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NEWSLETTER

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GUIDELINES FOR OVERSEAS INVESTMENT BY ALTERNATIVE INVESTMENT FUNDS (AIFS) / VENTURE CAPITAL FUNDS (VCFS)

SEBI issued new guidelines for overseas investment by Alternative Investment Funds ("**AIFs**")/ Venture Capital Funds ("**VCFs**") via a circular dated August 17, 2022. As per the new guidelines, overseas investee firms won't need to have an Indian connection. Under the rules, AIFs can invest in securities of companies incorporated outside India.

As per the fresh guidelines, AIFs or VCFs will be allowed to invest in an overseas investee company, which is incorporated in a country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding or a signatory to the bilateral Memorandum of Understanding with SEBI

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Further, AIFs or VCFs will not invest in an overseas investee company, which is incorporated in a country identified by the Financial Action Task Force ("**FATF**") as a jurisdiction having a strategic anti-money laundering or combating the financing of terrorism deficiencies to which counter measures apply.

Also, such entities have been prohibited from making an investment in a country that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with FATF to address such deficiencies.

AIFs or VCFs will have to file an application before SEBI for allocation of overseas investment limit in the format.

If an AIF/VCF liquidates an investment made in an overseas investee company previously, the sale proceeds received from such liquidation to the extent of investment made in the said overseas investee company shall be available to all AIFs/VCFs for reinvestment.

Further, AIFs or VCFs will sell the investment in overseas investee companies only to the entities eligible to make overseas investments.

AIFs or VCFs will have to furnish the divestment details of the overseas investments to the capital markets regulator in a specified format within three working days to update the overall limit available for overseas investment by these entities. Also, all the overseas investments sold/divested by them till date will also be reported to SEBI within thirty days.

The circular will come into force with immediate effect.

CIRCULAR FOR PORTFOLIO MANAGERS

Pursuant to the amendment to SEBI (Portfolio Managers) Regulations, 2020, notified on August 22, 2022, SEBI issued a circular dated August 26, 2022, for portfolio managers to ensure certain compliances.

SEBI amended portfolio managers' rules that mandated prudential limits on investments in associates and related parties of portfolio managers, the requirement of taking prior consent of clients for such investments, and restrictions based on the credit rating of securities.

Portfolio managers shall invest up to a maximum of thirty percent of their client's portfolio (as a percentage of the client's assets under management) in the securities of their own associates/related parties. With regard to investment in equity, debt, and hybrid securities, the regulator has fixed a limit of fifteen percent each for investment in a single associate or related party, while the same has been set at twenty-five percent for investment across multiple associates or related parties.

The portfolio manager is not allowed to invest clients' funds in unrated securities of their related parties or their associates without the prior consent of the client. The format of the consent form has been specified in Annexure A of the circular. The regulator defined "associate" as a body corporate in which a director or partner of the portfolio manager holds, either individually or collectively, more than twenty percent of its paid-up equity share capital or partnership interest.

Portfolio managers offering discretionary and non-discretionary portfolio management services shall not make any investment in below-investment-grade securities. Portfolio managers may invest up to ten percent of assets in unlisted unrated securities of the issuer. Further, portfolio managers shall provide a periodic report to the client detailing details of the investment, instances of passive breach of investment limits, and the credit ratings of investments. The portfolio manager shall provide periodic reports and disclosure documents in the format provided in the circular.

The circular shall come into effect from September 20, 2022.

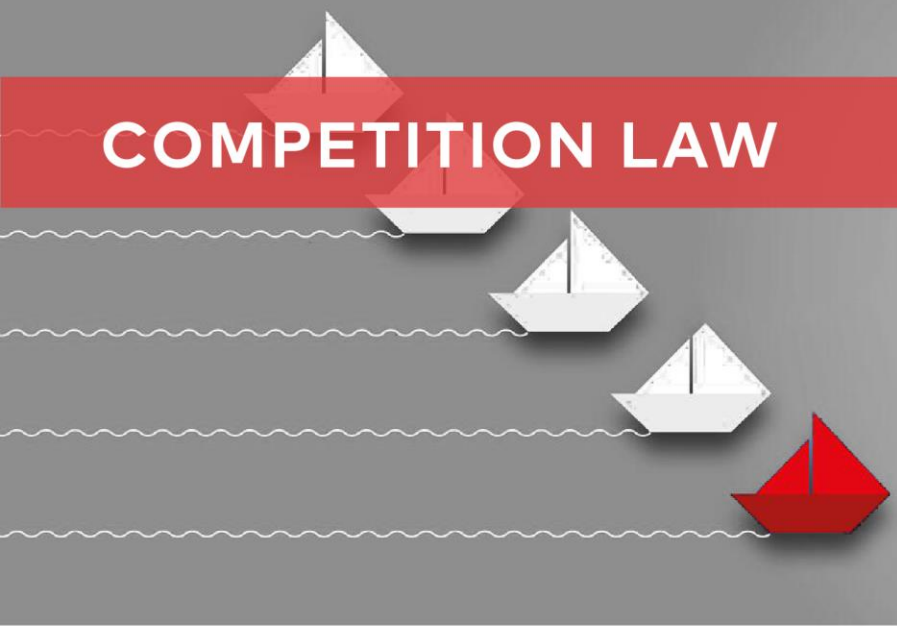
AMENDMENTS TO GUIDELINES FOR THE PREFERENTIAL ISSUE AND INSTITUTIONAL PLACEMENT OF UNITS BY A LISTED INVIT AND REIT

SEBI issued two circulars dated August 26, 2022, by which it modifies guidelines for the preferential issue and institutional placement of units by a listed InvIT and REIT. InvIT/REIT shall make an application for listing the units to the stock exchange(s). The circular reduces the time for making such an application from seven working days to two working days from the date of allotment. Failure of the abovementioned condition will require the InvIT/REIT to refund the monies within four working days from the date of allotment or to repay that money with fifteen percent interest after the expiry of the fourth working day.

Further, the circular modifies the pricing norms of frequently traded units allotted pursuant to the preferential issue. As per the circular, the price of the unit shall not be less than higher of the ninety trading days' volume weighted average price of the related units quoted on the recognized stock exchange preceding the relevant date; or the ten trading days' volume weighted average prices of the related units quoted on a recognized stock exchange preceding the relevant date.

If the preferential issue of units is made to institutional investors, then not exceeding five in number, shall be made at a price not less than the ten trading days' volume weighted average prices of the related units quoted on a recognized stock exchange preceding the relevant date.

Further, Clause 4.1 of the circular dated November 27, 2019, stands modified as now the allotment preferential issue of units shall not be made to any person who has sold or transferred any units of the issuer during the 90 trading days preceding the relevant date.



DELHI HIGH COURT DISMISSES WHATSAPP'S APPEAL

After Facebook's acquisition of WhatsApp in 2014, WhatsApp introduced a data sharing policy in 2016 seeking to share user information with Facebook. Users were however given an 'opt out' option at the time, which led to a challenge before the CCI being dismissed in 2017. In 2021, a revised policy was introduced with no 'opt out' causing a huge uproar and leading to writ petitions before the High Court and the Supreme Court. The CCI simultaneously decided to take up the issue *suo motu* in March 2021, which came to be challenged before the High Court, and dismissed by the single judge on 22.04.2021.

A division bench of the Delhi High Court, vide order dated 25.08.2022, dismissed the appeal in full.

The thrust of the WhatsApp's arguments were centred around the pending writ proceedings and reliance on the Supreme Court's oft cited judgment in *Bharti Airtel*, arguing that the parallel proceedings could lead to conflicting decisions. The Court negated this observing that "*even if the issues are the same, the approach of the authorities is vastly dissimilar…in their respective spheres of adjudication…and a slight overlap between the inquiries does not mean that one must lead to the ouster of the other*." The Court further held that "*The investigation conducted by the CCI will not be affected by the outcome of the proceedings pending before the Apex Court and this Court. In the event the Supreme Court upholds the 2021 Policy, then surely CCI can venture into the question as to whether the provisions of the Act have been violated or not. In the event that the 2021 Policy is set aside by the Supreme Court, the CCI will still possess the jurisdiction to investigate the violation of the Act, if any, during the pendency of the matter before the Supreme Court when the 2021 Policy was in operation*."

While this sounds convincing, it appears to be somewhat of an oversimplification of the issue. The holding of the constitutional courts will be binding on the CCI, and thus observations on the material issues would likely affect the decision of the CCI as well, regardless of whether the CCI is operating within its 'sphere of adjudication'. Nonetheless, the judgment reinforces the jurisdiction of the CCI, and the principle of non-interference in matters before statutory authorities, particularly at the preliminary stage.

KARNATAKA HIGH COURT ALLOWS CCI TO PROCEED WITH ITS INVESTIGATION INTO INTEL'S ALLEGED ABUSE OF DOMINANCE

The Karnataka High Court, vide its order dated 23.08.2022, not only dismissed a writ petition filed by Intel against the *prima facie* order of the CCI, but also imposed a fine of 10 lakhs INR for having "*hastily rushed to this Court and unjustifiably secured an interim order that interdicted an inquiry of preliminary nature, for all these years, to the enormous prejudice of public interest*." The proceedings filed by Intel were, according to the Court, 'premature' and 'devoid of merits' aimed at *"scuttling the innocuous statutory proceedings of the Commission"*, which made it a *"fit case for dismissal with exemplary costs."*

The issue revolved around Intel's warranty policy for India, which limited warranty requests for Intel boxed microprocessors to those purchases made from its official Indian distributor within the country. The CCI had ordered an investigation into Intel's conduct in 2019, which was challenged by Intel before the Karnataka High Court.

Intel relied on CCI's 2014 findings in *Ashish Ahuja v. Snapdeal.com* to argue that identical issues had already been adjudicated by the CCI and hence the principle of *res judicata* would apply on any subsequent proceedings.

The High Court firstly noted the Section 26(1) order was more administrative in character, and writ courts "*ordinarily*

do not have the expertise in matters like this and therefore, should loathe to interfere."

The Court went on to distinguish *Ashish Ahuja's* case since in this case the complainant was importing Intel's boxed microprocessors from its authorized distributors abroad, whereas in Ahuja's case, the products were purchased from unauthorized distribution channels. In added that "*in ever changing matters of commerce & industry of the kind, the doctrine of res judicata ill suits.*"

While this may have very well be sufficient, the Court then engages in a somewhat lengthy discussion of the *in rem* nature of the proceedings under the Competition Act, before noting that the matter was a preliminary stage and Intel would have a right to participate in the investigation and plead its case before the Commission.

CCI DISMISSED THE ACCUSATIONS OF ANTI-COMPETITIVE BEHAVIOUR AGAINST MAHARASHTRA STATE ROAD DEVELOPMENT CORPORATION LIMITED IN THE RELEVANT MARKET OF 'CRYSTALLINE DURABILITY ADMIXTURE IN HEAVY INFRASTRUCTURE PROJECTS'

In an information filed by Apaar Infratech Private Limited, it had alleged cartelization and abuse of dominance by the opposite parties. CCI vide an order dated 24.08.2022, found that no cartelization had taken place between the opposite parties under Section 3 of the Competition Act, 2002 (**Act**) and that Maharashtra State Road Development Corporation Limited (**OP-1**) was not a dominant player in the relevant market for 'Crystalline Durability Admixture in Heavy Infrastructure Projects', thereby did not violate Section 4 of the Act.

CCI observed that the allegations made for horizontal agreements were not maintainable since the relationship of certain opposite parties was vertical in nature instead as otherwise alleged. Additionally, the CCI cited the case of *In Re:* Alleged cartelization in road construction work in the State of Uttar Pradesh with respect to allegations of common ownership and stated that *"the Commission has previously held that common ownership is not sufficient to record any findings of contravention of the provisions of Section 3 of the Act."* The CCI reasoned that OP-1 was not considered to be in violation of Section 4 of the Act since the product was not restricted to only Maharashtra, however was used in a variety of industries where OP-1 had no dominance.

DSK View: *In this order, the CCI has very precisely and concisely pointed out the key aspects which are integral to constitute a violation of Section 3 and Section 4 of the Act. It is a well-reasoned order. It is noteworthy that CCI has relied upon precedents, wherein the cited cases were backed by strong established arguments. Such orders aid in drawing parallels between facts, which successfully assist in establishing contraventions to the provisions of the Act.*

CCI APPROVES OF AN INCREASE IN VOTING RIGHTS HELD BY CPPIB IN RENEW

CCI vide order dated 15.07.2022 approved of the buyback of shares by ReNew Energy Global plc (**ReNew**), which is likely to increase the proportion of voting rights held by Canada Pension Plan Investment Board (**CPPIB**) in ReNew, to more than 25%. This would give CPPIB a negative control on the special resolutions in ReNew.

DSK View: *As per Item 6, Schedule I of the Competition Commission of India (Procedure in Regard to the Transaction of Business relating to Combinations) Regulations, 2011, buy back of shares, not leading to acquisition of control, is exempted from the requirement of notifying the CCI of the same, as it has a less likelihood of causing an appreciable adverse impact on competition. However, in this particular combination, notification was necessary as it was leading to an increase in the voting share of CPPIB in ReNew to more than 25%, and would entitle CPPIB to block special resolutions. Thus, the assessment of the CCI is well reasoned and appreciated. This may cause more entities to come forth and notify such changes which may lead to an increase in the total voting rights.*

COMPETITION (AMENDMENT) BILL, 2022

The Competition (Amendment) Bill, 2022 (**Bill**) was table before the Lok Sabha on 05.08.2022. It aims to amend the existing Competition Act, 2002, and make it at par with the evolving modern requirements of the market. Post the conclusion of the monsoon session of the Parliament, via a notification dated 17.08.2022, it was informed that the Bill, as introduced in the Lok Sabha, was referred to the Standing Committee on Finance, for examination and report.

DISPUTE RESOLUTION

CORPORATE VEIL CAN BE LIFTED IN ORDER TO UPHOLD PUBLIC INTEREST

In the case of ***Yadubir Singh Sajwan & Ors. v. Som Resorts Private Limited, Company Petition No. (IB)-67(ND)/2022,*** it was held that a developer company cannot defraud homebuyer's by seeking reliance on the notion of "separate legal doctrine". The Delhi High Court ordered liquidation of Cosmic Structures in 2017 and the official liquidator had sealed Financial Creditors, Corporate Debtor and Cosmic in 2018 wherein the Construction of the said property was to be completed within 18 months of its de-sealing. However, for the second time these commitments were not followed, therein a Section 7 IBC Petition ("**CIRP**") was filed by the Financial Creditors against the Corporate Debtor for a default of Rs. 15,37,19,463. The Corporate Debtor defied liability by citing that the payments were received by Cosmic Ltd. without its knowledge and the same were not released to it during liquidation. The National Company Law Tribunal ("**NCLT**"), New Delhi Bench comprising Shri. Dharminder Singh and Dr. Binod Kumar Sinha, refuted the contentions by lifting the Corporate Veil of Cosmic Ltd. It was noted that both the Corporate Debtor and Cosmic Ltd. were under the control of Mr. Sandeep Pahwa and therein the Corporate Debtor cannot rely on the notion of separate legal doctrine to escape liability. The Section 7 CIRP petition was accordingly admitted.

WHETHER ENTRIES IN BALANCE SHEET/BOOK OF ACCOUNTS CAN BE TREATED AS ACKNOWLEDGEMENT OF LIABILITY OF DEBT PAYABLE TO FINANCIAL CREDITOR

In the case of, ***Asset Reconstruction Company (India) Limited Appellant (s) v. Tulip Star Hotels Limited & Ors. CIVIL APPEAL NOS. 84-85 OF 2020,*** NCLAT had held that Books of Account cannot be treated as an acknowledgement of liability in respect of debt payable and therein the Section 7 ("CIRP") Petition was barred by limitation. On Appeal, the Apex Court reiterated a trail of the transactions culminating over the years ranging between 2008-2017. Therein, it was noted that the amount of Corporate Debtor was declared NPA in 2008. Subsequently, the Corporate Debtor acknowledged its liability and proposed a settlement in 2011 and further sought extension for payment of the same in 2013. It was concluded that the Corporate Debtor acknowledged its liabilities in its financial statements from 2008-09 till 2016-17 and the Section 7(2) petition was filed in 2018. The Apex Court allowing the appeal stating that once debt is acknowledged, the limitation period is extended upto 3 years from the date of acknowledgement and therein the Section 7 application was not barred by limitation. The impugned order and judgement of NLCAT was set aside.

TIMELY COMPLETION OF RESOLUTION PROCESS IS IMPERATIVE UNDER IBC

In the case of ***Shrinathji Trading Company v. Sanwaria Consumer Limited. Company Appeal (AT) (Ins.) No. 480 of 2022,*** the National Company Law Appellate Tribunal ("NLCAT"), New Delhi Bench dismissed an application filed by the resolution applicant seeking consideration of its revised resolution plan. In this case, Corporate Insolvency Resolution Process ("CIRP") was initiated against M/s. Sanwaria Consumer Limited ("Corporate Debtor") in 2020. The Committee of Creditors ("CoC") rejected the resolution plan submitted by the Appellant in 2021 after ordering multiple revisions of the same. The Appellant moved an application before the adjudicating authority to permit consideration of its revised resolution plan. Accordingly, a revised plan was submitted by the appellant however the same was not approved. The Appellant again filed an interim applicating before the adjudicating authority for considering its revised plan however the same was rejected. Therein, appeal was filed before the NCLAT. The CoC argued that the resolution plan was not in tandem with the directions issued by lender banks and further the resolution applicant failed to modify the same on multiple occasions. The Resolution Professional further relied upon ***Ebix Singapore Pvt. Ltd. v.***

CoC of Educomp Solutions Ltd. & Anr. Civil Appeal No. 3324 of 2020, to emphasis that statutory timelines under IBC shall be followed with utmost diligence. Thus, the Bench held that the decision to not consider the revised resolution plan was within the ambit of the commercial wisdom of the CoC. Additionally, the prescribed statutory limit under Section 12 IBC is of 330 days and 559 days were already spent since the initiation of CIRP. Therein, the Impugned order of the Adjudicating Authority was upheld considering the view of the CoC that has resolved for liquidation of the assets of the Corporate Debtor.

CLAIMS RESULTING FROM THE GRANT OF A LICENSE OR PERMISSION FOR THE USE OF INTELLECTUAL PROPERTY RIGHTS CONSTITUTE AN OPERATIONAL DEBT

In the case of ***Somesh Choudhary v. Knight Riders Sports Private Limited & Ors., COMPANY APPEAL (AT)(INS) No. 501 of 201***, the National Company Law Appellate Tribunal has held that claims arising out of grant of an exclusive right and license to use intellectual property right falls within the ambit of “operational debt” as defined under Section 5(21) of the IBC. In this case, Knight Riders Sports Pvt. Ltd. had entered into a Licensing Agreement with Somesh Choudhary wherein Somesh Chaudhary was permitted to use the trademark of “Kolkata Knight Riders” in return of payment of a minimum guaranteed royalty(“MGR”). Owing to part-payment received by the respondent, a Section 9 CIRP against the Appellant was initiated. The NCLT Bench held that incorporeal rights pertaining to intellectual property are included in the ambit of goods. Therein, it was held that non-payment of the MGR amounted to an operational debt under IBC and the Corporate Debtor was bound to pay the same. In the appeal made against the NCLT decision, the NCLAT Bench, noted that a Guaranteed Minimum Royalty is a regular payment made by a licensee to a licensor in accordance with a licence. A minimum royalty is typically an agreed-upon lump sum payment of reasonably expected revenue from the sale of licenced product over a period, as opposed to a royalty, which is typically determined as a percentage of net sales revenue. The Bench held that regarding the provision of goods and services, the Respondent had established a "Right to Payment." Accordingly, to the wording of the License Agreement, the "Claim" with regard to such "goods and services" provisions falls inside the purview of the definition of Operational Debt under Section 5(21) of the IBC. The NCLT's ruling was upheld.

GOVERNMENT OF MADHYA PRADESH NOTIFIES CONDITIONS FOR EMPLOYING WOMEN UNDER THE MADHYA PRADESH SHOPS AND ESTABLISHMENT ACT, 1958

The Government of Madhya Pradesh, vide a notification dated August 1, 2022, has directed that the provision of section 25 of the Madhya Pradesh Shops and Establishment Act, 1958 ("**Madhya Pradesh S&E Act**") which relates to the working hours of women between 9:00 PM to 7:00 AM shall not apply to all shops and commercial establishments in the whole of the state and shall be subject to the terms and conditions mentioned below:

(a) It shall be the duty of the employer or other responsible persons at workplaces/institutions to prevent the commission of acts of sexual harassment and to proceed with the prosecution of acts of sexual harassment by taking all necessary actions;

(b) All employers or responsible persons in charge of the workplace should take appropriate steps to prevent sexual harassment, including the establishment of a complaint mechanism that shall ensure time-bound treatment of complaints and proper support services. Further, such a complaint committee should be headed by a woman and not less than half of its members should be women, beside a non-government at organisation's representation in the committee and such person should be familiar with the issues of sexual harassment;

(c) In case of any criminal case, the employer shall initiate appropriate action in accordance with the penal law without delay and also ensure that victims of witnesses are not victimized or discriminated against while dealing with the complaints of sexual harassment and wherever necessary, at the request of the affected worker, shift or transfer the perpetrator, if circumstances warrant. The employer shall take appropriate disciplinary action if such conduct amounts to misconduct in employment;

(d) Wherever there is harassment at the instance of a third party, either by an act or omission the employer and person in charge of the establishment should take all steps necessary and reasonable to assist the affected person in terms of support and preventive action;

(e) The employer of the establishment shall provide proper lighting not only inside the establishment, but also in the surroundings of the establishment and in all places where the female workers may move out of necessity in course of their work;

(f) The employer shall see that women workers are employed in a batch not less than 2/3rd (Two Third) of the total strength;

(g) Sufficient women security shall be provided during the night time at entry as well as exit points and a separate canteen facility shall be provided for the female workers;

(h) Separate transportation facility shall be provided by the employer and the employer shall ensure pick up and drop transport facility under security from the women employee's residence to the workplace during the night shift. Further, the employer shall appoint not less than 2 (Two) female wardens at night who shall go round and work as Special Welfare Assistants;

(i) The establishment shall provide appropriate medical facilities and also make available at any time of urgency necessary telephone connections and where more than 100 (One Hundred) female workers are employed at night, a separate vehicle to be kept ready to meet the emergent situation such as hospitalization;

(j) There shall be not less than 12 (Twelve) consecutive hours of rest or gap between the last period and the night period whenever a woman worker is changed from day period to night period and so also from night period to day period;

(k) The provisions of the Madhya Pradesh S&E Act and other statutory provisions with respect to the hours of work and the payment of equal remuneration and all other labour legislations shall be employed by the employer;

(l) Apart from the facilities, which are permissible under the Madhya Pradesh S&E Act, an additional holiday shall be permitted for the women workers during the menstruation period, which shall be a paid holiday for the night time;

(m) The female workers who work during the night shall have a monthly meeting through their representatives with the principal employer once in 8 (Eight) weeks as grievance day and the employer shall try to cope resolve such grievances in a timely manner;

(n) The employer shall send a monthly report to the Government Labour Officer/Assistant Labour Commissioner about the details of employees engaged during night time and shall also send the report immediately whenever there is some untoward incident to the officers concerned and local police station as well.

PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY INSTRUCTION TO STOP FACILITY OF PAYMENT OF SUBSCRIPTIONS/CONTRIBUTION TO TIER-2 ACCOUNT OF NATIONAL PENSION SCHEME ("NPS") THROUGH CREDIT CARD

The Pension Fund Regulatory and Development Authority, vide its circular dated August 1, 2022, has issued Points of Presence instructing to stop the facility of payment of subscriptions/contribution to tier-2 account of NPS through credit card. All Points of Presence are advised to stop acceptance of credit card as a mode of payment for tier-2 account of NPS with immediate effect.

THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENTS (AMENDMENT) RULES, 2022

The Government of Kerala, vide its notification dated August 2, 2022, has amended the Kerala Shops and Commercial Establishments Rules, 1961. The amendment has caused the omission of Rule 2E which provided for the issue of duplicate registration certificate, Rule 2G(3) pertaining to obtaining a duplicate copy of the registration certificate, and Rule 12A which provided for submission of return under the said rules.

STANDARD OPERATIONAL PROCEDURE ("SOP") TO SETTLE CLAIMS IN CASES OF DEATH DUE TO INDUSTRIAL ACCIDENTS

The Employees' Provident Fund Organisation ("**EPFO**"), Ministry of Labour and Employment, vide a circular dated August 3, 2022 informed all employers regarding the SOP to settle claims for death due to industrial accidents. The information regarding industrial death with full particulars of all deceased persons may be provided to the person in-charge of the Regional Industrial Accidents Monitoring Cell so that immediate follow up actions to settle their claims can be taken on priority. If immediate information is not provided, it shall be treated as a violation under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**") and other schemes and shall be liable for action as per law. The family members of those already enrolled as provident fund ("**PF**") members are eligible for the following benefits under EPF Act and schemes framed:

(a) Employee Provident Fund ("**EPF**") accumulation in their EPF account with up-to-date interest.

(b) Employee Deposit Linked Insurance ("**EDLI**") benefits as per EDLI Scheme, 1976.

(c) Monthly family pension as per Employee Pension Scheme, 1995 ("**EPS**"), i.e., widow/ widower will get monthly family pension till their death or re-marriage, whichever is earlier.

(d) Children of the deceased persons, with up to 2 (Two) children, can avail of monthly pension till 25 (Twenty Five) years of age. In case the deceased person has more than 2 (Two) children, when one of the children attains 25 (Twenty Five) years of age, thereafter the third child will start receiving said pension till 25 (Twenty Five) years of age and so on.

(e) Disabled children are eligible for a monthly pension for life as per EPS.

(f) A nominee of a deceased person can avail monthly pension for life in case the deceased member has no family.

(g) Dependent parents can avail monthly pension for life in case the deceased member has no family and no nominee. The monthly pension shall first be given to the father and after his death, the mother will be eligible for such pension.

(h) Family members of those who are eligible to be enrolled as PF members shall also get the above-mentioned benefits under the EPF Act.

THE UTTAR PRADESH DOOKAN AUR VANIJYA ADHISHTHAN (NAVAM SANSHODHAN) NIYAMAWALI, 2022

The Government of Uttar Pradesh vide its notification dated August 3, 2022, has amended the Uttar Pradesh Dookan Aur Vanijya Adhishthan Niyamawali, 1963 ("**UP S&E Rules**"). Rule 2A of the UP S&E Rules which provides for the form of register to be kept by the Inspector concerned of the shop or commercial establishment and the fees charged for their registration and its validity has been amended in relation to the procedure of registration and renewal of licenses under the said Rules.

GOVERNMENT OF TELANGANA EXTENDS VARIOUS WELFARE SCHEME BENEFITS TO THE BUILDING & OTHER CONSTRUCTION WORKERS ("BOCW") AND THEIR DEPENDENTS REGISTERED WITH THE TELANGANA BOCW WELFARE BOARD

The Government of Telangana, vide its notification dated August 4, 2022, has extended the following benefits to Building & Other Construction Workers ("**BOCW**") registered with Telangana BOCW welfare board, Hyderabad provided they furnish proof of possession of the Aadhar number and undergo Aadhar authentication:

(a) Fatal accident relief of INR 6,00,000 (Rupees Six Lakhs) to the nominees/dependants/legal heir of the deceased who dies on the spot or due to injuries caused by the accident that occurred either in the workplace or anywhere else.

(b) Disability relief to registered Building & Other Construction Worker ("**Worker**") who sustains injuries caused by an accident occurring either in the workplace or anywhere else resulting in total permanent disability (INR 5,00,000 (Rupees Five Lakhs)) and partial permanent disability (up to INR 4,00,000 (Rupees Four Lakhs)) (as per Employees' Compensation Act, 1923).

(c) Natural death relief of INR 1,00,000 (Rupees One Lakh) to the nominee/dependant/legal heir of the deceased registered Worker for natural death.

(d) Funeral expenses of INR 30,000 (Rupees Thirty Thousand) in case of fatal accident/natural death of registered Workers. For accidental death of unregistered Workers in the course of employment, the charges of transportation of the deceased body at the rate of INR 20/- (Rupees Twenty) per kilometre.

(e) Marriage gift of INR 30,000 (Rupees Thirty Thousand) including financial assistance to unmarried women who are Workers and to 2 (Two) daughters of the registered Worker.

(f) Maternity benefit of INR 30,000 (Rupees Thirty Thousand) for women registered Workers, wife of the male Workers and 2 (Two) daughters of either male or female registered Worker up to two deliveries each.

(g) Hospitalization relief of INR 300 (Rupees Three Hundred) per day up to INR 4,500 (Rupees Four Thousand Five Hundred) extending up to 3 (Three) months for accidents/terminal diseases.

(h) Relief to unregistered Workers in case of:

- Death at work site of INR 50,000 (Rupees Fifty Thousand)
- 50% (Fifty Percent) and above permanent disability of INR 20,000 (Rupees Twenty Thousand)
- 50% (Fifty Percent) below partial disability of INR 10,000 (Rupees Ten Thousand).

The Government further clarified that if such Worker does not possess the Aadhar number, shall be required to make such application for enrolment before applying for the schemes. The Telangana BOCW welfare board, Hyderabad is required to additionally offer such enrolment facilities for Workers who are not yet enrolled and until the enrolment is complete, such Worker shall be provided all the benefits of the schemes after they produce one of the following documents after verification by the assistant labour officer:

i. Bank or post office passbook with photo; or

ii. Permanent Account Number Card; or

iii. Passport; or

iv. Ration card; or

v. Voter identity card; or

vi. Mahatma Gandhi National Rural Employment Guarantee Act card; or

vii. Kisan photo passbook; or

viii. Driving license issued by the licensing authority under the Motor Vehicles Act, 1988 (Act No. 59 of 1988); or

ix. Certificate of identity having photo of such person issued by a gazetted officer or a Tehsildar on an official letter head; or

x. any other document as specified by the department.

THE GOVERNMENT OF HIMACHAL PRADESH ISSUES REVISED RATE OF INTEREST FOR THE GENERAL PROVIDENT FUND AND OTHER SIMILAR FUNDS

The Government of Himachal Pradesh, vide its resolution dated August 4, 2022, has announced that during the year 2022-23, accumulations at the credit of subscribers to the general provident fund and other similar funds shall carry interest at the rate of 7.1% (Seven Point One Percent) with effect from July 1, 2022, to September 30, 2022.

DELHI GOVERNMENT HAS LAUNCHED AN ONLINE APPLICATION FOR EXEMPTION UNDER THE PROVISIONS OF DELHI SHOPS AND ESTABLISHMENT ACT, 1954

The Government of Delhi, Labour Department, vide an office order dated August 5, 2022, has notified an online portal for receiving the application under sections 14, 15 and 16 of the Delhi Shops and Establishment Act ("**Delhi S&E Act**"), which is available on URL https:/dlabourwelfareboard.delhi.gov.in/shopexemption/ from August 8, 2022. The exemptions are:

(a) Exemption under section 14 of the Delhi S&E Act for allowing young person and women to work between 9:00 PM to 7:00 AM during the summer and between 8:00 PM to 8:00 AM in the winter.

(b) Exemption under section 15 of the Delhi S&E Act for allowing changing the working hours.

(c) Exemption under section 16 of the Delhi S&E Act for allowing opening of shops/establishments on a weekly off day or on 3 (Three) national holidays of India.

All the concerned stakeholders can utilize the above-mentioned services available with effect from August 8, 2022, and no physical application shall be received at the office.

NEW PROVISIONS IMPLEMENTED THROUGH THE SOCIAL SECURITY CODE ("SSC") TO ENHANCE THE COVERAGE OF SOCIAL SECURITY

The Ministry of Labour & Employment vide a press release dated August 8, 2022, has highlighted the following provisions introduced in the SSC in order to enhance the coverage of social security:

(a) The coverage of Employees' State Insurance Corporation ("**ESIC**") has been extended pan-India as against the notified districts. Further, the ESIC coverage on a voluntary basis for establishments having less than 10 (Ten) employees have been introduced. The benefits of ESIC can also be made applicable to an establishment carrying on hazardous or life-threatening occupation as notified by the central government, in which even 1 (One) employee is employed.

(b) Envisages a social security fund for formulating schemes for the welfare of unorganized workers, gig workers, and platform workers.

(c) The gig workers and platform workers have been defined for the purpose of formulating schemes to provide social security benefits.

(d) The central government has been empowered to extend benefits to unorganized workers, gig workers, platform workers and the members of their families through ESIC or EPFO.

CONDITIONS FOR EMPLOYING WOMEN WORKERS IN FACTORY DURING NIGHT IN THE STATE OF HIMACHAL PRADESH

The Government of Himachal Pradesh, vide its notification dated August 12, 2022, listed conditions for employment of women workers in factories during night shifts (from 07.00 P.M. to 06.00 A.M). The conditions are as follows:

(a) No woman worker shall be bound to work without her consent before 06:00 AM and after 07:00 PM or be required or allowed to work for more than 8 (Eight) hours in any day not for more than 48 (Forty Eight) hours in any week.

(b) Employer shall ensure that provisions of the Maternity Benefit Act, 1961 are complied with.

(c) Adequate transportation facilities along with a guard shall be provided to the woman employee to pick up and drop at her residence. Further, the occupier shall intimate the arrangement proposed by him to the concerned Inspector of the region for verification affording him a minimum period of 7 (Seven) days for such verification. The employer shall ensure sufficient supervision during such working hours and the journey thereof.

(d) Employer shall provide lighting not only inside the establishment, but also surroundings of the establishment and to all places where the female employees may move as per her necessity in the course of such shift.

(e) Employer shall provide appropriate medical facilities and also make available at any time of urgency by providing necessary telephone connections and where more than 100 (One Hundred) female employees are employed in a shift, a separate vehicle shall be kept ready to meet the emergent situation such as

hospitalization, whenever there is a case of injury or incidental acts of harassment, etc.

(f) The female employees who work in night shifts and regular shifts shall have a monthly meeting through their representatives with the principal employer once in 8 (Eight) weeks as grievance day and the employer shall comply all just and reasonable grievances.

(g) Employer shall send a fortnightly report to the inspector about the details of employees engaged during night shifts and shall also send express report whenever there is some untoward incident to the Inspector and local police station as well.

(h) The employer shall provide safe, secure, and healthy working conditions such that no women employee is disadvantaged in connection with her employment. Further, the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, as applicable to the establishment, shall be complied with.

CLARIFICATION REGARDING THE DETERMINATION OF ELIGIBLE SERVICE FOR THE SETTLEMENT OF PENSION CLAIMS RELATED TO WORKERS OF SEASONAL FACTORIES/ESTABLISHMENTS

The Ministry of Labour & Employment vide its clarification dated August 17, 2022, has clarified the method of determination of eligible service for the settlement of pension claims related to workers of seasonal factories/establishments. It is stated that if a seasonal factory/establishment was operational only for 4 (Four) months and if the employee has worked for those 4 (Four) months, his contributory service shall be treated as 1 (One) full year. In case of a new entrant, the contributory service shall be treated as an eligible service. Total contributory service shall be rounded off to nearest year by treating any service for more than 6 (Six) months as 1 (One) year and ignoring any service for less than 6 (Six) months.

THE GOA LABOUR WELFARE FUND (AMENDMENT) BILL, 2022

The Government of Goa, vide a gazette notification dated August 19, 2022, has notified the Goa Labour Welfare Fund (Amendment) Bill, 2022 which seeks to insert a new section 29A in the Goa Labour Welfare Fund Act, 1986, so as to enable compounding of offences punishable under the said Act, on an application of the accused person, either before or after the institution of any prosecution, be compounded by such officer, as the government may, by notification in the Official Gazette, specify, for a sum equivalent to 75% (Seventy Five Percent) of the maximum fine provided for such offence, in the prescribed manner. Further, every application for the compounding of an offence shall be made in such form and in such manner as may be prescribed. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, against the offender in relation to whom the offence is so compounded.

REVISED RATES OF MINIMUM WAGES

- Central: The Government of India, vide its notification dated August 12, 2022, has amended the rates under central minimum wages provided in the previous notification published on July 29, 2022, for various categories including construction or maintenance of roads or runways or in building operations, effective from April 1, 2021, October 1, 2021, and April 1, 2022, respectively.

- Kerala: The Government of Kerala, Labour, and Skills (E) Department, vide a notification dated August 12, 2022, has revised the variable dearness allowance for employment in Shops and Commercial Establishment and employment in the computer software sector on August 12, 2022.

- Maharashtra: The Government of Maharashtra, vide its order dated August 2, 2022, has released revised rates of special allowance/ dearness allowance ("**SA/DA**") and House Rent Allowance ("**HRA**") payable to the registered security guards/officers of the board for the period from July 1, 2022, to December 31, 2022.

  - Accordingly, the rate of SA/DA of the security guard/officer is INR 2,106 (Rupees Two Thousand One Hundred Six) per month.

  - HRA at 20% (Twenty Percent) on basic wages plus SA/DA is also made applicable to the security guards/officers. The rate of basic wages, conveyance allowance, Education Allowance ("**EA**"), Leave Travelling Allowance ("**LTA**"), and washing allowance will remain the same as per the order dated October 17, 2017.

  - It is obligatory on the part of the registered principal employer to pay a levy of 45.25% (Forty Five Point Twenty Five Percent) on the minimum wages and to pay a 3.25% (Three Point Twenty Five percent) levy on HRA, EA, LTA, and Over Time Wages.

  - Over Time Wages should be calculated at double the normal rate, on minimum wages. All registered employers are hereby directed to remit the wages, allowances, and levy thereon at revised rates with effect from July 1, 2022, in respect of registered security guards allotted to them.

ENERGY & INFRASTRUCTURE

ENERGY

MOP ISSUES AMENDMENTS TO THE GUIDELINES FOR PROCUREMENT OF ROUND-THE CLOCK RE POWER, COMPLEMENTED WITH POWER FROM ANY OTHER SOURCE OR STORAGE

Guidelines for Tariff-Based Competitive Bidding Process for Procurement of Round-the-Clock (RTC) Power from Grid Connected Renewable Energy Power Projects, Complemented with Power from Any Other Source or Storage, were amended by the Ministry of Power ("**MoP**"). The following are covered in the proposed amendments:

1. The Generator will deliver round-the-clock despatchable RE Electricity, complemented with power from any other source, maintaining an annual minimum availability of 90%, along with at least 90% availability on a monthly basis for at least 11 months and a minimum of 90% availability during peak hours. Four hours out of every 24 hours will constitute the peak hours, as established by RLDCs in line with the relevant regulation. Penalty for not meeting the stipulated availability will be equal to the fixed tariff for the number of units not supplied.

2. The Generator can combine storage for ensuring it achieves the required minimum annual availability of 90% along with maintaining at least 90% availability on a monthly basis for at least eleven months in a year. However, annually a minimum of 51% of energy should be offered from renewable energy sources. This 51% should also include offer from the storage system, provided RE sources were used to store energy in the storage system,

3. Weighted Average Levelized Tariff as the Bidding Parameter: The bidding evaluation parameter will be the weighted average levelised tariff per unit supply of RTC power. The Procurer should invite bids wherein the bidder will quote the first year weighted average levelized Tariff in Rs. /kWh. The quoted tariff should comprise of four parts – Fixed component [RE power (fixed), non-RE power (fixed)] and Variable component [non-RE power (scalable for fuel), and non-RE power (scalable for transportation)]. The Fixed component of tariff of the RE power and Non-RE power should be quoted for each year of the term of PPA. The variable component of the Non-RE power should be quoted as on scheduled date of commissioning. The levelised tariff will be arrived at using the CERC escalation indices for the type of fuel quoted by the bidder and the discount factor to be specified in the bidding document. The bidder should also quote the proportion of energy from RE sources and non-RE source that he wishes to supply. The weighted average levelised tariff per unit supply shall be arrived at for the term of PPA and proportion of energy from RE sources and Non-RE source.

4. The bidder will be selected on the basis of least quoted weighted average levelised Tariff. Subsequent to the e-reverse auction, the bidder (called the L1 bidder) quoting the least weighted average levelized Tariff (called the L1 tariff) will be allocated the quantum of power offered by him. If the allocated quantum of power is less than the total quantum of power to be contracted, the capacity allocation will be on the basis of Bucket filling i.e., capacity quoted by L1 bidder at L1 rates will be allocated first, then the capacity quoted by the next lowest bidder (called the L2 bidder) at the rates quoted by him (called the L2 rates) may be allocated and so on.

5. However, the allocation will only be made to the bidders whose bid falls within a pre-defined "range" from the L1 tariff. Thus, after arranging the bidders in the ascending order of tariff, the Project capacities will be awarded only to those bidders whose final price bids are within a range of "L1+x%", in terms of INR/kWh, while the value of "x" generally be 2 to 3.

6. The PPA period will be for a period of 25 years from the date of the Scheduled Commissioning Date (SCD) or the date of commissioning of full project capacity, whichever is later. The PPA may also be fixed for a higher period such as 35 years, but in any case, the duration of the PPA must be mentioned upfront in the PPA document. The Generators are free to operate their plants after the expiry of the PPA period in case the arrangements with the land and infrastructure owning agencies, the relevant transmission utilities and system operators so provide.

7. In case the project availability is less than 90% on annual basis or maintaining at least 90% availability on a monthly basis for at least eleven months in a year, or during the peak hours as defined above, for reasons attributable to Generator, the Generator shall be liable to pay to the Procurer, penalty for such shortfall in availability. Penalty for not meeting the stipulated availability shall be equal to the fixed tariff for the number of units not supplied.

8. In case of multiple performance criteria being stipulated in the tender, penalty will be calculated separately for shortfall in meeting each individual criterion. However, the maximum of all such penalties calculated will be levied, and not all.

9. The End Procurer shall provide payment security to the Intermediary Procurer through: (i) Revolving Letter of Credit (LC) for an amount of not less than 1 months' average billing for the Project(s) under consideration; and (ii) State Government Guarantee, in a legally enforceable form, such that there is adequate security, both in terms of payment of energy charges and termination compensation if any.

10. In case the End Procurer is not eligible to be covered under State Government Guarantee, the tender shall contain provisions for payment of additional risk premium of Rs. 0.10/kWh, by End Procurer to the Intermediary Procurer, and to be credited to the payment security fund maintained by the Intermediary Procurer, in addition to Letter of Credit to be maintained by the End Procurer as per the above provisions.

11. The provisions for 'Change in Law' will be in accordance with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021 notified by Ministry of Power vide notification dated 22nd October 2021 including amendments and clarification thereof issued from time to time.

12. Where project components are located at multiple locations, if one of such components (wind or solar PV) is ready for injection of power into the grid, but the remaining component is unable to get commissioned, the Generator will be allowed to commission such component which is ready outside the ambit of PPA, with first right of refusal for such power being vested with the End Procurer. Subsequent to refusal of such power by the End Procurer, the right of refusal shall vest with the Intermediary Procurer.

13. In case Procurer/Intermediary Procurer decides to buy such discrete component(s) power outside the PPA, such power shall be purchased at 50% of the PPA Tariff / weighted average levelized tariff for the applicable Contract Year.

IMPLEMENTATION OF THE "ELECTRICTY (LATE PAYMENT SURCHARGE & RELATED MATTERS) RULES, 2022"

The MoP, on August 26, 2022, issued notification to implement the Electricity (Late Payment Surcharge & Related Matters) Rules, 2022 ("**LPS Rules**"). The LPS Rules were issued to regulate access to power in case of non-payment of dues, a month after the due date of payment or two and half months after the presentation of bill by the generating company, electricity trading licensee or the transmission licensee, as the case may be, whichever is later. The LPS Rules recognizes that a period of 2.5 months is adequate to settle the regular bills by the distribution licensees. The over dues of prior period i.e., up to 3rd June 2022 have been liquidated through EMIs under the LPS Rules for which financial assistance is also available from REC Limited/Power Finance Corporation/Financial Institutions/Banks. Vide letter dated August 11, 2022, MoP has designated Power Finance Corporation ("**PFC**") as the Nodal Agency for implementing the LPS Rules. The LPS Rules are being operationalized through an automated process using existing PRAAPTI Portal and POSOCO Portal by on-boarding DISCOMs on the Portal.

In order to streamline the process of monitoring of payments of regular bills of suppliers by the DISCOMs and identifying defaults by the DISCOMs in payment of dues and consequent regulation of access to power as per the LPS Rules, the following SOP has been prescribed:

i. Suppliers must update the details of invoices presented to DISCOMs on the PRAAPTI Portal within 5 days (including any holidays) of date of Invoice (DOI). The date of presentation of bill (DOP) to DISCOMs shall also be entered by the Generator on the portal, which shall

form the anchor date in respect to determination of due date and default trigger date on the portal in line with provisions of the LPS Rules.

ii. The portal will auto check this period of 5 days and suppliers will not be allowed to update details of invoices beyond this period in any case.

iii. An automated email will be sent to designated email-ids of the DISCOMs upon entry of any new invoice on the portal along with basic details of invoice including bill amount, bill due date and default trigger date.

iv. The default trigger date will be generated by the portal as per the LPS Rules on the basis of due date and date of presentation of bill.

v. For the purpose of implementation of the LPS Rules, the dues will be considered as per invoices updated by the suppliers on the portal which are not stayed by a competent court or Tribunal, or dispute resolution agency as designated in the Power Purchase Agreement.

vi. DISCOMs may provide their inputs regarding *prima facie* incompleteness, if any, with respect to the invoices updated by the suppliers on the portal with the approval of Competent Authority of DISCOMs (not lower than the Director level of DISCOM) within 10 days (including any Holidays) of date of updation of invoice on the portal. The inputs from DISCOMs should be brief and precise and to not exceed 150 words, for which the portal would have necessary checks.

In such cases, an automated email would be sent to designated email-ids of supplier with details of inputs provided by the DISCOMs.

vii. In case, no inputs are provided by the DISCOMs within the above stipulated period, the details of invoices will be automatically frozen. If required, the supplier will be required update the details of concerned invoice within 10 days of inputs provided by the DISCOMs. An automated email will be sent to designated email-ids of DISCOMs upon updation of invoice. After this period of 10 days, details of invoices will be automatically frozen on the portal for all purposes. The details of the invoices will be frozen within maximum period of 25 days from the date of invoice in all cases.

viii. DISCOMS will be responsible for updation of payment details against the invoices updated by the suppliers and information of payment available on the portal at 17:30 on the day just before the default trigger date will be considered for regulation of access to power as per the LPS Rules, wherever applicable.

ix. Payment status should be updated by DISCOMS on the portal in the following manner:

a. DISCOM will have to certify that the invoice amount has been settled in full (payment amount may be different on account of various deductions *inter-alia* TDS, advance settlement, penalty, rebates etc.).

b. DISCOM will be required to add details of payments (UTR no., cheque no., date of payment etc.).

c. An automated email will be sent to the supplier on payment updation by DISCOM.

GUIDELINES FOR TARIFF BASED COMPETITIVE BIDDING PROCESS FOR PROCUREMENT OF POWER FROM GRID CONNECTED RE POWER PROJECTS FOR UTILISATION UNDER SCHEME FOR FLEXIBILITY IN GENERATION AND SCHEDULING OF THERMAL/ HYDRO POWER STATIONS THROUGH BUNDLING WITH RENEWABLE ENERGY AND STORAGE POWER

The MoP, on August 26, 2022, issued the Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected RE Power Projects for utilisation under scheme for flexibility in Generation and Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage power ("**Guidelines**").

Objectives of the Guidelines

The Guidelines have been issued to meet the following objectives:

a) To promote competitive procurement of electricity from RE power plants, by thermal/ hydro generators for utilisation under Flexibility scheme for Scheduling of Thermal/ Hydro Power Stations through bundling with Renewable Energy and Storage Power, to reduce emission;

b) To facilitate transparency and fairness in procurement processes;

c) To provide standardization and uniformity in processes and a risk-sharing framework between various stakeholders, involved in the RE power procurement under Flexibility scheme, thereby encouraging investments, enhanced bankability of the Projects and profitability for the investors.

Applicability of the Guidelines

These Guidelines have been issued under the provisions of Section 63 of the Electricity Act, 2003 for long term

procurement of electricity by the 'Procurers', from grid connected RE Power Projects ('**Projects**'), having individual size of 5 MW and above, through competitive bidding.

Conditions to be met by the Procurer

The Procurer is required to meet the following conditions:

a) Bid documentation:

(i) Procurer to decide on solar or wind power procurement and prepare the bid documents in accordance with these Guidelines, subject to stipulated exceptions. The Guidelines also stipulate the standard provisions to be included in the bid documents;

(ii) Inform the Appropriate Commission about the initiation of the bidding process;

(iii) Seek approval of the Appropriate Commission for deviations, if any, in the draft bid documents, from the Guidelines;

(iv) Procure the requisite clearances for the Project.

b) Undertake all arrangements related to the Project site, as specified in the Guidelines. The Project may be set up either at the Project site specified by the Procurer, including in a Solar Park, or at the Project site selected by the RE Power Generator.

c) Design the bid structure-

(i) the bids are to be designed in terms of a package. The minimum size of a package should be 50MW, in order to have economies of scale. The bidder is required to quote for an entire package. The Procurer may also choose to specify the maximum capacity that can be allotted to a single bidder including its Affiliates keeping in mind factors such as economies of scale, land availability, expected competition and need for development of the market.

(ii) The Procurer may choose to invite the bids in: (1) Power Capacity (MW) terms or (2) Energy Quantity (kWh or million units i.e., MU) terms.

(iii) The Procurer may select either of the following kinds of tariff-based bidding: (1) fixed tariff in Rs. /kWh for the term of Power Purchase Agreement (PPA) or (2) escalating tariff in Rs. /kWh with pre-defined quantum of annual escalations fixed in Rs. /kWh and number of years from which such fixed escalation will be provided.

d) Prepare the draft PPA proposed to be entered into with the successful bidder which shall be issued along with the bid documents. The standard provisions to be incorporated in the PPA has also been stipulated in the Guidelines.

e) Conduct the bidding process in the following manner:

(i) The Procurer or its authorised representatives should call for the bids adopting a single stage bidding process to be conducted through electronic mode. The Procurers may adopt e-reverse auction if it so desires. E-procurement platforms with a successful track record and with adequate safety, security and confidentiality features are to be used.

(ii) he Procurer or its authorised representatives should invite the RE Power Generators to participate in the bidding process for installation of RE Power Plants in terms of these Guidelines.

(iii) The Procurer or its authorised representatives should publish the bid notice in at least two national newspapers and its own website to accord wide publicity.

(iv) The Procurer or its authorised representatives should provide opportunity for pre-bid conference to the prospective bidders and should also provide written interpretation of the tender documents to any bidder which shall also be made available to all other bidders. Any clarification or revision to the bidding documents should be uploaded on the website of the Procurer or its authorised representatives. In the event of the issuance of any revision or amendment of the bidding documents, the bidders should be provided a period of at least 7 days therefrom, for submission of bids.

f) The Procurer to follow the following conditions during bid submission and evaluation:

(i) Formation of consortium by bidders should be permitted, in which case the consortium should identify a lead member who shall be the contact point for all correspondences during the bidding process. The Procurer may specify technical and financial criteria, and lock in requirements for the lead member of the consortium

(ii) The Procurer or its authorised representatives should constitute a committee for evaluation of the bids (Evaluation Committee), with at least

three members, including at least one member with expertise in financial matters/bid evaluation.

(iii) The bidders may be required to submit non-refundable processing fee and/or project development fee.

(iv) The bidders should be required to submit separate technical and price bids. The bidders should also be required to furnish necessary bid-guarantee in the form of an EMD along with the bids.

(v) The technical bids should be evaluated to ensure that the bids submitted meet the eligibility criteria set out in the bid document on all evaluation parameters. Only the bids that meet the evaluation criteria should be considered for further evaluation on the price bids.

(vi) To ensure competitiveness, the minimum number of qualified bidders should be two. If the number of qualified bidders is less than two, even after three attempts of bidding, and the Procurer or its authorised representatives still wants to continue with the bidding process, the same may be done with the consent of the Appropriate Commission.

(vii) The price bid shall be rejected if it contains any deviation from the tender conditions.

(viii) The bid evaluation mechanism should be on the basis of the bidding criteria as specified in the bid document. Ranking of the bidders will start from the bidder quoting the "lowest tariff (L1)"

g) A minimum period of 22 days should be allowed between the issuance of the bid documents and the last date of bid submission. Under normal circumstances, the bidding process should be completed within a period of 110 days.

h) The PPA should be signed with the successful bidder/ project company or an SPV formed by the successful bidder.

i) After the conclusion of bidding process, the Evaluation Committee constituted for should critically evaluate the bids and certify as appropriate that the bidding process and the evaluation has been conducted in conformity to the provisions of the bid documents.

j) For the purpose of transparency, the Procurer or its authorised representatives should, after the execution of the PPA, publicly disclose the name(s) of the successful bidder(s) and the tariff quoted by them together with breakup into components, if any. The public disclosure shall be made by posting the requisite details on the website of the Procurer for at least 30 days.

k) Subject to provisions of the Electricity Act, 2003 the Procurer should approach the Appropriate Commission for adoption of tariffs.

l) Letter of Award should be issued to the successful bidders after obtaining consent from beneficiaries or in accordance with rules notified by the Central Government under Electricity Act, 2003, and PPA should then be signed between the Procurer and the successful bidders after the adoption of tariff by the Appropriate Commission.

m) RE Power Generator shall attain the financial closure in terms of the PPA, within 9 (nine) months from the date of execution of the Power Purchase Agreement for projects specified to be set up in Solar Park, and within 12 (twelve) months from the date of execution of the Power Purchase Agreement, for projects not specified to be set up in Solar Park. However, if for any reason, the time period for attaining the financial closure needs to be kept smaller than that provided in these Guidelines, the Procurer can do the same.

Conditions to be met by the RE Power Generator

a) RE Power Generator should attain the financial closure in terms of the PPA, within 9 months from the date of execution of the PPA for projects specified to be set up in Solar Park, and within 12 months from the date of execution of the PPA, for projects not specified to be set up in Solar Park. However, if for any reason, the time period for attaining the financial closure needs to be kept smaller than that provided in these Guidelines, the Procurer can do the same.

b) Failing the aforesaid, the Procurer may encash the Performance Bank Guarantee unless the delay is on account of the Procurer.

c) Any delay in adoption of tariff by the Appropriate Commission, beyond 60 days, will entail a corresponding extension in financial closure.

d) The successful bidder, if being a single company, should ensure that its shareholding in the SPV/project company executing the PPA does not fall below 51% (at any time prior to 1 year from the Commercial Operation Date (COD), except with the prior approval of the Procurer.

e) In the event the successful bidder is a consortium, then the combined shareholding of the consortium members in the SPV/project company executing the

PPA, should not fall below 51% at any time prior to 1 year from the COD, except with the prior approval of the Procurer.

f) Further, the successful bidder should ensure that its promoters should not cede control of the bidding company/ consortium till 1 year from the COD, except with the prior approval of the Procurer.

g) Any change in the shareholding after the expiry of 1 year from the COD can be undertaken by intimating the Procurer.

h) In the event the RE Power Generator is in default to the lender(s), lenders will be entitled to undertake "Substitution of Promoter" in concurrence with the Procurers.

i) The projects should be commissioned, within a period of 15 months from the date of execution of the PPA, for projects specified to be set up in Solar Park, and within a period of 18 months from the date of execution of the PPA, for projects not specified to be set up in Solar Park. However, if for some reason, the scheduled commissioning period needs to be kept smaller than that provided in these Guidelines, the Procurer can do the same. Any delay in commissioning beyond the Scheduled Commissioning Period will involve penalties on the RE Power Generator, as prescribed in the Guidelines.

j) The Guidelines also stipulate the manner in which transmission connectivity is to be obtained by the RE Power Generator.

Deviation from the process defined in the Guidelines

In case of any deviation from the Guidelines, the same is required to be approval by the Appropriate Commission.

Arbitration

In the event the Central Electricity Regulatory Commission (CERC) is the Appropriate Commission, any dispute claiming any change in or regarding determination of the tariff or any tariff related matters, or which partly or wholly could result in change in tariff, will be adjudicated by the CERC. All other disputes are to be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996. Where any State Electricity Regulatory Commissions (SERC) is the Appropriate Commission, all disputes will be adjudicated by the SERC or shall be referred for arbitration by the SERC.

INFRASTRUCTURE

AMENDMENT TO RFP DOCUMENTS FOR ENGAGEMENT OF AUTHORITY ENGINEER/INDEPENDENT ENGINEER/DPR CONSULTANT

The National Highways Authority of India ("**NHAI**") vide circular number 11.41/2022 dated August 12, 2022 ("**Policy Circular**") issued amendments to the standard request for proposal ("**RFP**") for consultancy assignment for engaging authority engineer / independent engineer / detailed project report consultant (collectively "**Consultant**").

The amendment *inter alia* states that the bidder cannot revise its share among the lead/JV partner/associate partner as declared at the time of the bidding/award of respective consultancy assignments. The maximum limit of the share of associates will be limited to their actual assignments subject to a maximum of 25% (twenty five percent) of the contract amount.

The amended format of the memorandum of understanding for appointing the Consultant has also been provided under the Policy Circular.

AMENDMENT IN UNIFIED LICENSE (VIRTUAL NETWORK OPERATOR) AGREEMENT FOR CHANGE IN THE FDI COMPLIANCE REPORT

The Department of Telecommunication ("**DoT**") vide circular number 20-271/2010 AS-1 (Vol.-IV) dated August 02, 2022 ("**Amendment Circular**") amended certain clauses of the Unified License (Virtual Network Operator) License Agreement ("**UL (VNO) Agreement**").

The provisions relating to ownership of the licensee company under Part-I, Chapter I of the General Conditions of the UL (VNO) Agreement have been amended as follows:

- As per clause 1.2, the licensee was required to declare the Indian and foreign equity structure (direct and indirect) in the licensee company and further submit a report on compliance with Foreign Direct Investment ("**FDI**") norms and security conditions ("**FDI Report**"), duly certified by the statutory auditor or company secretary and countersigned by the duly authorised director of the licensee company, on the first day of January and first day of July every year to the licensor. As per the Amendment Circular, the licensee company is now required to submit the said FDI Report only on the first day of January of every year to the licensor.

Further, the licensee is required to submit such FDI Report within 15 (fifteen) days whenever there is a change in FDI in the licensee's company.

- As per clause 1.6 (ii), the licensee was required to declare the paid up capital and submit a compliance report ("**Report**"), duly certified by the statutory auditor or company secretary and countersigned by the duly authorised director of the licensee company, on the first day of January and first day of July every year to the licensor. As per the Amendment Circular, the licensee is required to submit the said Report only on the first day of January of every year.

- Changes related to the date of submission of the FDI Report similar to those provided in clause 1.2 of UL (VNO) Agreement have been carried out in the License Agreement for Captive VSAT Services Closed User Group Domestic Data Network using INSAT Satellite System, the License Agreement for VSAT Service using INSAT System and the INSAT MSS-R Service License Agreement by the DoT vide circular bearing number 815-66/2022-SAT dated August 03, 2022.

AMENDMENT TO THE GENERAL FINANCIAL RULES, 2017

The Department of Expenditure ("**DoE**"), Ministry of Finance vide circular number F.1/4/2022-PPD dated August 05, 2022 ("**Circular**") partially amended Rules 170(i) and 171(i) of the General Financial Rules, 2017.

As per the amendment under the Circular, bid security and performance security furnished pursuant to a bid, when provided in the form of bank guarantee will also include e-bank guarantee.

AMENDMENT TO THE MANUAL FOR PROCUREMENT OF WORKS

The DoE vide circular number F.1/1/2021-PPD dated August 04, 2022 ("**Corrigendum**") amended paragraph 3.3.6 (iv) of the Manual for Procurement of Works ("**Manual**") issued in July 2022.

In some high value contracts or complex technical contracts, the capability of the source of the supply is crucial. In such cases, paragraph 3.3.6 of the Manual prescribes a separate stage of a pre-qualification bidding ("**PQB**") system to make sure that only bidders with the requisite technical capacity compete in the bidding process.

Paragraph 3.3.6 (iv) of the Manual deals with the advertisement of the notice of invitation for PQB to ensure that the invitation of PQB documents by the concessioning authority receives widest possible coverage. In terms of the said paragraph, the PQB documents must be submitted within a minimum period of 21 (twenty-one) days post the said advertisement of the notice of invitation for PQB documents. In cases of urgency, the maximum time period for submitting documents may be reduced to 30 (thirty) days by the concessioning authority. The amendment in the Corrigendum prescribes that in cases of urgency, the maximum time period for submitting PQB documents can be fixed by the concessioning authority at its discretion.

COMMENTS INVITED ON THE DRAFT INDIAN PORTS BILL, 2022

The Ministry of Ports, Shipping and Waterways vide circular number 5/5/2017-PD-VII (330347) dated August 18, 2022, invited comments from stakeholders on the draft Indian Ports Bill, 2022 ("**Draft Bill**"). The Draft Bill aims to:

- consolidate and amend laws related to ports;
- prevent and contain pollution at ports;
- ensure compliance with India's obligations under maritime treaties and international instruments to which India is a party;
- take measures for conserving ports;
- empower and establish state maritime boards for effective administration, control, and management of non-major Indian ports;
- provide for an adjudicatory mechanism for redressal of port related disputes;
- establish a national council for encouraging the growth and development of the port sector and
- ensure optimum utilization of India's coastline.

Moreover, the primary objectives of the Draft Bill are as follows:

- promotion of integrated planning between States inter-se, the Centre and States via a consultative and recommendatory framework;
- prevent pollution for all Indian ports while incorporating India's obligations under international treaties;
- address a dispute resolution framework for the ports sector and
- usher transparency and cooperation in development and other aspects through data.

The Draft Bill will streamline the development of the maritime sector in India in a uniform manner and promote ease of doing business for all stakeholders involved. It shall also instill confidence amongst players in the port sector and result in increased participation in this sector. In addition to the above, the Draft Bill will incorporate State Maritime Boards in the national framework, thereby integrating the port sector holistically.

SCHEDULE OF BIDDING PROCESS TO BE INCLUDED WHILE INVITING RFP

NHAI, vide policy circular number 8.1.26/2022 dated August 26, 2022 ("**RFP Circular**"), has provided the schedule of bidding process to be included while inviting RFP to ensure timely award of the project, which generally gets delayed due to extensions in the bid due date for incorporating amendments in the issued RFP and model concession agreement as well as incorporating modifications suggested during appraisal of the project by the relevant appraisal committees. Accordingly, the following has been decided:

- Bid due date shall not be extended more than once and can be extended twice only in exceptional cases.
- The following bidding schedule will be followed and incorporated while inviting the RFP:

Sr. No.	Event Description	Date and Time
i.	Invitation of RFP (NIT)	T
ii.	Last date for receiving queries	T1= T+ 25 (twenty five) calendar days
iii.	Pre-bid meeting at the specified venue	T2= T1+ 1 (one) working day
iv.	Authority response for queries latest by	T3= T2+ 7 (seven) calendar days
v.	Last date for request for bid document	T4= T3+ 15 (fifteen) calendar days (max) up to 11 AM
vi.	Bid due date	T4= T3+ 15 (fifteen) calendar days (max) up to 11 AM
vii.	Opening of technical bid at venue	T5= T4+ 1(one) working day after 11 AM
viii.	Declaration of eligible/qualified bidders	T6= T5+ 15 (fifteen) calendar days (max)
ix.	Opening of financial bid	T7= T6+ 8 (eight) calendar days
x.	Physical submission of original bid security; power of attorney for lead member of JV (if any); joint bidding agreement or JV if any; Integrity Pact and experience certificates apostille at foreign origin, if any	T8= T7+ 4 (four) calendar days (max)
xi.	Issuance of letter of acceptance ("**LOA**")	T9= T8+ 3 (three) calendar days
xii.	Return of signed duplicate copy of LOA	Day after issuance of LOA
xiii.	Validity of bid	120 (one hundred and twenty) days from bid due date.

INTELLECTUAL PROPERTY RIGHTS

DELHI HIGH COURT FACILITATES CO-EXISTENCE BETWEEN LEADING BAKERIES

In an aim to resolve multiple legal proceedings between the parties namely, Theobrama Foods Private Limited and Theos Food Private Limited, the Delhi High Court, in the presence of the parties' Founders / Partners, recorded an amicable settlement in the form of a co-existence.

Briefly, the Defendant (Plaintiff in Bombay suit being Commercial IP Suit No.342 of 2016) claimed to have adopted and started using the trademark 'Theobrama' in the year 2004. In 2021, the Defendant in Bombay suit i.e. Theos Foods Private Limited, filed a commercial suit in Delhi, seeking similar relief against trademark infringement, passing off and dilution. Besides, the parties have also sought for cancellation of trademarks, presuming as counter blasts. During the proceedings before the Delhi High Court, the Court facilitated discussions between the parties and due to this process, the parties could arrive to an amicable settlement. Among other things, Theos acknowledged Theobrama's rights and has agreed to restrict its business within Delhi NCR. On the other hand, Theobrama would use the mark, Theos, only in respect to few bakery items and only in offline mode. The Court has, however, allowed the Plaintiff to use the mark Theos, outside Delhi NCR region, as a prefix or suffix, provided that in entirety, the said mark is not identical to or deceptively similar to Theobrama.

DSK View: *Settlement by way of co-existence can be conducive when the parties can identify factors, which does not diminish or dilute co-existing Parties' respective brand value and also allows each of these parties to enforce rights against third parties. In case where the marks are nearly identical and are used in respect to identical goods/ services, such co-existence should be entered into after careful consideration of the extent and use of the brands / trademarks.*

Theos Food Pvt. Ltd. & Ors v. Theobroma Foods Pvt. Ltd.

BIHAR'S MAKHANA (FOXNUT) RECOGNISED AS GEOGRAPHICAL INDICATION ("GI")

In August 2022, the Indian GI Registry had granted GI tag to a specific variety of foxnut (GI Application No. 696), originating from Mithilanchal region of Bihar. An organisation namely, Mithilanchal Makhana Utpadak Sangh, facilitated by Bihar Agricultural University, Sabour, Bhagalpur and the Department of Agriculture, Government of Bihar, had applied for registration of its foxnut variety as a GI. Pursuant to careful examination of the application on various grounds and subject to strict compliance including registration of at least 5,000 producers as authorised users within six months from the issuance of registration certificate, the Registrar of GI had allowed the application and has granted GI tag to Bihar's Mithila Makhana.

DSK View: *Keeping in mind the growing commercial value from foxnuts, arising from its health benefits, it is likely that sub-standard foxnuts would be traded as goods originating from North Bihar, particularly, the Mithila region. The strong protection granted by GI tag, would protect the community at large as also the consumers, who would be able to distinguish the Mithila originating makhana by the tag itself.*

INDIA'S FTAS 2.0: FRESH COMMITMENTS ON PREVIOUSLY UNTOUCHED AVENUES

The primary goal of Free Trade Agreements (FTA) is to facilitate and ease cross-border transactions, increase investment prospects, promote mutual trade and improve the ease of doing business. FTAs can be signed at the multilateral level (e.g., WTO covered agreements), plurilateral level (e.g., RCEP, NAFTA) and at the bilateral level. Given the lack of consensus among WTO members on several topics, countries are looking at plurilateral and bilateral FTAs to protect their areas of interest. India has recently been very proactive in entering into FTAs with key trading partners wherein it has been negotiating on several issues which remained mostly taboo in FTS negotiations. These aspects among others include government procurement, labour standards, environment, and diversity.

Government Procurement

Governments make frequent purchases using public funds for public objectives. These procurements are generally termed as government/public procurements. The ideal method for achieving this goal is usually thought to be open, transparent, and non-discriminatory procurement as it maximises provider competition (e.g., through open tenders). India has been wary of taking any international commitments on Government Procurement and to this end had not signed the Government Procurement Agreement at the WTO and is not even an observer therein. India has also never signed a plurilateral or bilateral FTA with a chapter/ commitment on government procurement, until recently. This has allowed the Government of India ('GOI') the flexibility to favour domestic companies over foreign companies, vis-a-vis the government tenders in India.
However, in a paradigm shift, a chapter on government procurement was part of the India-UAE FTA which concluded in March 2022 wherein the GOI for the first time has undertaken certain obligations. Chapter 10 of the India-UAE FTA also known as Comprehensive Economic Partnership Agreement ('**India-UAE CEPA**') marks the entry of India in international market for government related tenders.

The Article 10.5 of the India-UAE CEPA establishes two basic principles for government procurement:

(a) Treatment of supplier from the counterparty, at equal footing to a locally established supplier

(b) No discrimination between locally established suppliers on account of them procuring goods or services from the counterparty

These obligations also come with certain exceptions and the threshold limits as agreed by India and UAE.

Given this development, it will be interesting to observe the on-going FTA negotiations with the United Kingdom and Canada and whether the GOI undertakes similar obligation or not with these trading partners and thereby further opening up the competition in government tenders in India.

Diversity

Gender analysis is the systematic collection and assessment of data on gender relations and differences in order to recognise, comprehend, and address gender-based injustices. The fight to give both men and women equal rights and opportunities to flourish and be at the frontline as business owners, entrepreneurs, workers and consumers etc still continues and requires intervention. One such intervention can be done through diversity chapters in FTAs. Despite the liberalisation of trade, the concerns of women remain underrepresented in trade negotiations. While 'Ministry of Women and Child Development' finds a mention in Annexure 10A, Schedule of India to the India-UAE CEPA,

unfortunately, it does not validate the importance of having a chapter devoted to gender and trade. On the contrary, for a nation beginning to acknowledge the importance of gender and equality in trade, such provisions serve as proof of better inclusion of the concept of gender in the future FTAs.

In fact, the India-UK FTA which is currently under negotiation is likely to have a chapter on gender in order to promote the interest of women. The negotiating objectives of UK provides for promoting women's access to the full benefits and opportunities of FTAs. The negotiations can take inspiration from Canada-Israel and Canada-Chile FTAs which include a gender and trade chapter and the WTO's Joint Declaration on Trade and Women's Economic Empowerment signed in December 2017 which acknowledged the need to incorporate a gendered perspective to international trade. Inclusion of a gender chapter is likely to:

- Contribute to advancing gender equality and women's economic empowerment
- Improve women's access to opportunities and reduce the barriers to their participation in national and international economics

Labour standards

Labour standards apply to the way workers are treated and cover a wide range of things: from use of child labour and forced labour, to the right to organize trade unions and to strike, minimum wages, health and safety conditions, and working hours.

Labour standards differ depending on the stage of the development, social, political and economic conditions from country to country. International Labour Organization ('**ILO**') is the main body developing international labour policies and norms in collaboration with WTO. However, there are no trade related sanctions in place against countries which flout international conventions on labour standards and human rights.

International labour standards have always been a contentious issue in relation to trade between industrialized and developing countries. The competing interests herein are the need to improve workplace conditions and the trade barriers posed by ethical use of labour for more developed countries vis-à-vis the economic advantages of a low-wage country without strong labour protection laws.

In recent years the number of FTAs between multiple countries including the European Union and United States are increasingly including labour standard provisions. While India-EU FTA negotiations are likely to start sometime later this year, there exist fundamental differences in the design of the trade agreements signed by India and the EU so far.

While it has been a consistent position of the EU that a FTA should contain a chapter on Trade and Sustainable Development ('**TSD**') which requires FTA parties to adhere to international labour and environmental norms, India has been in past arguing that the TSD chapter would interfere with its sovereign right to legislate on labour and environmental issues.

Thus, the issue of trade and labour standards linkages remains unsettled and the consensus on this issue will be difficult to reach at a multilateral level. While there are local labour laws and international labour conventions in place to provide guidance on labour policies, inclusion of such policies in FTAs is likely to provide a strong incentive to ensure compliance.

Given that India has now undertaken commitments on government procurement and diversity and is contemplating the inclusion of labour standards in its FTA with a key trading partner like the EU, it will be interesting to how India handles these issues at the multilateral level as well as with other key trading partners like the US. Historically, India's stance has been conservative on such issues.

FSSAI HAS MANDATED HEALTH CERTIFICATES FOR IMPORTS OF FOOD CONSIGNMENTS

The Food Safety and Standards Authority of India ('**FSSAI**') recently mandated the requirement of Health Certificates along with the imports of food consignments vide F. No. 1829/Health Certificate/FSSAI/Imports/2021 dated August 3, 2022. As per the text of the directive, such health certificate would require a detailed declaration of the country of origin and export, the expiry date of the food product and details of its ingredients.

It has been directed that imported food consignments of the food categories specified in Food Product Standards & Food Additives ('**FSS**') must be accompanied by a Health Certificate issued by a competent authority of the exporting country. The certificates would be valid till 90 days from the date of their issue. Such directive was issued by the FSSAI to keep a check on the preservatives used in the food products and ensure that they comply with the limits prescribed by the FSSAI.

In compliance with the same, the Central Board of Indirect Taxes and Customs ('**CBIC**') issued instructions vide Instruction No. 18/2022-Customs dated August 12, 2022, requiring mandatory health certificates for the import of the following food items only:

1. Milk and Milk Products
2. Pork and Pork Products
3. Fish and Fish Products

Such mandatory requirement of Health Certificates

accompanying the imports shall be applicable with effect from 1st November 2022.

***DSK View**: FSSAI's new directive of mandatory health certificates would ensure that the food is fit for consumption and toxic additives are not present in the products. This is in line with the government's policy of ensuring quality standards of goods imported into the country. We also note that this requirement will now apply additionally to requirements for obtaining health certificates for disease free certification by the Department of Animal Husbandry and Dairying.*

MEDIA & ENTERTAINMENT

KERALA HIGH COURT HELD THAT THE CONDITIONS SET BY CBFC FOR THE THEATRICAL RELEASE OF A FILM SHALL ALSO BE APPLICABLE TO ITS OTT RELEASE AS WELL

In a petition filed by Jose Kuruvinakkunnel against the OTT release of the film tiltled "Kaduva", the Kerala High Court while permitting the OTT release of film held that "*the directions/conditions set by the Central Board of Film Certification (CBFC) for the theatrical release of a film should be followed when it is broadcasted on OTT platforms as well*". Initially, the Petitioner had filed a suit against the publication of the film on the grounds that the portrayal of the central character and the story of the film is based on the real-life story of the Petitioner and the film contains certain additions which are defamatory to the Petitioner and his family members. However, the petition and the subsequent appeal, both were dismissed on the ground that the film was not a biopic. When the film was presented for examination and certification before the CBFC, the Petitioner objected the grant of certification under section 5A of the Cinematograph Act, 1952. After hearing the parties, the Kerala High Court directed CBFC to take a decision on the objections raised by the Petitioner. CBFC found that the alleged scenes would only be relatable to the Petitioner if the protagonist is named "Kuruvachan", and thereby demanded the producers to modify the name of the protagonist. In the present petition, the Petitioner alleged that even though the name was changed in the versions being used for Indian theatrical screening, it remained the same for versions being used for overseas theatrical screening. The film nevertheless got released on OTT platforms on August 4, 2022.

DELHI HIGH COURT RESTRAINS ROGUE WEBSITES FROM STREAMING ASIA CUP 2022

In a suit filed by Star India Private Limited ("SIPL") and Novi Digital Entertainment Private Limited ("Hotstar") against certain rouge websites, the Delhi High Court has restrained 11 websites from streaming and broadcasting matches of the Asia Cup 2022. SIPL, which has the exclusive rights to broadcast the event globally, contented before the Court that the websites have been engaged in rebroadcasting the live matches illegally which in turn is violating the exclusive rights owned by SIPL. The Court ordered that "*the Defendant Nos. 1 to 11 and all others acting for or on their behalf, shall stand restrained from hosting, streaming, broadcasting, rebroadcasting, retransmitting or in any other manner communicating to the public, or disseminating to the public, any cricketing events, extracts, excerpts, highlights in relation to cricket matches relating to the Asia Cup 2022*". The Court further directed the Department of Technology (DoT), Domain Name Registrars (DNRs), Ministry of Electronics and Information Technology (MeiTY), and Internet Service Providers to immediately block these websites.

MADRAS HIGH COURT QUASHES THE CRIMINAL PROCEEDINGS FILED AGAINST THE LEAD ACTOR AND THE DIRECTOR OF THE FILM "JAI BHIM"

The Madras High Court has quashed the FIR filed by the Velachery police against the actor Suriya and director TJ Gnanavel ("Petitioners") for allegedly hurting the sentiments of the Vanniyar community in the film *"Jai Bhim"*. The Police were directed by the Saidapet Magistrate to file a complaint in the matter and subsequently the actor and the director were charged under Section 295A of the Indian Penal Code (hurting religious sentiments). In pursuance to the same, a petition was filed by the Petitioners before the Madras High Court contending that there was no material to show that the name "Gurumurthy" was given to the character with the intent of defaming the name of one of the leaders "Gurunathan", of the Vanniyar community, and the Magistrate and the police officials have erred to take note of this. Further, the Petitioners contended that the Magistrate has also erred in observing the fact that proper sanctions had been obtained by the Producer from the statutory body (CBFC) for screening the film. After considering the

contentions of both parties, the Court opined that though the Defendant alleged that the film was projected in a manner which can incite violence and hostility on a particular community, no specific instances were recorded. The Court further observed that "*Merely assuming that the name given to a character in the movie resembles that of the leader of a community, it cannot be presumed that in fact such projection was made or directed against a particular community*".

A PROPOSAL IS BEING FINALISED BY THE IAMAI FOR THE FORMATION OF A 7-MEMBER SELF-REGULATORY COMMITTEE FOR SOCIAL MEDIA INTERMEDIARIES

A group of various social media intermediaries including Meta, Twitter and Google, led by the Internet and Mobile Association of India (IAMAI), are in the process of finalising a proposal for the formation of a 7 (seven) member self-regulatory committee chaired either by an eminent jurist or industry senior with a minimum professional experience of 15 (fifteen) years is areas such as technology or any allied fields, to handle the appeals and complaints filed by Indian users against such social media intermediaries over content and takedown directives. Further, out of the 7 members' panel, 3 (three) members, should be appointed who shall have an expertise in areas such as law, minority, child, and human rights and the other 3 (three) members shall be nominated from the member companies who are signatory to the said proposal. The motive behind proposing this initiative is to pre-empt the need for the formation of a government-led grievance redressal forum as required under the recently notified IT Rules, 2021. Once the proposal is finalised, the same will be pitched to the Ministry of Electronics and Information Technology (MeitY).

DELHI HIGH COURT ALLOWS OTT RELEASE OF THE FILM "SHAMSHERA" SUBJECT TO THE PRODUCER DEPOSITING RS. 1 CRORE WITH THE REGISTRY

In the copyright infringement suit filed by the producer, Bikramjeet Singh Bhullar ("Petitioner") against the film "Shamshera", alleging that the producers Yash Raj Films (YRF) ("Defendant") have infringed the Petitioner's copyright in the literary work, 'Kabu na chhadein khet' by making a substantial reproduction, the Delhi High Court however allowed the release of the film on OTT platforms, subject to YRF depositing an amount of Rs. 1 crore with the Registrar General by August 22, 2022. While the Plaintiff opposed the release of the film, the Defendant claimed that they would face an irreparable loss and breach the contractual obligations qua third parties in case the same is ordered. The Court observed that "*Considering the totality of the circumstances as well as the fact that the impugned film has already been released in theatres and is scheduled to be released on the OTT Platforms tomorrow i.e. 19.08.2022, in my view, in order to balance the equities between the parties, at this stage, it would be appropriate to permit Defendant No. 1 to release the impugned film "Shamshera", on the OTT Platforms, subject to Defendant No. 1 depositing a sum of Rs.1 Crore with the Registrar General of this Court, latest by 22.08.2022*". The matter will next be heard on September 12.

MAJOR RECORD LABELS AND BRIGHT HOUSE NETWORKS SETTLE COPYRIGHT LAWSUIT ONE DAY BEFORE TRIAL

Three years ago, with backing from the Recording Industry Association of America (RIAA), several of the world's largest music companies including Warner Bros and Sony Music ("Plaintiffs") sued the internet service provider "*Bright House Networks*" ("ISP"), accusing the ISP of not doing enough to stop pirating subscribers and alleging that the ISP failed to terminate repeat infringers. Over a year after the lawsuit was filed, ISP filed a countersuit, accusing the Plaintiffs of "*false, deceptive, and misleading*" claims and of violating the Digital Millennium Copyright Act (DMCA) by "*knowingly sending materially inaccurate notices of alleged infringement*". After going back and forth with more arguments for three years, in a court filing on August 02, 2022 which came a day before the two Parties were set to go to trial in the US District Court for the Middle District of Florida, Tampa division, Universal Music, on behalf of the Recording Industry Association of America (RIAA) said that, "*they have resolved*" the case against Bright House, without disclosing the specifics of the settlement. Shortly after, US District Court Judge Mary Scriven dismissed the case with prejudice, meaning that the lawsuit cannot be revived again in the future and all pending motions, hearings, and the trial itself stand cancelled. While Bright House has resolved this matter and the settlement marks the end of a three-year litigation between Bright House and the record companies, its parent company Charter Communications continues to face similar repeat infringer claims.

CANADIAN GOVERNMENT MAY SOON ADOPT AN ARTIST'S RESALE RIGHTS LAW

According to the Office of the Innovation Minister, Francois-Philippe Champagne, along with Heritage Minister, Pablo Rodriguez is currently drafting the reforms to the Copyright Law of Canada. The reforms might award the Canadian Artists a 5% share of the resale value for their artistic creations in the secondary market. Currently, there is no legislation for Canadian artists to receive anything if the value of their work skyrockets after its initial sale. A 5% royalty in resales is being pushed by advocacy groups like Canadian Artists' Representation (CARFAC), which would apply even after the artist dies — at which point the funds would be collected by their estate. Out of all the American states, only the State of California has regulations in place. The California Resale Royalty Act implemented in the year 1977, had instated a 5% royalty on artworks valuing over $1,000 with the royalty to go up every time the work is resold at a higher value, though the implementation of the

same has been largely subdued by the courts in the recent times.

NETFLIX LOSES "BIRD BOX" ARBITRATION CASE AGAINST WRITERS GUILD OF AMERICA

Netflix has lost the arbitration proceedings against the Writers Guild of America West (WGAW) regarding the 2018 Sandra Bullock horror film "Bird Box". Netflix had argued that it has paid the writers based on the "*minimum basic agreement*" guidelines established with the Directors Guild of America (DGA) and the Screen Actors Guild (SGA). However, WGAW argued that Netflix should apply the "cost-plus" model to its own films as well and should assign the license fees in excess of the production budget towards payment of the residuals. The Arbitrator ruled that the compensation called for in the WGAW contracts is based on the same "*cost plus*" formula which is maintained for the films produced by third-party production companies, which bases the value of the films slightly higher than the agreed budgets. The Arbitrator further ruled that the Netflix's "self-dealing" as the producer and distributor of the film resulted in an underpayment to the writer of the film *Bird Box* and awarded him an additional $457,882 in residuals over and above the already received residuals amounting to $391,481 and interest at the rate of 1.5% per month. Further, this decision will resultantly generate an additional liability of $42 million plus interest on Netflix towards payment of unpaid residuals to 216 screenwriters on 139 Netflix projects.

A COPYRIGHT LAWSUIT HAS BEEN FILED BY UFC AGAINST THE PRODUCERS OF THE DOCUMENTARY BASED ON FORMER UFC MIDDLEWEIGHT CHAMPION MICHAEL BISPING

The global governing body of mixed martial arts, UFC, has recently filed a copyright infringement lawsuit before a Los Angeles Federal Court against Score G Productions ("Defendants"), the makers of the documentary titled 'Bisping: The Michael Bisping Story'. The attorneys representing UFC have reported that the Defendants never bothered to contact UFC to seek a license for the content/ footages used in the documentary by the Defendants, which means any of the footage from Bisping's UFC fights was used without permission and could be subject to removal and/or compensatory damages. UFC claims the said documentary borrows "substantial portions of the UFC's most famous fights," including footage of Conor McGregor's knockout victory over then-featherweight champion Jose Aldo. The attorneys further argued that allow such use by the Defendants as an exception under the "fair use" act, would set a wrong precedent permitting any future documentary to serve as an excuse to re-broadcast UFC fights without authorization.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

COMPANIES (INCORPORATION) THIRD AMENDMENT RULES, 2022

The MCA *vide* notification dated August 18, 2022 (accessible here), has notified the Companies (Incorporation) Third Amendment Rules, 2022 ("**Incorporation Amendment Rules**") which amends the Companies (Incorporation) Rules, 2014 ("**Incorporation Rules**").

As per the Incorporation Amendment Rules, a new Rule 25B has been inserted after Rule 25A of the Incorporation Rules in respect of physical verification of registered office addresses of the companies by the Registrar of Companies ("**Registrar**") to verify whether a company is carrying on any business or operation from such address, the key provisions of which have been summarised below:

(i) The Registrar shall, based upon the information or documents made available on the MCA website, visit at the address of the registered office of the company and may cause the physical verification of the said registered office in presence of 2 (two) independent witnesses of the locality where the said registered office is situated and may also seek assistance of the local police for such verification, if required;

(ii) The Registrar shall carry the documents as filed on the MCA website in support of the address of the registered office of the company for the purposes of physical verification and to check the authenticity of the same by cross verification with the copies of supporting documents of such address collected during the said physical verification, duly authenticated from the occupant of the property where the said registered office is situated;

(iii) The Registrar shall take a photograph of the registered office of the company while causing physical verification of the same; and

(iv) The Registrar shall, pursuant to the physical verification, prepare a report of the physical verification including the details of the registered office address, landmarks, date and time of visit, details of personals available at the address etc. in the format as set out in the Incorporation Amendment Rules.

Further, where the registered office of the company is found to be not capable of receiving and acknowledging all communications and notices, the Registrar shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of relevant documents, if any, within a period of 30 (thirty) days from the date of the notice before taking further actions in accordance with the provisions of Section 248 *(Power of Registrar to remove name of company from register of companies)* of the Companies Act, 2013.

COMPANIES (REMOVAL OF NAMES OF COMPANIES FROM THE REGISTRAR OF COMPANIES) SECOND AMENDMENT RULES, 2022

The MCA *vide* notification dated August 24, 2022 (accessible here), has notified the Companies (Removal of Names of Companies from the Registrar of Companies) Second Amendment Rules, 2022 ("**Removal of Names Amendment Rules**") which amends the Companies (Removal of Names of Companies from Registrar of Companies) Rules, 2016.

As per the Removal of Names Amendment Rules, the MCA has amended Form No. STK-1 (*Notice by Registrar for Removal of names of a company from Register of companies*), Form No. STK-5 (Public Notice of Strike-off) and Form No. STK-5A (Public Notice of Strike-off published in newspaper), to provide for the Registrar to issue notices for removal of the name of the company if it finds that a company is not carrying any business or operation from the

registered office as revealed during the conduct of the physical verification of the registered office of the company under section 12(9) of the Companies Act, 2013.

COMPANIES (REGISTRATION OF CHARGES) SECOND AMENDMENT RULES, 2022

The MCA *vide* notification dated August 29, 2022 (accessible here), has notified the Companies (Registration of Charges) Second Amendment Rules, 2022 ("**Charges Amendment Rules**") which amends the Companies (Registration of Charges) Rules, 2014 ("**Charges Rules**").

As per the Charges Amendment Rules, a new Rule 13 has been inserted after Rule 12 which provides that charge e-forms shall be signed by insolvency resolution professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be, and be filed with the registrar of companies.

Further, the Charges Amendment Rules also amended Form No. CHG-1 *(Application for registration of creation, modification of charge (other than those related to debentures)*, Form No. CHG-4 *(Particulars for satisfaction of charge thereof)*, Form No. CHG-8 *(Application to Central Government for extension of time for filing particulars of registration of creation / modification / satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/ modification/ satisfaction of charge)* and Form CHG-9 *(Creating or modifying the charge in (for debentures including rectification)* to provide for signing of the said forms by the insolvency resolution professional or resolution professional or liquidator.

COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) THIRD AMENDMENT RULES, 2022

The MCA *vide* notification dated August 29, 2022 (accessible here), has notified the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022 ("Directors' Appointment Amendment Rules") which amends the Companies (Appointment and Qualification of Directors) Rules, 2014.

As per the Directors' Appointment Amendment Rules, the MCA has notified the new e-form DIR-3 KYC and web-form DIR-3 KYC-WEB for submission of KYC of directors of the companies.

COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2022

The MCA *vide* notification dated August 29, 2022 (accessible here), has notified the Companies (Acceptance of Deposits) Rules, 2022 ("**Deposits Amendment Rules**") which amends the Companies (Acceptance of Deposits) Rules, 2014 ("**Deposits Rules**").

As per the Deposit Amendment Rules, the MCA has amended Rule 16 of the Deposits Rules, to bring in transparency and enhance the role and responsibilities of statutory auditors by requiring that all information (as on March 31 of the concerned financial year) inserted in Form DPT-3 shall be duly audited by the auditor and a declaration to that effect shall be submitted by the auditor in Form DPT-3.

EXTERNAL COMMERCIAL BORROWINGS (ECB) POLICY – LIBERALISATION MEASURES

The Reserve Bank of India ("**RBI**") has, vide circular dated August 01, 2022, bearing reference number RBI/2022-23/98 A.P. (DIR Series) ("**Circular**"), introduced the following temporary relaxations applicable to external commercial borrowings ("**ECB**") raised till December 31, 2022:

i. limit for ECBs raised under automatic route has been increased from USD 750 million or equivalent per financial year, to USD 1.5 billion or equivalent per financial year; and

ii. all-in-cost ceiling for ECBs has been increased by 100 bps. The revised ceiling shall be available only to eligible borrowers of investment grade rating from Indian Credit Rating Agencies. Other eligible borrowers may raise ECBs as per existing all-in-cost ceiling.

The Circular was issued pursuant to RBI's press release on Liberalisation of Forex Flows in July 2022. The RBI's Master Directions on External Commercial Borrowings, Trade Credits and Structured Obligations dated March 26, 2019 ("**ECB Master Directions**") permit eligible ECB borrowers to raise ECBs up to USD 750 million or equivalent per financial year under the automatic route.

DSK View: *With global recession setting in, the risks of a spillover effect in the Indian markets cannot be ruled out. The Circular seems to be a move by the RBI to ensure that the impact on forex flows into India is mitigated and the economy is stable. However, the relaxations are subject to certain conditions and a specific timeline, thereby suggesting that RBI is adopting a wait and watch policy, to review and decide at a later date if there is any need to continue the relaxations or take such other steps as may be required considering market conditions.*

ENHANCED GUIDELINES FOR DEBENTURE TRUSTEES AND LISTED ISSUER COMPANIES ON SECURITY CREATION AND INITIAL DUE DILIGENCE

The Securities and Exchange Board of India ("**SEBI**") vide circular dated August 04, 2022[1] ("**SEBI Circular**") has issued revised requirements relating to creation of security and related due diligence by debenture trustees ("**Debenture Trustees**") in pursuance of previous circulars dated November 03, 2020[2] ("**November 03 Circular**"), November 12, 2020[3] ("**November 12 Circular**") and May 19, 2022[4] ("**May 19 Circular**"). The SEBI Circular is applicable to all issuers who have listed or propose to list their debt securities.

Regulation 59 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**") provides for change in terms of listed non-convertible debentures. As per the SEBI Circular, a change in the structure of non-convertible debt securities ("**NCDS**") includes (i) a change in security; (ii) creation of additional security if the NCDS is already secured; or (iii) creation of security for unsecured debt securities.

In order to harmonize the process of creation of security to secure NCDS pursuant to listing, certain guidelines have been issued vide the SEBI Circular, some of which are listed as below:

i. Prior to initiating due diligence, Debenture Trustees and the listed entity shall enter into an amended debenture trust agreement to incorporate certain obligations arising out of the November 03 Circular, November 12 Circular and May 19 Circular for continuous monitoring, and any other stipulations of

[1] SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/106
[2] SEBI/HO/MIRSD/CRADT/CIR/P/2020/218
[3] SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2020/230
[4] SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2022/ 67

SEBI with respect to security creation, initial due diligence and continuous monitoring by Debenture Trustees.

ii. Debenture Trustees are required to carry out due diligence in accordance with paragraph 4 to 7 of the November 03 Circular and issue a no-objection certificate to the issuer company for effecting any change proposed in the security structure or for creation of security.

iii. The issuer company and Debenture Trustee are required to execute a supplemental/ amended debenture trust deed to include all the terms and conditions pursuant to the due diligence and security created.

iv. The issuer company is also required to submit certain documents to the Depositories and Stock Exchanges including an NOC by the Debenture Trustee for change in security/ creation of security; the executed supplemental/amended debenture trust deed; undertaking from the Debenture Trustees that the security has been created and registered.

v. Creation of encumbrance (as defined under SEBI Circular) on securities for securing the NCDS shall be through the depository system, in accordance with the Depositories Act, 1996, the SEBI (Depositories and Participants) Regulations, 2018, depository bye laws and other applicable regulations and circulars.

vi. If the security has not been finalized at the time of filing of draft shelf prospectus/ placement memorandum, then the Debenture Trustees are required to undertake due diligence as per the provisions of the SEBI Circular read with the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**") and Annexure A of November 03 Circular.

vii. The Debenture Trustees are also required to empanel external agencies for undertaking due diligence and continuous monitoring.

DSK View: *The SEBI Circular aims to strengthen the regulatory framework governing Debenture Trustees, clearly stipulating the role and responsibility of the Debenture Trustees and issuer companies in relation to encumbrance, security creation and due diligence pertaining to listed debt securities. SEBI has periodically reviewed and modified / supplemented existing regulatory framework pertaining to the role of Debenture Trustees. In the year 2020, the SEBI had issued a slew of regulatory changes (vide circulars and/or amendments to existing regulations governing Debenture Trustees and debt securities), to strengthen the role of Debenture Trustees and stipulating specific responsibilities on them including independently evaluating security cover, ensuring consents and approvals in relation thereto are in place and continuously monitoring the cover.*

RESERVE BANK - INTEGRATED OMBUDSMAN SCHEME, 2021

The RBI had introduced the Reserve Bank – Integrated Ombudsman Scheme (RB-IOS) – 2021 ("**RBIOS, 2021**") on November 12, 2021, as a one-point cost-effective grievance redressal mechanism for the public. The RBIOS 2021 is available to customers of 'Regulated Entities' as defined under the RBIOS 2021.

In furtherance of the same, the RBI has, vide notification dated August 05, 2022 bearing reference number CEPD.PRD.No.S544/13.01.001/2022-23 ("**Notification**") extended the RBIOS, 2021 to make the same applicable to Credit Information Companies ("**CICs**") as defined under the Credit Information Companies (Regulation) Act, 2005 ("**CIC Act**"). It may be noted that the RBIOS 2021 does not apply to any dispute for which a remedy has been provided in Section 18 of the CIC Act.

The Notification is effective from September 01, 2022.

DSK View: *With the inclusion of CICs in RBIOS, 2021, RBI has widened the definition of 'Regulated Entity' to include CICs within its ambit. Although Section 18 of the CIC Act provides certain remedies for disputes with CICs, the inclusion of CICs under RBIOS 2021, will now provide a grievance redressal mechanism to customers who have any grievances against CICs and for which remedy is not provided under Section 18 of the CIC Act.*

RECOMMENDATIONS OF THE WORKING GROUP ON DIGITAL LENDING - IMPLEMENTATION

The RBI has, vide press release dated August 10, 2022 issued a regulatory framework ("**Framework**") to regulate and support the growth of credit delivery through digital lending methods. RBI has classified digital lenders into 3 (three) groups:

a. entities regulated by the RBI and permitted to carry out lending business ("**RBI REs**");

b. entities authorized to carry out lending as per other statutory/regulatory provisions but not regulated by RBI;

c. entities lending outside the purview of any statutory/ regulatory provisions.

The Framework regulates RBI REs as well as lending service providers ("**LSPs**") engaged by RBI REs. Certain key features of the Framework are given below:

a. REs must undertake transactions related to: (a) loan disbursals, and (b) repayment, only through their own the bank account and the bank account of the borrower, without any pass-through/ pool account of the LSPs or any third party;

b. fees, charges etc. payable to the LSPs in relation to the credit intermediation process should be paid directly by the RE and the all-inclusive cost of digital loans in the form of Annual Percentage Rate ("**APR"**) should be disclosed to the borrower;

c. increasing the credit limit without borrower's consent has been expressly prohibited;

d. a cooling-off period to be provided within the loan contract, during which borrower may paying the principal and proportionate APR without any penalty;

e. REs and LSPs to appoint a nodal grievance redressal officer who shall be responsible for dealing with fintech/ digital lending related complaints. Borrower may also lodge a complaint under the RBIOS, 2021, if a complaint remains unresolved by the RE within the stipulated time period of 30 (thirty) days.

f. Digital Lending Apps ("**DLAs**") may collect only need based data with prior explicit consent of borrower. Borrower may either accept, deny or revoke its consent for use of any specific data along with the option to delete any data collected by the DLAs/ LSPs.

g. Any lending sourced through DLA to be reported to CICs, irrespective of the nature or tenure of such lending. RE to report all new digital lending products involving short term credit or deferred payments, extended by them over merchant platforms to CICs.

h. RBI is examining the recommendations of the Working Group and will issue directions in near future. However, REs to ensure that the financial product, wherever the contractual arrangement provides for FLDG, are in compliance with extant guidelines laid down in Master Direction – Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 dated September 24, 202 (Reserve Bank of India - Master Directions (rbi.org.in)).

DSK View: *The RBI is constantly taking steps to encourage innovation in the financial system to address orderly growth, stability, and protection of public interest. One such step was the constitution of the Working Group on 'digital lending including lending through online platforms and mobile apps' on January 13, 2021 ("**WGDL**"). With the increase in digitization, servicing through the digital lending route has gained popularity. However, RBI has noted emergence of several issues such as unbridled engagement of third parties, mis-selling, breach of data privacy, charging exorbitant interest rates, unethical recovery practices, etc. The Framework has taken into consideration several recommendations of the WGDL, which submitted its report on November 18, 2021.*

OUTSOURCING OF FINANCIAL SERVICES - RESPONSIBILITIES OF REGULATED ENTITIES EMPLOYING RECOVERY AGENTS

The RBI has, vide circular dated August 12, 2022, bearing reference number RBI/2022-23/108 DOR.ORG.REC.65/21.04.158/2022-23 ("**OFS Circular**") expressly laid down certain responsibilities of REs that are employing recovery agents. The OFS Circular is application to following REs:

a. Commercial Banks (including Local Area Banks, Regional Rural Banks, and Small Finance Banks) excluding Payments Banks;

b. All-India Financial Institutions (viz. Exim Bank, NABARD, NHB, SIDBI, and NaBFID);

c. Non-Banking Financial Companies including Housing Finance Companies;

d. Primary (Urban) Co-operative Banks, State Co-operative Banks, and District Central Co-operative Banks; and

e. Asset Reconstruction Companies.

The OFS Circular expressly stipulates the following responsibilities to be observed by REs while employing recovery agents and while undertaking recovery of overdue loans:

a. REs and their agents not to resort to intimidation or harassment of any kind, either verbal or physical, against any person in their debt collection efforts or make false and misleading representations, etc.;

b. REs and their agents not to undertake any acts intended to publicly humiliate or intrude upon the privacy of debtors' family members, referees or friends;

c. REs and their agents not to send inappropriate messages (via mobile or social media) or threaten or make anonymous calls or repeatedly call borrowers; and

d. REs and their agents not to call borrowers before 8:00 a.m. and after 7:00 p.m.

The OFS Circular is not applicable to microfinance loans covered under the regulatory framework issued by the RBI for microfinance loans, on March 14, 2022.

***DSK View**: RBI is mandated to operate the credit system of the country, while ensuring public interest and customer protection. The RBI has regularly iterated that the REs are solely responsible for any activities outsourced by them and accordingly, for the actions of the service providers (e.g. recovery agents) engaged by them. The OFS Circular expressly instructs REs to adhere to and to ensure that the agents employed by REs also adhere to fair practices and do not resort to unethical means to recover payments from customers. The OFS Circular has been issued in light of continuous malpractices followed by REs and their agents, especially while undertaking recovery of dues.*

FEMA OVERSEAS INVESTMENT RULES, REGULATIONS AND DIRECTIONS

The RBI vide three separate notifications, all dated August 22, 2022, notified the Foreign Exchange Management (Overseas Investment) Rules, 2022 ("OI Rules"), Foreign Exchange Management (Overseas Investment) Regulations, 2022 ("OI Regulations"), Foreign Exchange Management (Overseas Investment) Directions, 2022 ("OI Directions").

The OI Rules, OI Regulations, and OI Directions (collectively "Revised Framework") have been introduced in supersession of the extant framework under the Foreign Exchange Management (Transfer or Issue of any Foreign Security) (Amendment) Regulations, 2004 and Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015, to simplify the existing framework and reduce the compliance requirements.

Some of the key highlights of Revised Framework are given below:

a. The Revised Framework cover both, debt instruments and non-debt instruments.

b. Debt instruments include government and corporate bonds, all tranches (except equity tranches) of securitisation structures, borrowings by firms through loans, and depository receipts whose underlying securities are debt securities.

c. Investment Ceilings: The Revised Framework permits overseas investment in foreign entities engaged in bona fide business activities (i.e., activities permitted in India and the host jurisdiction of the investee), directly or through step-down subsidiaries and SPVs, subject to the limits prescribed in the OI Rules and the OI Directions.

d. Exemptions from Investment Ceilings: The investment ceilings prescribed in the Revised Framework may be exceeded, with prior approval of the Central Government or RBI, as applicable.

e. Investment through Debt Instruments: The OI Regulations, deal exclusively with financial commitments through debt instruments and permit lending or investment only in those entities where the lender has acquired control through the overseas direct investment. Any such investment shall be included towards the limits prescribed under the OI Rules.

f. Security in relation to Debt Instruments: The financial commitment through debt instruments may include guarantees, pledge, mortgage, hypothecation or similar charges over the Indian assets of the investor, its group companies, associate companies, promoter, or director or foreign assets of the foreign entity, etc.

g. Late Submission Fees: the Revised Framework also stipulates monetary penalties in the form of late submission fees, in case of delays in reporting, much like those imposed for delays in reporting foreign investment in India.

***DSK View:** The Revised Framework aims to simplify the existing regulatory structure pertaining to overseas debt and equity investments, in order to bring them same in tandem with the requirements of market participants. The Revised Framework also provides clarity on several issues including structure, security, modes of investment, etc. This may assist in enhancing the overseas investment opportunities for Indian stakeholders.*

DISCUSSION PAPER ON CHARGES IN PAYMENT SYSTEMS

The RBI has vide press release dated August 17, 2022 released a discussion paper on charges in payment systems ("**Discussion Paper**"). The Discussion Paper aims to provide a high-level overview of the payment system in India in order to frame necessary policies on the issue of high and non-transparent charges.

Key points set forth under the Discussion Paper include:

i. types of payment systems (fund transfer and merchant);

ii. common modes in which payment systems prevalent in the market (RTGS, NEFT, cards, prepaid payment instruments, UPI etc.);

iii. ownership of payment systems (RBI, NPCI, other companies);

iv. types of charges (merchant discount rate, convenience fee, surcharge and intercharge).

The Discussion Paper also lists the requirement for regulatory and government intervention in payment systems and provides product wise charges.

***DSK View**: The RBI's intent to issue the Discussion Paper was to present various issues on the subject with a view to receive inputs which will be taken into consideration while policymaking. However, the Discussion Paper does not put forth any views or opinions on the specific issues raised therein.*

RERA

REMEDIES AVAILABLE UNDER THE RERA ACT DO NOT CREATE A BAR TO INITIATE AN ARBITRATION PROCEEDING: HON'BLE HIGH COURT OF DELHI

The Hon'ble High Court of Delhi in the case of *Priyanka Taksh Sood v. Sunworld Residency Pvt. Ltd.*, held that the Real Estate (Regulation and Development) Act, 2016 (**"RERA Act"**) does not bar the application of concurrent remedies available under the Arbitration and Conciliation Act, 1996 ("**A&C Act**") as the remedies available under the RERA Act are in addition to, and not in supersession of, the remedies available under the A&C Act.

In the present case, Sunworld Residency Pvt. Ltd., a real estate developer, undertook construction of a housing society in which Priyanka Taksh Sood ("**Buyer**") had been allotted a flat by entering into a 'Flat Buyer Agreement'. The buyer opted to cancel the said agreement and recover the amount given for allotment. However, the developer failed to refund the said amount and thereby, the Buyer invoked the arbitration clause given in the agreement and filed the application in the Hon'ble High Court of Delhi under the Section 11(6) of the A&C Act seeking the appointment of a sole arbitrator.

The dispute arose when the developer contended that since the developer is registered with the Uttar Pradesh Real Estate Regulatory Authority ("**UP RERA**"), the jurisdiction for the disputes would lie before the UP RERA and the civil court's jurisdiction to entertain a suit or proceeding would be barred in respect of any matter which the RERA.

The court, while dealing with the question, whether RERA ousts the jurisdiction of the civil court or a private fora voluntarily chosen by the parties to adjudicate their disputes, relied upon the ***'Doctrine of Election'*** which stated that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them. Relying on various decisions of the apex court for interpreting Sections 79, 88 and 89 of the RERA Act, the court concluded that there is no bar under the RERA Act from application of concurrent remedy under the A&C Act, and thus, there is no clash between the provisions of the RERA Act and the A&C Act.

REGISTRATION AS A REAL ESTATE AGENT IS NOW VALID FOR TEN YEARS UNDER UP RERA

The UP RERA amended the "Registration Certificate" under Form-H of the UP RERA Rules, governing the registration of real estate agents mandated under the RERA Act. The change has increased the validity period of registration of real estate agents from 5 years to 10 years as prescribed under Rule 10(3) of the UP Land Estate (Regulation and Development) Rules, 2016.

The UP RERA *vide* a notification issued on August 26, 2022, added Regulation 48 in the Uttar Pradesh Real Estate Regulatory Authority (General) Regulations, 2019 and prescribed a fee amount that shall be payable by the real estate agents for the amendment in Form-H with respect to period of validity of registration certificate through online payment mode.

DEVELOPER DOES NOT HAVE THE AUTHORITY TO DEDUCT MONEY FROM THE BOOKING AMOUNT UPON CANCELLATION OF PURCHASE BY THE BUYER: MREAT

The Maharashtra Real Estate Appellate Tribunal ("**MREAT**") in a ruling dated August 10, 2022, held that as per the RERA Act, property developers cannot deduct money from the amount paid by a buyer if they cancel their purchase.

In the case before the Tribunal, the homebuyers had entered into an agreement with the developer for purchasing an apartment and paid Rs. 17 Lakhs as part payment. However, the developer failed to complete the project even after the due date for delivery of possession was revised.

The homebuyers subsequently decided to file a case before the Maharashtra Real Estate Regulatory Authority ("**Maha RERA**") asking the developer to pay compensatory benefits and refund of booking amount with interest. Maha RERA, in favour of the developer's argument, passed an order saying that the cancellation and subsequent refund process would be guided by the terms and conditions in the booking form.

Therefore, the buyers approached MREAT, wherein MREAT observed that the developer had already failed to hand over the possession by the promised date and ruled that *"there is no express provision in the RERA Act by which promoter is entitled to forfeiture of the amount in the event of cancellation of booking on the part of allottees (buyers), especially when allottees are not at fault or instrumental in causing delay"*.

DEMOLITION OF SUPERTECH TWIN TOWERS IN NOIDA

Recently, a 40-storey Supertech ("**Developers**") twin tower in Noida was demolished due to violation of the building codes. The twin tower, Ceyane and Apex, were part of the Emerald Court project launched by the Developers in the mid-2000s. The project is located off the Noida-Greater Noida expressway. Originally, the project was set up to include 14 nine-story towers, as per the plan submitted under the guidance of the New Okhla Industrial Development Authority (NOIDA).

However, in the year 2012, the Developer changed its plans which caused problems to arise. The complex had been changed to have 15 buildings instead of 14 and were now supposed to have 11 stories instead of 9. Furthermore, two new 40-storey towers were included in the new plan (Ceyane and Apex).

The Residents' Welfare Association moved to the Hon'ble Allahabad High Court claiming the construction to be illegal violating the provisions of U.P. Apartments Act, 2010 and the National Building Code. The Hon'ble Court, ordering in the favour of the residents of the society directed the authorities to demolish the twin-tower in the year 2014.

The matter was then appealed to the Hon'ble Supreme Court of India by the Developers wherein Hon'ble Supreme Court upheld the decision of the Hon'ble Allahabad High Court, and further ordered in favour of the residents. This was followed by a long legal battle in the Apex Court. Ultimately, the Court remained firm on its stance and ordered the Developers to demolish the tower at its own expense, resulting a historic demolition on August 28, 2022.

NO REGISTRATION REQUIRED FOR REHABILITATION OF REDEVELOPMENT PROJECTS UNDER RERA: MREAT

The MREAT recently in an order stated that the rehabilitation which is a part of a redevelopment project does not require registration under the RERA Act unless it involves marketing, advertising or selling. The Authority clarified that generally the projects are registered as a whole, this does not mean that the rehabilitation part of the project is also covered under RERA Act.

Setting aside the appeal, MREAT cited that redevelopment projects do not come under the ambit of the RERA Act, and further observed that *"Section 3(2) (c) of the Act (RERA Act), has specifically and expressly exempted the rehabilitation part of a redevelopment project from the requirement of registration, if it does not involve marketing, advertising or selling."*

Clarifying the concept of redevelopment projects, the MREAT stated that redevelopment projects are of hybrid nature and rehabilitation components do not fall within the purview of the RERA Act. Thereby, flat buyer, being in the rehabilitation component is not entitled to any relief under the provisions of the RERA Act and as such, complainant has no locus standi under the provisions of the RERA Act.

PROJECT COMPLETION DATE UNILATERALLY CHANGED BY THE DEVELOPER WITHOUT CONSENT OF HOMEBUYERS IS NON-BINDING ON THE HOMEBUYERS: MREAT

The MREAT, while hearing an appeal for refund of booking amount for a flat booked, has held that if the project completion date is unilaterally changed by the developer without the consent of homebuyers, then it is not binding on the homebuyers directing the developers to refund Rs. 7 Crores paid to the developer by the buyers along with interest at the rate of highest marginal cost of lending rate of State Bank of India plus 2%.

In the case before the Tribunal, the developers had changed the possession date and updated the date mentioned on the Maha RERA's website without taking the consent from the homebuyers, such a consent is considered as non-binding. The authorities were of the view that the date for delivery of the project cannot be extended upon grant of each commencement date. Therefore, the authorities ruled that the changed completion date mentioned on the website of Maha RERA cannot be taken as the agreed possession delivery date as it was updated without the consent of homebuyers. Further, the promoter shall continue to be bound by the contractual possession date as agreed with the homebuyer at the time of sale even after subsequent changes in the possession date made on the Maha RERA website.

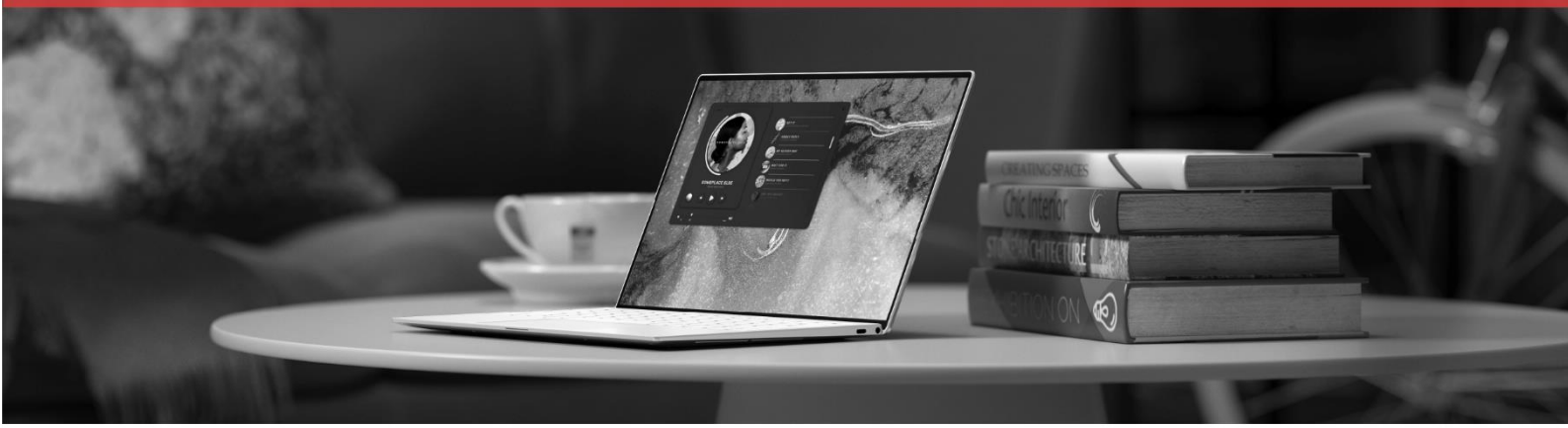
DEVELOPERS ALLOWED TO CUT OVER 2% AMOUNT FROM BUYERS IN BOOKING CANCELLATION: MAHA RERA

The Maha RERA issued a revised order that will pave the way for developers to increase the deduction amount in case of cancellation of booking, which was earlier capped at 2%. The

earlier order was issued in July that prescribed proportionate deduction of the booking amount according to the number of days with a cap 2% for cancellation after 61 days of booking.

Pursuant to the revised order issued on August 12, 2022, the Maha RERA directed that if the developers want to add any points in case of deviations/modifications from the proforma of the allotment letter as approved by the Authority, it should highlight the same with different colour. In consequence, Maha RERA's revised order has paved the way for developers to deduct more than 2% in the event of cancellation by highlighting deviations or changes in colour in consideration of the different circumstances of properties offered for sale.

Furthermore, the Maha RERA ordered that the developer would have to upload the allotment letter along with a deviation sheet indicating the changes while seeking registration of the real estate project. This further empowers the buyers to make an informed decision and also provides some relief since the developers would need RERA's approval for the changes made.



RBI INTRODUCES REGULATORY FRAMEWORK FOR DIGITAL LENDING

The Reserve Bank of India ("**RBI**"), on August 10, 2022, has introduced a regulatory framework to cater to the growth of credit delivery in the country through digital lending methods ("**Framework**") (accessible here). The release of the RBI's Framework follows the report of the working group constituted by the RBI to evaluate 'digital lending including lending through online platforms and mobile apps' (dated January 13, 2021 and accessible here); and the recommendations on the same, as received from relevant stakeholders. The Framework aims to mitigate regulatory concerns and is based on the principle that the business of lending can only be carried out by entities either regulated by the RBI, or permitted to do so by law for the time being in force. The Framework categorizes digital lenders into 3 categories and addresses concerns related to the transparency on part of regulated entities and digital lending applications. Broadly, the Framework focuses on protecting the interest of the customer, data protection, regulatory role of the mandated bodies, and ensuring the accountability of the stakeholders involved in the lending business.

RBI RELEASES DISCUSSION PAPER ON CHARGES IN PAYMENT SYSTEMS

In order to make payment systems affordable as well as economically remunerative for the entities involved, RBI has released a discussion paper (accessible here and here) on August 17, 2022. The discussion paper focusses on all aspects relating to charges in payment systems (such as those for Immediate Payment Service (IMPS), National Electronic Funds Transfer (NEFT) system, Real Time Gross Settlement (RTGS) system, Unified Payments Interface (UPI) and for utilization of various payment instruments), with the aim to identify areas of friction in the payment systems. Such scrutiny comes in the light of consumer complaints, which largely relate to high and non-transparent charges. The discussion paper seeks public views on 40 specific questions with regard to charges and levies in payment systems and has directed that any recommendations/ comments from stakeholders be received by October 3, 2022.

GOVERNMENT WITHDRAWS DATA PROTECTION BILL

The Central Government, on August 3, 2022, withdrew the Personal Data Protection Bill, 2019 ("**PDP Bill**") from Lok Sabha. The motion was moved by Union Minister for Electronics and Information Technology, Ashwini Vaishnaw, and was passed in a voice-vote. The IT Minister stated that 81 amendments were proposed, and 12 recommendations were made "towards a comprehensive legal framework". The PDP Bill was first introduced on December 11, 2019; and was intended to provide for a law for protection of personal data and was more recently referred to the Joint Parliamentary Committee (JPC) for examination and recommendations. It is notably reported that the recommendations received officially from the JPC has led the Central Government to scrape the PDP Bill in its entirety, and instead put together a revamped draft which fits into the comprehensive legal framework, promised to be introduced in the near future. The withdrawal of the PDP Bill received marked backlash from various civil rights organisations and internet freedom activists, which stressed on the noticeable and gaping delays in the timelines for adoption of a dedicated data protection framework in India. In this context, it is pertinent to note that the PDP Bill has been under discussions and deliberation for nearly 4 years (and was preceded by the Personal Data Protection Bill, 2018).

CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022 COMES INTO EFFECT

The contentious Criminal Procedure (Identification) Act, 2022, by way of a notification dated August 3, 2022 (accessible here), has come into effect from August 4, 2022. The said Act expands the powers of the authorities to collect

biometric and behavioural data of convicts, arrested persons and undertrials and contains provisions allowing storage of such data for up to 75 years, by the National Crime Records Bureau (NCRB), further allowing the NCRB to share all such data with law enforcement agencies. The data that the agencies will be able to collect under various provisions of the Act includes palm print impressions, fingerprint impressions, photographs, iris, footprint impressions and retinal scans and other physical and biological samples; as well as behavioural attributes, including handwriting samples and signatures.

DELHI HC DISMISSES APPEALS AGAINST CCI PROBE INTO WHATSAPP'S PRIVACY POLICY

The division bench of the Delhi High Court on 25th August dismissed appeals filed by WhatsApp and Facebook (Meta) challenging Competition Commission of India's ("**CCI**") probe against WhatsApp's 2021 updated privacy policy which challenged a single-judge bench order that allowed CCI to proceed with its probe against WhatsApp's updated privacy policy introduced in 2021. CCI had ordered a probe into the new privacy policy of WhatsApp after making a *prima facie* observation that it was violative of the Competition Act, 2000 ("**Competition Act**"). Issuing notices to both WhatsApp and its parent company – Meta (formerly Facebook), CCI had observed that the privacy policy terms on sharing of personalised data with Facebook companies was "*neither fully transparent nor based on specific, voluntary consent of users*" resulting in abuse of dominant position and making it violative of provisions set out under Section 4 of the Competition Act.

This order by High Court of Delhi paves way for the CCI to proceed with its investigation against the allegations of anti-competitive practices and abuse of dominant position by WhatsApp which started in January 2021, after WhatsApp had announced its updated privacy policy which would allow the company to share data concerning user interaction with the business accounts, with Facebook and the non-acceptance of which would ultimately result in the deletion of the WhatsApp accounts of users.

WHILE EXERCISING POWER UNDER SECTION 482 OF THE CRPC, THE HIGH COURT MAY GRANT A STAY OF INVESTIGATION OR ANY OTHER INTERIM RELIEF IN THE MOST EXCEPTIONAL CASES

The Supreme Court in the case of ***Siddharth Mukesh Bhandari v. State of Gujarat*** (Criminal Appeal No. 1044 - 1046 of 2022) reiterated that the High Court while exercising its powers under Section 482 of the CrPC can pass an order granting a stay on the investigation or any interim order only in rarest of rare cases. This position was determined by the Supreme Court in the case of *M/s Neeharika Infrastructure Private Limited v. State of Maharashtra* (AIR 2021 SC 1918). The Gujarat High Court, in its impugned order dated February 14, 2022, allowed the criminal applications filed under Section 482 of the CrPC and had granted temporary relief, and postponed the criminal proceedings against the Accused, which was being challenged by the Complainant before the Supreme Court. However, the Supreme Court while setting aside the order passed by the High Court, thereby granting interim relief, emphasised on the judgement of *Neeharika* and directed the investigating officer to complete the investigation and file a chargesheet within a period of three months. The Supreme Court further directed the High Court to deal with the criminal applications in accordance with law and its own merits and it would be open to the accused to move appropriate applications seeking anticipatory bail.

DSK View: *The Supreme Court has reiterated that while exercising the powers under Section 482 of the CrPC, a stay of investigation or other interim relief of taking no coercive steps can only be granted in the rarest of rare cases.*

THE RIGHT TO CROSS-EXAMINATION CANNOT BE DENIED IF THE ACCUSED HAD FAILED TO DEPOSIT INTERIM COMPENSATION UNDER SECTION 143A OF THE NI ACT

The Supreme Court in the case of ***Noor Mohammed v. Khurram Pasha*** (SLP (Crl) No. 2872 of 2022) held that an accused who fails to deposit the interim compensation under Section 143A of the Negotiable Instruments Act ("**NI Act**") cannot be denied to cross-examine the witnesses. In the present case, a Complaint was instituted against the Appellant under Section 138 of the NI Act. Subsequently, an application was made under Section 143A of the NI Act, which was allowed by the trial court and directed the Appellant to deposit 20% of the cheque amount within 60 days. However, the Appellant failed to deposit the interim compensation. When the matter was taken-up for examination of witnesses, an application was made on behalf of the Appellant under Section 145(2) of the NI Act seeking permission to cross-examine the Respondent. In view of his failure to deposit the interim compensation as directed, the trial court held that the application under Section 145(2) of the NI Act is not maintainable and dismissed the application. The trial court further allowed the Complaint and found the Appellant guilty under Section 138 of the NI Act. The said order was challenged by the Appellant before the Sessions and thereafter before the High Court. Both the courts upheld the decision of the trial court and therefore, the Appellant approached the Supreme Court. The Supreme Court observed that an order foreclosing the right would not be within the powers conferred upon the trial court and would go beyond the permissible exercise of power. The Supreme Court while allowing the said appeal held that the denial of a right to cross examine suffers from an inherent infirmity and illegality and accordingly directed the trial court to permit the Appellant to cross examine the respondent and take the proceedings to a logical conclusion.

DSK View: *The Supreme Court in this judgement has clarified the position that the remedies for failure to pay interim compensation is provided by the Legislature. The Court has further stated that the method and modality of recovery of interim compensation is clearly delineated by the Legislature and if a statute prescribes a method or modality for exercise of power, by necessary implication, the other methods of performance are not acceptable.*

THE CONFESSIONS RECORDED BY THE ADDITIONAL SUPERINTENDENT OF POLICE UNDER MCOCA IS ADMISSIBLE IN EVIDENCE

The Supreme Court in the case of ***Zakir Abdul Mirajkar v. State of Maharashtra*** (Criminal Appeal No. 1125 of 2022), held that a confession recorded by an Additional Superintendent of Police is admissible in evidence under Section 18 of the Maharashtra Control of Organized Crime Act, 1999 ("**MCOCA"**). In the present case the Bombay High Court held that the confessions recorded by the Addl. SP are admissible because Addl. SPs have the same rank as Superintendents of Police under Bombay Police Manual 1959 clause 25(2). In an Appeal before the Supreme Court, the Appellants contended that if the legislature had intended to include Addl. SPs within the scope of Section 18 MCOCA, it would have done so expressly, as it was aware of the distinction between various ranks while enacting MCOCA. The State maintained that the ranks and posts have distinct connotations, and that an Addl. SP has the rank, rights, duties, and functions of an SP. Furthermore, it was argued that Section 18(1) MCOCA does not contain any particular authorization of a police officer not below the rank of SP for the purpose of recording confessions. The prime issue framed by the Supreme Court is whether a confession recorded by an Addl. SP under Section 18 MCOCA can be proved against the accused. The Supreme Court while dismissing the appeal held that the evidentiary value of confessions alleged to have been made by the appellant shall be considered by the trial court and the mere validation of their being recorded by an officer in the rank of Superintendent of Police shall not be construed as the approval of the contents or voluntary nature of the alleged confessions by the Supreme Court.

NOTHING SURVIVES AFTER FILING A CLOSURE REPORT IS FILED

The Supreme Court in the case of ***Parvez Parwaz v. State of Uttar Pradesh*** (Criminal Appeal No. 1343 OF 2022), dismissed a plea challenging the rejection of sanction to prosecute Uttar Pradesh Chief Minister, in a case alleging an anti-muslim hate speech addressed to Hindu Yuva Vahini activists in Gorakhpur. The Appellant had filed a petition before the Allahabad High Court wherein the court had framed certain questions for deciding the petition i.e., whether the investigation was liable to be transferred to some other investigating agency and whether state can pass an order under section 196 in respect of a proposed accused. However, the High Court did not find any procedural error in conduct of the investigation or in the decision-making process to grant sanction and accordingly, dismissed the petition. The Supreme Court while upholding the decision of the High Court, held that nothing survives in the petition as the investigation culminated in a closure report, and a protest petition is pending before the trial court.

DSK View: *The Supreme Court after hearing the parties and considering the material available on record rightly observed that the subsequent events have rendered the appeal into a purely academic exercise and with respect to the issue on sanction, it can be considered in an appropriate case.*

REVISED GUIDELINES FOR ARREST AND BAIL IN RELATION TO OFFENCES PUNISHABLE UNDER THE CUSTOMS ACT, 1962

The Central Board of Indirect Taxes and Customs through its ***Circular No. 13/2022*** dated August 16, 2022, has issued revised Guidelines for Arrest and Bail in relation to offences punishable under the Customs Act, 1962. Also, the threshold limit is simplified in accordance with the revised threshold limitations for initiating prosecution for offences punishable under the Customs Act. Paragraph 2.3 of the existing guideline issued vide F. No. 394/68/2013-Cus (AS) dated 17.09.2013 as amended by Circular No. 28/2015 dated 23.10.2015 shall read as under:

" 2.3 While the Act does not specify any value limits for exercising the powers of arrest, it is clarified that arrest in respect of an offence, should be effected only in exceptional situations which may include:

a. *Cases involving unlawful baggage importation or Transfer of Residence Rules, where the market value of the goods concerned is Rs. 50,00,000/- or more.*

b. *Smuggling cases of High value goods, restricted items, prohibited items or goods notified under Section 123 of the Customs Act or foreign currency offences where value of the goods is Rs. 50,00,000/- or more.*

c. *Cases related to importation of trade goods of wilful mis-declaration of goods covered under Section 123 of the Customs Act where value of the goods is Rs.2,00,00,000/- or more*

d. *Cases where fraudulent evasion or attempt to evade is done involving an amount of Rs.2,00,00,000/- or more*

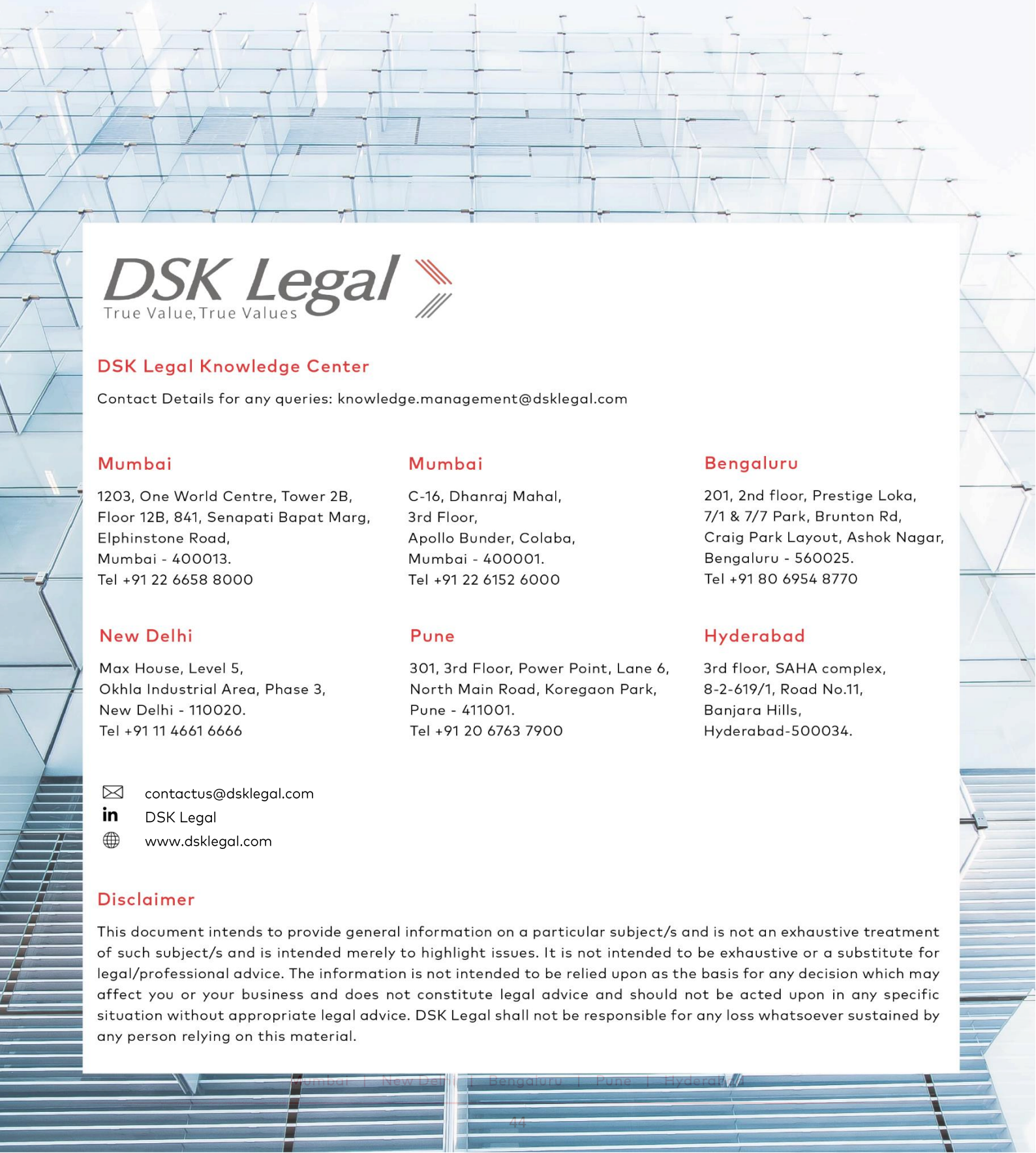
e. *In cases involving fraudulent availment of drawback or attempt to avail of drawback or any exemption from duty allowed under the Customs Act, 1962, in connection with the export of goods, where the amount of drawback or exemption from duty is Rs. 2,00,00,000/- (Rupees Two Crore) or more. When evaluating cases involving the exportation of commercial items,*

   i. *Wilful misdeclaration of value/description;*

   ii. *concealment of prohibited items or articles notified under section 11 of the Customs Act, 1962, when the market value of the offending*

goods is Rs. 2,00,00,000 (Rupees Two Crore) or more. Any case involving the obtaining of an instrument by fraudulent means where the duty related to the utilisation of the said instrument is Rs.2,00,00,000/- or more

f. *The above criteria for the value mentioned would not be applicable to cases involving offending items pertaining to FICN, arms, ammunitions and explosives, antiques, art treasures, wildlife items and endangered species of flora and fauna.*



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