

NEWSLETTER

October 2021

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SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENT) (FIFTH AMENDMENT) REGULATIONS, 2021

The Securities Exchange Board of India (“SEBI”) *vide* notification no. SEBI/LAD-NRO/GN/2021/47 dated September 7, 2021, has further amended the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (“LODR Regulations”) to:

- align the LODR Regulations with the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021;
- provide enhanced disclosures and compliance requirements for debt listed entities; and
- extend provisions of Chapter IV to entities with listed non-convertible debt securities where the outstanding amount is INR 500 Crores or more (i.e., high value debt list entities). Further, once such provisions become applicable, they shall continue to prevail even if the outstanding amount falls below such thresholds.

INTRODUCTION OF T+1 ROLLING SETTLEMENT ON AN OPTIONAL BASIS

SEBI, *vide* circular dated September 7, 2021 bearing number SEBI/HO/MRD2/DCAP/P/CIR/2021/628, has introduced T+1 rolling settlement on an optional basis. As per the circular, stock exchanges shall have the flexibility to offer either T+1 or T+2 settlement cycle on any of the scrips. After opting for T+1 settlement cycle for a scrip, the stock exchange shall have to mandatorily continue with the same for a minimum period of 6 (six) months. Thereafter, in case, the stock exchange intends to switch back to T+2 settlement cycle, it shall do so by giving 1-month advance notice to the market.

The settlement option for security shall be applicable to all types of transactions in the security on that stock exchange

i.e., the regular market deals as well as block deals will follow the T+1 settlement cycle on that stock exchange.

The circular shall come into force with effect from January 01, 2022.

CLARIFICATIONS WITH RESPECT TO CIRCULAR DATED APRIL 28, 2021 ON ‘ALIGNMENT OF INTEREST OF KEY EMPLOYEES (‘DESIGNATED EMPLOYEES’) OF ASSET MANAGEMENT COMPANIES (AMCS) WITH THE UNITHOLDERS OF THE MUTUAL FUND SCHEMES

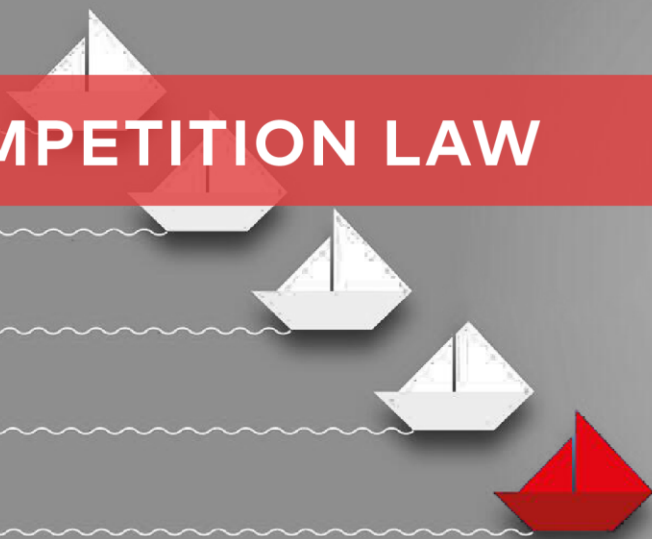
SEBI, *vide* a circular dated September 20, 2021¹, has provided clarification on certain provisions and on the applicability of the SEBI Circular no. SEBI/HO/IMD/IMD-I/DOF5/P/CIR/2021/553 dated April 28, 2021. These clarifications are in relation to the use of the terms, use of cashflows and fund, redemption of units and disclosures prescribed by SEBI.

RISK MANAGEMENT FRAMEWORK (RMF) FOR MUTUAL FUNDS

SEBI, *vide* a circular dated September 27, 2021², has laid down revised Risk Management Framework (RMF) which provides a set of principles or standards, which *inter alia* comprise the policies, procedures, risk management functions and roles and responsibilities of the management, the Board of Asset Management Companies (AMC) and the Board of Trustees. The elements of RMF, wherever applicable, have been segregated into ‘mandatory elements’ which should be implemented by the AMCs and ‘recommendatory elements’ which address other leading industry practices that can be considered for implementation by the AMCs, to the extent relevant to them.

¹ SEBI/HO/IMD/IMD-I/DOF5/P/CIR/2021/629

² SEBI/HO/IMD/IMD-1 DOF2/P/CIR/2021/630.



COMPETITION COMMISSION OF INDIA RAIDS OFFICES OF VEGETABLE SEED COMPANIES

The Competition Commission of India (“CCI”) on September 08, 2021, raided local offices of several vegetable seed companies including BASF, a subsidiary of Germany’s multinational chemical company – BASF SE.

The raids were conducted on offices of at least four vegetable seed companies across the country including cities of Gurugram, Bengaluru and Hyderabad. The search and seizure operations conducted by Director General’s (“DG”) office of CCI are commonly known as ‘Dawn Raids’.

The power to conduct a dawn raid is conferred upon the DG under the provisions of Section 41 of the Competition Act, 2002 (“Act”) in accordance with the provisions of Sections 240 and 240A of the Companies Act, 1956 (*pari materia* with Sections 217 and 220 of the Companies Act 2013). The DG must mandatorily seek a warrant from the Chief Metropolitan Magistrate before conducting a dawn raid.

DSK Legal’s Observation: *In recent years, CCI has raided several companies in case of alleged price fixing including JCB, Eveready, Carlsberg, and Glencore.*

CCI PENALIZES ANTI-COMPETITIVE CONDUCT IN THE BEER MARKET

By an order dated September 24, 2021, CCI has penalized three beer companies namely - United Breweries Limited (“UBL”), SABMiller India Limited renamed as Anheuser Busch InBev India Limited (“AB InBev”) and Carlsberg India Private Limited (“CIPL”) for indulging in cartelisation in the sale and supply of beer in various States and Union Territories in violation of Section 3 of the Act which pertains to anti-competitive agreements.

The period of cartel was held to be from May 2009 to October 2018 (the date on which the DG conducted dawn raids at the premises of the beer companies). The All India Brewers’ Association (“AIBA”) was found to be actively involved in facilitating such cartelisation. Based on evidences of regular communications between the parties collected by the DG during dawn raids and on the basis of the disclosures made in the lesser penalty applications, CCI found that the three companies engaged in price co-ordination in the States of Andhra Pradesh, Karnataka, Maharashtra, Odisha, Rajasthan, West Bengal, National Capital Territory of Delhi and the Union Territory of Puducherry, in collectively restricting supply of beer in the States of Maharashtra, Odisha and West Bengal in contravention of the provisions of Section 3 of the Act, and in sharing of market in the State of Maharashtra as well as co-ordination with respect to supply of beer to premium institutions in the city of Bengaluru.

CCI has directed UBL and CIPL to pay penalties to the tune of INR 7.5 Bn. and INR 1.20 Bn. respectively, besides passing a cease and desist order. However, AB InBev has been given 100% benefit of reduction in penalty under the provisions of Section 46 of the Act. Four individuals of UBL, four individuals of AB InBev, six individuals of CIPL and the Director General of AIBA, were held by CCI to be liable for the anti-competitive conduct of their respective companies/ association, in terms of Section 48 of the Act.

DSK Legal’s Observation: *This was one of the rare cases (like dry-cells cartel case) where dawn raids were conducted, and lesser penalty applications were also filed. The filing of lesser penalty applications cemented DG’s position on anti-competitive agreements.*

CCI APPROVES ACQUISITION OF ONGC TRIPURA POWER COMPANY BY GAIL

By an order dated September 09, 2021, CCI has approved the acquisition of 26% equity share capital of ONGC Tripura Power Company Limited (“**OTPCL**”) by GAIL (India) Limited (“**GAIL**”) from IL&FS group entities.

GAIL was incorporated in August 1984 as a central public sector undertaking under the Ministry of Petroleum & Natural Gas and is a listed public sector company with diversified interests across the natural gas value chain of trading, transmission, LPG production & transmission, LNG re-gasification, petrochemicals, city gas, and certain small renewable energy projects in Rajasthan, Gujarat, Karnataka and Tamil Nadu.

OTPCL is a special purpose vehicle between Oil and Natural Gas Corporation, IL&FS Group and Government of Tripura formed in 2008 to implement a 726.6 MW Combined Cycle Gas Turbine thermal power plant at Palatana, Tripura. OTPCL is a public limited company and is engaged in the business of generation and supply of electricity, in the region of North-East India. The OTPCL also holds 26% stake in North East Transmission Company Limited.

CCI APPROVES ACQUISITION OF INDIABULLS ASSET MANAGEMENT COMPANY AND INDIABULLS TRUSTEE COMPANY BY NEXTBILLION TECHNOLOGY

By an order dated September 09, 2021, CCI has approved an acquisition of 100% shareholding of Indiabulls Asset Management Company Limited (“**Indiabulls AMC**”) and Indiabulls Trustee Company Limited (“**Indiabulls Trustee**”) by Nextbillion Technology Private Limited (“**NTPL**”).

NTPL is a stockbroker and depository participant. It is also registered with Association of Mutual Funds in India as a mutual fund distributor. It is engaged in providing an online platform named ‘Groww’ that allows investors to invest in mutual funds and stocks.

Indiabulls AMC is a subsidiary of the Indiabulls Housing Finance. Presently, Indiabulls AMC has three business verticals - mutual fund business, alternate investment fund business and portfolio management business. It provides asset management services to Indiabulls Mutual Fund (“**Indiabulls MF**”) and operating and managing its schemes. Indiabulls Trustee is engaged in providing trusteeship services to the Indiabulls MF.

CCI APPROVES ACQUISITION OF INFLOW TECHNOLOGIES BY SAVEX

By an order dated September 09, 2021, CCI has approved acquisition of 100% of the equity share capital of Inflow

Technologies Private Limited (“**Inflow**”) by Savex Technologies Private Limited (“**Savex**”).

Savex is engaged in the distribution of Information and Communication Technologies (“**ICT**”) products in India, largely catering to the consumer and mixed segment. It functions as an intermediary between original equipment manufacturers (“**OEMs**”) / original brand manufacturers and the large scale resellers, value added resellers, wholesalers, system integrators, e-commerce networks, etc.

Inflow is a distributor of ICT products, largely catering to the enterprise segment. It functions as an intermediary between technology vendors / OEMs and largescale service providers, resellers, value added resellers and system integrators.

CCI APPROVES STAKE-ACQUISITION OF GANGAVARAM PORT BY ADANI PORTS

By an order dated September 20, 2021, CCI has approved the acquisition of 10.4% of the shareholding Gangavaram Port Limited (“**GPL**”) by Adani Ports and Special Economic Zones Limited (“**APSEZ**”).

APSEZ is an integrated port infrastructure services provider currently present across eleven domestic ports in six maritime states of Gujarat, Goa, Kerala, Andhra Pradesh, Tamil Nadu, and Odisha.

GPL owns, develops, and operates the deep-water port at Gangavaram, Andhra Pradesh, pursuant to a concession agreement on Build-Own-Operate-Transfer basis with Government of Andhra Pradesh for a concession period of thirty years from the date of commercial operations and entitled for a further period of twenty years.

CCI APPROVES ACQUISITION OF SHARES IN FULLERTON INDIA BY SUMITOMO MITSUI FINANCIAL GROUP

By an order dated September 23, 2021, CCI has approved acquisition of shares in Fullerton India Credit Company Limited (“**FICC**”) by Sumitomo Mitsui Financial Group, Inc. (“**SMFG**”).

SMFG is the holding company of Sumitomo Mitsui Banking Corporation (“**SMBC**”) and its other group companies. Its primary business is to manage its banking subsidiaries and other companies. Apart from commercial banking, the SMBC group is also engaged in a diverse range of financial services, including leasing finance, project finance, real estate financing, securities and derivatives, maritime finance, consumer finance, credit card, trade finance, cash management, etc.

FICC is registered as a Non-Banking Financial Company with the Reserve Bank of India. It is primarily engaged in the provision of loans such as loans for commercial vehicles and

two wheelers, loans against property, loan against securities, personal loans, loans extended to real estate developers, loans extended to businesses, and loans for rural solidarity group. Fullerton India Home Finance Company Limited, a wholly-owned subsidiary of FICC, is registered with the National Housing Bank as a non-deposit taking Housing Finance Company.

DSK Legal's Observation: Transactions beyond certain threshold requires CCI's approval. The CCI has introduced an automatic system of approval for combinations under 'Green Channel'. Under this process, the combination is deemed to have been approved upon filing the notice in the prescribed format. This system would significantly reduce the time and cost of transactions and thereby contributing towards ease of doing business in India.

EMPLOYMENT LAW

EXTENSION OF TIMELINES FOR MANDATORY SEEDING OF AADHAR NUMBER

The Employees Provident Fund Organization, vide notification dated September 11, 2021, has extended the timelines for seeding of Aadhaar in UAN in the state of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura and certain classes of establishments such as beedi making, building and construction and plantation industries, till December 31, 2021.

ENFORCEMENT OF CERTAIN PROVISIONS OF EMPLOYEES' STATE INSURANCE ACT, 1948 IN TRIPURA

The Ministry of Labour and Employment, vide notification dated September 23, 2021, has appointed October 1, 2021, as the date on which the following provisions of Employees' State Insurance Act, 1948 shall come into force in all the areas of Dhalai, Gomati, North Tripura and Sepahijala district, in the State of Tripura:

- (i) Sections 38, 39, 40, 41, 42, 43 and sections 45A to 45H of Chapter IV;
- (ii) Sections 46 to 73 of Chapter V; and
- (iii) Sections 74, 75, sub-sections (2) to (4) of section 76, 80, 82 and 83 of Chapter VI.

DRAFT MAHARASHTRA CODE ON WAGES RULES, 2021

The Industries, Energy and Labour Department, Maharashtra has notified the draft Maharashtra Code on Wages Rules, 2021 vide notification dated September 3, 2021. The draft rules provide to regulate, *inter alia*, minimum wages, hours of work, weekly day of rest, night shifts, payment of dues and claims, etc. Objections and suggestions against any of the provisions of the draft rules, if any, can be sent within 45 (Forty Five) days of publication of draft rules to the

Commissioner of Labour, Maharashtra State, Kamgar Bhavan, 'E' Block, Bandra-Kurla complex, Bandra East, Mumbai 400051 or by email at mahalabourcommr@gmail.com.

HIMACHAL PRADESH MINIMUM WAGES NOTIFICATION

The Department of Labour and Employment, Government of Himachal Pradesh, vide notification dated September 9, 2021, has revised the minimum rate of wages in scheduled employment to INR 300 (Rupees Three Hundred) per day or INR 9,000 (Rupees Nine Thousand) per month, with effect from April 1, 2021. The key guidelines in this regard are as under:

- (i) There will be no distinction between minimum wages of male or female and adult or non-adult for same and similar nature of work;
- (ii) Wages of apprentices shall be regulated under the Apprenticeship Act, 1961;
- (iii) Where any class of work is performed in piece work basis, the wages shall not be less than the time rate prescribed for that category;
- (iv) 25% (Twenty Five percent) increase shall be applicable over and above the minimum wages in the scheduled tribes areas in Himachal Pradesh.

DRAFT CODE ON WAGES (HARYANA) RULES, 2021

The Government of Haryana, vide notification dated September 16, 2021, issued the draft Code on Wages (Haryana) Rules, 2021. Objections and suggestions, if any, can be sent within 45 (Forty Five) days of publication of draft rules to Labour Commissioner, Haryana, 30 Bays Building,

Sector-17 B, Chandigarh or by email at – codeonwageshry@gmail.com. The draft rules provide for regulating, inter alia, manner of calculating the minimum rate of wages, weekly day of rest, overtime wages, and night shifts, etc.

DRAFT INDUSTRIAL RELATIONS (HARYANA) RULES, 2021

The Labour Department, Government of Haryana, vide notification dated September 16, 2021, has notified the draft Industrial Relations (Haryana) Rules, 2021. The draft rules provide, *inter alia*, registration of trade union, register of trade unions to be maintained, filing of annual returns, etc. Objections and suggestions against any of the provisions of the draft rules, if any, can be sent within 45 (Forty Five) days of publication of draft rules to Commissioner of Labour, Maharashtra State, Kamgar Bhavan, 'E' Block, Bandra-Kurla complex, Bandra East, Mumbai 400051 or on email ircodehry@gmail.com.

DRAFT CODE ON SOCIAL SECURITY (HARYANA) RULES, 2021

The Government of Haryana, vide notification dated September 16, 2021, issued the draft Code on Social Security (Haryana Rules, 2021). Objections and suggestions, if any, can be sent within 45 (Forty Five) days of publication of draft rules to Labour Commissioner, Haryana, 30 Bays Building, Sector-17 B, Chandigarh or by email at – sscodehry@gmail.com. The draft rules provide to regulate, *inter alia*, gratuity provisions, maternity benefit and the terms associated thereto, employee compensation, social security, and cess in respect of building and other construction workers.

NOTIFICATION TO EXTEND THE APPLICABILITY OF EMPLOYEES' STATE INSURANCE ACT, 1948 TO CERTAIN ESTABLISHMENTS IN MANIPUR

The Government of Manipur, vide notification dated September 20, 2021, has extended the provisions of The Employees' State Insurance Act, 1948 to the following establishments with immediate effect: (a) Shops; (b) Hotels; (c) Restaurants; (d) Road Motor Transport establishments; (e) Cinemas including preview theatres; (f) newspaper establishments; (g) Educational institutions, (h) Medical institutions; (i) Municipal Corporation, Municipal Board, Municipal Council and other Local bodies controlled by the State Government, in all the areas of Manipur where the provisions of Employees' State Insurance Act, 1948 have already been brought into force.

DRAFT DELHI SHOPS AND ESTABLISHMENT (AMENDMENT) RULES, 2021

The Delhi Labour Department, vide notification dated September 24, 2021, has notified the Delhi Shops and Establishments (Amendment) Rules, 2021 to amend the

Delhi Shops and Establishments Rules, 1954. The key amendments proposed are as under:

- (i) Instead of filing an application physically for registration of establishment, the occupier of the establishment shall within 90 (Ninety) days of the commencement of work apply for the registration under the Delhi Shops and Establishment Act, 1954, online on the Shop and Establishment Portal of Labour Department.
- (ii) On submission of application online on the Shop and Establishment portal of Labour Department, Government of NCT of Delhi, the registration certificate shall be generated online in Form C.
- (iii) The occupier shall notify any change in respect of any information within 30 (Thirty) days after such change has taken place, online, on the Shop & Establishment Portal of Labour Department, Government of National Capital Territory of Delhi, instead of filing a physical application.

Objections and suggestions, if any, against the Draft Delhi Shops and Establishment (Amendment) Rules, 2021 can be sent within 15 (Fifteen) days of publication of draft rules to Additional Secretary (Labour), C-Block, 5, Sham Nath, Marg, Delhi-110054.

THE HIMACHAL PRADESH BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) AMENDMENT RULES, 2021

The Labour and Employment Department, vide notification dated September 24, 2021, notified the Himachal Pradesh Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Amendment Rules, 2021 to amend the Himachal Pradesh Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2008. The key amendments are as under:

- (i) The amendment provides for female birth gift scheme, wherein the Board may provide a sum of INR 51,000 (Rupees Fifty One Thousand) only in the shape of FDR which may be given to the beneficiary on the birth of his/her female child (up to two girls), which will be encashed on the completion of eighteen years of the said daughter. If the girl in whose name an FDR has been made, unfortunately dies before attaining the age of 18 (Eighteen) years, the FDR will be transferred to the third girl child of beneficiary if any, otherwise the entire amount will be paid to the nominee.

- (ii) Financial assistance for the care of mentally retarded or handicapped children with disability of 50% (Fifty percent) and above of a beneficiary INR 20,000 (Rupees Twenty Thousand) per year will be provided to him/her on production of a valid medical certificate issued by the competent authority.
- (iii) Beneficiary who is already enrolled either under Pradhan Mantri Aawas Yojna or Mukhya Mantri Aawas Yojna, will be provided a financial assistance of INR 1,50,000 (Rupees One Lakh Fifty Thousand) to build his/her house.

ENERGY

APPEC INDIA'S NAYARA ENERGY AIMS TO OPERATE REFINERY AT 100% CAPACITY IN 2021

According to Alois Virag, Chief Executive, Naraya Energy is aiming to function at 100% capacity in its 400,000 barrels per day refinery located in western India on account of increase in fuel market demand. Russian major oil company Rosneft partly acquired ownership of Nayara, which led to decreased rates at its Vadinar refinery in Gujarat in previous year. It is projected that India's demand for fuel will increase by 9-11% due to the Indian economy's focus on higher growth post second wave of COVID-19.

ONGC'S OVERSEAS ARM INTERESTED IN ACQUIRING STAKE IN RUSSIA VOSTOK'S ARCTIC LNG-2 PROJECT

Oil Minister Hardeep Singh Puri stated that ONGC Vidhesh Ltd is in talks to acquire a share in Russia Vostok's planned liquified gas project Arctic LNG-2 project along with Vostok's huge oil project. ONGC's overseas arm, OVL along with Petronet LNG Ltd are aiming to purchase a 9.9 percent stake in Novatek. According to Puri, these investments will further reinforce relationship between India and Russia. The minister met vital industry leaders during his visit such as CEO of Rosneft Igor Sechin and CEO of Novatek, Leonid Mikhelson and held fruitful discussions with them for affiliation with Russia in the energy industry.

USA AND INDIA HARMONISE THEIR WORK ON EMERGING FUELS AND CLEAN ENERGY SOLUTIONS

USA and India agreed to grow their partnership in energy by including emerging fuels as one of the areas of harmonised action in the list which already states power and energy efficiency, renewable energy amongst others. In a meeting of the US-India Strategic Clean Energy Partnership (SCEP),

Minister of Petroleum and Natural Gas, Hardeep Singh Puri launched the amended SCEP in a virtual meeting. The status quo of SCEP stands at total five pillars of cooperation, namely, Power and Energy Efficiency, Sustainable Growth, Responsible Oil and Gas, Renewable Energy and now Sustainable Growth as well. Minister Puri highlighted the commercial compatibility between the two countries, with USA's technologies and India's fast growing energy market which together will culminate a pathway of cleaner energy and low carbon.

BHEL HAS POSITIVELY EXECUTED YHDCV TRANSMISSION BETWEEN WESTERN AND SOUTHERN GRIDS

Bharat Heavy Electricals Limited (BHEL) proudly announced its role in fruitful implementation of +800 kV, 6,000 MW ultra-high voltage direct current link among the western and southern grids located in Raigarh, Chhattisgarh and Pugalur, Tamil Nadu respectively. BHEL described that its significant impact in the project was made through converter transformers, shunt reactors, filter bank capacitors and instrument transformers sourced from its plant in Bhopal combined with thyristor valves sourced from its Electronics division based in Bengaluru. The company believes this move will reduce power deficit in the southern grid of the country

NALCO IS TAKING STEPS TO OPERATIONALISE UTKAL D COAL MINE LOCATED IN ODISHA IN FY 2023

National Aluminium Company Ltd (NALCO) is taking steps to operationalise Utkal D coal mine which is situated in Odisha by the upcoming financial year. The block will be operationalised post procurement of all statutory clearances required according to NALCO's latest report. The Centre has allotted these two coal blocks as a part of raw material security to the operational units currently existing and for future development of the company in this realm. NALCO

had executed Utkal D's mining lease on March 25, 2021, following acquiring the required regulatory clearances and land acquisition in the area for mining lease. The next step would be the employment of the mine developer and operator (MDO) along with completion of the rehabilitation project for those relocated. As NALCO had already executed UTKAL D's mining lease on March 2021 they will begin with the operational work of all the blocks as soon as they get statutory clearance hence post acquiring the clearance they will be well equipped to begin with the work and employ mine developers and other labourers and would eventually be able to cater in relocating the ones affected .

DISCOMS INDIA AT UN ENERGY SUMMIT: A "ONE-SIZE-FITS-ALL SOLUTION" WILL NOT WORK

The Minister of Power and New and Renewable Energy, R K Singh stated that India is targeting 450 gigawatts (GW) of renewable energy capacity by the year 2030, in the UN energy summit held virtually on September 24, 2021. India emphasised on the need of energy transition to be just, equitable and inclusive and that a tailored approach is required, disregarding the "one-size-fits-all solution for various energy related issues in different countries. India stated that it was ready to inaugurate a National Hydrogen Energy Mission to rapidly scale its utilisation of green hydrogen for the purpose of the economy's decarbonisation. This mission will increase production of green hydrogen to 1 metric ton (MT) by 2030 in India and consequently, make India a global hub for supply of the same. In a statement released by the UN, India also dedicated itself to the following: Production Linked Incentive (PLI) Scheme in order to add 10 GW solar PV manufacturing capacity by the year 2025, to produce 15 million metric tonnes (MMT) of compressed biogas (CBG) by 2024, accomplish 20% ethanol blending in petrol by 2025-26.

INFRASTRUCTURE

PRODUCTION LINKED INCENTIVE SCHEME FOR DRONES AND DRONE COMPONENTS

The Ministry of Civil Aviation, on September 15, 2021, has introduced a production-linked incentive ("PLI") scheme for drones and drone components ("Drones PLI Scheme") with the aim to increase manufacturing of drones by 2030. As per the Drones PLI Scheme, manufacturers of drones and its components will be granted a 20% (twenty percent) incentive on their value addition calculated as the annual sales revenue minus the cost of purchase for drones or its

CASE LAWS:

APTEL REITERATED THAT CONSUMPTION SHOULD BE DETERMINED ONLY AT THE END OF THE FINANCIAL YEAR

In the case of Sai Wardha Power Generation Limited v Maharashtra Regulatory Commission and Ors, Appellate Tribunal for Electricity ("APTEL") vide its order dated September 2, 2021, observed that the actual consumption and drawl for determining the terms of open access, has to be considered only at the end of the relevant financial year.

Facts: Under the Electricity Act, the rules and regulations, captive generators and captive consumers are given exemption from levy of cross-subsidy surcharge. Sai Wardha Power Generation Limited had approached the State Commission seeking directions to Maharashtra State Electricity Distribution Company Limited ("MSEDCL") regarding the terms of open access for the period beginning 1st April 2018, which was decided in favour of MSEDCL. Against this decision, Sai Wardha Power Generation Limited preferred this appeal.

Judgment: APTEL, in its judgment held that the approach taken by the State Commission is wholly incorrect and inappropriate as they relied on the facts which pertains to the previous financial year. The matter at hand has to be considered with respect to the actual injection, drawl, consumption at the end of the financial year and not at the beginning of the relevant financial year. Looking into the aspect of convenience the matter was remitted to the State Commission for further proceedings. Sai Wardha Power Generation Limited would be refunded if they are successful in establishing the claim.

DSK Legal's Observation: The requirements of Electricity Rules, 2005 can be ascertained only on annual basis at the end of the financial year and the facts pertaining to the usage in the previous financial year does not hold value.

components. The Drones PLI Scheme will cover a wide variety of drone components, which *inter alia*, include:

- (a) airframe, propulsion systems (engine and electric), power systems, batteries and associated components, launch and recovery systems;
- (b) inertial measurement unit, inertial navigation system, flight control module, ground control station and associated components;

- (c) communications systems (radio frequency, transponders, satellite-based etc.);
- (d) cameras, sensors, spraying systems and related payload etc.; and
- (e) 'detect and avoid' system, emergency recovery system, trackers etc. and other components critical for safety and security.

The amount allocated for the Drones PLI Scheme is Rs. 120 Crores (Rupees One Hundred and Twenty Crores) spread over 3 (three) financial years starting from FY 2021-22, throughout which the rate of the incentive shall be kept constant at 20% (twenty percent). This is in contrast to other PLI schemes wherein the rate reduces every year.

Additionally, the eligibility norms for micro, small and medium enterprises ("MSME") and start-ups in terms of annual sales turnover at a nominal level has been fixed at Rs. 2 Crores (Rupees Two Crores) for drones and Rs. 50 Lakhs (Rupees Fifty Lakhs) for drone components, while eligibility norms for non-MSME companies in terms of annual sales turnover has been kept at Rs. 4 Crores (Rupees Four Crores) for drones and Rs. 1 Crore (Rupees One Crore) for drone components. It is expected that the Drones PLI Scheme will provide an impetus to domestic manufacturing of drones considering that majority of them are imported.

PUBLIC PROCUREMENT (PREFERENCE TO MAKE IN INDIA) ORDER 2017 – TELECOM PRODUCTS, SERVICES AND WORKS.

The Department of Telecommunications vide notification bearing number 18-10/2017-IP dated August 31, 2021, has modified the list of telecom products, services and works, for purchase preference from local suppliers pursuant to public procurement. Much like its preceding notification, the present notification is applicable to all central schemes if they are fully or partly funded by the Central Government inclusive of projects funded by the Universal Service Obligation Fund and for which the Government has made procurements.

The list of telecom products, services or works having sufficient local capacity and local competition is to be

reviewed from time to time. Further, the committee constituted for complaints and independent verification of self-declarations and auditor's/accountant's certificates is required to dispose of the complaints within 4 (four) weeks from the date of its receipt.

The notification also introduces a complaint fee which shall be a minimum of Rs. 2 Lakhs (Rupees Two Lakhs only) or 1% (one percent) of the value of the locally supplied telecom goods or services, whichever is higher and in case the complaint is found to be incorrect the fee shall be forfeited.

AMENDMENTS TO THE CENTRAL MOTOR VEHICLES RULES, 1989

The Ministry of Road Transport and Highways vide notification bearing number G.S.R. 652 (E) dated September 23, 2021, has notified the Central Motor Vehicles (Twenty-first Amendment) Rules, 2021 ("Amendment Rules"), which has come into effect from September 25, 2021, to amend certain provisions of the Central Motor Vehicles Rules, 1989.

The Amendment Rules provides for a new Chapter XI which pertains to the recognition, regulation, and control of automated testing stations. In this regard, the Amendment Rules provide for controlling automated testing stations authorised by the State Government where vehicle fitness testing will be conducted through automated testing equipment. Further, vide inclusion Rule 176 of the Amendment Rules, the owner or operator of these testing stations shall be the State Government or any company or association or body of individuals or special purpose vehicle directly or through private-public partnership. It also makes registration certificate for these operators mandatory and the procedure to obtain the registration shall be pursuant to Rule 175. Rule 178 provides for requisite infrastructure requirement corresponding to the types of vehicles, including construction of ancillary infrastructure such as administrative blocks, waiting areas, information technology services etc. Additionally, the registered owner of the vehicle must upload certain documents, itemised herein at the testing station. The Amendment Rules also allows for appeals against the test results within 7 (seven) days of the receipt of the result by the aggrieved party through the electronic portal.

MEDIA & ENTERTAINMENT



SUPREME COURT STAYS NCDRC ORDER AGAINST YASH RAJ FILMS

The Supreme Court has issued a notice on a Special Leave Petition (SLP) filed by Yash Raj Films Pvt. Ltd. (YRF) challenging the order passed by National Consumer Disputes Redressal Commission (NCDRC). The NCDRC had directed YRF to pay compensation to a consumer; Afreen Fatima Zaidi who was aggrieved by the fact that the film 'Fan' starring Shah Rukh Khan did not include the song 'Jabra Fan' as shown in the promos. An application for interim stay was also filed by YRF due to which the Court stayed the operation of the NCDRC order against YRF.

ALLAHABAD HIGH COURT REFUSES TO GRANT INTERIM RELIEF AGAINST FILM 'CHEHRE'

The Allahabad High Court has refused to grant a stay on the release of the film 'Chehre' in an appeal filed by writer Uday Prakash alleging copyright infringement by the producer of the Film, Anand Pandit, and the director of the film, Rumi Jaffery. The Court has refused to grant any interim relief in the appeal filed against the order passed by the District Court, wherein it had rejected the application seeking a temporary injunction filed by Mr. Prakash. The High Court opined that while the Film and the copyrighted work that is alleged to have been plagiarized appear to have a common theme, they are materially different in treatment and development. The High Court has directed the trial for the suit be expedited, thereby, directing the District Court to fix one date every week and endeavouring to conclude the trial within the next 4 months.

IT RULES, 2021 UPDATE:

Several petitions have been filed before various High Courts on the constitutional validity of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules") which regulates social media

platforms, digital news media and OTT platforms. The updates on these petitions are as follows:

- The Central Government has filed an affidavit before the Delhi High Court in response to a batch of pleas filed in the High Court by digital media houses 'The Quint', 'The Wire', 'Alt News' and news agency 'PTI', challenging the IT Rules. The affidavit stated that the IT Rules do not infringe any fundamental rights and do not have a chilling effect on the right to free speech and that it is well within the scope of the Information Technology Act, 2000 (IT Act). It claimed that the legislative intent behind the IT Rules is to prevent misuse of freedom of the press and deterring fake news by bringing about self-regulation clubbed with a "co-regulatory" mechanism for grievance redressal of the general public and promotion of the right to information.
- The Central Government represented by its Ministry of Electronics and Information Technology (MEITY) and the Ministry of Information and Broadcasting (MIB) have filed two counter-affidavits before the Madras High Court defending the validity of the IT Rules. The affidavits have been filed in response to the petitions filed by acclaimed Carnatic vocalist and Ramon Magsaysay awardee 'TM Krishna', 'Digital News Publishers Association' (DNPA) as well as journalist 'Mukund Padmanabha'. The affidavits contend that there is no chilling effect on the freedom of speech and expression and that the IT Rules were enacted within the scope of the IT Act and that they do not violate the fundamental rights of the citizens.
- The Supreme Court has listed a group of petitions related to the IT Rules after 6 weeks. The cases include the petitions filed by the Union Government seeking to transfer to the Apex Court the cases filed in the High Courts challenging the interim orders passed by various High Courts in some cases.

- The Madras High Court has ordered that any action taken under Rules 3 and 7 of the IT Rules, would be subject to the result of the petitions challenging the constitutional validity of the IT Rules before the Court. Rule 3 is related to the obligation to exercise due diligence by intermediaries and Rule 7 is related to coercive action against intermediaries for breach of the provisions of the IT Rules. The Court has recorded that the Bombay High Court's order dated August 14, 2021, staying the operation of sub-rules (1) and (3) of Rule 9 of the IT Rules must have a 'pan-India' effect. Sub-rules (1) and (3) of Rule 9 mandate adherence to the Code of Ethics, which is annexed to the IT Rules and provide for a three-tier structure for addressing the grievances made in relation to publishers. This order of the Madras High Court is in relation to the Public Interest Litigation (PIL) moved by the acclaimed Carnatic musician TM Krishna, and another petition that was moved by DNPA as well as journalist Mukund Padmanabhan.
- The Central Government has filed an affidavit informing the Delhi High Court that Twitter has appointed Chief Compliance Officer, Nodal Contact Person and Resident Grievance Officer in compliance with the IT Rules. This development comes in a petition filed by Amit Acharya stating that Twitter being a 'significant social media intermediary' (SSMI) as laid down under the IT Rules, must ensure compliance with statutory duties imposed upon it by the provision of these IT Rules. Twitter had earlier failed to comply with the 3 months' time granted to all SSMIS to comply with the IT Rules and had appointed Chief Compliance Officer and Grievance officer as 'contingent workers' which the Court had strongly objected to.

KARNATAKA PASSES BILL BANNING ONLINE 'GAME OF CHANCE'

The Karnataka State Government has passed a bill to amend the Karnataka Police Act 1963, whereby it aims to ban online gambling and betting, with provisions of a maximum imprisonment of three years and a penalty up to Rs. 1,00,000/- for violation of these provisions. The bill titled Karnataka Police (Amendment) Act, 2021 includes all forms of wagering or betting, including in the form of tokens valued in terms of money paid before or after the issue of it. It has banned electronic means and virtual currency, electronic transfer of funds in connection with any game of 'chance'. However, there is no ban on lottery, or betting on horse races on any racecourse within or outside Karnataka. Previously, in February in a petition filed by Sharada D R seeking a complete ban on online gambling and betting, the State Government had informed the Karnataka High Court that it proposes to have legislation for regulating online gambling and betting. The bill is awaiting the Governor's assent.

KERALA HIGH COURT LIFTS BAN ON ONLINE RUMMY, FINDS IT UNCONSTITUTIONAL

The Kerala High Court has lifted the ban on online rummy in the state by quashing an amendment to the government notification issued under Section 14A of the Kerala Gaming Act, 1960. The Court observed that the notification was arbitrary and violated the right to trade and commerce guaranteed under Article 19(1)(g) of the Constitution and the right to equality guaranteed under Article 14 of the Constitution.

COMPLAINT AGAINST THE FILM "MARAKKAR"

The Kerala High Court has directed the Central Government to take action on the complaint filed against the CBFC certification of the upcoming Malayalam film '*Marakkar Arabikkadalinte Simham*', based on the life of Kunjali Marakkar, the naval chief of the Zamorin of Calicut. The Court issued the order on a plea filed by a legal heir of Marakkar, seeking a restraint on the release of the film on the ground that it was an alleged distortion of history. The Court has directed the Centre to decide on the complaint within 4 weeks.

PLEA MOVED IN DELHI HIGH COURT SEEKING WITHHOLDING OF THE RELEASE OF THE FILM 'THE CONVERSION'

A plea has been moved in Delhi High Court by All India Practising Lawyers Council to withhold the release of the film 'The Conversion' and to remove its trailer from YouTube till it is reviewed and censored by the appropriate authorities. The petitioner contended that the trailer contains biased and communal content and that the film has the potential of communal polarization amidst the upcoming Uttar Pradesh elections. The Petitioner body submitted that it had previously sent a representation to the Ministry of Information and Broadcasting (MIB) and also to YouTube complaining about the content shown in the trailer of the film and had also requested to remove the trailer and withhold the release of the film, but it didn't receive any response. The Court has adjourned the matter for hearing on October 1.

MARVEL SUING TO KEEP RIGHTS TO 'AVENGERS' CHARACTERS FROM COPYRIGHT TERMINATION

Marvel Entertainment, a wholly owned subsidiary of The Walt Disney Company, has filed a series of lawsuits in Manhattan, Brooklyn and Los Angeles federal courts against the heirs of Stan Lee, Steve Ditko, Gene Colan, and others, in an effort to avoid losing copyright control over iconic characters including Iron Man, Spiderman, Doctor Strange, and many others. Marvel is seeking a ruling that the characters were created as work-for-hire basis and are thus

not eligible for copyright termination. This came after the estate of the late comic book artist Steve Ditko filed a notice of termination with the US Copyright Office for the copyright of Spiderman and Dr Strange. The rights of both of these characters are currently held by Marvel, but the estate of Ditko, who co-created both characters with the late Stan Lee, is looking to terminate the grant of copyright to Marvel by June 2023 through a clause in US copyright law. US copyright law says authors, or their heirs can reclaim the rights to their creations after a specific period of time.

EVEL KNieVEL'S SON SUES DISNEY OVER 'TOY STORY 4' CHARACTER

Kelly Knievel, the son of American stunt performer Evel Knievel, had filed a lawsuit in the Las Vegas district court against the Walt Disney Company, Pixar, and subsidiaries, claiming that the character 'Duke Caboom' in the film 'Toy Story 4' was improperly based on the late stunt performer. Kelly through K&K Promotions claimed that he has held the publicity rights to his father's name since 1998 and that Disney-owned Pixar did not ask permission to use his father's likeness when creating the character 'Duke Caboom'. The lawsuit claimed similarities in the look of Knievel and 'Duke Caboom' and said a propelled stunt toy sold to market the film was very similar to the toy released by Evel Knievel in 1973 and recently re-released. Kelly, through the federal trademark infringement lawsuit, sought damages of more than \$300,000 over allegations including false endorsement and unjust enrichment. The court, however, observed that

Duke Caboom's role in the film passed a test applied to artistic works to balance potential trademark infringement with First Amendment rights. The court also opined that the plaintiff didn't provide enough evidence proving that Disney had tried to confuse the public. It was held by the court that the use of Knievel's trademarks was not enough evidence to prove the likelihood of consumer confusion and there were enough differences between the animated stuntman and the real person, as Duke Caboom's different facial hair, name, hair, jumpsuit and backstory all made the character separate from the actual stuntman. Thereby, the claim that Disney violated publicity rights was dismissed by the court.

JAY-Z'S RIGHT-OF-PUBLICITY CLAIMS SURVIVE THE PHOTOGRAPHER'S MOTION TO DISMISS

Photographer Jonathan Mannion, who took the photo of rapper Jay-Z that appears on the cover of his debut album "Reasonable Doubt", lost his bid to escape Jay-Z's claims in Los Angeles federal court, that he has been misusing the rapper's image to sell merchandise. In June, Jay-Z had sued Mannion and alleged that Mannion had violated the rapper's right to publicity by misusing his likeness to sell shirts, turntable slip mats, and copies of the pictures. In August, Mannion had moved the court to dismiss the claims calling Jay-Z's filing a "*vitriolic complaint filled with false insinuations of exploitation*". The federal court has opined that Jay-Z's right-of-publicity claims survive Mannion's motion to dismiss and there is not enough information to find Mannion's uses protected.



EXTENSION OF THE LAST DATE FOR HOLDING ANNUAL GENERAL MEETING FOR THE FINANCIAL YEAR 2020-21

The jurisdictional Registrars of Companies, MCA vide circulars dated September 23, 2021 (accessible [here](#)), have extended the due date for holding annual general meetings (AGMs) by companies for the financial year 2020-21 by two months i.e. upto 30th November 2021, in view of difficulties being faced by companies, industry bodies and professional institutes due to the Covid-19 pandemic.

EXTENSION OF THE LAST DATE OF FILING COST AUDIT REPORT TO THE BOARD OF DIRECTORS

The MCA *vide* circular dated September 27, 2021 ("**Circular**") (accessible [here](#)), has granted extension of the last date for filing the cost audit report by the cost auditors to the board of directors of the company. As per Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014 ("**CRA Rules**"), the cost auditor is required to prepare the cost audit report and provide it to the company within 180 (one

hundred and eighty) days from the closure of the financial year.

As per the Circular, the MCA has, in view of the disruption caused by the pandemic, decided that if the cost auditor submits the cost audit report for the financial year 2020-21 to the board of directors of the companies by October 31, 2021, then the same will not be considered as a violation of the Rule 6(5) of the CRA Rules.

Consequently, the cost audit report for the financial year 2020-21 is required to be filed by the company in E-Form CRA-4 with the Central Government within 30 (thirty) days from the date of receipt of the copy of the cost audit report by the company. However, the Circular clarifies that in case a company has got/had been permitted extension of time for holding annual general meeting under sub-section (1) of Section 96 (Annual General Meeting) of the Companies Act, 2013, ("**Companies Act**"), then E-Form CRA-4 may be filed within the resultant extended period of filing financial statements under Section 137 (Copy of Financial Statement to be filed with Registrar) of the Companies Act.

AMENDMENT TO FOREIGN EXCHANGE MANAGEMENT (EXPORT OF GOODS AND SERVICES) REGULATIONS, 2015

The Reserve Bank of India ("RBI") vide its notification dated September 8, 2021 bearing notification no. FEMA 23(R)/(5)/2021-RB read with the circular dated September 28, 2021 bearing notification no. FEMA 23(R)/(5)/2021-RB, has amended the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 to permit use of any widely accepted/alternative reference rate instead of the LIBOR rate for interest payable on export/import transactions.

DSK Legal's Observation: *The amendment has been introduced to permit a smooth and seamless transition of banks from LIBOR to an alternative reference rate and prevent friction in the business operations.*

APPLICATION FOR AADHAAR E-KYC AUTHENTICATION LICENSE

The RBI vide its circular dated September 13, 2021 bearing reference number RBI/2021-22/98 DOR.AML.REC 48/14.01.001/2021-22 has permitted NBFCs, payment system providers, and payment system participants to obtain the Aadhar Authentication License – KYC User Agency (KUA) or sub-KUA License, issued by the Unique Identification Authority of India and has provided the application format to be followed for obtaining the same.

DSK Legal's Observation: *The authorisation is expected to promote digitisation, check frauds and improve customer trust levels by ensuring that only licensed entities undertake eKYC. The move will also reduce third-party dependence by allowing such participants to directly and easily undertake Aadhar based eKYC for customer on-boarding.*

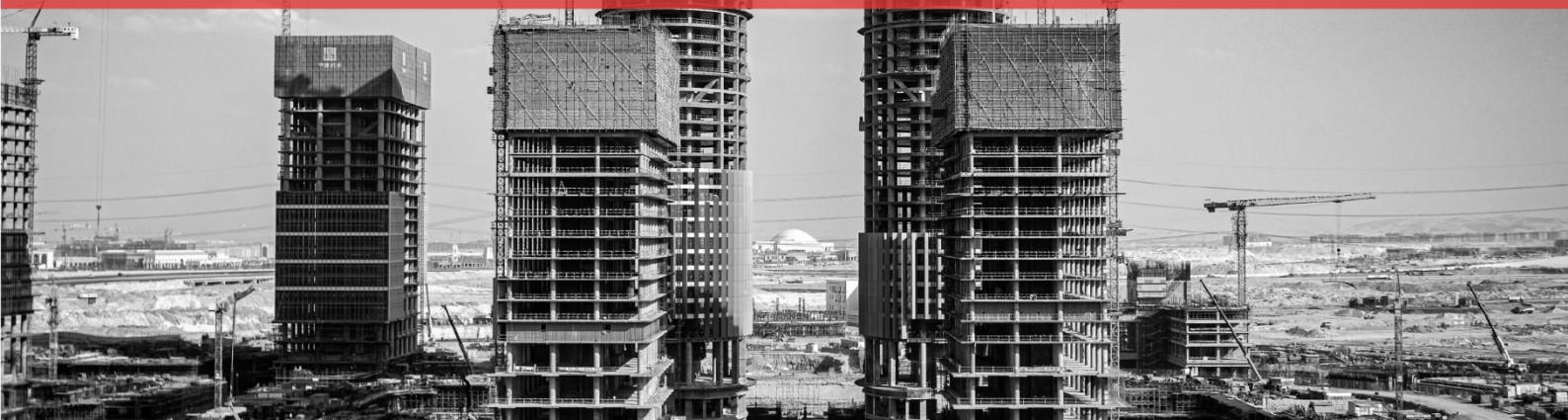
MASTER DIRECTIONS ON TRANSFER OF LOAN EXPOSURES

The RBI vide its circular dated September 24, 2021 bearing reference number RBI/DOR/2021-22/86 DOR.STR.REC.51/21.04.048/2021-22 has issued the Master Directions: RBI (Transfer of Loan Exposures) Directions, 2021 ("**Loan Transfer Directions**") for sale/transfer of loan exposures between lending institutions. Following are key provisions of the Loan Transfer Directions:

- **Eligibility** – Subject to certain conditions, scheduled commercial banks, regional rural banks, Primary (Urban) Co-operative Banks/State Co-operative Banks/District Central Co-operative Banks, All India financial institutions, small finance banks, NBFCs, housing finance companies are considered as lenders eligible to undertake the sale/transfer of loans.
- **General conditions** – The Loan Transfer Directions impose certain general conditions such as maintenance of Board approved policy for transfer and acquisition of loan exposures, ensuring that the loan transfer results in a transfer of economic interest on the same underlying terms and conditions, contractually delineating roles and responsibilities of the transferor and transferee, restriction on re-acquisition of transferred loan exposure, etc.
- **Special Conditions** – Special conditions for transfer of loans not in default (e.g., minimum holding period, capital adequacy requirements, and other prudential norms), stressed loans (for transfers to asset reconstruction companies, price discovery through Swiss challenge method), and non-performing assets.
- **Disclosures and Reporting** – The Loan Transfer Directions require the lenders to make appropriate disclosures in their financial statements. Further, the transferors are required to disclose the quantum of

excess provisions reversed to the profit and loss account on account of sale of stressed loans in their financial statements and to report the loan transfer transactions to a notified trade reporting platform.

DSK Legal's Observation: *The Loan Transfer Directions help ensure proper credit-risk pricing, improve transparency in identification of stress in the banking system and resolution of stressed loans. It also assists in developing an efficient secondary market for loans, thereby creating additional avenues for raising liquidity.*



RERA HAS GIVEN BOOST TO CONSTRUCTION ACTIVITY: PM

PM Narendra Modi today said that RERA Act has resulted in impartiality in real estate sector and has given boost to construction activities.

“There was lack of impartiality in real estate sector. This was creating problems for those who wanted to buy houses. By introducing RERA, the government has created confidence in the minds of homebuyers,” said Modi. He added that government has strengthened dreams of homebuyers by giving tax concessions so that middle class people can fulfil their dream of having own houses.

“Many States have notified RERA, and tribunals are working. Many flats are being constructed under RERA” he said, adding the holistic approach for construction of houses has yielded good results. Modi claimed that 1.80 crore houses have been constructed with public participation under Pradhan Mantri Awas Yojana.

SUPREME COURT ORDERS DEMOLITION OF SUPERTECH TWIN 40-STOREY TOWERS

Nine years after taking up the cudgels against Supertech Ltd, home buyers finally got relief from the Supreme Court on Tuesday as it ordered demolition of the under-construction twin 40-storey towers:

The top court said it is also affirming the high court order for sanctioning prosecution under provisions of Uttar Pradesh Urban Development Act and Industrial Area Development Act, against the officials of the Supertech Ltd and the NOIDA officers for violation of the law.

Nine years after taking up the cudgels against Supertech Ltd, home buyers finally got relief from the Supreme Court on Tuesday as it ordered demolition of the under-construction twin 40-storey towers which would have blocked sunlight

and fresh air, violating building norms in collusion with NOIDA officials.

The case revealed a nefarious complicity of the planning authority (NOIDA) in violation of the provisions of law by the developer (Supertech), the apex court said.

A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance, it said.

A bench of Justices D Y Chandrachud and M R Shah said, The order passed by the (Allahabad) High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed.

SUPREME COURT CLARIFIES - CONCURRENT REMEDIES UNDER RERA AND CONSUMER PROTECTION ACT, 1986 AVAILABLE TO HOMEBUYERS

In a judgment dated 2 November 2020, passed by the Supreme Court of India in the case of M/s Imperia Structures Ltd v Anil Patni & Another (Civil Appeal No. 3581-3590 of 2020), the Supreme Court held that the redressal mechanism / provisions under the Real Estate (Regulation and Development) Act 2016 (RERA) do not act as a bar to complaints under the Consumer Protection Act 1986 (CP Act). The principles laid down in this judgment by the Supreme Court, finds place in a range of earlier series of decisions passed by various High Courts as well as the National Consumer Disputes Redressal Commission (NCRDRC) which have stated that allottees / homebuyers are well within their rights to avail remedies the CP Act as well as RERA and even the Insolvency and Bankruptcy Code 2016 (IBC).

UP RERA FINES TWO DEVELOPERS FOR ADVERTISING WITHOUT REGISTRATION

The Uttar Pradesh Real Estate Regulatory Authority (UP RERA) has imposed a fine of 1.3 crore against two developers for advertising about the project without registering it with the authority.

As per the regulation, any developer can not sell apartment or plots and cannot even promote it without getting it registered with RERA. Failing to do so attracts fine upto 10% of the project cost.

In a separate case, UP RERA has imposed Rs 25 lakh penalty against SJP hotels and resorts ltd for advertising about its upcoming projects in Lucknow without RERA registration.

HOMEBUYERS UNHAPPY, WANT STATES TO SCRAP PROJECT DEADLINE EXTENSION

A homebuyers' body has demanded that RERA authorities in Maharashtra, Uttar Pradesh and Karnataka roll back their decisions to give another extension for completing housing projects as these would lead to delays of more than a year.

The housing ministry in 2020 "under the pretext of Covid-19 pandemic provided a suo motu extension (zero period) of six months to real estate projects across the country", with an option for a further extension of three months given to State RERA authorities, the letter said. This was done with the sole purpose of giving relief to builders at a huge cost to homebuyers.

In August, Maharashtra and Karnataka RERAs extended timelines by six months and UP by nine months.

The explicit purpose of the government bringing in a law in 2017 to set up Real Estate Regulatory Authorities across the country was to regulate the sector as well as to protect the rights of homebuyers.

The second wave lasted for merely two-three months but the extensions had been granted for six to nine months.

FPCE has demanded that the Centre should intervene in this matter and direct the three states to roll back their decisions.



RBI UNVEILS ACCOUNT AGGREGATOR NETWORK

On September 02, 2021, Reserve Bank of India (“RBI”) launched the framework on account aggregator network (accessible [here](#)) to revolutionize the investing and credit, giving millions of consumers greater access and control over their financial records and expanding the potential pool of customers for lenders and fintech companies. Account aggregators (“AA”) retrieve or collect information related to financial assets of a customer from the holders of such information and aggregate, consolidate and present it to the customers or specified users. Here AAs act as intermediaries and merely assist in decision making required for provision of various financial services viz., lending, loan monitoring, wealth management, personal finance management, etc. Currently, eight major banks in India have already joined the AA network. These include Axis, ICICI, HDFC, IndusInd Bank, State Bank of India, Kotak Mahindra Bank, IDFC First Bank, and Federal Bank.

RBI ENHANCES THE SCOPE OF TOKENIZATION

On September 07, 2021, RBI issued an press release (accessible [here](#)) which enhanced the scope of tokenization and permitted card issuers to act as token service providers in order to ensure security of transaction card data. The RBI had earlier permitted tokenization services, under which a unique alternate code is generated for transaction purposes, on mobile phones and tablets of cardholders. The RBI extended the device-based tokenization to card-on-file tokenization services, a move that will bar the merchants from storing actual card data.

IRDAI RELEASES GUIDANCE DOCUMENT ON CYBER INSURANCE

On September 08, 2021, Insurance Regulatory & Development Authority of India (“IRDAI”) released a circular (accessible [here](#)) envisaging guidance on product structure

for cyber insurance. Considering the rising incidences of cyber-attacks and increase in the number of data breaches, IRDAI has recommended to all insurers evaluate new technologies posing heightened cyber risks, to develop stand-alone cyber insurance products specifically designed to address cyber risks, to adopt best practices and provide additional cover in response to customer needs etc. IRDAI has also recommended that insurers shall also endeavour to provide tailor made products considering the increase in demand for cyber insurance products.

RBI ALLOWS NBFCs AND PAYMENT SYSTEM OPERATORS TO APPLY FOR AADHAR KYC LICENSE

The RBI, *vide* its notification dated September 13, 2021, has invited applications from Non-Banking Financial Companies, Payment System Providers and Payment System Participants desirous of obtaining Aadhaar Authentication License - KYC User Agency (“KUA”) License or sub-KUA License (to perform authentication through a KUA), issued by the Unique Identification Authority of India (“UIDAI”). The applications will have to be sent via email to the RBI in format prescribed by the RBI (accessible [here](#)).

KARNATAKA GOVERNMENT TABLES BILL TO BAN ONLINE GAMBLING AND BETTING

On September 14, 2021, the Karnataka Government tabled the Karnataka Police (Amendment) Bill, 2021, before the assembly, which seeks to ban online gambling or betting in the State. The bill proposes penalty in the form of imprisonment which may extend to 3 years or fine of up to Rs. 1 lakh. The bill proposes to cover within its ambit the use of cyberspace, computer resources or any communication device, as defined in Information Technology Act, 2000, in the process of online gaming involving wagering or betting.

DELHI HIGH COURT ISSUES NOTICE AGAINST UNAUTHORIZED ACCESS OF AADHAAR, BANKING DATA BY GOOGLE PAY

On September 15, 2021, the Delhi High Court issued notice in a public interest litigation (“PIL”) seeking action against Google Pay for unauthorized collection and storage of Aadhaar and banking information of citizens. The PIL alleged violation of Article 21 (the right to life) of the Constitution of India, the Aadhaar Act 2016, the Information Technology Act 2000, the Payments and Settlement Systems Act 2007, and Banking Regulations Act 1949 by Google Pay. The PIL further alleged that Google Pay is not a registered or licensed entity under the Payments and Settlement Systems Act 2007 to conduct the business of digital payments and transactions.

UNION CABINET APPROVES REFORMS IN THE TELECOM SECTOR

On September 15, 2021, the Union Cabinet approved a set of reforms in the telecom industry in order to encourage investment in the industry and reduce regulatory burden on Telecom Service Providers. The approved reforms include – (i) 100% foreign direct investment under automatic route being allowed in the telecom sector, (ii) rationalization of the definition of ‘Adjusted Gross Revenue’ (“AGR”) to exclude *non-telecom revenue* from its ambit on a prospective basis, (iii) Moratorium/deferment of up to 4 years being allowed in (a) annual payments of dues arising out of the AGR judgment, and (b) payments due of spectrums purchased in past auctions subject to certain conditionalities.

In continuation of the said reforms Department of Telecommunications, Ministry of Communications (“DoT”) issued a series of orders on September 21, 2021, (accessible [here](#)) simplifying the KYC processes. DoT has implemented Aadhaar based e-KYC, Self-KYC and OTP based conversion of mobile connection from prepaid to post-paid and vice-versa for contactless, customer centric, and secured KYC processes. Aadhaar based e-KYC is an entirely paperless and digital process wherein the demographic details along with picture of the customer is received online by the Telecom Service Providers from UIDAI, whereas under Self-KYC, customers can apply for a mobile connection through an application/ portal and receive the SIM card at their doorstep using documents electronically verified by UIDAI or DigiLocker. Further, the OTP based conversion process enables a subscriber to convert their prepaid connection to post-paid or vice versa via an OTP based authentication process.

MADRAS HIGH COURT STAYS SUB-RULES (1) AND (3) OF RULE 9 OF THE INTERMEDIARY RULES

On September 16, 2021, the Madras High Court observed that the Bombay High Court’s order dated August 14, 2021, which had stayed the operation of sub-rules (1) and (3) of

Rule 9 of the Information Technology (Guidelines for intermediaries and Digital Media Ethics Code) Rules, 2021 (“Intermediary Rules”) would have a pan-India effect. The relevant rules of the Intermediary Rules require publishers of news and current affairs content, and publishers of online curated content, to comply with a Code of Ethics laid out in the Intermediary Rules and also prescribe a three-tier grievance redressal for addressing the grievances made in relation to publishers. The Madras High Court made the observation while hearing a petition filed by the Digital News Publishers Association, which comprises 13 media houses, challenging the Intermediary Rules.

UIDAI RELEASES DRAFT RULES ON PRICING OF AADHAAR AUTHENTICATION SERVICES

On September 20, 2021, the UIDAI released the draft Aadhaar (Pricing of Aadhaar Authentication Services) Regulations, 2021 (“Draft Regulations”) for public consultation (accessible [here](#)). The Draft Regulations were prepared on the basis of decisions taken by the UIDAI in its meeting held on September 14, 2021 and prescribe certain charges for Aadhaar authentication services. These charges shall be revised every two years basis the Consumer Price Index. Further, the authentication transactions done by or on behalf of the Central or State Government for notified services or transfer of benefits and subsidies are exempted from the authentication charges as prescribed under the Draft Regulations.

The last date for sending comments on the Draft Regulations is October 6, 2021, and the same may be send at auth.regulations@uidai.net.in.

TWITTER HAS COMPLIED WITH INTERMEDIARY RULES: CENTRE TO DELHI HIGH COURT

On September 24, 2021, the Central Government informed the Delhi High Court that Twitter has complied with the Intermediary Rules by appointing three-tier level grievance officers, as mandated under the Intermediary Rules. In the affidavit filed by the Central Government, it was also informed that Twitter has appointed Chief Compliance Officer, Nodal Contact Person and Resident Grievance Officer as Twitter employees, and not as contingent workers. In this context, Twitter also furnished the names of the said appointed personnel along with their respective positions, date of employment and the employment contracts of such personnel.

DELHI HIGH COURT DISPOSED OF PETITION FILED BY GOOGLE OVER ALLEGED LEAKING OF CONFIDENTIAL DOCUMENTS BY CCI

On September 27, 2021, the Delhi High Court disposed of petition filed by Google over its allegations that the Competition Commission of India (“CCI”) leaked the interim

probe report in the ongoing investigation pertaining to abuse of Google's dominance in the android market. The Delhi High Court took on record the stand of CCI that it has no objection to accept all requests of Google in regards of confidentiality. The allegations of Google were based upon a news report published by the media house, the Times of

India. Responding to the said allegations, the counsel for CCI submitted that as on date, no confidential report is leaked by the CCI and Google may instead consider legal action against the concerned media house which claims to have accessed the report.

WHITE COLLAR CRIME

AMANPREET SINGH VS CBI (CRIMINAL APPEAL NO. 929 OF 2021) – ARREST NOT MANDATORY ONCE CHARGESHEET IS FILED

The Supreme Court, clarifying the position under section 170 of CrPC, held that the arrest of an accused is not mandatory once chargesheet has been filed, even on allegations of non bailable offences, particularly when he had never been arrested through the course of the investigation. The Apex Court relied on its previous judgment in the case of *Siddharth vs State of Uttar Pradesh [Criminal Appeal No. 838 of 2021]* whereunder it accorded its imprimatur to the judgment of the Delhi High Court in the case of *Court on its Own Motion vs CBI [2004 (72) DRJ 629]* in this regard wherein it sought to draw a distinction between the existence of the power to arrest and the justification for exercise of it. The Supreme Court reiterated that upon appearance of an accused in a non-bailable offence who has neither been arrested during investigation nor produced in custody as envisaged in Section 170, CrPC the appropriate procedure would be to call upon him to move a bail application (if not already done) and release him on bail as the fact of his having not been arrested during investigation nor produced in custody is sufficient to entitle him to be released on bail, unless the Investigating Agency shows reasonable apprehension of absconding or influencing witnesses.

Link: [Click Here](#)

NARAYAN YADAV AND STATE OF KARNATAKA (WP 226989/2020) KARNATAKA HIGH COURT: FREEZING OF ALL BANK ACCOUNTS ADVERSELY AFFECTS ACCUSED'S RIGHT TO LIFE UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA

The petitioner herein approached the Court under Article 226 and 227 r/w Section 482 of CrPC, seeking to quash a notice issued by the Police Inspector to Axis Bank to freeze the all of the accounts of the petitioner in connection with an investigation of an online fraud, where the petitioner was

suspected to have been involved in defrauding the complainant of Rs. 3,73,899/-.

The court, referring to the High Court judgments in the cases of *Smt. Neeta Shanthilal v. State of Karnataka [Criminal Petition No.5847of 2016]* and '*Mr. Prakash Padukone & Ors. v. State of Karnataka [Writ Petition No. 13516-13518 of 2018]* held that the freezing of accounts was in violation of the principles of natural justice and the petitioner's right to life under Article 21 of the Constitution of India and that it had been done without following appropriate procedure i.e. Section 102 of CrPC whereunder it is mandatory to report the freezing of bank accounts to the Jurisdictional Magistrate. Allowing the petition, the Court directed the Police Inspector to intimate the concerned banks to defreeze the accounts of the accused, provided he submit a bank guarantee for the above sum and cooperated with the investigation whenever required.

Link: [Click Here](#)

SENTENCE OF IMPRISONMENT FOR LIFE MEANS RIGOROUS IMPRISONMENT FOR LIFE : SUPREME COURT

In *Md. Alfaz Ali v State of Assam [SLP (Crl.) No. 6220 of 2018]*, the Supreme Court reiterated that a sentence of imprisonment for life shall necessarily mean rigorous imprisonment for life while, disposing two SLPs where the Apex Court had issued notice limited to the question of propriety of specifying 'rigorous' imprisonment while imposing a life sentence.

The Supreme Court, without re-examining the issue, relied on and reiterated its authoritative judgment on the point in the case of *Naib Singh vs State of Punjab [(1983) 2 SCC 454]* which inturn relied on the judgment in the case of *Gopal Godse vs. State of Maharashtra [(1961) 3 SCR 440]*. Gopal Godse, interestingly, was the younger brother of Nathuram

Godse, and was convicted for the murder of Mahatma Gandhi.

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NO EXTENSION OF TIME CAN BE GRANTED FOR COMPLETION OF INVESTIGATION AS WELL AS FILING OF CHARGESHEET BY A MAGISTRATE UNDER UAPA

In the case of *Sadique vs State of Madhya Pradesh (Criminal Appeal No.963 of 2021)* the appellants plea seeking a default bail under Section 167(2) of Code of Criminal Procedure, 1973 (“CrPC”) on the ground that no chargesheet was filed by the investigating agency within 90 days was rejected by Chief Judicial Magistrate, Bhopal and subsequently by the Sessions court and the Madhya Pradesh High Court. The Supreme Court relying on a prior judgement rendered by the Apex Court in the case of *Bikramjit Singh vs. State of Punjab*, held that where offences under the first proviso of section 43D(2)(b) of Unlawful Activities (Prevention) Act, 1967 (“UAPA”) are concerned, the jurisdiction of the Magistrate to extend time to conduct investigation is non-existent. The Magistrate would not be competent to consider such a request for extension of time to complete the investigation. It is only the competent authority – “the court”, as specified in the proviso in Section 43-D (2)(b) of the UAPA which can consider such request. In the view of the same, the Court allowed the appeal and held the appellants were entitled to be released on default bail.

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IMPORTANCE OF ANALYST’S REPORT VIS-A-VIS BAIL UNDER SECTION 167(2), CODE OF CRIMINAL PROCEDURE

In the case of *Sameer vs State of Kerala (Bail Appl. No. 5747 Of 2021)* the Kerala High Court, while considering the question whether the accused under the Narcotic Drugs and Psychotropic Substances Act, 1985 is entitled to default bail, asserted that under Section 167(2) Code of Criminal

Procedure not filing of the analyst report will not amount to incomplete investigation unless the entire case of the prosecution relies solely on the analyst report.

The Court held that each case will have to be decided on its own facts and if the purpose of the analyst report is only corroboratory then non receipt of the analyst report will not entitle the accused to default bail under 167 (2) CrPC. However, if the prosecution case solely relies on the analyst report, then the final report filed under section 173 of the CrPC will be termed as incomplete and the accused shall be entitled to default bail.

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DISMISSAL OF A COMPLAINT AT PRE-COGNIZANCE STAGE SHOULD BE TREATED AS REJECTION AND NOT DISMISSAL

In the case of *Ranjan V. State of Kerala & Ors. (O.P.(Crl). No. 329 of 2016)*, the Petitioner had challenged the order of the Special Court, dismissing the complaint filed by the Petitioner with a finding that there was no material to make out a case against the accused persons. The Petitioner had therefore challenged the said order before the Kerala High Court. The Kerala High Court while dismissing the petition observed that, dismissal of the complaint under section 203 of the Code of Criminal Procedure, 1973 (“CrPC”) can be only after a pre-cognizance stage. However, every Magistrate has the power to reject the complaint at a pre-cognizance stage, if a complaint does not make out a case of the offences as alleged in the complaint and is not mandatory for the Magistrate to proceed under section 200 of the CrPC. Further the court referred to the High Court’s decision in the case of *Raju Puzhankara v. State of Kerala*, held that such dismissal at the pre-cognizance stage could only be treated as a rejection of the complaint, instead of dismissal of the complaint.

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