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NEWSLETTER

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LIMITED RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 ('LODR REGULATIONS')[1]

The Securities and Exchange Board of India (SEBI) has issued a circular dated October 6, 2023, on the extension of the relaxation from compliance with certain provisions of the LODR Regulations, specifically concerning the dispatch of physical copies of financial statements to holders of non-convertible securities, in response to Ministry of Corporate Affairs ('MCA') directives. The extension is in effect until September 30, 2024.

Regulation 58(1)(b) Requirement: Regulation 58(1)(b) of the LODR Regulations mandates listed entities to send hard copies of statements containing salient features of specified documents, as per Section 136 of the Companies Act, 2013, and related rules, to holders of non-convertible securities who have not registered electronically.

SEBI had previously afforded respite from this imperative in response to relaxations proffered by the MCA through Circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020. Subsequent extensions were granted by SEBI in alignment with MCA relaxations through diverse circulars.

a) Circular no. SEBI/HO/CFD/CMD2/CIR/P/2021/11 dated January 15, 2021, extending the respite until December 31, 2021.
b) Circular no. SEBI/HO/DDHS/P/CIR/2022/0063 dated May 13, 2022, extending the respite until December 31, 2022.
c) Circular no. SEBI/HO/DDHS/RACPOD1/CIR/P/2023/001 dated January 05, 2023, extending the respite until September 30, 2023.

MCA, through its circular dated September 25, 2023, has extended the relaxation from dispatching physical copies of financial statements, including the Board's report, Auditor's report, or other required documents, up to September 30, 2024. Consequently, SEBI has decided to extend the relaxation, in compliance with MCA directives, up to September 30, 2024, with respect to the requirements of regulation 58(1)(b) of the SEBI Listing Regulations. Stock exchanges are also instructed to communicate the provisions of this circular to all entities with listed non-convertible securities and to publish this information on their websites.

This circular came into effect immediately, i.e. October 6, 2023.

REQUIREMENT OF BASE MINIMUM CAPITAL DEPOSIT FOR CATEGORY 2 EXECUTION ONLY PLATFORMS[2]

SEBI has issued a circular dated October 6, 2023, outlining requirements for Execution Only Platforms (EOPs) dealing with direct plans of Mutual Funds. EOPs are digital platforms facilitating transactions like subscription, redemption, and switches in these schemes. There are two categories of EOPs:

Category 1 EOP: These entities need to register with AMFI and act as agents of AMC(s). They can serve investors and intermediaries, following AMFI guidelines. No deposit is required for Category 1 EOPs.

Category 2 EOP: Category 2 EOPs must register as Stock Brokers under SEBI's regulations for stock brokers. They serve as agents for investors directly and must follow stock broker requirements, including maintaining a deposit with the stock exchange.

[1] SEBI/HO/DDHS/P/CIR/2023/0164

[2] SEBI/HO/MRD/POD-III/CIR/2023/165

SEBI has modified the requirement for Base Minimum Capital (BMC) deposit for Category 2 EOPs, setting it at Rs. 10 lakhs. If a member has registrations in multiple segments on the same stock exchange, the highest applicable BMC deposit is required, and it's not additive. The circulars relating to BMC deposit for stock brokers are updated accordingly.

This circular came into effect immediately, i.e. October 6, 2023.

RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 [3]

SEBI has issued a circular dated October 7, 2023, on the regulatory extension of certain compliance relaxations by SEBI, which will impact listed entities and their obligations under the LODR Regulations until September 30, 2024.

The SEBI master circular dated July 11, 2023, which pertains to the adherence to the provisions of the LODR Regulations by entities listed on stock exchanges, has, among other things, granted a relaxation concerning the application of regulation 36(1)(b) of the LODR Regulations for Annual General Meetings (AGMs) and regulation 44(4) of the LODR Regulations for general meetings held electronically until September 30, 2023 (section VI-J of the master circular).

The MCA through its General Circular No. 09/2023 dated September 25, 2023, has extended the relief concerning the necessity of sending physical copies of financial statements, including the Board's report, Auditor's report, or other documents to be appended therewith, to shareholders for AGMs conducted until September 30, 2024. SEBI has received requests for the extension of the aforementioned relaxations.

In light of the developments outlined above, it has been determined that the relaxations referred to in paragraph 1 are extended until September 30, 2024.

It is emphasized that listed entities must ensure compliance with the conditions outlined in paragraphs 5.1 and 5.2 of section VI-J of chapter VI of the master circular when availing themselves of the provided relaxations.

This circular came into effect immediately, i.e. October 7, 2023.

AMENDMENT TO THE GUIDELINES ON ANTI-MONEY LAUNDERING (AML) STANDARDS AND COMBATING THE FINANCING OF TERRORISM (CFT) /OBLIGATIONS OF SECURITIES MARKET INTERMEDIARIES UNDER THE PREVENTION OF MONEY-LAUNDERING ACT, 2002 AND RULES FRAMED THERE UNDER[4]

SEBI has issued a circular dated October 13, 2023, in response to the amendments to the Guidelines on Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) obligations for Securities Market Intermediaries under the Prevention of Money-laundering Act, 2002, and associated rules. The modifications are aimed at enhancing the effectiveness of the AML/CFT framework for securities market intermediaries.

An additional provision is inserted in Paragraph 6, mandating financial groups to apply supplementary measures in cases where the host country does not permit adequate implementation of AML/CFT measures consistent with home country requirements, with mandatory reporting to SEBI.

Paragraph "7B" is introduced after Paragraph 7A and before Paragraph 8, stipulating that financial groups must implement group-wide programs to address ML/TF, encompassing all branches and majority-owned subsidiaries. This includes policies and procedures for sharing information, safeguards for confidentiality, and data exchange.

In Paragraph 11, amendments require trustees of trusts to disclose their status at the inception of an account-based relationship and outline precise criteria for identifying beneficial ownership and control. Paragraph 11(iii) is substituted with updated criteria for identifying beneficial ownership in various scenarios, including companies, partnership firms, unincorporated associations, and trusts. Registered intermediaries are directed to periodically update client and beneficial owner information collected during the Customer Due Diligence (CDD) process, particularly for high-risk clients.

A new Paragraph "11A" establishes that no transaction or account-based relationship shall commence without adhering to the CDD procedure.

Amendments to Paragraph 12 expand the definitions and norms regarding Politically Exposed Persons (PEPs) and introduce Enhanced Due Diligence (EDD) measures for business relationships and transactions from countries designated by the FATF.

A new Paragraph "41A" mandates registered entities to obtain records of the identity of existing clients and allows

[3] SEBI/HO/CFD/CFD-PoD-2/P/CIR/2023/167

[4] SEBI/HO/MIRSD/SEC-FATF/P/CIR/2023/0170

for account closure if such records are not obtained, following due notice to the client.

In Paragraph 60, it is clarified that confidentiality requirements do not inhibit information sharing within the group.

Paragraph 61 specifies the appointment of a Principal Officer, responsible for reporting suspicious transactions, identification, and assessment of potentially suspicious transactions, and reporting to senior management or the Board of Directors. The Principal Officer must be at a management level.

This circular came into effect immediately, i.e. October 13, 2023.

GUIDELINES FOR BUSINESS CONTINUITY PLAN (BCP) AND DISASTER RECOVERY (DR) OF QUALIFIED RTAS (QRTAS)[5]

SEBI has issued a circular dated October 20, 2023, pertaining to the Business Continuity Plan (BCP) and Disaster Recovery (DR) requirements for Qualified RTAs (QRTAs), which are Registrar and Transfer Agents with over 2 Crore folios. The objective is to ensure the resilience, integrity, and uninterrupted functioning of the securities market, given the systemic importance of QRTAs.

Based on consultations with the Technical Advisory Committee ('TAC') of the SEBI, it has been determined that guidelines must be issued to reinforce the overall resiliency, procedures, and governance of QRTAs in response to disruptions. This includes enhancing systems and practices to achieve improved Recovery Time Objective (RTO) and Recovery Point Objective (RPO) and fostering general preparedness through periodic announced/unannounced drills. Consequently, QRTAs are obliged to adhere to the following framework for Business Continuity Planning (BCP) and Disaster Recovery (DR).

Organizational Resilience and Documentation:
QRTAs must establish BCP and Disaster Recovery Sites (DRS) to maintain the integrity of their operations, data, and transactions. DRS personnel should have expertise equivalent to that available at the Primary Data Centre (PDC). An Incident and Response Team (IRT) or Crisis Management Team (CMT) must be formed, responsible for declaring disasters and shifting operations to DRS. The Technology Committee should regularly review BCP-DR policy implementation.

Configuration of DRS/NS with PDC:
In addition to DRS, QRTAs should maintain a Near Site (NS) to ensure zero data loss. DRS and PDC configurations should mirror each other, and systems should not require configuration changes for switchover. In the event of a disruption in 'Critical Systems', a disaster must be declared, and operations should be restored within 45 minutes. 'Critical Systems' may include transaction processing, connectivity with Asset Management Companies (AMCs), and Net Asset Value (NAV) calculation. QRTAs must also ensure an RPO of 15 minutes.

DR Drills/Testing:
QRTAs should conduct training programs, quarterly DR drills, and unannounced live operations from DRS on normal working days. During drills, PDC staff should not support operations. The results and observations of these drills must be documented and reported to SEBI, and the System Auditor should assess the QRTA's preparedness.

BCP-DR Policy Document:
QRTAs are required to establish a comprehensive BCP-DR policy document that outlines disaster scenarios, standard operating procedures, escalation hierarchy, communication protocols, and documentation policies. This document should be approved by the Governing Board and reviewed every six months as well as after every disaster.

Leasing Premises and Agreements:
If QRTAs lease their DRS premises to other entities, they must ensure the confidentiality, integrity, and availability of their systems are not compromised. Access controls should be implemented to restrict access to critical systems. In case QRTAs lease DRS premises from other entities, they must also safeguard the confidentiality and integrity of their systems.

Submission of Revised BCP-DR Policy:
QRTAs are advised to submit their revised BCP-DR policy to SEBI within three months from the date of the circular. The scope of the System Audit should include the elements specified in clauses 5.8 and 6.1.5 of the guidelines.

This circular came into effect immediately, i.e. October 20, 2023.

MASTER CIRCULAR FOR DEPOSITORIES[6]

SEBI, on October 6, 2023, has issued a comprehensive master circular for Depositories. This master circular serves

[5] SEBI/HO/IMD/IMD-TPD-1/P/CIR/2023/173
[6] SEBI/HO/MRD/MRD-PoD-2/P/CIR/2023/166

as a compendium of previously promulgated circulars, encompassing various aspects such as the Beneficial Owner Accounts, Depository Participants (DP), Issuer and lastly Depositories related. Furthermore, it furnishes detailed guidance on the opening, exemptions, guidelines, investor grievances, etc., for Beneficial Owner Accounts.

The master circular outlines a comprehensive framework governing various aspects of Depository Participant (DP). These include features of securities market intermediaries' operations such as mechanisms for online registration, supervision of depository participant branches, incentivization schemes, guidelines for outsourcing activities, adherence to international tax compliance agreements, interest and dividend reporting, grievance redressal mechanisms, central KYC records registry, and adherence to KYC regulations. Furthermore, the framework addresses issues related to cyber security and resilience, standard operating procedures for handling cyber security incidents, data breach prevention, reporting of AI and ML applications, and ensuring client data protection. Additionally, it includes guidelines for block mechanisms in client demat accounts, validation of pay-in instructions, monitoring of security and covenant compliance, maintenance of websites, cybersecurity advisory practices, combating the financing of terrorism, cloud services adoption, and establishing cyber security operations centres. These provisions collectively facilitate the efficient and secure functioning of intermediaries within the securities market.

Furthermore, it furnishes detailed guidance on the management of investor grievances, the prevention of dissemination of unverified information, the delegation of operational functions, and the resolution of conflicts of interest.

These provisions that are Issuer-related encompass a comprehensive regulatory framework that addresses a multitude of crucial aspects of the securities market. They cover issuer charges, streamlining processes for share issuances, ADRs/GDRs, investor redressal mechanisms, and compliance with market regulations. The provisions promote efficiency by introducing electronic payment systems and automation for insider trading disclosures. They also provide clarity on regulatory compliance and reporting, including reconciling share capital and overseeing public equity share issuances. This framework reinforces investor protection, market integrity, and adherence to regulations, ultimately enhancing the transparency and efficiency of securities market operations.

The provisions related to Depositories detail a wide array of regulatory measures related to securities market infrastructure. These include regulations concerning depository operations, settlement timelines, approval processes for rule amendments, investor protection, electronic payment systems, and records preservation. The framework also addresses issues like cyber security, disclosure of information, risk management, and prevention of market abuse. It further delves into technology governance, inspections of depository participants, dematerialization of securities, and measures for enhancing resilience against cyber threats. These regulations aim to ensure market integrity, transparency, and investor protection while addressing various aspects of the securities market's operations and technology.

This comprehensive directive takes precedence and renders ineffective specific SEBI circulars, meticulously delineated in the attached annexure, concerning Depositories. The master circular comes into effect from the date of its issuance.

MASTER CIRCULAR ON KNOW YOUR CLIENT (KYC) NORMS FOR THE SECURITIES MARKET[7]

SEBI, on October 12, 2023, issued a comprehensive master circular on KYC norms for the securities market. This master circular serves as a compendium of previously promulgated circulars, encompassing various aspects of KYC norms including the KYC requirements and KYC Registration Agency.

The master circular outlines the KYC essentials for the securities market. It includes definitions, the background of KYC, the use of a uniform KYC format, the necessity of a Permanent Account Number (PAN), and exemptions and clarifications regarding PAN requirements. The section also lists acceptable documents for Proof of Identity (PoI) and Proof of Address (PoA), discusses the acceptance of third-party addresses for correspondence, and addresses the identification of beneficial ownership. It further highlights the need for additional documentation for non-individual entities and mandates the provision of a mobile number and email ID. The section covers digital KYC, online KYC app features, the requirement for In-Person Verification (IPV), and the incorporation of Aadhaar-based e-KYC processes, including the KUA and Sub-KUA mechanism. It also outlines

[7] SEBI/HO/MIRSD/SECFATF/P/CIR/2023/169

the entities allowed to conduct e-KYC using Aadhaar authentication and confidentiality of client information.

Furthermore, the master circular encompasses guidelines for intermediaries and KYC Registration Agencies (KRAs). It addresses the rationalization of the Risk Management Framework at KRAs and the processing of investor complaints against KRAs through the SEBI Complaints Redress System (SCORES). The section places a strong focus on cyber security and resilience, laying out a framework in this regard for KYCRAs. Additionally, it discusses the Central KYC Records Registry (CKYCR), a central repository for KYC information. An annexure provides further details about the framework for cyber security and resilience applied to KRAs.

This master circular takes precedence and renders ineffective specific SEBI circulars, meticulously delineated in the attached annexure, concerning KYC norms. The master circular comes into effect from the date of its issuance.

MASTER CIRCULAR FOR STOCK EXCHANGES AND CLEARING CORPORATIONS[8]

SEBI, on October 16, 2023, issued an extensive master circular for Stock Exchanges and Clearing Corporation. This master circular serves as a collection of previously promulgated circulars, encompassing a range of topics related to Stock Exchanges and Clearing Corporations. It addresses trading activities, trading software and technology, settlement processes, comprehensive risk management for the cash market and debt segment, exchange-traded derivatives, and the administration of stock exchanges and clearing corporations. Each section provides detailed regulatory guidance and practices for these areas of the securities market.

The master circular discusses the various aspects of Trading such as bulk deals and block deals, circuit breakers and price bands, margin trading, market makers, liquidity enhancement schemes, negotiated deals, PAN requirements, proprietary trading disclosure, short selling, securities lending and borrowing, securities transaction tax, time-stamping of orders, trading in government securities, etc.

Furthermore, it covers various aspects related to technology in trading, including internet trading conditions, direct market access facilities, electronic contract notes, straight-through processing, trading terminals, smart order routing, algorithmic trading guidelines, annual systems audits, business continuity plans, disaster recovery, cybersecurity, cyber resilience, co-location and proximity hosting, capacity planning, and data feeds.

The master circular outlines the Settlement process in the securities market. It covers activity schedules for rolling settlements, close-outs, auctions, delivery versus payment, modes of payment and delivery, settlement on holidays, the Core Settlement Guarantee Fund (Core SGF), contribution mechanisms, transfer of funds and securities, and default waterfall procedures. These regulations ensure smooth and secure settlement of transactions.

It also focuses on Comprehensive Risk Management for the Cash Market and Debt Segment. This includes risk management frameworks, deposit requirements for clearing members, risk management for Foreign Portfolio Investors, methodology for margin computation, and pre-trade risk controls. These measures are designed to mitigate risks in the cash market and debt segment of the securities market.

The master circular concentrates on the various aspects of Exchange Traded Derivatives including the different types of derivatives, such as Index Futures, Index Options, Stock Futures, Stock Options, Currency Futures, Currency Options, Interest Rate Futures, and more. The section provides details on product design, risk management, surveillance, and other relevant topics related to these derivative instruments.

Lastly the master circular brings to attention the administration of stock exchanges and clearing corporations. It addresses various aspects related to the governance, management, and regulatory framework for stock exchanges, clearing corporations, and subsidiary management. This section also covers investor protection funds, arbitration mechanisms, and functions of different committees associated with stock exchanges. Additionally, it discusses issues related to small and medium enterprises (SMEs) in the context of stock exchanges.

This master circular takes precedence and renders ineffective specific SEBI circulars, meticulously delineated in the attached annexure, concerning Stock Exchanges and Clearing Corporations. The master circular comes into effect from the date of its issuance.

[8] SEBI/HO/MRD2/PoD-2/CIR/P/2023/171

SECURITIES AND EXCHANGE BOARD OF INDIA (INVESTMENT ADVISERS) (AMENDMENT) REGULATIONS, 2023 ('AMENDMENT REGULATIONS')[9]

SEBI amended the Securities and Exchange Board of India (Investment Advisors) Regulations, 2013 through the Amendment Regulations on October 9, 2023. The changes were made to regulation 7, sub-regulation (1) and they modify the requirements for investment advisers in India, mandating "shall" for compliance with investment advice and allowing the Board to specify the time frame for compliance replacing the earlier requirement of 3 years.

The Amendment Regulations came into force with effect from September 30, 2023.

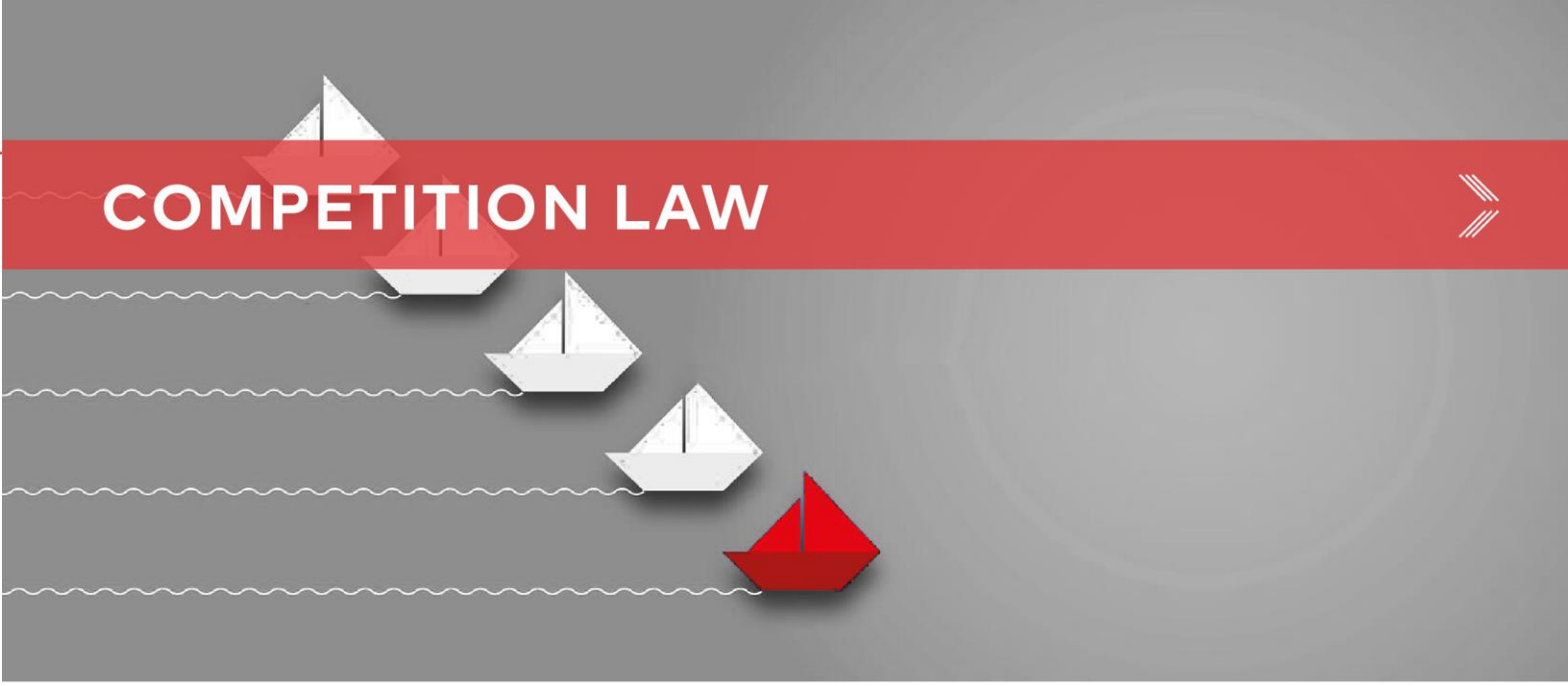
SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (FIFTH AMENDMENT) REGULATIONS, 2023 ('FIFTH AMENDMENT REGULATIONS')[10]

SEBI amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, through the Fifth Amendment Regulations on October 9, 2023. The changes were made to regulation 30, sub-regulation (11) and they altered the effective dates for reporting requirements related to listed entities in India, removing specific dates and allowing SEBI to specify the effective dates in the future.

The Fifth Amendment Regulations came into force with effect from October 1, 2023.

[9] SEBI/LAD-NRO/GN/2023/154

[10] SEBI/LAD-NRO/GN/2023/155.



It was a busy month for the competition law space. The following are the main highlights for the month of October:

CCI NOTIFIES DRAFT COMPETITION COMMISSION OF INDIA (LESSER PENALTY) REGULATIONS, 2023 PUBLISHED FOR COMMENTS

The CCI has notified its Draft Competition Commission of India (Lesser Penalty) Regulations, 2023 for comments. The regulations set out the procedural aspects of the leniency plus regime, which was introduced through the Competition (Amendment) Act, 2023.

The regulations are open for public perusal and comments on the same have been allowed by the CCI until November 6, 2023. The new regulations aim to replace the existing leniency regulations, the key points of emphasis in the draft regulations are (a) the introduction of the new leniency plus regime, (b) the introduction of provisions allowing the withdrawal of both leniency and leniency plus applications, (c) conditions wherein leniency plus application may be forfeited, (d) expanding the leniency plus regime to persons facilitating a cartel.

Under the Amendment Act, the leniency mechanism has been expanded to introduce a "lesser penalty plus" regime. This permits a current leniency applicant, who has previously sought leniency for one cartel, to provide comprehensive and crucial information about another previously unknown cartel (referred to as the "second cartel") to the Competition Commission of India (CCI). If the applicant's disclosure leads the CCI to form a preliminary opinion on the existence of the second cartel, the applicant becomes eligible for an additional reduction in monetary penalties of up to thirty percent for the first cartel, in addition to any existing reductions based on priority status. Furthermore, the applicant is entitled to a complete penalty waiver of up to one hundred percent for the second cartel.

CCI APPROVES CA PLUME INVESTMENTS AND QUEST GLOBAL SERVICES PTE. LTD DEAL

The CCI approved a combination involving CA Plume Investments (Acquirer), Bequest, and Quest Global Services (Target). The purpose of the combination is the acquisition of the equity stake in Target by the Acquirer. Furthermore, the combination contemplates the acquisition of an additional equity stake in Target by the bequest; and buyback of the equity stake by Target.

The Acquirer is an investment vehicle that is indirectly controlled by the affiliates of the Carlyle Group Inc. The Carlyle Group itself is a global alternative asset manager and manages investments across three different disciplines, global private equity, global credit, and investment solutions (i.e. private equity funds of fund programs).

Bequest operates as a holding entity of Target's co-founder and its Chief Executive officer, the sole purpose of Bequest Inc is to hold the shares of Target. The primary business of the target, i.e. Quest Global Services Pte. Ltd., is to provide engineering services for products and series across the lifecycle of the product to the customers.

The CCI noted in its order that the transaction is unlikely to raise any competition concerns, as there are no horizontal overlaps, vertical and/or complementary links between the activities of the Acquirer and the Target, in India. Thus, the Proposed Transaction was notified under the green channel route in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended).

CCI APPROVES IDFC TRANSACTION

The CCI approved a combination involving IDFC FIRST Bank Limited (IDFC FIRST), IDFC Financial Holding Company Limited (IDFC Holding), and IDFC Limited (IDFCL).

The transaction provided for the merger of IDFC Holding into IDFCL, with IDFCL being the surviving entity. Consequently, it was envisaged that IDFCL shall be merged with IDFC First Bank, with IDFC FIRST Bank being the surviving entity.

Further, the transaction involved the cancellation of the existing shares which are held by IDFC Holding in IDFC FIRST. Subsequently, the transaction involved the issuance of new shares of IDFC FIRST to IDFCL's shareholders. The issuance of new shares is the consideration for the merger of IDFCL into IDFC FIRST. The final step of the proposed transaction included the reduction of the securities premium account of IDFC FIRST.

It is pertinent to note that IDFC FIRST is primarily engaged in the business of providing banking services and IDFC Holding which is a wholly owned subsidiary of IDFCL is a non-operative financial holding company registered with the RBI and is not permitted to directly undertake any business in India. IDFCL is a non-banking financial company that is registered with the RBI, it does not directly engage in any business operations and is the ultimate holding company for IDFC FIRST Bank.

The CCI noted in the markets in which the parties operate, there exists no (a) horizontal overlaps or (b) vertical overlaps. Thus, since there are no linkages or overlaps between the businesses the relevant market can be left open and need not be defined In light of the same, the Proposed Transaction was notified under the green channel route in terms of Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended).

CCI APPROVES ONTARIO LIMITED AND BUSY BEES SOLUTIONS PRIVATE LIMITED COMBINATION

The CCI has approved the combination between the parties which are, Ontario Limited (Acquirer) and Busy Bees Logistics Solutions Private Limited (Target).

The purpose of the present transaction is the acquisition of a minority shareholding by the acquirer in the Target. The Acquirer is under the sole control of the Ontario Teacher's Pension Plan Board. The OTPP is responsible for the administration of pension benefits and pension plan assets of active and retired teachers across the province of Ontario.

Busy Bees is an express logistic service provider that is incorporated in India. Busy Bees caters specifically towards end-to-end supply chain solutions amongst other services such as B2B Xpress, B2C Xpress, Cross border and third-party logistics services.

The CCI noted that there are no horizontal or vertical relationships or complementary businesses that exist between the Acquirer and the Target in India. In light of the same, the CCI held that the transaction would not cause an appreciable adverse effect on competition. Thus, the transaction was notified under the Green Channel route, under Regulation 5A and 4 Schedule III of the Competition Commission of India Regulations, 2011.

CCI APPROVES GENERAL ATLANTIC SINGAPORE TBO PTE. LTD. AND TBO TEK LTD. DEAL

The CCI approved a combination involving the purchase of equity shares collectively from TBO Korea Holding Limited (Seller 1) and Augusta TBO (Singapore) Pte. Ltd. (Seller) constituting 7.5% shareholding of TBO Tek Ltd. by General Atlantic Singapore TBO Pte Ltd.

General Atlantic Singapore TBO Pte Ltd is an investment holding company, which is incorporated under the laws of Singapore.

TBO operates a two-sided business-to-business technology platform, "travelboutiqueonline.com," offering travel services to travel agents and independent travel advisors. Their services include online booking, a platform for travel agents and hoteliers to showcase their offerings, and educational courses for the travel and tourism industry.

The CCI noted in its order that the proposed transaction raises no risk of adverse competition, nor does there exist any horizontal overlap or existing and/or potential vertical or complimentary relationship between the two parties. Therefore, accordingly, the transaction was notified under the Green Channel Filing.

NO STAMP DUTY IS PAYABLE ON AN INSTRUMENT, EXECUTED BY OR ON BEHALF OF OR IN FAVOUR OF THE GOVERNMENT

The Hon'ble High Court of Delhi in ***M/s SVK Infrastructures vs. Delhi Tourism and Transportation Development*** [11] has held that no stamp duty is payable on an instrument which is executed by, or on behalf of, or in favour of the government. In the instant case, the Petitioner had filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 (the "**Act"**) seeking appointment of an arbitrator for adjudication of disputes. The counsel for the Respondent, relying on the decision of the Hon'ble Supreme Court in *M/s. N.N. Global Mercantile Private Limited vs. Indo Unique Flame Ltd. and Ors.*[12], objected to the said petition *inter alia* the ground that the Work Order containing the arbitration clause was unstamped and therefore, an unstamped work order could not be relied upon to invoke the arbitration. The counsel for the Petitioner contended that in terms of proviso (1) to Section 3 of the Indian Stamp Act, no stamp duty would be chargeable on an instrument which has been executed by or on behalf of the Government. The Hon'ble Court rejected the arguments put forth by the Respondent, and, having noticed the fact that the Respondent did not dispute the Work Order being executed by Government, accepted the contention of the Petitioner. The Hon'ble High Court found that Clause 5(c) of Schedule IA must be read in conjunction with the Section 3 of the Indian Stamp Act, which is the charging section and prescribes the instruments which would be chargeable with stamp duty. The Hon'ble Court found that, in terms of proviso (1) of Section 3, it is evident that no stamp duty would be chargeable *inter alia* on an instrument which has been executed by or on behalf of the Government. Hence, as the work order had been executed on behalf of the Government, no stamp duty was payable on the said work order in light of Section 3, and proviso (1) thereunder. Thus, the Hon'ble Court held that the Hon'ble Supreme Court's decision in *M/s. N.N. Global Mercantile Private Limited*[13] is inapplicable to an agreement executed by or on behalf or in favour of the government. Thus, a Court exercising powers under Section 11 of the Act would not refuse to appoint arbitrator once it is ascertained that instrument falls within the exception created by the stamps act for government.

ARBITRATION CLAUSE ALLOWING ONE PARTY TO APPOINT 2/3 MEMBERS OF THE ARBITRAL TRIBUNAL IS NOT ENFORCEABLE

The Hon'ble High Court of Delhi in ***Taleda Square Private Limited vs. Rail Land Development Authority***[14] has held that an arbitration clause allowing one party to appoint 2/3 members of the Arbitral Tribunal is not enforceable. In the instant case, a petition under Section 11 of the Arbitration and Conciliation Act 1996 was filed before the Hon'ble Court seeking the appointment of an Arbitral Tribunal for resolution of disputes which had arisen between the parties in the context of lease agreement dated 31.03.2015. The counsel for the Petitioner submitted that, in terms of the arbitration clause, a panel of 3 arbitrators would adjudicate the dispute between the parties, wherein the Petitioner and Respondent were both entitled to appoint their nominee arbitrators and the presiding arbitrator would be appointed by the Respondent's Vice Chairman. The counsel for the Petitioner further submitted that the Respondent refused to accept the Petitioner's nominee arbitrator and called upon the Petitioner to appoint its nominee arbitrator from the list of 5 persons who were on the panel of the Respondent. The Hon'ble Court observed that the Respondent's stand that the Petitioner should be compelled to select its nominee arbitrator from a 5-member panel of the Respondent could not be accepted. The Hon'ble High Court further observed

[11] ARB.P. No. 668/2023
[12] 2023 SCC OnLine SC 495
[13] Id.
[14] ARB.P. No. 637/2023

that where the Respondent has the power to appoint two out of the three arbitrators and compels the Petitioner to choose one arbitrator from the Respondent's panel of five arbitrators, is a complete violation of the test of counter balancing. Accordingly, the Hon'ble High Court admitted the said petition. Thus, the Hon'ble Court appointed to the Arbitral Tribunal arbitrators for both the Petitioner and Respondent, and further directed both that the arbitrators shall concur amongst themselves and appoint the presiding arbitrator to the said Arbitral Tribunal.

DOCTRINE OF ELECTION CAN'T PREVENT FINANCIAL CREDITORS FROM INITIATING CIRP AGAINST CORPORATE DEBTORS

The Hon'ble Supreme Court of India in the case of ***Tottempudi Salalith vs. State Bank of India & Ors.***[15] held that the 'Doctrine of Election' cannot be applied to prevent a Financial Creditor from approaching the National Company Law Tribunal ("**NCLT**") for initiation of a Corporate Insolvency Resolution Process ("**CIRP**") against a Corporate Debtor under the Insolvency and Bankruptcy Code, 2016 ("**Code**").

In the present case, State Bank of India ("**Financial Creditor**") (amongst other banks) had extended credit facilities to Totem Infrastructures Limited ("**Corporate Debtor**"/ "**Totem**"). When Totem failed to repay the loans, three recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI Act**") were instituted against it before the Hon'ble Debt Recovery Tribunal ("**DRT**"). Thereafter, Hon'ble DRT issued a Recovery Certificate against the Corporate Debtor in 2015. Subsequently, two more Recovery Certificates against the Corporate Debtor were issued by the Hon'ble DRT. The Financial Creditor had a stake in each one of the aforesaid Recovery Certificates. Subsequently, the Financial Creditor filed a petition under Section 7 of the Code before the Hon'ble National Company Law Tribunal ("**NCLT**") seeking initiation of the CIRP against the Corporate Debtor, for defaulting in payment towards the aforementioned Recovery Certificates. Thereafter, on 21.01.2021, the Hon'ble NCLT was pleased to initiate CIRP against Totem. Aggrieved by the aforesaid order, an appeal was filed by Totem before the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"). In its appeal, Totem contended that the debt was time-barred and Totem further contended that the banks were barred under the doctrine of election from approaching the NCLT for recovery of the same set of debts as they have already approached the Hon'ble DRT *qua* the same debt. Hon'ble NCLAT dismissed the Appeal filed by Totem. Aggrieved by the order passed by the Hon'ble NCLAT, Totem filed the civil appeal under section 62 of the code. The Hon'ble Supreme Court dismissed the Civil Appeal.

The Hon'ble Apex Court noted that the Doctrine of Election would not apply in the present case as the recovery proceedings before the Hon'ble DRT commenced in 2014, when the Code had not come into existence. The Hon'ble Apex Court relied on the judgement passed by it in *Kotak Mahindra Bank Limited vs. A. Balakrishnan and Anr.*[16], wherein the Hon'ble Court held that a claim arising out of a recovery certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the Code. Consequently, the holder of the recovery certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the Code. The Hon'ble Bench recognised the right of the Financial Creditor to invoke the mechanism under the Code after the issuance of the recovery certificate stood acknowledged as a valid legal course. The Hon'ble Court distinguished between the two statutes and clarified that while one is a recovery mechanism, the other is a revival mechanism for debt-laden companies. In view of the aforesaid, the Hon'ble Bench clarified that the Doctrine of Election doesn't prevent Financial Creditors from approaching the NCLT for initiating CIRP under the Code, thereby providing a judicial precedence in favour of Financial Creditors' rights in choosing the forum for debt recovery following the issuance of a recovery certificate.

OPERATIONAL CREDITOR MERELY RESPONDING TO NOTICE INVOKING ARBITRATION BY STATING THAT THERE EXISTS NO DISPUTE, WOULD NOT PREVENT THE ADJUDICATING AUTHORITY FROM CONCLUDING THAT DISPUTES EXIST BASED ON MATERIAL ON RECORD

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") in the case **of *NTT Data Business Solutions Pvt. Ltd. vs. Trident Ltd.***,[17] held the operational creditor merely responding to notice invoking arbitration by stating that there exists no dispute, would not prevent the Adjudicating Authority from concluding that dispute exist, based on material on record.

In the present case, NTT Data Business Solutions Pvt. Ltd. ("**Operational Creditor**"/ "**Appellant**") entered into a contract with Trident Ltd. ("**Corporate Debtor**"/ **"Trident**") to provide certain services to the Corporate Debtor. Shortly thereafter, a dispute arose between the parties *qua* the quality of the service provided by the Operational Creditor. Accordingly, Trident invoked the arbitration clause under the Contract and sent a notice invoking arbitration ("**NIA**") under Section 21 of the Arbitration and Conciliation Act, 1996 ("**A&C Act**"). The Operational Creditor responded to the NIA stating that there is no dispute between the parties. Thereafter, an Arbitrator was appointed to adjudicate the dispute between the parties. In spite of the ongoing Arbitration, the Operational Creditor issued a Demand Notice under Section 8 of the Insolvency and Bankruptcy

[15] Civil Appeal No. 2348 of 2021
[16] Civil Appeal No. 689 of 2021
[17] Company Petition No. (IB)-101/(PB)/2017.

Code, 2016 ("**Code**") and subsequently, filed a Petition under Section 9 of the Code before the Hon'ble National Company Law Tribunal ("**NCLT**") to initiate the Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor. The Hon'ble Bench dismissed the aforesaid petition citing the existence of a pre-existing dispute between the Parties as the reason for the dismissal.

Aggrieved by the aforesaid order of the Hon'ble NCLT, the Appellant filed an appeal before the Hon'ble NCLAT whereby it contented that there is no dispute as the Operational Creditor never accepted the existence of any dispute and refuted the existence of same in its reply to the NIA. The Hon'ble NCLAT noted that the NIA precedes the demand notice under Section 8 of the Code. The Hon'ble NCLAT further noted that merely the fact that the operational creditor refuted the existence of dispute in its reply to the notice invoking arbitration, would not prevent the adjudicating authority from concluding that disputes exist based on material on record. In view of the aforesaid, the Hon'ble NCLAT dismissed the Appeal.

ADVOCATES CANNOT CLAIM RIGHT OF LEGAL REPRESENTATION UNDER THE INDUSTRIAL DISPUTES ACT, 1948

The Supreme Court of India, *vide* order dated October 4, 2023, in the case of *Thyssen Krupp Industries India Private Limited & Ors vs. Suresh Maruti Chougule & Ors.*, noted that advocates cannot claim right of legal representation under the Industrial Disputes Act, 1948 ("**IDA**"). The Supreme Court of India herein reaffirmed its judgement in *Paradip Port Trust, Paradip vs. Their Workmen*, ("**Paradip Port**"), which was challenged by the petitioners in the present case.

The Supreme Court in Paradip Port dealt with Section 36 of the IDA and Section 30 of the Advocates Act, 1961. Section 36(4) of the IDA puts a bar upon advocates appearing before authorities, such as the Labour Courts and Tribunals, mentioned under the IDA, without the consent of the opposite side and the permission of the authorities in consideration. On the other hand, Section 30 of the Advocates Act, 1961 allows advocates to appear before any kind of court/tribunal. The Supreme Court in Paradip Port noted that IDA, being a special legislation, would override the Advocates Act, 1961 which is a general law. Hence, it was observed that advocates could not claim the right to legal representation under Section 30 of the Advocates Act, 1961 when it pertained to matters which attracted the IDA.

REVISION OF MINIMUM WAGES OF WORKERS IN ODISHA

The Government of Odisha *vide* notification dated October 4, 2023, revised the minimum wages of workers. The daily minimum wages of the following categories of employees have been revised:

- Unskilled workers: INR 352 (Rupees Three Hundred and Fifty-Two);
- Semiskilled workers: INR 392 (Rupees Three Hundred and Ninety-Two);
- Skilled workers: INR 442 (Rupees Four Hundred and Forty-Two); and
- Highly skilled workers: INR 502 (Rupees Five Hundred and Two).

STANDARD OPERATING PROCEDURE FOR MANAGEMENT AND REGULATION OF EMPLOYEES' PROVIDENT FUND EXEMPTED ESTABLISHMENTS

The Employees' Provident Fund Organisation ("**EPFO**") released the Standard operating procedure ("**SOP**") for management and regulation of EPF exempted establishments on October 6, 2023.

EPFO has published an SOP to be followed by entities exempted from the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**"). Exemption from the operations of the Employees' Provident Funds Scheme, 1952 is granted to an establishment by the appropriate Government to manage the provident fund of its employees within certain conditions and obligations. This SOP aims to delineate the process of compliance to be done by the exempted/relaxed establishments managing their own trust and the regulations thereof on the conditions and obligations as per the statute.

The SOP lays down the compliance terms of the exempted establishments managing their own provident fund trust and further describes EPFO's methodology to monitor and regulate the compliance of the exempted/relaxed establishments. It covers within its ambit establishments which have been granted:

- exemption under Section 17(1) (*power to exempt*) of the EPF Act; and
- exemption under Section 17(2) (*power to exempt*) of the EPF Act (read with Para 27A (*exemption of a class*

of employees) and Para 27 (*exemption of an employee*) of the Employees' Provident Funds Scheme, 1952).

GOVERNMENT OF DELHI ISSUES ADVISORY ON PAYMENT OF BONUS

The Office of the Commissioner, Labour Department, Government of the National Capital Territory of Delhi, *vide* order dated October 11, 2023, issued an advisory based on complaints regarding non-payment of bonuses by the contractors, based on complaints from outsourced workers.

The aforementioned advisory stated that all the contractor's establishments who have employed 20 (Twenty) or more workers on any day during the accounting year are covered under the Payment of Bonus Act, 1965. Hence, it is a statutory responsibility of the contractors, as employers, to pay bonus to their employees. The advisory also highlighted the provisions of the Contract Labour (Regulation & Abolition) Act, 1970, stating that the principal employer bears the responsibility to ensure compliance of various labour laws by their respective contractors.

The advisory also states that in case of default, the establishments/contractors will be liable for prosecution for non-payment of bonus. Additionally, the due amount of bonus will be recoverable as arrears of land revenue.

EMPLOYEES ENTITLED TO INTEREST ON MEDICAL REIMBURSEMENT FROM THE DATE OF CLAIM UNDER EMPLOYEES COMPENSATION ACT, 1923

The High Cout of Kerela, *vide* order dated October 11, 2023, in the case of *Venugopalan vs. The Managing Partner*, noted that an employee is entitled to claim interest on medical reimbursement under Section 4A of the Employees Compensation Act, 1923 from the date of making claim before the Compensation Commissioner and not from the date of the accident. In the present case, the appellant filed an application before the Employees Compensation Commissioner (Industrial Tribunal), Thrissur for compensation towards functional disability sustained by him in an accident during the course of his employment. The above-mentioned commission, however, did not disburse interest upon the medical reimbursement, as required under Section 4A(3)(a) of the Employees Compensation Act, 1923. Thus, an appeal was preferred. The High Court of Jharkhand, allowed the appeal in part and ordered for payment of interest on medical reimbursement at the rate of 12% (Twelve Percent) from the date of petition till realization.

CHANGE IN INTEREST RATES UNDER PROVIDENT FUND SCHEME IN WEST BENGAL

The Finance Department, West Bengal *vide* resolution dated October 12, 2023, decided that the accumulated credit of the Subscribers who have subscribed for the general provident fund and other similar funds maintained under the administrative control of the government from the period of October 1, 2023, to December 31, 2023, shall carry a rate of 7.1% (Seven Point One Percent) per annum. The funds concerned are:

- General provident fund (West Bengal Service).
- Contributory provident fund (West Bengal).
- Provident funds maintained under the West Bengal Non-Government Educational institutions and Local Authorities (Control of Provident Fund of Employees) Act, 1983.
- Any other provident fund maintained under state account with the approval of the government.

ENFORCEMENT OF PROVISIONS OF EMPLOYEES STATE INSURANCE ACT 1948 IN SOME DISTRICTS OF TAMIL NADU AND UTTAR PRADESH

The Ministry of Labour and Employment, *vide* notification dated October 13, 2023 has enforced the following provisions of the Employees State Insurance Act, 1948 ("**ESI Act**") in all the areas of Lalitpur, Kushinagar, Kaushambi, Budaun, Sultanpur, Deoria, Ballia, Jaunpur, Azamgarh, Baghpat, Chitrakoot, Sambhal and Ayodhya districts in the State of Uttar Pradesh and all the areas of Nilgiris district, in addition to the already notified areas in the said district, in the State of Tamil Nadu:

- Sections 38 to 43 and sections 45A to 45H of Chapter IV which relates to *'contribution'*;
- Sections 46 to 73 of Chapter V which relates to *'benefits';* and
- Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of Chapter VI which relates to *'adjudication* of disputes and claims'.

REVISION OF MINIMUM WAGES OF WORKERS IN PUNJAB

The Office of the Labour Commissioner, Punjab, *vide* notification dated October 13, 2023, adjusted and revised the minimum wages of workers with effect from September 1, 2023. The revised monthly minimum wages are as detailed below:

- Unskilled: INR 10,736.75 (Rupees Ten Thousand Seven Hundred and Thirty-Six and Seventy-Five Paise);
- Semi-skilled: INR 11,516.75 (Rupees Eleven Thousand Five Hundred and Sixteen and Seventy-Five Paise);
- Skilled: INR 12,413.75 (Rupees Twelve Thousand Four Hundred and Thirteen and Seventy-Five Paise); and

- Highly skilled: INR 13,445.75 (Rupees Thirteen Thousand Four Hundred and Forty-Five and Seventy-Five Paise).

GOVERNMENT OF HARYANA TO PROVIDE HEALTH SERVICES TO CONTRACTUAL EMPLOYEES

The Haryana Chief Secretary, Mr. Sanjeev Kaushal, through press release dated October 16, 2023, declared that employees engaged in various departments under the Haryana Kaushal Rozgar Nigam Limited will now have access to health services through the Haryana Chirayu Yojana. This initiative will extend the much-needed benefits of healthcare services to a substantial number of engaged contractual employees.

Employees of Urban Local Bodies who are not covered by the Employees' State Insurance Scheme and receive a salary exceeding INR 21,000 (Rupees Twenty-One Thousand) will now have access to medical services. Furthermore, in cases where employees engaged in municipal councils, municipalities, and municipal corporations sustain injuries during their duty, the State Government will bear the expenses for their treatment.

In the event of sudden death, the employees including sanitation workers, sewer workers, firemen, and fire brigade drivers are entitled to INR 5,00,000 (Rupees Five Lakh) insurance benefit under the Mukhyamantri Karamchari Durghatna Beema Yojana. Additionally, financial assistance of up to INR 3,00,000 (Rupees Three Lakh) is given to employees on *ad hoc*, daily wages, and contract.

ESTABLISHMENTS UNDER THE ESI ACT OBLIGED TO MAKE CONTRIBUTIONS EVEN IF EMPLOYEES FALL BELOW THE SPECIFIED LIMIT

The High Court of Jharkhand, *vide* order dated October 18, 2023, in the case of *Beldih Club Jamshedpur vs. The State of Jharkhand & Ors.* noted that if an organisation is covered under the ESI Act, the number of employees working there is irrelevant, and such establishments are obligated to deposit employee subscriptions to contribute to the Employees State Insurance fund. The High Court of Jharkhand reaffirmed the Single Judge bench's judgement, wherein the Court did not interfere with the order of regional director's, Employees' State Insurance Corporation. The regional director had earlier passed an order wherein a demand notice of INR 17,35,556 (Rupees Seventeen Lakh Thirty Five Thousand Five Hundred Fifty Six) was held valid, based on the contention that petitioner fell under Section 2(12) of the ESI Act. According to this, all workers/employees earning below the stipulated limits were included under the ESI Act.

The High Court of Jharkhand noted that the ESI Act is a progressive piece of legislation meant to provide specific benefits to the workers it covered. Interpreting its provisions narrowly or technically would defeat the purpose of the legislation. Thus, it did not interfere with the Single Judge bench's judgement.

SAME WAGES AND SEPARATE TOILETS FOR MALE AND FEMALE CONSTRUCTION WORKERS IN DELHI

The Office of the Commissioner, Labour Department, Government of the National Capital Territory of Delhi, *vide* notification dated October 18, 2023, has stated that all employers, contractors, and establishments on a construction site must pay the same wages to female workers as they do to male workers for the same work, as mandated under the Equal Remuneration Act, 1976. The afore-mentioned notification also noted that such employers, contractor establishments are required to provide separate toilets for male and female construction workers on a construction site as mandated by the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002.

DELHI GOVERNMENT RECONSTITUTES SCREENING COMMITTEE UNDER MODIFIED ASSURED CAREER PROGRESSION SCHEME

The Labour Department, Government of the National Capital Territory of Delhi, *vide* notification dated October 19, 2023, to reconstitute a screening committee for granting financial upgradation under the Modified Assured Career Progression ("**MACP**") Scheme.

This order applies to eligible Group B and Group C central government civilian employees. Casual employees, including those granted 'temporary status,' and employees appointed in the government on an ad-hoc or contract basis do not qualify for benefits under MACP.

Under the MACP scheme, three financial upgrades are allowed upon completing 10 (Ten), 20 (Twenty), and 30 (Thirty) years of regular service, counted from the direct entry grade. The MACP scheme only involves placement in the immediate next higher grade pay. The MACP scheme for Central Civilian Government Employees supersedes the earlier Assured Career Progression Scheme.

A screening committee shall be constituted in each department to consider the case for granting financial upgradations under the MACP. The screening committee shall consist of a chairperson and two Members. The members of the committee shall comprise officers holding posts that are at least one level above the level at which the MACP is to be considered and not below the rank of Under Secretary or equivalent in the government. The chairperson should generally have a level above that of the members of

the committee. Accordingly, the composition of the screening committee is as follows:

- Additional Labour Commissioner: Chairperson;
- Deputy Labour Commissioner (Administrative): Member; and
- Senior Accounts Officer: Member.

REVISION OF MINIMUM WAGES FOR SCHEDULE EMPLOYMENT IN DELHI

The Office of Commissioner (Labour), Government of NCT Delhi, *vide* notification dated October 23, 2023, revised the minimum wages for unskilled, semi-skilled and skilled workers in all schedules employment. The following changes have been made:

- Un-skilled workers: INR 673 (Rupees Six Hundred Seventy Three) per day.
- Semi-skilled workers: INR 742 (Rupees Seven Hundred Forty Two) per day.
- Skilled workers: INR 816 (Rupees Eight Hundred Sixteen) per day.

With respect to clerical and supervisory staff in all schedule employments, the following revisions have been made:

- Non matriculate: INR 742 (Rupees Seven Hundred Forty Two) per day.
- Matriculate but not graduate: INR 816 (Rupees Eight Hundred Sixteen) per day.
- Graduate and above: INR 888 (Rupees Eight Hundred Eighty Eight) per day.

ENERGY & INFRASTRUCTURE

ENERGY

MINISTRY OF NEW AND RENEWABLE ENERGY ISSUED THE R&D ROADMAP FOR GREEN HYDROGEN ECOSYSTEM IN INDIA DATED OCTOBER 12, 2023

The Ministry of New and Renewable Energy on October 12, 2023 issues the R&D Roadmap for Green Hydrogen Ecosystem in India. The Roadmap covers multiple aspects of Green Hydrogen Energy and its future in India.

The R&D Roadmap covers in detail multiple aspects of Green Hydrogen Energy such as Hydrogen Storage, Hydrogen Transport and the End use Application of Green Hydrogen Energy.

The R&D Roadmap most notably establishes three R&D priorities namely the Mission Mode Projects, Grand Challenge Projects and the Blue Sky Projects.

The Roadmap also touches upon key aspects in relation to Green Hydrogen such as Safety and calls for research in key areas of Hydrogen Safety. The Roadmap is most likely to serve as a guiding documents for the establishments of a dynamic and efficient ecosystem for the commercialisation of Green Hydrogen.

Read more (here).

THE MINISTRY OF POWER ISSUED OFFICE MEMORANDUM MAKING PARTIAL MODIFICATIONS REGARDING THE RESOLUTION OF CONTRACTUAL DISPUTES

The Ministry of Power *vide* its office memorandum bearing reference no. F. No. 11/22/2021 – TH.II dated October 18, 2023, made partial modifications to para 6 and 9 of its previous memorandum dated December 29, 2021. The previous memorandum dealt with the resolution of contractual disputes in the projects implemented by CPSUs/Statutory Bodies under the administrative control of the Ministry of Power. This is going to be done through the "Conciliation Committee of Independent Experts (CCIE).

Before the present amendment para 6 allowed for disagreements to the solved through a dispute avoidance mechanism (through an independent engineer), failing which the dispute would be referred to the conciliation committee. Previously, in cases wherein there was a failure of the conciliation process only then the option of arbitration would be available to be exercised however, the amendment has allowed for the removal of the same with parties now being allowed to take recourse to arbitration proceedings or the laid down legal process of courts even after conciliation process is successful.

Prior to the recent amendment in para 9, parties could only explore the possibilities of conciliation through the conciliation committee of independent experts when the parties withdraw from the arbitration proceedings and forego their rights to proceed for further arbitration in the subject. But the amendment has allowed the parties to explore the options including the other legal remedies without withdrawing the arbitration proceeding and foregoing their rights.

CENTRAL GOVERNMENT IN CONSULTATION WITH THE BUREAU OF ENERGY EFFICIENCY SPECIFIED MINIMUM SHARE OF CONSUMPTION OF RENEWABLE ENERGY FROM NON-FOSSIL SOURCES BY DESIGNATED CONSUMERS

The Central Government in consultation with the Bureau of Energy Efficiency, *vide* reference No. S.O. 4617(E), dated October 20, 2023, specified the minimum share of consumption of renewable energy from non-fossil sources by designated consumers. The notification specified the minimum share of consumption of non-fossil sources

(renewable energy) by designated consumers as energy or feedstock and different share of consumption for different types of non-fossil sources for different designated consumers in respect of electricity distribution licensee and other designated consumers who are open access consumers or captive users to the extent of consumption of electricity from sources other than distribution licensee as a percentage of their total share of energy consumption.

Furthermore, the notification also allowed flexibility in meeting renewable energy consumption targets. This was done by allowing for any shortfall in achievement of stipulated win energy to be compensated with hydro renewable energy and vice versa. Additionally, surplus energy in any category can be utilized to cover deficits. The notification clearly calls for open access consumers or consumers with captive power plants (CPPs) to adhere to the specified renewable energy targets irrespective of the no fossil fuel source. Lastly, it was specified that compliance can be achieved directly or through certificates, issues in accordance with CERC Regulations, 2022, with penalties imposed for any shortfalls in meeting specified targets.

CERC AMENDED THE CENTRAL ELECTRICITY REGULATORY COMMISSION (SHARING OF INTER-STATE TRANSMISSION CHARGES AND LOSSES) REGULATIONS, 2020

CERC *vide* its notifications No. L-1/250/2019/CERC and L-1/250/2019CERC1, dated October 20, 2023 and October 26 2023 respectively amended the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (hereinafter referred to as "the Principal Regulations")

CERC *vide* its first notification dated October 20, 2023, amended regulation 2 to provide a comprehensive definition of "Deemed COD: under the newly added Regulation 2 (1)(i)(i-i). This amendment added a proviso to sub-clause (d) of clause (3) of regulation 5 and sub-clause (a) of clause (1) of regulation 6 of the principal regulation. Furthermore, Clause (12) of Regulation 13 was substituted as specified in the notification, with a new YTC for interstate transmissions or elements thereof approved as deemed COD being prescribed.

Read more (here).

Additionally, CERC *vide* its second Notification dated October 26, 2023, notified the Third Amendment to Principal Regulations. The Amendment allows for the insertion of a Proviso in sub clause (d) of clause (3) which sets the percentage of Yearly Transmission Charges for internal – regional HVDC transmission systems at 30%.

Furthermore sub clause (a) of clause 1 of the regulation 6 was substituted

Read more (here).

MINISTRY OF POWER (MOP) NOTIFIED, THE PROCEDURE FOR IMPLEMENTATION OF THE UNIFORM RENEWABLE ENERGY TARIFF DULY APPROVED BY THE MINISTRY OF POWER AND MINISTRY OF NEW & RENEWABLE ENERGY

The Ministry of Power *vide* its notification **bearing reference no No.13/05/2023-RCM/NRE dated October 25, 2023** approved the procedure for implementation of a uniform renewable energy tariff duly approved by the Ministry of New and Renewable Energy. According to the rules an implementing agency, in this case, called the central agency will be appointed by the central government and shall compute a 'uniform renewable energy tariff' every month for central pools like solar power, wind power central pool, etc. It is on the basis of the calculations made in this central pool that the intermediary procurer shall sell power from renewable energy from that central pool to all the end procurers.

Furthermore, *vide* notification dated October 17, 2023, Grid India was notified as the Implementing Agency for the implementation of a uniform renewable energy tariff for the central pool.

MINISTRY OF POWER: DIRECTION TO ALL GENCOS INCLUDING INDEPENDENT POWER PRODUCERS (IPPS) FOR TIMELY IMPORT OF COAL FOR BLENDING PURPOSES AND MAXIMIZING PRODUCTION IN CAPTIVE COAL MINES (OCTOBER 25, 2023)

Ministry of Power *vide* reference no. FU-21/2020-FSC(Vol-IV) issued a Direction to all GENCOs including Independent Power Producers (IPPs) for the timely import of coal for blending purposes and maximizing production in captive coal mines with consultation with the Central Electricity Authority (CEA).

The notice bearing in mind the need to ensure uninterrupted power supply across the country, has allowed for blending of imported coal @ 6 % (weigh) minimum to be continued till March 2025. The Gencos may continuously review their stock position and opt for blending as per the requirements if the shortfall in domestic coal supply is more than 6 percent.

THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE AMENDED THE BATTERY WASTE MANAGEMENT RULES

MOEFCC notified the Battery Waste Management (Amendment) Rules, 2023 *vide* notification no. S.O. 4617(E) dated October 25, 2023 to amend the Battery Waste Management Rules, 2022. The aforementioned provisions came into force on October 25, 2023. One of the key changes included the amendment of the definition of "Battery". The

definition was amended to remove battery components from under its purview.

The Rules were also amended to revive the functions of the producers. The extent of liability under Extended Producer Responsibility was amended to not include in its ambit batteries which the producer puts to self-use as well as those introduced by the producer in the market.

Additionally, Rule 8 which pertains to the "Functions of the Refurbisher" was amended to allow for the total weight of the waste battery produced by an entity involved in refurbishment (of waste batteries) to be made available on the portal of the CPCB. Rule 10 of the Battery Waste Management Rules, 2022 was also amended to insert multiple sub rules pertaining to the operation of electronic platforms / trading platforms for the sale/purchase of Extended Producer Responsibility Certificates.

INFRASTRUCTURE

CLARIFICATIONS ON THE VIVAD SE VISHWAS-II (CONTRACTUAL DISPUTES) SCHEME

The National Highways Authority of India ("**NHAI**") vide policy circular bearing number 2.1.64/2023 dated October 11, 2023 ("**Policy Circular**") has released certain clarifications in relation to the methodology to be adopted for calculating the net amount to be recovered/paid under the Vivad se Vishwas-II (Contractual Disputes) Scheme ("**Scheme**").

As per Rule 227A of the General Financial Rules, 2017, if the procuring entities challenge the arbitral award, 75% (seventy five percent) of the award amount must be paid to the contractor, against the bank guarantee ("**BG**") of such amount prior to filing the challenge before the court. The amounts paid to the contractor under the said Rule would be adjusted with the amounts due under the Scheme. However, the BG charges will be non-reimbursable.

The Policy Circular was issued to address certain discrepancies in cases where 75% (seventy five percent) of the award amount had been paid against the BG.

The key stipulations as provided in the Policy Circular have been given hereinbelow:

- The settlement amount must be calculated up to the date of the acknowledgement email, as provided under paragraph 10 of the office memorandum dated May 29, 2023, issued by Department of Expenditure ("**DoE**").
- The payment released against BG along with an interest of 9% (nine percent) on the said payment shall be worked out from the date of the payout against BG till the date of settlement under the Scheme.
- The difference between the two amounts mentioned hereinabove shall be the amount to be recovered or paid to the contractor.

PARTICIPATION OF DEMERGED ENTITIES IN PUBLIC PROCUREMENT

The Procurement Policy Division ("**PPD**") under DoE, Ministry of Finance vide office memorandum bearing number F.8/78/2023-PPD dated October 12, 2023 ("**OM**"), has issued certain directions on the participation of demerged entities in public procurement.

The key stipulations provided in the OM have been detailed hereinbelow:

- Demerged entities (i.e., entities that have undergone corporate restructuring) shall be permitted to use credentials of the original or the parent entity in order to satisfy the eligibility criteria provided in the tender for at least 5 (five) years from the incorporation of the demerged entities.
- Tenders must mention if the credentials of the demerged entity shall be considered in the specific tender and the conditions under which such entities become eligible to bid.
- The procuring entities must consider the credentials of the demerged entities based on the merits and circumstances of the cases such as type of procurement, nature of demerger, number of eligible bidders, etc.

UPLOADING/SHARING CONTRACT AWARD DETAILS ON ELECTRONIC PORTALS

The PPD, under the DoE vide office memorandum bearing number 6/5/2023-PPD dated October 23, 2023 ("**Contract OM**"), issued directions in relation to uploading/sharing contract details on electronic portals such as the government e-marketplace ("**GeM**") immediately after the contract is awarded.

Key stipulations as provided in the Contract OM are detailed hereinbelow:

- Commercial organizations such as central public sector enterprises must disclose if the subject for

procurement is for commercial re-sale at the time of the formulation of the tender.

- Within 6 (six) months of the finalization of the procurement the details in relation to the contract awarded may be shared on electronic portals such as GeM or the central public procurement portal.
- Electronic procurement portals were directed to make necessary changes for implementing the same.

INTEREST RATE APPLICABLE FOR HYBRID ANNUITY PROJECTS

The NHAI vide policy circular number 8.4.42/2023 dated October 10, 2023, has notified the following interest rates under Clause 23.6.4 of the model concession agreement for hybrid annuity model ("**HAM**") projects ("**Model HAM Agreement**"), payable in relation to the reducing balance of completion cost towards the project:

Sr. No.	Bank's Name	One year MCLR % (as on October 01, 2023)	Average rate applicable for the period from October 01, 2023, to December 31, 2023
1.	State Bank of India	8.55	8.80 % per annum plus 1.25%
2.	HDFC Bank	9.15	
3.	ICICI Bank	8.95	
4.	Bank of Baroda	8.70	
5.	PNB	8.65	

In terms of Clause 23.6.4 of the Model HAM Agreement, the next review of such interest rate will be conducted on September 01, 2024, and the rates will be published for 1st day of every quarter.

AMENDMENT TO THE MASTER DIRECTION ON KYC

RBI, on October 17, 2023, issued an amendment to the Master Direction on Know-Your-Customer ("**KYC**"). This amendment updates the KYC guidelines to align with various legal and regulatory changes. Given below are the key changes:

i. The **scope of KYC Master Directions has been widened** to include 'asset reconstruction companies' as Regulated Entities.

ii. The **definition of a 'Beneficial Owner' in partnership firms has changed**, with the ownership threshold reduced to 10%. Even if the threshold isn't met, individuals exerting 'control' in other ways are considered 'Beneficial Owners'. 'Control' has been defined to include right to control management or policy decision.

iii. Regulated Entities are now required to **use reliable and independent sources to identify and verify customers and Beneficial Owners**. The scope of Customer Due Diligence ("**CDD**") has been expanded to include various elements like identifying the customer, understanding the nature of their business, and determining if they act on behalf of a Beneficial Owner.

iv. Regulated Entities must ensure that ongoing due diligence aligns with their knowledge about customers, their source of wealth and their risk profiles.

v. Every Regulated Entity which is part of a group, shall implement group-wide programmes against money laundering and terror financing, including group-wide policies for sharing information required for the purposes of client due diligence and money laundering and terror finance risk management.

vi. The periodicity of money laundering/terrorist financing risk assessments is now determined by the Regulated Entity's board or a delegated committee.

vii. Regulated Entities shall apply a Risk Based Approach (RBA) and implement a customer due diligence programme, having regard to the Money Laundering /Terror Financing risks identified (by the Regulated Entities itself or through the National Risk Assessment) and the size of business, for mitigation and management of the identified risk and should have Board approved policies, controls and procedures in this regard.

viii. When opening trust accounts, Regulated Entities must ensure that trustees disclose their status at the account's commencement or during specific transactions.

ix. When sharing information with the Financial Intelligence Unit-India ("**FIU-IND**"), Regulated Entities must maintain the confidentiality of record maintenance. However, such confidentiality requirement shall not inhibit sharing of information of any analysis of transactions and activities which appear unusual, if any such analysis has been done.

x. Enhanced due diligence is required for business relationships and transactions involving individuals and entities from countries identified by Financial Action Task Force ("**FATF**") as non-compliant with their recommendations.

DSK View: *The recent update by the RBI reflects a noteworthy effort to adapt its KYC guidelines to align with evolving legal and regulatory standards. This demonstrates a commitment to strengthening anti-money laundering and counter-terrorist financing measures. The changes are in view of the forthcoming Financial Action Task Force (FATF) evaluation of India. Any gaps in the money laundering laws are being plugged to avoid any adverse remark or negative rating by FATF, which eventually may have impact on India being an investment destination.*

Source

INTRODUCING NEW CHANNELS FOR CARD-ON-FILE TOKENISATION

In a press release dated October 06, 2023, RBI provided information about Card-on-File Tokenisation ("**CoFT**"), which was introduced in September 2021 and became effective on October 1, 2022. Up to this point, more than 560 million tokens have been generated, enabling transactions totalling over ₹5 trillion in value. Tokenisation has not only strengthened the security of transactions but has also led to an increase in transaction approval rates. Currently, Card-on-File ("**CoF**") tokens can only be created through a merchant's application or website. However, there is a proposal to allow the generation of CoF tokens directly at the issuer bank level. This proposed change is intended to enhance convenience for cardholders when creating and linking tokens to their existing accounts with various e-commerce applications. Detailed instructions regarding this change will be issued separately by RBI.

DSK View: *This step of tokenisation of cards at the issuing bank level and moving it away from the e-commerce platforms inter alia ensures (a) data security during the process of tokenisation as the card details need not be shared with the e-commerce portal; (b) Better control of the tokens in the hand of the users who can manage their tokens on the issuing bank portal.*

Source

RBI IMPOSES MONETARY PENALTY ON PAYTM PAYMENTS BANK LIMITED

RBI in its notification dated October 10, 2023, has imposed a monetary penalty of INR 5,39,00,000/- (Indian Rupees Five Crore Thirty Nine Lakh) on Paytm Payments Bank Limited ("**Paytm**"). This penalty stems from the bank's failure to comply with specific provisions outlined in the 'Reserve Bank of India (Know Your Customer (KYC)) Directions, 2016', 'RBI Guidelines for Licensing of Payments Banks', along with regulations related to maximum daily balance, cybersecurity protocols, and guidelines on reporting unusual cybersecurity incidents.

This order comes after a thorough review of Paytm, focusing on KYC and Anti Money Laundering (AML) compliance. This review included a comprehensive system audit conducted by RBI-appointed auditors and revealed various instances of non-compliance, such as:

i. Failure to identify beneficial owners for entities using the bank's payout services.
ii. A lack of monitoring and risk profiling of payout transactions.
iii. Breaching regulatory balance limits for certain customer advance accounts.
iv. Delayed reporting of a cybersecurity incident.
v. Neglecting to implement necessary security measures for SMS delivery receipt checks.
vi. An inability to prevent connections from IP addresses outside India in the Video-Based Customer Identification Process (V-CIP) infrastructure.

In response to these findings, the RBI issued a notice to Paytm, prompting them to provide reasons for not imposing a penalty for non-compliance with the specified directives. Following the bank's response and oral presentations during a personal hearing, the RBI determined that the non-compliance allegations were valid and warranted the imposition of a monetary penalty on the bank.

DSK View: *RBI cracking a whip on Paytm and imposing such a hefty penalty is re-iteration of its policy of strict compliance of KYC Guidelines by the fintechs. RBI conducted a comprehensive audit and provided due opportunity to Paytm to explain the lapses. However, considering the gravity of the breaches on multiple fronts, RBI has upheld that the integrity and security of financial system cannot be compromised in the name of innovative fintech solutions.*

Source

NPCI BHARAT BILLPAY FORAYS INTO B2B CATEGORY: OFFERS PAYMENTS AND COLLECTIONS FOR BUSINESSES

NPCI Bharat BillPay Ltd. (NBBL), a subsidiary of the NPCI, is introducing Business-to-Business (B2B) services to revolutionize business payments and collections. These services will include flexible invoice presentation, complaint management, and MIS reporting. The B2B category is going live on the MyJio app, initially partnering with Biller Arzooo and Axis Bank as the Biller Operating Unit (BOU).

Under the B2B category, Bharat BillPay aims to onboard sellers like manufacturers and distributors as Billers, allowing their buyers, such as retailers and shopkeepers, to conveniently pay for goods and services through various Bharat BillPay-enabled channels and modes. This category will facilitate sellers in issuing multiple invoices, and buyers will have the flexibility to make single or multiple invoice

payments in one transaction. The platform will offer multiple payment modes and channels, including UPI, net banking, cards, wallets, IMPS, cash, mobile apps, websites, agents, and branches. Partial payments will also be accommodated to support B2B cash flow needs.

Source

NPCI INTERNATIONAL ENTERS INTO STRATEGIC PARTNERSHIP WITH AL ETIHAD PAYMENTS TO DEVELOP UAE'S DOMESTIC CARD SCHEME

Al Etihad Payments ("**AEP**"), a wholly-owned subsidiary of the Central Bank of the UAE ("**CBUAE**"), and NPCI International Payments Limited ("**NIPL**") have announced a strategic partnership aimed at advancing the creation of the UAE's inaugural national Domestic Card Scheme ("**DCS**"). The partnership aligns with the goals of CBUAE's Financial Infrastructure Transformation ("**FIT**") program introduced in 2023. AEP intends to establish an innovative, interoperable payment infrastructure that allows licensed financial institutions and payment service providers to offer advanced payment solutions, ultimately improving the customer experience. The DCS, set to debut in early 2024, seeks to boost e-commerce and digital transactions, promote financial inclusion, support the UAE's digitalization efforts, diversify payment options, reduce payment costs, and solidify the UAE's position as a global leader in digital payments.

NIPL was selected for this project following a comprehensive evaluation of its capacity to meet the needs of consumers and merchants, as well as its capability to construct an integrated financial infrastructure. NIPL will operate the DCS and provide essential services, including fraud monitoring and data analysis support.

Source

AMENDMENT IN THE PLASTIC WASTE MANAGEMENT RULES

The Ministry of Environment, Forest and Climate Change has proposed to issue certain amendments in the Plastic Waste Management Rules 2016 ('erstwhile Rules') *vide* Draft Notification G.S.R. 744(E) dated 16 October 2023 (available here). Any person interested in making objections or suggestion to the above-mentioned Draft Notification may do so by 16 November 2023.

The key amendments to the existing law have been enlisted as follows:

i. Under the erstwhile Rules, only producers, importers, brand owners of plastic packaging and plastic waster processors were covered under the obligations of Extended Producer Responsibility ('EPR'). However, it is proposed that EPR should also be applicable on manufacturing units or agencies engaged in production of plastic raw material which is used as raw material by the producers of plastic packaging.
ii. In order to ensure plastic waste management and enhanced EPR, the entities covered under the Rules are required to operate schemes such as deposit refund system or buy back of plastics or any other appropriate scheme which encourages the customers to return unwanted plastic items for a reimbursement under the applicable scheme.
iii. The manufacturers of compostable plastic and biodegradable plastic carry bags and/or commodities, or both, shall obtain a certificate from the Central Pollution Control Board ('CPCB') before marketing or selling them. CPCB may as required, prescribe guidelines, to permit manufacture of further commodities from compostable and biodegradable plastics, after approval from the Government.
iv. Every manufacturer and importer of plastic raw material shall also make an application to the State Pollution Control Board or the Pollution Control Committee of the Union Territory concerned, for the purpose of one-time registration subject to certain prescribed conditions listed on the Centralised Plastic Waste Portal.
v. Further, every person engaged in selling plastic raw material or an intermediate material used for manufacture of plastic packaging to producer shall also make an application to the concerned State Pollution Control Board or the Pollution Control Committee of the Union Territory concerned.
vi. The local authorities shall be responsible for development and setting up of an infrastructure for segregation, collection, storage, transportation, processing and disposal of plastic waste either on their own or by engaging agencies or producers. In addition to this, they shall submit an Annual Report on plastic waste management by 30th June of the Next Financial Year on the Centralised Plastic Waste Portal.

In addition to the above, the Bureau of Indian Standards ('BIS') shall prescribe separate colour/ marking for plastic packaging and commodities made from compostable and biodegradable plastics to identify their respective end-of-life scenarios –

i. All kinds of plastic packaging or commodities, in addition to recycled carry bags shall bear a label or a mark "*recycled*" and conform to the Indian Standard: IS 14534: 1998.
ii. Further, all carry bags, packaging or commodities made from compostable plastics shall bear the label "*compostable only under industrial composting*" and shall conform to the Indian Standard: IS 17088: 2008.
iii. Further, all carry bags, packaging or commodities made from biodegradable plastics shall bear the label

"*Biodegradable in [--specific number of days--] only in the [--specify recipient environment such as land, landfill, waste etc.--]*".

The formats of the applications, annual reports and suggestive minimal level of recycling targets are included as annexures to the Draft Notification.

DSK View: *The above-mentioned proposal has introduced fresh perspectives on manufacturer's responsibilities towards waste disposal and plastic waste management, particularly in relation to biodegradable and compostable plastics. Earlier, EPR was applicable on brand owners, importers and producers only; however, the amended rules would encourage the manufacturers of raw plastic to ensure safe disposal of all kinds of plastics till the end of their lifecycle.*

Through the Plastic Waste Management (Second Amendment) Rules, 2023, the proposed amendments have increased the application processes and labelling requirements for the manufacturers and sellers of plastic raw materials. It has further ensured that the local bodies ensure segregation and management of waste by streamlining its process through regulation by way of a Centralised Portal. This move is in line with India's goals of contributing to a cleaner and sustainable future.

Overall, these proposed amendments foster environmental responsibility, create opportunities for innovative recycling and waste management solutions, and reduce ambiguity in regulatory compliance. These benefits can contribute to a more sustainable and eco-conscious business environment in India.

Businesses must align with these regulations and take steps to reduce their environmental footprint, and also to remain legally compliant once these regulations come into effect.

MEDIA & ENTERTAINMENT

DELHI HC REJECTS PLEA TO BAN DISTASTEFUL ANTI-TOBACCO IMAGERY IN ADS

A petition filed before the Delhi Court ("**Court**") to ban the airing of anti-tobacco health advertisements with "*graphic or gross images*" during films on TV, OTT platforms or theatre screens was rejected by the Court.

The Court held that the Indian government had introduced such advertisements to deter people from smoking tobacco and tobacco products and to educate people about the ill effects of tobacco and tobacco products. The Court further held that the graphic nature of such advertisements were in fact eye-openers for people not to use tobacco and tobacco products and was, therefore, in public interest. Further, the Court was also of the view that it was the duty of the Government to take steps to ensure that the health of the people was protected. Thus, while dismissing the petition the Court held that the petition was a gross abuse of the process of law (backed by the tobacco industry lobby) and was an attempt to prevent awareness amongst the public with respect to the ill effects of tobacco.

PHONOGRAPHIC PERFORMANCE LIMITED (PPL) AND INDIAN SINGERS AND MUSICIANS RIGHTS ASSOCIATION (ISAMRA) SUBMIT APPLICATIONS FOR REGISTERING AS COPYRIGHT SOCIETIES

On 4th and 15th September 2023, respectively, Phonographic Performance Limited (PPL) and Indian Singers and Musicians Rights Association (ISAMRA) submitted applications to the Copyright Office for registering as Copyright Societies under Section 33 of the Copyright Act, 1957 (as amended from time to time) in respect of Sound Recording Works. The Copyright Office issued a public notice on October 4, 2023, and October 6, 2023, inviting objections and comments from the public on the applications made by ISAMRA and PPL, respectively.

DELHI HIGH COURT ISSUES DYNAMIC INJUNCTION ORDER TO PREVENT THE UNAUTHORIZED STREAMING OF THE REALITY SHOW "BIGG BOSS"

"Bigg Boss" is the popular reality show in India based on the format of contestants cohabitating together and is broadcast by Viacom18 Media Private Limited ("**V18**"). Despite such rights with respect to the show vests with V18, multiple rogue and pirate websites were illegally streaming the show on their platforms causing infringement to V18's rights. V18, therefore, approached the Delhi High Court ("**Court**") in this respect, and the Court granted V18 a dynamic injunction order restraining 5 (five) such rogue websites from broadcasting, telecasting, streaming, retransmitting, and hosting any episodes of the show, whether already telecasted or likely to be telecasted in the future. The Court further held that such 'unauthorised and illegal dissemination' of the show would be a clear infringement of V18's copyright of broadcast and reproduction rights. In addition, the dynamic injunction order also states that in the future, if any other rogue websites are found using the show, then V18 would be entitled to file an application with respect to such websites and the dynamic injunction would extend to such additional websites. The Court said the Department of Telecommunication and the Ministry of Electronics and Information Technology would issue blocking orders, and the websites would be blocked by internet service providers after receiving such orders. While summons in this case were issued, the main lawsuit was listed by the Court for hearing on April 9, 2024.

DELHI HIGH COURT RESTRAINS SANDOZ AND GOLA SIZZLERS FROM PLAYING SOUND RECORDINGS WHICH ARE PART PHONOGRAPHIC PERFORMANCE LIMITED'S REPERTOIRE

In a lawsuit filed by Phonographic Performance Limited ("**PPL**") against the food outlet's Gola Sizzlers Private Limited ("**Gola Sizzlers**") and Ors., for copyright infringement due to

use of PPL's sound recordings without PPL licenses, the Delhi High Court ("**Court**") issued a temporary injunction against Sandoz and Gola Sizzlers. The injunction prohibits Gola Sizzlers and Sandoz from playing PPL's sound recordings. The Court, led by Justice C Hari Shankar, held that there were grounds to grant an *ex-parte ad-interim* injunction against Gola Sizzlers and Sandoz. It should, however, be noted that although PPL had made a third food outlet, Tim Hortons, party to its suit, the temporary injunction was not extended to them, given Tim Horton's submitted before the Court that they are not playing and will not play any of PPL's sound recordings without a license. The Court has issued summons in all three cases to further address the matter and listed the matter for further consideration on February 7, 2024. On October 19, Thalapathy Vijay will release the highly awaited movie "Leo", which is sure to please his fans. While the first track from "Leo", "Naa Ready", proved popular right away, it also drew criticism for sequences in which Thalapathy Vijay was shown smoking. Several complaints followed, including one from Anaithu Makkal Arasiyal Katchi (AMAK) submitted by Rajeshwari Priya and others. These accusations claimed that the song's lyrics encouraged the use of drugs and alcohol. A complaint was also made against the film's production crew by activist RTI Selvam for glorifying drug use and disorderly conduct in "Naa Ready". The CBFC ordered the film's creators to change the music as a result. They specifically requested that the smoking scenes and the song's references to drinking be taken out.

KARNATAKA HIGH COURT REJECTS HOTEL CHANCERY PAVILION'S APPEAL AGAINST IPRS ALLEGING THAT IPRS TRIED EXTORTING MONEY FROM IT

The Karnataka High Court ("**KHC**") has rejected an appeal filed by a Bangalore hotel, Chancery Pavilion ("**CP**"), stating that CP should pursue its case against the Indian Performing Rights Society Ltd ("**IPRS**") before the Delhi High Court ("**DHC**"). CP had initially filed a petition against IPRS in the City Court of Karnataka ("**City Court**") claiming that IPRS was attempting to illegally extort money from it. However, the same got rejected by the City Court. Subsequently, IPRS, in response, initiated legal proceedings in the DHC to recover money from CP for playing its copyrighted songs. While submitting the appeal before the KHC, CP asserted that IPRS had issued intimidating public notices in newspapers, instructing establishments to obtain licenses for playing pre-recorded music. To avoid harassment, CP obtained a license, but later IPRS claimed it had expired and demanded a payment of Rs. 7,86,718/-. In response, IPRS argued that it administers the public performance rights of its members, including author-composers and music publishers, and had initiated action against CP before the DHC in 2013. Therefore, the case would need to continue before the DHC. CP had filed the suit under Section 60 of the Copyright Act, 1957 after feeling threatened by the alleged copyright owner. However, the KHC ruled that IPRS had also initiated legal proceedings under the same provision and therefore, the DHC would be the correct forum for CP to continue its proceedings against IPRS.

CBFC REVERSES CERTIFICATION DIRECTIVE FOR HINDI DUBBED REGIONAL FILMS

The Central Board of Film Certification (CBFC) has made a significant change for the film industry by reversing a 2017 Directive ("**Directive**"). The Directive required all applications for certifying Hindi dubbed versions of regional language films to be submitted exclusively to the CBFC's Mumbai office. However, pursuant to the new notification issued by the CBFC on October 18, 2023, the process has now been amended. Under the new notification, the certification for Hindi dubbed versions of regional films will take place at the same CBFC office where the original film was certified. Such shift in policy will simplify the certification process as it eliminates the need for producers to send applications to the Mumbai office. This will lead to smooth and more efficient process. It is also hoped that such change will reduce delays and any potential extra costs for Hindi dubbed regional films. The Bombay High Court refused to grant any interim relief to actor Nawazuddin Siddiqui in his suit against Zee Studios seeking payment of his fees for the lead role in the film 'Haddi'. The movie was originally supposed to be co-produced under the AEPL banner and it was titled "Gunshe". However, the petitioners alleged that the respondents clandestinely siphoned this property into another company they formed called Anandita Studios Private Limited and "Gunshe" is now being released as "Haddi" on the OTT platform 'Zee 5'.

BOMBAY HIGH COURT DISMISSES PLEA TO BAN ENGAGEMENT OF PAKISTANI ARTISTS IN INDIA

In a petition filed by a cine worker seeking directions for the Ministry of information and Broadcasting ("**MIB**"), the Ministry of External Affairs ("**MEA**") and the Ministry of Home Affairs ("**MHA**") for issuance of appropriate notifications imposing a ban and prohibiting the grant of visas to Pakistani artists (including actors, singers, musicians, lyricists and technicians), the Bombay High Court ("**BHC**") dismissed the petition while observing that the petition is a "*retrograde step in promoting cultural harmony, unity and peace, and has no merit in it*". The petitioner, while highlighting the various resolutions passed by the All-Indian Cine Workers Association (AICWA), Indian Motion Pictures Producers Association (IMPPA), and the Federation of Western Indian Cine Employees (FWICE) banning Pakistani artists from the Indian film industry after the Pulwama terror attacks contended that, allowing Pakistani artists to work in India could lead to discrimination against the Indian artists as the favourable environment available to the Pakistani artists in India is not available to Indian artists in Pakistan. However, the BHC deemed the petitioner's stance as misplaced and emphasized on the need of cultural harmony and peace between the two nations. The BHC further held

that the resolutions passed by the aforementioned private associations lacks statutory force and hence could not be enforced through judicial orders. The BHC concluded that the petitioner's prayers for framing policy directions were beyond the BHC's scope of powers, as it could not direct the government or the legislature to frame policies in a particular manner.

PEOPLE OF INDIA VS HUMANS OF BOMBAY

Humans of Bombay filed a lawsuit against People of India, seeking an injunction against copyright infringement. Humans of Bombay claimed that People of India had stolen their original storytelling style and was also using their photos and videos without their permission.

People of India contended that the similarity in content was not due to copying or infringement but because people were sharing the same stories and pictures on various platforms. People of India further argued that the Humans of Bombay platform / concept was not unique, as there were many similar platforms with names like 'Humans of Amsterdam', 'Humans of Bihar', and 'Humans of Jhansi'.

In response, Humans of Bombay stated that they were seeking a claim of copyright on the specific processes and methods they used to create content, including how they commissioned and presented photographs and conducted interviews. They argued that as joint owners of the photographs, they had the right to safeguard their content from copyright infringement.

ASCI WARNS LINKEDIN INFLUENCERS TO ENSURE AD DISCLOSURE

The Advertising Standards Council of India (ASCI) has expanded its focus to include "Linkedfluencers" i.e., influencers on the professional networking platform, LinkedIn. This move follows ASCI's previous actions in cracking down on health influencers and finfluencers who did not adhere to the advertising standards. Manisha Kapoor, the CEO and Secretary General of ASCI, issued a stern warning to these LinkedIn influencers who were not following the standard format for promotional write-ups on the platform. Manisha Kapoor highlighted that similar to other social media platforms, there is a need to ensure that advertising and promotional content on LinkedIn is transparent, truthful, and follows established advertising standards. The use of hashtags like "#ad" can be a way for influencers and content creators to indicate when a post includes paid or promotional content, ensuring transparency for their audience. Manisha Kapoor also stated that influencers on LinkedIn need to keep the following in mind: (i) nothing should be advertised, whose advertising is restricted under law / guidelines; and (ii) add the hashtag "*ad*" or "*partnership*" or other appropriate labels upfront at the beginning.

UNIVERSAL MUSIC GROUP IS SUING AMAZON-BACKED AI STARTUP ANTHROPIC

Universal Music Group (UMG), ABKCO, and Concord Publishing have taken legal action against Anthropic, a startup established by former OpenAI employees. The lawsuit alleges that Anthropic's AI chatbot, "Claude", is involved in copyright infringement by using copyrighted lyrics in two distinct ways. First, when users prompt Claude to provide lyrics to specific songs, the chatbot responds with text that includes substantial portions of copyrighted lyrics from songs by various artists, such as Beyoncé, Bruno Mars, Katy Perry, Gloria Gaynor, and The Rolling Stones. Second, the lawsuit asserts that Anthropic's AI models generate output containing copyrighted lyrics even when not explicitly asked to do so. This means that when users issue broader prompts like "write a song about the death of Buddy Holly" or "moving from Philadelphia to Bel Air," Claude produces results that closely resemble existing songs, like Don McLean's "American Pie" and Will Smith's "The Fresh Prince of Bel-Air," potentially infringing on the copyrights of the original compositions. This legal action underscores the growing concern over AI-generated content and its potential to infringe on intellectual property rights in the music industry.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

INSOLVENCY AND BANKRUPTCY CODE, 2016

The MCA, *vide* its notification dated October 3, 2023 (accessible *here*), has notified exceptions for certain transactions, arrangements or agreements in respect of which the provisions pertaining to the moratorium under sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), shall not be applicable. The aforesaid notification, passed by the Central Government in exercise of the powers conferred by clause (a) of sub-section (3) of section 14 of the IBC, states that the transactions, arrangements or agreements, under the Convention on International Interests in Mobile Equipment ("**Convention**") and the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment ("**Protocol**"), relating to aircraft, aircraft engines, airframes and helicopters are exempted from the application of the moratorium under sub-section (1) of section 14 of the IBC.

The "Moratorium" under sub-section (1) of section 14 of the IBC is a declaration made by the adjudication authority upon the commencement of an insolvency prohibiting the ***(i)*** institution of new suits or continuation of pending suits or proceedings against the corporate debtor, including the execution of judgements, decree or order in any court of law, tribunal, arbitration panel or other authority, ***(ii)*** corporate debtor from transferring, encumbering, alienating or disposing off any of its assets or any legal right or beneficial interest, ***(iii)*** any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and ***(iv)*** the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

India is a signatory to the Convention and the Protocol which were adopted under the joint auspices of International Civil Aviation Organization and the International Institute for the Unification of Private Law. The primary aim of the Convention and the Protocol is to resolve the problem of obtaining certain and opposable rights to high-value aviation assets, namely airframes, aircraft engines and helicopters which, by their nature, have no fixed location.

AMENDMENT TO THE COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2023

The MCA, *vide* its notification dated October 20, 2023 (accessible *here*), has notified the Companies (Incorporation) Third Amendment Rules, 2023 ("**Incorporation Amendment Rules**"), which amends the Companies (Incorporation) Rules, 2014 ("**Incorporation Rules**"). The following key changes have been made into the Incorporation Rules:

1. As per rule 30 (9) of the Incorporation Rules, the Central Government, while passing the order for confirming the alteration of the registered office was authorised to include such order as to costs as it thinks proper. The Incorporation Amendment Rules have now omitted this provision related to inclusion of costs in such orders.

2. The proviso to rule 30 (9) of the Incorporation Rules states that shifting of registered office of a company should not allowed in case any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the provisions of the Companies Act, 2013. However, the Incorporation Amendment Rules have clarified that in cases where the previous management of a company has been taken over by a new management under a resolution plan approved under section 31 of the IBC and no appeal against such resolution plan is pending in any court or tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed.

COMPANIES (MANAGEMENT AND ADMINISTRATION) SECOND AMENDMENT RULES, 2023

The MCA, *vide* its notification dated October 27, 2023 (accessible *here*), has notified the Companies (Management and Administration) Second Amendment Rules, 2023 ("**MGT Amendment Rules**") which amends the Companies (Management and Administration) Rules, 2014 ("**MGT Rules**"). The MGT Amendment Rules has introduced the concept of "designated person" who shall be responsible for furnishing and extending co-operation for providing information to the jurisdictional registrar of companies ("**ROC**") or any other authorised officer in respect of the beneficial interest in the shares of the company.

The MGT Amendment Rules have introduced changes in rule 9 (*Declaration in Respect of Beneficial Interest in Any Shares*) of the MGT Rules, wherein the following new provisions have been introduced:

1. Sub-rule (4) mandates that every company shall designate a person who would be responsible for furnishing and extending co-operation for providing information to the ROC or any other authorised officer in respect of beneficial interest in the shares of the company.

2. Sub-rule (5) outlines the choices for designating a responsible person which may include, the company secretary ("**CS**") (if the appointment of the CS is mandated under law for the relevant company), any key managerial personnel (other than a CS), or any other director of the company (if the company has no CS or key managerial personnel).

3. Sub-rule (6) specifies that until any person is designated or specified as a "designated person", certain persons will be deemed to be the designated person which shall include the CS (if the appointment of the CS is mandated under law for the relevant company), the managing director ("**MD**") or manager of the company (if the CS has not been appointed), or any other director of the company (if there is no CS or MD or manager).

4. Sub-rule (7) mandates that every company must inform the details of the designated person in its annual report and sub-rule (8) states that the company shall intimate any change in designated person to the ROC in e-form GNL-2.

COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) SECOND AMENDMENT RULES, 2023

The MCA, *vide* its notification dated October 27, 2023 (accessible *here*), has notified the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 ("**PAS Amendment Rules**") which amends the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**PAS Rules**"). Through the PAS Amendment Rules, the MCA has extended the requirement of issuing securities in dematerialised form and facilitating the dematerialisation of all existing securities on every private company other than a small company. The erstwhile rule 9 of the PAS Rules imposed an obligation on the promoters of every public company making a public offer of any convertible security to hold such security only in dematerialised form. Further, rule 9A imposed an obligation on all unlisted public companies to issue its securities only in dematerialised form and to facilitate the dematerialisation of all its existing securities. Pursuant to the PAS Amendment Rules, the following provisions have been introduced in the PAS Rules:

1. Sub-rule (2) has been added to rule 9 and the erstwhile rule 9 has been numbered as sub-rule (1) of rule 9. The new sub-rule (2) has imposed the following obligations on public companies that had issued share warrants prior to the commencement of the Companies Act, 2013, where such share warrants have not been converted into shares:

    a. the company that has issued such share warrants is required to inform the ROC about the details of such share warrants in Form PAS-7 within 3 (three) months of the commencement of the PAS Amendment Rules;
    b. such companies are required to request the bearers of the share warrants (by placing a notice in Form PAS-8 on the company's website and publishing the same in vernacular and English language newspapers) to surrender the share warrants and get the shares dematerialised within 6 (six) months of the commencement of the PAS Amendment Rules.

2. If the bearer of such warrants fails to surrender the share warrants within the 6 (six) month period prescribed above, the company is required to convert such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund.

3. As per the new rule 9B, all private companies (except small companies) are also now required to

issue securities only in dematerialised form and to facilitate the dematerialisation of all its existing securities.

4. Sub-rule (2) to rule 9B prescribes that private companies that are not small companies on the last day of the financial year ending on or after March 31, 2023 as per their audited financial statements of such financial year are required to comply with the provisions of rule 9B within 18 (eighteen) months of closure of such financial year.

5. Sub-rule (3) to rule 9B prescribes that private companies falling under sub-rule (2) must ensure that the entire holding of securities of their promoters, directors, and key managerial personnel has been dematerialised in accordance with the provisions of the Depositories Act, 1996 before making any offer for the issuance of securities, buyback of securities, or the issuance of bonus shares or rights offers.

6. Every holder of securities of a private company (other than a small company) intending to transfer such securities is required to get such securities dematerialised prior to such transfer.

7. Every holder of securities of private company (other than a small company) who subscribes to any securities by way of private placement, bonus shares or rights issue is required to ensure that all his securities are held in dematerialised form prior to the subscription on or after the date when the Company is required to comply with this rule.

LIMITED LIABILITY PARTNERSHIP (THIRD AMENDMENT) RULES, 2023

The MCA, *vide* its notification dated October 27, 2023 (accessible *here*), has notified the Limited Liability Partnership (Third Amendment Rules) 2023 ("**LLP 3rd Amendment Rules**") which amends the Limited Liability Partnership Rules, 2009 ("**LLP Rules**"). The LLP 3rd Amendment Rules have introduced new rules 22A and 22B in the LLP Rules. The key provisions of the LLP 3rd Amendment Rules have been summarised below:

1. Rule 22A has introduced the new provision pertaining to '*Register of Partners*' by limited liability partnership ("**LLP**") wherein an LLP is now required, from the date of its incorporation, to maintain a register of its partners in the prescribed Form 4A and such register shall be kept at the registered office of the LLP. The LLPs already existing on the date of commencement of the LLP 3rd Amendment Rules are required to prepare and maintain the aforesaid register within 30 (thirty) days from such commencement.

2. The register of partners shall contain the following details:

   a. Name, address (registered office address in case of a body corporate), email address, permanent account number, corporate identification number, unique identification number (if any), father, mother or spouse's name, occupation, status, nationality, name and address of nominee;
   b. date of becoming partner;
   c. date of cessation as partner;
   d. amount and nature of contribution (indicating tangible, intangible, movable, immovable or other benefit to the LLP including money, promissory notes or other agreements to contribute cash or property and contracts for services performed or to be performed) with monetary value, and
   e. any other interests.

3. The entries in the register of partner are to be made within 7 (seven) days pursuant to any changes in the aforesaid details. Further, if any rectification is made in the aforesaid register pursuant to any order passed by the competent authority, the necessary reference to such order shall be indicated in the respective register.

4. Sub rule (1) of the new rule 22B requires that any person whose name is entered in the register of partners of an LLP but who does not hold any beneficial interest fully or partially in the contribution shall file with the LLP a declaration to that effect in Form 4B within a period of 30 (thirty) days from the date on which his name is entered in the register of partners specifying the name and other particulars of the person who actually holds the beneficial interest. Further, in case of any change in the beneficial interest in such contribution, the registered partner is required to make a declaration of such change in Form 4B.

5. Sub rule (2) of the new rule 22B states that every person who has acquired beneficial interest in contribution of an LLP but whose name is not registered in the register or partners ("**Beneficial Partner**") is required to file with the LLP, a declaration disclosing such interest in Form 4C within a period of 30 (thirty) days after acquiring such beneficial interest. Further, in case of any change in the beneficial interest in such contribution, the Beneficial Partner is required to make a declaration of such change in Form 4C.

6. Sub rule (3) of the new rule 22B prescribes that every LLP is required to, within 30 (thirty) days of receiving any declaration in the aforesaid Form 4B and 4C, file a return in Form 4D with the ROC.

7. Sub rule (3) of the new rule 22B requires every LLP to specify a designated partner who shall be responsible for furnishing and extending co-operation for providing information in respect of 'beneficial interest' in contribution in the LLP and provide all the information to the ROC or any other officer authorised by the Central Government and shall file information of such designated partner with the ROC in Form 4. However, if no designated partner has been specified, every designated partner shall be responsible for furnishing and extending co-operation for providing information in respect of 'beneficial interest' in contribution in the LLP.

PROMPT CORRECTIVE ACTION FRAMEWORK FOR GOVERNMENT NBFCs

The Reserve Bank of India ("**RBI**") had, on December 14, 2021, issued the Prompt Corrective Action Framework ("**PCA Framework**") for non-banking financial companies ("**NBFCs**") excluding government owned NBFCs who had been provided time to comply with the capital adequacy norms. The PCA Framework was applicable to *inter alia* all deposit and non-deposit taking NBFCs in middle, upper and top layers, housing finance companies, etc. The RBI has, *vide* its circular dated October 10, 2023, extended the PCA Framework to Government owned NBFCs (except base layer Government NBFCs).

Accordingly, with effect from October 1, 2024, the PCA Framework shall be applicable to all (i) Government-owned deposit taking and non-deposit taking NBFCs in middle, upper and top layers (excluding (a) NBFCs not accepting/ not intending to accept public funds; (b) primary dealers, and (c) housing finance companies).

DSK View: *The PCA Framework, a tool for effective market discipline, is designed to impose business restrictions on regulated entities and enable supervisory intervention at appropriate time and require the regulated entities to initiate and implement remedial measures in a timely manner, so as to restore their financial health.*

AMENDMENT TO THE MASTER DIRECTION ON 'KNOW YOUR CUSTOMER'

The RBI issued the Master Direction – Know Your Customer on February 25, 2016 ("**KYC Master Direction**"). This was subsequently amended by the RBI *vide* the Amendment to the Master Direction on Know Your Customer dated October 17, 2023 ("**KYC Master Direction Amendment**"). Some key provisions of the said amendment, are highlighted below:

(a) certain instructions as set out under the KYC Master Direction have been updated, including provisions of Section 4, Section 5B and certain annexures thereto;

(b) certain instructions as set out under the KYC Master Direction has been updated in line with the recommendations of the Financial Task Action Force; and

(c) the Master Circular titled 'Guidelines issued under Section 36(1)(a) of the Banking Regulation Act, 1949 - Implementation of the provisions of Foreign Contribution (Regulation) Act, 2010' dated July 1, 2015, has been repealed. Accordingly, a new Section 55A has been included in the KYC Master Direction in connection with the Foreign Contribution (Regulation) Act, 2010.

DSK View: *The KYC Master Direction Amendment is a step taken to align all connected legislations covering anti-money laundering, combating financing of terrorism, etc.*

STRENGTHENING OF CUSTOMER SERVICE RENDERED BY CREDIT INFORMATION COMPANIES AND CREDIT INSTITUTIONS

The RBI, has, *vide* its circular dated October 26, 2023 ("**Circular**"), issued a comprehensive framework for strengthening and improving the efficacy of grievance redressal mechanism and customer service provided by the credit information companies ("**CICs**") and credit institutions ("**CIs**").

Pursuant to the Circular, CICs and CIs are required to implement certain directions, including the following:

(a) CICs to intimate customers through SMS/ email when their credit information report ("**CIR**") is accessed by any specified users (as defined under the Credit

Information Companies (Regulation) Act, 2005), which enquiry will reflect in the CIR;

(b) CIs to intimate its customers through SMS/ email while submitting information to CICs regarding default in existing credit facilities;

(c) CIs to intimate its customers reasons for the rejection of any data correction request, if any;

(d) CICs to ingest credit information data received from the CIs into their databases within 7 (seven) calendar days of its receipt, as per its data acceptance rules;

(e) CICs to disclose details of complaints registered against them and CIs in connection with credit information reporting in the prescribed format, on their website; and

(f) CICs to provide easy access to free full credit report including credit score, once a year, to individuals whose credit history is available with the CIC.

DSK View: *In addition to the introduction of specific grievance redressal and customer service requirements, the introduction of compensation for delays in connection with credit information pursuant to the Circular will boost customer confidence in the banking system and may also further bolster the retail credit market in India.*

THE SECURITIES AND EXCHANGE BOARD OF INDIA AMEND THE GUIDELINES ON ANTI-MONEY LAUNDERING STANDARDS AND COMBATING THE FINANCING OF TERRORISM

The Securities and Exchange Board of India ("**SEBI**") had issued a Master Circular dated February 3, 2023 ("**Master Circular**") setting out the guidelines on anti-money laundering ("**AML**") standards and combating the financing of terrorism ("**CFT**") in line with the obligations of securities market intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed thereunder.

The Government has, on September 4, 2023, amended the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 *vide* the Prevention of Money Laundering (Maintenance of Records) (Second Amendment) Rules, 2023 ("**PMLA Maintenance of Records Amendment**").

Following the PMLA Maintenance of Records Amendment, SEBI has, *vide* its circular dated October 13, 2023, amended the Master Circular ("**SEBI Amendment**").

Pursuant to the SEBI Amendment, RBI has incorporated the following changes in the Master Circular:

(i) requirement for financial groups to apply additional measures when the host country does not permit proper AML/ CFT implementation consistent with home country requirements;

(ii) financial groups are now mandated to implement group-wide programs to deal with money laundering and terrorist financing applicable to all branches and majority-owned subsidiaries of the financial group;

(iii) with respect to cases involving trusts, reporting entities are required to ensure that the trustees disclose their status at the commencement of an account-based relationship;

(iv) beneficial owners of various entities are now required to be identified including ownership percentages, control, and senior managing officials;

(v) registered intermediaries are now responsible for periodically updating client and beneficial owner information collected through customer due diligence in order to ensure that such information remains relevant, especially for high-risk clients.

Additionally, certain specific norms applicable to politically exposed persons, consistent with the Prevention of Money-Laundering Rules, 2005 have also been introduced.

EASE OF DOING BUSINESS AND DEVELOPMENT OF THE CORPORATE BOND MARKET

Pursuant to the provisions of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**"), large corporates[18] ("**LCs**") are required to raise a minimum of 25% (twenty-five per cent) of their incremental borrowings in a financial year through issuance of debt securities. Prior to the Circular, mandatory qualified borrowing by LCs through debt securities in a financial year was required to be met over a contiguous block of 3 (three) years from 2022 onwards.

The SEBI has, pursuant to its circular dated October 19, 2023 ("**Circular**"), revised the framework for fund raising by issuance of debt securities by LCs. Pursuant to the provisions of the Circular, the requirement of mandatory qualified borrowing by LCs through debt securities in a financial year will have to be met over a contiguous block of 3 (three) years from 2025 onwards.

Additionally, in case of a surplus in the requisite borrowings through debt securities, certain incentives shall be available,

[18] As defined under the Circular dated October 19, 2023

including (i) reduction in the annual listing fees pertaining to debt securities or non-convertible redeemable preference shares, and (ii) credit in the form of reduction in contribution to the Core Settlement Guarantee Fund ("**SGF**")[19], in the manner set out under the Circular; and in case of a shortfall, the LC will need to make additional contribution to the core SGF (ranging from extra 0.015% for 0-15% shortfall to 0.055% for above 75% shortfall.

This Circular will come into effect from April 1, 2024 for LCs following April-March financial year, and with effect from January 1, 2024, for LCs which follow January-December financial year.

DSK View: *The Circular seems to be a means to try and boost the corporate bond market in India and reduce financing stress on the banking industry. However, it may also restrict the financing avenues for LCs by mandating them to raise finance through the bond market.*

[1919] Set up by SEBI pursuant to circular CIR/MRD/DRMNP/25/2014 dated August 27, 2014

WARNING ISSUED BY MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY: 291 REAL ESTATE PROJECTS MAY FACE DEREGISTRATION OVER NON-COMPLIANCE

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") has recently issued a stern warning to a total of 291 real estate projects, with a significant concentration of 63 projects located in the Pune district. These warnings were issued due to the persistent failure of developers to upload essential quarterly project report details on the authority's official website, despite prior notices and reminders.

To ensure compliance, **MahaRERA** has set a firm deadline of November 10, 2023, after which it may initiate the deregistration process for the non-compliant projects. As a consequence, the developers will be compelled to undergo a fresh registration process should they intend to resume work on these projects.

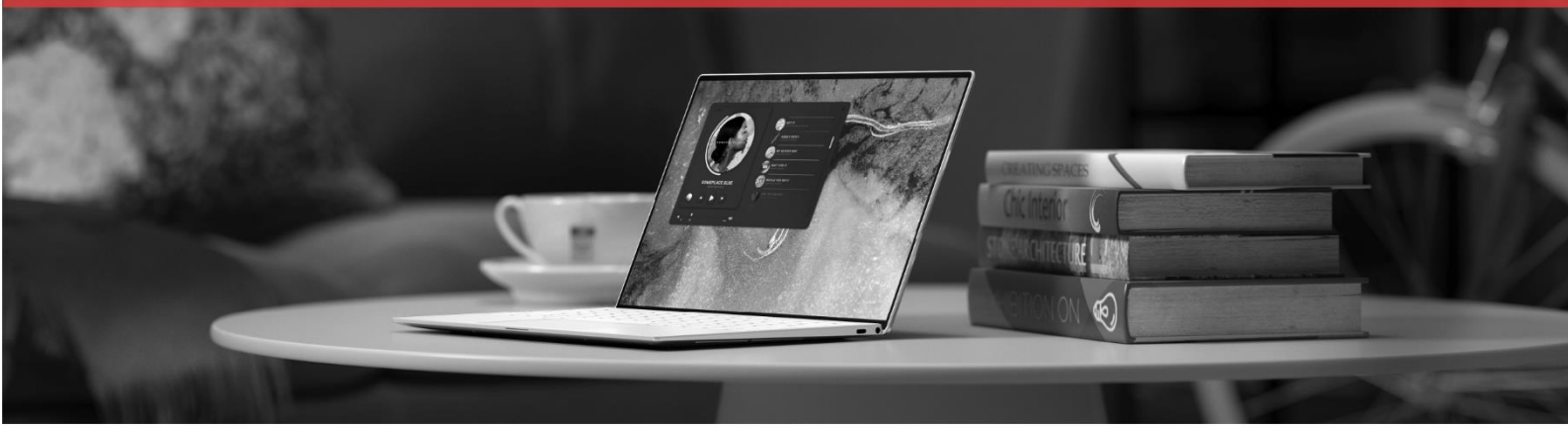
In previous communications, notices had been dispatched to the developers of 363 projects, prompting 72 of them to respond by promptly paying a penalty of Rs 50,000 and furnishing the requisite project details to **MahaRERA**.

Emphasizing the gravity of the situation, **MahaRERA** officials have emphasized that this current warning represents the final opportunity for developers to fulfill their regulatory obligations. Of particular significance is the fact that the affected projects were registered within the current year, underscoring the urgency of compliance and adherence to the prescribed guidelines set forth by **MahaRERA**.

COLLABORATIVE EFFORTS BY THE INTERNATIONAL ARBITRATION AND MEDIATION CENTRE AND TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY TO STREAMLINE REAL ESTATE CONFLICT RESOLUTION

The International Arbitration and Mediation Centre **("IAMC")** has come together with the Telangana State Real Estate Regulatory Authority **("TSRERA")**, formalizing their collaboration through the signing of a comprehensive Memorandum of Understanding **("MoU")**. The central aim of this MoU is to establish a streamlined and effective framework for resolving the diverse range of complaints and disputes that frequently emerge between property allottees and developers.

Former Supreme Court Judge Justice L. Nageswara Rao emphasized the significance of mediation in resolving such disputes, urging **TSRERA** Chairman N Satyanarayana to utilize IAMC's services to settle pending matters. The event, commemorating the "International Arbitration Day," celebrated the successful two-year operation of **IAMC** in Hyderabad, renowned internationally for its effective resolution of disputes through arbitration and conciliation.



DATA PRIVACY

CHHATTISGARH HC RULES THAT PHONE CONVERSATIONS RECORDED WITHOUT CONSENT VIOLATE PRIVACY AND ARE NOT ADMISSIBLE IN EVIDENCE

In a hearing held on October 5th, 2023, a bench comprising of Hon'ble Shri Justice Rakesh Mohan Pandey of the Chhattisgarh High Court rules that a mobile phone conversation recorded without the consent of the other party, cannot be brought into court as evidence (*accessible here).* The Court, in the present case was ruling on a maintenance case appeal, filed under Section 125 of the Criminal Procedure Code. The Court relied on several past judgements pertaining to the right to privacy, guaranteed under Article 21 of the Constitution. The High Court held that recording phone conversations without consent amounted to an invasion of privacy.

In the present case, a 38-year-old woman, in her petition challenged a family court order from October 2021. The order of the family court allowed for her 44-year-old ex-husband to re-examine her, particularly on the grounds of certain conversations recorded on the mobile phone. The petitioner counsel contended that the order of the family court infringed upon the client's right to privacy and cited multiple Supreme Court judgements such as *R.M. Malkani vs. State of Maharashtra*[20], , *Mr. "X" vs. Hospital "Z"*[21], and *Anurima alias Abha Mehta vs. Sunil Mehta*[22]. The Court, paying due heed to the jurisprudence, opined that the Family Court, Mahasamund Chhattisgarh had committed an error of law in allowing for an application and set aside the order.

The Court opined that since the husband recorded the wife's conversation, without her knowledge or permission, the same amount to a violation of her right to privacy as well as the right guarantee under Article 21 of the Constitution of India.

Read more here.

ARTIFICIAL INTELLIGENCE

MEITY RELEASES THE FIRST EDITION OF INDIAAI REPORT

The first edition of the IndiaAI report (*accessible here*), prepared by seven working groups of the Ministry of Electronics and Information Technology ("**MeitY**"), has been submitted to the Union Minister of State for Electronics & IT, Mr. Rajeev Chandrasekhar. The objective of the report was to undertake a comprehensive study and identify tangible next action items that need to be worked on for AI development and it now seeks input from the public and other stakeholders.

The report is said to serve as India's guiding roadmap for its AI ecosystem and envisions a $1 trillion economy; emphasising on the India Datasets Platform, a collection of anonymised datasets for researchers to train their models, the India AI Compute Platform, a public-private partnership project for creation of GPU capacity and the development of AI chips in partnership with Semicon India Programme. It also details the operational aspects of establishing Centres of Excellence and the institutional framework governing data collection, management, processing, and storage by the National Data Management Office (NDMO).

The report also lists recommendations on how India can leverage its demographic dividend; play to its strengths as an IT superpower to further the penetration of AI skills in the country; strengthen the AI compute infrastructure through public-private partnerships; and propose the Design Linked

[20] AIR 1973 SC 157
[21] AIR 1999 SC 495
[22] AIR 2016 Madhya Pradesh 112

Incentive (DLI) Scheme that aims to offer financial incentives as well as design infrastructure support to domestic companies and start-ups/MSMEs.

Read more here.

INFORMATION TECHNOLOGY

MEITY ISSUES NOTICE TO SOCIAL MEDIA PLATFORMS FOR TAKEDOWN OF CHILD ABUSE MATERIAL

The MeitY has issued notices to social media intermediaries such as X, YouTube, and Telegram. The notices are warnings by MeitY to the social media platforms, demanding the removal of all Child Sexual Abuse Material ("**CSAM**") from the platforms. The notices emphasize the importance of prompt and permanent removal or disabling of access to any CSAM on their platforms. The notices also seek implementation of proactive measures, such as content moderation algorithms and reporting mechanisms, to prevent the dissemination of CSAM in future.

Any non-compliance of the notices or the request for seeking removal of CSAM for their platforms will be deemed as a breach of Rules 3(1)(b) and 4(4) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**Intermediary Rules**"). As per Rule 3(1)(b) of the Intermediary Rules, all intermediaries are required to inform their users to not share in any manner whatsoever, any materials which are pornographic in nature, or harmful to a child, amongst other requirements.

Further, Rule 4(4) of the Intermediary Rules also put the onus on social media intermediaries to deploy technology-based measures, including automated tools or other mechanisms to proactively identify information that depicts any act or simulation in any form depicting, amongst other things under CSAM. The Ministry has warned the three social media intermediaries that any delay in complying with the notices will result in the withdrawal of their safe harbour protection. Safe harbour protection is a provision under Section 79 of the Information Technology Act, 2000, which provides legal immunity to intermediaries against content shared by their users.

Read more here.

TELECOM

OTT PLATFORMS NOT UNDER TELECOM REGULATORY AUTHORITY OF INDIA'S (TRAI) JURISDICTION

Under an order dated October 4, 2023, The Telecom Disputes Settlement & Appellate Tribunal ("**TDSAT**" or the "**Tribunal**") held that the over-the-top ("**OTT**") platforms are not covered under the purview of TRAI as they are not a distribution platform in terms of Regulation 2(r) of The Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulation, 2017 ("**Broadcasting Regulations 2017**") (*accessible here*). **The Tribunal further held that OTT platforms are not a TV channel**, as they require no license or permission from the Central Government to operate, and that the subject matter of the Information Technology Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules, 2021) (*accessible here*) are also indicative of its exclusion from governance under The Telecom Regulatory Authority of India Act, 1997 (*accessible here*).

Details of the Case:

All India Digital Cable Federation ("**Petitioner**") had alleged violation of Regulation 3(2) of the Broadcasting Regulations 2017 by Star India Private Limited ("**Star India**" or the "**Respondent**"). These concerns related to the Respondent's practice of charging for the Star Sports channel while allowing free access to the same content on their OTT platform.

The Petitioner submitted that the Respondent should be restrained from allowing their viewers to access Star Sports on their mobiles free of charge, or they should also provide Star Sports channel to the Petitioner and its cable operators free of charge. The Petitioner also argued that, even though the term "OTT platform" is not explicitly included in the definition provided in Regulation 2(r) of the Broadcasting Regulations 2017 for "distribution platform", it should be interpreted in conjunction with other definitions. It contended that OTT platforms utilize the internet for their operations, which are considered to fall within the scope of the definition of "Telegraph" as defined in the Indian Telegraph Act, 1885 (*accessible here*). Consequently, it was asserted that the Tribunal possesses the requisite powers, jurisdiction, and authority to entertain and adjudicate upon this matter.

However, Star India submitted that they wear two hats, one as a "broadcasting" entity and the other as the "owner of OTT". The Respondent's counsels argued that OTT platforms cannot be encompassed within the definition of "distribution platform" of the Regulation 2(r) of the Broadcasting Regulations 2017, as such definition is exhaustive. They further contended that the Broadcasting Regulations 2017 are primarily intended for regulating the distribution of signals from TV channels. To bolster their arguments, the Respondent's counsels referred to the Explanatory Memorandum accompanying the 2017 Regulation ("**EM**") and the various consultation papers issued by TRAI regarding the regulation of OTT Platforms (*accessible here and here*).

After considering the arguments presented by both parties and examining the contentious issues raised, the Tribunal

has admitted the petition of the All-India Digital Cable Federation.

Order/No Interim Relief to Petitioner:

The Tribunal held that a *prima facie* case in favour of the Petitioner is not evident when assessing the provisions of the Broadcasting Regulations 2017, particularly when examining Regulation 2(h), read in conjunction with 2(j), 2(r), 2(s), and 2(pp), along with Regulations 3 and 4. Additionally, the EM also did not aid in establishing a *prima facie* case.

The Petitioner has been allowed to file a rejoinder affidavit on or before the next scheduled hearing date. This matter is adjourned to December 18, 2023.

Find copy of the order here.

WHITE COLLAR CRIME

NON-COMPLIANCE WITH SECTION 52A (2) OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 ("NDPS ACT") RENDERS PRIMARY EVIDENCE INVALID AND VITIATES CONVICTION

On October 13, 2023, the Supreme Court in the case of ***Yusuf (Asif) vs. State*** (Criminal Appeal No. 3191 of 2023) set aside the conviction of the appellant/ accused because of non-compliance with Section 52A (2) of the NDPS Act. Section 52A (2) requires the concerned officer under the NDPS Act to prepare an inventory of the seized substances, and then make an application to a Magistrate for the purposes of certifying its correctness and for allowing to draw representative samples of such substances in the presence of the Magistrate and to certify the correctness of the list of samples so drawn.

In the present case, the trial court upon consideration of the evidence on record held all four accused persons guilty under the provisions of NDPS Act and convicted them. The conviction was confirmed by the High Court. The order of the High Court was challenged before the Supreme Court. The main ground of Appeal was that the process of seizure and sampling was in violation of mandatory provisions of Section 52A(2) of the NDPS Act. The Supreme Court observed that there was no evidence on record to the effect that the procedure prescribed under subsections (2),(3) and (4) of Section 52A of the NDPS Act was followed. Consequently, the samples drawn would not constitute a valid piece of primary evidence in trial and therefore the whole trial was vitiated. Accordingly, the Supreme Court set aside the conviction of the appellant.

DSK View: *The judgment is indicative of the fact that the provisions of the NDPS Act are stringent and strict compliance thereof is required. This is also because Section 54 of the NDPS Act raises a presumption of commission of offence from possession of illicit articles. In view thereof, how the inventory is prepared, and samples are drawn becomes crucial.*

It is interesting to note that on September 27, 2023, the Bombay High Court in the case of ***Mukesh Rajaram Chaudhari vs. State of Maharashtra****, has rejected the applicant's bail application observing that failure to comply with Section 52A does not automatically entitle an accused to bail and the bail conditions under Section 37 of the NDPS Act would continue to apply.*

VICARIOUS LIABILITY IS NOT ATTRACTED WHERE THE INGREDIENTS OF SECTION 141(1) OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 ("NI ACT") IS NOT SATISFIED

The Supreme Court in the case of ***Siby Thomas vs. M/s. Sonamy Ceramics Ltd.*** (Criminal Appeal No. 003139 of 2023) held that the averments in the complaint filed by the Respondent were not sufficient to satisfy the mandatory requirements of Section 141(1) of the Act. The Appellant in the case was Accused No.4 in a complaint filed by the Respondent under Section 138 r/w Section 141 of the NI Act. Being aggrieved by the order of the High Court rejecting the quashing petition, the Appellant challenged the order before the Hon'ble Supreme Court. One of the grounds of Appeal was that the complaint did not contain the necessary averments in terms of Section 141(1) of the NI Act describing the role of the Appellant.

The Hon'ble Supreme Court considered whether the statement "*The accused No. 2 to 6 being the partners are responsible for the day to day conduct and business of the accused No. 1.*", satisfies the requirement of Section 141(1) and held that the same is not sufficient. The court held that the Complaint did not disclose any clear and specific role of the Appellant. Merely because somebody is managing the affairs of the company, per se, he would not become in charge of the conduct of the business of the company or the person responsible to the company for the conduct of the business of the company. Section 141(1) holds such persons vicariously liable who, at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company to

be guilty of the offence. Accordingly, the Hon'ble Supreme Court set aside the High Court order and quashed the complaint *qua* the Appellant.

DSK View: *The concept of vicarious liability holds a person liable for the acts committed by the company. Where vicarious liability attracts criminal liability, the threshold is much higher. The judgment thus explains that merely because a person holds the position of a partner or director does not automatically make them liable under the NI Act. The ingredients of Section 141(1) must be satisfied.*

ED DOES NOT HAVE POWER TO ARREST UNDER SECTION 50 OF THE PMLA

The Delhi High Court in the case of ***Ashish Mittal vs. Directorate of Enforcement*** (Criminal Writ Petition No. 2416 of 2023) held that the power to arrest is conspicuously absent in Section 50 of the Prevention of Money Laundering Act, 2002 ("**PMLA**") and further, the power under this section to issue summons is different and distinct from the power under Section 19 to arrest a person. The Petitioner in this case, the CFO of M/s Educomp Solutions Ltd ("**Educomp**") sought quashing of the ECIR No. ECIR/DLZO-I/04/2020 registered against him on March 4, 2020, in view of the summons issued to him by the Assistant Director, ED, Chandigarh under Section 50(2) and (3) of the PMLA requiring him to appear before them on August 21, 2023. The ECIR emanated from an FIR registered by the CBI for the offences under Sections 120B read with sections 420, 467, 468, 471 of the Indian Penal Code, 1860 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. The Respondent contended that mere issuance of summons was not a ground to approach the court under a writ petition as the Petitioner was neither named in the FIR or the ECIR. The court observed that the power under section 50 of the PMLA is to issue summons to a person and to require the production of documents and record statements, which is akin to the powers of a civil court and is different and distinct from the power under section 19 to arrest a person. The Supreme Court further observed that the exercise of the powers under one section, cannot be restrained on the apprehension that it could lead to the exercise of powers under the other. If that is permitted, any and every person summonsed under section 50 of the PMLA, to produce documents or give a statement on oath, could resist such summons expressing mere apprehension that he may face arrest at the hands of the ED, in exercise of the powers under section 19 of the PMLA.

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