DSK Legal
True Value, True Values

NEWSLETTER

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PERFORMANCE/RETURN CLAIMED BY UNREGULATED PLATFORMS OFFERING ALGORITHMIC STRATEGIES FOR TRADING

SEBI *vide* circular dated September 02, 2022[1], casts certain responsibilities on stockbrokers and stock exchanges to prevent any mis-selling of services and strategies to investors which are being marketed with "claims" of huge returns on investment along with "ratings" assigned to strategies that similar returns would be earned in the future.

In lieu of the above, SEBI, to protect the interest of investors in the securities market, has decided that –

1. Stock brokers who provide services relating to algorithmic trading shall not:

   (a) directly or indirectly make any reference to the past or expected future return/ performance of the algorithm; and/or

   (b) directly or indirectly associate with any platform providing any reference to the past or expected future return/performance of the algorithm.

2. Further, stock brokers who are directly/indirectly referring to any past or expected future return/performance of an algorithm or are associated with any platform providing such reference, shall remove the same from their website and/or disassociate themselves from the platforms providing such references, with 7 (seven) days from the date of this circular.

3. Stock exchanges are directed to take necessary steps to put in place systems and procedures for implementation of the above-mentioned provisions and monitor the compliance of this circular by taking confirmations form stock brokers that they are compliant with this circular and shall submit a compliance report to SEBI in this regard within 60 (sixty) days from the date of this circular.

MASTER CIRCULAR ON SURVEILLANCE OF SECURITIES MARKET

SEBI has issued a master circular dated September 13, 20222, to ensure the availability of comprehensive information pertaining to Surveillance of Securities Market ("**Master Circular**"). This Master Circular covers various circulars issued till August 31, 2022, by the Integrated Surveillance Department.

This Master Circular shall supersede the previous master circular[3] dated March 01, 2021.

DISCUSSIONS ON THE INTRODUCTION OF THE APPLICATION SUPPORTED BY BLOCKED AMOUNT ("ASBA") SYSTEM FOR SECONDARY MARKET TRANSACTIONS

In an initial public offering ("**IPO**"), the ASBA facility helps protect the money of investors by ensuring that money flows only when an allotment happens. Madhabi Buch, chairperson of SEBI revealed that the regulator is deliberating on introducing the ASBA facility for secondary market transactions as well, as currently present in the primary market. In the present secondary market system, the investor keeps money with the broker, the ASBA facility will remove the middlemen and will minimize the loopholes in the system.

[1] SEBI/HO/MIRSD/DOP/P/CIR/2022/117
[2] SEBI/HO/ISD/ISD-PoD-2/P/CIR/2022/118
[3] SEBI/HO/ISD/ISD/CIR/P/2021/22

SEBI INTRODUCED THE FRAMEWORK FOR SOCIAL STOCK EXCHANGE ("SSE")

SEBI vide circular dated September 19, 2022[4], the regulator specified the following requirements –

1. Minimum requirements to be met by a Not-for-Profit Organization ("**NPO**") for registration with SSE in terms of regulation 292F of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR Regulations**"):

   (a) The entity wishing to get listed on SSE must be an Indian NPO having a valid registration certificate for a minimum of 12 (twelve) months and must have spent at least Rs 50 lakh annually in the past financial year and should have received a funding of at least Rs 10 lakh in the past financial year;

   (b) Entity can as a charitable trust under Section 8 of the Companies Act, 2013, Societies Registration Act, 1860, Indian Trusts Act, 1882, under any relevant state law;

   (c) Corporate foundations, political or religious organizations or activities, professional or trade associations, infrastructure, and housing companies, except affordable housing, will not be eligible to be identified as a social enterprise;

   (d) Social Enterprises ("**SEs**") shall have the social intent and objectives. They will have to engage in a social activity out of 16 broad activities listed by the regulator.

   (e) Entity must be at least 3 (three) years old and adequate disclosure concerning the ownership and control must be made; and

   (f) Minimum annual spending in the previous financial year must be at least INR 50 (fifty) lakh and minimum annual funding must be at least INR 10 (ten) lakh.

2. Minimum initial disclosure requirement for NPOs raising funds through the issuance of zero coupon zero principal instruments in terms of regulation 292K(1) of the ICDR Regulations:

   Disclosures like vision, target segment, strategy, governance, management, operations, finance, compliance, credibility, social impact, risks, etc. must be present in the document. SSE shall host the requirements for the structure of the draft/final fund-raising document on its website.

3. Annual disclosure by NPOs on SSE which have either raised funds through SSE or are registered with SSE in terms of regulation 91C of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"):

   Disclosures must be made about details of the top five donors or investors in terms of budget, the scale of operations, including employee and volunteer strength, general aspects, governance aspects and financial aspects. These disclosures must be made within 60 days from the end of the financial year.

4. Disclosure of Annual Impact Report ("**AIR**") by all SEs which have registered or raised funds using SSE in terms of regulation 91E of the LODR Regulations:

   (a) For NPOs registered without listing security, AIR must cover its significant activities, interventions, programs, or projects during the year. For social impact funds, AIR must disclose all aspects of investee/grantee organizations where the fund is deployed.

   (b) At a minimum, AIR must cover strategic intent and planning, approach, and impact score card.

   (c) All SEs shall contain the qualitative and quantitative aspects of the impact generated by the entity and duly audited AIR must be sent to SSE within 90 days from the end of the financial year. AIR shall be audited by Social Auditors and the SEs shall disclose the report of the Social Auditor along with AIR.

5. Statement of the utilization of funds in terms of 91F of the LODR Regulations

   The listed NPO shall submit a statement of the utilization of funds to SSE, as required under Regulation 91F of the LODR Regulations, within 45 days from the end of the quarter.

MODIFICATION IN THE OPERATIONAL GUIDELINES FOR FPIS, DDPS, AND EFIS PERTAINING TO FPIS REGISTERED UNDER THE MULTIPLE INVESTMENT MANAGERS ("MIM") STRUCTURE

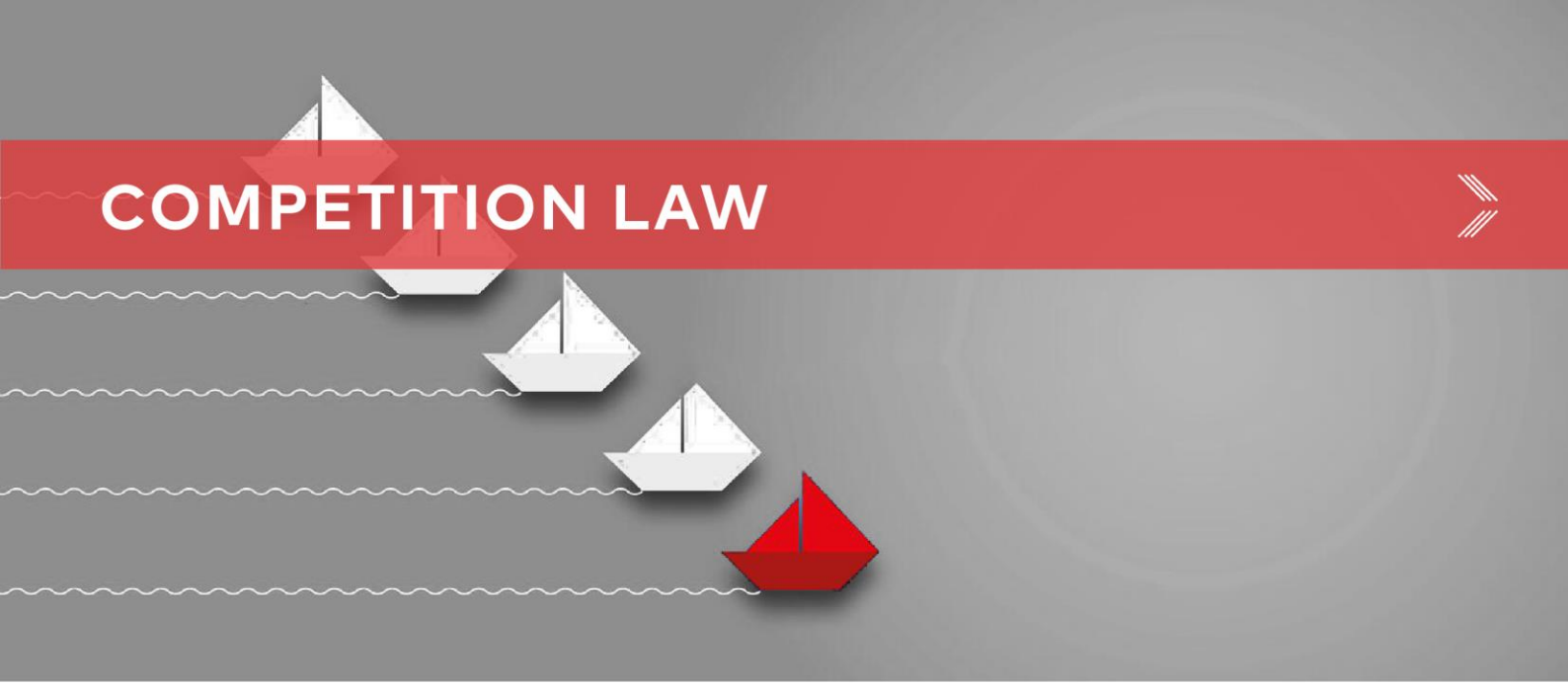
SEBI Circular dated September 26, 2022[5], amends Clause (i) of Paragraph 4 of Part A of the Operational Guidelines under

[4] SEBI/HO/CFD/PoD-1/P/CIR/2022/120

[5] AFD/ P/ CIR/ 2022/125

the SEBI (FPI) Regulations, 2019. The said clause is replaced with the following:

"Where an entity engages multiple investment managers (MIM) for managing its investments, the entity can obtain multiple FPI registrations mentioning name of Investment Manager for each such registration. Such applicants can appoint different DDPs for each such registration. Investments made under such multiple registrations shall be clubbed for the purposes of monitoring of investment limits".



CCI SCORES FOUR WINS IN THREE HIGH COURTS

Facebook suffered its second dismissal in as many months with its subsidiary's petition being dismissed by the Delhi High Court, while reiterating the now established principle that CCI's order initiating an investigation will not normally be interfered with. (*Facebook India Online Services v. CCI*)

The Gujarat High Court also followed suit throwing out a petition filed by school textbook printers and binders challenging the initiation of an investigation for suspected cartelization. (*Shree Shivam Corporation v. CCI*)

The petitions filed by broadcasters Disney and Star India against the initiation of an investigation for alleged abuse of dominance was dismissed by the Bombay High Court on the ground of lack of territorial jurisdiction, since the entire controversy pertained to the state of Kerala. (*Asianet Star Communications v. CCI*)

The Delhi High Court also dismissed a petition filed by the Builders Association of India against the order of the CCI rejecting its application for impleadment into ongoing proceedings against the cement manufacturers. (*Builders Association of India v. CCI*)

The CCI itself passed six enforcement orders and published ten merger approvals and a Market Study on Cab Aggregators.

CCI REJECTS ISWAI'S ALLEGATIONS AGAINST ANDHRA PRADESH EXCISE DEPARTMENT AND BEVERAGES CORPORATION

CCI rejected ISWAI's complaint filed against Andhra Pradesh Prohibition and Excise Department and the A.P. State Beverages Corporation alleging abuse of dominance due to arbitrary procurement of alcoholic beverages and imposition of anti-competitive clauses, in the State.

The procurement, distribution, and retail sales of alcoholic beverages via retail shops in the State is undertaken by the Corporation.

Based on the figures and the representations, the CCI, vide an order dated 19.09.2022, held that there was insufficient evidence to establish that the reduction in the procurement and sales of the alcohol brands sold by the members of ISWAI was due to any arbitrary actions by the Corporation, and rather appeared to have occurred due to other factors. Consequently, the CCI dismissed ISWAI's complaint.

CCI DISMISSES CUTS COMPLAINT AGAINST PVR-INOX MERGER

Vide its order dated 13.09.2022, the CCI dismissed the complaint filed by public interest research and advisory organization Consumer Unity & Trust Society, which alleged that the proposed merger between PVR and INOX is likely to cause an adverse effect on competition in the market.

The CCI noted that the transaction had fallen below the applicable *de minimis* threshold and thus was not notifiable under the merger control provisions. As regards the applicability of the enforcement provisions, the transaction had not even been consummated as yet and thus, there was no merged entity in existence as on the date of the complaint. Moreover, neither the mere existence of dominance nor the apprehension of future abusive conduct be the basis to order an investigation.

DSK View: *Unfortunately, the CCI's hands were tied the transaction having fallen below the de minimis threshold due to the covid lockdowns.*

CCI GIVES A CLEAN CHIT TO ASIAN PAINTS

Vide an order dated 08.09.2022, the CCI dismissed the allegations of abuse levelled by JSW paints against Asian Paints.

While finding Asian Paints to be dominant in the market for "*manufacture and sale of decorative paints by the organized sector in India*", it held that that there was insufficient evidence to conclusively establish that Asian Paints had pressurized dealers into giving up their associations with JSW.

CCI PENALIZES GLOBAL INFRASTRUCTURE PARTNERS FOR FAILING TO NOTIFY ITS ACQUISITION OF IDFC ALTERNATIVES

Vide an order dated 30.08.2022, the CCI levied a penalty on Global Infrastructure Partners India Private Limited (**GIP**) for failing to notify its acquisition of infrastructure asset management business of IDFC Alternatives (**IDFC**).

The CCI held that the investment manager of the fund would *control* the portfolio entities and hence, the value of assets and turnover of the portfolio entities had to be taken into account for the purposes of the thresholds under the Act.

DSK View: *The view taken by the CCI follows the position first implemented by the CCI in InvestCorp in its December 2021 decision.*

CCI APPROVED OF A COMPOSITE SCHEME OF ARRANGEMENT & AMALGAMATION PROPOSED BY THE ENTITIES OF SHRIRAM GROUP

CCI vide an order dated 01.08.2022 approved of a composite scheme of arrangement and amalgamation proposing a set of intra-group restructuring involving eleven companies. Eight of such entities form a part of the Shriram Group.

While approving the transaction, the CCI noted that the inter-group restructuring would not result in a significant change in the control over the other parties.

DSK View: *Such transactions ought to be exempt from the filing requirement, and the CCI ought to amend its regulations to avoid using regulatory resources for such transactions.*

MARKET STUDY ON CAB AGGREGATOR INDUSTRY

The CCI released the much awaited 'Market Study Report on Cab Aggregator Industry in India' on 09.09.2022.

The study largely focuses on perception of the industry stakeholders on (i) surge pricing, and (ii) transparency concerns regarding personalised/differential pricing, 'total fare' calculation & information asymmetries.

i. Surge Pricing

The CCI noted that there is an information asymmetry created by the cab aggregators between the surge being charged from the riders and the surge being handed down to the driver.

However, it turned out that despite the app-based cab services being expensive, end customers are inclined towards paying that 'surge', basis convenience and driver's behaviour. Similarly, it was found that this 'surge' does not motivate the drivers to proportionally alter their services as per the fluctuations in demand.

Hence, the report concluded that surge pricing may not be counterproductive but needs to be regulated.

ii. Transparency concerns

The CCI noted that 'personalised pricing' is dependent on several factors – distance travelled, number of trips, type of rides, mode of payment, nature of mobile sets, etc. This makes the calculation of 'base fare' and 'total fare' ambiguous and unpredictable.

The Report found that the practise of algorithm based personalised pricing adopted by the cab aggregators is not likely to cause an adverse impact on competition, however, there is an element of uncertainty and lack of transparency in the parameters which continuously determine the change and personalization of prices / fares.

To resolve the concerns raised by the stakeholders, CCI released a set of self-regulatory guidelines which are indicative of the measures which ought to be implemented by the cab aggregators to maintain healthy competition in the market.

DISPUTES PERTAINING TO TAX CONCESSIONS ARE NOT ARBITRABLE

The Hon'ble Supreme Court of India in *M/s Shree Enterprise Coal Sales Private Limited v. Union of India & Another*[6] held that disputes pertaining to tax concessions are not arbitrable. In the said case, the Appellant after purchasing coal from Northern Coalfields Limited (2nd Respondent) through e-auction, took certain assignments through railways of which the destination was in the State of Madhya Pradesh. The 2nd Respondent initially charged a concessional tax rate of 2%, however, the grievance of the Appellant was that the 2nd Respondent did not issue Form E-1 and did not grant the benefit of Form C while charging tax at the rate of 4%. Aggrieved, the Appellant moved a writ petition before the Hon'ble Allahabad High Court wherein *inter-alia* it prayed for the relief that the 2nd Respondent be directed to grant the benefit of concessional rate of tax to the Appellant after accepting Form C on record. The Hon'ble High Court dismissed the said writ on the ground that the terms of the e-auction provided that any dispute is arbitrable and that the Appellant is virtually seeking enforcement of a contractual dispute by way of a writ.

The Hon'ble Supreme Court while observing that the Appellant was not asserting a contractual claim in pursuance of the e-auction, it set aside the impugned order and remanded the matter back to the Hon'ble Allahabad High Court for consideration on merits.

COURT EXERCISING POWERS UNDER SECTION 9 OF THE ARBITRATION AND CONCILIATION ACT, 1996 IS NOT STRICTLY BOUND BY THE PROVISIONS AND PRINCIPLES OF CODE OF CIVIL PROCEDURE 1908

The Hon'ble Supreme Court in *Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited*[7], has held that while deciding a petition under Section 9 of the Arbitration & Conciliation Act 1996, the Court cannot ignore the basic principles of the Code of Civil Procedure 1908, however, the power of the Court to grant relief cannot be curtailed by the rigours of every procedural provision in the Code of Civil Procedure 1908. In exercise of its powers to grant interim relief under Section 9 of the Arbitration and Conciliation Act, 1996, the Court is not strictly bound by the provisions of the Code of Civil Procedure 1908. The Hon'ble Supreme Court also held that if a strong *prima facie* case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration and Conciliation Act 1996, should not withhold relief on the mere technicality of absence of averments.

RESOLUTION PLAN WHICH DOES NOT INCORPORATE PAYMENT OF STATUTORY DUES IS LIABLE TO BE REJECTED

In the case of *State Tax Officer (1) v. Rainbow Papers Limited*[8], the Hon'ble Supreme Court held that the Adjudicating Authority must reject a Resolution Plan which ignores the statutory obligations payable to any State Government or other legal authority. In this case, an appeal was filed under Section 62 of the Insolvency and Bankruptcy Code, 2016 by the State Tax Officer ("Appellant") raising the question, whether the provisions of the Insolvency and Bankruptcy Code , in particular, override Section 48 of the Gujarat Value Added Tax, which provides for first charge on

[6] Civil Appeal No. 6539 of 2022 (Arising out of SLP (C) No. 13125 of 2018), judgment dated September 12, 2022.

[7] Civil Appeal of 2022 (Arising out of SLP (C) No. 3351 of 2021), judgment dated September 14, 2022.

[8] Civil Appeal No. 2568 of 2020, judgment dated September 6, 2022.

the property of a dealer in respect of any amount payable by the dealer on account of tax, interest, penalty etc. On 12.09.2017, a Section 9 petition under Insolvency and Bankruptcy Code, 2016 filed by Neeraj Papers Private Limited ("Operational Creditor"), was admitted against the Corporate Debtor. The Apex Court held that the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental Authority or for that matter, any other dues. It was held that under Section 53(1)(b)(ii) of the Insolvency and Bankruptcy Code, 2016, the debts owed to a secured creditor, which would include the State under the GVAT Act, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date. The definition of secured creditor in the Insolvency and Bankruptcy Code does not exclude any Government or Governmental Authority and therein the Adjudicating Authority erred in law in rejecting the application/appeal of the appellant.

UNPAID INSTALLMENT DOES NOT FORM "OPERATIONAL DEBT" UNDER SECTION 5(21) IBC

In the case of *Bajaj Rubber Company Private Limited v. Saraswati Timber Private Limited*[9]**,** the National Company Law Tribunal ("NCLT"), New Delhi Bench refused to revive a Section 9 petition under Insolvency and Bankruptcy Code, 2016 stating that breach of settlement terms does not fall within the purview of "operational debt" under the 2016 Code. In this case Corporate Insolvency Resolution Process ("CIRP") petition was filed against Saraswati Timber Private Limited ("Corporate Debtor") by Bajaj Rubber Company Private Limited ("Operational Creditor"). On 17.01.2019, the Corporate Debtor and Operational Creditor had entered settlement terms by which post-dated cheques were issued to the Operational Creditor by the Corporate Debtor. The Operational Creditor withdrew the petition on the grounds that the parties reached a settlement. On 21.01.2019, the Section 9 petition was disposed of by the Adjudicating Authority considering these settlement terms. Thereafter, the Corporate Debtor failed to adhere to the settlement terms and cheques were dishonored. The Operational Creditor sought revival of the petition. NCLT rejected the plea of the Operational Creditor, placing reliance on the case of ***M/s Alhuwalia Contracts (India) Limited v. M/s Logix Infratech Private Limited***[10] and ***Nitin Gupta v International Land Developers Private Limited***[11] wherein the NCLT New Delhi Bench held that an unpaid instalment under a settlement agreement cannot be considered as an operational debt under Section 5(21) of the IBC.

[9] Company Petition No. (IB) 1441 (ND)/2018.
[10] Company Petition No. (IB) 882/(ND)/2022.
[11] Company Petition No. (IB) 507/(ND)/2020.

EMPLOYMENT LAW

EMPLOYEES' STATE INSURANCE CORPORATION EXTENDS MEDICAL BENEFITS TO THE INSURED PERSONS IN KALAHANDI DISTRICT IN THE STATE OF ODISHA AND RAMANATHAPURAM AND SIVAGANGAI DISTRICTS IN TAMIL NADU

- The Employees' State Insurance Corporation ("**ESIC**"), vide its notification dated September 1, 2022, has extended the medical benefit as laid down in Regulation 95-A of the Employees' State Insurance (General) Regulations, 1950 ("**ESI Regulations**") and the Odisha Employees' State Insurance (Medical Benefit) Rules, 1958, for the Kalahandi district in the state of Odisha, and Tamil Nadu Employees' State Insurance (Medical Benefit) Rules, 1955 to the entire area of Ramanathapuram and Sivagangai districts in the state of Tamil Nadu to the families of insured persons, in addition to the already implemented area in the districts.

- As per Regulation 95-A of the ESI Regulations, the family of an insured person shall become entitled to medical benefit from the day the insured person himself becomes entitled to such benefits and shall continue to be so entitled so long as the insured person is entitled to receive medical benefit for himself, or in the case of death of the insured person till such date up to which the insured person would have remained entitled to medical care, had she/he survived.

- The nature and scale of medical benefit to which the family of an insured person shall be entitled shall be such as may be specified by the state government in consultation with the ESIC from time to time.

REVISED MINIMUM RATES OF WAGES FOR EMPLOYEES IN THE SHIP BREAKING ACTIVITIES IN THE STATE OF GUJARAT

The Labour, Skill Development and Employment Department of Gujarat, vide its notification dated September 5, 2022, has revised the minimum rates of wages of employees employed in the ship breaking activities in the state of Gujarat. The revised rates of minimum wages are as follows:

- Skilled: INR 430 (Rupees Four Hundred Thirty) + Special Allowance;

- Semi-Skilled: INR 417 (Rupees Four Hundred Seventeen) + Special Allowance;

- Un-Skilled: INR 404 (Rupees Four Hundred Four) + Special Allowance.

GOA FACTORIES (SIXTEENTH AMENDMENT) RULES, 2022

The Government of Goa, vide notification dated September 15, 2022, has issued the Goa Factories (Sixteenth Amendment) Rules, 2022. As per the notification, Rule 18A of the Goa Factories (Sixteenth Amendment) Rules, 2022, confers upon the Chief Inspector of factories the power to give directions to in writing to the occupier or manager or both, any officer or authority appointed by the Government, etc.

ENFORCEMENT OF PROVISIONS FROM EMPLOYEES' STATE INSURANCE ACT IN THE KRISHNAGIRI, TIRUCHIRAPPALLI AND PERAMBALUR DISTRICTS OF TAMIL NADU

The Ministry of Labour and Employment, vide its notification dated September 15, 2022, has implemented the following provisions of the Employees' State Insurance Act, 1948 ("**ESI Act**") in all the areas of Krishnagiri, Tiruchirappalli and

Perambalur in the state of Tamil Nadu to be effective from October 1, 2022:

- Sections 38 to 43 and sections 45A to 45H of Chapter IV (*provisions pertaining to contributions*) of the ESI Act;
- Sections 46 to 73 of Chapter V (*provisions pertaining to benefits*) of the ESI Act; and
- Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of Chapter VI (*provisions pertaining to adjudication of disputes and claims*) of the ESI Act.

AMENDMENT TO THE GUJARAT BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) RULES, 2003

The Government of Gujarat, vide its notification dated September 17, 2022, made the following amendments to the Gujarat Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2003:

- The time frame for the issue of registration certificate under the said rules has been increased from 15 (Fifteen) days to 30 (Thirty) days, from the date of application.
- Further, a proviso to the aforesaid rule has been included which provides that if no order for compliance/ registration certificate is communicated to the applicant within 30 (Thirty) days from the date of receipt of the registration application, the permission applied for by the said application shall be deemed to have been granted.

ONLINE SUBMISSION OF MATERNITY CLAIM

The ESIC, vide its circular dated September 22, 2022, has informed that the online submission of maternity claim has been deployed. The insured woman whose universal account number has been seeded in the system, can claim for maternity benefit through the internet portal. The user manual for submission of online request has also been published with the circular for ease of reference.

ENERGY & INFRASTRUCTURE

ENERGY

MINISTRY OF POWER NOTIFIES FORUM OF REGULATORS (AMENDMENT) RULES, 2022

The Ministry of Power ("**MoP**") notified the Forum of Regulators (Amendment) Rules, 2022 ("**Revised Rules**"), which amend the Forum of Regulators Rules, 2005.

According to the Revised Rules, each distribution licensee in the nation is required to prepare quarterly statements pointing out whether demands for subsidy are raised by distribution companies every quarter based on accurate records of the energy consumed by the subsidized category and the per-unit subsidy payable, whether the subsidy is paid under section 65 of the Electricity Act, 2003, the difference between the amount of subsidies due and actually paid, and other pertinent information. The Revised Rules also provides for monitoring of renewable purchase compliance by the Forum and states that the Forum shall monitor compliance of targets, by each distribution licensee, captive consumption and consumers procuring power through open access, for purchase of electricity from renewable sources as determined by the Central Government or by State Commission, whichever is higher. The Revised Rules further states that an annual report comprising data and analysis thereof for compliance of the targets for purchase from renewables shall be submitted to the Central Government by 31st May of next financial year.

MINISTRY OF POWER NOTIFIES DISTRIBUTION OF ELECTRICITY LICENCE (ADDITIONAL REQUIREMENTS OF CAPITAL ADEQUACY, CREDITWORTHINESS AND CODE OF CONDUCT) (AMENDMENT) RULES, 2022

The MoP has notified the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) (Amendment) Rules, 2022 ("**Revised Rules**") which amend the Distribution of Electricity Licence (Additional Requirements of Capital Adequacy, Creditworthiness and Code of Conduct) Rules, 2005 ("**Earlier Rules**").

The Revised Rules have substituted the 'Explanation' provided in sub-rule (2) of Rules 3, as follows: "*Explanation.- For grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within either a Municipal Corporation as defined in Article 243Q of the Constitution or three adjoining revenue districts, or a smaller area as may be notified by the Appropriate Government shall be the minimum area of supply*."

Rules 3 deals with 'requirements of capital adequacy and creditworthiness', and empowers the appropriate commission, upon receipt of an application for grant of license for distribution of electricity under Electricity Act, 2003, to decide on the requirement of capital investment for distribution network after hearing the applicant and keeping in view the size of the area of supply and the service obligation within that area in terms of Section 43 of the Electricity Act, 2003. Rule 3 further states that the applicant for grant of license is required to satisfy the appropriate commission that on a norm of 30% equity on cost of investment as determined thereunder, the applicant would be in a position to make available resources for such equity with respect to the project on the basis of the net worth and generation of internal resources of its business including that of promoters, in the preceding three years after excluding its other committed investments. The 'Explanation' as provided in the Earlier Rules read as: "*Explanation.- For the grant of a license for distribution of electricity within the same area in terms of sixth proviso to section 14 of the Act, the area falling within a Municipal Council Corporation or a Municipal Corporation as defined in Article 243Q of the Constitution of*

India or a revenue district, shall be the minimum area of supply."

MINISTRY OF NEW AND RENEWABLE ENERGY NOTIFIES IMPOSITION OF BASIC CUSTOMS DUTY ON IMPORT OF SOLAR PV CELLS AND MODULES AND HIKE IN GST RATES TO BE COVERED UNDER 'CHANGE IN LAW'

The Ministry of New and Renewable Energy ("**MNRE**") has vide notification (no. F. No. 283/3/2018-GRID SOLAR-Part (4)) dated September 27, 2022, highlighted that with effect from April 1, 2022, a Basic Customs Duty @25% has been imposed on import of solar PV cells and a Basic Customs Duty @ 40% has been imposed on import of solar PV modules. MNRE also indicated that as per notification no. 8/2021 dated September 30, 2021, the GST rate for specified renewable energy devices and parts for their manufacture have increased from 5% to 12%. Pursuant to representations made by Renewable Energy Developers on the said issue, the MNRE examined the matter and requested Renewable Energy Implementing Agencies (SECI/NTPC Ltd./NHPC Ltd.) to consider imposition of Basic Customs Duty on import of solar PV cells and modules with effect from April 1, 2022 under 'Change in Law' unless the same is disallowed by specific provisions in the tender documents/contracts. MNRE also requested the Renewable Energy Implementing Agencies to consider the hike in GST rate from 5% to 12%, for specified renewable energy devices and parts for their manufacture, under 'Change in Law' unless the same is disallowed by specific provisions in the tender documents.

INFRASTRUCTURE

AMENDMENT IN O&M PAYMENTS PROVISION IN HAM MODE

The National Highways Authority of India ("**NHAI**") vide policy circular bearing number 11.43/2022 dated September 19, 2022 ("**Policy Circular**") modified clause 23.7.2 of the model concession agreement ("**MCA**") for hybrid annuity model ("**HAM**") projects, which relates to operation and maintenance payments ("**O&M Payments**").

The amended provision specifies that the O&M Payments to be paid by NHAI as per Clause 23.7.1 of the MCA shall be inclusive of all taxes but exclusive of GST, which shall be payable at the applicable rates.

MANDATORY COMPLETION OF SAFETY WORKS FOR ISSUANCE OF PROVISIONAL COMPLETION CERTIFICATE

NHAI vide circular bearing number 12.27/2022 dated September 22, 2022 ("**Circular**") has stipulated that it is mandatory to complete safety works on the project highway prior to issuance of provisional completion certificate by the representatives of NHAI/ Independent Engineer ("**IE**")/ Authority Engineer ("**AE**").

NHAI noticed that the provisional completion certificates were being issued without keeping or maintaining safety items or works *inter alia* including road markings, road signages, end treatment of crash barriers etc. as mentioned in the punch list in the contract or concession agreement, thus, compromising the safety of end users of the highway.

The Circular provides that safety road works must be completed before issuance of provisional completion certificate. The regional officer ("**RO**")/project director ("**PD**")/IE/AE shall be held accountable if serious or fatal accidents are caused due to poor road engineering works, poor infrastructure, or poor installation of road safety furniture.

ISSUANCE OF LISTED COMMERCIAL PAPERS BY INVITS

The Securities and Exchange Board of India ("**SEBI**") vide circular bearing number SEBI / HO / DDHS / DDHS_Div3 / P / CIR / 2022 / 123 ("**SEBI Circular**") has issued guidelines for issuance and listing of commercial papers by infrastructure investment trusts ("**InvITs"**) having a net worth of INR 1,00,00,00,000 (Rupees One Hundred Crore) or higher.

As per the SEBI Circular, InvITs may issue listed commercial papers subject to the following:

- InvITs shall abide by the guidelines prescribed by Reserve Bank of India for issuances of commercial papers.
- InvITs shall abide by the conditions of listing norms prescribed by SEBI under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and circulars issued thereunder.
- The issuance of listed commercial papers shall be within the overall debt limit permitted under SEBI (Infrastructure Investment Trusts) Regulations, 2014.

DSK View: *Commercial paper is an unsecured, short-term debt instrument issued by corporations. It is typically used to the finance short-term liabilities such as payroll, accounts payable, and inventories. This move of SEBI will allow InvITs to raise short term debts and bridge the capital requirements of such investment vehicles. Further, this will encourage InvITs assets to perform better in the future.*

DRAFT INDIAN TELECOMMUNICATION BILL, 2022

The Department of Telecommunication ("**DoT**") issued the Draft Indian Telecommunication Bill ("**Bill**") on September 21, 2022 and invited stakeholder comments on the same. The last date for submission of comments is October 20, 2022.

The Bill aims to replace the archaic laws such as the Indian Telegraph Act, 1885, the Wireless Telegraphy Act, 1933, and the Telegraph Wires (Unlawful Possession) Act, 1950 that governed the telecom sector in India. The Bill aims to *inter alia* consolidate and amend the existing laws governing provision, development, expansion and operation of telecommunication services, telecommunication networks and telecommunication infrastructure and assignment of spectrum.

Key features of the Bill are *inter alia* as follows:

- The Bill provides structure for the government to grant registrations for establishing telecommunication infrastructure.
- The Bill has broadened the definition of telecommunication services to include over the top ("**OTT**") communications. Thus, players in the OTT space would be subjected to the same rules in relation to licenses, sharing of revenue with the government etc. as those applied to telecom service providers.
- The Bill has provided wide-ranging powers to the central and state governments in the event of a war, public emergency or in interest of public safety. In such situations, the government can mandate a limited suspension of transmission of messages or provision of telecommunication networks or services for the purposes of national security.
- The Bill has envisioned the creation of a regulatory sandbox for the telecommunication sector by the government. Thus, new technologies can be tested in controlled conditions, in order to promote innovation in this sector.
- The Bill also lays down a detailed regulatory framework for spectrum assignment by the central government to undertake spectrum assignment to all entities engaged or intending to engage in telecommunication infrastructure, telecommunication network or telecommunication services, or using spectrum or operating an earth station.
- The Bill has empowered the central government to prescribe standards for manufacturers of telecommunication equipment, network and infrastructure for reliability purposes.
- The central government has also been vested with the authority to waive fees, interests, and penalties payable under specific circumstances in the interests of consumers, ensuring competition, reliability and continued supply of telecommunication services, etc.
- Right of ways ("**RoW**") is a prerequisite for establishing telecommunication network and infrastructure. The Bill seeks to remove limitations associated with obtaining RoW by specifying a robust regulatory framework within the federal structure, to obtain RoW in a uniform, non-discriminatory manner, for the establishment of telecommunication infrastructure.
- The Bill seeks to simplify the framework for mergers, demergers and acquisitions, or other forms of restructuring undertaken by the licensee or registered entity. The same can be undertake only upon providing intimation to the licensing authority. Any licensee or registered entity will simply be required to comply with the scheme for restructuring as provided under the Companies Act, 2013 and inform the DoT as required.

INTELLECTUAL PROPERTY RIGHTS

DELHI HIGH COURT OBSERVES THAT A MERE LOOMING PRESENCE OF A WEBSITE IN A GEOGRAPHICAL LOCATION IS SUFFICIENT TO ATTRACT THE TERRITORIAL JURISDICTION OF THE COURT

Recently, the Division Bench of the Delhi High Court had set aside the order of Single Judge and had granted ex-parte *ad interim* injunction against a crypto exchange, tatabonus.com. The Single Judge had declined injunctive relief to the Appellant – Plaintiff on the basis that the crypto exchange was registered outside India. The Single Judge held that it cannot exercise extra-territorial jurisdiction and grant an ad-interim injunction in favour of the Plaintiff. Setting aside Single Judge's order, the Division Bench held that the website has looming presence in India and within the jurisdiction of the Delhi High Court, which is sufficient to invoke the jurisdiction of the Delhi High Court. The Division Bench observed that the Single Judge had option to dismiss the suit in entirety, due to lack of jurisdiction, the Judge erred in dismissing the injunction application, while allowing the suit to continue. ***Tata Sons Private Limited v. Hakunamatata Tata Founders & Others.***

DSK View: *The test of "mere looming presence and access to the website" has wider connotation than the test of "purposeful availment" as the test does not take into consideration whether a website is purposefully directed towards the jurisdiction. This would certainly give a choice to right owners to invoke jurisdiction of a convenient forum.*

ADVERTISERS CANNOT CROSS THE PERMISSIBLE LIMIT AND DISPARAGE COMPETING PRODUCT:

A Division Bench of the Delhi High Court, while dealing with an issue relating to comparative advertisement, held that the latitude available in advertising is wide but does not extend to denigrating the product of one's competitor. The Bench observed that there may be cases where certain features of an advertiser's product may be demonstrably better than the features of his competitor. In such cases, it is permissible for an advertiser to advertise and highlight these features. The message must clearly be to highlight the superior features of his product while ensuring that the product of his competitor is not disparaged or defamed. ***Reckitt Benckiser (India) Private Limited v. Hindustan Unilever Limited.***

TO SUCCEED IN A DESIGN INFRINGEMENT SUIT, PLAINTIFF IS REQUIRED TO DEMONSTRATE ITS OWNERSHIP OF A VALID REGISTRATION AND SUBSTANTIAL IMITATION BY THE OPPOSITE PARTY – DELHI HIGH COURT

In a well-articulated manner, the Delhi High Court decided upon an interim application pertaining to design infringement, restraining the Defendants from using similar designed hip flask. The Court observed that the yardstick for determining infringement of a registered design are the 'visual effect', 'appeal to the eye' of the customer and 'ocular impression of design as a whole'. The Court clarified that the test is not to look out for subtle dissimilarities but rather to see if there is a substantial similarity in the two designs. The Court has also observed that there cannot be any hard and fast rule that merely because the design registration of a recent date, the Plaintiff would not be entitled to an injunction. While dismissing the Plaintiff's plea against passing off (trade dress violation), the Court clarified that the issue of passing off was decided on overall get-up and packaging and did not examine the design elements as such. ***Diageo Brands B.V. and Another v. Great Galleon Ventures Limited.***

DSK View: *The Court has distinguished the concept of novelty in design and patent laws. It is not necessary to justify the whole of the design should be new, but newness can be confined to only a part of it, but that part must be a significant one and must impart a distinct identity to the*

complete design. For a wider protection, design owners may consider registering each new / original element as a separate design.

INTERNATIONAL TRADE / WTO

INDIA RETALIATES TARIFF RATE QUOTAS IMPOSED BY UK ON STEEL PRODUCTS WITH A 15% ADDITIONAL DUTY ON 22 UK IMPORTS

Despite being in the midst of crucial Free Trade Agreement ('FTA') negotiations with India, UK in the recent past has imposed certain safeguard duties in the nature of tariff-rate quotas on 15 steel products from India. Imports above the pre-determined quota from India attract a 25% out of quota duty.

In this regard, India had raised concerns at the WTO and claimed that the imposed safeguard measures were in violation of the WTO Agreement on Safeguards ('AoS'). Consequently, on 5 August 2022, India and UK held virtual consultations as per Article 12.3 of the AoS. India therein requested for compensation from UK for imposing restrictions on India's steel products under Article 8.1 of the AoS.

Subsequent to the consultations, on 1 September 2022, India had proposed to impose retaliatory duties, as per WTO norms, on certain goods imported from the UK should its compensation claim be denied. In other words, in the event of non-acceptance of the claim of compensation; India would retaliate by imposing additional customs duties on goods imported from UK.

In its latest communications to the WTO, dated 27 September 2022, India has proposed suspension of concessions to UK under Article 8.2 of the AoS. Such suspension would entail the imposition of additional customs duties of 15% on the imports of 22 products which include whiskey, cheese, and diesel engine parts from the UK in retaliation to its decision to impose restrictions on steel products. Some other products on which retaliatory duties have been imposed include processed cheese, scotch, blended whiskey, gin, animal feed, liquified propane, some essential oils, beauty preparations, cosmetic and toilet preparations, unsorted diamonds, silver, platinum, semi-diesel engine parts, unwrought gold, turbo jets, and certain electric conductors.

India has estimated that the safeguard measures imposed by UK on steel products has resulted in the decline of exports to the tune of 2,19,000 tonnes on which the duty collection would be USD 247.7 million approximately. Accordingly, India's proposal of suspension of concessions would result in an equivalent amount of duty being collected from products imported from UK into India. It is understood that such retaliatory measures would continue to apply until the protectionist safeguard measures applied by UK are lifted.

DSK View: *The retaliation from India at this crucial juncture of the India-UK FTA, which is likely to be concluded by Diwali, sends a strong message that India will not negotiate from a position of weakness. With the world looking at a China + 1 alternative to maintain certainty in global value chains, India is walking the tight rope to establish itself as the best substitute. In doing so, India must ensure that it does not pander to the whims of the global north at the cost of its domestic interests. The retaliatory measures would thus be seen as India's arrival at the negotiating table with a certain heft that was previously lacking in India's Foreign Policy stances.*

SMART NUTRITIONAL LABELS ON PACKAGED FOOD PROPOSED BY THE FSSAI TO HELP CONSUMERS MAKE HEALTHIER CONSUMPTION CHOICES

The Food Safety and Standards Authority of India ('**FSSAI**') has proposed to amend the Food Safety and Standards (Labelling & Display) Regulations, 2020 vide F. No. Std./SP-08/T(FoPNL-N-01) dated 13 September 2022. As per the text of the draft regulations, all processed and pre-packaged food items would display the prescribed format of the Indian

Nutrition Rating ('INR') on the front of its pack, in close proximity to the name or brand name of the product, to provide the overall nutritional value of the specific food item.

The INR system entails the rating of the overall nutritional profile of the packaged food items by assigning them a rating from ½ star (least healthy) to 5 stars (healthiest). Higher number of stars would indicate that the food product is better positioned to provide for daily human need of nutrients. The INR rating would subsequently be displayed on the front of the food item's package.

For the purpose of this front-of-pack nutritional labelling ('FOPNL'), the following would have to be declared:

a) the baseline reference values for four health risk increasing factors i.e., energy, total sugars, saturated fat and sodium per 100 g or 100 ml of the product,

b) the minimum percentage of positive nutrients, namely, fruit & vegetables (FV); nuts, legumes & millets (NLM); fibre and protein present in the food items.

Such declarations must be made for calculating the INR of the specific solid or liquid foods items as per the Tables of Schedule III annexed to these draft Regulations. The INR is calculated on the basis of contribution of energy (in kilo calories; kcal), saturated fat (g), total sugar (g) and sodium (mg) and the positive nutrients per 100 g of solid food or 100 ml of liquid food on an "as sold' basis.

Notably, all the processed and packaged food items are classified into three categories under the extant draft regulations: Category-I (Solid Foods), Category-II (Liquid Foods) and Category-III (Exempted from FOPNL) for the purposes of INR scoring and FOPNL requirement.

The food business operators ('FBO') have to submit their product's relevant nutrient profile in the Food Safety Compliance System ('FoSCoS') for generating their respective INR scores and subsequent logos. Compliance of front-of-pack nutrition labelling would be voluntary for a period of 48 months from the date of final notification of these regulations and mandatory thereafter.

***DSK View**: FSSAI's draft regulations on nutritional scoring and subsequent labelling would be a positive step in curtailing the rising consumption of processed foods that are high in fat, sodium, and sugar. Such FOPNL would be a tool for discouraging consumption of processed foods as the nutritional information on the label would help the consumer to compare the nutritional values between different brands while making their consumption choices between similar food items.*

MEDIA & ENTERTAINMENT

DELHI HIGH COURT HAS HELD THAT COURTS CAN DIRECT "TELEGRAM" TO DISCLOSE PERSONAL INFORMATION OF ANY USER IN RELATION TO ANY PROCEEDINGS

In a suit filed before the Delhi High Court by Neetu Singh and K.D. Campus Pvt. Ltd. ("Plaintiffs") against Telegram FZ LLC and others ("Defendants"), seeking permanent injunction against the unauthorized dissemination of Plaintiffs' videos, lectures, books, etc. by the Defendants on their platforms, the Court had observed that the copies of the Plaintiffs' work circulated on the Telegram channels, would constitute as copyright infringement under the Copyright Act, 1957. The Defendants had opposed the grant of relief by submitting before the Court that the requisite data is stored in its data servers located in Singapore and the disclosure of such data is prohibited under the Personal Data Protection Act, 2012 of Singapore. However, the Court opined "*merely due to the fact that the persons disseminating the copyrighted works were using the Telegram App and the said App retained its data outside India on its servers, the jurisdiction of the High Court cannot be ousted*". The Court further added that the rationale behind damages against infringement would be rendered inconsequential when the infringers conceal their identities through the means of these messaging apps. Additionally, the Court highlighted the need for the dynamic evolution of the copyright laws.

THE CENTRAL GOVERNMENT WILL SOON IMPLEMENT NEW REGULATORY GUIDELINES FOR SOCIAL MEDIA PLATFORMS

Recently, the Delhi High Court while hearing a petition against the suspension of accounts of several social media users, has been informed by the Central Government regarding a new regulatory framework that will keep a check on an individual's conduct on the social media platforms and shall also include provisions related to the action or practice of "de-platforming" an individual holding views regarded as unacceptable or offensive from contributing to a forum or debate, especially by blocking them on a particular website/platform. This new framework would include the grievance redressal of social media account suspension. The Court while observing that the said framework would apply prospectively, granted further time to the Central Government to formulate the regulatory framework and pursuant to this deferred the hearing of the petitions till December 19, 2022. In one of its affidavits on suspension of social media accounts the Government opined that an individual's right to freedom and speech cannot be ambushed, and the social media platform must adhere to the fundamental rights set out in the Constitution of India. Additionally, the Central Government submitted before the Court that it is against the complete de-platforming of accounts as it infringes numerous rights with an exception to situations where *"…interest of the sovereignty, security, and integrity of India friendly relations with foreign states, or public order, or, pursuant to a court order, or if the content is grossly unlawful…"*.

SUPREME COURT ISSUES NOTICE IN RELATION TO THE PETITION FILED AGAINST THE MADRAS HIGH COURT'S JUDGEMENT ON STRIKING DOWN THE BAN ON ONLINE GAMES SUCH AS RUMMY AND POKER

In a petition filed before the Supreme Court by the State of Tamil Nadu against the Madras High Court's judgement of striking down Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act of 2021 ("Act"), wherein a ban was imposed on games like rummy and poker which are played on the internet with real stakes, a division bench of the Supreme Court has issued notices to the parties involved in the petition. The rationale of the Madras High Court behind striking down the Act was to highlight that the assailed legislation was created irrationally without determining as to when a game requiring skill becomes intwined with wagering and betting and hence becoming punishable as per the provisions of the Act. The Supreme Court observed that in the event no offence is being committed under Section 4(1) of the Tamil Nadu Gaming Act, 1930, if any betting and

wagering is involved in a game of skill, then by virtue of Sections 8 and 9 of the Act, an offence will be made out of the same activity and "*As a result, a simple game of football or volleyball which awards any cash prize or even a trophy, would, by the legal fiction created by the definition, amount to gaming and thereby outlawed*".

DELHI HIGH COURT HAS ALLOWED THE PRODUCERS OF THE FILM "FARAAZ" TO FILE AN ENTRY FOR SCREENING AT THE LONDON FILM FESTIVAL

In an interim injunction application filed against the producers of the film "Faraaz", the Delhi High Court allowed the filing of the film for screening in London Film Festival on the condition that the said film shall not be screened either in India or abroad till disposal of the application or without prior permission of Court. The Application was filed by the family members of a girl who lost her life during the 2016 terrorist attack in Dhaka, Bangladesh and on whose life story the film is claimed to be based upon. The Petitioners alleged that the story of the said girl has been shown in a bad light in the film. The Petitioner had submitted before the Court that despite there being an injunction order against the screening of the film, the same was shown to the defendant's counsel and was subsequently submitted to the British Film Institute, London for screening in the Film Festival. The Petitioners have filed an application under Order XXXIX Rule 1 and 2, read with section 151 CPC has been filed and the Court directed the parties to file the written submissions, if any, in relation to the application.

CCI APPROVES AMALGAMATION OF JIO CINEMA OTT PLATFORM WITH VIACOM 18

Recently, the Competition Commission of India (CCI) has approved the amalgamation of Jio Cinema OTT platform with Viacom 18 Media Private Limited. The approval follows an investment from Reliance Property Management Services, Bodhi Tree System (BTS) Investment and Reliance Projects. The approval is an aftermath of the earlier announcement of the strategic partnership by the Reliance Industries and Viacom18, to form one of the largest TV and digital streaming companies in the country. BTS, along with a host of investors, announced that it will invest Rs 13,500 crore in Viacom18 to launch the entertainment platform and lead the media landscape with a 'streaming first' approach.

COMPLAINT FILED AGAINST THE FILM "THANK GOD" FOR HURTING RELIGIOUS SENTIMENTS

Representatives of the Kayastha Samaj in Rajasthan have filed a police complaint against the producers of the film "Thank God" starring Ajay Devgn and Sidharth Malhotra for the alleged indecent portrayal of the Hindu deity Chitragupta. The complaint has been filed by the senior social worker Chandrakant Saxena under the banner of the Sri Chitragupta Committee. In the complaint, it was submitted that the film's trailer depicts the Hindu deity dressed in modern clothes and surrounded by "half naked woman", which has allegedly hurt the religious sentiments of the community. The members of the community have further demanded the producer to remove the "objectionable scenes" from the film. The film is scheduled to be released on October 25, 2022.

CENTRAL GOVERNMENT TO INTRODUCE GUIDELINES FOR SOCIAL MEDIA INFLUENCERS

The Central Government is in the process of drafting guidelines for social media influencers which will make it mandatory for the influencers to disclose their relationship/association with the product/services they endorse. The said guidelines will make it mandatory for any person endorsing a company's product on social media to disclose whether he/ she has been paid by the company or not. In addition to the same, the influencers will need to put disclaimers in such endorsement posts. It has also been contemplated that the Department of Consumer Affairs is also in the process of developing a framework to curb fake reviews on e-commerce sites.

TIMBALAND AND SWIZZ BEATZ HAVE SETTLED THEIR LAWSUIT AGAINST TRILLER OVER THE SALE OF "VERZUZ"

In August, Swizz Beatz and Timbaland filed a suit against the entertainment and video editor platform "Triller" for breaching the contract signed between the Parties in relation to the acquisition of the rap-battle show "Verzuz". The show was purchased by the Defendants under for an eight-figure deal which also made both the artists shareholders of the Defendant's company. Triller was accused of defaulting a number of payments amounting to $28 Million. However, now the dispute has been settled. As per an announcement made by both the parties regarding this settlement has led to an increase in the ownership stake in Triller for Swizz Beatz and Timbaland. Another lawsuit with Proxima Media and Sony Media is also pending against Triller on similar grounds of breach of contract and default in payments.

NETFLIX SETTLES THE COPYRIGHT SUIT AGAINST THE CREATORS OF "THE UNOFFICIAL BRIDGERTON MUSICAL"

In July, Netflix sued Emily Bear and Abigail Barlow, the makers of the musical, for copyright infringement over a for-profit show at the Kennedy Center in Washington, D.C. Initially, the tune of the duo's song was different which was later on changed after they won the Grammy for the best musical theatre album award and decided to exploit the music by way of live shows and merchandise. Netflix claimed that the Defendants blatantly infringed Netflix's copyright despite repeated warnings that the same wasn't authorized. As of now both the parties have decided on a deal to resolve the suit, but the terms of deal are not yet disclosed.

DISNEY LOSES THE BID TO DISMISS THE 'MUPPET BABIES' REBOOT COPYRIGHT SUIT

The copyright infringement suit filed by Jeffrey Scott, the screenwriter of the original "Muppet Babies" series, against Disney in relation to its 2018 reboot of the same series, which was earlier dismissed owing to his personal bankruptcy has been revived by the US District Court after observing that Disney might have copied certain elements of the reboot show from the original "Muppet Babies" production bible that Scott had authored in the 1980s. The order is in line with the recent mandates from a US Federal Appeals Court, directing the lower courts not to prematurely dismiss copyright cases at the pleading stage. The Plaintiff further alleged that there exists substantial similarity between specific scripts of the original and the reboot series and breached the contract which was in place between Disney and Scott. The suit emphasized on email from a company executive she concealed from Scott that Disney had no intention of including him in the reboot despite asking for ideas. Subsequent to which, Disney lost its right on moving to dismiss Scott's fraud claims.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2022

The MCA *vide* notification dated September 20, 2022 (accessible here), has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 ("**CSR Amendment Rules**") which amends the Companies (Corporate Social Responsibility Policy) Rules, 2014 (**"CSR Rules"**).

Under the CSR Amendment Rules, the MCA has made the following amendments to the CSR Rules:

1. Rule 3(1) of the CSR Rules 2014 has been amended to include a new proviso to provide that a company having any amount in its 'Unspent Corporate Social Responsibility Account' as per Section 135(6) of the Companies Act, 2013 ("**Act**") shall be required to constitute a CSR Committee and comply with the provisions contained in relation thereto under the Act. Therefore, a company cannot dissolve its CSR committee as long that there is any amount lying in its 'Unspent Corporate Social Responsibility Account'.

2. Rule 3(2) of the CSR Rules has been omitted. As per the earlier provision, the CSR related provisions ceased to be applicable on a company when it ceased to meet the criteria as specified in Section 135(1) of the Act for 3 (three) consecutive financial years thereby requiring companies which would cease to be covered under Section 135(1) of the Act to continue with compliance of Section 135 of the Act for up to three financial years. Pursuant to the amendment, the criteria under Section 135(1) shall have to be verified every financial year, and only companies fulfilling the criteria under Section 135(1) of the Act shall be required to comply with the prescribed provisions for such financial year.

3. Rule 4(1) of the CSR Rules has been substituted with a new provision which widens the category of entities that can appointed as implementing agency which can be appointed by a company to undertake CSR activities. As per this amendment, now a company may also undertake its CSR activities through

   (a) a company established under Section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of Section 10 of the Act or registered under Section 12A of the Act and approved under Section 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company; or

   (b) a company established under Section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of Section 10 of the Act or registered under Section 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

4. Rule 8(3)(c) of the CSR Rules has been amended to revise the limits of the company to book expenditure towards undertaking impact assessment from *'up to 5% of the total CSR expenditure for that financial year or Rs. 50 Lakhs, whichever is less'* to *'up to 2% of the total CSR expenditure for that financial year or Rs. 50 Lakhs, whichever is higher'*.

5. A new format for the annual report on CSR activities has been introduced, which is to be included in the board's report for the financial year.

COMPANIES (SPECIFICATION OF DEFINITION DETAILS) AMENDMENT RULES, 2022

The MCA *vide* notification dated September 15, 2022 (accessible here) has notified Companies (Specification of Definition Details) Amendment Rules, 2022 ("**Specification Amendment Rules**") which amends the Companies (Specification of Definition Details) Rules, 2014 ("**Specification Rules**"). Under the Specification Amendment Rules, the Specification Rules has been amended to revise the thresholds for 'small companies' by increasing their thresholds for ***(i)*** paid up capital from "not exceeding Rs 2 crore" to "not exceeding Rs 4 crore", and ***(ii)*** turnover from "not exceeding Rs 20 crore" to "not exceeding Rs 40 crore".

NOTIFICATION U/S 55(2) OF THE INSOLVENCY & BANKRUPTCY CODE, 2016

The MCA *vide* notification dated September 02, 2022 ("**IBC Notification**") (accessible here) has amended its previous notification dated June 14, 2017 (accessible here) in respect of fast track insolvency resolution process for 'Startups.' Under the IBC Notification, the MCA has widened the definition of 'Startup' to have the meaning as defined in the notification dated February 19, 2019 issued by the Government of India in the Ministry of Commerce and Industry number G.S.R. 127(E) published in the Gazette of India (accessible here) under which the definition of 'Startup' was widened to provide that an entity shall be considered a Startup for a period of 10 years from the date of its incorporation/registration (from the then existing limit of 7 years) and the threshold for turnover was increased from Rs. 25,00,00,000 (Rupees Twenty-Five Crores) to Rs. 100,00,00,000 (Rupees One Hundred Crores).

EXTENSION OF TIME FOR FILING E-FORM DIR-3-KYC AND WEB-FORM DIR-3-KYC-WEB

The MCA *vide* general circular dated September 28, 2022 (accessible here) has further extended the date of filing of e-form DIR-3-KYC and web-form DIR-3-KYC upto October 15, 2022 without late filing fee for updating of KYC details of directors for the financial year 2021-22.

GUIDELINES ON DIGITAL LENDING

Following RBI's press release on 'Recommendations of the Working Group on Digital Lending – Implementation' dated August 10, 2022, the RBI, vide circular dated September 02, 2022, bearing reference number RBI/2022-23/111 DOR.CRE.REC.66/21.07.001/2022-23 ("**Digital Lending Guidelines**") has issued detailed guidelines on recommendations of the Working Group accepted for immediate implementation.

While issuing the Digital Lending Guidelines, the RBI has reiterated that even if Regulated Entities ("**REs**") are entering into outsourcing arrangements with lending service providers ("**LSP**") or digital lending apps ("**DLA**"), REs will need to conform to the existing guidelines on outsourcing and ensure that the LSPs and DLAs engaged by them (or by the LSP) comply with the Digital Lending Guidelines. The Digital Lending Guidelines are applicable to existing customers availing fresh loans and to new customers.

The Digital Lending Guidelines are applicable to all commercial banks, primary (urban) co-operative banks, state co-operative banks, district central co-operative banks; and non-banking financial companies ("**NBFCs**") (including housing finance companies).

Some of the key features of the Digital Lending Guidelines are given below:

a. *Loan disbursal, servicing and repayment:* Loan servicing, repayment, disbursals, etc. shall be done directly between borrower's bank account and RE's bank account, without any pass-through/pool account of the LSPs/DLAs or any other third party. Following are exempt:

   (i) disbursals covered exclusively under statutory or regulatory mandate of RBI or of any other regulator;

   (ii) flow of money between REs for co-lending transactions; and

   (iii) disbursals for specific end use, provided disbursed directly into beneficiary bank account.

b. *Collection of fees, penal / interest charges, etc.*: payable by REs to the LSPs in relation to the credit intermediation process should be paid directly by the RE and should not charged by LSP to the borrower. Penal / interest charges to be disclosed upfront to the borrower (on an annualized basis) and calculated on the outstanding amount of the loan.

c. *Disclosures to borrowers:*

   (i) REs to provide a key fact statement (KFS) to the borrower before execution of the contract in the format as specified in the Digital Lending Guidelines;

   (ii) annual percentage rate as all-inclusive cost of digital loans to be disclosed upfront to borrowers in the KFS, failing which they shall not be payable by borrower;

   (iii) KFS to contain *inter alia* details of grievance redressal officer, recovery mechanism, cooling off/look-up period.

d. REs to ensure that digitally signed documents, KFS, account statements, privacy policies, sanction letter, etc. are shared directly with the borrower on their registered email address / SMS, after execution.

e. RE's letterhead and LSPs shall appoint a nodal grievance redressal officer who will be responsible for dealing with fintech/digital lending related complaints or issues raised by the borrowers.

f. There should be no increase in the credit limit without the explicit consent of the borrower;

g. Any lending sourced through DLAs engaged by the REs and/or DLAs of LSPs has to be reported to credit information companies ("**CICs**"), irrespective of the nature or tenure of such lending as per the provisions of the Credit Information Companies (Regulation) Act, 2005; CIC Rules, 2006; CIC Regulations, 2006 and related guidelines issued by RBI;

h. REs shall especially comply with provisions of synthetic securitisation as per Paragraph (6)(c) of 'Master Direction – RBI (Securitisation of Standard Assets) Directions, 2021 dated September 24, 2021, with respect to financial products involving contractual agreements such as first loss default guarantee.

DSK View: *With digitization on the rise, RBI's decision to issue guidelines on digital lending, is a step taken in light of increasing cases of exploitation of consumers by way of data privacy breaches, mis-selling, charging exorbitant interest rates, unethical recovery practices, etc. Amongst other things, the Digital Lending Guidelines hold RBI regulated entities accountable for the actions of LSPs and DLAs engaged by them. This step will help protect public interest by regulating foul practices and also instill confidence amongst borrowers and encourage healthy development of the fintech industry which is growing at a rapid pace following rising digitization.*

DIGITALISATION OF RURAL FINANCE IN INDIA – PILOT FOR KISAN CREDIT CARD (KCC) LENDING DEVELOPED BY THE RESERVE BANK INNOVATION HUB

The Reserve Bank of India ("**RBI**") vide press release dated September 02, 2022, bearing reference number 2022-2023/807, has launched a pilot project for end-to-end digitalization of KCC ("**the Project**"). The Project is being developed by RBI's subsidiary, namely, the Reserve Bank Innovation Hub ("**RBIH**"), to work towards digitalisation of various aspects of rural finance in India. The Project involves automation of various processes within banks and integration of banking systems with that of service providers, to try and reduce the turn-around-time from loan application to disbursement. The Project which proposes digitalizing the KCC also aims to increase efficiency and decrease borrower expenses.

The Project has commenced in September 2022, in certain districts of Madhya Pradesh and Tamil Nadu with the support of the respective state governments. Union Bank of India and Federal Bank will play the role of partner banks in Madhya Pradesh and Tamil Nadu, respectively. The Project will then be expanded to other districts and gradually across the country, basis the learnings of the pilot.

DSK View: *Digitalisation of rural finance forms an important objective of RBI's Fintech initiatives. As per RBI statistics, turn-around time from loan application to disbursal takes anywhere between 2 (two) to 4 (four) weeks in rural areas. The pilot Project is expected to play a pivotal role in facilitating credit flow to the unserved and under-served rural population, a majority of which consists of farmers, small businesses, and ancillary industries, by speeding up the credit process and aiming to make it more user friendly and efficient.*

REGULATORY SANDBOX – FIFTH COHORT ANNOUNCEMENT AND OPENING OF 'ON TAP' APPLICATION FOR SECOND COHORT ON 'CROSS BORDER PAYMENTS'

The RBI vide press release dated September 05, 2022, bearing reference number 2022-2023/816, announced the Fifth Cohort under the Regulatory Sandbox with a neutral theme. Accordingly, applicants across various functions in the RBI's regulatory domain can submit applications for innovative products, services and technologies. The submission period for the said applications is yet to be announced.

The Second Cohort on 'Cross Border Payments' has also been made available for 'On Tap' applications.

The Regulatory Sandbox is a well-defined space and duration where the financial sector regulator provides regulatory guidance to increase efficiency, manage risks and create new opportunities for consumers.

DSK View: *The RBI set up an inter-regulatory working group in July 2016 to look into and report on the finer aspects of financial technology ("**FinTech**") and its implications vis-à-vis the regulatory framework and to respond to the fast-developing requirements of FinTech industry. The Regulatory Sandbox was one of the key recommendations of the working group. A comprehensive framework highlighting the clear principles and role of the regulatory sandbox was issued on October 08, 2021.*

REGULATORY SANDBOX: 'ON TAP' APPLICATION FACILITY FOR THEME 'RETAIL PAYMENTS' – SHORTLISTING OF ENTITIES

The RBI vide press release dated September 05, 2022, bearing reference number 2022-2023/817, has selected the following entities for the 'Test Phase' of the 'On Tap' application facility for the theme 'Retail Payments' as per the Enabling Framework for Regulatory Sandbox. The selected entities and their products are described as below:

A. HDFC Bank (in partnership with Crunchfish AB) proposes to provide a product in relation to "Offline Retail Payments," to both consumers and business owners

whereby they can send and receive payments in offline mode. The technology enables transactions without the need for an internet connection and is expected to increase digital payment methods in locations with little or no network coverage.

B. Precision Biometric India Private Limited proposes to offer a product named "InnaIT Key Solution for Banking" which aims at providing a biometric token-enabled alternative to one-time passwords (OTPs) for usage with respect to internet banking. The solution combines public key infrastructure (PKI) with Biometric to improve security and user experience in the digital payments industry.

REVIEW OF PRUDENTIAL NORMS – RISK WEIGHTS FOR EXPOSURES GUARANTEED BY CREDIT GUARANTEE SCHEMES (CGS)

Pursuant to the Master Circular on Basel III Capital Regulations, issued on April 1, 2022, the RBI has permitted banks to apply zero percent risk weights in respect of claims on Credit Guarantee Fund Trust for Micro and Small Enterprises ("**CGTMSE**"), Credit Risk Guarantee Fund Trust for Low Income Housing ("**CRGFTLIH"**) and individual schemes under National Credit Guarantee Trustee Company Ltd ("**NCGTC**").

In this regard, the RBI, vide notification bearing reference number RBI/2022-23/113 DOR.STR.REC.67/21.06.201/2022-23 dated September 07, 2022 ("**CGS Circular**"), has advised that the risk weight of zero percent shall be applicable to exposures guaranteed under any existing or future schemes launched by the CGTMSE, CRGFTLIH and NCGTC, in order to have a consistent approach with regard to risk weights for exposures guaranteed by these entities. The RBI has stipulated certain conditions pertaining to prudential aspects, restrictions on permissible claims, etc. that need to be fulfilled in order to apply the risk weight of zero percent. Further, for any future schemes to be eligible for zero percent risk weight, the scheme needs to *inter alia* provide for settlement of eligible guaranteed claims within thirty days from the date of lodgment.

The notification also provides illustrations of risk weights applicable on claims guaranteed under specific existing schemes.

***DSK View**: Risk-weighted assets are off-balance sheet exposures of an entity, which are weighted according to their risk. When a financial sector entity provides a guarantee, it is an off-balance sheet exposure which requires capital allocation to ensure that the financial entity can absorb the risk. The exposure amount is usually multiplied with the risk weight. The CGS Circular aims to bring about uniformity for exposures guaranteed by CGTMSE, CRGFTLIH and NCGTC.*

RERA

HARYANA RERA THREATENS TO BAR REAL ESTATE AGENTS FOR CHARGING ARBITRARY BROKERAGE FROM HOMEBUYERS

The Haryana Real Estate Regulatory Authority ("**HARERA**") has alarmed the real estate agents for charging arbitrary brokerage costs from homebuyers after several complaints being filed by cheated buyers or allottees for relief. The HARERA has determined to fix this situation by blacklisting such brokers who have been charging brokerage arbitrarily. The HARERA refers to the Haryana Regulation for Property Dealers and Consultants Rules, 2009, which prescribes that only half a percent commission each from the buyers and the sellers is allowed to be charged under the said rules.

The HARERA, prohibited one of the agents from charging brokerage of more than a half percent, being deducted by the promoters on surrendering the units by the homebuyers. Further, HARERA stated that charging arbitrary brokerage is offensive under the Real Estate (Regulation and Development) Act, 2016 ("**RERA Act**") and agents/brokers adopting such malpractice are punishable under the RERA Act. Further, the authority has issued warning to around 1840 registered brokers/agents for charging arbitrary brokerage from homebuyers.

RELIEF TO HOMEBUYERS FROM COERCIVE EMI REPAYMENT: KARNATAKA HIGH COURT

A single judge bench of Hon'ble Justice Krishna S Dixit in the case of *Mudit Saxena v/s Union of India*, granted relief to more than 30 homebuyers by issuing a writ of mandamus on September 14, 2022, filed for challenging coercive recovery measures taken by the Punjab National Bank Housing Finance Ltd. ("**PNBHFL**"), post withdrawal of their flat bookings in an ongoing construction project.

The homebuyers had booked apartment units with Mantri Developers Private Limited under a pre-EMI scheme and a pre-sanctioned loan *vide* a tripartite agreement between the homebuyers, developer and PNBHFL. In terms of the tripartite agreement, the loan amount shall be refunded back to the bank by the developers in case of any withdrawal or cancellation of bookings. However, when some of the homebuyers tried to withdraw their bookings because of the slow pace of work by the developers, the developers did not return the amount back to the bank. Subsequently, complaints were filed with the Karnataka RERA under Section 31 of the RERA Act. The Karnataka RERA authorities under its orders had the developers to refund the amount of loan raised along with 10% (Ten Percent) interest. However, the orders of Karnataka RERA were not followed by the developers which led to banks initiating coercive proceedings to recover the loan amounts from the homebuyers.

In relief of the same the Hon'ble Karnataka High Court passed an order and restrained PNBHFL from taking any coercive measures to recover the amount from homebuyers.

DEVELOPERS ALLOWED TO DE-REGISTER SOUTH MUMBAI PROJECT PAVING WAY FOR MORE SUCH EXITS: Maharashtra RERA

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") allows a developer namely Turf Estate Joint Venture LLP, to de-register a residential project, stating that there is no provision in the RERA Act to force completion of the project when the developer had expressed inability to complete it and the act is silent with respect of the same. The order was passed by the MahaRERA, after obtaining prior written consent from two-thirds of allottees. Further, MahaRERA had ordered to refund the amount paid by the allottees along with 9% (Nine Percent) interest. The project became unviable on the ground that 21 allotees out of 27 allotees, cancelled their allotments. By virtue of this landmark order, the developers have been provided with an option to explore in case the project becomes commercially unviable.

MahaRERA, relied on Section 14 and Section 15 of the RERA Act to back the stance of de-registering the project. Section 14 of the RERA Act clearly states that wherever major changes like alterations in sanction plan layout plan specification of the building are envisaged the same cannot be done without the written consent of two-thirds of the allottees. The Act lays out the condition precedent to permit substantial changes. Further, Section 15 lays down the process to be followed wherein the original promoter desires to transfer or assign his majority rights and liabilities to any third party. Thus, the legislature has recognised that there will be situations arising wherein certain major changes would have to be carried out without jeopardising the rights of the allottees. Thus, this order passed by the MahaRERA has become a landmark step to protect the rights of the developers.

UTTAR PRADESH REAL ESTATE REGULATORY AUTHORITY IMPOSES PENALTY AGAINST 13 DEVELOPERS

The Uttar Pradesh Real Estate Regulatory Authority ("**UP RERA**") imposed penalty of more than Rs. 1,39,00,000/- (Indian Rupees One Crore Thirty-Nine Lakhs Only) on 13 (Thirteen) developers for non-compliance of orders despite granting sufficient time to the guilty developers. This step has been taken by the UP RERA to ensure speedy justice and proper enforcement of orders.

UP RERA, used its powers under Section 38 and Section 63 of the RERA Act that empowers the authority to penalize the non-compliant promoters and to impose penalty against them.

APEX COURT GRANTS FOUR WEEKS TIME TO STATES AND UNION TERRITORIES TO RESPOND TO THE DEVIATIONS IN THE RERA RULES IN THEIR JURISDICTIONS

The Hon'ble Supreme Court on September 30, 2022, while hearing a matter pertaining to implementation of a model builder buyer agreement across the country, granted another 4 (Four) weeks to States and Union Territories who have not filed their reply to the deviations and variations pointed out in the implementation of RERA Act, and its corresponding rules and laws in their jurisdiction. A bench of Hon'ble Justices D Y Chandrachud and Hima Kohli, stated that in case requisite responses are not filed within the stipulated period, principal secretaries of housing and urban development shall have to be present in the court to explain the delay to file replies in this regard. The aim under the plea was to prepare a model agreement by the Central Government as to create uniformity in the agreement, and to safeguard the interest of homebuyers.

BUILDER ASKED TO DEPOSIT RS 64 LAKH BEFORE APPEAL AGAINST ASSAM RERA: ASSAM REAL ESTATE APPELLATE TRIBUNAL

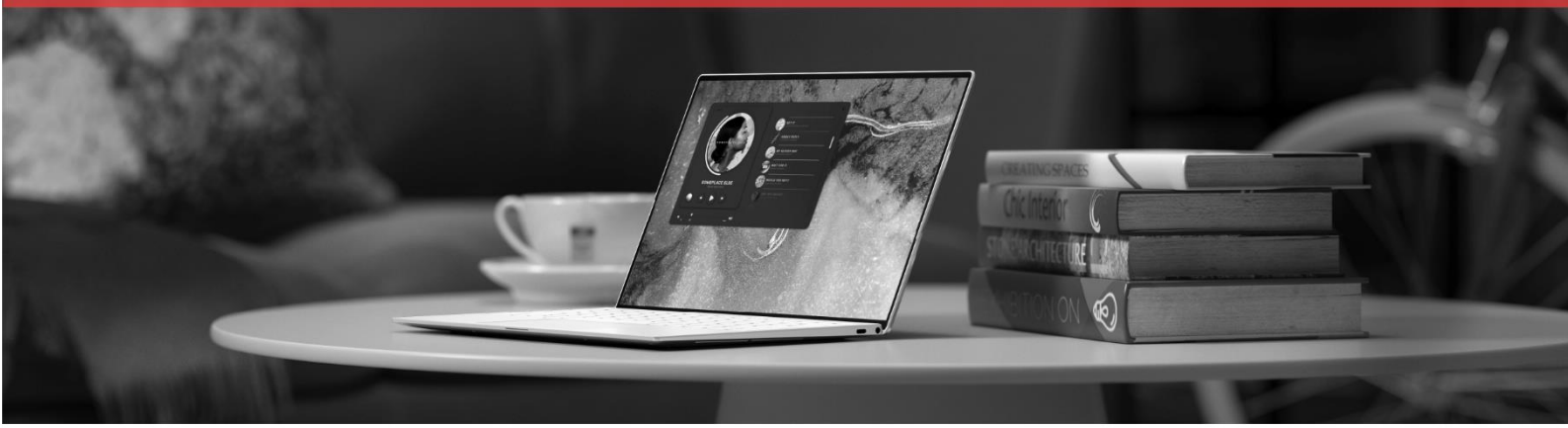
In an appeal filed by M/s Gargi & Associates Private Limited, ("**Builder**") against an order dated June 02, 2022, passed by the Assam RERA, wherein the Assam RERA had directed the Builder to return the consideration amount of Rs. 34,00,000/- (Rupees Thirty-Four Lakhs only) along with interest to the buyer of the flat for failure to deliver the flat on time, the Assam Real Estate Appellate Tribunal ("**Assam REAT**"), has directed the Builder to deposit an amount of Rs. 64,21,955 (Rupees Sixty-Four Lakh Twenty-One Thousand Nine Hundred and Fifty-Five Only) to the Assam REAT, within 3 (Three) weeks before it hears the appeal against the order.

The order was passed by the Assam REAT in accordance with Section 43, sub-section 5 of the RERA Act, wherein it contains that the quantum of deposit, required to be deposited by the promoter/developer with the appellate tribunal before the appeal to challenge the orders of the RERA are entertained.

DDA TO NOTIFY DELHI'S MASTER PLAN BY APRIL 2023

The Delhi Development Authority ("**DDA**"), on September 13, 2022, informed the Bench of Hon'ble Justice Sanjay Kishan Kaul and Hon'ble Justice Abhay S Oka, Hon'ble Supreme Court that the draft Delhi Master Plan-2041 ("**MPD-2041**") are proposed to be notified by April 2023. The aim of this initiative by the authorities is to curb illegal construction in Delhi and help legalize farmhouses.

The authorities of DDA also notified the Hon'ble Supreme Court, that DDA is aiming the to send a letter to the Ministry of Housing and Urban Development for final approval and notification of the MPD-2041 by January 15, 2023, and the final Master Plan shall be published on or before April 30, 2023, as per DDA in the hearing. DDA authorities have already put the draft in the public domain, inviting objections and suggestions. In April 2021, the DDA gave its preliminary approval to the MPD 2041, which is working as a blueprint for future development of the capital city for two decades.



DEPARTMENT OF TELECOMMUNICATIONS RELEASES THE DRAFT TELECOMMUNICATION BILL, 2022

The Department of Telecommunications ("**DoT**"), Government of India has released the draft of the Indian Telecommunication Bill, 2022 ("**Bill**") on September 21, 2022 (available here) for public consultation, and has solicited comments and inputs from the relevant stakeholders. The Bill proposes to consolidate and repeal three separate acts which currently govern the provision, development, expansion and operation of telecommunication services, telecommunication networks and telecommunication infrastructure, namely, the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, and the Telegraph Wires (Unlawful Protection) Act, 1950.

The Bill has been framed basis the comments, inputs and suggestive reforms received by the Ministry of Communications on its consultation paper titled '*Need for a new legal framework governing Telecommunication in India*', issued by the DoT in July, 2022 (available here) from the stakeholders. The draft Bill has widened the definition of the term 'telecommunication services', bringing within its ambit over-the-top communication services (such as WhatsApp, Signal and Telegram), internet and broadband services, and satellite-based communication services. The Bill captures detailed provisions relating to suspension of services (internet shutdowns) and interception of messages have also been introduced. The Bill lays down an explicit regulatory framework for the Central Government to undertake spectrum assignment to the regulated entities. The intent of the regulatory framework is to ensure spectrum management which serves the common good and enables widespread access to telecommunication services.

EU ANNOUNCES CYBER RESILIENCE ACT FOR SMART DEVICES

The European Commission on September 13, 2022, announced its proposal for enacting the new Cyber Resilience Act (available here) ("**Resilience Act**"), aimed at improving the security of internet-connected devices. The Resilience Act aims to safeguard consumers and businesses buying or using digital products, softwares with a digital components and associated services that are placed on the market across the European Union by making the manufacturers responsible for the security of their products throughout its lifecycle. In terms of the Resilience Act, the manufacturers will be required to assess the cybersecurity risks of their products and notify the European Union Agency for Cybersecurity (ENISA) of any incidents which may have an impact on the security of products with digital elements (i.e., features which allows such products to be connected with the internet) within 24 hours of discovery and undertake such corrective or risk mitigating measures, as may be required. Additionally, the Resilience Act prescribes that the importers and distributors of such products will be required to verify that the products conform with the provisions of the said Resilience Act; and any non-compliance may result in prohibition or restriction of availability of the product in the market through withdrawal or recall; with penalties up to 15 million euros or higher, being imposed.

CALIFORNIA SIGNS NEW SOCIAL MEDIA TRANSPARENCY BILL

The Governor of California - Gavin Newsom on September 13, 2022, signed into law, a first-of-its-kind measure that aims to provide greater transparency into the role of social media platforms in amplifying extreme and dangerous content. The Assembly Bill (AB)-587 ("**Bill**") (available here) will require social media platforms to publicly disclose their content moderation policies governing hate speech,

disinformation, extremism, harassment, and foreign political interference, as well as key metrics and data regarding how and when they enforce those policies. In doing so, the Bill will pull back the curtain to provide transparency into how social media companies are moderating public discourse in the U.S. and around the globe. The Bill further aims to enable consumers and policymakers to determine whether platforms are merely regulating contentious content, or instead amplifying it in pursuit of greater user engagement and profitability.

DELHI HIGHT COURT UPHOLDS RESERVE BANK OF INDIA'S GUIDELINES FOR PAYMENT AGGREGATORS

A division bench of the Delhi High Court, vide its judgment dated September 15, 2022 (available here) in the case of *Lotus Pay Solutions Pvt Ltd & Anr. v Union of India & Ors.* ruled that payment aggregators ("**PAs**") fall within the definition of designated payment system under Section 23A of the Payment and Settlement Systems Act, 2007 and that the Reserve Bank of India (RBI) has the power to issue guidelines for efficient management for such payment systems. The ruling of the Delhi High Court succeeds the writ petition filed by Lotus Pay Solutions Private Limited, wherein Clauses 3, 4 and 8 of the circular dated March 17, 2020 issued by RBI titled 'Guidelines on Regulation of Payment Aggregators and Payment Gateways' were challenged by the petitioner ("**Guidelines**") (available here).

The Court, while dismissing the plea, held that PAs not only provide an integration system but also handle funds of customers, and therefore, their services (offered to the payer and beneficiary via the use of technology) would fall within the ambit of the payment system, accordingly requiring PAs to seek authorisation from the RBI to operate. The Guidelines while mandating the requirement of licensing for non-banking entities which offer payment aggregation services, had also set forth the requirement for existing PAs to achieve a net worth of ₹15 crore by end of March 2021 and to scale up the same to ₹25 crore by the end of March 2023.

CENTRAL GOVERNMENT NOTIFIES CRIMINAL PROCEDURE (IDENTIFICATION) RULES UNDER THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022

The Ministry of Home Affairs vide a notification dated September 19, 2022, notified the Criminal Procedure (Identification) Rules, 2022, ("**Rules**") (available here) under the Criminal Procedure (Identification) Act, 2022 ("**CPIA**") (available here). The Rules largely set out the procedural requirements in terms of data processing related compliances under the CPIA.

The Rules set forth the definition of the term 'measurements' by including within its ambit, biometric data (such as finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis); and behavioural attributes including signatures, handwriting, amongst others. In terms of the Rules, any authorised user or any skilled person shall be allowed to take the measurements of a person for the purposes of the CPIA. The Rules further authorise the National Crime Records Bureau ("**NCRB**") to issue the standard operating procedures for taking, handling, storing, disseminating, and destroying the measurements and empowers the NCRB to further exercise control over the preservation, processing, sharing and destruction of data collected through such measurements. The Rules also stipulate that the measurements be uploaded and stored in digital format and follow the encryption method. Further, any act contravening the provisions of the CPIA and the Rules shall be punishable as per the provisions of the Indian Penal Code, 1860 and the Information Technology Act, 2000.

RESERVE BANK OF INDIA ISSUES GUIDELINES ON DIGITAL LENDING

The Reserve Bank of India ("**RBI**") on September 2, 2022, issued the 'Guidelines on Digital Lending' (available here) which are applicable to digital lending by: (a) all commercial banks; (b) primary (urban) co-operative banks, state co-operative banks, district central co-operative banks; and (c) NBFCs (including Housing Finance Companies) ("**Guidelines**"). The instructions listed under the Guidelines have been made applicable to 'existing customers availing fresh loans' and to 'new customers getting onboarded' with immediate effect (i.e., from the date of the Guidelines). However, in order to ensure smooth transition of 'existing digital loans' (sanctioned as on the date of the Guidelines), RBI has allowed the regulated entities time until November 30, 2022, to put in place adequate systems and processes to ensure that such existing digital loans are also in compliance with the Guidelines.

RBI GOVERNOR LAUNCHES THREE KEY DIGITAL PAYMENT INITIATIVES

RBI Governor launched three key initiatives– RuPay Credit Card on UPI, UPI LITE and Bharat BillPay Cross Border Bill Payments during the Global Fintech Fest 2022, (available here) held in Mumbai on September 20, 2022. While the RuPay Credit Cards are proposed to be linked to a virtual payment address (VPA) i.e., UPI ID, thereby directly enabling safe and secure payment transactions; UPI Lite will provide users with a convenient solution for faster and simpler low-value transactions. Further, Bharat BillPay Cross-Border Bill Payments is aimed at making bill payments easier for people residing out of India (and maintaining a house in India) by enabling them to undertake utility, water, and telephone-related bill payments on behalf of their families in India. It is believed that the three initiatives together will give the potential to revolutionize the digital payments ecosystem and extend the reach of digital payments to new users across

India & abroad and aid the journey of onboarding the next 300 million users on digital payments.

FOR CONVICTION UNDER SECTION 411 OF IPC, PROSECUTION MUST ESTABLISH THAT THE ACCUSED HAD KNOWLEDGE THAT THE PROPERTY WAS A STOLEN PROPERTY

The Supreme Court of India in the case of ***Shiv Kumar v. State of Madhya Pradesh*** (Criminal Appeal No. 1503 of 2022) observed that for conviction under Section 411 of the Indian Penal Code, 1860 ("**IPC**") – "*Dishonestly receiving stolen property*" – it must be established by the prosecution that the accused had knowledge that the property in his possession was stolen property. In this case, the prosecution alleged that the accused Shiv Kumar and Shatrughan Prasad dishonestly received goods which were looted from a truck. It was stated that they were aware of the fact that the goods were stolen property. The Trial Court convicted the accused, and the High Court also confirmed the conviction.

The counsel for the accused, while challenging the decision of the Trial Court and the High Court, contended that the essential ingredients of Section 411 of the IPC were not made out as the prosecution failed to adduce any evidence to show that the accused had knowledge that the seized articles were stolen from the looted truck. The Supreme Court, while setting aside the High Court and Trial Court orders, referred the judgment in *Trimbak v. State of Madhya Pradesh*[12] and held that the essential ingredients for conviction under Section 411 of the IPC are – (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property.

DSK View: *The Supreme Court thus held that the prosecution failed to establish that the accused had any knowledge about the fact that the articles seized from his possession were stolen goods, and that the essential ingredient of mens rea is clearly not established for the charge under Section 411 of the IPC.*

COURTS MUST BE SLOW TO EXERCISE THEIR JURISDICTION TO QUASH CRIMINAL PROCEEDINGS ON THE BASIS OF SETTLEMENT BETWEEN COMPLAINANT AND ACCUSED WHEN OFFENCES ARE CAPABLE OF IMPACTING OTHERS

The Supreme Court in ***P Dharamaraj v. Shanmugam*** (Criminal Appeal No. 1514 of 2022; Special Leave Petition (Crl.) No. 1354 of 2022 and Criminal Appeal Nos. 1515-1516 of 2022) observed that the courts should be slow while exercising their jurisdiction to quash criminal proceedings on the basis of settlement, when the offences are capable of having an impact on the society at large. The Supreme Court made the above observation while setting aside a judgment of the Madras High Court which quashed a criminal complaint arising out of a cash-for-job scam. In this case, four persons were named in the First Information Report ("**FIR**") as accused and a final report was filed against them under Sections 406, 409, 420, 506(1) read with Section 32 of the IPC. Thereafter, one of the accused filed a petition before the High Court, which was allowed after the *de facto* complainant - K. Arulmani filed an affidavit supporting the accused and praying for quashing of the final report – on the ground that the dispute had been settled out of Court. The Appellant in the present case filed a special leave petition contending that he would have been selected for the said job if the cash-for-job scam had not taken place. The rival contentions addressed by the Supreme Court included the following: (i) the locus standi of the appellants; and (ii) the effect of the compromise entered into between the de facto complainant and the thirteen named victims on the one hand and the four accused on the other hand; and (iii) the non-inclusion in the charge sheet of the offences under the Prevention of Corruption Act, 1988. On the first issue of locus standi, the bench noted that the appellant is a victim as he could not get selected on account of the alleged corrupt

[12] AIR 1954 SC 39

practices and rejected the objection of the respondents to the locus standi of the Appellants. On the second issue, it was held that a court has to go slow even while exercising jurisdiction under Section 482 of the Criminal Procedure Code, 1973 or Article 226 of the Constitution in the matter of quashing of criminal proceedings on the basis of a settlement reached between the parties, when the offences are capable of having an impact not merely on the complainant and the accused but also on others. The Bench further noted that the Court cannot deal with cases involving abuse of official position and adoption of corrupt practices, like suits for specific performance, where the refund of the money paid may also satisfy the agreement holder. Lastly, regarding the third issue, the Court remarked that the attempt of the investigating officer, of non-inclusion of the offences under the Prevention of Corruption Act, 1988, in the final report appears to be of one, "*willing to strike but afraid to wound*."

DSK View: *The Supreme Court, by way of this judgment, has highlighted that the abuse of official position and adoption of corrupt practices is an offence against the society at large, hence, it is inappropriate to deal with these cases like suits for specific performance etc.*

TRANSFER PETITION CANNOT BE ADMITTED ON THE GROUNDS THAT ORDERS ADVERSE TO THEM ARE PASSED

The Supreme Court in the case of ***Anupam Ghosh v. Faiz Mohammed*** (Transfer Petition (C) Nos. 2331-2334 of 2021) remarked that in the present times, there is a tendency on part of the litigants, to make allegations against judicial Officers whenever orders are passed against them which are not liked by them. The Court strictly condemned this practice. In the present case, the petitioner filed a Transfer Petition under Section 25 of the Code of Civil Procedure, 1908 on the grounds that it has not been given a fair trial as the respondents are able to influence the local court. The Supreme Court stated that if the petitioners are aggrieved by any judicial order, the proper remedy would be to challenge the same before a higher forum. But merely because some orders adverse to them are passed by the Court, it cannot be said that the Orders on the judicial side are passed under influence. Another ground on which the transfer of proceedings was sought by the petitioners was that when the warrant issued by the Executing Court was sought to be executed, a false criminal FIR was filed which caused an apprehension of life of the petitioners. The Supreme Court, in this regard, noted that if the petitioners were aggrieved by the FIR, the remedy would have been to approach the quashing of the same. The Supreme Court dismissed the transfer petition, stating that the allegation that orders are passed under influence can be said to be obstructing the administration of justice.

CHEQUE CASE AGAINST DIRECTOR/PARTNER OF FIRM CAN BE QUASHED ONLY IF THERE IS UNIMPEACHABLE AND INCONTROVERTIBLE EVIDENCE THAT THEY WERE NOT CONCERNED WITH ISSUANCE OF CHEQUE

The Supreme Court in the case of **S.P. Mani and Mohan Dairy vs Dr. Snehalatha Elangovan** (Criminal Appeal No. 1586 of 2022) observed that a High Court can quash a case for dishonor of cheque only if it comes across some unimpeachable and incontrovertible evidence which clearly indicates that the Director/Partner of a firm was not concerned with the issuance of such cheque. In the present case, the High Court had quashed a cheque case against the Partner of a firm on the ground that there was nothing to indicate in what manner she was in-charge and responsible for the day-to-day affairs of the firm. This decision was challenged in the present Criminal Appeal and upon examination, the Supreme Court concluded that the primary responsibility of the complainant is to make specific averments in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no legal requirement for the complainant to show that the accused partner of the firm was aware about each and every transaction. If the accused is able to prove to the satisfaction of the Court that the offence was committed without his/her knowledge or he/she had exercised due diligence to prevent the commission of such offence, he/she will not be liable of punishment.

Further, on analyzing Section 141 of the Negotiable Instrument Act, 1881, the Supreme Court held that the burden upon the prosecution is discharged under sub-section (1) when a person is proved to be in charge of and responsible to the company in the conduct of its business and would shift upon the accused to prove that he was ignorant or diligent, and that he is not liable to be convicted. It was held that a person who signs the cheque or who has the authority to sign the cheque for and on behalf of the company, regardless of his office or capacity, can, prima facie, be assumed to be in charge of and responsible to the company in the conduct of its business. The Supreme Court, therefore, noted in the present case that there were clear and specific averments in the complaint and that the cheque was issued with the consent of the accused and with her knowledge. It was further noted in the present case that the power of quashing should be exercised very sparingly and where, read as a whole, the factual foundation for the offence has been laid in the complaint, it should not be quashed.

DSK View: *The Supreme Court, by way of this judgment, has made it clear that criminal liability is attracted only on those, who at the time of commission of the offence, were in charge of and were responsible for the conduct of the business of the firm. However, it is possible for vicarious criminal liability to be inferred against the Partners of a firm when it is specifically averred in the complaint about the status of the Partners 'qua' the firm. This would make them liable to face the prosecution but does not lead to automatic conviction. If*

the Partners want the complaint to be quashed, they must furnish some sterling incontrovertible material or acceptable circumstances to substantiate the fact that they are not at all concerned with the issuance of the cheque.

A MAGISTRATE COURT CANNOT DIRECT FURTHER INVESTIGATION BY THE POLICE AFTER REJECTING THE CLOSURE REPORT FILED BY A HIGH COURT CONSTITUTED SPECIAL INVESTIGATION TEAM

The Karnataka High Court in the case of ***M. Manjula v. State of Karnataka*** (Writ Petition No.7784 of 2022) has held that a Magistrate Court cannot direct further investigation by another investing agency after rejecting the 'B' report (i.e., the closure report) filed by a probe agency which was appointed by the High Court. In the present case, the petitioner M. Manjula, a family member of the deceased K. Raghunath, had approached the Court seeking further investigation to be conducted into the alleged murder of K. Raghunath by a different Investigating Officer, other than the one who had filed a report before the Court. The petitioner also sought direction for handing over of the entire matter to the Central Bureau of Investigation ("**CBI**") for a re-investigation/fresh investigation. The Court noted that the investigation in this case was to be conducted by the jurisdictional police, however the police did not take action for over a year. Subsequently, the petitioner approached the Court alleging that the accused, who are in the position to influence the jurisdictional police, are interfering with the investigation. A coordinate bench of the Karnataka High Court constituted a Special Investigating Team ("**SIT**") to probe the case.

However, the Magistrate found the 'B' report filed by the SIT to be unreliable and rejected the same. The Magistrate also directed further investigation to be conducted by HAL Police Station. The Supreme Court, in this present case, set aside the said order passed by the Magistrate. Referring to the judgment in *Chandra Babu @ Moses v. State Through Inspector of Police and Ors*[13]., the Court held that the Magistrate does not have the jurisdiction to direct further investigation by any other investigating agency. The Supreme Court also observed that, owing to the existing lacuna in the report of the SIT, this becomes a case where further investigation is imperative and therefore, directed the CBI to conduct further investigation.

DSK View: *The Supreme Court in this case noted that the extraordinary power to hand over the investigation to the CBI must be used sparingly, cautiously and in exceptional circumstances and when it becomes necessary to provide credibility and instill confidence in investigation or when such an order becomes necessary for complete justice.*

GUIDELINE FOR COMPOUNDING OF OFFENCES UNDER INCOME-TAX ACT, 1961

The Central Board of Direct Taxes has through its circular dated September 16, 2022, has released revised guidelines for compounding of offences under the Income-Tax Act, 1961 with a view to simplify and facilitate compounding of offences. This circular repeals all previous guidelines issued by the Central Board of Direct Taxes in this regard.

Some significant developments brought about through these guidelines are:

i. Offences under Chapter XXII of the Act are classified into two parts Category 'A' and Category 'B' for the limited purpose of Compounding of Offences. The Category 'A' offences are the ones where the offences are of technical nature caused by an act of omission. Whereas the Category 'B' offences are non-technical offences attributed to an act of commission.

ii. The Guidelines lay down an eligibility criterion for compounding. To be eligible one must satisfy all the conditions laid down in the guidelines. These include (i) an application has to be made to the Pr.CCIT/ CCIT/ Pr.DGIT/ DGIT having jurisdiction over the case; (ii) the application should be made within prescribed time frame provided under the guideline; (iii) the person has to pay the outstanding tax, interest, penalty and any other sum due relating to the offence for which compounding is sought; (iv) the person should undertake to pay the compounding charges; (v) the person should undertake to withdraw appeals filed by him, if any, related to the offence for which the compounding is sought and (vi) that an application for compounding of offence under sections 276B/276BB of the Act by an applicant for any period for a particular TAN should cover all defaults constituting offence under section 276B /276BB in respect of that TAN for such period.

iii. The guidelines give details of the offences not to be compounded. These include offences under section 275A and section 275B, Category 'A' on more than three occasions, offence under Direct Tax Laws for which the person was convicted earlier with imprisonment for two years or more and offences in respect of which compounding application has already been rejected among others.

iv. The guidelines further provide for an exhaustive procedure for compounding of the offences, thereby, making the process of compounding of offences under the Income Tax Act, 1961 lucid.

[13] (2015) 8 SCC 774

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Apollo Bunder, Colaba,
Mumbai - 400001.
Tel +91 22 6152 6000

Bengaluru

201, 2nd floor, Prestige Loka,
7/1 & 7/7, Brunton Road,
Craig Park Layout, Ashok Nagar,
Bengaluru - 560025.
Tel +91 80 6954 8770

New Delhi

Max House, Level 5,
Okhla Industrial Area, Phase 3,
New Delhi - 110020.
Tel +91 11 4661 6666

Pune

301, 3rd Floor, Power Point, Lane 6,
North Main Road, Koregaon Park,
Pune - 411001.
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Hyderabad

3rd floor, SAHA complex,
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