DSK Legal
True Value, True Values

NEWSLETTER

September 2023

TABLE OF CONTENTS

Capital Market	03
06	Competition Law
Dispute Resolution	09
11	Employment Law
Energy & Infrastructure	14
19	Fintech
International Trade/WTO	22
24	Media and Entertainment
Ministry of Corporate Affairs (MCA)	28
30	RBI and FEMA
RERA	34
36	Technology Law
White-Collar Crime	39

AMENDMENT TO THE VALIDITY PERIOD OF APPROVAL GRANTED BY SEBI TO ALTERNATIVE INVESTMENT FUNDS ("AIFS") AND VENTURE CAPITAL FUNDS ("VCFS") FOR OVERSEAS INVESTMENT UNDER MASTER CIRCULAR FOR AIFS[1] AND GUIDELINES FOR OVERSEAS INVESTMENTS BY VCFS[2]

SEBI vide circular dated August 04, 2023[3] has reduced the time limit for making the allocated investments in overseas investment from 6 (six) months from the date of SEBI approval to 4 (four) months. This change is brought with the aim of efficient utilisation of allocated time and making the allocated time available to the AIF/VCF industry in a shorter period of time.

The circular came into force with immediate effect, i.e., August 4, 2023

REDUCTION OF TIMELINE FOR LISTING OF SHARES IN PUBLIC ISSUE FROM EXISTING T+6 DAYS TO T+3 DAYS[4]

SEBI vide circular dated August 09, 2023 has reduced the listing and trading timelines from the existing T+6 working days which came into effect from January 01, 2016, to T+3 working days. The reduction in timeline also changes the overall timeline of a public issue. The new timeline is as follows:

T day:

- Submission of Applications:
    - Electronic Applications (Online ASBA through 3-in-1 accounts) – Upto 5 PM
    - Electronic Applications (Bank ASBA through Online channels like Internet Banking, Mobile Banking and Syndicate UPI ASBA etc) – Upto 4 PM
    - Electronic Applications (Syndicate Non-Retail, Non-Individual Applications) – Upto 3 PM
    - Physical Applications (Bank ASBA) – Upto 1 PM
    - Physical Applications (Syndicate Non-Retail, Non-Individual Applications of QIBs and NIIs) –Upto 12 PM and Syndicate members shall transfer such applications to banks before 1 PM
- Bid Modification: From Issue opening date up to 5 PM
- Validation of bid details with depositories: From Issue opening date up to 5 PM
- Reconciliation of UPI mandate transactions: On daily basis
- UPI Mandate acceptance time: 5 PM
- Issue Closure:
    - QIB and NII categories- 4 PM
    - Retail and other reserved categories- 5 PM

T+1 day

- Third party check on UPI applications: On daily basis and to be completed before 9.30am
- Third party check on non-UPI applications: On daily basis and to be completed before 1 PM
- Submission of final certificates:
    - For UPI from Sponsor Bank- Before 9:30 PM
    - For Bank ASBA, from all SCSBs- Before 7:30 PM
- Finalisation of rejections and completion of basis: Before 6 PM
- Approval of basis by Stock Exchange: Before 9 PM

[1] SEBI/HO/AFD/PoD1/P/CIR/2023/130
[2] SEBI/VCF/Cir no. 1/ 98645 /2007
[3] SEBI/HO/AFD/PoD/CIR/P/2023/137
[4] SEBI/HO/CFD/TPD1/CIR/P/2023/140

T+2 day

- Issuance of fund transfer instructions for debit and unblock to SCSB / Sponsor Bank by RTI – Initiation not later than 09:30 AM
- Completion before 2 PM for fund transfer
- Completion before 4 PM for unblocking.
- Corporate action execution for credit of shares: Initiation before 2 PM and Completion before 6 PM
- Filing of listing application with Stock Exchanges and issuance of trading notice: Before 7:30 PM
- Publication of allotment advertisement on website of Issuer, Merchant Banker and RTI: Before 9 PM

T+3 day

- Trading starts
- Publication of allotment advertisement in newspapers (on T+3 day but not later than T+4 day)

The new timeline shall be applicable on voluntary basis for public issues opening on or after September 01, 2023 and shall become mandatory for public issues opening from December 01, 2023.

SEBI (FOREIGN PORTFOLIO INVESTORS) (SECOND AMENDMENT) REGULATIONS, 2023[5]

Vide notification dated August 10, 2023, SEBI amended the SEBI (Foreign Portfolio Investors) Regulations, 2019[6] ("**FPI Regulations**"). Regulation 4(f) is amended to replace "twenty-five percent or more" with "more than the threshold prescribed under sub-rule (3) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005." This indicates that Foreign Portfolio Investors are required to comply with the anti-money laundering rules for ownership and control identification.

Furthermore, Regulation 22 introduces sub-regulations (6) and (7), which require the FPIs to provide information or documents regarding individuals or entities with ownership, economic interest, or control in the FPI. This information must be furnished in accordance with SEBI's specifications.

The Amendment came into force with immediate effect, on date of publication in the Official Gazette, i.e., August 10, 2023.

MANDATING ADDITIONAL DISCLOSURES BY FOREIGN PORTFOLIO INVESTORS (FPIS) THAT FULFIL CERTAIN OBJECTIVE CRITERIA

Vide circular dated August 24, 2023[7], SEBI has mandated additional disclosure requirements for FPIs in terms of Regulations 22(6) and 22(7) of the SEBI (FPIs) Regulations 2019 which were inserted vide SEBI (FPIs) (Second Amendment) Regulations, 2023.

FPIs holding more than: (i) 50% (Fifty per cent) of their Indian equity Assets Under Management ("**AUM"**) in a single Indian corporate group, ("**First Criteria**") or (ii) INR 25,000 crore (Indian Rupees Twenty-Five Thousand Crores) of equity AUM in the Indian markets (**"Second Criteria"**), have to disclose the granular details of all entities holding any ownership, economic interest, or exercising control in them, on a full look through basis, up to the level of all natural persons. Terms such as 'economic interest', 'control' and 'ownership' have been defined in the circular and these disclosures are to be considered a material information.

Certain FPIs are granted exemption from making the above-mentioned disclosures. They are as follows (**"Exempted FPIs"**):

- Government and Government related investors registered as FPIs;
- Public Retail Funds, subject to independent validation by DDPs/Custodians;
- Exchange Traded Funds with less than 50% (fifty percent) exposure to India and India-related equity securities, and listed Entities on notified exchanges;
- Pooled investment vehicles registered with or regulated by a government authority or regulatory authority in their home jurisdiction/ country of incorporation/ establishment/ formation, where: (i) in case of FPIs falling under the First Criteria, their holding in an Indian corporate group is below 25% (twenty five percent) of their overall global AUM at a scheme level, or (ii) in case of FPIs falling under Second Criteria, their equity AUM in the Indian markets is below 50% (fifty percent) of their overall global AUM at a scheme level; subject to independent validation by the DDPs/ Custodians;
- FPIs that are unable to liquidate their excess investments due to statutory restrictions till the existence of such restrictions;

[5] SEBI/LAD-NRO/GN/2023/143
[6] SEBI/LAD-NRO/GN/2019/36
[7] SEBI/ HO/ AFD/ AFD–PoD–2/CIR/P/2023/148

- Newly registered FPIs for the first 90 (ninety) calendar days from the date of settlement of first trade in equity segment in India.
- FPIs that are in the process of winding down their investment and have also intimated to their DDP their intention to surrender their FPI registration. Additionally, they have to bring down their holdings to 'NIL' within 180 (one-eighty) calendar days from the date of intimation, failure to which will result into blockage from purchase and sale as well as regulatory action.

It is further stated that the constituents of FPI investor group falling under Second Criteria are exempted from making the additional disclosures (i) if the investor group consists of Exempted FPIs, and (ii) the net equity AUM of the investor group, after deducting the AUM of such Exempted FPIs, falls below INR 25,000 crore (Indian Rupees Twenty-Five Thousand Crores). In event the net equity AUM exceeds the monetary threshold, only the non-Exempted FPIs will have to make disclosure under this Circular.

Additionally, Exempted FPIs are not required to identify entities having ownership interest, economic interest, or control rights.

Elaborating more on the exemptions, the circular further states that FPIs are exempted from the disclosure requirement if their investment is realigned within the below mentioned timelines and conditions:

- FPIs falling under First Criteria: 10 (ten) trading days from exceeding the threshold. Additionally, they should not make fresh purchases of the equity shares of any company belonging to the Indian corporate group during the next 30 (thirty) calendar days from the date of exceeding the threshold.
- FPIs falling under Second Criteria: 90 (ninety) calendar days from exceeding the threshold. Additionally, the accounts of all FPIs shall be blocked for further equity purchases until they bring their holding below the threshold mentioned in Second Criteria.
- FPIs under falling First Criteria or Second Criteria as on the date of applicability of this Circular: 90 (ninety) calendar days from the date of applicability of this circular.

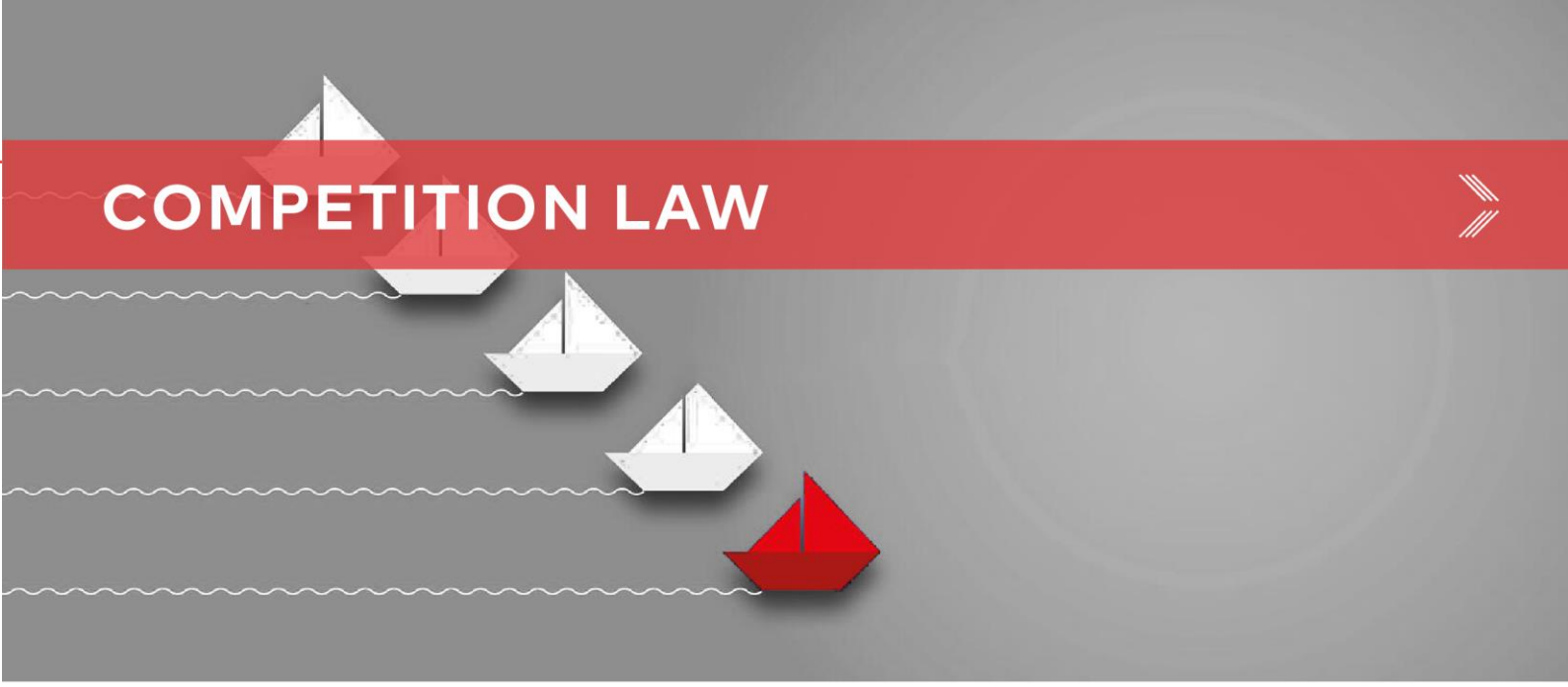
After realignment, in case the FPI's holding exceeds the prescribed threshold on a subsequent date, the timeline realignment will restart from such subsequent date.

On failure to realign, the FPIs must make the disclosure provided under this circular within 30 (thirty) trading days from the expiry of the aforesaid realignment timelines. Failure to disclosure in this case will entitle penalties such as: (i) rendering FPI registration invalid, (ii) not allowing the FPIs to make any further purchase, and (iii) causing the FPIs to surrender the FPI registration within 180 (one eighty) calendar days from the invalidity of the FPI registration. During the said 180 (one eighty) calendar days, the investee companies shall restrict the FPI's voting rights to its actual shareholding or its shareholding corresponding to 50% of its equity AUM on the date from which the FPI registration is rendered invalid, whichever is lower.

Depositories will introduce new freeze reason codes and Stock Exchanges will put in place appropriate mechanism in view of this circular.

For monitoring compliance under the First Criteria, a repository of companies forming a part of each Indian corporate group, will be publicly disseminated on the websites of Stock Exchanges/ Depositories.

This Circular come into force with effect from November 01, 2023.



It's been a busy August for the Competition Commission of India. The main highlights are as follows:

HON'BLE MADRAS HIGH COURT DISMISSED 14 PETITIONS AGAINST GOOGLE DUE TO THE ABSENCE OF APPROPRIATE JURISDICTION

The Hon'ble Madras High Court dismissed 14 of the 16 petitions submitted by Indian startups challenging Google's new user billing system in the matter of *Matrimony.Com Ltd vs. Alphabet Inc and others (and connected cases) C.S(COMM DIV) 98 of 2023*. The remaining two petitions have been lodged by Disney+Hotstar and Testbook.

Dismissing the petition, the Hon'ble Court recognized that the current cases fall under the jurisdiction of the Competition Commission of India (**CCI**) and that the remedies provided by the Competition Act, 2002 (**Competition Act**) are considerably more extensive than those accessible through a civil court. Additionally, the court pointed out that the pleas were restricted by Section 61 of the Competition Act, which explicitly prohibits civil courts from entertaining any legal proceedings that the CCI is empowered to adjudicate.

The startups had argued before the Hon'ble Court that in 2020, Google had made the use of the Google Play Billing System mandatory and exclusive for processing the payments for downloading paid apps and in-app purchases.

CCI DISMISSED ANTI-COMPETITIVE ALLEGATIONS OF ANTI-COMPETITIVE BEHAVIOR AGAINST THE DIRECTOR GENERAL OF CPWD (CENTRAL PUBLIC WORKS DEPARTMENT) AND OTHER PARTIES

Via an order dated August 07, 2023, under Section 26(2) of the Competition Act, the CCI in the matter of *In Re: Prem Prakash and Director General, CPWD and Ors. (Case No. 08 of 2023)*, dismissed the allegations of anti-competitive practices against the Director General, CPWD, and others (**Opposite Parties**).

As per the Informant, the Opposite Parties acted in consonance with the National Accreditation Board for Testing and Calibration Laboratories (**NABL**) whereby a mandatory accreditation from NABL was required under various tenders and circulars issued by the Opposite Parties. The Informant alleged that such mandatory accreditation resulted in the creation of entry barriers and the closure of competition in the market, thus violating Section 3 and Section 4 of the Competition Act.

In its order, the CCI observed that the Informant had failed to produce any cogent evidence to suggest the existence of any agreement between NABL and the other Opposite Parties and hence there was no contravention of Section 3(4) of the Competition Act.

Furthermore, the CCI noted that the Informant had defined separate relevant markets for each of the Opposite Parties and had claimed that each of the Opposite Parties was dominant in each such relevant market. According to the CCI, defining a separate relevant market for each Opposite Party was not appropriate. There was a broader market than alleged by the Informant. Hence, it cannot be established that there has been a foreclosure of competition.

In addition, the CCI noted that there could not be an existence of dominance as apart from the Opposite Parties, there are other players in the market who want to avail themselves of the service of the laboratories. In lieu of the above observations, the CCI observed that there exists no *prima facie* case for the contravention of Section 3 and Section 4 of the Competition Act and thus closed the matter under Section 26(2) of the Competition Act.

CCI CLOSES COMPLAINT AGAINST THE ASSOCIATION OF CERTIFIED FRAUD EXAMINERS, NETRIKA CONSULTING INDIA PRIVATE LIMITED, AND THE OPEN THINKING ACADEMY

The CCI has closed a complaint filed by an Informant against the Association of Certified Fraud Examiners (**ACFE**), Netrika Consulting India Private Limited (**NCIPL**), and the Open Thinking Academy (**OTA**) for the alleged contravention of Section 3 and Section 4 of the Competition Act in the matter of *Mrs. Kanwaljeet Kaur Soni vs. The Association of Certified Fraud Examiners Inc. & Others (Case No. 05 of 2023) via* its order dated August 07, 2023.

In the given matter, the Informant offers study resources and coaching for those aspiring to become Certified Fraud Examiners (**CFEs**) through the ACFE course. ACFE is a US-based organization dedicated to combatting fraud. Their CFE certification course includes an exam set by ACFE's Board of Regents, and CFE credentials require annual renewal through a fee. NCIPL is an ACFE Authorized Training Partner (**ATP**) for CFE certification training in India, while OTA holds ATP status in four countries.

The Informant alleged that the ACFE was abusing its dominant position by imposing unfair conditions that restricted third-party preparatory services for ACFE aspirants. Allegations of copyright and trademark infringement were also made by ACFE against the Informant. In addition, ACFE appoints only one ATP in each country for CFE coaching and its ATP agreements allegedly create barriers to entry for potential tutors or institutes and foreclosure of competition which causes an Appreciable Adverse Effect on Competition (**AAEC**) under Section 3(4) of the Competition Act.

The CCI observed that for the present case, it was not necessary to define the relevant market or establish dominance. It noted the ACFE has previously issued notices to the Informant for unauthorized use of its study material, claiming copyright and trademark infringement. Further, the CCI noted that ACFE also approached the Informant about becoming an ATP for India but later chose another entity as ATP due to its concerns about the Informant's repeated misuse of their copyrights and trademarks.

In conclusion, the CCI held that there was no contravention of the Competition Act and closed the case under Section 33 of the Competition Act.

CCI APPROVES THE ACQUISITION OF EQUITY SHARES OF BIOCON BIOLOGICS LIMITED BY KOTAK SPECIAL SITUATIONS FUND

CCI has *via* an order dated August 10, 2023, approved the combination of Biocon Biologics Limited (**Target**) by Kotak Special Situations Fund (**Acquirer**). The Acquirer proposed to purchase certain equity shares of the Target (**Proposed Combination**). The Proposed Combination was notifiable to the CCI under Section 5(a) of the Competition Act.

The Acquirer is an alternative investment fund registered with the Securities and Exchange Board of India. It is engaged in the business of investing in companies with a sector-agnostic approach. Target is a biosimilar company that is engaged in the manufacture and commercialization of pharmaceutical formulations in India.

The CCI concluded that the parties' activities do not exhibit any horizontal, vertical, or complementary overlaps in any of the plausible relevant markets in India. Thus, the Proposed Combination was notified under Regulation 5A and Schedule III of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended).

NATIONAL COMPANY LAW APPELLATE TRIBUNAL DISMISSES THE APPEAL TO INVESTIGATE THE PVR-INOX MERGER

The Hon'ble National Company Law Appellate Tribunal (**NCLAT**) dismissed the appeal filed by the Consumer Unity and Trust Society (**CUTS**) seeking directions to CCI to investigate the PVR-INOX merger.

CUTS had argued before the NCLAT that the merged entity controls over half the screens in the country and that the said merger would have an appreciable adverse effect on competition (**AAEC**) and could be detrimental to the consumers.

The NCLAT had, however, observed that both PVR and INOX have become a single entity post their merger and thus the application by CUTS was not itself in accordance with the law. Furthermore, the NCLAT pointed out that while dominance in itself is not anti-competitive, any abusive conduct arising from such dominance can be investigated if brought to the commission's notice.

The PVR-INOX merger was under the threshold limit of CCI to probe such transactions owing to the depressed revenue from Covid. On September 13, 2022, CCI passed an order rejecting the CUTS application stating that apprehension of the likelihood of anti-competitive practices by an entity cannot be the subject of a probe.

CCI HOLDS NO ABUSE OF DOMINANCE BY HERO FINCORP UNDER SECTION 4 OF THE COMPETITION ACT

CCI has closed the complaint filed by Synco Industries Limited (**Informant**) against Hero FinCorp Ltd. (**Hero FinCorp**) alleging contravention of the provision of Section 4(1) of the Competition Act in the matter of *Synco Industries Limited vs. Hero FinCorp Ltd* (Case No. 09 of 2023).

In the present case, the Informant alleged that Hero FinCorp's benchmark interest rate adjustments were not transparent and that it continued to charge higher interest rates even as the market rates decreased. As per the Informant, such practices amounted to an abuse of its dominant market position as Hero FinCorp was exploiting its customers by overcharging them through planned and conspiratorial actions. The accusations include imposing unreasonable charges, manipulating floating interest rates for financial gain, and neglecting to pass on the benefit of reduced repo rates to borrowers.

The CCI held that there was no violation of Section 4 of the Competition Act. The CCI noted that there are numerous service providers operating in the relevant market who are competing with each other. The relevant market in the present case was defined as the 'market for the provision of loans against property in India.'

The CCI concluded that there was not sufficient evidence to establish Hero FinCorp's dominance in the said market. Furthermore, there exists a large number of competitors in the relevant market which further negates the claim of Hero FinCorp's dominance.

CCI FINES AXIS BANK FOR GUN-JUMPING

The CCI has imposed a fine of Rs. 40 lakh on Axis Bank Limited (**Axis Bank**) due to its failure to provide notification about its stake acquisition in CSC e-Governance Services India Ltd (**CSC e-Governance**) *via* its order dated August 09, 2023. This particular transaction involved the purchase of a 9.91% stake in CSC e-Governance and was finalized in November 2020.

CSC e-Governance Services India Ltd is a special-purpose vehicle set up by the Ministry of Electronics and Information Technology to oversee the implementation of the common services center scheme.

According to the CCI, it is evident that Axis Bank's acquisition was not purely for investment purposes, nor can it be regarded as part of its regular business operations. Consequently, the acquisition does not qualify for the provisions outlined in Item I of Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Rules**), and as such, the impact of whether the transaction resulted in obtaining control becomes insignificant.

In order to qualify for the advantages outlined in the Combination Rules, the acquiring entity must not possess board membership, the power to nominate directors or involvement in the operations or governance of the enterprise from which shares or voting rights are being procured.

Nevertheless, Axis Bank currently holds a position on the board of CSC e-Governance. Moreover, it had expressed the intention of gaining representation on the company's board of directors and actively engaging in its managerial activities.

DISPUTE RESOLUTION

CLAUSE RESTRICTING THE RIGHT TO INVOKE ARBITRATION TO 6 MONTHS IS INVALID AND IS IN VIOLATION OF THE PROVISIONS OF THE INDIAN CONTRACT ACT 1872

The Hon'ble High Court of Delhi in ***M/s G.S. Express Private Limited vs. NTPC Limited***[8] has held that a clause which restricts the right to invoke arbitration to 6 months is invalid and is in violation of the provisions of the Indian Contract Act, 1872. In the said case, a petition under Section 11 of the Arbitration and Conciliation Act, 1996 was filed before the Hon'ble High Court of Delhi which was opposed by the Respondent only on the ground that the said arbitration mechanism has not been invoked within time as per the dispute resolution mechanism provided under the contract and thus, the petition under Section 11 of the Act is not maintainable. It was the Respondent's contention that in terms of the contract, clause 7.3.1. provided that parties could invoke arbitration only within six months from the date of completion of the execution of work under the contract or the termination of the contract but not thereafter. The Hon'ble High Court by relying upon the law laid down by the Hon'ble Supreme Court of India as well as the judgments of the co-ordinate bench of the Delhi High Court, rejected the contention of the Respondent and held that any clause which restricts the right to invoke arbitration to 6 months is invalid and is in violation of the provisions of the Indian Contract Act, 1872. Thus, the Hon'ble High Court of Delhi appointed an arbitrator to adjudicate upon the disputes between the parties.

OBJECTION TO A CIVIL SUIT IN VIEW OF THE ARBITRATION CLAUSE OUGHT TO BE RAISED BEFORE THE COURT AT THE FIRST INSTANCE AND NOT THEREAFTER

The Hon'ble Karnataka High Court in ***Nova Medical Centers Private Limited vs. Smt. Sowmya & Anr.***[9] has held that an objection to a civil suit in view of the arbitration clause ought to be raised before the court at the first instance and not thereafter. In the said case, the Appellant had filed a suit for an injunction which was dismissed on the ground that the parties to the suit have to invoke the provisions of the Arbitration and Conciliation Act, 1996. It was the Appellant's contention that once evidence has been recorded, the Court could not have dismissed the suit on the premise that the parties have to take recourse to the provisions of the Act of 1996. The Hon'ble High Court of Karnataka while allowing the said suit for injunction observed the principle of law that objection to entertain a suit based on the arbitration clause is to be raised before the Court at the first appearance and not later.

DIFFERENTIAL PAYMENTS CAN BE MADE TO ASSENTING AND DISSENTING UNSECURED FINANCIAL CREDITORS: NCLAT DELHI

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi in the case of ***Peter Beck and Partner Vermoegensverwaltung GMBH vs. Sharon Bio-medicine Limited & Ors.***[10] held that differential payments can be made between unsecured Financial Creditors who voted in favour of the plan and the ones who voted against it.

In the present case, Sharon Bio-Medicine Limited ("**Corporate Debtor**") was admitted into the Corporate Insolvency Resolution Process ("**CIRP**") under the Insolvency and Bankruptcy Code, 2016 ("**IBC**") by the Hon'ble National Company Law Tribunal ("**NCLT**") on 25.04.2017. The Committee of Creditors ("**CoC**") approved a Resolution Plan for the Corporate Debtor with 79.28% voting share. Peter Beck, Partner of Vermoegensverwaltung GMBH ("**Dissenting Financial Creditor**") was an unsecured financial creditor of the Corporate Debtor who abstained from voting for the

[8] ARB. P. 374 of 2023
[9] Regular First Appeal No. 937 of 2016
[10] Company Appeal (AT) (Insolvency) No. 912 of 2023

approval of the Resolution Plan. The Hon'ble NCLT approved the Resolution Plan on 17.05.2023. Subsequently, on 21.06.2023, Dissenting Financial Creditor received an email stating that as per the approved Resolution Plan, he is not entitled to any payment as the Liquidation value of the dissenting financial creditors was nil. Thereafter, the Dissenting Financial Creditor filed an Appeal challenging the order dated 17.05.2023 passed by the Hon'ble NCLT *vide* which the Hon'ble NCLT had allowed the Application filed by the Resolution Professional for approval of the Resolution Plan.

Dissenting Financial Creditor, in its appeal, argued that he had been discriminated against by the Successful Resolution Applicant. It was submitted that there cannot be any discrimination in the payment to the unsecured Financial Creditors on the basis of their 'assent' and 'dissent'. The Dissenting Financial Creditor apprised the Hon'ble Bench that the Resolution Plan proposed to pay Rs. 1.48 Crores to another unsecured Financial Creditor solely based on the assent given by such creditor to the plan whereas, the Dissenting Financial Creditor being similarly placed was allocated nil amount. It was further contended that such discrimination was not intended by IBC.

The Hon'ble Bench rejected the contentions raised by the Dissenting Financial Creditor that there cannot be any discrimination in respect of the amount being paid to unsecured financial creditors who did not vote in favour of the plan and those who voted in favour of the plan. The Bench placed their reliance on Section 30(2)(b) of IBC and noted that IBC just provides that the financial creditors who do not vote in favour of the Resolution Plan shall not be paid less than the amount to be paid to such creditors as per Section 53(1) in the event of liquidation of Corporate Debtor i.e. the only provides a minimum value. The Hon'ble Bench noted that, in the present case, the amount to be paid to such creditors as per Section 53(1) in the event of liquidation of Corporate Debtor was nil. Therefore, the Resolution Plan was not in violation of Section 30(2)(b) of IBC. The Hon'ble Bench further noted that the provisions of the IBC provided that the financial creditors who didn't vote in favour of the Resolution Plan, would be paid in priority over financial creditors who voted in favour of the plan. Therefore, IBC differentiates between the two categories of Financial Creditors i.e. those who voted in favour of the Resolution Plan and those who voted against the Resolution Plan. Therefore, it can't be said the Resolution Plan was discriminatory against the Dissenting Financial Creditor. Accordingly, the appeal has been dismissed.

IBC SECTION 9 PETITION NOT MAINTAINABLE AGAINST CLAIM FOR COMPENSATION OF PENALTY UNDER A CONTRACT: NCLAT DELHI

The Hon'ble National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi in the case of ***Chandrashekhar Exports Pvt. Ltd. vs. Babanraoji Shinde Sugar & Allied Industries Ltd.***[11], upheld the decision of Hon'ble National Company Law Tribunal ("**NCLT**") whereby it dismissed a petition under Section 9 of IBC which was filed based on claim of compensation penalty under a contract. The Hon'ble Bench noted whether a claim for compensation penalty has crystallized or not and whether it is to be adjudicated by a competent Court and not by Hon'ble NCLT.

In the present case, Chandrashekhar Exports Pvt. Ltd. ("**Chandrashekhar Exports**") and Babanraoji Shinde Sugar & Allied Industries Ltd. ("**Corporate Debtor**") had entered into an Agreement to provide certain services. The aforementioned Agreement had a clause which stated that, if the Corporate Debtor fails to perform as per the Agreement, then it will be liable to repay the advance to Chandrashekhar Exports along with compensation penalty and losses incurred. When the Corporate Debtor could not perform the Agreement, it repaid the advance money to Chandrashekhar Exports. However, since the compensation penalty remained unpaid, Chandrashekhar Exports filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), seeking initiation of Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor. In its Application under Section 9 of IBC, it was argued by Chandrashekhar Exports that a mere refund of the advance money would not absolve the Corporate Debtor from making payment of the compensation penalty. The Hon'ble NCLT, *vide* its order dated 28.04.2023, dismissed the petition and noted that a petition under Section 9 of IBC cannot be admitted on the basis of the claim of compensation under a contract. It was further clarified by the Hon'ble NCLT that the operational debt must be crystallized, undisputed and shouldn't be something that requires adjudication by the Adjudicating Authority.

Aggrieved by the aforementioned order of Hon'ble NCLT, Chandrashekhar Exports filed an appeal before the Hon'ble NCLAT against the order dated 28.04.2023 passed by Hon'ble NCLT. The Hon'ble NCLAT upheld the order of the Hon'ble NCLT and noted that the issue of whether the compensation penalty has crystallized or not, is for the competent court to decide and thus, the Hon'ble NCLT has rightly rejected the Section 9 petition. Accordingly, the Appeal was dismissed.

[11] Company Appeal (AT) (Insolvency) No.1032 of 2023

THE GOVERNMENT OF KARNATAKA NOTIFIES THE FACTORIES (KARNATAKA AMENDMENT) ACT, 2023

The Government of Karnataka, vide notification dated August 07, 2023, notified The Factories (Karnataka Amendment) Act, 2023. The aforementioned notification amends the following provisions of The Factories Act, 1948 ("**1948 Act"**) for the State of Karnataka.

- Under Section 54 of the 1948 Act (*which relates to daily hours*), the State Government has been given the power to extend the daily maximum hours of work up to 12 (Twelve) hours from the previous 9 (Nine) hours, inclusive of interval for rest. This is subject to a maximum of 48 (Forty-Eight) hours in any week subject to the written consent of such worker for such work and provided that the remaining days of the said week for the worker shall be paid holidays. Accordingly, under Section 56 of the 1948 Act (*which relates to spread over*), clause (2) is added empowering the State Government to increase the spread over time from 10.5 (Ten Point Five) hours to 12 (Twelve) hours.

- Under Section 55 of the 1948 Act (*which relates to intervals of rest*), the State Government has been given the power to extend the total number of hours of work of a worker without an interval from 5 (Five) hours to 6 (Six) hours.

- Under Section 59 of the 1948 Act (*which relates to extra wages for overtime*), any worker who works more than –

  - 9 (Nine) hours in a day for 6 (Six) days in a week,
  - 10 (Ten) hours on any day or for more than 48 (Forty-Eight) hours in any week, working for 5 (Five) days in any week, or
  - 11.5 (Eleven Point Five) hours on any day working for 4 (Four) days in any week, or works on paid holidays,

shall be entitled to wages at the rate of twice his ordinary rate of wages.

- Under Section 65 of the 1948 Act (*which relates to the power to make exempting orders*), the maximum limit of overtime work allowed for a worker has been increased from 75 (Seventy-Five) to 125 (One Hundred Twenty-Five) hours.

- Under Section 66 of the 1948 Act (*which relates to further restrictions on the employment of women*), provisions for the safety of women workers have been envisaged if such women are working between 7:00 PM to 6:00 AM. Additionally, the aforementioned amendment also adds provisions for the prevention of sexual harassment, safety, and transportation of women workers.

THE GOVERNMENT OF PUNJAB NOTIFIES THE PUNJAB BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (AMENDMENT) RULES, 2023

The Department of Labour, Government of Punjab, vide notification dated August 07, 2023, has notified the Punjab Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Amendment) Rules, 2023. (**"BOCW Amendment Rules**"). The BOCW Amendment Rules makes the following changes to Punjab Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2008 (**"Punjab BOCW Rules**")

- Under Rule 260 of the Punjab BOCW Rules *(which relates to membership*) a certificate can now be issued by any person or authority which is authorized by the

Board, in addition to the employer and contractor in form no. XXVII.

- Under Rule 261 of the Punjab BOCW Rules (*which relates to contribution to the fund*), a contribution can now be remitted in advance for a period of 1 (One) year, at the time of applying for registration or renewal of registration in any of the banks, in which the member resides or in cash receipt as prescribed in form no. XXXIV.

PAST SERVICE AS A CONTRACTUAL EMPLOYEE IS TO BE FACTORED IN WHILE PAYMENT OF PENSION

The Supreme Court of India, vide its order dated August 07, 2023, in the case of *State of Himachal Pradesh v. Sheela Devi*, observed that past service of a contractual employee is a factor to be considered while calculating the pension. The order came in consonance with the order of the High Court of Himachal Pradesh, wherein it was held that the inclusion of prior contractual employment for pension calculations is not contrary to Rule 2(g) of the Central Civil Services Pension Rules, 1972 ("**CCS Pension Rules**"). The said order by the High Court of Himachal Pradesh was challenged by the State of Himachal Pradesh.

Rule 2(g) of the CCS Pension Rules states the application of the provisions made under the CCS Pension Rules to *"persons employed on contract except when the contract provides otherwise".* The Supreme Court of India, while disagreeing with the State's contention, noted that Rule 2(g) is only an opening clause that permits the application of other rules and Rule 17 of the CCS Pension Rules, which relates to the counting of service on contract, clearly envisage a situation where contract workers become regularized. Therefore, Rule 17 provides a situation where contractual employees, upon becoming regularized, are entitled to pensions under the CCS Pension Rules.

Observing the above, the Supreme Court of India dismissed the appeal by the State of Himachal Pradesh and directed it to provide pensions to all applicable employees who have become regularized after contractual employment.

THE LEGALITY OF THE AWARD PASSED BY THE LABOUR COURT CANNOT BE CHALLENGED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

The High Court of Jammu & Kashmir and Ladakh, vide order dated August 8, 2023, in the case of *Vishwakarma Gun Works v. Industrial Tribunal Court and Ors.*, has held that the correctness or the legality of an award passed by the Labour Court cannot be challenged under Article 226 of the Constitution of India. Under the Industrial Disputes Act, 1947 ("**IDA**"), the Labour Court assumes the power of a Civil Court. Therefore, any challenge to an award passed by the same shall be under Article 227 of the Constitution of India.

In the present case, the Labour Court passed an *ex-parte* award in 2008 against the petitioner, which was challenged in the High Court of Jammu & Kashmir and Ladakh under Article 226 of the Constitution of India. The High Court of Jammu & Kashmir and Ladakh, in the aforementioned order, also noted that if the challenge is limited only to the correctness or otherwise of the award, then Article 227 of the Constitution of India can be considered. However, raising disputed questions of facts is impressible under the law under Article 226 of the Constitution of India. The High Court also further highlighted that since the petitioners had willingly accepted the award of the Industrial Tribunal Court for a considerable period, the delayed challenge to the same cannot be done. Thus, the petitioners were estopped from contesting the said award at a later stage.

EMPLOYER'S FAILURE TO ALLOT WORK TO AN EMPLOYEE IS DEEMED RETRENCHMENT UNDER THE INDUSTRIAL DISPUTES ACT, 1948

The High Court of Jammu & Kashmir and Ladakh, vide its order dated August 10, 2023, in the case of *JK Handicrafts v. Aga Syed Mustafa & Anr.*, has observed that lack of posting of the employee to one of the centres by the employer, even when other employees were posted there by the organisation, would amount to termination despite there being no specific order for the same.

The High Court of Jammu & Kashmir and Ladakh, in the aforementioned order, analysed the scope of Section 2(oo) of the IDA, which relates to the definition of retrenchment and noted that the words *"for any reasons whatsoever"* has a wide meaning, as affirmed in the case of *State Bank of India vs. Shri N. Sundara Money*[12]. The High Court of Jammu & Kashmir and Ladakh dismissed the petition by the employers challenging the order of the Industrial Tribunal to reinstate the respondent employee. The High Court of Jammu & Kashmir and Ladakh in the present case also held that since the petitioner corporation has not fulfilled its requirement under Section 25F of the IDA, the Industrial Tribunal had not erred in the reinstatement of the respondent. Section 25F of the IDA provides for conditions precedent to the retrenchment of workmen, which shall be mandatorily fulfilled by an employer in case of retrenchment.

EMPLOYEE'S STATE INSURANCE CORPORATION CIRCULAR ON REVIEW OF PENDING ACCIDENT REPORT

The Employee's State Insurance Corporation ("**ESIC**"), vide an order dated August 10, 2023, ordered all the regional offices and sub-offices to expedite the review of all pending accident reports and take all necessary steps to ensure their

[12] AIR 1976 SC 1111

timely disposal. The ESIC also stated that if any employer fails to provide the necessary records, then legal action may be taken against the wilful defaulting employers in accordance with the provisions of the Employee's State Insurance Act, 1948 and corresponding rules and regulations. The aforementioned order was circulated upon an incident where due to the non-production of records by the employer, the branch manager closed the case of an accident temporarily, without initiating any legal action against the employer and without intimating the sub-regional office about such closure and thus causing inconvenience to the dependents.

MATERNITY BENEFITS MUST BE GRANTED EVEN IF THE PERIOD OF BENEFIT OVERSHOOTS THE TERM OF CONTRACTUAL EMPLOYMENT

The Supreme Court of India vide judgment dated August 17, 2023, in the case of *Kavita Yadav v. Secretary, Ministry of Health and Family Welfare and Ors.*, has held that maternity benefits payable to a woman employee can be given for a term beyond the term of the contractual employment. Section 12(2)(a) of the Maternity Benefits Act, 1961 ("**MB Act, 1961**"), provides for entitlement for an employee who is dismissed/discharged during her pregnancy. The Supreme Court of India noted that if such entitlement satisfies the conditions under Section 5 which deals with the '*right to payment of maternity benefit*' of the MB Act, 1961, then the benefits can travel beyond the term of employment. Section 5 of the MB Act, 1961, lays down the conditions that must be satisfied in order to get the benefits including payment of compensation and grant of maternity leaves.

The aforementioned judgement comes against the ruling of the High Court of Delhi, wherein maternity benefits for a period of 11 (Eleven) days were granted, citing the expiration of the contractual agreement. The Supreme Court of India, while disagreeing with the stance taken by the High Court of Delhi, thus directed the employer to pay the maternity benefits as would be available within Section 5 and Section 8 of the MB Act, 1961 within 3 (Three) months.

TERMINATION ORDER CANNOT BE CHALLENGED UNDER SECTION 33C(2) OF THE IDA

The High Court of Jammu & Kashmir and Ladakh, vide order dated August 18, 2023, in the case of *M/S Cadila Health Care Ltd v. Presiding officer & Anr.*, has observed that Labour Court does not have the power to stay the order of dismissal in an application under Section 33C(2) of the IDA.

The High Court of Jammu & Kashmir and Ladakh noted that Section 33C(2) of the IDA, which deals with the application for recovery of money due from an employer, can only be used to recover the money, and nothing in the said provision gives jurisdiction to the Labour Court/tribunal to pass an interim order staying the termination of the employee. The High Court of Jammu & Kashmir and Ladakh also referred to the Supreme Court of India's judgements including English Electric Company of India vs. V. Manohara Rao and others (2001) 9 SCC 739 to note that when an interim order passed by the Labour Court is wholly without jurisdiction, the said order can be challenged through a writ petition.

The High Court of Jammu & Kashmir and Ladakh, in the aforementioned order, allowed the writ petition and set aside the order passed by the Labour Court.

CIRCULAR ON THE STANDARD OPERATING PROCEDURE FOR JOINT DECLARATIONS UNDER THE EMPLOYEES PROVIDENT FUND ORGANISATION

The Employee's Provident Fund Organisation ("**EPFO**"), vide notification dated August 22, 2023, released a Standard Operating Procedure ("**SOP**") for processing joint declarations for the updation of member profiles. As per the aforesaid notification, the SOP should be followed for the process of handling joint declarations, anything that is not contained in the current SOP shall be governed by the existing Manual Accounting Procedure (MAP). The SOP aims to delineate the procedure of receipt of joint declarations for the corrections in Universal Account Number (UAN) profiles by the members and employer and the method of corrections to be followed by the field offices.

CIRCULAR ON NOTIFIED AND NON-NOTIFIED DISTRICTS UNDER ESIC

ESIC vide circular dated August 24, 2023, and continuation of previous circular dated April 6, 2023, declared the notified, partially notified and non-notified districts of a state under the ESI scheme. As per the aforementioned circular:

- Total no. of 16 (Sixteen) States/ Union Territories whose entire area is notified; and
- Total no. of 20 (Twenty) States/ Union Territories whose entire area is partially notified.

Additionally, the aforementioned circular also states that:

- Total no. of 535 (Five Hundred Thirty-Five) districts have been fully notified;
- Total no. of 108 (One hundred Eight) districts have been partially notified; and
- Total no. of 135 (One hundred Thirty-Five) districts have not been notified.

ENERGY & INFRASTRUCTURE

ENERGY

THE CENTRAL ELECTRICITY REGULATORY COMMISSION *VIDE* PUBLIC NOTICE NO. L-1/250/2019/CERC ISSUED ON AUGUST 28, 2023, RESCHEDULED TO HOLD A PUBLIC HEARING REGARDING "DRAFT CENTRAL ELECTRICITY REGULATORY COMMISSION (SHARING OF INTER-STATE TRANSMISSION CHARGES AND LOSSES) (THIRD AMENDMENT) REGULATIONS, 2023 ON SEPTEMBER 05, 2023

The Central Electricity Regulatory Commission ("CERC") issued the Draft Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Third Amendment) Regulations, 2023 on June 12, 2023 ("Regulation"), in reference to a public hearing was scheduled to be held on August 28, 2023. The CERC *vide* this public notice declared to postpone the event. The Regulations are currently in the draft stage therefore, views and suggestions of stakeholders are awaited to be discussed *vide* a public hearing.

This public notice purports to declare that a public hearing on the aforesaid subject shall be rescheduled to take place on September 05, 2023, at 3.00 PM via online video conferencing inviting representatives of Central/ State Governments / Load Despatch Centers / State Utilities / CPSUs / CTUs /STUs / Transmission Licensees / Trading Licensees / Power Exchanges / Individual Experts / NGOs / IPPs / Financial Institutions /Consultancy Firms/ any other Organizations.

THE MINISTRY OF POWER *VIDE* NOTIFICATION BEARING REFERENCE NO. 27/03/2023-RCM DATED AUGUST 21, 2023, RELEASED "GUIDELINES FOR TARIFF BASED COMPETITIVE BIDDING PROCESS FOR PROCUREMENT OF POWER FROM GRID CONNECTED WIND SOLAR HYBRID PROJECTS" TO STREAMLINE THE BIDDING PROCESS IN LINE WITH THE EARLIER RELEASED GUIDELINES FOR SOLAR AND WIND PROJECTS ON AUGUST 02, 2023

The Ministry of Power *vide* the said notification released guidelines for tariff based competitive bidding process for procurement of power from grid connected wind solar hybrid projects pursuant to the Wind-Solar Hybrid Policy issued by Ministry of New & Renewable Energy on May 14, 2018 (read with amendment dated August 13, 2018, and other amendments thereto). The said guidelines along with other clauses under it, provide for completion of bidding process to take place in around 110 days and the period of a power purchase agreement to be set at 20 years from the scheduled commissioning date, which is extendable up to 25 years in case where the extension is granted due to reasons beyond generator's control. Further, the guidelines prescribe that for projects up to 1000 MW capacity, the power supply must begin within 24 hours of PPA signing, however for projects above 1000 MW capacity, the power supply must begin within 30 months of PPA signing.

THE MINISTRY OF NEW AND RENEWABLE ENERGY (GRID SOLAR POWER DIVISION) *VIDE* AN OFFICE MEMORANDUM DATED AUGUST 23, 2023, UPDATED LIST I (MANUFACTURERS AND MODELS OF SOLAR PV MODULES) OF ALMM ORDER, 2019

The Ministry of New and Renewable Energy *vide* Office Memorandum bearing reference no. 283/22/2023-Grid Solar-Pt. dated August 23, 2023 ("Memo"), updated the List - I (Manufacturers and Models of Solar PV Modules) of ALMM Order, 2019 *vide* several O. M's issued by the Ministry. This Memo refers to the Ministry's O.M. dated March 10, 2021, for implementation of Approved Models and Manufacturers of Solar Photovoltaic Modules (Requirement of Compulsory Registration) Order, 2019 and

publishing List-1 (Manufacturers and Models of Solar PV Modules) of ALMM Order, 2019.

This Ministry *vide* its Office Memorandum No. 283/22/2023-Grid Solar/Pt dated 10.05.2023 had issued major reforms in the Approved List of Models and Manufactures for Solar Photovoltaic Modules which inter-alia include enlistment of only such models of Solar PV Module Manufacturers, under ALMM, which comply with the BIS Standards and have the minimum module efficiency, as listed in the Memo (Category 1, Category 2 and Category 3). Post May 10, 2023, only such models of Solar PV Modules have been considered for enlistment under ALMM List - I, whose module efficiency is equal to or greater than 19.00%. Further, the List- I (Manufactory and Models of Solar PV Modules) of ALMM Order, 2019 was last updated on August 17, 2023, and is now under further revision (Revision XV) (enclosed as Annexure I) *vide* this, Memo.

Owing to the above details as published *vide* this Memo, the List – I (Manufacturers and Models of Solar PV Modules) of ALMM Order, 2019 (Annexure- 1 to the Memo) stands revised and updated.

THE MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE) RELEASED A NOTIFICATION DATED AUGUST 18, 2023, ON "GREEN HYDROGEN STANDARD OF INDIA" UNDER THE NATIONAL GREEN HYDROGEN MISSION

MNRE *vide* an office memorandum bearing reference number 353/35/2022-NT released a notification on "Green Hydrogen Standard of India" with the objective to lay out a definition for terms such as "Green Hydrogen" and its sources of production- being "Green Hydrogen produced through electrolysis" and "Green Hydrogen produced through conversion of biomass". The definition of green hydrogen involves ensuring that the total emissions from the entire production process, which includes steps like purification, drying, and compression of hydrogen, do not exceed 2 kg of carbon dioxide equivalent per kg of hydrogen. This calculation is based on an average over the preceding 12 months. The notification designates the Bureau of Energy Efficiency as the nodal agency for accreditation of agencies for carrying out monitoring, verification, and certification of Green Hydrogen production projects.

THE MINISTRY OF NEW AND RENEWABLE ENERGY (MNRE) RELEASED A STRATEGY PAPER ON "REVISED STRATEGY FOR ESTABLISHMENT OF OFFSHORE WIND ENERGY PROJECTS" ON AUGUST 17, 2023, OUTLINING THE REVISED STRATEGY FOR DEVELOPMENT OF OFFSHORE WIND POWER PROJECTS ACROSS THE INDIAN COASTLINE.

MNRE revised the strategy for establishment of offshore wind energy projects, post stakeholder consultations and specifically after considering feedback from several offshore developers. Gujarat and Tamil Nadu were identified as potential offshore wind energy zones post assessment carried out by Facilitating Offshore Wind in India (FOWIND) consortium with National Institute of Wind Energy (NIWE) as knowledge partner who is also acting as the nodal agency for development of offshore wind energy in India under the aid of MNRE, acting in the capacity of nodal ministry as appointed under the Government of India notified National Offshore Wind Energy Policy-2015.

THE CENTRAL ELECTRICITY REGULATORY COMMISSION ON AUGUST 3, 2023 NOTIFIED THE CENTRAL ELECTRICITY REGULATORY COMMISSION (INDIAN ELECTRICITY GRID CODE) REGULATIONS, 2023

The Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2023 ("IEGC Regulations") were published on July 11, 2023 in the Gazette of India Extraordinary (Part III, Section 4, No. 488), however the Central Electricity Regulatory Commission ("CERC") *vide* notification bearing no. L-1/265/2022/CERC on August 3, 2023 notified the IEGC Regulations, to be effective from October 1, 2023. The IEGC Regulations contains provisions regarding the functions and responsibilities of the concerned statutory bodies, generating companies, licensees and any other person connected with the operation of the power systems within the statutory framework envisaged in the Electricity Act, 2003 and the rules and modifications issued by the Central Government.

Besides the abovementioned provisions, the IEGC Regulations contain extensive provisions for (a) reliability and adequacy of resources; (b) technical and design criteria for connectivity to the grid including integration of new elements, trial operation and declaration of commercial operation of generating stations and inter-State transmission systems; (c) protection setting and performance monitoring of the protection systems including protection audit; (d) operational requirements and technical capabilities for secure and reliable grid operation including load generation balance, outage planning and system operation; (e) unit commitment, scheduling and despatch criteria for physical delivery of electricity; (f) integration of renewables; (g) ancillary services and reserves; and (h) cyber security etc.

THE CENTRAL ELECTRICITY REGULATORY COMMISSION ON AUGUST 3, 2023, NOTIFIED THE PROVISIONS OF CERC (CONNECTIVITY AND GENERAL NETWORK ACCESS TO THE INTER-STATE TRANSMISSION SYSTEM) REGULATIONS, 2022

The Central Electricity Regulatory Commission ("CERC") on August 3, 2023, notified the CERC (Connectivity and General Network Access to the inter-state transmission system) Regulations, 2023 ("CGNA Regulations"). Additionally, the CERC also notified the remaining provisions of the CERC (Connectivity and General Network Access to the inter-state transmission system) (First Amendment) Regulations, 2023.

CERC has, *vide* the notification, clarified the scheduling and dispatch of the electricity shall be effective w.e.f. October 01, 2023, in line with the CERC (Indian Electricity Grid Code) Regulations, 2023 or IEGC Regulations.

INFRASTRUCTURE

AIRCRAFT (SECURITY) RULES, 2023

The Ministry of Civil Aviation has introduced new rules for aircraft security through a gazette notification bearing number G.S.R. 596 (E) dated August 9, 2023 ("**Rules**"), which superseded the Aircraft (Security) Rules, 2011 ("**2011 Rules**") and shall come into force on the date of their publication in the Official Gazette of India.

The crucial provisions under the Rules are as follows:

- An important change over the 2011 Rules is that the Director General of the Bureau of Civil Aviation Security ("**Director General**") has been empowered to impose fines, with a maximum amount of Rs. 1,00,00,000 (Rupees One Crore) which will ensure that the aviation security rules are followed more stringently.

- Rule 2 introduced various new definitions of terms such as 'accompanied hold baggage', 'background check', 'cargo', 'security audit', 'security hold area', 'security inspection', and others, thereby providing clarity.

- Rule 3 elucidates the role and responsibilities of the Director General for carrying out regulatory and oversight functions in respect of matters relating to civil aviation security. The Rules provide for the additional responsibilities of the Director General that include (i) development, maintenance and review of a National Civil Aviation Security Quality Control Programme to determine whether it is compliant with the National Civil Aviation Security Programme ("**NCASP**") and to confirm the effectiveness of the same; (ii) provide for risk assessment of identified landslide area and establish landslide security measures; and (iii) to frame guidelines to protect against cyber threats and to implement standards, practices and procedures for the same.

- Rule 4 contains the provision for the continuation of the National Civil Aviation Security Committee ("**Committee**") as a committee under the Rules. The Committee shall include the Secretary of the Ministry of Civil Aviation, the Director General and such other members as may be determined by the Central Government. The Committee has been established to facilitate the coordination of security operations on a national scale among the relevant departments, agencies, and other entities tasked with or accountable for executing different components of NCASP.

- Under Rule 5 every airport operator whose security program has received approval from the Director General is required to set up an Airport Security Committee ("**ASC**") in alignment with NCASP. The ASC has been tasked with aiding the airport operator in fulfilling its duty to harmonize the enforcement of security measures and protocols as outlined in the aerodrome security program.

- Rule 14 provides that entities[13] must appoint a chief security officer or aviation security compliance officer to ensure that security rules are followed and to fulfil the responsibilities as specified by the Director General.

- Rules 49 and 50 provides that entities are required to identify critical information and communication technology systems for aviation, conduct risk assessments, and implement security measures to prevent unauthorized access and use, following NCASP. The entities must assign qualified and trained staff to secure critical information and communication technology systems. Further, the entities must create processes to detect unauthorized access, and establish a cyber security response plan, as directed by the Director General.

- Rules 64 to 66 contain provisions for appeals, compounding of offences, and penalties. The penalties vary depending on the nature of the contravention.

The Rules play a vital role in upholding the security of India's aviation sector. The Rules establish a well-defined structure for reporting, investigating, and managing security incidents, thereby contributing to the integrity of the aviation industry. Compliance with the Rules is imperative not just for security and safety in the aviation sector but also for upholding public confidence in air travel. As the landscape of aviation security evolves, the Rules provide a fundamental basis for adapting to emerging challenges and technologies.

[13] "entity" means a person or a group of persons or a company, including but not limited to an aerodrome operator, aircraft operator, ground handling agency, regulated agent, fuel farm, maintenance, repair and overhaul, catering establishment, business establishment, and any other category as may be included by the Central Government or an officer authorised on its behalf for such purposes, from time to time and has its direct or indirect place of business, provides any service, facility, carries out any commercial or financial activity, or any other legal transactions, at the airport or on the premises of a civil aviation facility.

M/S OM GURUSAI CONSTRUCTION COMPANY VS. M/S V.N. REDDY & ORS., 2023

Introduction

In the case of *M/s. Om Gurusai Construction Company vs. M/s. V.N. Reddy & Ors., 2023*[14], the Supreme Court of India ("**Supreme Court**") while interpreting the tender conditions held that the owner/employer who authored tender documents is the best person to understand and appreciate such tender conditions. The Supreme Court decided upon the issue of whether the strict time limit prescribed in the tender for submitting additional performance security can be relaxed under exceptional circumstances.

Facts

- A tender was issued on January 18, 2021, by the Executive Engineer, Lower Wardha Project Division, Wardha ("**Authority**"), for the construction of land development works at Gadegaon wherein 3 (three) bidders submitted bids, and technical eligibility was confirmed for the Appellant and the Respondent No.1 on February 8, 2021.

- The financial bids were opened on March 12, 2021, and the Appellant's bid was the lowest and the Appellant had to provide additional performance security in accordance with Clause 2.22.0 (ix) of the tender, within 2 (two) working days. The tender prescribed that the two-day timeframe specified will not be extended under any circumstances. Failure to comply will result in the forfeiture of the Earnest Money Deposit (EMD), and the bidder will be disqualified from participating in any tender issued by the Authority for a period of 2 (two) years from the date of financial bid opening.

- Since March 13, 2021 (Saturday) and March 14, 2021 (Sunday) were non-working days, the two-day period ended on March 16, 2021. Due to a nationwide bank employees' strike on March 15, 2021 and March 16, 2021, the Appellant couldn't submit the security.

- The Appellant submitted the additional performance security on March 17, 2021. Despite the delay caused by the strike, the Authority acknowledged the strike's impact and accepted the Appellant's bid.

- The work order was issued to the Appellant on May 07, 2021, followed by the work commencement order on May 24,2021.

- Respondent No. 1 filed a writ petition before the Bombay High Court, Nagpur Bench ("**HC**") challenging the work order issued to the Appellant, claiming that the time limit under the relevant clause of the tender was mandatory and non-compliance had specified consequences.

- The HC ruled that the said clause was mandatory and an essential condition and held that the time limit could not be relaxed, and the tendering authority had no power to do so. The HC concluded that the authority shouldn't have accepted the security on March 17, 2021, as it exceeded the stipulated time mentioned under the tender.

Judgment:

- The Supreme Court held that the tendering authority or employer, as the author of the tender documents, possesses the best understanding of its requirements and document interpretation.

- It referenced legal principles regarding the impossibility of performance of tasks, acknowledging the Appellant's compliance with the earliest possible timeline for security submission given the circumstances.

- The Supreme Court stressed that, after verifying the strike situation, the tendering authority accepted the security and awarded the work. It emphasized that decision-makers should consider ground realities and compelling necessities prior to making any decisions.

- The Supreme Court concluded that the Appellant's security submission on March 17, 2021, adhered to the tender clause and did not violate it.

- It cited precedents to underscore the importance of respecting the tendering authority's interpretation of the documents, barring malice or perversity.

- The Supreme Court cautioned against unnecessary interference in tender matters unless malice, irrationality, or public interest is evident in the authority's decision.

- The Supreme Court overturned the HC's decision, asserting that the project owner's understanding and appreciation of the tender documents should prevail and that constitutional courts must not interfere with the same unless there is evidence of malice or perversity in this understanding.

***DSK View**: The Supreme Court once again upheld the well settled decision in various judgements that the courts should not interfere in the tendering process unless there it is clear*

[14] MANU/SC/0916/2023

evidence of arbitrariness, mala fide or bias. The Supreme Court further observed that the entity authoring the tender is the foremost authority which can appreciate and understand the conditions and restrictions prescribed under the tender.

THE RBI LAUNCHES THE PILOT PROJECT FOR PUBLIC TECH PLATFORM FOR FRICTIONLESS CREDIT

The RBI, *via* its wholly owned subsidiary, Reserve Bank Innovation Hub (RBIH), has launched a public tech platform (currently, in the pilot mode) to enhance frictionless credit. Explaining the objective in the 'Statement on Developmental and Regulatory Policies' which was released on August 10, 2023, the RBI has noted that for instances such as digital credit delivery, credit and background information of the customers are required for their credit appraisal and such information is available with different entities like Central and State governments, account aggregators, banks, credit information companies, digital identity authorities and the like. However, since such data are currently stored in separate systems of the respective agencies, its utilization is restricted which hinders timely delivery of rule-based lending. The platform will create an end-to-end a 'plug and play' ecosystem for lenders due to its open architecture, open Application Programming Interfaces (APIs), and open standards, thereby amplifying the credit approval and disbursement system.

Linked with services such as Aadhaar e-KYC, land records from onboarded state governments (such as Madhya Pradesh, Tamil Nadu, Karnataka, Uttar Pradesh, and Maharashtra), satellite data, PAN validation, transliteration, Aadhaar e-signing, account aggregation, the platform presently offers Kisan Credit Card loans up to Rs. 1.6 Lakh per borrower, dairy loans, unsecured MSME loans, personal loans and home loans through participating banks.

DSK View: *While the platform is intended to be rolled out and expanded in a calibrated fashion, its success will be determined by its ability to practically consolidate the lending process in terms of reduction of costs, quicker disbursement, and scalability. The platform is a thoroughly promising enterprise in terms of its scope and objective as it will allow greater masses to seek speedy loans. As it reduces reliance on paperwork, the project will prove to be the most beneficial for remote areas of India where banks are not in a close proximity.*

Source

NPCI LAUNCHES 3RD EDITION OF UPI ADOPTION AND SAFETY AWARENESS CAMPAIGN

NPCI has launched the third edition of the UPI Safety Awareness Campaign, "UPI Chalega", in association with the key players operating in the payment ecosystem such as, BHIM, Google Pay, Pay Zapp, Cred, ICICI Bank, PayTM Payments Bank, Amazon Pay amongst others. NPCI had previously conducted such awareness campaigns to educate consumers about its security and usability, in order to increase UPI penetration in India.

DSK View: *India leads multiple world statistics in real-time payments. The awareness events conducted by NPCI in partnership with major players in the UPI ecosystem, is expected to invariably increase the outreach and adoption of UPI payments ecosystem in India.*

Source

RBI LAUNCHES 'UDGAM', A CENTRALIZED WEB PORTAL FOR SEARCHING UNCLAIMED DEPOSITS

The RBI has launched a centralized web portal - UDGAM (*Unclaimed Deposits – Gateway to Access infor'M'ation*) for enabling the public to search their unclaimed deposits across multiple banks at one place. The primary objective of this portal is to streamline the procedure of identifying and reclaiming unclaimed deposits which are spread across different banks, thereby guaranteeing simplified access to these funds for the general public. The platform was created

in partnership with participating banks, Indian Financial Technology & Allied Services and Reserve Bank Information Technology Private Limited.

"Unclaimed Deposits" are balances in savings or current accounts that have not been used for 10 (Ten) years or term deposits that have not been repaid within 10 (Ten) years of the maturity date. The RBI has periodically launched public awareness programs to educate the public on this issue considering the rising trend in the number of unclaimed deposits.

Users will initially have access to information about their unclaimed deposits related to the seven banks which are already listed on the platform. This program is estimated to be phased in by October 15, 2023.

DSK View: *The launch of the UDGAM portal represents a proactive endeavour to tackle the issue of unclaimed deposits and simplify the process of reclaiming them. Through the provision of an easily accessible and consolidated platform, the RBI aims to empower individuals to manage their financial assets effectively. This initiative is anticipated to contribute not just to financial inclusivity but also to the efficient utilization of funds that might otherwise go unclaimed.*

Source

RESET OF FLOATING INTEREST RATE ON EMI BASED PERSONAL LOANS

The RBI, in its notification dated August 18, 2023, has highlighted the issue pertaining to the grievances faced by the consumers/borrowers due to lack of communication pertaining to elongation of loan tenor and/or increase in EMI amount. Therefore, the RBI has sought to impose specific responsibilities and mandatory disclosure requirements on Regulated Entities ('REs' or 'Lenders') when resetting the floating interest rate for EMI-based personal loans. The key points have been summarized below:

i. Clear communication regarding the potential or actual effects on the interest rates, EMIs and loan tenor must be provided to the borrowers;

ii. Lenders should have a board approved policy containing provisions for options provided to the borrowers to switch to a fixed rate if the interest rates are changed;

iii. The borrowers should be given an option to choose between (i) enhancement of EMI and extension of their loan tenure, or combining both the approaches; and (ii) prepayment of their loan, in part or full, during their loan tenure; subject to the applicable foreclosure and prepayment charges;

iv. When exercising the options, all applicable fees for switching loans from floating to fixed rates and any other service costs involved must be fully disclosed to the borrowers in their sanction letters as well as during any subsequent revisions of such charges/ costs by the Lenders.

v. Lenders must ensure that extension of loan tenor in case of floating rate loan does not result in negative amortization.

Lenders are directed to apply these provisions to both new and existing loans by December 31, 2023. Existing borrowers must receive communication through suitable means, detailing the available choices.

DSK View: *The RBI's circular highlights its dedication to upholding transparency, fairness, and safeguarding consumer interests in the lending sector. Through enhanced communication and increased flexibility for borrowers, the circular intends to address apprehensions arising from interest rate fluctuations. As these directives are put into practice, borrowers can anticipate a more knowledgeable and empowered borrowing journey, ultimately bolstering the overall stability and integrity of the lending landscape in India.*

Source

ENHANCING TRANSACTION LIMITS FOR SMALL VALUE DIGITAL PAYMENTS IN OFFLINE MODE

As per the RBI's notification dated August 24, 2023, the upper limit of an offline payment transaction is increased to Rs. 500/- (Rupees Five Hundred only), with immediate effect. This notification is in reference to an erstwhile RBI circular on "Framework for Facilitating Small Value Digital Payments in Offline Mode" dated January 03, 2022. Earlier, the upper limit of an offline payment transaction was Rs. 200/- (Rupees Two Hundred only). However, the change is only regarding the upper limit for offline transaction and the other guidelines listed in the aforesaid framework shall continue to remain applicable as before.

DSK View: *The primary objective of this notification is to expedite small-value transactions on the Unified Payments Interface (UPI) and encourage the adoption of the UPI-Lite wallet, which was introduced in September 2022, in regions with limited or no internet connectivity. This endeavour seeks to not only facilitate digital payments for retail customers but also to guarantee swift transaction processing with minimal rejections, particularly in regions where internet or telecom connectivity is scarce or unavailable.*

Source

10 NBFCS SURRENDER THEIR CERTIFICATE OF REGISTRATION TO RBI

As per RBI's press release dated August 10, 2023, 10 (Ten) NBFCs have surrendered their registration certificates to the RBI. The reasons cited by the NBFC are as follows:

i. Exit from the Non-Banking Financial Institution (NBFI) Business: Incred Capital Financial Services Private Limited (Maharashtra), Bagaria Investech Private Limited (Karnataka), Latent Light Finance Limited (New Delhi), Saraogi Investments Limited (New Delhi), Kaushal Finlease Company Private Limited (Southwest Delhi), Bharat Nidhi Limited (New Delhi), Digvijay Capital Management Limited (Uttar Pradesh) and Origa Lease Finance Private Limited (Maharashtra).

ii. NBFC ceasing to be a legal entity due to amalgamation/ merger/dissolution/ voluntary strike-off, etc.: Hariom Holdfin Private Limited (East Delhi) and Capitaltrust Microfinance Private Limited (New Delhi).

Source

EU CBAM REPORTING OBLIGATIONS FOR TRANSITIONAL PHASE

EU's Carbon Border Adjustment Mechanism ('CBAM') is an instrument which prices the carbon emissions from the manufacture of commodities entering the EU common market and thereby promotes cleaner industrial output in non-EU nations as well. The CBAM has been explained in detail in the *June edition* of this Newsletter.

Recently, the EU Commission has released an Implementing Regulation 2023/956 dated 17 August 2023 (available here) to lay down the reporting obligations under the CBAM for the transitional period from 1 October 2023 to 31 December 2025.

During the above-mentioned transitional period, importers must report the quantity of imported goods, along with the direct and indirect emissions embedded in them, and any carbon price due for those emissions, including carbon prices due for emissions embedded in its relevant precursor materials. The importers are required to submit their first report in respect of the goods imported in the last quarter of 2023 on or by January 31, 2024, and the last report would be submitted by 31 January 2026.

In accordance with the Implementing Regulation, reporting declarants, or importers of CBAM-covered goods, are required to submit data on a quarterly basis covering the topics inclusive of the quantity of imported goods, the type of imported goods as indicated by their Combined Nomenclature ('CN') codes, information on their embedded emissions and amount of carbon price due. Additional details on the reporting forms for importers are provided in Annex I to the Implementing Regulation.

Further, the Implementing Regulation specifies that the importer must determine the level of the embedded emissions from source streams using activity data obtained by means of measurement systems or laboratory analysis and/or by means of continuous measurement of the concentration of the relevant greenhouse gases.

Furthermore, the Implementing Regulation proposes guidelines for sanctions in case the importer fails to report the data correctly, i.e., for each tonne of embedded emissions that are not disclosed, a penalty between EUR 10 – 50 may be recommended.

In its transitional phase, the CBAM would initially apply to imports of specific products and certain chosen precursors, namely, cement, iron and steel, aluminium, fertilizers, power, and hydrogen, whose manufacturing process is carbon-intensive and thus, pose a great danger of carbon leakage.

During the transitional phase of CBAM, while there will be a requirement to report on the emissions associated with their imported goods that fall under the mechanism's purview, no immediate financial adjustment will be applied. This will provide businesses with a preparatory window to adapt while also creating room for further refinement of the methodology.

DSK View: *Indian Businesses or export units must start taking active action to adapt to EU's Implementing Regulation as it is one of the most pressing requirements under the CBAM. The above-mentioned regulation's reporting requirements would come into effect from October 1, 2023 onwards and thus, all EU importers of the CBAM-covered products, and their exporting counterparts, must be prepared for these transitional period reporting obligations in order to accomplish a seamless roll-over and minimize any possible interruptions.*

RESTRICTION ON IT IMPORTS BY INDIA

The Director General of Foreign Trade ('DGFT') has notified an amendment to the Import Policy of Items under HSN 8471 of Chapter 84 of Schedule-I (Import Policy) of ITC (HS) vide Notification No. 23/2023 dated 3 August 2023 (available here). This amendment restricts the import of products falling under HSN 8471, namely, laptops, tablets, all-in-one PCs, ultra small form factor Computers and Servers and allows their import only against a Valid Licence for Restricted Imports.

The above-mentioned import licencing requirement is exempted in the following cases:

i. Each consignment is allowed one laptop, tablet, all-in-one PC, or ultra-small form factor PC without the need for an Import License. This exemption also applies to laptops, tablets, and PCs purchased from e-commerce portals through post or courier, provided applicable duties are paid.

ii. Up to 20 such items per consignment are exempted from the import licensing requirement for specific purposes like R&D, testing, benchmarking, evaluation, repair and re-export, and product development. However, it is essential to ensure that these imported goods are used solely for their intended purposes and not for resale. After fulfilling their designated functions, the products must either be destroyed or re-exported.

iii. Items falling under HSN 8471 can be imported if they are an essential part of a Capital Good.

iv. The DGFT has extended the exemption from import licensing to items that are re-imported after being repaired abroad.

The above-mentioned restrictions on the imports of IT products shall be effective from 1 November 2023 onwards and liberal transitional arrangements are provided for import of Laptops, Tablets, All-in-one Personal Computers, Ultra-small form factor Computers and Servers falling under HSN 8471 till 31 October 2023 vide Notification No. 26/2023 dated 4 August 2023 (available here).

In essence, all major tech companies, namely Apple, Intel, Google, Lenovo, Dell Technologies, HP and others would be forced to stop their shipments into India unless they have a Valid License for Restricted Importers as issued by the DGFT. Many of these companies have requested the US Government to undertake formal stakeholder consultations and use every available forum in order to push India to reconsider the Import Restriction Policy on IT products.

DSK View: *This move would curtail inbound shipments of IT products, especially from countries like China and Korea. Global tech giants like Dell, Acer, Samsung, Panasonic, Apple, Lenovo, and HP are expected to encounter challenges and may need to reassess their market access strategies for the Indian domestic market.*

Conversely, the above-mentioned amendment aligns with India's commitment to bolster domestic manufacturing under the 'Make in India' program and is in line with India's production-linked incentive ('PLI') scheme for IT Hardware which offers a 4% incentive on increasing domestic production. Interestingly, as per latest news reports, many leading global and local players in the IT hardware segment have shown interest in this PLI scheme.

This move presents a significant opportunity for local manufacturing as the government emphasizes on indigenous production. Companies manufacturing in India are likely to witness increased demand from consumers seeking alternatives to imported products. By promoting domestic manufacturing, the government's vision of 'Make in India' will receive a significant boost, likely leading to job creation and further development within the electronics industry.

It would auger well for businesses to closely monitor updates from the Indian government regarding these import restrictions and their implementation.

MEDIA & ENTERTAINMENT

LOK SABHA PASSES BILL TO AMEND THE CINEMATOGRAPH ACT

On 31st July 2023, the Lok Sabha passed the Cinematograph (Amendment) Bill, 2023 after receiving an approval from Rajya Sabha. The Bill seeks to punish people for unauthorised recordings of films for a fine up to Rs. 3 lakhs and imprisonment between 3 months to 3 years. It also introduces new categories of film certification by increasing the number of age ratings. The practice of recertification of movies for television broadcast are sought to be formalised. It also proposes to grant perpetual validity to certifications instead of the current 10-year validity period.

The objective of the Parliament for passing this bill is to formalise the current practices in the changing landscape in India in terms of privacy and censorship.

KARNATAKA GOVERNMENTS PLAN TO CURB MISINFORMATION AND FAKE NEWS

Karnataka home minister G Parameshwara has announced that the State Government shall bring laws to punish people for spreading misinformation and fake news on the internet. The measures would also include the use of artificial intelligence to crack down the source and culprit behind the spread of misinformation. The Home Minister also emphasised on the lack of provisions for certain cases under the existing cyber laws to enforce control measures. The State government aims to amend such existing laws and curb misinformation spread over the internet.

GOLDMINES TELEFILMS RESTRAINED BY DELHI HIGH COURT FROM UPLOADING SONGS OWNED BY T-SERIES IN COPYRIGHT INFRINGEMENT SUIT

After T-Series claimed copyright infringement in its complaint, the Delhi High Court ordered Goldmines Telefilms not to upload music from 14 Hindi films to YouTube. T-Series asserted that Goldmines Telefilms lacked the legal authority to permit the uploading of these songs from the suit films to YouTube because it had acquired and owned prior assignment deeds in respect of audio-visual works, including literary, artistic, dramatic, and musical works as well as the cinematograph films for the songs. According to the court, "Given the nature of the disputes raised, the defendant shall not upload any additional audio or audio-visual works from the suit films, other than those already uploaded on YouTube, until the next date of hearing."

THE DELHI HIGH COURT HAS ORDERED THE GOVERNMENT TO REMOVE 22 'ROGUE WEBSITES' THAT BROADCAST CRICKET MATCHES

The Delhi High Court recently ordered the Ministry of Electronics and Information Technology (MEITY) and the Department of Technology (DoT) to take down 22 'rogue websites' that were illegally streaming various television stations, cricket matches, France Ligue, and LaLiga. The Court also ordered the Domain Name Registrars to submit IP addresses and other website-related information.

PILS SEEKING GUIDELINES TO CONTROL TV NEWS NETWORKS DISMISSED BY THE SUPREME COURT

The Supreme Court declined to hear two petitions seeking laws governing television news networks, as well as an independent board or media tribunal for grievance redressal related to content on such channels. According to the petition, the Union Ministry of Information and Broadcasting had completely failed in its obligations and in enforcing the Programme Code, to which television broadcasters are obliged to follow. The petitioners contended that self-regulation of such channels could not be the solution. A bench consisting of Justices Abhay S Oka and Sanjay Karol ruled that viewers were free not to watch such channels, and that the industry's freedom of speech and expression would be respected.

SUPREME COURT TO ISSUE GUIDELINES FOR STRENGTHENING OF SELF-REGULATION MECHANISM OF TV CHANNELS

On August 14th, the Supreme Court announced its intention to establish guidelines aimed at bolstering the self-regulation of television channels. The court expressed dissatisfaction with the News Broadcasting Standards Authority (NBA), which oversees self-regulation, and questioned the efficacy of imposing a mere fine of Rs one lakh on channels. A panel consisting of Chief Justice DY Chandrachud, Justice JB Pardiwala, and Justice Manoj Misra presided over the case brought forth by NBDA (formerly News Broadcasters Association). The NBDA contested critical remarks made by the Bombay High Court regarding the self-regulatory process within the media. These comments were part of a January 2021 ruling in response to several public interest litigations that questioned media trials in the Sushant Singh Rajput death case. The Supreme Court cast doubt on the media's ability to self-regulate and opined that the existing maximum fine of Rs one lakh outlined in the NBA guidelines lacked the necessary deterrent effect. The court proposed that fines should be proportionate to a percentage of profits, emphasizing the need for substantial consequences within the regulatory framework. The court asserted the importance of an effective self-regulation mechanism while addressing the need to exercise caution regarding government control over the media. It emphasized that pre-censorship or post-censorship measures should be avoided, advocating instead for a robust self-regulation system. These observations were made by the bench while formally acknowledging the submitted petition.

ADDITIONAL INFLUENCER GUIDELINES FOR HEALTH AND WELLNESS CELEBRITIES, INFLUENCERS AND VIRTUAL INFLUENCERS ISSUED BY THE DEPARTMENT OF CONSUMER AFFAIRS

The Ministry of Consumer Affairs, Food and Public Distribution's Department of Consumer Affairs has issued additional guidelines for individuals in the health and wellness sector, including celebrities, influencers, and virtual influencers. These guidelines are an extension of the 2022 Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements. The Additional Influencer Guidelines for Health and Wellness Celebrities, Influencers, and Virtual Influencers have been formulated after extensive consultations with various stakeholders, including the Ministry of Health, Ministry of Ayush, Food Safety and Standards Authority of India (FSSAI), and the Advertising Standards Council of India (ASCI). As per these guidelines, certified medical practitioners and health and fitness experts holding valid certifications from recognized institutions are required to disclose their certification status when sharing information, endorsing products or services, or making health-related claims. In instances where celebrities, influencers, or virtual influencers portray themselves as health experts or medical practitioners and engage in sharing information, promoting products or services, or making health-related assertions, they are obligated to provide clear disclaimers. These disclosures or disclaimers should be prominently displayed during endorsements, promotions, or whenever health-related claims are made. It's important to note that general health and wellness advice such as 'Stay Hydrated by Drinking Water', 'Regular Exercise Enhances Physical Activity', 'Limit Sedentary Behavior and Screen Time', 'Ensure Adequate and Restful Sleep', 'Incorporate Turmeric Milk for Quicker Recovery', 'Apply Sunscreen Daily for Protection from Harmful UV Rays', 'Apply Hair Oil for Improved Hair Growth', and similar advice not tied to specific products, services, health conditions, or outcomes are exempt from these regulations. The Department of Consumer Affairs (DoCA) will actively monitor and enforce these guidelines. Violations of these guidelines could result in penalties under the Consumer Protection Act of 2019 and other applicable legal provisions.

DELHI HIGH COURT UPHOLDS ORDER HOLDING SATYAJIT RAY AS 'FIRST OWNER' OF COPYRIGHT IN BENGALI FILM 'NAYAK'

The Delhi High Court has confirmed the decision of a single judge, affirming that the esteemed filmmaker Satyajit Ray holds the initial copyright ownership for the 1966 Bengali film titled "Nayak," given that he authored the film's screenplay. A panel of judges, comprising of Justice Yashwant Varma and Justice Tushar Rao Gedela, has rejected the appeal filed by RDB and Co. HUF. The appeal was lodged by the 'Karta' R.D. Bansal, who had commissioned Ray to write and direct the film. The appeal contested the verdict made by the single judge on May 23. The plaintiff, represented by the Hindu Undivided Family (HUF), aimed to prevent the publishing house HarperCollins from adapting the film into a novel. The novelization, authored by Bhaskar Chattopadhyay, was published in May 2018. In the previously challenged ruling, the single judge permitted HarperCollins to seek a summary judgment for the dismissal of the lawsuit, asserting that the suit lacked a valid cause of action. Consequently, the HUF's request for a permanent injunction against the publishing house was denied. The division bench has upheld the single judge's decision, emphasizing that the copyright for the screenplay of the film rightfully belongs to its author, Satyajit Ray. The bench further stated that recognizing the existence of copyright within the screenplay author automatically precludes any claim the plaintiff HUF might have over the cinematographic work. This recognition doesn't diminish or weaken Ray's copyright in the screenplay.

DELHI HIGH COURT PASSES 'DYNAMIC+ INJUNCTION' RESTRAINING ROGUE WEBSITES FROM STREAMING PRESENT AND FUTURE CONTENT OF SIX AMERICAN STUDIOS

In the case of *Universal City Studios LLC & Ors v. DotMovies.Baby and Ors*, the Delhi High Court has issued an order restraining 16 unauthorized websites, along with their mirror/redirects or variations, from streaming or offering for download the current and future content produced by six American studios. These studios include Netflix Studios, Disney Enterprises, Warner Bros, Columbia Pictures, Paramount Pictures, and Universal City Studios. The studios brought the matter before the High Court, alleging that these rogue websites were distributing their copyrighted content without any proper license or authorization. Justice Prathiba M Singh emphasized the necessity of a 'dynamic+ injunction' due to the ever-evolving nature of copyright infringement facilitated by these "hydra-headed websites". She explained that such an injunction was essential to protect copyrighted works immediately upon their creation, preventing potential harm to the creators and owners of the content. She noted that these rogue websites or their updated versions could swiftly upload films, shows, and series, thus requiring prompt action. The Court highlighted the importance of establishing a global consensus to safeguard the rights of copyright owners. Despite Internet Service Providers (ISPs) blocking these websites, they can still be accessed through methods like VPN servers that are beyond the reach of legal authorities. Recognizing that copyright for future works is established as soon as the work is created, the court acknowledged the difficulty faced by American studios in approaching the court for every new film or series to seek an injunction against piracy. The court stressed that as technology evolves, courts must adjust the remedies they provide. While not every case may warrant an injunction for future works, the granting of such an injunction depends on the specific circumstances that arise.

BOMBAY HIGH COURT REFUSES TO STALL RELEASE OF AYUSHMANN KHURRANA STARRER 'DREAM GIRL 2'

The Bombay High Court has declined to halt the release of the movie "Dream Girl 2," starring Ayushmann Khurrana. The decision was made by Justice Riyaz Chagla in response to a Commercial IPR (Intellectual Property Rights) suit filed by writer-director Ashim Kumar Bagchi. Bagchi claimed that the film's producers were using his registered script as their own. The plaintiff argued that (i) the film produced by the defendants, essentially reproduces or modifies the plaintiff's work, which constitutes a violation of his copyright; (ii) the plaintiff's script centers around two financially challenged men who pretend to be women to escape their debts. A womanizing producer falls in love with one of them, and the plot revolves around how they navigate this situation; (iii) the plaintiff claimed to have contacted Balaji about the same script in 2013 and even emailed it to them; (iv) after watching the film's trailer, the plaintiff noticed similarities between the movie and his allegedly registered screenplay; and (v) the plaintiff sought Rs. 20 crores in damages for copyright infringement, along with a permanent injunction. After hearing arguments from both parties, Justice Riyaz Chagla stated that films should not be prevented from release at the last minute. He cited various legal cases that uphold this principle, emphasizing that courts should discourage the practice of parties bringing copyright infringement claims at the eleventh hour and expecting immediate priority. He noted that this approach had been established in previous cases such as *Ravi Mallesh Bohra and Ors. v. State of Maharashtra and Ors.*, *Warner Bros. Entertainment Inc. & Anr. Harinder Kohli & Ors.*, and *Dashrath B. Rathod and Ors. v. Fox Star Studios India Pvt. Ltd. and Ors*. The film was released on August 25, 2023.

A FEDERAL JUDGE UPHELD A FINDING FROM THE U.S. COPYRIGHT OFFICE THAT A PIECE OF ART CREATED BY AI IS NOT OPEN TO PROTECTION

A federal judge has upheld a decision by the U.S. Copyright Office that a piece of artwork generated by artificial intelligence (AI) is not eligible for copyright protection. The ruling was issued in response to Stephen Thaler's legal challenge against the government's stance on registering AI-created works. U.S. District Judge Beryl Howell rejected Thaler's argument, emphasizing that copyright law has never extended its protection to works generated solely by technology without human creative input. The judge's opinion emphasized the fundamental requirement of human authorship for copyright protection, stating that "Human authorship is a bedrock requirement." Stephen Thaler, CEO of neural network company Imagination Engines, had listed an AI system called the Creativity Machine as the sole creator of an artwork named "A Recent Entrance to Paradise" in 2018. The Copyright Office rejected the application, asserting that the connection between human thought and creative expression is essential for protection. Thaler, who claimed ownership of the copyright based on the work-for-hire doctrine, sued to challenge the denial and the requirement of human authorship. He argued that AI should be recognized as an author if it meets authorship criteria, with ownership belonging to the AI's owner. His complaint contended that the Copyright Office's refusal violated the Administrative Procedure Act, which allows for judicial review of agency actions, and was "arbitrary, capricious, an abuse of discretion, and not in accordance with the law." The central issue in the lawsuit was whether a work created solely by a computer is eligible for copyright protection. Judge Howell's ruling straightforwardly stated that a work created without any human involvement in its creation cannot be eligible for copyright protection. She emphasized that U.S. copyright law exclusively safeguards works of human creation and is designed to adapt to changing technological landscapes. The ruling further clarified that human creativity is the core of copyrightability and that this

principle remains intact even as new tools and media emerge. In her explanation, Judge Howell highlighted that while cameras can mechanically reproduce scenes, they do so after a human develops a "mental conception" of the photograph. This mental conception involves choices like subject positioning, arrangements, and lighting, which are fundamental to the creative process.

MINISTRY OF CORPORATE AFFAIRS ("MCA")

AMENDMENT TO THE COMPANIES (INCORPORATION) RULES, 2014

The MCA, *vide* notification dated August 2, 2023 (accessible *here*) has notified the Companies (Incorporation) Second Amendment Rules, 2023 to introduce the new version of Form No. RD-1 *(Form for filing application to Central Government (Regional Director))*. Companies are required to file Form No. RD-1 with the Regional Director for *inter alia* seeking approval in case of rectification of name, change in financial year, conversion of public company into a private company.

The key changes in the new Form No. RD-1 have been summarised below:

(a) the requirement of disclosing the global location number (GLN) of company has been omitted;

(b) the purpose of application for the filing of Form No. RD-1 now includes following additional options: ***(i)*** notice of approval of the scheme of merger in CAA-11, and ***(ii)*** any other options along with additional details in this regard;

(c) date of publication of advertisement (both in English and vernacular language) as per rule 41 of the Companies (Incorporation) Rules, 2014 (in respect of proposed conversion of public company into private company) is now required to be specified in the form;

(d) disclosures, if there has been any previous application within the last five years for ***(i)*** change in financial year, and/or ***(ii)*** any conversion made along with the outcome thereof, are now required to be specified in the form; and

(e) details of transferor company such as number of transferor company, CIN and name of company are now required to be specified in the form.

The objective of the ROC is to enhance the accuracy and comprehensiveness of the information presented in the form by including these additional disclosures.

CONDONATION OF DELAY IN FILING OF FORM-3, FORM-4 AND FORM-11 UNDER SECTION 67 OF LIMITED LIABILITY PARTNERSHIP ACT, 2008 READ WITH SECTION 460 OF THE COMPANIES ACT, 2013

The MCA, *vide* general circular No.08/2023 ("**Circular**") dated August 23, 2023 (accessible *here*), has introduced a scheme for condonation of delay to grant one-time relaxation in additional fees to LLPs that have not filed Form-3 (*LLP Agreement and changes therein*), Form-4 (*Notice of appointment, cessation, change in name/address/designation of partner and consent to become a partner/designated Partner*) and Form-11 (*Annual Return for LLP*) within the due time and also providing an opportunity to update filings and details in the Master Data (on MCA portal) for future compliances. The aforesaid relaxation is being provided as LLPs were facing technical difficulties in the filing of these forms including due to mismatch in Master Data of LLPs on MCA portal.

The key features of Circular have been summarised below:

(a) Form-3 and Form-4 would be processed under Straight Through Process (STP) mode except for change in business activities. The forms are to be filed in sequential order to update the master data by filing the form for the oldest event first;

(b) While filing the forms, there will be a facility to edit the pre-filed data of the LLP. The onus is on stakeholders to correct data if necessary. In cases of misrepresentation, the designated partner of the LLP and the professional certifying the form maybe liable for adverse action as per provisions of the law;

(c) The filing of Form-3 and 4 without additional fee would

be applicable for the events dated January 1, 2021 and onwards but for events dated prior to January 1, 2021, these forms are to be filed with twice the normal filing fees for small LLPs and 4 (four) times the normal filing fees for other than small LLPs;

(d) The filing of Form-11 without additional fee would be applicable for financial year 2020-21 onwards. Form-11 for previous years are to be filed with twice the normal filing fees for small LLPs and 4 (four) times the normal filing fees for other than small LLPs;

(e) The aforesaid forms are available for filing from September 1, 2023 to November 30, 2023 (both dates inclusive); and

(f) By availing the scheme, the LLPs won't be liable for any action for delay in filing the forms;

FAIR LENDING PRACTICE - PENAL CHARGES IN LOAN ACCOUNTS

The Reserve Bank of India ("**RBI**"), on August 18, 2023[15], vide notification number DoR.MCS.REC.28/01.01.001/2023-24 ("**Fair Practice Notification**"), introduced a set of instructions in relation to levy of penal charges by regulated entities ("**REs**").

Some of the key highlights of the Fair Practice Notification are given below:

(i) the Fair Practice Notification is applicable to all Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks, excluding Payments Banks), all Primary (Urban) Co-operative Banks, all NBFCs (including HFCs) and all India Financial Institutions (EXIM Bank, NABARD, NHB, SIDBI and NaBFID);

(ii) REs can levy 'penal charges' for non-compliance of material terms and conditions of a loan agreement, and the same shall not be in the form of 'penal interests' or in the form of an additional component over and above the contracted rate of interest;

(iii) the REs shall be restricted from capitalizing on such penal charges i.e., no further interest can be computed on such charges;

(iv) all REs must have a board approved policy with respect to penal charges;

(v) the grounds for levy of penal charges, and the quantum thereof, should be duly disclosed under the loan agreement and most important terms and conditions (or the key fact statement in case of digital loans), and the same should also be displayed on REs' website;

(vi) penal charges should be reasonable and proportional to the level of non-compliance and should not be discriminatory towards any particular loan or product category;

(vii) penal charges levied to individual borrowers should not, in any event, be higher than penal charges levied to the non-individual customers for similar reasons;

(viii) while sending reminders to the borrowers for any non-compliance with any material terms of the loan agreement and reasons for levying the charges together with the applicable penal charges should also be communicated to the borrower.

The Fair Practice Notification will come into effect from January 1, 2024. Existing loans are required to ensure compliance with the Fair Practice Notification by the next review or renewal date thereof or six months from the effective date of the Fair Practice Notification, whichever is earlier. The provisions of the Fair Practice Notification are not applicable to credit cards dues, external commercial borrowings, trade credits and structured obligations.

DSK View: *By ensuring that all applicable penal charges are duly disclosed to the borrowers at the time of availing the loan, and further, by ensuring that such penal charges are reasonable and non-discriminatory, the RBI aims to improve fairness and transparency in the lending market.*

[15] https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12527&Mode=0

REVISED REGULATORY FRAMEWORK FOR INFRASTRUCTURE DEBT FUND-NBFCs

RBI issued a circular bearing reference number, RBI/2023-24/54, dated August 18, 2023[16] ("**IDF-NBFC Circular**"), introducing an updated regulatory framework ("**Revised Regulatory Framework**") for Infrastructure Debt Fund-Non-Banking Financial Corporations ("**IDF-NBFCs**").

Some key provisions of the Revised Regulatory Framework are highlighted below:

- The circular defines an IDF-NBFC as a non-deposit taking NBFC authorized to provide refinancing for infrastructure projects after the commencement of operations date ("**COD**").
- IDF-NBFCs are also permitted to finance toll-operate-transfer (**TOT**") projects directly as a lender.
- IDF-NBFCs are required to maintain a minimum Net Owned Fund ("**NOF**") of ₹300 crore and a capital-to-risk weighted assets ratio ("**CRAR**") of at least 15%, with a minimum Tier 1 capital of 10%.
- IDF-NBFCs can raise funds by issuing bonds denominated in either rupees or dollars or through external commercial borrowings ("**ECBs**") and having a minimum maturity of five years, or through shorter tenor bonds and commercial papers up to 10% of their total outstanding borrowings.
- ECBs cannot be availed from foreign branches of Indian banks.
- Exposure limits for IDF-NBFCs are set at 30% of their Tier 1 capital for a single borrower/party and 50% of their Tier 1 capital for a single group of borrowers/parties.
- The requirement of a sponsor for an IDF-NBFC has now been withdrawn and shareholders of IDF-NBFCs shall be subjected to scrutiny as applicable to other NBFCs, including NBFC-IFCs.
- The requirement to enter into a tripartite agreement with the concessionaire and the project authority for investments in the Public Private Partnership infrastructure projects having a project authority is also optional now.
- All regulatory norms applicable to NBFC-Investment and Credit Companies ("**NBFC-ICCs**") will apply to IDF-NBFCs.
- NBFCs will now be eligible to sponsor (sponsorship as defined by SEBI Regulations for Mutual Funds) IDF-MFs with prior approval of the RBI subject to the conditions stipulated under the Revised Regulatory Framework.

***DSK View**: The Revised Regulatory Framework has modified the eligibility criteria, capital requirements, fundraising options and other regulatory norms governing fund raising by IDF-NBFCs. Certain changes in the Revised Regulatory Framework, such as permitting NBFCs to sponsor IDF-MFs, permitted IDF-NBFCs to raise funds through shorter tenor bonds and commercial papers and removing the requirement of a sponsor for IDF- or NBFC infrastructure finance companies, may facilitate better management of asset and liabilities. The Revised Regulatory Framework also seems to be a step towards harmonizing regulations governing infrastructure financing by NBFCs.*

TRANSACTIONS IN CORPORATE BONDS THROUGH REQUEST FOR QUOTE (RFQ) PLATFORM BY FOREIGN PORTFOLIO INVESTORS

The Securities and Exchange Board of India ("**SEBI**") vide circular bearing reference number SEBI/HO/AFD/AFD-POD-2/P/CIR/2023/138 dated August 7, 2023[17], ("**FPI Circular**") directed Foreign Portfolio Investors ("**FPIs**") to conduct a minimum of 10% (ten percent) of their total secondary market trades by value, in corporate bonds, on the Request for Quote ("**RFQ**") platform of stock exchanges.

The FPI Circular will need to be adhered to by FPIs, from October 01, 2023 and the trade limit will be tracked on a quarterly basis. FPIs are required to meet this stipulation by placing or seeking quotes on the RFQ platform of stock exchanges.

***DSK View**: The FPI Circular is a move to increase transparency and improve the disclosure mechanism for trading in the secondary market in corporate bonds. The minimum requirement of mandating FPIs to undertake their secondary market trades through the RFQ platform may also likely increase liquidity within the secondary market for corporate bonds.*

[16] https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12528&Mode=0
[17] https://www.sebi.gov.in/legal/circulars/aug-2023/transactions-in-corporate-bonds-through-request-for-quote-rfq-platform-by-fpis_75009.html

FRAMEWORK FOR BORROWINGS BY LARGE CORPORATES

SEBI first introduced a framework for enhanced market borrowings by large corporates in November 2018 ("**Existing Framework**"). On August 10, 2023, the SEBI released a consultation paper on the review of the Existing Framework ("**Proposed Framework**")[18].

The Proposed Framework outlines several proposed changes to the Existing Framework, some of which are listed below:

- The threshold for identifying an entity as a large corporate is proposed to be increased from Rs. 100 crores to Rs. 500 crores.
- The terms "outstanding long-term borrowings" and "incremental borrowings" (now proposed to be referred to as "qualified borrowings") would be expanded to include exclude inter-corporate borrowings between a holding company and its subsidiaries and grants received as per government guidelines.
- The requirement for having an "AA and above" credit rating as a criterion for identifying an entity as a large corporate, is also proposed to be done away with.
- Instead of imposing a penalty for non-compliance, the Proposed Framework suggests introducing incentives such as reduction in annual listing fees payable to stock exchanges and credits towards the core Settlement Guarantee Fund and disincentives such as additional contributions to the core SGF based on the extent of shortfall in borrowings, etc.
- The Proposed Framework is proposed to be revised to require compliance on an annual basis instead of a contiguous block of 4 years.

DSK View: *Off-late SEBI has begun to issue consultation papers on topics of interest and importance to stakeholders, inviting their comments and incorporating relevant items into the regulatory framework issued by it. The Proposed Framework aims to strike a balance between encouraging corporate bond issuance and considering the challenges faced by businesses, to try and ensure a more stronger and balanced regulatory environment for the corporate bond market.*

ENHANCING TRANSACTION LIMITS FOR SMALL VALUE DIGITAL PAYMENTS IN OFFLINE MODE

RBI has vide notification bearing reference number RBI/2023-24/57 CO.DPSS.POLC.No.S526/02-14-003/2023-24 dated August 24, 2023[19] ("**SVDP Circular**"), enhanced transaction limits for small-value offline digital payments to streamline the acceptance of digital payment methods across different platforms.

RBI had earlier stipulated a limit of ₹200 per transaction and an overall limit of ₹2000 per payment instrument for small-value offline digital payments. However, post the RBI, increased the upper limit for offline payment transactions to ₹500.
The decision to raise the per transaction limit to ₹500, is directed towards encouraging broader adoption of this payment mode and further expedite the transition towards digital payments. However, the overall limit remains capped at ₹2000 to manage and contain the potential risks associated with relaxing two-factor authentication.

DSK View: *The RBI's move to increase transaction thresholds for offline small value digital payments not only corresponds to the changing payment trends but also emphasizes the RBI's dedication to enabling secure, effective, and contemporary payment options while encouraging digital transactions.*

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (THIRD AMENDMENT) REGULATIONS, 2023

SEBI vide notification bearing number SEBI/LAD-NRO/GN/2023/149 dated August 23, 2023[20] ("**SEBI LODR Amendment**"), has introduced certain amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"). SEBI has introduced Chapter VIA, which lays down the framework for voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares and obligations of a listed entity.

Some of the key changes of the SEBI LODR Amendment are given below:

- the scope of applicability of the provisions to the voluntary delisting of listed non-convertible debt securities or redeemable preference shares has been laid down clearly;

[18]https://www.sebi.gov.in/reports-and-statistics/reports/aug-2023/consultation-paper-on-review-of-framework-for-borrowings-by-large-corporates_75179.html
[19] https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12531&Mode=0\

[20]https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2023_75861.html

- entities with public issued securities, entities with over 200 security holders, entities which have been delisted due to penalties, resolution plans, etc. have been excluded. Further, delisting under the Insolvency Code 2016 needs to be disclosed to stock exchanges within 1 (one) working day;

- Section 64B lays down the process for receipt of in-principle approval from stock exchanges, where in the listed entity must apply within 15 (fifteen) working days of board approvals, investor grievances, fees, compliance, litigations, and penalties;

- the steps for obtaining approval for non-convertible debt securities should begin within 3 (three) working days of the date of in-principle approval;

- additional information including securities details, reasons for delisting and security adequacy, are also required to be disclosed on the entity's website;

- section 64D mandates sending delisting notices to holders within 3 (three) days of in-principle approval receipt;

- section 64E emphasizes obtaining approvals from holders and no-objection letters from debenture trustees within 15 (fifteen) working days from the notice of delisting;

- section 64F discusses delisting failure scenarios, such as non-receipt of approvals or no-objection letters, which need to be communicated to the stock exchanges promptly;

- Section 64G outlines the final application for delisting, which needs to be made within 5 (five) working days of obtaining requisite approvals;

- Section 64H introduces delisting from multiple exchanges, wherein entities can choose to delist from all but one stock exchange;

- Section 64I assigns the role of monitoring compliance to stock exchanges, requiring them to report instances of non-compliance to the SEBI.

DSK View: *The SEBI LODR Amendment lays down a comprehensive framework for the voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares from stock exchanges. The amendment also lists our provisions for delisting from multiple stock exchanges and mandates monitoring of compliance by relevant stock exchanges.*

OFFER FOR SALE FRAMEWORK FOR SALE OF UNITS OF REAL ESTATE INVESTMENT TRUSTS (REITS) AND INFRASTRUCTURE INVESTMENT TRUSTS (INVITS)

SEBI, vide circular bearing number SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/10 dated January 10, 2023[21] ("**OFS Framework Circular**"), introducing a comprehensive framework for the Offer for Sale ("**OFS**") of shares, including units of Real Estate Investment Trusts ("**REITs**") and Infrastructure Investment Trusts ("**InvITs**"), using the stock exchange mechanism.

The SEBI has now, vide circular bearing number SEBI/HO/MRD/MRD-PoD-3/P/CIR/2023/134, dated August 03, 2023 ("**OFS Amendment**"), made certain modifications pertaining to the allowance of OFS for units of privately listed InvITs and REITs providing a framework which is similar to the one for selling equity shares of listed companies.

The OFS Amendment also outlines the rules for the sale of units of REITs and InvITs by permitting permits the sale of units in listed REITs and InvITs by sponsors, sponsor group entities and other unitholders.

The provisions of the OFS Amendment came into force from August 03, 2023. All recognized stock exchanges have also been instructed to take necessary measures and systems to accommodate these changes.

DSK View: *The OFS Amendment, especially the inclusion of privately listed InvITs, shows SEBI's awareness to market dynamics and commitment to transparency. Effective immediately, implementation highlights SEBI's seriousness to continuously ensuring a robust and investor-friendly securities market, including in relation to InvITs and REITs.*

[21] https://www.sebi.gov.in/legal/circulars/aug-2023/offer-for-sale-framework-for-sale-of-units-of-real-estate-investment-trusts-reits-and-infrastructure-investment-trusts-invits-_74938.html

RERA

THE HON'BLE SUPREME COURT OF INDIA HAS ISSUED NOTICES TO SEVERAL STATES AND UNION TERRITORIES DUE TO THEIR FAILURE IN IMPLEMENTING AND ENFORCING THE PROVISIONS OF THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The Hon'ble Supreme Court *vide* an order dated August 11, 2023, in the case titled '*Pioneer Urban Land and Infrastructure Limited & Anr. vs. Union of India [W.P. (C) No. 43/2019]*', has issued notices to the chief secretaries of several states, including Nagaland, Meghalaya, Sikkim, as well as the Union Territory ("**UT**") of Ladakh for non-establishment for Real Estate Regulatory Authority ("**RERA**") and/or non-issuance of requisite rules as mandated by the Real Estate (Regulation and Development) Act 2016 ("**RERA Act**") in such states and UT(s).

The Court in the said order stated that either state (as mentioned in the order) have not yet notified the requisite rules as mandated RERA Act, or where rules are in place, the establishment of the RERA has not been implemented.

Additionally, the Hon'ble Court has taken a measure by sending distinct notices to the chief secretaries of the states of Arunachal Pradesh, Meghalaya, Mizoram, Sikkim, and West Bengal, along with the Union Territories of Jammu & Kashmir and Ladakh. The notice provides that these states and UTs have merely passed interim orders pertaining to the establishment of the RERA, without advancing any further steps in this direction.

Within the context of this ongoing matter, the Hon'ble Court has mandated that the chief secretaries provide affidavits detailing the progress made in relation to the implementation and enforcement of the RERA Act within a period of 60(sixty)-day period from the date of issuance of the order.

THE MAHARASHTRA REAL ESTATE REGULATORY MANDATES REAL ESTATE AGENTS TO PROMINENTLY EXHIBIT A QUICK RESPONSE CODE IN THE PROMOTIONAL MATERIALS

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") issued Order dated August 21, 2023, bearing no. 46B/2023, as an extension of MahaRERA Order No. 46/2023 dated May 29, 2023, notifying the directions for the real estate agents to display Quick Response Code ("**QR Code**") in the promotional materials.

Under the said order, MahaRERA compels the real estate agents of each registered real estate project to present a QR Code in their promotional materials and advertisements for the project in a prominent manner from August 1, 2023. This requirement aims to facilitate allottees' access to project-related information.

Furthermore, the order explicitly outlines that the QR Code must be easily *'legible, readable and detectable'* using software applications. It should be placed alongside the project's registration number provided by MahaRERA.

The order also provides for penalties for non-compliance of directions by real estate agents. It states that any real estate agent who fails to comply with such directions shall bear a penalty of Rs. 10,000/- which may extend to Rs. 50,000/-. Additionally, if such agent fails to rectify and remedy the violation within 10 days, the same shall be construed a continuous breach of such direction and appropriate actions under the Real Estate (Regulation and Development) Act, 2016 shall be taken against such agent.

THE GOVERNMENT OF MAHARASHTRA PROPOSES AMENDMENTS TO THE REGISTRATION ACT, 1908 IN ORDER TO MONITOR AND ADDRESS ONGOING INFRACTIONS IN PROPERTY REGISTRATION CASES

The Government of Maharashtra has proposed to introduce amendments to the Registration Act, 1908, with the primary goal of conferring enhanced authority to sub-registrars. One of the key modifications involves the insertion of Section 18(a), which will grant sub-registrars the discretionary power to refuse the registration of specific documents that pertain to transactions prohibited under either central or state laws. Furthermore, the proposed amendment also seeks to bring about revisions to the existing Section 21, thereby empowering the State Government to establish requisite rules concerning property description within these documents.

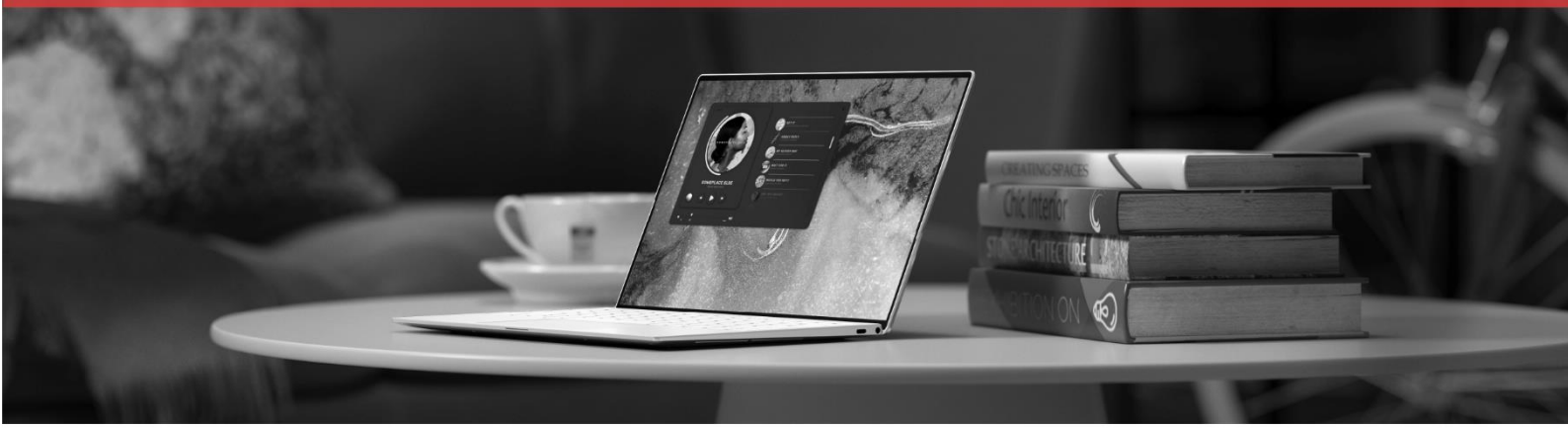
This amendment proposal successfully garnered approval from the State Assembly on July 25, 2023, and subsequently from the State Council on August 3, 2023. Post the receipt of governor's approval to the said amendment, the bill will then advance to the Union Government for consideration and subsequently to the President for the final stamp of assent.

THE TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY HAS IMPLEMENTED A VIRTUAL HEARING SYSTEM

The Telangana State Real Estate Regulatory Authority ("**TS-RERA**") has officially introduced the Virtual Hearing System ("**VHS**") for case hearing. The main objective behind this technology-driven approach is to enhance convenience for complainants as they will no longer be required to travel to office of TS-RERA in Hyderabad for hearings. Besides benefiting applicants, this virtual system is also expected to accelerate the resolution of complaints as oftentimes, the complainants request the authority to postpone the hearing dates due to their inability to be present before the authority, as consequence causing delays.

CERTIFICATE EXAMS PROPOSED TO BE INTRODUCED FOR REAL ESTATE AGENTS IN TELANGANA

The Chairman of Telangana State Real Estate Regulatory Authority ("**TS-RERA**") aims to enhance the credibility of real estate agents by following the model set-up by Maharashtra Real Estate Regulatory Authority ("**MahaRERA**"), whereby, real estate agents need to complete a certification course followed which real estate agents need to clear an examination which will make them eligible for a five-year valid license. Many reputed institutions will provide such training and conduct the exam in English and Telugu. The said proposal is yet to achieve finality. This move, when final, will enhance transparency in the system, and boost confidence of the homebuyers.



PRESIDENT GIVES ASSENT TO DIGITAL PERSONAL DATA PROTECTION ACT, 2023

The Digital Personal Data Protection Act, 2023 ("**DPDP Act**") (*accessible here*) received the assent of the President of India Droupadi Murmu after it was passed by both the houses of the Parliament. The DPDP Act aims to govern the processing of digital personal data, by balancing individuals' right to safeguard their personal data and the need to lawfully process such data for certain specific purposes. According to the DPDP Act, a person ("**Data Fiduciary**") may process the personal data of an individual ("**Data Principal**") for a lawful purpose on the basis of their consent or for certain legitimate uses. The DPDP Act will apply to the processing of digital personal data within India where such data is collected in digital form, or collected offline and is digitised subsequently. It will also apply to such processing outside India if it is for offering goods or services to Data Principals in India. The DPDP Act also provides for the establishment of the Data Protection Board of India ("**Board**"). The Data Fiduciaries handling personal data will be required to take reasonable security safeguards to protect such data, and instances of personal data breach will have to be reported to the Board and the affected Data Principals by the Data Fiduciary.

ASCI ISSUES GUIDELINES FOR HEALTH AND FINANCIAL INFLUENCERS

The Advertising Standards Council of India ("**ASCI**") revised its Guidelines for Influencer Advertising in Digital Media ("**Guidelines**") by adding an addendum (Addendum II) (*accessible here*) to it with respect to Health and Financial Influencers, in light of the substantial and serious implications that improper or wrong advice in such context can have. Financial influencers giving advice regarding stock, investments, and banking, financial services and insurance should be registered with SEBI and their SEBI registration number should be stated with their name & qualifications. Financial influencers giving any other financial advice must have suitable qualifications such as an IRDAI insurance license, CA, CS etc. Health and wellness influencers must have relevant qualifications such as a medical degree, or be a certified nurse, nutritionist, dietician, physiotherapist, psychologist, etc., as relevant. When promoting health and wellness products or services, such influencers are obliged to include a disclaimer clarifying that their content should not be seen as a substitute for professional medical advice, diagnosis or treatment.

DELHI HIGH COURT NIXES PILS AGAINST OPERATION OF GOOGLE PAY IN INDIA

The Delhi High Court has dismissed two PILs seeking directions to Google Payment India Private Limited ("**Google**") to cease its operations in the country over an alleged violation of regulatory and privacy norms. A division bench of Chief Justice Satish Chandra Sharma and Justice Subramonium Prasad in its order stated that Google Pay is a "mere third-party app provider" for which no authorisation from the Reserve Bank of India ("**RBI**") is required under the provisions of the Payments and Settlement Systems Act, 2007 ("**PSS Act**"). The High Court, after perusing the counter affidavit filed by RBI, held that Google Pay was not a "system provider" under the PSS Act and that it "did not find any merit in the petitioner's contention that Google Pay is actively accessing and collecting sensitive and private user data". As per the observation of the bench, National Payments Corporation of India ("**NPCI**") is the operator of the UPI system for transactions in India and is a "system provider" which is authorised by the RBI under the PSS Act to extend its services for facilitating transactions, and the transactions carried out via Unified Payments Interface ("**UPI**") through Google Pay are only peer-to-peer or peer-to-merchant transactions and therefore, Google Pay shall not be considered a system provider under the PSS Act.

MADRAS HIGH COURT RESTRAINS GOOGLE FROM DELISTING BHARAT MATRIMONY AND 13 OTHER APPS FROM PLAY STORE

A division bench of Chief Justice SV Gangapurwala and Justice PD Audikesavalu granted an interim injunction, whereby the Madras High Court has temporarily restrained Google from delisting matrimony.com, which is operated by Bharat Matrimony, along with 13 other digital companies on Google Play Store. This came in light of dismissal of the pleas filed by the companies by a single judge of the Madras High Court when Google made Google Play Billing System ("**GBPS**") mandatory, and the sole option for payments in relation to all transactions, which include paid app downloads and in-app purchases. Additionally, Google imposed a fee of 15-30 per cent depending upon the annual revenue of app developers for availing services of Google. Previously, the CCI had directed Google to allow users to use third-party payment systems, and Google's new billing system allowed app developers to opt for other payment options besides GPBS, subject to imposition of a "service fee" of 11-26 per cent. Bharat Matrimony and the other app developers have questioned the fee before the High Court. It was previously held that the issue fell under the jurisdiction of the Competition Commission of India ("**CCI**") and the remedy available under the Competition Act, 2002 was more comprehensive than that available before a civil court.

CENTRE TO BRING RULES TO REGULATE THE USAGE OF VULGAR LANGUAGE ON SOCIAL MEDIA PLATFORMS

The Ministry of Electronics & Information Technology ("**MeitY**") made a submission before the Delhi High Court, regarding rules and regulations to regulate social media platforms to make them safer from the use of vulgar language. This submission was made through a "compliance report" in relation to the Court's directions in a previous ruling in the case of *TVF Media Labs Pvt Ltd. vs. Union of India*, whereby the Delhi High Court had directed MeitY to enforce such rules/regulations in light of an FIR against TVF Media Labs Pvt Ltd. On perusal of the report submitted by MeitY, the bench of Justice Swarana Kanta Sharma noted that since introducing such rules/regulations was a policy decision, the MeitY, while undertaking its regular exercise of policy making, shall be responsible for incorporating the rules/regulations to regulate the social media platforms, intermediaries for making it safer from the use of vulgar language including profanity, bad words, etc., in accordance with the ruling of the Delhi High Court.

SEBI RELEASES GUIDELINES FOR MARKET INFRASTRUCTURE INSTITUTIONS REGARDING CYBER SECURITY AND CYBER RESILIENCE

In light of the interrelation and interdependency of the Market Infrastructure Institutions ("**MIIs**") to carry out their functions, the cyber risk of MIIs has increased substantially, and is no longer limited to the MII's owned or controlled systems, networks and assets. With this background, and based on the recommendations of the SEBI's High Powered Steering Committee on Cyber Security, SEBI has released guidelines (*accessible here*) for strengthening the existing cyber security and cyber resilience framework of MIIs. The guidelines set out certain practices that should be followed by MIIs, such as maintaining offline, encrypted backups of data, conducting regular vulnerability scanning, undertaking regular business continuity drills to check the readiness of the organization and effectiveness of existing security controls at the ground level, among other such measures.

TRAI RELEASES SUPPLEMENTARY CONSULTATION PAPER ON DATA COMMUNICATION SERVICES BETWEEN AIRCRAFT AND GROUND STATIONS PROVIDED BY ORGANIZATIONS OTHER THAN AIRPORTS AUTHORITY OF INDIA

The Telecom Regulatory Authority of India ("**TRAI**") *vide* its supplementary consultation paper dated August 3, 2023 (*accessible here*), has invited comments on data communication services between aircrafts and ground stations provided by organizations other than Airports Authority of India. The supplementary consultation paper inter alia seeks inputs on issues related to service license, methodology for spectrum assignment, and spectrum charging mechanism for data communication services between aircraft and ground stations provided by organizations other than Airports Authority of India. Comments on the issues are invited by August 17, 2023, and counter comments by August 24, 2023.

TRAI RELEASES CONSULTATION PAPER ON REVIEW OF REGULATORY FRAMEWORK FOR BROADCASTING AND CABLE SERVICES

TRAI *vide* its consultation paper dated August 8, 2023 (*accessible here*), has invited comments on regulatory framework for broadcasting and cable services. TRAI had notified the Regulatory Framework for Broadcasting and Cable services on March 3, 2017, and has subsequently held consultations and introduced amendments to resolve issues that have arisen with respect to the regulatory framework. This consultation paper inter alia seeks inputs on issues related to tariff, interconnection, quality-of-service ("**QoS**") and levy of financial disincentive in relation to broadcasting and cable services. Comments on the issues are invited by September 5, 2023, and counter comments by September 19, 2023.

TRAI RELEASES CONSULTATION PAPER ON REVIEW OF QUALITY-OF-SERVICE STANDARDS FOR ACCESS SERVICES (WIRELESS AND WIRELINE) AND BROADBAND SERVICES (WIRELESS AND WIRELINE)

TRAI *vide* its consultation paper dated August 18, 2023 (*accessible here*), has invited comments on quality-of-service ("**QoS**") standards for access services (wireless and wireline) and broadband services (wireless and wireline). The consultation paper inter alia seeks inputs on the draft regulation, the measurement methodology for the measurement of different benchmarks against the respective QoS parameters, the measures required to accelerate the adoption of AI for management of Quality of Experience, among other issues. Comments on the issues are invited by September 20, 2023, and counter comments by October 5, 2023.

TRAI RELEASES CONSULTATION PAPER ON REVIEW OF TERMS AND CONDITIONS OF PMRTS AND CMRTS LICENSES

TRAI *vide* its consultation paper dated August 29, 2023 (*accessible here*), has invited comments on terms and conditions of PMRTS and CMRTS licenses. The consultation paper inter alia seeks inputs on the need to review the terms and conditions for issue of fresh licenses for CMRTS and PMRTS services, particularly regarding technical conditions, including connectivity with PSTN, internet, use of digital technology, allocation of spectrum to PMRTS, use of network slicing under 5G, etc., and financial aspects, among other aspects of such licenses. Comments on the issues are invited by September 26, 2023, and counter comments by October 10, 2023.

WHEN CRIMINAL PROCEEDINGS ARE MANIFESTLY FRIVOLOUS OR VEXATIOUS, THE COURT OWES A DUTY TO LOOK INTO THE FIR WITH CARE

The Supreme Court in the case of ***Mohammad Wajid & Anr. vs. State of U.P. & Ors.***, (Criminal Appeal No. 2340 of 2023) held that when criminal proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, in such circumstances the Court owes a duty to carefully examine the FIR. In the present case, an FIR was registered for offences punishable under Sections 323, 395, 504 and 506 of the Indian Penal Code, 1860 against the Appellants for allegedly hurling abuses, assaulting the first informant and his brother, forcibly obtaining signatures on a plain stamp paper, and forcibly taking Rs. 2 Lakh from the first informant. The Appellant also allegedly threatened the first informant that if he informed anyone about the incident, all his family members would be killed. The Appellants filed a writ petition before the Allahabad High Court for quashing of the FIR which was rejected on the ground that *prima facie* the FIR revealed commission of cognizable offence. The Appellants therefore approached the Supreme Court. The Supreme Court observed that whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the CrPC or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed, it is the duty of the court to scrutinize the FIR or the complaint a little more closely. The Court need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. The Court also noted that when it comes to quashing of the FIR or criminal proceedings, the criminal antecedents of the accused cannot be the sole consideration to decline to quash the criminal proceedings when FIR fails to disclose commission of any offence or the case falls within one of the parameters as laid down by the Supreme Court in the case of *State of Haryana vs. Bhajan Lal, [AIR 1992 SC 604].* Ultimately, the Supreme Court allowed the appeal, overturning the High Court's order and quashed the criminal proceedings against the Appellants.

DSK View: *In this case the Supreme Court has taken a conscious view of the scope of the inherent powers of the High Court in quashing of criminal proceedings. The Supreme Court has held that the Court should not only refer to the FIR but should also look into the circumstances that led to its registration.*

POWER UNDER SECTION 482 OF THE CRPC CAN BE EXERCISED BY THE HIGH COURT IN CASES OF 138 COMPLAINT ONLY WHEN IT COMES ACROSS UNIMPEACHABLE AND INCONTROVERTIBLE EVIDENCE

The Supreme Court in the case of ***Riya Bawri Etc vs. Mark Alexander Davidson & Ors.***, (Criminal Appeal No. 2510-2552 of 2023) has held that the power under Section 482 of the Criminal Procedure Code, 1973 ("**CrPC**") can be exercised by the High Court in cases of complaint under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**") only when it comes across unimpeachable and incontrovertible evidence. In the present case, the High Court of Meghalaya had allowed the Petition filed by the Respondent Nos. 1 and 2 for quashing the summoning order and criminal complaints filed by the Appellants under Section 138 read with Sections 141 and 142 of NI Act along with Sections 420, 418, 417, 403, 409 and 406 of the Indian Penal Code, 1860 before the Court of Additional Deputy Commissioner (Judicial), Shillong. The contentions raised by the Respondent No. 1 before the High Court was that, on the dates when the cheques were issued for discharging the liability, he had already retired from the firm and a retirement deed in that regard was executed. The High Court accepted the arguments on behalf of the Respondent No. 1 and quashed summoning order. The order was thereafter challenged before the Supreme Court. The Supreme Court observed that the facts to be proved before the trial court and that the final judgment of the trial court would depend on the evidence adduced before it. The Court

further observed that the public notice regarding the retirement was issued much after the complaint was filed and after the issuance of summoning order. In fact, it was published few days before the High Court decided the quashing petition. Therefore, while quashing the High Court's order, the Supreme Court held that powers under Section 482 of the CrPC can be exercised by the High Court in case when it comes across unimpeachable and incontrovertible evidence, to indicate that the partner of the firm did not have any concern with the issuance of cheques.

DSK View: *In this case the Supreme Court has reiterated that, to quash a criminal proceeding the accused is required to produce unimpeachable and incontrovertible evidence to prove his case.*

MERE RETENTION OF PROPERTY, WITHOUT ANY MISAPPROPRIATION CANNOT FALL WITHIN THE AMBIT OF CRIMINAL BREACH OF TRUST UNDER SECTION 406 OF THE IPC

The Kerala High Court in the case of ***K.O. Anthony vs. State of Kerala & Ors.***, (Crl. MC No. 2126/2022) held that the act of mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust under Section 406 of the Indian Penal Code, 1860 ("**IPC**"). In the present case, an FIR was registered for offence under Section 406 of the IPC against the Petitioner. The prosecution's story is that the Petitioner, a headload worker and Union Secretary at Cochin International Airport, had obtained blank signed cheques from fellow workers under the pretext of legal fees for challenging a government order regarding their employment. When asked to return the cheques, the Petitioner refused, which lead to filing of a police complaint and subsequently an FIR was registered. The Kerala High Court held that "Entrustment" of property under Section 405 of IPC, is pivotal to constitute an offense of breach of trust. The court further emphasized that under Section 405 the crucial word is 'dishonestly', and therefore, it presupposes the existence of *mens rea*. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. In the present case the cheques were entrusted with the Petitioner in terms of the collective decision taken by the General Body of the Union. The Court held that to attract Section 406 of the IPC, the accused must dishonestly use or dispose of property or wilfully suffer any other person to do so in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract made touching the discharge of such trust. The High Court thus quashed the criminal proceedings against the Petitioner holding that allegations made in the FIR and the evidence collected in support of the same do not disclose the commission of any offence against the petitioner.

DSK View: *The Kerala High Court in this case has rightly considered the essential elements for constituting an offence of breach of trust.*

DSK Legal
True Value, True Values

DSK Legal Knowledge Center

Contact Details for any queries: knowledge.management@dsklegal.com

Mumbai

1701, One World Centre,
Floor 17, Tower 2B,
841, Senapati Bapat Marg,
Mumbai - 400013.
Tel +91 22 6658 8000

Mumbai

C-16, Dhanraj Mahal,
3rd Floor,
Apollo Bunder, Colaba,
Mumbai - 400001.
Tel +91 22 6152 6000

Bengaluru

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

New Delhi

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

Pune

Ground Floor, 1 Modibaug,
Ganesh Khind Road, Shivajinagar,
Pune - 411016.
Tel +91 20 6684 7600

Hyderabad

3rd floor, SAHA complex,
8-2-619/1, Road No.11,
Banjara Hills,
Hyderabad-500034.

contactus@dsklegal.com
DSK Legal
www.dsklegal.com

Disclaimer