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NEWSLETTER

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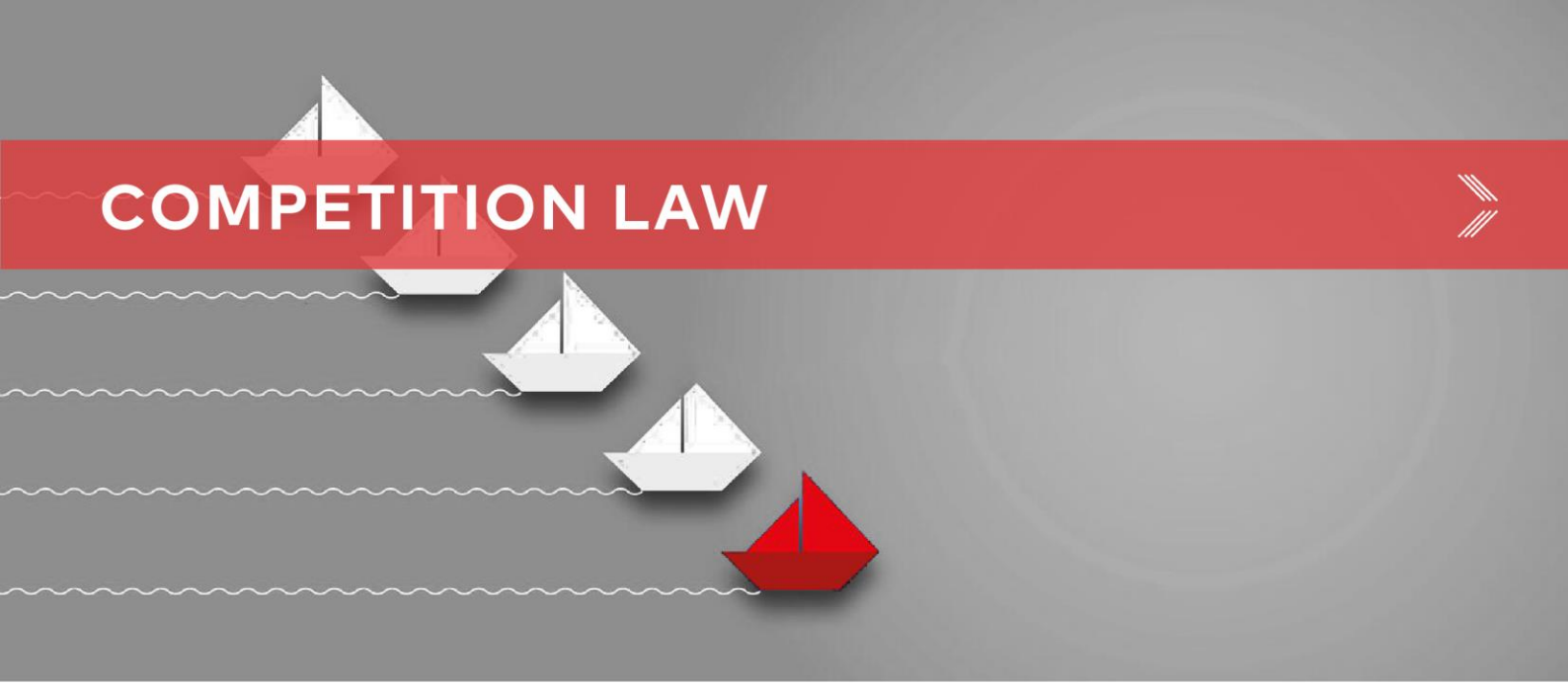
REDUCTION IN THE DENOMINATION FOR DEBT SECURITIES AND NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES

The Operational Circular no. SEBI / HO / DDHS / P / CIR / 2021 / 613 dated August 10, 2021, issued by SEBI mandated that the face value of each debt security or non-convertible redeemable preference share issued on a private placement basis shall be Rs. Ten Lakh and the trading lot shall be equal to the face value.

However, to enhance liquidity and increase the participation of investors, SEBI *via* circular dated October 28, 2022, reduced the face value of debt security and non-convertible redeemable preference share issued on a private placement basis to Rs. One Lakh.

The new guidelines will be applicable to all issues of debt securities and non-convertible redeemable preference shares on a private placement basis through new ISINs, on or after January 1, 2023.

However, with respect to the shelf placement memorandum, which is valid as on January 1, 2023, the issuer thereof will have the option to keep the face value at Rs. Ten Lakh or Rs. One Lakh while raising funds through a tranche placement memorandum. Such issuer will be required to issue the necessary addendum in relation to this in the shelf placement memorandum.



CCI FINES GOOGLE IN THE ANDROID MOBILE ECOSYSTEM

Vide an order dated 20.10.2022 CCI imposed a penalty of Rs. 1,337.76 crores on Google for abusing its dominant position in multiple markets in the Android Mobile device ecosystem. The CCI also directed Google to amend its practices within a set deadline.

The CCI found Google to be in the dominant position in the following markets:

(i) Market for licensable OS for smart mobile devices in India

(ii) Market for app store for Android smart mobile OS in India

(iii) Market for general web search services in India

(iv) Market for non-OS specific mobile web browsers in India

(v) Market for online video hosting platform (OVHP) in India.

Google entered in multiple agreements including Mobile Application Distribution Agreement (MADA), Anti-fragmentation Agreement (AFA), Android Compatibility Commitment Agreement (ACC), Revenue Sharing Agreement (RSA) to govern rights when doing business in the android devices market with Original Equipment Manufacturers.

The CCI opined that the markets should be allowed to compete on merits Google ensured that users continue to use its search services on mobile devices which facilitated uninterrupted growth of advertisement revenue for Google. Further, it also helped Google to further invest and improve its services to the exclusion of others.

CCI stated that these practices and the agreements entered by Google were a clear violation of its dominant position under the Competition Act.

Accordingly, in terms of the provisions of Section 27 of the Act, the CCI has imposed monetary penalty as well as issued cease and desist order against Google for indulging in anti-competitive practices that have been found to be in contravention of the provisions of Section 4 of the Act.

CCI FINES GOOGLE FOR ITS PLAY STORE POLICIES

Vide its order dated 25.10.2022, the CCI imposed a penalty of ₹936.44 crore on Google for abusing its dominant position using its Play Store marketplace.

The relevant markets as delineated by the DG are as follows:

a) Market for licensable mobile OS for smart mobile devices in India;

b) Market for App Stores for Android OS in India; and

c) Market for apps facilitating payments through UPI.

On analysis of various factors and further scrutiny, the CCI found that Google is dominant, in terms of explanation (a) to the provisions of Section 4 of the Act, in the relevant markets for *'licensable mobile OS for smart mobile devices in India'* & *'market for App store for Android OS in India'.*

The CCI found that Google's Play Store policies require the App developers to use exclusively and mandatorily Google Play's Billing System (GPBS) not only for receiving payments for Apps and also examined the allegations of exclusion of rival UPI apps as effective payment options on Play Store.

The CCI concluded that these practices were a clear violation of Section 4 of the Act.

Accordingly, in terms of the provisions of Section 27 of the Act, the CCI directed Google to cease and desist from indulging in anti-competitive practices that have been found to be in contravention of the provisions of Section 4 of the Act.

CCI PENALIZES MAKEMYTRIP (MMT) FOR ANTI-COMPETITIVE CONDUCT

Vide an order dated 19.10.2022, the CCI levied a penalty on MMT for its anti-competitive conduct.

It had been alleged that MMT and Oyo had entered into an anti-competitive agreement and that MMT was abusing its dominant position in the market.

The CCI scrutinized the DG report and the allegations and concluded that the relevant market for this matter was the "market for online intermediation services for booking of hotels in India".

As regards dominance, the CCI considered various factors under Section 19(4) having due regard to the dynamic nature of the market under consideration and found MMT to be holding a dominant position in the market for online intermediation services for booking of hotels in India.

CCI concluded that practices such as impositions e.g., room parity obligations, deep discounting strategies and exclusivity conditions were in contravention of Section 4 of the Act.

Based on the detailed reasoning, the CCI found the conduct of MMT in violation of the provisions of Section 4(2)(a)(i) as well as Section 4(2)(c) read with Section 4(1) of the Act. Further, the arrangement between MMT and OYO was also found to be in contravention of Section 3(4)(d) read with Section 3(1) of the Act.

INITIATION OF PROCEEDINGS UNDER THE SARFAESI ACT DOES NOT BAR THE ARBITRATION OF DISPUTES

The Hon'ble High Court of Delhi in ***Diamond Entertainment Technologies Pvt. Ltd. & Ors. v. Religare Finvest Ltd.***[1] held that merely because proceedings under the SARFAESI Act have been initiated, arbitration of disputes does not get per se barred. In the said case, one of the objections taken by the Respondent was that since it had already invoked proceedings under the SARFAESI Act, the disputes being raised by the Appellants are no longer arbitrable. The Hon'ble Court rejected the objection taken by the Respondent as devoid of any merit and held that since the SARFAESI Act does not oust the jurisdiction of the recovery by a Civil Court/DRT, the choice of forum continues to exist with the parties who may elect to approach the Civil Court/DRT as the case may be and/or take their civil disputes for adjudication for arbitration.

The Hon'ble High Court of Delhi further observed that SARFAESI proceedings are in the nature of enforcement proceedings while arbitration is an adjudicatory process. In the event that the secured assets are insufficient to satisfy the debts, the secured creditor can proceed against other assets in execution against the debtor, after the determination of the pending outstanding amount by a competent forum. Therefore, the provisions of the SARFAESI Act are a remedy in addition to the adjudication under the Arbitration and Conciliation Act, 1996 as an alternate forum to Civil Court/DRT.

DESIGNATED COMMERCIAL COURTS SUBORDINATE TO THE RANK OF PRINCIPAL CIVIL JUDGE IN THE DISTRICT CAN HEAR APPEALS/APPLICATIONS UNDER THE ARBITRATION & CONCILIATION ACT 1996

The Hon'ble Supreme Court of India in ***Jaycee Housing Pvt. Ltd. & Ors. v. Registrar (General), Orissa High Court, Cuttack & Ors.***[2] has held that designated commercial courts subordinate to the rank of a principal civil judge in a district can hear appeals/applications under the Arbitration & Conciliation Act 1996. In the said case, the Appellant challenged a notification dated 13.11.2020, issued by the State of Odisha through its Principal Secretary, the Law Department in establishing the Court of the Civil Judge (Senior Division) as Commercial Courts for the purposes of exercising jurisdiction and powers under the Commercial Courts Act, 2015. The Appellant contended that the constitution and designation of the Court of Civil Judge (Senior Division) as Commercial Courts and to exercise the powers under the Commercial Courts Act would be in conflict with the provisions of Section 2(1)(e) of the Arbitration & Conciliation Act 1996 as the term court under the Arbitration & Conciliation Act 1996 only means the Principal Civil Court of original jurisdiction in a district (Court of Principal District Judge).

The Hon'ble Supreme Court observed that the object and reason for enacting the Commercial Courts Act, 2015 was to provide for the speedy disposal of commercial disputes which includes the arbitration proceedings, and to achieve the said object, the legislature in its wisdom has specifically conferred the jurisdiction in respect of arbitration matters as per Section 10 of the Act, 2015. The Hon'ble Court further observed that as per the settled position of law, it is to be presumed that while enacting the subsequent law, the legislature is conscious of the provisions of the Act prior in time and therefore the later Act shall prevail.

Accordingly, the Hon'ble Supreme Court observed that since the Commercial Courts Act 2015 has been enacted after the Arbitration and Conciliation Act 1996, Sections 3 & 10 of the Commerical Courts Act, 2015 shall prevail and all

[1] ARB.P. No. 62 of 2022

[2] Civil Appeal No. 6876, 6877 & 6878 of 2022

applications or appeals arising out of arbitration under the provisions of Act, 1996, other than international commercial arbitration, shall be filed in and heard and disposed of by the Commercial Courts, exercising the territorial jurisdiction over such arbitration where such commercial courts have been constituted. The Hon'ble Court further observed that if the submission on behalf of the Appellants that all applications/appeals arising out of arbitration under the provisions of Act, 1996, other than the international commercial arbitration, shall lie before the principal civil Court of a district, in that case, not only the Objects and Reasons of enactment of Act, 2015 and establishment of commercial courts shall be frustrated, even Sections 3, 10 & 15 shall become otiose and nugatory.

PLACE OF ARBITRATION WOULD NOT BECOME THE 'SEAT' WHEN THE EXCLUSIVE JURISDICTION IS CONFERRED ON A COURT AT A DIFFERENT PLACE

The Hon'ble High Court of Delhi in ***Kush Raj Bhatia v. M/s DLF Power & Services Ltd.***[3] has held place/venue of arbitration shall not become the 'Seat' of arbitration when the exclusive jurisdiction is conferred on a court at a different place. In the said, the Petitioner filed a petition under Section 11 of the Arbitration and Conciliation Act 1996 for the appointment of an arbitrator as disputes had arisen between the Petitioner and Respondent in terms of the Lease Deed dated 13th July 2005. As per Clause 48 of the said Lease Deed, the arbitration proceedings were to be held at an appropriate location in New Delhi. However, the Respondent objected to the jurisdiction of the Hon'ble High Court by relying upon Clause 49 of the said Lease Deed wherein it was stated that the Civil Courts at Gurgaon and the High Court of Chandigarh shall alone have jurisdiction. The Hon'ble High Court of Delhi observed that there is a contradiction in the said Lease Deed i.e., while the venue of arbitration may be New Delhi, the seat of arbitration being the Civil Courts of Gurgaon, and High Court at Chandigarh, it has no jurisdiction to entertain the petition under Section 11 of the Arbitration and Conciliation Act 1996. Accordingly, it was held that the Courts at Gurgaon/High Court of Chandigarh have the exclusive jurisdiction for entertaining the disputes arising out of the said Lease Deed.

NCLT DISMISSES SECTION 7 FILED BY HOMEBUYERS

In the case of ***Amit Kumar Sinha & Ors. v. Ireo Private Ltd.*** **CP (IB) 239/ND/2021**, the National Company Law Tribunal, New Delhi dismissed the petition filed by the Homebuyers under Section 7 of the Insolvency and Bankruptcy Code ("**Code**"). In this case, the Financial Creditors, who are Homebuyers in the project "Ireo Gurgaon Hills," filed the Section 7 petition with a request to start the Corporate Insolvency Resolution Process ("**CIRP**") against the Developer Company Developer Company M/s Ireo Private Limited ("**IREO**"). It was the case of the Homebuyers argued that because no Occupancy Certificate ("**OC**") had been issued and the project had been delayed, they were entitled to initiate CIRP against IREO. The reason for non-issuance of the Occupancy Certificate as intimated by the Corporate Debtor was "non-completion of the interior works" of the units owned by the Financial Creditor. The Respondents, i.e IREO submitted that as per the Apartment-Buyer-Agreement, their obligation was limited to construct and deliver the respective units in a bare-shell condition. Further, the homebuyers were under an obligation to customize and finish the interior works of their respective units. The Respondents had emailed the homebuyers to execute their obligations, however owing to non-fulfillment of the same they were categorized as "wilful defaulters". The Tribunal relying on the decision *of Pioneer Urban Land and Infrastructure Pvt. Ltd. & Anr. v. UOI & Ors.* (2019) 8 SCC 416, held that the Homebuyers who are themselves committing default, cannot initiate insolvency proceedings against the developer. Additionally, the tribunal held that non-completion of obligations by the home-buyers is a testimony to the fact that they are speculative investors as opposed to "genuine home-buyers" and therein the Section 7 petition was dismissed.

NCLT AND NCLAT CAN EXERCISE JUDICIAL REVIEW OVER COMMITTEE OF CREDITOR'S DECISION FOR LIQUIDATION

In the case *of* ***Sreedhar Tripathy v. Gujarat State Financial Corporation & Ors.*** **Company Appeal (AT) (Insolvency) No. 1062 of 2022,** the National Company Law Appellate Tribunal, New Delhi held that decision taken by the Committee of Creditors ("**COC**") for liquidation the same is open to judicial review by the Adjudicating Authority ("**NCLT**") and the Appellate Tribunal ("**NCLAT**"). In this case, NCLT vide order dated 23.06.2022 had directed for liquidation of the Corporate Debtor. The Appellant contended that CoC's decision is devoid of commercial wisdom and is arbitrary. NCLAT held that under the legislative scheme of Section 33 (2) of the Code, CoC is empowered to take decision to liquidate the Corporate Debtor, any time after its constitution and before confirmation of the resolution plan. The appeal was dismissed observing that once the decision of liquidation taken by the COC is approved by NCLT, it does not warrant any interference by the Appellate Tribunal. However, it was held that "*we make it clear that the decision taken by the CoC was in the facts of the present case and it cannot be said that whenever decision is taken for liquidation the same is not open to judicial review by the Adjudicating Authority and this Appellate Tribunal. It depends on the facts of each case as to whether the decision to liquidate the Corporate Debtor is in accordance with the I&B Code or not*".

[3] ARB.P. No. 869 of 2022

EMPLOYMENT LAW

APPLICABILITY OF PAYMENT OF BONUS ACT, 1965 ON EMPLOYERS IN DADRA & NAGAR HAVELI AND DAMAN & DIU

The Administration of Dadra & Nagar Haveli and Daman & Diu Labour Department, vide its circular dated October 10, 2022, has directed all the industrial and other establishments, i.e., hotels, shops etc., and the labour contractors to whom the Payment of Bonus Act, 1965 ("**Payment of Bonus Act**") applies to pay bonus to all the eligible employees in accordance with the provision of the Payment of Bonus Act taking into consideration the productivity of the employee so that congenial industrial environment could be created leading to overall economic development of the region. The employers shall submit Annual Return in Form 'D' under the Payment of Bonus Act immediately after making payments of bonus to employees.

GOVERNMENT OF GOA NOTIFIES GOA INDUSTRIAL GROWTH AND INVESTMENT PROMOTION POLICY, 2022

The Government of Goa, vide its notification dated October 13, 2022, has published the Goa Industrial Growth and Investment Promotion Policy, 2022 ("**Policy**"). The Policy is open to all sectors and types of investments in the state except those included in the exclusions section of the notification. Thrust areas of the Policy are ecotourism, adventure tourism, entertainment, food processing, education and research and development, and other white and green category industries. The objectives of the Policy include:

- Strengthening of the online single window to provide time-bound clearances with no physical touchpoint.
- To provide support to local and existing businesses as well as attract new investment in the state by providing specific incentives and enabling infrastructure.
- To promote local employment and skill development through incentives and other Policy provision.

Further, some of the key initiatives under the Policy are as follows:

- Provision for development of industrial infrastructure in public private partnership model, such as industrial/sectoral parks, incubator and accelerators, logistics park, convention centre, food parks, etc.
- A single window system for all events-related clearances may be developed.
- Facilitation for private landowners to lease/sell to investors for setting up industry. Goa Investment Promotion Board/Goa Industrial Development Corporation ("**IPB/GIDC**") may invite landowners to register their land with the department. Fixed rates, zoning change and other clearances may be facilitated through IPB/GIDC. Database of such land parcels will be maintained and shared with prospective investors when required.
- Facilitation for communidade landowners may be provided to lease land for industrial or commercial use.
- Anchor units may be identified and incentivized to support the growth of ancillary industry and sector-specific ecosystem.

EMPLOYMENT OF WOMEN IN NIGHT SHIFTS UNDER TELANGANA SHOPS AND ESTABLISHMENTS ACT, 1988

The Government of Telangana, vide its order dated October 13, 2022, has allowed all establishments covered under the Telangana Shops and Establishments Act, 1988, to employ women in night shifts, i.e., between 8:30 PM to 6:00 AM, subject to the following conditions:

- Consent of women employees shall be obtained in writing to work in night shifts and employment of women employees shall be on rotation basis;

- The establishment shall provide transport facilities from the residence of the woman employee to the workplace and back, free of cost and with adequate security. Such transport facility shall have GPS for tracking and monitoring;

- The safety and security measures shall include provision of shelter, rest rooms, lunch rooms, night crèches and ladies toilets, adequate protection of their privacy, dignity, honor and safety, protection from sexual harassment, employment of at least 5 (Five) women employees together and adequate number of security guards shall be posted during night shift;

- The said relaxation shall not apply to a woman employee during the period of 16 (Sixteen) weeks before and after her childbirth, of which at least 8 (Eight) weeks shall be before the expected childbirth, and for such additional period, if any, as specified in the medical certificate stating that it is necessary for the health of the woman employee or her child;

- The above stated conditions shall apply in addition to the transport and safety conditions as detailed in the notification.

If any establishment fails to comply with the above conditions, then it may lead to cancellation of the registration certificate and/or withdrawal of the above exemption in respect of such establishment. However, the exemptions provided under the order may also be revoked at any time without any prior notice.

EXTENSION OF THE SCOPE OF EMPLOYEES' STATE INSURANCE BENEFITS TO EMPLOYEES IN SALEM, CHENGALPATTU AND KARUR DISTRICTS OF TAMIL NADU

The Ministry of Labour and Employment, vide its notification dated October 13, 2022, has made certain provisions of Employees State Insurance Act, 1948 ("**ESI Act**") applicable to the districts of Salem, Chengalpattu and Karur in the state of Tamil Nadu. The provisions are:

- Sections 38 to 43 and Sections 45A to 45H of chapter IV (provisions pertaining to contributions) of the ESI Act;

- Sections 46 to 73 of chapter V (provisions pertaining to benefits) of the ESI Act; and

- Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of chapter VI (provisions pertaining to adjudication of dispute and claims) of the ESI Act.

EXTENSION OF PUBLIC UTILITY SERVICE STATUS OF CERTAIN INDUSTRIES BY THE MINISTRY OF LABOUR AND EMPLOYMENT

The Ministry of Labour and Employment vide its notification dated October 20, 2022, has extended the public utility service status on services of the following industries:

- Iron ore mining, which is covered in the First Schedule to the Industrial Disputes Act, 1947, for a period of 6 (Six) months with effect from October 14, 2022.

- Transport (other than railways) for the carriage of passengers or goods, by land or water which is covered in the First Schedule to the Industrial Disputes Act, 1947, for a period of 6 (Six) months with effect from October 20, 2022.

EMPLOYMENT OF WOMEN DURING NIGHT SHIFT IN FACTORIES IN ANDHRA PRADESH

The Government of Andhra Pradesh, vide its circular dated October 25, 2022, has allowed the employment of women in factories during night shifts, i.e., after 7:00 PM and before 6:00 AM subject to the following conditions:

- Consent of each women worker required or allowed to be engaged in the night shifts shall be taken in writing in advance;

- No women worker shall be employed against the maternity benefit provisions laid down under the Maternity Benefit Act, 1961;

- Adequate transportation facilities shall be provided to all women workers for pick up and drop off from and to their residences;

- The workplace including passage towards conveniences or facilities concerning toilets, washrooms, drinking water and entry and exit of women employees should be well-lit;

- The toilet, washroom and drinking facilities should be near the workplace where such women workers are employed;

- Provide safe, secure and healthy working conditions such that no women worker is disadvantaged in connection with her employment; and

- The provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as applicable to the establishments, shall be complied with.

REVISION OF MINIMUM WAGES

- Punjab: The Office of the Labour Commissioner, Punjab, vide a circular dated October 11, 2022, has revised the consumer price index and minimum wages for skilled, unskilled, semi-skilled and highly skilled laborers employed in (i) Agriculture, and (ii) Brick Kiln sectors.

- Jammu & Kashmir: The Government of Jammu and Kashmir, vide a notification dated October 12, 2022, has revised the minimum rates of wages in the following manner with effect from October 17, 2022:

    - Unskilled labour: INR 311 (Rupees Three Hundred Eleven);
    - Semi-Skilled labour: INR 400 (Rupees Four Hundred);
    - Skilled labour: INR 483 (Rupees Four Hundred and Eighty Three);
    - Highly Skilled labour: INR 552 (Rupees Five Hundred Fifty Two);
    - Administrative/Ministerial: INR 449 (Rupees Four Hundred Forty Nine).

- Delhi: The Government of Delhi, vide an order dated October 14, 2022, has revised the minimum rates of wages for schedule employments. After adjustment of the average All India Consumer Price Index Number for the period of January 2022 to June 2022 which is 365.75 (Three Hundred Sixty Five Point Seven Five), an increase of 8.11 (Eight Point Eleven) points, the dearness allowances and minimum wages which shall be payable for all clerical and supervisory staff has been declared with effect from October 1, 2022.

- Odisha: The Government of Odisha, vide its notification dated October 19, 2022, has notified the minimum wages effective from October 1, 2022 for the state of Odisha. The new minimum wages with variable dearness allowance are:

    - Unskilled labour: INR 333 (Rupees Three Hundred Thirty Three);
    - Semi-Skilled labour: INR 373 (Rupees Three Hundred Seventy Three);
    - Skilled labour: INR 423 (Rupees Four Hundred Twenty Three);
    - Highly Skilled labour: INR 483 (Rupees Four Hundred Eighty Three).

ENERGY & INFRASTRUCTURE

ENERGY

MINISTRY OF POWER NOTIFIES GUIDELINES UNDER SECTION 63 OF THE ELECTRICITY ACT, 2003 FOR PROCUREMENT OF POWER ON FINANCE, OWN AND OPERATE (FOO) BASIS UNDER THE SHAKTI POLICY

The Ministry of Power ("**MoP**") vide notification no. 23/03/2022-R&R, dated 20.10.2022, notified the Guidelines under Section 63 of the Electricity Act, 2003 ("**Act**") for procurement of power on Finance, Own and Operate (FOO) basis under the SHAKTI Policy ("**Guidelines**"). The SHAKTI Policy or the Scheme for Harnessing and Allocating Koyala Transparently in India, was introduced by the Ministry of Coal on 22.05.2017 with a view to allocate the available coal to thermal power plants all over the country.

The objective of the Guidelines is to facilitate procurement of power on long-term and medium-term basis by the Nodal Agency through transparent bidding to meet power requirement of group of states with coal linkage as per para B(v) of the SHAKTI Policy.

Scope of the Guidelines

The Guidelines have been issued under Section 63 of the Act for procurement of electricity by States/ distribution licensees (Procurer) for:

(a) long-term procurement of electricity for a period of 12 years to 15 years;

(b) Medium term procurement for a period of up to 7 years but exceeding 1 year.

The Nodal Agency

Under the Guidelines, the Nodal Agency is responsible for conducting the bid process for procurement of power under para B(v) of the SHAKTI Policy under tariff-based competitive bidding in accordance with the Guidelines. Further PFC Consulting Limited, a wholly owned subsidiary of Power Finance Corporation Limited has been designated as the Nodal Agency by MoP. Alternatively, a group of States may also appoint a Nodal Agency of their choice.

Preparation for inviting bids

The Nodal Agency will aggregate the requirement of power of a group of States for medium term or long term basis in terms of quantum (MW) and duration (period) including the date of commencement for supply of power. The Nodal Agency may also initiate procurement of long term or medium term power for group of States based on broad demand assessment on the basis of consultation with the States. Based on the quantum and period of power to be procured, the Nodal Agency will work out the quantity of domestic coal required on the basis of CEA norms and the estimated commencement date of supply. The MoP will send the request for coal requirement along with duration and estimated date of commencement of coal supply to the Ministry of Coal for further consideration. Sources of coal will then be identified by Coal India Ltd and /or any of its subsidiary or Singareni Collieries Company Ltd as per requisition received from the Nodal Agency and letter of intent will accordingly be issued to the Nodal Agency.

Tariff Structure

For procurement of electricity under these Guidelines, the tariff will be paid and settled for each payment period (not exceeding one month). A multi-part tariff structure with separate Fixed Charge and Variable Charge components of tariff will form the basis for bidding.

Bidding Process

The Nodal Agency will invite bids from generating companies (bidder) and request them to quote Base Fixed Charge, Base Variable Charge (Fuel cost component and Fuel transportation component) separately for one or more sources of coal identified to meet the aggregate requirement of power indicated by the Nodal Agency. To ensure competitiveness, the minimum number of qualified bidders against each source has been stated to be at least two. If, in case of a particular source, it is found that only 1 (one) bidder has offered the bid, the Nodal Agency may cancel the bidding process for such source and proceed with selection of bidders for other sources.

Bid Evaluation

The bid evaluation is to be done source wise with bucket filling approach. The list of shortlisted bidders for consideration of evaluation for a source will be arrived at by considering the last bidder whose bid is less than or equal to 110% of Fixed Charge plus fuel component of Variable charge of the L1 bidder for that source. The bids will then be evaluated source wise starting with the source with highest quantity of coal. In case two sources have equal coal quantity, the source having the lowest average price per kWh quoted by the bidders shall be taken up first. The lowest bidder (L1) for a source shall be allocated maximum coal from that source subject to coal quantity commensurate with the capacity offered by that bidder. Thereafter, if further quantity of coal is available in that source, the quantity offered by the next lowest bidder after L1 will be exhausted. This will continue for the remaining bidders until the last shortlisted bidder, or the source quantity is exhausted, whichever is earlier.

Allocation of capacity to various States

The capacity of each successful bidder will be allocated amongst various states on proportionate basis. Similar, capacity allocations will be made for each participating state from each successful bidder. The variable charge for each supplier (i.e. successful bidder) for a month shall be based on weighted average cost of the coal consumed during that month from allocated linkage coal sources. After execution of PPA, FSA shall be signed between the successful bidders and respective coal company.

Payment Security

Payment security and other related issues is to be dealt with in accordance with the provisions of Electricity (Late Payment Surcharge and Related Matters) Rules as on the 7 days prior to the last date of bid submission.

Bid Evaluation Committee

The Nodal Agency to constitute a committee for evaluation of the bids (Evaluation Committee), with at least three members, including at least one member with expertise in financial matters and bid evaluation.

Adoption of Tariff

The tariff determined based on these Guidelines and the Model Bidding Documents issued in consonance with these guidelines is to be adopted by the Appropriate Commission in pursuance of the provisions of Section 63 of the Electricity Act, 2003.

GUIDING PRINCIPLES FOR MONETIZATION OF TRANSMISSION ASSETS IN THE PUBLIC SECTOR THROUGH ACQUIRE, OPERATE, MAINTAIN AND TRANSFER (AOMT) BASED PUBLIC PRIVATE PARTNERSHIP MODEL

The MoP, vide notification no. 25-10/28/2021-PG, has issued the Guiding Principles for Monetization of Transmission Assets in the Public Sector through Acquire, Operate, Maintain and Transfer (AOMT) based Public Private Partnership Model ("**Guiding Principles**"), with a view to evolve a common framework and approach, for national and state level transmission undertakings desirous of undertaking monetization of transmission asset. The Guiding Principles suggest a limited period transfer of ownership of a transmission service provider SPV along with a mandatory buy back to the asset owning public sector entity at the end of the transaction period.

The primary objectives of the Guiding Principles are as follows:

- To make available efficient capital for new investment in the transmission sector through upfront payment received from the monetization process;
- To facilitate transparency, consistent approach and efficiency in monetization processes to be undertaken by public sector transmission undertakings;
- To enable proficient project preparation and planning activities under a guiding framework for running credible transaction processes that instill investor confidence; and
- For sharing of good practices and models for monetization of infrastructure assets for value maximization and tapping private sector efficiencies.

Scope of the Guiding Principles

The guiding principles, though not mandatory, are intended to enable implementation of monetization program for identified transmission assets of the State Government owned transmission undertakings and CPSEs/PSUs/other Government Organizations in the Central Sector who may

adopt this framework with the approval of the respective competent authority.

Acquire, Operate, Maintain and Transfer ("AOMT") structure and steps

As the first step, the Sponsoring Transco or Energy Departments ("**Sponsoring Transco**"), desirous of monetizing its brown-field transmission assets through the AOMT model hives off the transmission assets supposed to be monetized (either individual transmission lines or a bundle of transmission lines and substations) by way of a special demerger under a new specific Special Purpose Vehicle ("**SPV**"). Under the AOMT model, the entire shareholding of the SPV is transferred to an Investor Entity as part of monetization and bought back at a nominal cost of INR 1.00 at the end of a stipulated transaction period. Such transaction period may be specified in the Transfer Agreement and be coterminous with the residual economic life of the asset. For the stipulated transaction period, the Investor Entity will undertake operation and maintenance of the transmission network including the right to earn transmission charges subject to provisions of the Transmission Service Agreement.

The SPV formed is required to apply to the respective regulatory commission for grant of a separate Transmission License(s) to operate and maintain the identified assets/asset bundle for a period up to terminal date envisaged under the Transfer Agreement. The Investor Entity is selected through a competitive bidding process to acquire the 100% shareholding of the SPV. As the shareholder of the SPV, it will own, operate and maintain the identified assets during the tenure of the Transfer Agreement.

At the expiry of the Transfer Agreement, the SPV along with the rights, title and interest in all the assets held by the SPV will be mandatorily transferred back to the Sponsoring Transco at a nominal consideration of INR 1.00 and free from any encumbrance and liability.

Identification of and Book Value of Assets for transfer to SPV

The estimated book value of the assets identified for such transfer is to be preferably determined or vetted, as the case may be by an independent auditor, that may be appointed by the Sponsoring Transco. The key considerations for identification of assets/asset bundle that need to be assessed are:

- Vintage of the asset, availability factor and associated maintenance cost
- Future capex requirements
- Need to bring scale in the transaction to attract credible players and investor entities

Scheme for Transfer of identified assets of Sponsoring Transco to an SPV

The identification of assets and demerger into separate SPVs may be made taking into consideration the amount to be monetized over a long term (5 years) and in such a manner that multiple SPVs are created *ab initio* to reduce the impact of capital gains tax.

Grant of Transmission License by respective regulatory commission to the SPV

The new SPV formed will be a wholly owned subsidiary of the Sponsoring Transco. The SPV will be required to apply to the respective regulatory commission (CERC or SERC, as the case maybe) for grant of a separate transmission license to operate and maintain the identified assets for a period in consonance with the Transfer Agreement.

Tenure of Transfer Agreement

The tenure of the Transfer Agreement shall be decided by the Sponsoring Transco on a case-to-case basis and may normally be coterminous with economic life of the asset or residual license period.

SPV Enterprise Value

The Sponsoring Transco will preferably appoint an independent valuer for carrying out financial valuation of the assets. The valuer will submit a comprehensive valuation report to the Sponsoring Transco. Asset enterprise valuation will preferably be done based on Discounted Cash Flow ("**DCF**") method. The Enterprise Value so determined may be reckoned as an undisclosed reserve value for bidding process by the Sponsoring Transco to enable an efficient price discovery of asset.

Transfer Agreement

The Sponsoring Transco may enter into a Transfer Agreement with the Investor Entity. This agreement shall inter-alia cover aspects related to transactions or purchase of shares by the Investor Entity at the beginning of the transaction as well as by the Sponsoring Transco at the end of tenure of Transfer Agreement.

Transmission Service Agreement (TSA)

In case of tariff based competitive bidding (TBCB) assets, the pre-existing TSA will continue to apply to the SPV, after the latter has been taken over by the Investor Entity. In case of regulated tariff mechanism (RTM) assets, the Sponsoring Transco may enter into a tripartite agreement with the new SPV as well as Investor Entity for assignment of its rights under the existing Transmission Service Agreement/Bulk Power Transmission Agreement to the newly created SPV

provided that the terms and conditions of existing Transmission Service Agreement/Bulk Power Transmission Agreement shall not be altered. In case of absence of existing Transmission Service Agreement/Bulk Power Transmission Agreement, the Sponsoring Transco on the date of acquisition of SPV may enter into a Transmission Service Agreement with the Central transmission utilities, in case of interstate projects or the concerned state utilities, in case of intra State projects.

The Sponsoring Transco to enter into other agreement(s), if required, under Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) or any other agreements mandated through regulations framed by the Appropriate Commission, as amended from time to time, within fifteen (15) days from the date of acquisition of the SPV.

Tariff

In case of TBCB assets, the tariff adopted by the Appropriate Commission, as applicable during the tenure of the Transfer Agreement, will continue to be collected by the SPV, subject to the provisions of the TSA. In case of RTM assets, the Appropriate Commission may specify a premium, which may be provided over and above the prevailing return on long term government securities (5 yr G-Sec) to arrive at the rate of return on equity applicable for the tenure of the Transfer Agreement. This is to be done prior to the process of monetization is undertaken by the Sponsoring Transco. Other parameters for determination of tariff for RTM assets will be in accordance with the Tariff Regulations specified by the Appropriate Commission from time to time.

Bidding and Evaluation

The Investor Entity is to be selected in accordance with these Guiding Principles, through a fair and transparent bid process which may be undertaken by the Sponsoring Transco with credible and professional transaction advisers. The bidder quoting the highest Upfront Payment may be selected as Investor Entity.

Payment Security Mechanism

The collection and disbursement of transmission charges is to be done in accordance with the relevant regulations of the Appropriate Commission. The payment security to Sponsoring Transco will be as per relevant rules issued by the MoP from time to time.

INFRASTRUCTURE

INTEREST RATE APPLICABILITY FOR HAM PROJECTS UNDER CLAUSE 23.6.4

NHAI, vide policy circular no. 8.4.35/2022 dated October 12, 2022, has notified the following interest rates under Clause 23.6.4 of the model concession agreement for hybrid annuity model projects ("**Model HAM Agreement**"), payable in relation to the reducing balance of completion cost towards the project:

Sl. No.	Bank's name	1 year MCLR in % (As on October 01, 2022)	Average Rate applicable for the period October 1, 2022 to December 31, 2022
1	State Bank of India	7.70	7.91% per annum plus 1.25%
2	HDFC Bank	8.20	
3	ICICI Bank	8.10	
4	Bank of Baroda	7.80	
5	Punjab National Bank	7.75	

In terms of Clause 23.6.4 of the Model HAM Agreement, the next review of such interest rate will be declared on September 01, 2023, and the rates will be published for 1st day of every quarter.

INTELLECTUAL PROPERTY RIGHTS

DELHI HIGH COURT GRANTS EX-PARTE INJUNCTION AGAINST NIC NATURAL ICE CREAM FOR USE OF ICE CREAM BRAND, NATURAL

The Delhi High Court restrains, by way of an ex-parte ad interim injunction, NIC Natural Ice Cream, from using the brand, NATURAL and even their own brand NIC Natural Ice Cream and the domain name, nicicecreams.com.

The Plaintiff claim adoption and use of the brand, Natural since 1984 and extensive Pan India presence, to justify a prima facie case against the Defendants. Importantly, the Plaintiff averred that the primary Defendant was a partner in one of the Plaintiff's franchisees and hence was well aware of the Plaintiff's brand and associated goodwill. In view of the facts and orders passed in earlier similar proceedings, the Court observed that the Plaintiff has proved a strong prima facie case and thus granted the *ex-parte* relief to the Plaintiff.

DSK View: *Malafide adoption and use of similar marks / branding, are strong grounds for grant of such discretionary relief. Subject to filing of pleadings by the Defendants, the said relief may be made absolute or modified by the Court.*

(Siddhant Icecreams LLP & Ors. v. Ameet Pahilani & Ors. – CS (COMM) 735 of 2022)

DELHI HIGH COURT RESTRAINS BICYCLE MANUFACTURER FROM USING NUMERAL, 'NINETY NINE' / '99', ON ALLEGATIONS OF TRADEMARK INFRINGEMENT

The Delhi High Court granted an *ex-parte* relief to the Plaintiff, by restraining the Defendants from using the numeral '99' on fresh stock of bicycle and related parts. The Plaintiff claimed to have exclusive rights on the numeral '91', and the use of '99' by the Defendants violated the said exclusive rights.

Plaintiff claimed that the Defendants had agreed for re-branding but rescinded from the said assurance. In view of this fact, the Court was inclined to grant a limited interim relief and appointed a local commissioner to prepare an inventory of all the bicycles and related parts, bearing the mark/ branding, 'Ninety Nine / 99'.

DSK View: *While single numeral is considered to be inherently non-distinctive [Carlsberg India Pvt. Ltd. v. Radico Khaitan Ltd. 2012 (49) PTC 54 (Del.) (DB)], combination of numerals, also with alphabets are granted protection under Indian Trademark laws. It is important to note that the Courts decide upon infringement in case of numeral marks, primarily on account of visual similarities.*

(Alphavector India Private Limited v. M/s Sach Industries and Ors. - CS (COMM) 691 of 2022)

VISTARA ALLOWED TO USE THE TAGLINE "FLY HIGHER" - DELHI HIGH COURT VACATES INTERIM INJUNCTION GRANTED AGAINST USE OF THE TAGLINE

Modifying its earlier order, the Delhi High Court allowed Vistara's plea to vacate the *ex-parte* interim injunction against use of the tagline "Fly Higher", which the Plaintiff claimed to be violative of their exclusive rights in the mark "Fly High". In a detailed judgment, the Court observed that Vistara was using "Fly Higher" not as a trademark but as a descriptive phrase for its aviation services. Moreover, the Court observed that the relevant class of consumers is different for each of the parties and hence use of "Fly Higher" as a tagline may not amount to public confusion as such. Defendants relied heavily on the well-known status of the brand, Vistara and claimed that the tagline is used in conjunction with the said brand, which further reduces chances of public confusion.

Among other crucial observations, the Court observed that

the words / phrase "Fly High", is descriptive for aviation industry and the owner i.e. the Plaintiff in this case must be prepared to tolerate some degree of confusion which is inevitable owing to widespread use of such trademark by fellow competitors [*Cadila Health Care Ltd. v. Gujarat Co-operative Milk Marketing Federation Ltd. & Ors.* 2009 SCC OnLine Del 2786].

DSK View: *Despite registration, descriptive trademarks do not enjoy strong proprietary rights. No person or entity can be restrained from using a mark in descriptive sense and not as a source identifier, which is a defence against infringement under the Indian Trademarks law.*

(Frankfinn Aviation Services Pvt. Ltd. v. Tata Sia Airlines Ltd. 2022/DHC/004489)

FIRST WTO APPEAL INITIATED BY COLUMBIA UNDER THE PLURILATERAL MPIA ARRANGEMENT

The first Multi-Party Interim Appeal Arbitration Arrangement ('MPIA') appeal is now underway with Colombia appealing the *Colombia – Anti-Dumping Duties on Frozen Fries from Belgium, Germany and the Netherlands* (DS591) dispute ('*Columbia – Fries*').

The Multi-Party Interim Appeal Arbitration Arrangement ('MPIA') is an interim contingency measure under Article 25 of the WTO's Dispute Settlement Understanding ('DSU') aimed at preserving the essential principles and features of the WTO dispute settlement system, which include its binding character and two levels of adjudication through an independent and impartial appellate review of panel reports. Not being in the nature of a treaty, the joint requests of both the parties to the dispute before a WTO panel is necessary to initiate the appeal arbitration procedure under the MPIA. Under the MPIA Arrangement, the parties agree to abide by the arbitration award which is considered final.

A total number of three arbitrators are selected from a pool of ten standing appeal arbitrators on the basis of the same principles and methods that govern an Appellate Body. The arbitration is supposed to be governed, *mutatis mutandis*, by the provisions of the DSU and other rules and procedures applicable to Appellate Review. This includes in particular the Working Procedures for Appellate Review and the timetable for appeals provided for therein as well as the Rules of Conduct. The arbitrators may adapt the Working Procedures and the timetable for appeals provided therein, after consulting the parties.

Previously, on 25 July 2022, an appeal arbitration award was issued in *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products* under Article 25 of the DSU (DS583) which we covered in our Monthly Newsletter's July edition. Although it was not conducted under the MPIA (as Turkey is not a participating Member), it was conducted pursuant to agreed procedures under Article 25 of the DSU in similar terms to those established for the purposes of the MPIA.

In the extant case, Columbia had applied anti-dumping duties at the rate of 85% on the imports of frozen fries imported from Belgium, Germany and the Netherlands. The three European Countries initiated a WTO dispute against such imposition of duties by Columbia and the WTO panel issued its Final Report on 29 August 2022 to state that the investigation conducted by the Ministry of Commerce, Industry and Tourism, Columbia ('MINCIT') was flawed on several procedural aspects, including the calculation of dumping margin as well as the injury analysis. Since the imposition of duties was in breach of the WTO rules, the WTO Panel recommended that Columbia should bring its measures into conformity with its obligations under the Anti-Dumping Agreement.

Subsequently, on 6 October 2022, a notification of appeal was filed by Columbia against the Report of the Panel in *Columbia – Fries*. Notably, this is the first notification of an appeal under Article 25 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ('DSU') wherein the parties to the dispute are also parties to the MPIA. The arbitrators in this extant matter have been requested to issue the award within 90 days of the filing of the notice, i.e., 4 January 2023. The award would be one of a kind as it would be the first award to be issued under the MPIA in respect of a WTO Panel Report.

DSK View: *The WTO Appellate Body has been in limbo for three years as it doesn't have enough members to decide upon the cases owing to the US blocking the appointments of new members to the Appellate Body. This has created numerous instances wherein member-countries have filed*

appeals into the void due to the absence of an Appellate Body. To revive the unique binding dispute settlement process, 47 WTO member-countries joined to form the MPIA to resort to the use of this mechanism give finality WTO disputes.

Despite the MPIA being an alternative to the WTO Appellate Body, a number of WTO member-countries including India, Japan, US, UK, Russia and South Africa have not joined the MPIA. However, non-parties to the MPIA can make written submissions and be heard by the arbitrators as third parties to the dispute.

The trend is encouraging and signals a new era of international trade rules enforcement, post the appellate body paralysis.

SOLAR POWER PROJECTS TO BECOME COSTLIER DUE TO AMENDMENT IN PROJECT IMPORTS REGULATIONS

In general parlance, imported goods are classified separately under different tariff headings and assessed at applicable basic customs duties ('BCDs'); however, when a variety of goods are imported for setting up an industrial project, their separate classification and valuation for assessment of duty becomes cumbersome. To reduce such overruns, the Central Board of Excise and Customs ('CBIC'), in exercise of its power under Section 157 of the Customs Act, 1962, introduced the Project Imports Regulations, 1986 ('PIR') in order to streamline and smoothen the assessment of goods imported for a project.

The PIR facilitates the import of machinery, instruments, and apparatus, among others, which are required for setting up a new project unit or for substantial expansion of an existing project unit by allowing imports at a concessional duty of 7.5%. Essentially, it classifies all goods imported for setting up a project under a single Custom Tariff Heading, namely Heading No. 98.01, in the Customs Tariff Act, 1975. The projects covered under the PIR includes power, industrial plants, irrigation, mining and projects for exploration for oil or other minerals.

India has in the recent past imposed BCD of 40% on solar modules and 25% on solar cells with effect from 1 April 2022 in a bid to cut imports from China and boost domestic manufacturing. However, several solar developers were using the PIR scheme under the garb of setting up new units to avoid paying high BCD on cells and modules. The Ministry of Finance had been looking at ways for plugging this loophole which has allowed many solar power developers to avoid paying duties on solar cells and modules.

Accordingly, the CBIC recently amended the Project Imports Regulations, 1986 to issue the Project Impots (Amendment) Regulations, 2022 vide Notification No. 54/2022-Customs dated 19 October 2022. The amendment has substituted "all power plants and transmission projects" in the table below Section 7 of the PIR with "all power plants and transmission projects, other than solar power plants or solar power projects" to exclude solar power projects from the purview of the Regulations and thereby, shut the PIR route used by solar project developers. This amendment has come into effect from 20 October 2022 onwards.

DSK View: *Post the amendment to the PIR, the solar power project developers will not be able to avail themselves of concessional import duty of 7.5% and avoid the existing customs duty @ 40%. The impact of such an amendment is likely to increase the cost of solar power production as well as the cost of setting up solar power plants.*

On the flipside, the measure could act as a catalyst for the domestic procurement of solar cells and modules, to set up solar power plants, thereby boosting the domestic manufacturing in this sector. This would also be in sync with the Atmanirbhar philosophy of the Government, which is being pushed for in the renewable energy sector, especially for solar energy.

MEDIA & ENTERTAINMENT

KERALA COURT RESTRAINS THE MAKERS OF THE MOVIE "KANTARA" FORM USING THE SONG "VARAHA ROOPAM" IN THEATRES AND STREAMING PLATFORMS

In a suit filed by a Kerala based rock band "Thaikkudam Bridge" ("Plaintiff"), against the producers of the film "Kantara" ("Defendants") alleging copyright infringement and plagiarism of their song "Navarasam", the Principal District Court at Kozhikode ("Court") has passed an ad-interim order against the Defendants from using the song "Varaha Roopam". The Plaintiff has alleged that there are substantial similarities between the songs and the music director of the film has not just taken an inspiration from the Plaintiff's song but has consciously plagiarised the same, resulting in the infringement of the Plaintiff's rights guaranteed under the Copyright Act, 1957. The Court while passing the restraining orders against the producer, director and Kerala distributor of the film, further directed the platforms such as Amazon Music, Spotify, Wynk Music and JioSaavn not to play the alleged song on their respective platforms.

THE CENTRAL GOVERNMENT NOTIFIED THE AMENDMENT TO THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES 2021

Recently, the Central Government vide a notification dated October 28, 2022, published the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022 ("Amendment Rules"). As per the Amendment Rules, a new "Rule 3A" has been introduced as per which, the Central Government shall, within 3 (three) months from the date of notification of these Amendment Rules, establish one or more Grievance Appellate Committee consisting of a chairperson and two full-time members appointed by the Central Government. Further, the Appellate Committee will be responsible to resolve any appeals filed by any aggrieved party against the decision of the Grievance Officer within 30 days from the date of receipt of communication from the Grievance Officer by the aggrieved party. The Amendment Rules further mentions that the Appellate Committee shall adopt an online dispute resolution mechanism wherein the entire appeal process, from filing of appeal to the decision thereof, would be conducted through digital mode. The Amendment Rules have put in place additional responsibility on social media intermediaries to ensure that the users have complied with the due diligence requirements as were laid down under the previously notified IT Rules, 2021.

PIL FILED AGAINST THE PRODUCERS AND ACTORS OF THE FILM "ADIPURUSH" FOR HURTING RELIGIOUS SENTIMENTS

An organisation named Hindu Sena ("Petitioners") has filed a Public Interest Litigation ("PIL") before the Delhi High Court ("Court"), against the film "Adipurush" seeking removal of the alleged "*objectionable content*" related to Lord Ram, Sita, Hanuman, Ravana and others from the film. The PIL alleged that "*the film has hurt the sentiments of the Hindu community by depicting the religious figures in an inappropriate and inaccurate manner*". Further, the depiction of the characters like Ravana (Played by Saif Ali Khan) and Lord Hanuman in the film are completely disconnected from the Indian civilization and certain scenes related to Ravana in the film are complete misrepresentation of the real facts and story of "The Ramayana". The film is scheduled for a theatrical release on January 12, 2023.

PIL FILED AGAINST THE TELEVISION REALITY SHOW "BIGG BOSS 6 (TELUGU)" ON THE GROUNDS OF OBSCENITY AND VULGARITY

A film producer, K. Jagadishwara Reddy ("Petitioner") has filed a Public Interest Litigation ("PIL") before the Andhra Pradesh High Court ("Court") against the television reality show "Bigg Boss 6 (Telugu)" ("Show"), hosted by Telegu actor Mr. Akkineni Nagarjuna, on the grounds that the Show promotes obscenity and vulgarity. The Petitioner further

submitted before the Court that a cinematograph film to be released anywhere in India is released only after the same has been scrutinized by the Central Board of Film Certification (CBFC) and are issued a certificate indicating the kind of content the film contains. However, the content of the Show is not subjected to the same level of scrutiny, showcasing "*unfiltered and unchecked content at their whims and fancies*", which is resultantly "*damaging the sensitive mindset of the younger generation of the country*". After hearing the Petitioner's submissions, the Court on October 27, 2022, issued notices to the host Mr. Akkineni Nagarjuna, the show organisers, the central government and the state government to file a counter in relation to the PIL. The next hearing in the matter has been posted for November 10, 2022.

THE CENTRAL CONSUMER PROTECTION AUTHORITY (CCPA) ISSUES SHOW-CAUSE NOTICES TO 6 ONLINE BETTING APPS OVER SURROGATE ADVERTISEMENTS

The CCPA has issued show-cause notices to 6 online betting apps i.e., Fairplay, Dafabet, IndiaBet, Parimatch, 1xBet and Wolf777 for violating the advertising norms set forth by the Central Government under the "Guidelines for Prevention of Misleading advertisements and Endorsements for Misleading Advertisements, 2022" ("Guidelines"). The CCPA has alleged that these online platforms have been advertising themselves as professional sports blog and sports news websites such as Fairplay News, Dafa News, Parimatch News etc. However, the same is being done only to mislead the consumers by issuing these surrogate advertisements and the concerned betting platforms and the corresponding news websites are not registered with any legal authority under any applicable Indian laws. Surrogate advertisements have been expressly prohibited by the Central Government under the recently notified Guidelines. The said action of the Central Government is in the wake of advisory dated October 3, 2022, issued by the Ministry of Information and Broadcasting to news agencies, OTT platforms and private satellite channels, asking them to refrain from carrying any advertisements related to online betting websites.

SUPREME COURT DISMISSES PETITION ASKING FOR PRE-SCREENING AND CENSORSHIP OF CONTENT RELEASED ON OTT PLATFORMS

The Supreme Court ("Court") has dismissed a petition seeking establishment of a pre-screening committee for censoring any content to be released on any digital streaming platform in India. The Court while questioning the functioning of the pre-screening committee rejected the submission by stating that watching every single episode of a web-series, by a committee, before it is released is not possible. The Court further held that specific legislations such as Cinematograph Act, 1952, IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, etc., already exists and in the event of absence of any specific direction, it is asserted that these platforms will be subject to the current laws. The Court added that, "*Despite the fact that viewers may be in this country, OTT satellite transmission originates from other countries. A different post-exhibition redressal method exists. You must be more specific in your petition. File one that is superior*." The Petitioner through the petition had also requested the Court to impose a moratorium on the broadcast of the online TV series "Mirzapur", alleging that the same is harming the reputation of Petitioner's hometown, however the same was also dismissed by the Court after taking into account the responses submitted by the defendants.

THE CENTRAL BOARD OF FILM CERTIFICATION (CBFC) HAS DIRECTED THE FILM PRODUCERS TO MANDATORILY CARRY THE FILM CERTIFICATION CATEGORY IN ALL THE FILM ADVERTISEMENTS

The CBFC vide a press release dated October 11, 2022, has directed all the film producers to mandatorily carry the category of certificate granted to a film, in all advertisements related to the film, after the same has been procured by the producer from the CBFC. The press release also stated that "*the rating granted to the film such as 'U/A', 'A' or 'S' should appear in all advertisements under the Cinematograph (Certification) Rule 1983 u/s 38*". The press release made it mandatory for the producers to carry the category of the certificate granted to a film in the film's advertisements in "*newspapers, wall posters, handbills and other media*" after the date of certification and any non-compliance of these statutory provisions may invite actions from the regulatory body.

E-GAMING FEDERATION TO CHALLENGE TAMIL NADU ORDINANCE BANNING ONLINE GAMING INCLUDING RUMMY AND POKER

The E-Gaming Federation (EGF) will file a lawsuit against the recent ordinance issued by the Tamil Nadu government to ban online gaming wherein rummy and poker are categorized as "Games of Chance". The Federation vide a statement stated that bringing the game of Rummy under the ambit of "Game of Chance" is directly in violation of the judgments passed by the Supreme Court of India and the Madras High Court in this respect, wherein Rummy has been recognized as a "Game of Skill", protected under Article 19(1)(g) of the Indian Constitution. The recent judgement of the Madras High Court has put in place a clear distinction between the categories of games of skill and chance by holding the view that "*any game (including rummy and poker) in which the better skilled person would prevail more often, is a game of skill, and is distinct from gambling or a game of chance. When it comes to card games such as rummy and poker, there is no distinction between skill involved in physical form or in virtual/online form*".

THE MINISTRY OF INFORMATION AND BROADCASTING (MIB) ISSUED ADVISORY TO NEWS PUBLISHERS, OTT PLATFORMS ON ADVERTISEMENTS RELATED TO ONLINE BETTING PLATFORMS

The MIB on October 03, 2022, issued an "Advisory on advertisements on online betting promotions" to publishers of news and current affairs content on digital media and publishers of online curated content i.e., OTT platforms. The Ministry through the advisory recognized that the offshore betting platforms such as 1xBet, Parimatch etc., are now using news websites as a surrogate product to advertise their betting platforms on digital media and the logos of these surrogate news websites bear striking resemblance to the betting counterparts. Earlier, the MIB had also issued advisories to newspapers and private TV channels asking them to refrain from advertising online betting websites. The Advisories relied upon the provisions of the Consumer Protection Act 2019, Cable TV Network Regulation Act 1995 and the IT Rules, 2021. The Ministry also advised online advertisement intermediaries to "*not target such advertisements towards the Indian audience*", as betting and gambling pose significant financial and socio-economic risk for the consumers, especially youth and children.

ED SHEERAN TO FACE $100 MILLION COPYRIGHT TRIAL OVER HIS SONG "THINKING OUT LOUD"

A Federal Court judge in Manhattan has cleared the way for further legal proceedings against the singer-songwriter Ed Sheeran for allegedly copying Marvin Gaye's song "Let's Get It On", for his own track "Thinking Out Loud". The copyright claim against the alleged song was originally filed in the year 2018, by David Pullman and his company, Structured Asset Sales, alleging that the singer and his co-writer had copied and exploited without authorization/credit, Marvin's track including but not limited to the "*melody, rhythms, harmonies, drums, bass line, backing chorus, tempo, syncopation and looping*". The Judge while allowing the lawsuit declared that "*there is no bright-line rule that the combination of two unprotectable elements is insufficiently numerous to constitute an original work*" and further added that "*A work may be copyrightable even though it is entirely a compilation of unprotectable elements*". The Judge further stressed on the necessity of a jury trial to resolve the issue at hand.

YOUTUBE REMOVES NEARLY 2,000 ANIMATED VIETNAMESE VIDEOS FOR COPYRIGHT VIOLATION

In pursuance to a complaint filed by UK's Entertainment One, producer of the famous animated series "Peppa Pig", YouTube has removed nearly 2,000 videos of the Vietnamese animated series "Wolfoo" over the claim of copyright infringement, causing losses of around US $2 million to the producers. YouTube allows its users to seek the removal of videos they deem a violation of its policies against copyright infringement. The producers of the series "Wolfoo" in a statement alleged that "*Entertainment One has falsely identified our videos as a product derived from Peppa Pig and filed their complaints to YouTube, which accepted all their copyright claims and deleted Wolfoo videos*". Earlier, Entertainment One had sued the Vietnamese producer in the courts of Russia and British over alleged intellectual property infringement, claiming that the "Wolfoo" characters are a re-worked version of "Peppa pig". However, after the ruling of the Moscow City Court against Entertainment One, the company immediately withdrew all its claims.

RBI & FEMA

EXTENSION OF TIMELINE FOR ENTERING DETAILS OF EXISTING OUTSTANDING NON-CONVERTIBLE SECURITIES IN THE 'SECURITY AND COVENANT MONITORING' SYSTEM

The Securities and Exchange Board of India ("**SEBI**"), vide notification bearing number SEBI / HO / DDHS / RACPOD1 / CIR / P / 2022 / 136 dated October 3, 2022, has extended the timeline for entering details of existing outstanding non-convertible securities in the 'Security and Covenant Monitoring' system hosted by Depositories by one month (i.e. up to October 31, 2022).

SEBI, vide an earlier circular bearing number SEBI / HO / MIRSD / MIRSD CRADT / CIR / P / 2021 / 618 dated August 13, 2021, and circular bearing number SEBI / HO / MIRSD / CRADT / CIR / P / 2022 / 38 dated March 29, 2022, had specified *inter alia* the manner of recording charges by issuers of non-convertible securities, manner of monitoring the charges by debenture trustees, credit rating agencies, etc. However, pursuant to several requests for an extension in the timeline for entering details of such existing outstanding non-convertible securities the SEBI has granted an extension of one month and the same shall be verified by debenture trustees by December 31, 2022.

THE RESERVE BANK INTRODUCES INTERNAL OMBUDSMAN MECHANISM FOR CREDIT INFORMATION COMPANIES (CICS)

Pursuant to the announcement in the 'Statement on Developmental and Regulatory Policies' dated August 5, 2022, the RBI brought Credit Information Companies ("**CICs**") under the Internal Ombudsman (IO) Framework, to strengthen and improve the efficiency of the internal grievance redressal mechanisms of CICs. In furtherance of the same, RBI vide press release 2022-2023/1003 dated October 6, 2022, has directed all CICs holding a Certificate of Registration to appoint an IO at the apex of their internal grievance redress mechanism by April 1, 2023.

Under the mechanism, all complaints that are partly or wholly rejected by CICs will be reviewed by the IO before the final decision of the CIC is conveyed to the complainant. The implementation of the IO mechanism will be monitored by the CIC's internal audit system, apart from regulatory oversight by RBI.

DSK View: *With the inclusion of CICs, RBI aims to strengthen the internal grievance redressal mechanism of CICs by directing them to ensure a grievance redressal mechanism is in place to customers in a timely and organized manner and improve the efficiency of the internal grievance redressal mechanisms of CICs.*

RBI LAUNCHES DAKSH APPLICATION TO ADVANCE SUPERVISORY PROCESS

The RBI vide press release 2022-2023/1005 dated October 6, 2022, has launched a new 'SupTech' initiative called '*DAKSH - Reserve Bank's Advanced Supervisory Monitoring System*'.

DAKSH is a web-based end-to-end workflow application through which RBI plans to monitor compliance requirements in a more focused manner with the objective of further improving the compliance culture in Supervised Entities (SEs) like banks, NBFCs, etc. With the introduction of this application, the RBI hopes to ensure seamless communication, inspection planning and execution, cyber incident reporting and analysis etc., through a platform that will enable secure access anytime and anywhere.

DSK View: *With the introduction of 'DAKSH', RBI expects the supervisory processes to become more robust. This initiative is a step by the RBI to increase supervision, by adopting analytical tools and utilizing technology to establish automated and increase efficiency in work procedures.*

REVISED CORPORATE GOVERNANCE FRAMEWORK FOR ARCS

The RBI had set up a Committee to undertake a comprehensive review of the working of asset reconstruction companies ("**ARCs**") and recommend suitable measures for enabling them to function in a more transparent and efficient manner. Basis the feedback received from the Committee, the RBI, vide circular dated October 11, 2022, bearing reference number RBI/2022 23/128DoR.SIG.FIN.REC.75/26.03.001/2022-23 ("**Revised Framework**"), amended the existing corporate governance framework applicable to ARCs. Some of the key features of the Revised Framework are given below:

a) Chairman will be an independent director and at least half of the meeting attending members of the board of directors ("**Board**") will have to be independent directors.

b) The tenure of the managing director, chief executive officer and whole-time directors cannot exceed five years and cannot continue beyond 70 years of age and their performance will be reviewed annually by the Board.

c) Individuals will be eligible for reappointment with the same ARC only if considered necessary and desirable by the Board, subject to meeting other conditions and after a minimum gap of three years.

d) Any individual who is re-appointed cannot hold the post for more than 15 years.

e) In order to strengthen the oversight by the Board, ARCs are required to constitute an audit committee and nomination and remuneration committee with powers similar to the powers laid down in Section 177 and Section 178, respectively, of the Companies Act, 2013.

f) ARCs are required to obtain prior approval of the RBI before undertaking a change in the sponsors or for change in shareholding on account of transfer of shares or for appointment/ re-appointment of a director or MD/ CEO.

g) The Revised Framework also stipulates certain disclosure requirements in case of investments by Qualified Buyers.

h) The minimum net owned fund requirement will now be increased to ₹300 crore from the previous requirement of ₹100 crore.

i) ARCs may now deploy available surplus funds in short-term instruments subject to the condition that maximum investment in such instruments is capped at 10% of the NOF of the ARC.

j) ARCs may now act as Resolution Applicants (RA) under the IBC, 2016 subject to the conditions laid down under the Revised Framework.

The ARCs are required to comply with the Revised Framework within six months from the date of issuance of the Revised Framework.

***DSK View**: ARCs play a very important role in managing distressed financial assets of banks and financial institutions. The Revised Framework has been issued by the RBI, keeping in mind the critical role played by ARCs, in order to review and increase efficiency in their functioning and operating framework and also improve corporate governance.*

REVIEW OF PRUDENTIAL NORMS – RISK WEIGHTS FOR EXPOSURES TO CORPORATES AND NBFCS

The RBI vide notification bearing number DOR.STR.REC.71/21.06.201/2022-23 dated October 10, 2022 ("**Instructions**"), has issued certain instructions in relation to publication of bank loan ratings by External Credit Assessment Institutions ("**ECAIs**"). In this regard, the RBI had issued a master circular on Basel III capital regulations on April 1, 2022 ("**Basel III Master Circular**") in terms of which, banks are permitted to derive risk weights for their unrated exposures based on ratings available for specific rated debt, subject to certain conditions specified thereunder. The aforesaid circular also requires publishing bank loan ratings by ECAIs.

The RBI has earlier instructed ECAIs to disclose name of banks and corresponding credit facilities rated by them in press releases issued on rating actions by August 31, 2021, after obtaining requisite consent from relevant borrowers. However, pursuant to a review, RBI observed that the disclosures were not available in several press releases due to absence of consent from borrowers.

RBI has instructed banks that a loan rating without the disclosure by the ECAI shall not be eligible for being reckoned for capital computation and banks would need to treat such exposures as unrated and assign applicable risk weights in terms in accordance with the provisions of the Basel III Master Circular.

***DSK View**: The RBI has observed several instances where press releases issued by ECAIs on rating actions do not contain lenders' details which are necessary source of information for banks to apply derived risk weights for unrated exposures, without confirming whether prescribed conditions have been adhered to. This could lead to potentially lower provision of capital as well as underpricing of risks. Accordingly, RBI issued the Instructions, in order to address this issue of lack of disclosures.*

REVIEW OF PROVISIONS PERTAINING TO ELECTRONIC BOOK PROVIDER PLATFORM

The SEBI vide circular bearing reference number SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/00139 dated October 10, 2022 ("**EBP Circular**") has issued a circular, modifying certain provisions pertaining to Electronic Book Provider ("**EBP**") platform in relation to issue and listing of non-convertible securities, securitized debt instruments, security receipts, municipal debt securities and commercial papers. The EBP Circular has modified various provisions stipulations of the existing EBP framework like threshold limits for applicability, issue size for privately placed debt securities and non-convertible redeemable preference shares, bidding limits for arrangers, penalties in case of default, etc. The EBP platform has also been extended to for private placement of municipal debt securities or commercial papers and also to issuers whose issue size is less than INR 50 Crores.

Issuers are required to ensure compliance with relevant provisions of the Companies Act, 2013 and provide the placement memorandum and term sheet to the EBP at least two working days prior to issue opening date and five working days prior to issue opening date for first time issuances. The EBP Circular also lays down the relevant disclosures required to be made in the term sheet and placement memorandum, eligible market participants and details on bidding, allotment and settlement process, amongst other things.

The EBP Circular will come into effect from January 1, 2023, and will replace the existing Chapter VI of the Operational Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated August 10, 2021 as amended from time to time ("**Operational Circular**").

***DSK View**: The EBP Circular has been issued by the SEBI, pursuant to several representations from various market participants, requesting for review of the extant EBP provisions, in order to address several issues such as 'fastest finger first' (viz. allotment based on time priority in bidding for issuances with fixed parameters), high ratio of green shoe to base issue size, limits on arrangers placing bids on behalf of clients, etc. As per SEBI, the EBP Circular has been issued to provide a fair opportunity to bidders and also to protect the interest of investors and to promote development of the securities market and to regulate it.*

REVIEW OF PROVISIONS PERTAINING TO SPECIFICATIONS RELATED TO INTERNATIONAL SECURITIES IDENTIFICATION NUMBER (ISIN) FOR DEBT SECURITIES ISSUED ON PRIVATE PLACEMENT BASIS

The SEBI had issued the Operational Circular. In this regard, the SEBI vide circular dated October 31, 2022, and bearing reference number SEBI / HO / DDHS / DDHS_Div1 / P / CIR / 2022 / 147 ("**Amendment**") has amended certain provisions of Chapter VIII of the Operational Circular, which pertain to specifications related to ISINs of debt securities issued on a private placement basis. The key features of the Amendment are given below:

a) A maximum number of fourteen ISINs maturing in any financial year shall be allowed for an issuer of debt securities. Additionally, a further six ISINs shall be available for issuance of capital gains tax debt securities by the authorized issuers under section 54EC of the Income Tax Act, 1961 on private placement basis.

b) Out of the fourteen ISINs maturing in a financial year and subject to other conditions specified under the Amendment:

   i. maximum nine ISINs maturing in a financial year are permitted for plain vanilla debt securities (both secured and unsecured)
   ii. maximum five ISINs maturing in a financial year shall be allowed for structured debt securities and market linked debt securities.
   iii. Where an issuer issues only structured/ market linked debt securities, the maximum number of ISINs allowed to mature in a financial year shall be nine.

c) The provisions of this Amendment shall be applicable to ISINs utilised to issue debt securities from April 1, 2023.

d) The newly capped limits shall not be applicable to ISINs utilised for issuance of debt securities up to March 31, 2023 and maturing in later years.

***DSK View**: Over the past few years, SEBI has been regularly taking steps to deepen and boost the liquidity of the Indian corporate bond markets. The Amendment has been introduced by the SEBI basis review of market trends which show that capping of ISINs reduces fragmentation in the primary market and enhances liquidity in the secondary market.*

MULTIPLE NBFCS IN A GROUP: CLASSIFICATION IN MIDDLE LAYER

The RBI vide notification bearing number DOR.CRE.REC.No.78/03.10.001/2022-23 dated October 11,

2022 ("**Classification Circular**"), has provided that the total assets of all the non-banking financial companies ("**NBFCs**"), in a Group (as defined under the Master Direction – Non-Banking Financial Company-Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions 2016), shall be consolidated, to determine the threshold for their classification in the Middle Layer.

Additionally, if the consolidated asset size of the Group is INR 1000 crore and above, then each Investment and Credit Company (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC-Factor and Mortgage Guarantee Company (NBFC-MGC) lying in the Group shall be classified as an NBFC in the Middle Layer and consequently, regulations as applicable to the Middle Layer shall be applicable to such NBFCs. The Classification Circular also provides illustrative examples to assist market participants to ensure compliance.

The Classification Circular is effective from October 1, 2022, and is not applicable to NBFCs in the Upper Layer.

***DSK View**: The RBI had issued a revised regulatory framework for NBFCs on October 22, 2021, wherein it had laid down the four layered regulatory structure for NBFCs, under a scale based regulatory framework. RBI had also earlier, vide the Master Direction – Non-Banking Financial Company-Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions 2016 ("**Master Directions**"), directed that NBFCs that are part of a common Group or are floated by a common set of promoters shall not be viewed on a standalone basis. The Classification Circular is in furtherance of the Master Directions on consolidation of assets of NBFCs in a Group.*

COMPLAINT AGAINST KARNATAKA REAL ESTATE REGULATORY AUTHORITY ("KRERA") TO KARNATAKA LOKAYUKTA

A Bangalore-based homebuyer turned to the Karnataka Lokayukta for seeking justice against Chairman HC Kishore Chandra of KRERA for incorrect and delayed orders passed by him.

According to the said homebuyer, the first complaint was filed in September 2020 for non-delivery of flat booked in the Mantri Serenity project with a delivery commitment of the year 2016, however, no action was taken by KRERA. He then submitted a request to KRERA to withdraw his complaint so that he could approach the National Consumer Disputes Redressal Commission. Further to the request filed, the KRERA Chairman passed an order on the complaint stating the case to be settled between the parties.

Aggrieved by the Chairman's order, the said homebuyer has now approached the Lokayukta for justice and requested the authority to investigate against the said Chairman. It was found that there have been other homebuyers who have lodged complaint against the orders passed by the said Chairman previously.

HARYANA RERA ORDERS FORENSIC AUDIT IN A HOUSING PROJECT CASE

The Real Estate Regulatory Authority (**"RERA"/ "Authority"**), Gurugram, passed an order to conduct a forensic audit in the ILD Arete Housing project. The three-member bench of RERA led by Mr. K. K. Khandelwal passed the order to conduct the audit after hearing the arguments of the parties for more than two hours.

Exercising the power under Section 63 of the Real Estate (Regulation and Development) Act, 2016 (**"Act"**), the Authority decided to issue a show cause notice to the promoter to furnish details failing which, RERA shall impose a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) per day. While investigating about the project, it was observed by the Authority that the promoters had failed to complete the project and there had been no progress of work on the project site since past 4 years.

SLUM REHABILITATION AUTHORITY ("SRA") INVITED PRIVATE BUILDERS TO REBUILD 'DEAD' SLUM PROJECTS

The officials of SRA have invited applications from private builders for getting enrolled in the agency for scrutiny, following which the authority shall float tenders and award contracts to the selected private builders to restart construction of the dead projects.

The applications received from private builders shall be divided into different categories, based on their previous construction experience and financial credentials, to complete more than 500 abandoned real estate projects stuck since 2005. Further, the authority has been struggling to revamp and review the slum rehabilitation policy.

SHOW CAUSE NOTICE ISSUED TO LAPSED REAL ESTATE PROJECTS: MAHARERA

Exercising the powers under Section 7 and 8 of the Act to revoke registration of the project, the Maharashtra Real Estate Regulatory Authority (**"MahaRERA"**) issued show cause notice to almost 40 lapsed real estate projects.

Every registered real estate project is given 3 to 4 years for completion, which is considered a reasonable time, followed by the issuance of a registration number for the project. A project is termed as 'lapsed' when the timeline given for completion is not met and the developer has not applied for extension as well. Once the registration of the project is declared lapsed, the developer cannot advertise, market, book, sell or offer to sell, or invite persons to invest in these projects. Such projects cannot be registered by the registrar of the revenue department.

Since the developers had surpassed the stipulated project completion date and the developers had not filed for any extension, the MahaRERA has issued notice to the developers of the stuck real estate projects majorly in the Mumbai Metropolitan Region (**"MMR"**).

REGISTRATION OF 52 REAL ESTATE PROJECTS SUSPENDED BY THE MAHA RERA

The MahaRERA suspended registration of 52 real estate projects situated in the jurisdiction of Kalyan Dombivali Municipal Corporation (**"KDMC"**) and MMR. The action was taken after complaints filed by KDMC against developers alleging fabrication of documents for registration of construction under RERA.

As per MahaRERA, the developers had indulged in fraud by forging registration documents that show permission for construction of houses since past 5 years.

The MahaRERA published a list of 52 developers on October 3, 2022, whose registration has been suspended along with the registration number as an action against a PIL filed in the Bombay High Court in 2021 against builders/developers who made fraudulent documents for the purpose of registration of flats/shops in illegal buildings because of which innocent buyers were cheated throughout Maharashtra.

RAJASTHAN HIGH COURT ISSUES NOTICE ON PETITIONS CHALLENGING BUILDING BYE-LAWS

The bench of Hon'ble Rajasthan High Court comprising of Justice MM Srivastava and Justice Vinod Kumar Bharwani issued notice to the Rajasthan RERA urban development and housing department and the state government challenging the state building bye-laws authorising private empanelled architects to issue a completion certificate on completion of the construction of any building.

According to the provisions of the Act, it is necessary to obtain a completion certificate from the local body/authority on completion of the construction work and if the said completion certificate is not obtained, then the building will be considered as under construction.

Challenging the building bye-laws of Rajasthan, a writ petition was filed against the amended building bye-laws of state government authorising private architects to issue such a completion certificate by delegation of the powers of local bodies due to which interests of many allottees have been hampered as the builders are easily able to declare the project complete merely on the basis of the completion certificate obtained from such delegated private architects.

KRERA ASKS HOMEBUYERS TO SUBMIT HOUSE PLAN FOR INCOMPLETE 2015 PROJECT

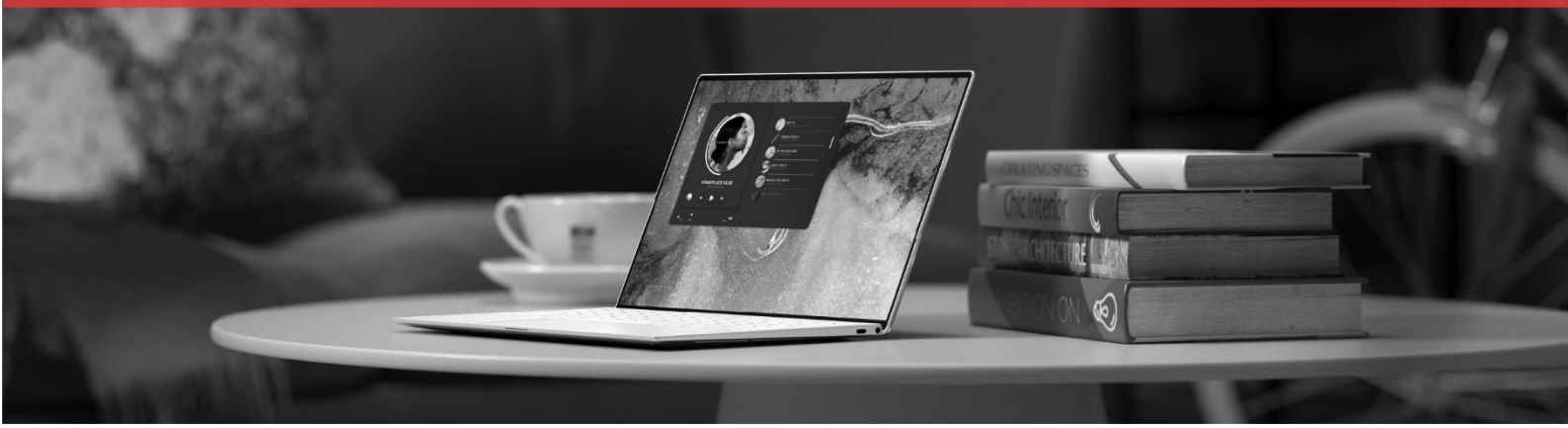
Homebuyers of Krishna Shelton apartment complex at Bagalur Road Cross have approached the authority for intervention after Krishna Enterprises Private Limited, the developer, was unable to complete the project with the promised amenities 7 years post the deadline. The project constituted a total of 260 flats of different dimensions in 12-storeys which had to be completed by March 2015.

The KRERA, post the approach, has asked the buyers to submit an action plan on their own to take over the residential project. Further, KRERA ordered the developer to deposit a sum of Rs. 3 Crores into an Escrow account by October 25, 2022, failing which a penalty of Rs. 1 Lakh will be imposed each day till the date of deposit.

RAMPRASTHA DEVELOPERS TO REFUND BUYER WITH INTEREST: HARYANA RERA ("HRERA")

An order has been passed by the HRERA against Ramprastha Developers, directing them to refund the principal amount to the buyer along with interest due to breach of the terms and conditions executed between the two parties and failing to provide possession of a unit booked in Skyz Project in 2011. The buyers approached the HRERA in December 2019 to withdraw from the project and demanding refund as the builder failed to give possession on the due date.

In terms of relief, the allottee will also be entitled to claim the cost, compensation and litigation charges as well, determined by the adjudicating office.



MINISTRY OF INFORMATION & BROADCASTING ISSUES ADVISORY ON ONLINE GAMBLING AND SURROGATE ADS ON MEDIA PLATFORM

The Information and Broadcasting ministry *vide* it's press release dated October 03, 2022, has instructed television channels, digital news publishers and OTT platforms to stop advertisement of online betting platforms (accessible here). The ministry advised online news websites, OTT platforms and private TV channels to refrain from publishing or broadcasting advertisements of online betting platforms or any surrogate product depicting them and said such sites pose significant financial and socio-economic risks for private consumers, especially youth and children.

The All-India Gaming Federation said that it has highlighted the said issue since 2018 and has provided the necessary information to the government. I&B ministry also mentioned that violation of this advisory could lead to penalties being imposed on such private television channels, digital news publishers and OTT platforms.

AMENDMENT TO INFORMATION AND TECHNOLOGY ACT

The Ministry of Electronics and Information Technology ("**MeitY**") *vide* notification dated September 26, 2022 ("**Amendment**") and published on October 06, 2022 (accessible here), amended the First Schedule of the Information Technology Act, 2000 ("**Act**") which lists the documents or transactions which are not covered under the ambit of the Act and to which the provisions of the Act do not apply.

Pursuant to the Amendment, (a) demand promissory note or a bill of exchange issued in favour of or endorsed by an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority have been excluded from the scope of negotiable instruments; (b) power of attorneys that empower an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority to act for, on behalf of, and in the name of the person executing them have been excluded from the scope of power-of-attorney as captured under item 2 of First Schedule of the Act; and (c) contract for the sale or conveyance of immovable property or any interest in such property has been removed. Accordingly, the foregoing instruments/documents shall now not be excluded from the scope of the Act.

SUPREME COURT'S DIRECTION TO STOP PROSECUTING PEOPLE UNDER SECTION 66A OF IT ACT

The Hon'ble Supreme Court ("**SC**") on October 12, 2022, disposed off the petition filed by People's Union for Civil Liberties seeking implementation of SC's judgement in *Shreya Singhal v Union of India* and restricting continued prosecution of citizens under Section 66A of the Information Technology Act, 2000 ("**IT Act**"). Section 66A of IT Act gave the government power to arrest and imprison an individual for "offensive and menacing" online posts.

The SC bench comprising of 3 judges observed that there needs no reiteration that Section 66A is in violation of the Constitution of India and no citizen can be prosecuted for violation of alleged offences under Section 66A of the IT Act. The bench further issued the following directions:

a) No citizen should be prosecuted under Section 66A as in *Shreya Singhal v Union of India,* the SC has unequivocally held that Section 66A is unconstitutional.

b) In every case where citizens are facing prosecution under Section 66A, reference and reliance upon the said section shall stand deleted.

c) Home Secretaries and other officials of the State Governments must direct the police force to not register any case under Section 66A.

d) All the government, semi government and private publications that refer to Section 66A should 'adequately inform' the readers that SC has struck down the said provision.

OPERATIONALISATION OF CENTRAL BANK DIGITAL CURRENCY

The Reserve Bank of India ("**RBI**") *vide it's* press release dated October 31, 2022, announced the commencement of the pilot launch of Digital Rupee ("**e₹**") (accessible here) in the Digital Rupee – Wholesale segment (e₹-W) from November 01, 2022.

RBI *vide* its earlier press release dated October 07, 2022, planned to commence pilot launches of e₹ for specific use cases and had issued the concept note on central bank digital currency ("**CBDC**") (accessible here). CBDC is form of digital currency notes issued by a central bank. The Concept Note explained the objectives, choices, benefits and risks of issuing a CBDC in India, referred to as e₹ and the e₹ will provide an additional option to the currently available forms of money. The Concept Note has been issued with the purpose of creating awareness about CBDC's and features of digital Rupee.

Reserve Bank's approach is governed by two basic considerations – to create a digital Rupee that is as close as possible to a paper currency and to manage the process of introducing digital Rupee in a seamless manner.

MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY AMENDS THE INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

With reference to the notification released by the Ministry of Electronics and Information Technology ("**MeitY**") on October 28, 2022 ("**Notification**") (accessible here) amending provisions of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**Intermediary Rules**"), the Central Government will be notifying one or more grievance appellate committees ("**GAC**") within 3 (three) months from the date of publication of the Intermediary Amendment Rules. Such GACs shall be responsible for dealing with any appeals preferred by users/persons aggrieved by the decision of the grievance officers appointed by intermediaries.

In addition to the establishment of the GACs, the Notification amends Rule 3 of the Intermediary Rules pertaining to the due diligence to be observed by intermediaries (including social media intermediaries) in respect of their respective platforms. Brief details of the relevant amendments to Rule 3 are as follows:

(a) The rules, policies and user agreements shall be required to be published in English or any language specified in the Eighth Schedule to the Constitution for access or usage of its computer resource by any person in the language of his choice and ensure compliance of the same;

(b) Intermediaries shall be required to make reasonable efforts to cause users to not host, display, upload, modify, publish, transmit, store, update or share any information which has been restricted under Rule 3(b) of the Intermediary Rules;

(c) Intermediary will be required to take all reasonable measures to ensure accessibility of its services to users along with reasonable expectation of due diligence, privacy and transparency;

(d) Intermediaries shall be required to resolve all complaints pertaining to removal of information/communication links which are restricted from being hosted/displayed in terms of Rule 3(1)(b) of the Intermediary Rules expeditiously and within seventy-two hours of the complaints. Complaints regarding removal of information which (i) belongs to another person and to which the user does not have any right; (ii) infringes any patent, trademark, copyright or other proprietary rights; and (iii) violates any law for the time being in force have, however, been exempted from the ambit of the foregoing strict timeline.

TAMIL NADU ASSEMBLY PASSES LAW PROHIBITING ONLINE GAMBLING

The Government of Tamil Nadu *vide* notification dated October 03, 2022, has published the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance, 2022 ("**Ordinance**") (accessible here).

The Ordinance prohibits online gambling and online games of chance played for money or other stakes, including Rummy and Poker. The Ordinance requires local online game providers to obtain a certificate of registration from the Tamil Nadu Online Gaming Authority for providing any gaming service. Failure to register is punishable with three years of imprisonment, a fine of Rs 10 lakh, or both.

Game providers based outside Tamil Nadu are required to restrict access to prohibited games to users located in the state or exercise due diligence.

RBI ISSUED DRAFT MASTER DIRECTIONS ON INFORMATION TECHNOLOGY, RISK CONTROLS AND ASSURANCE PRACTICES

The RBI *vide* press release dated October 20, 2022, released Draft Master Direction on Information Technology Governance, Risk, Controls and Assurance Practices ("**Draft Directions**") (accessible here) for all regulated entities.

The Draft Directions mandate the regulated entities to put in place a robust IT governance framework consisting of governance structures and processes necessary for the entities to meet their business objectives. RBI further stated that the key focus areas of IT governance shall include aspects such as strategic alignment, value delivery, risk management, performance management, resource management and business continuity/ disaster recovery management.

WHITE COLLAR CRIME

ALL DIRECTORS OF PHARMA COMPANIES ARE LIABLE FOR PRODUCTION OF SUBSTANDARD DRUGS

The Madras High Court, in the case of ***Vikas Rambal and Ors. v. The State*** (Crl. OP No. 11184 of 2019) has held that directors of pharma companies were liable for the production of drugs of substandard quality, even if they were not involved in the day-to-day activities of the company. In the present case, the Petitioners were the directors of the pharma company named Sunrise International Labs Ltd. ("**Company**"), which was allegedly manufacturing and supplying sub-standard medicines (Carbimazole tablets) to government hospitals. Accordingly, a complaint was filed by the Complainant – Drug Inspector against the Company and its directors under the provisions of the Drugs and Cosmetics Act, 1940. The Petitioners submitted that they were not involved in the day-to-day functioning of the Company and hence, they should not be held vicariously liable for the alleged act under as per Section 34 of the Act. On the other hand, it was contended by the Government that the directors accrued benefits out of the said offence and therefore, they were not entitled to go scot-free on the ground that they were not directly involved in the affairs of the Company. The Court held that the Petitioners' act was against the very object of the Drugs and Cosmetics Act, 1940. The Court while dismissing the petition further held that the decision to manufacture the drugs is a collective decision of the board of directors, so the decision to produce such drugs comes out of the decision made by the directors and therefore, the directors cannot claim they are not directly involved in production of drugs.

DSK View: *In the present case the court has categorically bifurcated the the directors prosecuted under the Negotiable Instruments Act and under the Drugs and Cosmetics Act by stating that, the case of directors signing the cheque on behalf the Company and the case of Directors participating in the decision to produce sub-standard drugs are not one and the same.*

MINIMUM OF 30 DAYS' TIME MUST BE GRANTED TO FILE REPLY TO GST SHOW-CAUSE NOTICE

The Bombay High Court, in the case of ***Sheetal Dilip Jain v. The State of Maharashtra & Ors.*** (Writ Petition (L) No. 17591 of 2022), has held that as per Section 73(8) of the Maharashtra Goods and Service Tax ("**MGST Act**"), a period of 30 days from the issuance of the show-cause notice is given to a person chargeable with tax, to make payment of such tax along with interest payable. In case such person does not wish to make the payment, then a reply to the show-cause notice can be filed by him/her within the 30-day period. In the present case however, the Petitioner was given a period of mere 7 days to respond to the show cause notice. Declaring the order passed by the Assessing Officer as 'patently illegal', the division bench observed that the statutory period cannot be arbitrarily reduced to 7 days by the assessing officer. The Court further went on to impose costs on the Respondents while allowing the petition.

DSK View: *This judgement made an important observation, regarding the increasing number of prosecutions launched by various government departments, en-masse, against general public for non-compliance of statutory provision. The Court observed that multiple orders are passed by the departments without application of mind, and this is adding to the already overburdened dockets of the Court. The Court also noted that this leads to wasting of valuable judicial time and causes hardships to general public.*

BANKS CAN INITIATE CRIMINAL ACTION AGAINST A COMPANY IF ACCOUNT IS DECLARED A FRAUD, EVEN AFTER INVOKING SARFAESI ACT

In the case of ***Associate Lumbers Private Limited v. State and Ors*** (Criminal Petition No. 7325 of 2022), the Karnataka High Court held that the Central Bureau of Investigation ("**CBI**") can investigate a complaint registered by a bank against a company and its directors, for the offences of cheating and criminal conspiracy, even after initiation of

proceedings against them under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") and possession of the recovery certificate. In the present case, the Petitioner company – Associate Lumbers Private Limited and its directors had challenged the First Information Report ("**FIR**") registered by the CBI filed under *inter alia* Section 120B read with Section 420 of the Indian Penal Code ("**IPC**") on the basis of a complaint filed by a bank. Due to non-payment of debt, the bank had proceeded against the company under the SARFAESI Act and had also declared the company's account fraud and its account holders to be wilful defaulters. Subsequently, the matter was referred to the CBI. The Petitioners contended that as proceeding under the SARFAESI Act was initiated and recovery certificate against the Petitioners was already obtained, the account could not have been declared to be a fraud, and that the CBI did not have jurisdiction to register the complaint against the Petitioners.

The Court dismissed the petition against the CBI FIR and held that the Master Circular issued by the Reserve Bank of India ("**RBI**") mandated that if the amount involved in a fraud is more than Rs. 25 crores and up to Rs. 50 crores, then the Bank could complaint to the Banking Security and Fraud Cell of the CBI, irrespective of the involvement of a public servant. The Court also held that in terms of Section 3 of the Delhi Special Police Establishment Act, 1946, the Central Government had issued notification to specify the offences which can be investigated into by the CBI. Both Sections 420 and 120B of the IPC formed part of the said notification and thus, the CBI had jurisdiction to investigate the alleged offences.

DSK View: *The Karnataka High Court has clarified the law regarding jurisdiction of CBI and held that a bank can initiate criminal proceedings in terms of the Master Circular issued by the RBI, even after invoking the provisions of the SARFAESI Act, if the account is declared to be a fraud.*

PLEA SEEKING PRE-ARREST BAIL IS NOT THE SAME AS MONEY RECOVERY PROCEEDINGS

The Supreme Court, in the case of ***Udho Thakur v. State of Jharkhand*** (Criminal Appeal Nos. 1703-1704 of 2022) has held that petitions seeking pre-arrest bail are not the same as money recovery proceedings. In the present case, the Court was considering an appeal plea challenging an order of the Jharkhand High Court granting pre-arrest bail to the appellants on the condition that they furnished a bond of Rs. 25,000/- and deposited a demand draft of Rs. 7,50,000/- as an ad-interim "victim compensation". The Appellants contended that the expression "victim compensation" as used in the order of the Jharkhand High Court, may not be apt as it was not a case of recovery of victim compensation. The Respondents relied on several orders against imposing terms of payment for the purpose of granting pre-arrest bail and remitting the matter for reconsideration. The Court, in the present case, did not approve the condition of depositing a sum of Rs. 7,50,000/- for the purpose of granting the relief of pre-arrest bail. The condition of furnishing a bond of Rs. 25,000 was, however, kept intact by the court.

DSK View: *The Supreme Court, by way of this judgment, has observed that there is no justification for a Court to adopt such a recourse wherein a person apprehending arrest has to make payment for the purpose of being granted pre-arrest bail.*

NO OFFENCE MADE OUT UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, IF CHEQUE IS PRESENTED FOR FULL AMOUNT WITHOUT ENDORSING PART-PAYMENT MADE BY BORROWER

In the case of ***Dashratbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and Anr.*** (Crl. Appeal. No. 1497 of 2022), the Supreme Court has held that no offence is made out under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**") if the cheque is presented for the full amount, without endorsing the part-payment made by the borrower after issuance of the cheque. In this case, a cheque for an amount of Rs. 20,00,000/- was issued and subsequently, the borrower had made a part payment of Rs. 4,09,315/- to the drawee of the cheque. The cheque was however presented for Rs. 20,00,000/- without endorsement of the part-payment. The findings of the Court in this case were: (i) for commission of an offence under Section 138 of the NI Act, the cheque which is dishonoured must represent a legally enforceable debt on the date of maturity or presentation; (ii) if the drawer of a cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, the legally enforceable debt on the date of maturity would not be the sum represented on the same cheque; and (iii) when part or whole of the sum represented on the cheque is paid by the drawer of the cheque, such payment must be endorsed on the cheque as prescribed in Section 56 of the NI Act. The cheque endorsed with the payment made could be used to negotiate the balance, if any. Further, if the endorsed cheque is dishonoured when it is sought to be encashed upon maturity, then it will be an offence under Section 138 of the NI Act.

The Court observed that the accused in this case had made part-payments after the debt was incurred and before the cheque was presented for encashment. Therefore, it was held that the sum of Rs. 20,00,000/- as represented on the cheque was not the legally enforceable debt on the date of maturity, and thus, the accused had not committed an offence under Section 138 of the NI Act.

DSK View: *In this judgement the Supreme Court has made an essential observation by clarifying that the sum reflected on a cheque will not be the 'legally enforceable debt' as per*

Section 138 of the NI Act, when it is presented for encashment without endorsing the part-payment.

NO ONE SHOULD BE PROSECUTED UNDER SECTION 66A OF THE INFORMATION TECHNOLOGY ACT, 2000

The Supreme Court, in the case of ***Peoples Union for Civil Liberties v. Union of India*** (Miscellaneous Application No. 901 of 2021 in W.P. (Crl.) No. 199 of 2013), has directed that no one should be prosecuted under Section 66A of the Information Technology Act, 2000 ("**IT Act**"), which was struck down as unconstitutional by the Court in the case of *Shreya Singhal v. Union of India* ("**Shreya Singhal Judgement**") in 2015. In the present case, a writ petition was filed by the NGO, Peoples Union for Civil Liberties ("**PUCL**") which highlighted the issue of FIRs still being registered under Section 66A of the IT Act despite the Shreya Singhal Judgment. Accordingly, a division bench observed that despite pronouncement of the Supreme Court on Section 66A of the IT Act being violative of the Constitution of India citizens are facing prosecution for violation of the same. Hence, the bench directed that no citizen can be prosecuted for an alleged violation of the section 66A of the IT Act and all criminal proceedings under Section 66A of the IT Act stand deleted. The Court also directed all the Directors General of Police, Home Secretaries of the States and Competent Officers in Union Territories to instruct the entire police force not to register any complaint or crime regarding an alleged violation of Section 66A of the IT Act. It was, however, clarified by the Court that if the crime in question had other facets, and if other offences were also alleged in addition to an offence under Section 66A of the IT Act, then the matter with respect to the offences other than Section 66A can be gone into in accordance with the law.

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