DSK Legal
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NEWSLETTER

December 2024

TABLE OF CONTENTS

INVESTMENTS IN OVERSEAS MUTUAL FUNDS/UNIT TRUSTS BY INDIAN MUTUAL FUNDS [1]

To facilitate ease of investment in overseas MF/UTs, to bring transparency in investments and diversify mutual fund investments, based on feedback from industry in consultation with Mutual Fund Advisory Committee and public consultation, SEBI has introduced the following framework:

Investment by schemes:

Under paragraph 12.19.2.10 of the Master Circular, Indian Mutual Fund ("MF") schemes can invest in overseas Mutual Funds/Unit Trusts ("MF/UTs") that have exposure to Indian securities, provided such exposure does not exceed 25% of the overseas MF/UT's assets. The following conditions apply:

- Pooling: All investor contributions in the overseas MF/UT must be combined in a single investment vehicle, with no side arrangements like segregated portfolios or sub-funds;
- Pari-passu and Pro-rata Rights: The overseas MF/UT must operate as a blind pool with a common portfolio and not segregated portfolios, ensuring all investors share returns proportionately to their contributions;
- Independent Management: The fund must be managed by an independent investment manager who makes autonomous investment decisions without direct or indirect influence from investors or other entities;
- Transparency: The overseas MF/UT must publicly disclose its portfolio at least quarterly; and
- No Advisory Agreements: Indian Mutual Funds cannot enter into advisory agreements with the overseas MF/UT to prevent conflicts of interest and undue advantages.

Breach of the limit:

At the time of making fresh or subsequent investments, Indian MF schemes shall ensure that underlying MF/UTs do not have more than 25% exposure to Indian securities. However, if exposure of overseas MF/UTs to Indian securities exceeds 25% of their net assets, then Indian MFs are allowed a 6-month observation period from the date of public disclosure to monitor portfolio rebalancing by underlying overseas MF/UTs.

During the observation period:

- No fresh investments can be made in such MF/UTs, and
- May resume investments in such overseas MF/UTs in case the exposure falls below 25%.

Rebalancing of the portfolio:

If an underlying overseas MF/UT does not rebalance its portfolio to reduce Indian securities exposure within the 6-month observation period, Indian Mutual Funds must liquidate their investments in the MF/UT within the following 6 months ("liquidation period"). However, if the exposure falls below the 25% limit during the liquidation period, liquidation is no longer required.

Non-compliance:

If the Indian MF/Asset Management Company ("AMC") fails to rebalance the portfolio of the scheme as per the

[1] SEBI/HO/IMD/IMD-PoD-1/P/CIR/149

requirements, then after the 6-month liquidation period the MF/AMC shall:

- not be permitted to accept any fresh subscriptions in concerned Indian Mutual Fund scheme;
- not be permitted to launch any new scheme; and
- not levy exit load, if any, on the investors exiting such schemes.

Fundamental attribute change:

The Indian mutual fund schemes shall be exempted from the requirement of fundamental attribute change for any change in underlying overseas MF/UTs, subject to following:

- The underlying overseas MF/UT exceeds 25% exposure to Indian securities.
- The Indian Mutual Fund scheme intends to reinvest in another overseas MF/UT with similar investment objectives.
- A notice-cum-addendum is issued to investors informing them of the change.

The provisions of this circular take effect immediately from November 04, 2024.

DISCLOSURE OF EXPENSES, HALF YEARLY RETURNS, YIELD AND RISK-O-METER OF SCHEMES OF MUTUAL FUNDS [2]

The current regulatory framework for Mutual Funds mandates various disclosures, including those on scheme expenses and risks. To enhance transparency, improve investor understanding, and standardize disclosures, the following measures have been introduced based on recommendations from the Mutual Fund Advisory Committee.

A. Disclosure of expenses, half yearly returns and yield of a scheme

Investments made under the direct plan of a mutual fund scheme, introduced in a 13 September 2012 circular and effective from January 1, 2013, are not routed through distributors. Since distribution expenses and commissions are not charged to direct plan investors, the expense ratio of the direct plan is lower than that of the regular plan of the same scheme, resulting in differing returns between the two plans. Hence, disclosure of expenses, returns during the half year and yield of direct and regular plans shall be as under:

- **Expenses:** The total recurring expenses for direct and regular plans will be separately disclosed, in addition to the total recurring expenses for the scheme, as per SI. No. 6.4 of the Twelfth Schedule and Regulation 59 of the SEBI (Mutual Funds) Regulations, 1996.
- **Returns and Yields:** The returns for the half-year and compounded annualized yields will be separately disclosed for direct and regular plans, as per SI. No. 7.1 and 7.2 of the Twelfth Schedule and Regulation 59 of the SEBI (Mutual Funds) Regulations, 1996.

To standardize the disclosures, AMFI, in consultation with SEBI, will review and finalize the format for the half-yearly financial statement for mutual fund schemes. Additionally, for all other regulatory disclosures requiring details on expenses, expense ratio, returns, and/or yield, separate disclosures will be made for both regular and direct plans.

B. Disclosures of change in Risk-o-meter

As per clause 17.4.1(h) of the Master Circular, any change in the Risk-o-meter for a particular scheme must be communicated to the unitholders through a Notice cum Addendum, as well as via email or SMS.

The provision of his circular takes effect from 5th December 2024.

TRADING SUPPORTED BY BLOCKED AMOUNT IN SECONDARY MARKET [3]

To enhance protection for investors against defaults by Trading Members ("**TM**") or Clearing Members ("**CM**"), SEBI introduced a supplementary process in paragraph 25 of Chapter 1 of the Master Circular on Stock Exchanges and Clearing Corporations, dated October 16, 2023. This process allows for the blocking of funds in the investor's bank account, rather than transferring them upfront to the TMs. This measure aims to provide greater protection for investors' cash collateral. The facility became operational on January 1, 2024.

Para 25.4.1.2 of Chapter 1 of the Master Circular provided that the facility for trading using the UPI block mechanism was introduced as a non-mandatory option to be offered by stockbrokers.

Considering the significant potential benefits for investors, public consultations were conducted, and discussions were held with market participants to explore measures for the widespread adoption of the UPI block mechanism. Some

[2] SEBI/HO/IMD/PoD1/CIR/P/2024/150

[3] SEBI/HO/MRD-POD2/CIR/P/2024/153

TMs have already begun offering the facility of 3-in-1 trading accounts. The key features of the 3-in-1 trading account include:

- **Integration**: The trading account is integrated with the client's demat and bank accounts.
- **Fund Blocking**: Funds are blocked in the client's bank account, to the extent of the obligation, upon placement of buy orders. If the buy orders are not executed, the blocked funds are released.
- **Securities Blocking**: Securities are blocked in the client's demat account when sell orders are placed. If the sell orders are not executed, the block on securities is removed.
- **Pay-in Process**: The pay-in, involving the transfer of funds or securities, is carried out post-market hours and is sent upstream to the Clearing Corporation. The client earns interest on the available funds until the pay-in is completed.

Based on the deliberations and considering the significant changes required in the systems and processes of the Clearing Corporations, Stock Exchanges, Depositories, NPCI, and TMs, the following decisions have been made regarding the implementation of the facility for trading supported by blocked amounts in the secondary market:

(i) In addition to the current mode of trading, Qualified Stock Brokers (QSBs) are required to offer their clients the option of trading supported by a blocked amount in the secondary market (cash segment) using the UPI block mechanism or the 3-in-1 Trading Account facility.
(ii) The 3-in-1 trading account facility offered or to be offered by the Qualified Stock Brokers ("**QSBs**") must, at a minimum, include the features specified above.
(iii) Clients of the QSBs will have the option to either continue with the existing facility of trading by transferring funds to the brokers or opt for one of the facilities mentioned in (i) above, as provided by the QSBs.

The Stock Exchanges and Clearing Corporations are advised to make the necessary amendments to the relevant bye-laws, rules, and regulations to implement the above decision, as required and inform market participants (including QSBs) about the provisions of this circular and ensure its dissemination on their websites.

The provisions of this circular shall come into effect on February 1, 2025.

PROCEDURE FOR RECLASSIFICATION OF FPI INVESTMENT TO FDI [4]

SEBI vide circular dated November 11, 2024 has issued a procedure for reclassification of FPI investment to FDI. In case the investment made by a Foreign Portfolio Investor (along with its investor group) reaches 10% or more of the total paid up equity capital of a company on a fully diluted basis and the FPI (along with its investor group) intends to reclassify its FPI holdings as Foreign Direct Investment (FDI), it shall follow extant FEMA Rules and circulars issued thereunder in this regard.

Pursuant to receipt of such intent from the FPI, the respective Custodian shall report the same to the Board and freeze purchase transactions by such FPI in equity instruments of such Indian company, till completion of the reclassification.

On receipt of request from the FPI for transfer of the equity instruments of such Indian company from its FPI demat account to its demat account maintained for holding FDI investments, the Custodian shall process the request if the reporting for reclassification, as prescribed by RBI, is complete in all respects.

The provisions of this circular came into force on November 11, 2024.

AMENDMENT TO PARA 15 OF MASTER CIRCULAR FOR CREDIT RATING AGENCIES (CRAS) DATED MAY 16, 2024 ("MASTER CIRCULAR")[5]

In order to provide flexibility, taking into account defaults corrected within a shorter span of time, a post default curing period of 90 days was introduced. The CRA would upgrade its rating from default to non-investment grade based on performance in the said 90-day period. The CRA would also frame policies with respect to the upgrade of a default rating to an investment grade rating. Such policies may include 'technical defaults' as well. The scenarios for non-payment of debt which may arise due to scenarios beyond the issuer's control were identified such as failure to remit due to absence of correct information and instruction from a government entity to freeze the account of the investor(s), among the others. In these scenarios the CRA will verify availability of funds, proof of failure of payment, the reasons for the same and the required amount being duly paid into a separate escrow account.

Furthermore, the CRAs will sensitize their clients to avail the penny-drop verification facility and other such measures to avoid failure of payment of debt. Accordingly, the term

[4] SEBI/HO/AFD/AFD-POD-3/P/CIR/2024/152

[5] SEBI/HO/DDHS/DDHS-PoD-3/P/CIR/2024/160

"technical default" is hereby omitted from Para 15.3 of the Master Circular and the said para stands modified as under:

"The policies framed as above may include scenarios like change in management, acquisition by another firm, sizeable inflow of long-term funds or benefits arising out of a regulatory action, etc., which fundamentally alter the credit risk profile of the defaulting firm."

The circular will be applicable with immediate effect.

WITHDRAWAL OF MASTER CIRCULAR ON ISSUANCE OF NO OBJECTION CERTIFICATE (NOC) FOR RELEASE OF 1% OF ISSUE AMOUNT [6]

In order to facilitate ease of business, the requirement to deposit 1% of the issue size available for subscription to the public with the designated stock exchange by the issuer company under Regulation 38(1) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("**ICDR**") has been dispensed. The Master Circular No. SEBI/HO/OIAE/IGRD/P/CIR/2022/0151 dated November 07, 2022, on Issuance of No Objection Certificate for release of 1% of Issue Amount stands withdrawn.

The stock exchanges shall frame a joint Standard Operating Procedure ("**SOP**") for release of 1% security deposit with stock exchanges that were deposited prior to the amendments in SEBI ICDR. They are advised to bring provisions of the circular to all companies whose securities are listed on the exchange as well as the website. The stock exchanges are also advised to make all necessary amendments to by- laws and so forth for implementation of the circular terms if necessary.

The circular shall be applicable with immediate effect.

VALUATION OF REPURCHASE (REPO) TRANSACTIONS BY MUTUAL FUNDS [7]

In order to have uniformity in valuation methodology of all money market and debt instruments and to address the concerns of unintended regulatory arbitrage that may arise due to different valuation methodology adopted, it has been decided that the valuation of repurchase (repo) transactions including TREPS with tenor of up to 30 days shall also be valued at mark to market basis.

Accordingly, Clause 9.6.2 of the Master Circular stands modified as under:

"Investments in short-term deposits with banks (pending deployment) shall be valued on cost plus accrual basis."

Further, for repo transactions (excluding overnight repos), valuations must now be sourced from AMFI-empaneled valuation agencies. Clause 9.2.3 (b) of the Master Circular has been revised to clarify that all money market and debt securities must be valued at the average security-level prices provided by valuation agencies. For new securities without agency-provided prices, the valuation may rely on purchase yield/price at the time of allotment or purchase.

The revised provisions will come into effect on January 1, 2025.

BUSINESS CONTINUITY FOR INTEROPERABLE SEGMENTS OF STOCK EXCHANGES [8]

SEBI has issued a circular to enhance the business continuity framework for Market Infrastructure Institutions ("**MIIs**"), particularly addressing contingencies in interoperable stock exchange segments. Existing SEBI Master Circulars provide guidelines for Business Continuity Planning ("**BCP**") and Disaster Recovery Sites ("**DRS**"). In the first phase, SEBI introduced a Software-as-a-Service model for Clearing Corporations' Risk Management Systems in December 2023. The second phase focuses on addressing risks during trading venue outages, such as price risks for participants with open positions. To mitigate these risks, SEBI proposes leveraging interoperability among Clearing Corporations and multi-exchange setups to provide alternative trading venues during outages.

For common trading products like indices, currency, and interest rate derivatives, participants can hedge open positions using correlated products on other exchanges. Since interoperable systems allow positions to net off, no additional measures are required. For products exclusively listed on one exchange, such as scrips or derivatives, exchanges must create reserve contracts to ensure continuity during outages. If index derivatives do not have a correlated counterpart on another exchange, the affected exchange is encouraged to develop such indices and introduce relevant contracts to provide hedging options. Exchanges must notify SEBI and the alternative trading venue within 75 minutes of an outage, and the alternative venue is required to activate its business continuity plan within 15 minutes, following a Standard Operating Procedure (SOP).

Initially, NSE and BSE will act as alternative trading venues for each other. A joint SOP outlining roles, workflows, and system changes for stock brokers and Clearing Corporations must be submitted to SEBI within 60 days. Exchanges and Clearing Corporations are directed to establish necessary infrastructure, amend relevant by-laws, disseminate the

[6] SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/0161
[7] SEBI/HO/IMD/IMD-I PoD-1/P/CIR/2024/163
[8] SEBI/HO/MRD/TPD/P/CIR/2024/167

circular's provisions to members and on their websites, and report the implementation status to SEBI.

The provisions of this circular will come into effect on April 1, 2025. Issued under Section 11(1) of the SEBI Act, 1992, the circular aims to protect investor interests, promote market stability, and regulate the securities market effectively.

GUIDELINES TO STOCK EXCHANGES, CLEARING CORPORATIONS AND DEPOSITORIES [9]

The compliance framework for MIIs encompasses multiple key provisions to ensure governance, transparency, and adherence to regulatory norms. It includes the oversight roles of Public Interest Directors (PIDs), quarterly and half-yearly reporting requirements, and enhanced supervisory mechanisms.

- Role of PIDs and Compliance Reviews:
  PIDs are tasked with reviewing compliance with applicable SEBI regulations, guidelines, and circulars. Their responsibilities also extend to evaluating the functioning of two verticals: "Critical Operations" and "Regulatory, Compliance, Risk Management, and Investor Grievances." PIDs assess the adequacy of financial and human resources in these areas and identify issues that might pose conflicts of interest, impact the MII's operations significantly, or harm the securities market. Discussions with Key Management Personnel (KMPs) and vertical heads form part of their process, culminating in reports submitted to SEBI and the MII's governing board within 30 days of meetings.

- Quarterly and Half-Yearly Reporting:
  The Compliance Officer ("**CO**") must submit quarterly reports to SEBI on any non-compliance with regulations and the status of investor grievances, within 45 days after the end of each quarter. Similarly, the Chief Risk Officer ("**CRiO**") is responsible for overseeing overall risk management and must submit half-yearly reports to SEBI within 90 days after the end of each half-year.

- Disclosure and Board Transparency:
  MIIs are mandated to disclose board meeting agendas and minutes related to regulatory, compliance, risk management, and investor grievances on their website within seven working days of approval. Strategic or confidential matters can be exempted if disclosure would disadvantage the MII, subject to proper classification by the governing board.

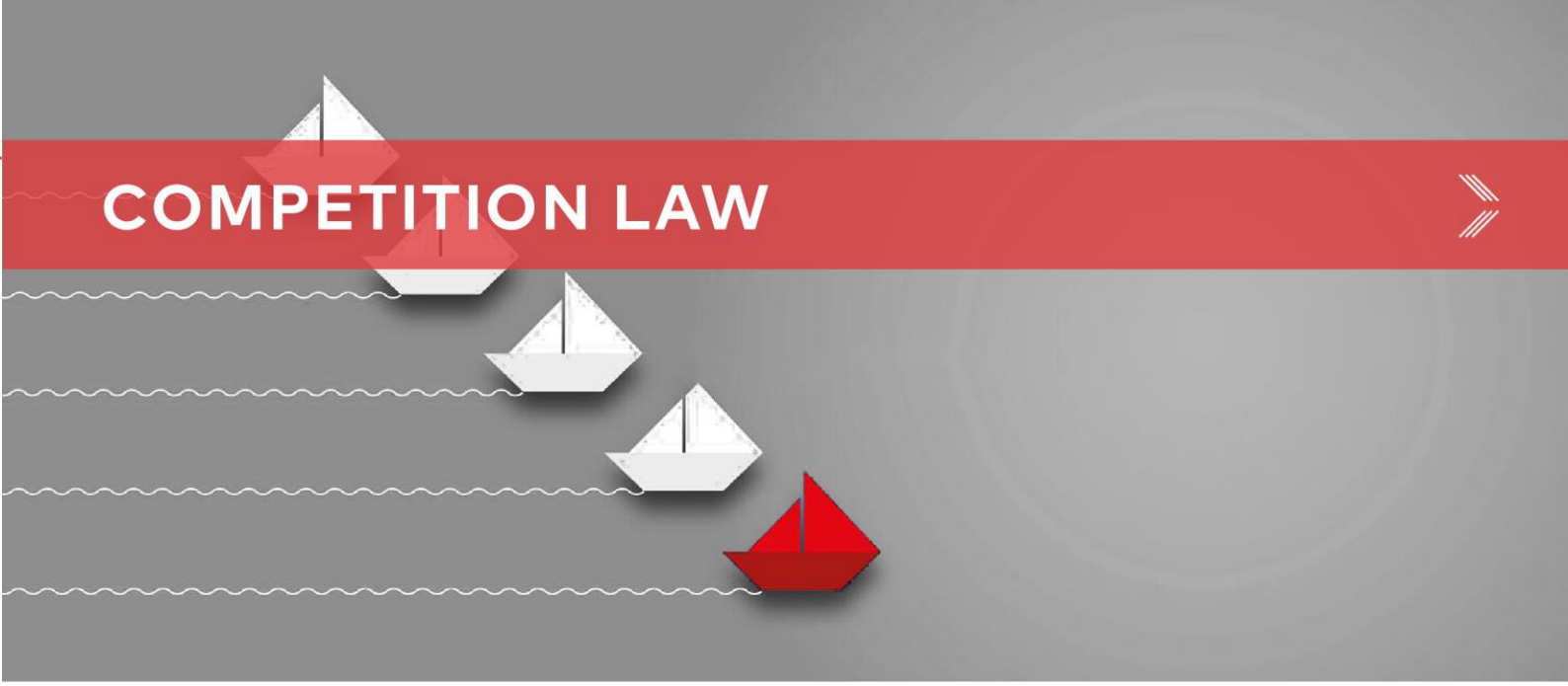
- Disciplinary Actions and Whistleblower Policy:
  MIIs are required to devise SOPs for taking disciplinary actions against KMPs for non-compliance. These SOPs must outline scenarios for invoking malus-clawback provisions and specify actions such as warnings, suspension, or termination. MIIs must also strengthen their whistleblower policies to ensure complaints are resolved within 60 days. The audit committee is tasked with investigating complaints and submitting quarterly reports to the governing board. Annual reviews of the whistleblower policy are mandatory.

- Supervisory Mechanisms and Vendor Oversight:
  MIIs are encouraged to adopt advanced technologies, such as RegTech and SupTech, to enhance their regulatory and supervision capabilities. These systems should enable online submissions by members or participants and generate alerts to aid compliance. MIIs must also establish policies for the appointment and monitoring of back-office vendors and outsourced agencies, outlining risks and minimum standards for selection.

- Training of Directors and Data Sharing Policies:
  Directors on MII governing boards must undergo at least seven days of training annually, focusing on capital market developments, global trends, and regulatory advancements. New directors are provided with familiarization programs and relevant regulatory materials. Furthermore, MIIs must formulate robust data-sharing policies that cover both online and offline methods, ensure monitoring of data shared, and conduct periodic audits at least every six months.

This circular is effective from April 1, 2025.

[9] SEBI/HO/MRD/POD-3/P/CIR/2024/162



Following are the developments in the Competition law sphere for the month of November 2024:

CCI APPROVES COMBINATION IN FERTILIZER SECTOR BETWEEN PARADEEP PHOSPHATES, MCFL, AND ZMPPL

The Competition Commission of India ("**CCI**" / "**Commission**") vide its order dated 30.07.2024 approved the proposed combination involving Paradeep Phosphates Limited ("**PPL**"), Mangalore Chemicals & Fertilizers Limited ("**MCFL**"), and Zuari Maroc Phosphates Private Limited ("**ZMPPL**"). This includes the amalgamation of MCFL with PPL and ZMPPL's acquisition of up to 33.08% of MCFL's shares. In the resulting entity, i.e., PPL, ZMPPL will hold up to 51% of its shares.

Both PPL and MCFL operate under the Adventz Group. ZMPPL is a 50:50 joint venture between the Adventz Group's Zuari Agro Chemicals Limited ("**ZACL**") and OCP S.A., a Moroccan state-owned enterprise.

PPL and MCFL are engaged in the fertiliser industry, producing urea and non-urea fertilisers like DAP and NPK, as well as intermediary products such as phosphoric and sulfuric acids. ZMPPL operates as a trading entity, primarily connected to PPL and MCFL, while OCP focuses on the mining, processing, and export of phosphates and fertilizers globally.

Certain horizontal overlaps were identified between the merging entities in the markets for urea, non-urea fertilizers (DAP, NPK, and MoP), and intermediary chemicals. Combined market shares in these segments were low, generally within the range of 0-10%, with incremental changes remaining minimal. State-wise, the highest combined market share was observed in Karnataka, at 20-25%, due to MCFL's strong presence there. However, robust competition from large domestic players like IFFCO, KRIBHCO, and Coromandel International ensures competitive pressures remain strong.

Vertical overlaps were noted in the supply relationships between OCP and PPL/MCFL, particularly in products like phosphoric acid and ammonia. These relationships were found to operate on an arms-length basis, with no exclusive or restrictive arrangements. Furthermore, alternative suppliers and buyers exist in these markets, reducing any potential foreclosure risks.

The CCI concluded that these overlaps do not pose appreciable adverse effects on competition, owing to low combined market shares and the presence of multiple competitors across segments, and hence, the combination was approved under Section 31(1) of the Competition Act, 2002 ("**Act**")

CCI CLEARS DIT-ATC INDIA DEAL, APPROVES COMBINATION IN TELECOM INFRASTRUCTURE

Vide order dated 06.08.2024, the CCI approved a combination Data Infrastructure Trust ("**DIT**") and ATC Telecom Infrastructure Private Limited ("**ATC India**") under Section 31(1) of the Act. The proposed combination included the acquisition of 100% of ATC India's share capital by DIT, alongside related unit allotments and share issues within entities associated with DIT. These transactions aim to consolidate and optimize DIT's portfolio in passive telecom infrastructure.

DIT is an infrastructure investment trust with subsidiaries engaged in providing passive telecom infrastructure services, including telecom towers. ATC India, a subsidiary of American Tower Corporation, operates in the same sector, offering telecom towers and dark fibre networks to telecom service providers ("**TSPs**"). Brookfield Corporation, British Columbia Investment Management Corporation ("**BCI**"), and GIC Group are key stakeholders in the transaction, with each

maintaining their existing influence within DIT's structure post-acquisition.

Horizontal overlaps between DIT and ATC India were identified in the provision of passive telecom infrastructure, specifically macro and micro towers. In the macro tower segment, the combined market share of DIT and ATC India was found to be within the range of 35-45%. Despite this concentration, substantial competition from other players like Indus Towers, which maintains a significant market presence, mitigates potential anti-competitive concerns. The micro tower segment showed declining market share for ATC India, alongside new entrants like CloudExtel and Suyog, which have introduced healthy competitive pressures.

Vertical overlaps were minimal and related to the laying of dark fibre networks, where ATC India's market share was less than 1%, ensuring negligible impact on market dynamics. Additionally, DIT provided an undertaking to operate non-discriminatory services, ensuring fair treatment of all telecom operators.

Concerns raised by one telecom service provider about potential market concentration and higher costs were addressed through CCI's assessment. It noted that existing long-term agreements and competitive forces among TSPs and infrastructure providers effectively constrain any likelihood of adverse effects. Furthermore, ATC India's exit from the Indian market and its portfolio transfer to DIT were viewed as facilitating growth in the sector, ensuring the continued availability of infrastructure for TSPs.

Based on these factors, the CCI concluded that the proposed combination is unlikely to harm competition in India and granted approval, emphasizing the benefits of investment in infrastructure expansion and the presence of strong competitors to maintain a healthy market.

CCI ENDS TENDER PROCESS SCRUTINY UNDER THE ACT

The CCI has dismissed allegations of anti-competitive practices in a tender process initiated by Bareilly Nagar Nigam ("**Opposite Party-4**") under Section 26(2) of the Act, via its order dated 11.11.2024. The complaint, filed by Mr. Harish Kumar (the "**Informant**"), accused OP-4 and three companies—SB Telecommunication ("**Opposite Party-1**"), Indulge Sign & Graphics ("**Opposite Party-2**"), and Adtek Print & Media Pvt. Ltd. ("**Opposite Party-3**")—of bid-rigging and collusion in contravention of Section 3(3)(d) of the Act.

The Informant, engaged in the advertisement business, alleged that OP-4's tender terms were deliberately crafted to favour OP-3. The initial turnover criterion of ₹20 crores was allegedly reduced to ₹9.5 crores without public notice, benefiting OP-3 and its alleged associates, OP-1 and OP-2. Additionally, the Informant contended that the registration of OP-1 and OP-2 was backdated and that the tender information for the contentious period was not accessible on Nagar Nigam's website, hinting at a lack of transparency.

In response, OP-4 argued that the modifications in turnover criteria aimed to foster healthy competition and were duly uploaded on the official website. It denied any favouritism, clarifying that registration and bid submissions adhered to due procedures and timelines. The Commission found that OP-1 to OP-3 met the eligibility requirements and that the highest bid, submitted by OP-3, was accepted in line with the tender terms. OP-4 also refuted the alleged association among the bidding firms, emphasizing the transparency and legality of its process.

The CCI observed that determining tender conditions lies within the procurer's discretion and does not inherently breach the Act. After examining OP-4's submissions, the Commission found no prima facie evidence of anti-competitive conduct or collusion. Consequently, it closed the case, ruling out any further investigation or relief under Sections 33 and 27 of the Act.

CCI IMPOSES PENALTY ON META FOR ABUSING DOMINANT POSITION THROUGH WHATSAPP'S 2021 PRIVACY POLICY UPDATE

The CCI under its order dated 18.11.2014 has imposed a penalty of Rs. 213.14 crore on Meta for abusing its dominant position in relation to WhatsApp's 2021 Privacy Policy. This penalty is linked to the manner in which WhatsApp updated its terms of service and the subsequent mandatory data collection and sharing with other Meta companies. In addition to the fine, the Commission issued cease-and-desist orders and directed Meta and WhatsApp to implement specific behavioural remedies within a set timeline.

The CCI identified two relevant markets in this case: the market for over-the-top ("**OTT**") messaging apps on smartphones in India, and the market for online display advertising. It was determined that Meta, operating through WhatsApp, holds a dominant position in the OTT messaging app market, while also maintaining a leading role in the online display advertising sector.

The issue arose after WhatsApp notified users of updates to its privacy policy in January 2021, which required users to accept new terms, including expanded data collection and mandatory sharing of user data with other Meta companies. This update removed the opt-out option previously available under WhatsApp's 2016 policy, forcing users to accept these new terms in order to continue using the service. The CCI concluded that WhatsApp's approach—offering these terms on a "take-it-or-leave-it" basis—created unfair conditions for users, thereby abusing Meta's dominant market position. The Commission found this practice to be in violation of Section 4(2)(a)(i) of the Competition Act, which prohibits the imposition of unfair conditions.

Furthermore, the Commission examined the impact of sharing user data between Meta companies. It found that this practice, particularly for purposes beyond providing the WhatsApp service, created entry barriers for competitors in the display advertising market, thereby denying market access and violating Section 4(2)(c). Additionally, Meta was found to be leveraging its dominant position in the OTT messaging market to protect its standing in the online display advertising market, in breach of Section 4(2)(e) of the Act.

As a result, the CCI issued several directions. WhatsApp was prohibited from sharing user data for advertising purposes with other Meta companies for a period of five years. For data sharing for other purposes, WhatsApp was required to provide clear explanations of data use, give users the ability to opt-out, and ensure that such data sharing was not a condition for accessing the service. All future policy updates must adhere to these requirements.

PROPERTY SOLD DURING THE PENDENCY OF PETITION UNDER SECTION 7, CODE BY THE CORPORATE DEBTOR CANNOT BE EXCLUDED FROM ASSETS

The Hon'ble National Company Law Appellate Tribunal, Chennai bench ("**NCLAT**") in the matter of ***Mr. Bhagawant Narayan Naik, Versus Ritesh R. Mahajan and Ors***[10] has held that property which was under the possession of the Corporate Debtor ("**CD**") and sold just before the judgment in Section 7 proceedings cannot be excluded from the scope of assets belonging to CD.

In the present case, the Appellant was a third party to the Corporate Insolvency Resolution Process ("**CIRP**") initiated against CD i.e., *M/s. Sovereign Industries Limited.* The Appellant purported to be the owner of the subject land in dispute. The CIRP proceedings were initiated against the CD on 28.03.2023 by the Ld. National Company Law Tribunal, Bangalore ("**NCLT**"). Pursuant to the initiation of CIRP, the Appellant filed an Interlocutory Application ("**IA**"), praying to inform all the Prospective Resolution Applicants about the scheduled property in possession of the Appellant and therefore prayed to exclude the same from the Resolution Plan submitted by the Resolution Professional. Apart from the aforesaid IA, the Appellant filed another IA, requesting the Resolution Professional to share the Information Memorandum, details of the Resolution Plan submitted by the Successful Resolution Applicant ("**SRA**") along with minutes of the CoC meetings. However, vide order dated 22.10.2024, both the IAs were duly rejected by the Ld. NCLT.

Consequently, the Appellant filed a Civil Suit, O.S. No. 16 of 2024, seeking a permanent injunction on 16.01.2024 on the subject land. The Appellant portrayed himself as a third party to CIRP, qua scheduled property, alleged to have purchased vide registered sale deed dated 24.02.2023. The Appellant asserted that the said property was purchased by lawful means and thereby has complete right, title, and interest over the same. Contending to the assertions stated by the Appellant, the Resolution Professional ("**RP**") filed its objection and prayed for rejection of the Civil Suit, since, it was instituted post the admission of the CIRP petition and was affected by Section 14 of the Code. In reply to this the Appellant based on Section 18 of the Code, contended that the property does not belong to the CD, hence cannot be included as an asset of the CD.

The Hon'ble NCLAT while adjudicating the Appeal filed by the Appellant, noted that the complete transaction had taken place while the Section 7 Application was under consideration, and was not done in the normal course. Also, it is an undisputed fact that the said property is used for industrial purposes and falls within the premises of CD which is under the custody of RP. Therefore, the Hon'ble NCLAT held that the transfer of the said property just after the judgment under Section 7 of the Code was reserved, together with the actions of the Appellant regarding the Civil Suit itself shows that the sale was not *bona fide*. Further, the rights of the Appellant are yet to be determined by the Civil Court, and at this stage, the pendency of the Civil Suit cannot be taken as a ground of interference in CIRP proceedings. Hence the Appeal was dismissed.

SHARE APPLICANT'S MONEY DEPOSITED WITH CORPORATE DEBTOR DOES NOT QUALIFY AS A FINANCIAL DEBT UNDER SECTION 5(8) OF THE CODE

The Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi ("**NCLAT**") in the matter titled ***M/s. Murlidhar Vincom Pvt. Ltd. versus M/S. Skoda (India) Pvt. Ltd***,[11] has held that the money deposited with the Corporate Debtor ("**CD**") for share application does not

[10] Company Appeal (AT) (CH) (Ins.) No. 394/2024 (IA Nos. 1072 & 1074/2024 & 1073/2024)

[11] Company Appeal (AT) (Insolvency) No. 1334 of 2024

constitute a Financial Debt under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 ("**Code**").

In the present matter, according to the request of the CD, the Appellant had infused some funds in the form of share application money in the CD during the FY 2009-10. In return of which, the CD allotted 3000 equity shares amounting to Rs. 6.97 lakhs to the Appellant. Subsequently, the Appellant infused another Rs. 1.32 Crores during the financial years, out of which Rs. 40 lakhs were refunded back to the Appellant. However, due to a financial crunch, the CD was not able to refund the remaining amount of Rs. 92 lakhs and consequently agreed to allot additional shares of the same amount, on the condition that the Appellant shall provide some additional funds to the CD. Thus, in accordance with the condition, the Appellant infused additional funds of Rs. 79.60 Lakhs, whereas neither the shares were allotted by the CD nor the amount refunded to the Appellant.

Owing to the default on the part of the CD, the Appellant issued a Demand Notice to the CD seeking the outstanding dues along with an interest @ 12% p.a., in accordance with Section 42(6) of the Companies Act, 2013. Since, the CD had failed to repay the amount as per the Demand Notice, the Appellant filed a Section 7 Application before the Ld. National Company Law Tribunal ("**NCLT**"), which was later dismissed on the ground that share application money cannot be deemed to be a financial debt. Aggrieved by the Order passed by the Ld. NCLT, the Appellant filed an Appeal before the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") under Section 61(1) of the Code. While relying on the judgment passed by the Hon'ble NCLAT in ***Kushan Mitra vs Amit Goel and Ors***[12], emphasized that in case of the non-allotment of shares, the interest is levied as per Section 42(6) of the Companies Act, 2013, hence it falls within the scope of Financial Debt u/s 5(8) of Code.

After adjudicating the pleadings filed by the Appellant, the Hon'ble NCLAT first referred to Section 5(8) of the Code, and observed that the very basic requirement for a debt to become Financial Debt is that it must be disbursed against the consideration for some time value of money. While, referring to the transactions stated under sub clauses (a) to (i), the Hon'ble NCLAT observed that the amount in the present case *prima facie* does not expressly fall under any of the said transactions.

Consequently, while relying on Section 42 of the Companies Act, 2013, held that the concern section provides for certain compliances before the issuance of the shares on a private placement basis, one of such requirements being the issuance of a Private Placement Offer letter under Section 42(2). However, the pleadings placed on record do not reflect any documents evidencing any valid concluded agreement between the two parties for the allotment of shares.

Henceforth, the Hon'ble NCLAT categorically held that the said amount advanced by the Appellant cannot be treated as an amount in response to the private placement offer, and for the application of Rule 2(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014 ("**CADR**"), to be maintainable, the amount should be advanced under the private placement offer which is as per the provisions of the Companies Act, 2013. While in the present case, there was no proof of any such private placement offer made as per the provisions of the Companies Act, 2013, therefore, the CADR Rules cannot be held to be applicable. Hence the Appeal was rejected.

EXTENSION OF ARBITRAL TRIBUNAL'S MANDATE UNDER SECTION 29A PERMISSIBLE UPON DEMONSTRATING SUFFICIENT CAUSE

The Hon'ble Supreme Court, in the matter titled *Ajay Protech Pvt. Ltd. versus General Manager & Anr.*[13], held that the court has the power to extend the mandate of an arbitral tribunal beyond the prescribed period under Section 29A of the Arbitration and Conciliation Act, 1996 hereinafter referred to as ("**the Act**") even after the statutory extension period has expired, provided there is sufficient cause.

In the present case, Ajay Protech Pvt. Ltd. ("**Appellant**") sought an extension of time for making an arbitral award under Section 29A(4) of the Act after the expiry of the extended deadline. The Appellant had initiated arbitration proceedings in 2019, and the arbitral tribunal's mandate was extended till April 2021. However, due to the COVID-19 pandemic and its subsequent impact on the proceedings, the appellant argued that the statutory limitation period should exclude the period from March 2020 to February 2022, as per the Supreme Court's earlier ruling on excluding the limitation period during the pandemic.

The Hon'ble Gujarat High Court, however, dismissed the Appellant's application seeking extension, stating that it was filed too late and the mandate of the tribunal could not be extended post the expiration of the statutory period.

The Hon'ble Supreme Court, upon examining the case, disagreed with the High Court's decision, holding that the exclusion of the pandemic period under *Re: Cognizance for Extension of Limitation (2022) 3 SCC 117* was applicable, and the Appellant was justified in seeking an extension beyond the deadline. The Hon'ble Court clarified that under Section 29A(4), the power to extend the tribunal's mandate lies with the Court, and this power is not limited by the statutory period but can be exercised if a sufficient cause is shown.

[12] Company Appeal (AT) (Insolvency) No. 128 of 2021, IA 2340 of 2021 and 2413 of 2021

[13] 2024 SCC OnLine SC 3381

Further, the Hon'ble Court said that 'sufficient cause' should be interpreted in the context of facilitating effective dispute resolution.

The Hon'ble Supreme Court concluded that sufficient cause existed for the extension, noting that the delays were attributable to exceptional circumstances brought about by the pandemic. The Supreme Court allowed the appeal, set aside the Gujarat High Court's order, and extended the timeline for making the arbitral award.

CONCILIATION REQUIREMENT DOES NOT BAR INVOCATION OF ARBITRATION CLAUSE UNDER SECTION 11 OF THE ARBITRATION ACT

The Hon'ble Delhi High Court in *Centaurus Green Energy Private Limited v. Rajshree Educational Trust* [14] held that the requirement of conciliation before initiating arbitration does not preclude the filing of an application under Section 11 of the Arbitration and Conciliation Act, 1996 hereinafter referred to as ("**the Act**").

In the present case, the Petitioner, Centaurus Green Energy Private Limited sought for the appointment of a sole arbitrator under Section 11(6) of the Act to resolve disputes with the Respondent, Rajshree Educational Trust arising from a Power Purchase Agreement ("**PPA**") signed on 14.10.2017. The PPA included an arbitration clause mandating an initial attempt at conciliation before invoking arbitration. The Respondent in response argued that the arbitration clause could not be invoked as the conciliation process had not been initiated as required.

The primary issue before the court was whether the absence of conciliation proceedings barred the invocation of the arbitration clause. Relying on prior judgments, including *Ravindra Kumar Verma v. BPTP Ltd.* 2014 SCC OnLine Del 6602 and *Saraswati Construction Co. v. Cooperative Group Housing Society Ltd. 1995 (57) DLT 343*, the court emphasized that procedural requirements, such as conciliation, are generally directory rather than mandatory.

Further, the Hon'ble Delhi High Court underscored the principle of minimal judicial interference, allowing arbitration to proceed under Sections 8 or 11 of the Act while preserving the rights of parties during conciliation. The court concluded that mandatory conciliation as a prerequisite would undermine the pro-arbitration framework of the Act. It held that disputes should be referred to arbitration unless exceptional circumstances warrant otherwise, ensuring that a party's claims remain open for adjudication through arbitration.

Accordingly, the Hon'ble Court reinforced the pro-arbitration stance of the Act, emphasizing that failure to initiate conciliation proceedings does not bar the invocation of arbitration under Section 11. This decision underscores the importance of minimal judicial intervention and upholds the parties' right to seek arbitration for resolving disputes, ensuring that arbitration remains an accessible and effective dispute resolution mechanism.

[14] ARB.P No. 311 of 2024

DISTRICT OFFICER, GURUGRAM DIRECTS SUBMISSION OF AN ANNUAL REPORT UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Office of the Additional Deputy Commissioner-cum-District Officer, Gurugram, through a notification dated November 4, 2024, directed all government and non-government organizations to submit their annual reports about cases of harassment in workplace under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by February 28 of each calendar year.

The notification stipulates a penalty of INR 50,000 (Rupees Fifty Thousand) for employers failing to comply with the reporting timeline. In cases of non-compliance, strict action will be initiated against the defaulting organisations as per the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

STATE GOVERNMENT CAN REFER A DISPUTE TO INDUSTRIAL TRIBUNAL WHEN AUTHORISED BY CENTRAL GOVERNMENT

The Uttar Pradesh High Court vide an order dated November 4, 2024, in the case of Hindustan Aeronautics Ltd. v. Hindustan Aeronautics Karmchari Sabha, quashed the Industrial Tribunal's order and held that the State Government can refer a dispute to an Industrial Tribunal if authorised by the Central Government.

In the present case, the petitioner, Hindustan Aeronautics Ltd. ("**HAL**"), challenged an award by a State Government constituted Industrial Tribunal that had declared canteen workers as HAL's direct employees. HAL argued that a third-party contractor employed the canteen workers and that the Central Government is the "appropriate government" for HAL. The canteen workers contended that they were directly employed by HAL, given their long-term services.

The Uttar Pradesh High Court held that the Central Government is the "appropriate government" for HAL under Section 2(a) of the Industrial Disputes Act, 1947, as it owns more than 51% (Fifty One Percent) of HAL's shares. However, the Uttar Pradesh High Court observed that the Central Government had delegated its authority to the State Government, allowing it to refer disputes to the Industrial Tribunal. It also concluded that the workers were not direct employees of HAL, citing the contractor's role in hiring, paying, and supervising them. Accordingly, the Uttar Pradesh High Court allowed the writ petition and quashed the Industrial Tribunal's award.

REGISTRATION, RENEWAL, AND WELFARE SCHEMES FOR CONSTRUCTION WORKERS CANNOT BE SUSPENDED CITING THE MODEL CODE OF CONDUCT

The Bombay High Court vide a writ petition dated November 6, 2024, in the case of Maharashtra Rajya Bandhkam Kamgar Sanyukt Kriti Samiti v. State of Maharashtra, quashed the Maharashtra Building and Other Construction Workers' Welfare Board's circular which suspended fresh registrations, renewals, and distribution of welfare benefits for construction workers citing the Model Code of Conduct ("**MCC**") in view of the Maharashtra Legislative Assembly elections.

The Bombay High Court ruled that the provisions of the MCC do not interfere with the ongoing statutory activities under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. The Bombay High Court bench emphasised that the aforementioned act is a welfare legislation aimed at providing health, safety, and social benefits to construction workers, and such statutory rights cannot be suspended during elections. It also highlighted that the MCC is intended

to prevent political abuse during elections, not to halt pre-existing welfare schemes. The Bombay High Court directed the Maharashtra Building and Other Construction Workers' Welfare Board to resume operations of various schemes, including registration and renewal of construction workers and dismissed the argument that the election code could justify suspending these essential services.

PENSIONARY BENEFITS ARE ONLY AVAILABLE TO RETIRED EMPLOYEES WHEN THE EMPLOYEE HOLDS A PENSIONABLE POST

The Orissa High Court, in its judgment dated November 8, 2024, in the case of Jagadananda v. State of Odisha & Ors., ruled that pensionary benefits are a vested right contingent on the fulfilment of prescribed conditions under the applicable statutory provisions.

In the present case, the petitioner, a former State Information Commissioner, sought post-retirement pensionary benefits under Section 16(5) of the Right to Information Act, 2005. The petitioner argued that the phrase "other terms and conditions" implies the inclusion of pensionary benefits. However, the State Government contended that there was no statutory provision to grant pension to State Information Commissioners.

The Orissa High Court dismissed the petition, holding that pensionary benefits must be explicitly authorised by a legislation or policy. It found that the Right to Information Act, 2005 and its related rules deliberately excluded such benefits for the petitioner's position unless the role was previously pensionable. The Orrisa High Court determined that, in the absence of specific rules granting State Information Commissioners the entitlement to pension in the present case, the petitioner has no legal basis to claim such benefits. The Orrisa High Court held that the right to pension arises exclusively when an employee holds a pensionable post and fulfils the conditions stipulated under the applicable legal framework.

WORKMAN'S RETRENCHMENT BY KRISHI UPAJ MANDI SAMITI IN COMPLIANCE WITH SECTION 25F INDUSTRIAL DISPUTES ACT, 1947

The Madhya Pradesh High Court vide petition dated November 8, 2024, in the case of Krishi Upaj Mandi Samiti Pichhore & Ors. v. Mukesh Kumar Bhatt, while allowing the petition, set aside the Labour Court's order and upheld the retrenchment of the workman, Mukesh Kumar Bhatt. It noted that the retrenchment complied with the requirements of Section 25F of the Industrial Disputes Act, 1947.

In the present case, the petitioner, Krishi Upaj Mandi Samiti, had retrenched the respondent workman in 1994, but the workman initiated legal proceedings only in 2009, 15 (Fifteen) years after his termination. The Labour Court had ordered reinstatement with partial back wages.

The Madhya Pradesh High Court observed that the employer had paid one month's wages in lieu of notice and retrenchment compensation, fulfilling the conditions under Section 25F of the Industrial Disputes Act, 1947. The Madhya Pradesh High Court also noted the significant delay in initiating legal action by the workman and ruled that the retrenchment process was carried out in accordance with the law.

RETENTION ALLOWANCE FORMS PART OF BASIC WAGES FOR EMPLOYEES' PROVIDENT FUND CONTRIBUTIONS

The Bombay High Court vide judgment dated November 11, 2024, in the case of Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd. v. Appellate Tribunal, Employees Provident Fund, while dismissing the petition, held that retention allowances paid to seasonal workers must be included in basic wages for the purpose of the Employees' Provident Fund ("**EPF**") contributions under the Employees' Provident Fund Act, 1952.

In the present case, the petitioner, Maharashtra State Cooperative Cotton Growers' Marketing Federation Ltd., had paid retention allowances to seasonal workers but did not make corresponding EPF contributions. The Assistant Provident Fund Commissioner issued a demand notice for overdue contributions. The petitioner contested that retention allowances were not part of basic wages.

The Bombay High Court dismissed the petitioner's arguments, ruling that the Federation's activities, including cotton procurement and processing, fell within the scope of "industry" under the Employees' Provident Fund Act, 1952. It also affirmed that retention allowance must be included in EPF calculations, as it is not excluded from the definition of basic wages.

LABOUR COURT'S FACTUAL FINDING SHOULD NOT BE DISTURBED WITHOUT COMPELLING REASON

The Supreme Court of India vide order dated November 13, 2024, in the case of Ganapati Bhikrao Naik v. Nuclear Power Corporation of India Limited, allowed the appeal and held that the factual findings of a Labour Court should not be disturbed by a writ court without compelling reasons and directed the reinstatement of an employee who had been terminated due to conflicts arising from his estranged marital relationship.

In the present case, the appellant, who had been employed as a helper under a rehabilitation package in 1990 following the acquisition of his father-in-law's land, was terminated in 2002 after his marriage became estranged. While the departmental inquiry resulted in termination, the Labour

Court set aside the order, recognizing that the appellant's appointment was valid under the rehabilitation scheme. However, the Writ Court had overturned the Labour Court's decision, claiming that the appellant had fraudulently secured the job. The Supreme Court of India, allowing the appeal, ordered that the employee be reinstated within 4 (Four) weeks.

GOVERNMENT OF RAJASTHAN AMENDS THE RAJASTHAN PRIVATE SECURITY AGENCIES (REGULATION) RULES, 2022

The Home (Group-9) Department, Government of Rajasthan, vide notification dated November 19, 2024, introduced significant amendments to the Rajasthan Private Security Agencies (Regulation) Rules, 2022, aimed at modernising and streamlining the licensing process for private security agencies.

The amendment mandates that all applications for the grant or renewal of licenses, to be submitted in Form-I, must now be filed exclusively through the Private Security Agency Licensing Portal (PSARA). This online submission process is to be accompanied by the payment of the prescribed fees as outlined under Section 7(3) of the Private Security Agencies (Regulation) Act, 2005.

GOVERNMENT OF WEST BENGAL EMPOWERS JUDGES/ PRESIDING OFFICERS (INCLUDING THE JUDGES-IN-CHARGE) OF INDUSTRIAL TRIBUNALS, LABOUR COURTS, EMPLOYEES' COMPENSATION COURTS, AND EMPLOYEES' INSURANCE COURTS TO ADJUDICATE UNDER KEY LABOUR LAWS

The Labour Department, Government of West Bengal, through a notification dated November 19, 2024 has extended the jurisdiction (territorial as well as subject matter) for Judges/ presiding officers (including the Judges-in-Charge) of Industrial Tribunals, Labour Courts, Employees' Compensation Courts, and Employees' Insurance Courts to adjudicate disputes under key labour laws i.e., the Industrial Disputes Act, 1947; Employees' Compensation Act, 1923; Payment of Wages Act, 1936; Minimum Wages Act, 1948; and Employees' State Insurance Act, 1948.

It has also authorised presiding officers (including the Judges-in-Charge) acting in additional capacities to handle cases from other tribunals or courts under their jurisdiction. Heads of Directorate/Judges-in-Charge are authorised to distribute pending and newly filed cases among tribunals and courts for swift disposal, as well as transfer cases to other Directorates when necessary. This notification supersedes all previous orders and is effective immediately.

EMPLOYEE ENTITLED TO REGULARIZATION AFTER 10 (TEN) YEARS OF CONTINUOUS SERVICE, DESPITE CONTRACTUAL APPOINTMENT

The Jharkhand High Court vide judgment dated November 19, 2024, in the case of Rajesh Kumar Verma v. State of Jharkhand, set aside a single bench judgment and directed the State to regularize the appellant's service as a clerk despite his initial contractual appointment.

In the present case, the appellant had been engaged as a computer operator on a daily wage basis since 2008 and later on a contractual basis. The appellant sought regularization after completing over 10 (Ten) years of continuous service. The appellant's claim for regularization was rejected by the single judge bench, who ruled that the regularization scheme did not apply to contractual appointments.

However, the Division Bench of the Jharkhand High Court overturned this decision, observing that the appellant's continuous service was virtually indistinguishable from a permanent position. The Jharkhand High Court further directed the State to regularize the appellant's service as a clerk, along with other employees regularised, on July 22, 2022, within 3 (Three) months from the date of receipt of copy of this order.

INDIVIDUAL IS AN EMPLOYEE UNDER THE EMPLOYEES COMPENSATION ACT, 1923 IF ENGAGED IN CONSTRUCTION, MAINTENANCE OR DEMOLITION OF BUILDING WHICH IS MORE THAN 1 (ONE) STOREY HIGH

The Uttar Pradesh High Court, vide order dated November 21, 2024, in the case of Seema Devi v. Vimal Jain and anr., remanded back the current matter to the Employees Compensation Commissioner and, while allowing the appeal, held that the deceased is an employee under the Employees Compensation Act, 1923.

In the present case, the claimant/appellant's husband, while carrying out wall painting and repair work, fell from the third floor of a building and died from the injuries. The widow sought compensation under Section 3 of the Employees Compensation Act, 1923, from the contractor and house owner who had employed her husband. The Employees Compensation Commissioner rejected the claim, citing no employer-employee relationship.

Challenging this decision, the appellant argued that the contractor had admitted to employing the deceased for the work. The Uttar Pradesh High Court held that the deceased was an employee by relying on Section 2(dd) of the Employees Compensation Act, 1923, as he was engaged in work on a building higher than one storey.

NATIONAL COMPANY LAW TRIBUNAL DOES NOT HAVE THE JURISDICTION TO DECIDE THE VALIDITY OF FACTORY CLOSURE UNDER THE INDUSTRIAL DISPUTES ACT, 1947

The National Company Law Appellate Tribunal ("**NCLAT**"), New Delhi bench, in its judgment dated November 22, 2024, in the case of Rakesh J Shah & Ors. v. Sanjay Kumar Agarwal and Ors., held that the National Company Law Tribunal is not the appropriate forum to determine whether a factory closure complies with the Industrial Disputes Act, 1947. Such matters should be addressed before the Industrial Court or Labour Court.

In the present case, the appellants, representing 271 (Two Hundred Seventy One) workers, challenged the liquidator's rejection of their claims for dues during the liquidation proceedings of Biotor Industries Limited., citing the alleged non-compliance of the factory's closure in 2010 with the Industrial Disputes Act, 1947. The liquidator dismissed the claims due to a lack of evidence proving employment during the relevant period. The National Company Law Tribunal upheld this decision, prompting the appeal.

The NCLAT, while dismissing the appeal, ruled that disputes regarding compliance with the Industrial Disputes Act, 1947 fall under the jurisdiction of the Industrial Court or Labour Court. The NCLAT emphasised that workers had failed to pursue their rights promptly, waiting years to raise the issue during liquidation proceedings. NCLAT upheld the liquidator's rejection of claims, concluding that the appellants failed to prove continuity of employment.

AMENDMENT TO THE MASTER DIRECTION: KNOW YOUR CUSTOMER DIRECTION, 2016

The Reserve Bank of India ("**RBI**") vide its notification dated November 06, 2024, has amended its Know Your Customer Direction, 2016 ("**KYC Directions**"), in order to align the KYC Directions with the changes brought by RBI in the *Prevention of Money Laundering (Maintenance of Records) Rules, 2005* vide Gazette Notification dated July 19, 2024 and changes introduced by Government of India in terms of the corrigendum dated April 22, 2024 issued by the Government of India to the Order dated February 2, 2021 on the 'Procedure for implementation of Section 51A of the Unlawful Activities (Prevention) Act, 1967' . This notification provides for changes in the customer due diligence ("**CDD**") as conducted by entities regulated by the RBI ("**RE**").

The key highlights of the notification are:

(i) RBI has now allowed customer (for whom CDD exercise has been undertaken by RE previously) to avail of any other product or service from the same RE, provided the customer's identification (generated pursuant to CDD exercise) has already been verified.

(ii) RBI has extended following mechanisms previously limited to periodic KYC updates to regular KYC updates: (i) Customers will now receive acknowledgments specifying the date of document receipt and updates made to their KYC; (ii) REs may obtain specific identification documents such as passports, Aadhaar numbers, and Voter ID cards, among others, during regular KYC updates; (iii) KYC updates can be facilitated at any branch of RE for convenience of the customers; and (iv) Aadhaar OTP-based e-KYC in non-face to face mode is now permissible for regular updation of KYC.

(iii) REs must upload/update KYC data to the Central KYC Records Registry (CKYCR) within 7 (Seven) days of obtaining new or updated information from customers. CKYCR will inform all reporting entities about updates to a customer's KYC record. REs should retrieve updated KYC records from CKYCR and update their own records accordingly.

(iv) The designation of the Central Nodal Officer for the Unlawful Activities (Prevention) Act has been changed from "Additional Secretary" to "Joint Secretary".

DSK Comment: *The amendments introduced by the RBI aim to enhance the efficiency and effectiveness of the KYC and CDD processes, ensuring better compliance with evolving regulatory frameworks. Further, the amendments seek to align the provisions of KYC Directions with the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 and the Unlawful Activities (Prevention) Act, 1967.*

Source

BHIM INTRODUCED NATIONAL PENSION SYSTEMS ("NPS") CONTRIBUTIONS VIA BHARAT CONNECT FOR SEAMLESS RETIREMENT PLANNING

NPCI BHIM Services Ltd. ("**NBSL**"), a subsidiary of National Payments Corporation of India ("**NPCI**"), has introduced a feature enabling NPS contributions through the BHIM app. This service simplifies the process by allowing users to contribute to their existing NPS accounts using just their registered mobile numbers and basic customer details. The contributions are processed and invested within 1(One) business day, ensuring quick and secure transactions. This integration is powered by Bharat Connect, offering a seamless, user-friendly, and accessible retirement savings solution.

DSK Comment: *NPCI aims to enhance financial inclusion and easy retirement planning among citizens by integrating essential financial services into the BHIM app. By simplifying NPS contributions, it seeks to foster a culture of long-term financial security and resilience. Moving forward, NPCI aims to further expand its offerings by integrating additional financial and investment tools into BHIM, strengthening its position as a financial platform and contributing to a digitally empowered India.*

Source

INTRODUCTION OF NEW INTER-OPERABILITY SYSTEM TO TACKLE UPI FRAUDS AND REDUCE RELIANCE ON UPI

The NPCI is in the process of developing a new inter-operability system for net banking and mobile banking, involving integration with six major banks, including HDFC and ICICI. This system aims to enable direct bank payments for merchant transactions, reducing reliance on UPI and eliminating the need for payment gateways. By partnering with payment aggregators, the system will simplify merchant onboarding and facilitate seamless single transactions across merchant outlets while enhancing transaction security and success rates.

DSK Comment: *This initiative is crucial in addressing the rising incidence of UPI fraud by offering a more secure and reliable alternative for digital transactions. It aligns with RBI's 2025 vision to create a robust and multifaceted payment ecosystem. Moving forward, the NPCI would definitely focus on scaling up the system by including all banks and merchants, ensuring widespread adoption.*

Source

SECURITIES AND EXCHANGE BOARD OF INDIA ("SEBI") HAS PROPOSED AMENDMENTS WITH RESPECT TO ASSIGNING RESPONSIBILITY FOR THE USE OF ARTIFICIAL INTELLIGENCE TOOLS BY ENTITIES REGULATED BY IT

SEBI through its consultation paper dated November 12, 2024, has proposed amendments to its regulatory framework to address the growing use of Artificial Intelligence ("**AI**") and Machine Learning ("**ML**") tools by entities in the securities market. These amendments seek to establish clear responsibilities for Market Infrastructure Institutions ("**MII**"), registered intermediaries, and other regulated entities that use AI/ML tools in their operations or while offering services to investors (**"SEBI Regulated Entities"**). These amendments mandate accountability for the privacy, security, and integrity of stakeholders' data and compliance with applicable laws. Additionally, SEBI aims to regulate the deployment of these technologies by requiring entities to ensure transparency and preparedness for potential risks.

The following are the key highlights of the consultation paper:

(i) In SEBI (Intermediaries) Regulations, 2008, regulation 16C has been proposed to be introduced stating that all the SEBI Regulated Entities, irrespective of their scale and scenario will be solely responsible for:

a. privacy, security, and integrity of stakeholders' data, especially data held in a fiduciary capacity;
b. compliance with applicable laws; and
c. ensuring reliability and safety in the output of AI/ML systems used.

(ii) In the Securities Contracts (Regulation)(Stock Exchanges and Clearing Corporations) Regulations, 2018, regulation 39B has been proposed to be introduced stating that stock exchanges and clearing corporations using AI/ML tools must ensure data protection, privacy, security and integrity of the investors. Additionally, they shall be solely responsible for all the outputs arising from any such tools and techniques and shall ensure compliance with applicable laws and regulations.

(iii) In the SEBI (Depositories and Participants) Regulations, 2018- Regulation 82B has been proposed to be inserted stating that, depositories using AI/ML tools must ensure data protection, privacy, security and integrity of the investors. Additionally, they shall be solely responsible for all the outputs arising from any such tools and techniques and shall ensure compliance with applicable laws and regulations.

For the purpose of these proposed amendments, AI/ML tools have been defined as applications, software programs, or systems used for (i) trading and investment-related activities; (ii) dissemination of investment strategies or advice; (iii) compliance or internal management purposes and (iv) any scenario where AI/ML is part of public offerings or internal operations.

DSK Comment: *SEBI's initiative is a timely and necessary response to the increasing reliance on AI/ML*

in the financial markets. While these technologies offer significant advantages, such as enhanced efficiency and risk management, they also present challenges related to data security, privacy, and ethical usage. By enforcing accountability and ensuring compliance, SEBI is taking steps to protect investors and maintain trust in the financial ecosystem.

Source

INFRASTRUCTURE

INDIA AND AUSTRALIA LAUNCH RENEWABLE ENERGY PARTNERSHIP

India and Australia have officially inaugurated the Renewable Energy Partnership (REP) during the second India-Australia Annual Summit, held on the sidelines of the G20 Summit in Rio de Janeiro. This partnership aims to foster collaboration in areas such as solar photovoltaic (PV) technologies, green hydrogen, energy storage, renewable energy workforce training, and the promotion of two-way investments.

MNRE VIDE ITS NOTIFICATION, HAS MADE IT MANDATORY FOR STAKEHOLDERS TO INPUT DATA ON THE DCR VERIFICATION PORTAL FOR SOLAR MODULES

The Ministry of New and Renewable Energy (MNRE) has mandated stakeholders to fill past data (from January 1, 2024 onwards) regarding Domestic Content Requirement (DCR)-compliant solar PV modules on the DCR Verification Portal operated by the National Institute of Solar Energy (NISE).

AMENDMENT IN SOLAR POWER SCHEME FOR TRIBAL AND PVTG AREAS

The Ministry of New and Renewable Energy (MNRE) has issued amendments to the New Solar Power Scheme for Tribal and PVTG Habitations/Villages under PM JANMAN and PM JUGA (dated 18.10.2024).

UNDERSTANDING THE RECENT INSTANCES OF FOOD IMPORT REJECTIONS BY THE FSSAI

The **Food Safety and Standards Authority of India (FSSAI)** is the apex regulatory body tasked with overseeing food safety and quality across the nation. Established by the **Food Safety and Standards Act, 2006**, FSSAI operates under the Ministry of Health and Family Welfare of the Government of India. This statutory authority is entrusted with the mandate of safeguarding public health by ensuring that food products sold within the country meet rigorous safety, labelling and quality standards. FSSAI's regulatory functions extend to setting food safety norms, licensing and registering food businesses, inspecting and enforcing compliance, and taking corrective actions to prevent foodborne illnesses and protect consumers' interests.

The authority and jurisdiction of FSSAI are enshrined in the **Food Safety and Standards Act, 2006**, which consolidated and simplified existing food laws into a unified framework. The Act empowers FSSAI with the ability to draft regulations, enforce compliance, and ensure that food is produced, processed, packaged, labelled, and distributed in a manner that protects consumer health.

Recent Developments and Challenges

The FSSAI has ramped up efforts to ensure that imported food products meet the country's stringent safety and quality regulations. Over the past year, more than 1,500 consignments of food items—including walnuts, apples, whisky, cheese, almonds, and dates—have been rejected at Indian borders. These rejections are attributed to a range of issues such as contamination with pesticides or heavy metals, microbiological hazards, mislabelling, and failure to adhere to India's established safety and quality benchmarks. Both developing and developed nations have seen their products flagged, underscoring the global implications of non-compliance with Indian standards.

To tackle these challenges systematically, the FSSAI introduced the **Food Import Rejection Alert (FIRA)** portal in September 2024 during the Global Food Regulators Summit. The portal is designed to enhance food safety management through robust tracking, communication, and preventive measures. It supports regulatory efforts by offering the following key features:

1. **Real-Time Notifications**: FIRA enables immediate dissemination of alerts regarding rejected consignments, empowering stakeholders—including food safety authorities, importers, and businesses—to respond swiftly to prevent hazardous products from entering the market. For instance, items found with contaminants or mislabelled packaging are flagged before they reach consumers.
2. **Global Collaboration**: The portal facilitates an exchange of information between Indian regulators and international food safety bodies, ensuring that unsafe consignments are identified and managed on a global scale. This fosters a more unified approach to food safety.
3. **Enhanced Traceability**: A detailed record of rejected consignments helps track products across the supply chain, reducing the risk of harmful items slipping through regulatory gaps. This also enables better monitoring and prevention of future violations.
4. **Comprehensive Data Repository**: The portal provides a centralized database of past import rejections, offering valuable insights into patterns of non-compliance. This data aids policymakers in refining regulatory frameworks and guiding future actions to pre-empt safety risks.
5. **Broad Accessibility**: The FIRA platform is designed to be user-friendly and accessible to various stakeholders, including businesses, consumers, and regulators. This inclusivity ensures transparency and encourages collaborative efforts to uphold food safety standards.

Since its launch, FIRA has led to increased scrutiny of imports, particularly for contaminants such as pesticide residues, heavy metals, and microbiological hazards. Rejections have also been issued for technical issues such as incorrect labelling, missing documentation, or failure to meet India-specific regulations. Notable examples include:

- **Cinnamon flower buds** from Sri Lanka and **arecanut** from Bangladesh, both rejected due to contamination and mold-related issues.
- **Tea bags** from Japan, turned away because the ingredient "Rooibos" is not permitted under FSSAI regulations.
- **Fresh apples** from Turkey, denied due to inadequate shelf life.
- **Non-alcoholic beer** from China, which failed to meet the prescribed pH standards for alcohol-free beverages.

FIRA represents a significant leap forward in India's ability to safeguard its food supply, ensuring that only high-quality, compliant products reach its consumers. By combining real-time monitoring, global cooperation, and a robust risk management framework, the portal exemplifies India's commitment to food safety and regulatory excellence.

Controlling Food Imports: Regulations and Enforcement
The process through which the FSSAI scrutinizes imported food products involves a robust three-stage verification process:

1. **Document Scrutiny:** The first stage involves a review of documentation accompanying the imported consignment. Required documents include certificates of analysis, safety compliance declarations, and other critical paperwork that verify the product's compliance with Indian standards.

2. **Visual Inspection:** In the second stage, the physical inspection of the imported goods is carried out to assess packaging integrity and detect any visible signs of damage, contamination, or spoilage. This process is essential for determining the condition of the product and ensuring that it has not been compromised during transit.

3. **Laboratory Testing:** The final stage involves sampling and laboratory testing of the product. The tests check for potential contaminants such as heavy metals, pesticide residues, and microbiological hazards to confirm whether the food meets FSSAI's safety standards. Under Regulation 3.1, FSSAI has the authority to conduct these tests and take necessary actions if a product fails to meet the prescribed safety criteria. Non-compliant products may be rejected, re-exported, or destroyed as per the regulations.

This robust framework not only ensures a safer food supply for Indian consumers but also incentivizes businesses to prioritize compliance and quality, fostering a more transparent and reliable imported food ecosystem.

DSK Views

*The **FSSAI** plays a critical role in safeguarding public health by enforcing stringent food safety standards. Its rigorous inspections ensure that only high-quality, safe food products are permitted in the Indian market. This fosters trust in the country's food supply while protecting consumers from potential health risks.*

Compliance with FSSAI's robust regulatory framework is essential for importers to maintain a foothold in the Indian market. These regulations, while ensuring safety, also introduce significant complexity to food trade operations. Importers must possess technical and procedural expertise to navigate these regulations effectively. This includes understanding labelling norms, safety benchmarks, testing and documentation requirements. Non-compliance not only leads to rejections and financial losses but also tarnishes the exporting country's reputation, as the FIRA portal's publicly accessible database exposes rejected consignments.

To mitigate these risks, exporters and importers can benefit from specialized guidance and domain expertise. By understanding FSSAI's requirements thoroughly, businesses can streamline their processes, ensure compliance, and avoid the pitfalls of regulatory oversight. In doing so, they contribute not only to a safer food supply chain but also to a positive perception of their brand in the highly competitive F&B market.

MEDIA & ENTERTAINMENT

ARMY CAN NOW DIRECTLY ISSUE NOTICES TO REMOVE ONLINE POSTS SHOWING INCORRECT CONTENT WITH REGARDS TO THE INDIAN ARMY

The Ministry of Defence has appointed a senior army officer, the Additional Directorate General (ADG) of Strategic Communication, as the "nodal officer", which officer is authorised to issue notices, including takedown requests, to social media platforms regarding any illegal content related to the Indian Army and its units. This action falls under Section 79(3)(b) of the Information Technology Act, 2000.

According to a source within the army, before this notification, the Indian Army depended on the Ministry of Electronics and Information Technology (MeitY) to remove or block illegal content related to the army. Through this notification, the ADG (strategic communication) will be able to highlight cases and issue notices directly to intermediaries when they find unlawful content related to the Indian army.

WIKIPEDIA UNDER SCRUTINY FOR COMPLAINTS OF BIASED AND INACCURATE INFORMATION

The Indian government has expressed concerns to Wikipedia regarding alleged biases and inaccuracies in its content, raising the question of whether the platform should be classified as a publisher rather than an intermediary.

The Ministry of Information and Broadcasting, in its communication, highlighted numerous complaints, pointing out that editorial control on Wikipedia seems to rest with a small group. Officials suggested this could undermine Wikipedia's claim of being a neutral, volunteer-based platform, according to reports.

The case centers on edits to ANI's Wikipedia page, which ANI claims were defamatory, describing ANI as a "propaganda tool" for the current government. In response, ANI filed a defamation suit and sought court intervention to compel Wikipedia to disclose the identities of three individuals linked to these edits. ANI escalated the matter by filing a contempt application, asserting that Wikipedia ignored a prior court directive to share the requested user details.

In its defence, Wikipedia requested additional time, arguing that given physical office in India complicated compliance. However, Justice Chawla rejected this argument, emphasizing that Wikipedia must respond promptly. He warned that if the platform continued to ignore the court's order, contempt proceedings would follow.

'MATCH FIXING – THE NATION IS AT STAKE' IN A FIX

The Bombay High Court on 13th November, 2024 dismissed a plea seeking a stay on the release of the movie "***Match fixing- The Nation is at Stake",*** a film inspired by the 2008 Malegaon blast case. The film's portrayal of the blast and the events that ensued was challenged by Lt. Colonel Prasad Purohit, one of the accused in the case, who argued that it could harm his reputation and career.

Another petition filed by Nadim Khan, who claimed the film hurt the religious sentiments of Muslims, was withdrawn after the Central Board of Film Certification (CBFC) represented by advocate Deepak Shukla confirmed that certain objectionable parts had already been removed during certification.

The Bench consisting of Justice BP Colabawalla and Justice Somasekhar Sundaresan dismissed Purohit's petition.

Purohit had argued that the film's release violated a *"2019 media gag order"* imposed by a special NIA court which barred media from reporting about the case to maintain the integrity of the trial. He contended that the same restrictions should apply to the movie since it could influence public opinion and interfere with the ongoing trial.

The movie's producers countered that the gag order was issued when the trial had not yet begun and was directed only at media outlets. The producers argued that as third-party filmmakers, they were not bound by the order. They further argued that the film is based on a fictional book, *'The Game Behind Saffron Terror'* and that the movie includes a disclaimer stating that it is purely fictional and has no connection to real-life events.

While the court acknowledged Purohit's concern regarding the film's trailer which invites viewers to "discover the truth," it ultimately dismissed the petition on the ground that the film is a work of fiction and would not affect the ongoing trial. The Court also rejected Purohit's argument that the case resembled the 2004 *Black Friday* movie case where the film based on the 1993 Mumbai bombings was temporarily withheld due to its portrayal of events during an ongoing trial.

The bench noted that the *Black Friday* film depicted events as true and was based on books that reflected the prosecution's narrative. In contrast, the movie *Match fixing* is fictional and its producers have made clear that it was not meant to represent real events, the Court said.

LAWSUIT FILED AGAINST NAYANTHARA: BOYOND THE FAIRYTALE

Actor Dhanush K. Raja's production company, Wunderbar Films Private Limited, has filed a civil suit in the Madras High Court against actress Nayanthara Kurian, her husband and director Vignesh Shivan, their production company Rowdy Pictures Private Limited, and two other parties for the unauthorized use of visuals from the Tamil film *Naanum Rowdy Dhaan* in the Netflix docu-drama *Nayanthara: Beyond the Fairytale*. The lawsuit arose after Dhanush alleged that certain behind-the-scenes (BTS) footage was used without obtaining a No Objection Certificate (NOC) from him. During the hearing of the case, the court allowed Dhanush to include Los Gatos Production Services India LLP, Netflix's operational entity in India, in the suit due to jurisdictional reasons. The dispute became public shortly before the documentary's release on November 18, when Nayanthara issued an open letter accusing Dhanush of harboring a personal grudge and refusing to issue the NOC despite her repeated requests over two years. Dhanush had previously sent a legal notice demanding ₹10 crore (approximately $1.2 million) in damages for what he claimed was the unauthorized use of "three seconds" of footage in the docu-drama's trailer, although Nayanthara contended that was shot by her using her personal devices during the shoot of the film.

SUPREME COURT CLARIFIES THAT SALE CERTIFICATES ISSUED AFTER COURT AUCTIONS ARE NOT COMPULSORILY REGISTRABLE AND AUCTION PURCHASERS ARE NOT REQUIRED TO DEPOSIT STAMP DUTY

The Hon'ble Supreme Court ("**Court**"), in State of Punjab & Anr. vs Ferrous Alloy Foldings (Civil Appeal No. 12527 of 2024), ruled that an auction purchaser is not required to pay stamp duty for the issuance of a sale certificate following an auction in court proceedings. The Court further held that stamp duty would be payable only when the sale certificate is utilized for some other purpose but not when the certificate remains as it is and mere filing under Section 89(4) of the Registration Act, 1908 ("**Act**") itself is sufficient when a copy of the sale certificate is forwarded by the authorised officer to the registering authority. However, Articles 18 and 23 of the Indian Stamp Act, 1899, make it clear that when the auction purchaser presents the original sale certificate for registration, it would attract stamp duty under the said Articles.

Further, the Court observed that a sale certificate issued by a public authority is not subject to registration under Section 17(1) of the Act, as it does not effectuate the transfer of ownership. Instead, it merely serves as proof of the title. The actual transfer of title occurs only when the sale is confirmed by the competent authority, not at the time of issuance of the certificate.

TELANGANA STATE REAL ESTATE REGULATORY AUTHORITY PENALIZES BUILDER FOR ILLEGAL SALES AND ORDERS A REFUND TO THE AGGRIEVED HOMEBUYER

The Telangana State Real Estate Regulatory Authority ("**Authority**") in Sri Sharath Chandupatla vs Buildox Private Limited (Complaint No. 520 of 2024) directed the builder to refund the initial amount paid by the homebuyer for purchasing a flat in an unregistered project of the builder.

The homebuyer after making the initial payment found that the builder had made violations of several provisions of the Real Estate Regulation and Development Act, 2016 ("**Act**") as he had no development agreement or title to the land, had created encumbrances on the land and had sold the units comprising in the project without obtaining registration under the provisions of the Act. However, the Authority refused to provide interest on the amount stating that it was the duty of the homebuyer to perform his due diligence before making payment to the builder.

The authority rejected the homebuyer's prayer to blacklist the builder from future projects holding that the punishment was too severe.

The authority further observed that it was the duty of the homebuyer under Section 19(1) of the Act to verify the project details and its registration before making any payment to the builder.

SPORTS AND GAMING

SPORTS

MICHAEL JORDAN AND RACING TEAMS FAIL TO SECURE GUARANTEED NASCAR SPOTS FOR 2025

Michael Jordan and other stock-car team owners, including his 23XI Racing team and Front Row Motorsports, have failed to convince a U.S. judge to compel Nascar to secure key spots for their drivers in the 2025 season. U.S. District Judge Frank Whitney ruled that their concerns about losing revenue and drivers were speculative, as Nascar could revoke their "charter" memberships while the lawsuit proceeds in federal court in Charlotte, North Carolina.

The lawsuit, filed in October, accused Nascar and its CEO, Jim France, of violating U.S. antitrust laws. It claims Nascar monopolized premier stock-car racing by acquiring top-tier racetracks and imposing restrictive policies that prevent teams from competing with rival organizations. According to the complaint, this monopoly allows Nascar to retain a disproportionate share of profits.

Chartered teams, such as 23XI and Front Row, are guaranteed slots in high-profile Cup Series races at tracks like Daytona International Speedway, while non-chartered teams must compete for limited "open" slots. The two teams argue they rejected Nascar's latest charter agreement because it included clauses that would prevent them from suing the league.

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SWIATEK RECEIVED ONE MONTH DOPING BAN

World No. 2, Iga Swiatek, tested positive for trimetazidine (TMZ) in an out-of-competition urine sample taken on 12 August, and received notification of the anti-doping rule violation a month later on 12 September with a one-month suspension.

The International Tennis Integrity Agency (ITIA) said it determined that Swiatek's tainted urine sample was because of a contaminated medicine she took and so she bore a low level of responsibility. The ITIA and Swiatek agreed she would serve a one-month suspension; because she was credited for the time she already missed, there were eight days remaining in a "one-month" penalty, so she is "serving" those now, even though the season is over.

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PREMIER LEAGUE VOTES TO APPROVE CHANGES TO THE ATP REGULATIONS

Premier League clubs have voted to approve changes to Associated Party Transaction regulations (APTs) governing commercial deals, despite opposition from Manchester City, Newcastle United, Nottingham Forest and Aston Villa. The vote came after an independent panel found aspects of the Premier League's rules to be unlawful earlier this year, following a lawsuit instigated by Manchester City.

APT rules were formed by the Premier League to prevent clubs from profiting from commercial or sponsorship deals with companies linked to their owners that are deemed above "fair market value". The Premier League said the rule changes relate to "integrating the assessment of shareholder loans" and "include the removal of some of the amendments made to APT rules earlier this year."

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IMANE KHELIF TO TAKE LEGAL ACTION AGAINST MEDIA REPORTS LEAKING HER MEDICAL RECORDS

Imane Khelif, the boxer who won Olympic gold amid a gender eligibility row, is taking legal action over media

reports allegedly detailing her leaked medical records, the International Olympic Committee has said. Reports published in France this week claimed the 25-year-old has XY (male) chromosomes. Khelif filed a legal complaint with the French authorities over the online abuse and harassment she was subjected to during the Games and the IOC said she was now also taking action over new reports which emerged in France.

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NIKE WINS AIR JORDAN TRADEMARK CASE

U.S. District Judge Michael A. Shipp ruled in favour of Nike in a trademark dispute against "Air Global" sneakers that look strikingly like Air Jordan 1 sneakers, however, Judge Shipp awarded Nike with a meagre $2,930 in damages.

Earlier this year, Nike sued Global Heartbreak, a New Jersey LLC, and its founder and owner, Naadier Riles, for infringement and related claims. In his ruling, Judge Shipp wrote that Nike became aware of the Air Global sneaker last December when it saw a video published by ReasonTV. The video featured Riles, who is described as selling a "reimagined version of an Air Jordan 1 under his own independent clothing label" and running his label out of his apartment in New Jersey. Riles told ReasonTV his shoes reflect his artwork, and the video shows him working on designs.

Judge Shipp found Nike had established its case since Nike and Riles "sell the same product—sneakers," they both use "digital channels" to make sales and "the Air Global sneaker has an extremely similar, if not identical, silhouette, panelling, and sole" as the Air Jordan. The judge also highlighted the likelihood of consumer confusion. He further stressed Nike took "immediate steps to block the infringement" including by sending a cease-and-desist letter and having a call with Riles. Judge Shipp awarded Nike $2,930 to reflect costs associated with filing the case and "multiple service attempts" to try to reach Shipp. But rejected Nike's demand for $4 million in damages since he was "unable to ascertain the damages based on the current record."

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NADA SUSPENDS BAJRANG PUNIA FOR 4 YEARS

The National Anti-Doping Agency has suspended Bajrang Punia for four years for his refusal to provide his sample for dope test on March 10, 2024 during selection trials for the national team. NADA had first suspended Punia on April 23, 2024 for the offence following which, the World Governing body UWW had also suspended him. Punia had appealed against the provisional suspension and NADA's Anti-Disciplinary Doping panel (ADDP) had revoked it on May 31, 2024 till NADA issues the notice of charge.

Punia has maintained since the beginning that he was given extremely prejudicial and unfair treatment with respect to doping control because of his involvement in the protest against former WFI President Brij Bhushan Sharan Singh. Further, Punia has also maintained that he never refused to give sample but only demanded to know NADA's response to his email where he sought answer why expired kits were sent to take his samples in December 2023.

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GAMING

CCI LAUNCHES PROBE INTO GOOGLE OVER ALLEGED ANTI-COMPETITIVE PRACTICES IN REAL MONEY GAMING

The Competition Commission of India (CCI) is investigating Google LLC for alleged abuse of dominant position in the real money gaming (RMG) sector, prompted by a complaint from Winzo Games. The CCI found initial evidence of violations of Section 4 of the Competition Act, 2002, focusing on Google's policies that favor Daily Fantasy Sports (DFS) and Rummy apps.

Key Allegations –

- Pilot Program: Exclusive support for DFS and Rummy apps.
- Ad Restrictions: Limitations on advertising for non-DFS and non-Rummy apps.
- Payment Warnings: Discriminatory warnings for payments to skill-based gaming apps.
- Sideloading Barriers: Challenges faced by developers with malware warnings.

Investigation Focus -

The CCI will examine the rationale behind Google's policies and their anti-competitive effects. This case may set a significant precedent for digital platform regulation in India's gaming industry.

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ILLEGAL BETTING AND GAMBLING ADS SURGE ONLINE; MOSTBET7 TOPS WITH 347 AD VIOLATIONS

Illegal betting and gambling advertisements have surged across digital platforms, prompting the Advertising Standards Council of India (ASCI) to refer 890 such ads to the Ministry of Information and Broadcasting (MIB) for action. Notably, 831 of these ads were Instagram posts featuring betting tickers that linked to offshore betting sites, with some page owners reportedly earning between Rs 2,000 and Rs 3,000 daily from these promotions. Additionally, ASCI identified 50 websites and social media pages promoting illegal betting apps and nine influencer posts endorsing these services.

Mostbet7 leads the violations with 347 reported instances. This increase in illegal gambling promotions underscores the necessity for ongoing regulatory oversight. ASCI is collaborating closely with MIB to address these violations.

In its Half-Yearly Complaints Report for 2024-25, ASCI revealed a significant prevalence of misleading and illegal ads in various sectors, particularly real estate and offshore betting. Between April and September 2024, ASCI reviewed 4,016 complaints, investigating 3,031 ads, with a staggering 98% requiring modifications. Of the ads scrutinized, 2,087 were found to violate legal standards. The report also highlighted that real estate ads accounted for 34% of violations while illegal betting ads made up 29%.

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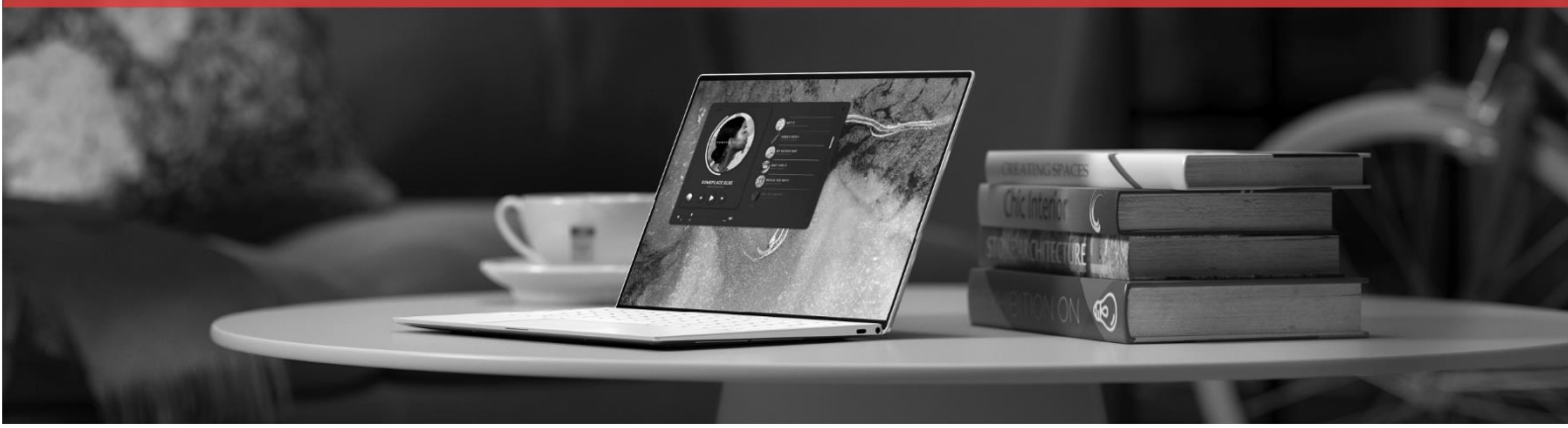

SEBI ISSUES ADVISORY TO INVESTORS ON UNAUTHORIZED VIRTUAL TRADING AND GAMING PLATFORMS

The Securities and Exchange Board of India ("**SEBI**"), on November 4, 2024 re-cautioned the public against usage and engagement with applications/ platforms offering virtual trading, paper trading, and fantasy games which operate basis the stock price data of listed companies ("**Advisory**") (accessible *here*). The Advisory reiterates observations made by SEBI under previous releases, wherein it was noted that such applications/ platforms are engaging in unauthorized activities, including distribution of prize monies basis predictions relating to movement of stock price data of listed companies.

The Advisory further reemphasizes that such virtual trading applications/ platforms are unregistered and unauthorised by SEBI, and that engagement with and conduct of such activities is in violation of the securities exchange and investor protection laws of India. Any interaction of investors with such platforms would be solely at the investors' risk and costs, and such investors would not have recourse to appropriate dispute resolution mechanisms in terms of transactions with such platforms (which remedies are otherwise made available for their benefit).

SEBI's Advisory on virtual trading applications can be further contextualised in terms of a SEBI circular dated May 24, 2024 issued to Market Infrastructure Institutions (MIIs) such as stock exchanges and depositories ("**MII Advisory**") (accessible *here*), wherein SEBI established guidelines for MIIs on sharing of real-time price data with third parties. As a part of such guidelines, SEBI mandated that MIIs may only share real-time price data when required for regulatory compliance and proper functioning of the securities market, subject to written/ formal agreements on the same with such third parties.

CCI IMPOSES PENALTY ON META OVER WHATSAPP'S 2021 PRIVACY POLICY UPDATE

The Competition Commission of India ("**CCI**") has passed an order on November 18, 2024, passing directions and imposing a penalty of INR 213.14 crores on Meta Platforms, Inc. (parent company of WhatsApp) ("**Meta**") in relation to an update of 2021 to WhatsApp's privacy policy penalty ("**Order**"), (accessible *here*). The CCI, in its Order, took cognizance of the anti-competitive practices deployed by Meta in procuring consent from users for its 2021 update to the WhatsApp privacy policy, which enabled user's data from WhatsApp to be shared amongst other Meta entities ("**2021 Privacy Update**"). Since no option of opting out was provided to users, failure to accept the 2021 Privacy Update would effectively impact a users' access and usage of WhatsApp's services.

Under the Order, the CCI further noted that such data sharing terms were introduced by Meta in WhatsApp's privacy policy without providing users with a sufficient explanation on the terms and purposes for which their data may be shared among other Meta entities. In this regard, the CCI observes that Meta abused its dominant position in the market segment of OTT messaging applications, to enable sharing of users' data with other entities of Meta so as to effectively bolster and protect Meta's position in the online display advertising market segment. The CCI deemed this "take it or leave it" approach, combined with the absence of viable alternatives in the market, as an abuse by Meta of its dominant position, in violation of the Competition Act, 2002.

In addition to the monetary penalty, and other related directions, the CCI under its Order: (a) prohibited WhatsApp from sharing user data with other entities of Meta for advertising purposes for a period of 5 years from the date of receipt of the Order; (b) directed WhatsApp to include a detailed explanation under its privacy policy specify the purpose of data sharing, and linking each type of data to its

corresponding purpose; and (c) directed that sharing of user data collected on WhatsApp with other entities of Meta Companies for purposes other than for providing WhatsApp services shall not be made a condition for users to access and use WhatsApp's messaging services.

DOT NOTIFIES THE TELECOMMUNICATIONS CYBER SECURITY RULES

The Department of Telecommunication ("**DoT**") notified the Telecommunications (Telecom Cyber Security) Rules, 2024 ("**Cyber Security Rules**") (accessible *here*) on November 21, 2024, under the Telecommunications Act, 2023 (accessible *here*), with the aim to fortify India's telecommunication infrastructure against evolving cyber threats and to focus on proactive risk management and mitigation.

Under the Cyber Security Rules, "telecommunication entities" – those that provide, operate, or maintain telecommunication services or networks, including entities authorized by the DoT for such purposes ("**Entities**") – are required to implement a telecom cybersecurity policy that includes security safeguards, network testing, incident risk assessments, and rapid response systems. Importantly, these Entities must identify, address, and mitigate cybersecurity incidents through regular audits. These audits, which may be conducted independently or by certified agencies, must be performed at intervals specified by the Central Government, with the audit reports to be submitted to the government.

Additionally, the Cyber Security Rules mandate that each Entity appoints a Chief Telecommunication Security Officer (CTSO) who will be responsible for coordinating with the Central Government and ensuring compliance with the Cyber Security Rules, including the reporting of security incidents. Furthermore, Entities are required to report security breaches to the Central Government within 6 hours of becoming aware of the breach. Within 24 hours, Entities must provide details regarding the number of affected users, duration, geographical impact, network disruptions, and the remedial measures taken.

Pertinently, the Cyber Security Rules require both the manufacturer and importer of equipment with an International Mobile Equipment Identity number ("**IMEI**") to register the same with the Central Government prior to its first sale or testing. Further, any alteration, removal or change in the unique telecommunication equipment identification number (which includes IMEI, electronic serial number, and any other number or signal to identity unique telecommunication equipment) or the possession/trafficking of such altered equipment by any person or Entity shall be deemed to be contravention of the Cyber Security Rules.

P&H HC QUASHES THE ORDER OF CUSTODIAL INTERROGATION GRANTED BY SPECIAL COURT PMLA PASSED IN A ROUTINE MANNER

In a Petition filed under Article 226 of the Constitution of India r/w Section 482 of the CrPC, the ***Punjab & Haryana High Court*** quashed the remand order of the Special Court PMLA granting ED custodial interrogation of the accused holding that it was passed without application of judicial mind. The Court observed that after taking cognizance, the ED had neither issued any notice under Section 50 of the PMLA nor approached the court for conducting further investigation under Section 44(1)(d), explanation (ii) of the PMLA. Section 309 of the CrPC was also not complied (which provides that accused can be remanded if accused is in custody and there is suspicion that he may have committed the offence, and further evidence may be obtained by a remand) - as neither was the accused in custody nor sufficient evidence was obtained against him. The Court further held that order of custodial interrogation should not be granted in a routine manner negating the protection of Article 21 of the Constitution of India.

Case - *Balwant Singh vs. Directorate of Enforcement*

PRIOR SANCTION UNDER S.197 OF CRPC IS MANDATORY TO PROSECUTE PUBLIC SERVANTS FOR MONEY LAUNDERING

The accused had challenged Special Court PMLA's order taking cognizance of the ED complaint filed without prior sanction of the government for prosecution, which is required for public servants in view of S.197 of the CrPC. ED argued that such sanction was not required as non-obstante provision (S.71) in PMLA gives it an overriding effect over all other statutes including the CrPC. However, quashing the cognizance order for want of such sanction, the ***Supreme Court*** held that S.197 of the CrPC applies to PMLA in view of S.65 of the PMLA which specifically makes CrPC provisions applicable to PMLA to the extent they are not inconsistent with PMLA. When a particular provision of CrPC becomes applicable to PMLA proceedings by virtue of S. 65, S.71 cannot override the same.

Case - *Directorate of Enforcement vs. Bibhu Prasad Acharya etc.*

MP HC GRANTS BAIL ON NON-COMPLIANCE OF S. 19 AND S.50 OF THE PMLA

In a case where the ED arrested an accused solely on the basis of statement of a co-accused, the ***Madhya Pradesh High Court*** granted bail reiterating the following principles laid down in earlier judgments:

(i) Section 19 of the PMLA which authorises ED to arrest mandates that if ED has reason to believe that the accused is guilty of the offence on the basis of material in their possession, such reason to believe has to be recorded in writing;

(ii) Any non-compliance with S.19 enures to the benefit of the accused as held in ***V. Senthil Balaji vs. State*** [2024) 3 SCC 51];

(iii) Any statement by an accused in custody under PMLA to ED under S.50 of PMLA is inadmissible against the maker as he is not a person operating with a free mind - as held in ***Prem Prakash vs. UOI*** [2024 SCC Online SC 2270] (covered here) – Link to August Newsletter.

The Court held that ED's opinion under S.19 with respect to accused's guilt was based upon the statement of the co-accused which is prima facie inadmissible. This non-compliance with S.19 would enure to the accused's benefit.

Case - *Asif Hanif Thara vs. Directorate of Enforcement*

NO BAR TO SUBSEQUENT FIR ON SAME ALLEGATIONS EVEN AFTER COGNIZANCE TAKEN ON A PRIVATE COMPLAINT

An FIR was sought to be quashed on the ground that it was registered on the same allegations as contained in a private complaint filed by the informant before the Magistrate on which cognizance had been taken and trial was going on. Referring to Section 233 of the BNSS (S.210, CrPC), the ***Rajasthan High Court*** stayed the complaint proceedings and held that if complaint proceedings are already initiated and the police receives a complaint on the same set of allegations, they are not barred from registering an FIR. All that is mandated procedurally is that Magistrate shall stay further proceedings in the complaint, which has been instituted prior to the FIR so as to await the outcome of the investigation by the police.

Case - *Ram Chandra Bisu and ors. vs. State of Rajasthan and anr.*

PROCEDURE FOR AN FIR REGISTERED BEFORE AND AFTER ENFORCEMENT OF BNSS, 2023

Interpreting the savings clause under the BNSS, the ***Gauhati High Court*** has reiterated the position taken by *inter alia* the Allahabad High Court and the Delhi High Court vis-à-vis application of the new criminal codes and held that for FIRs registered prior to enactment of BNSS (i.e., prior to July 1, 2024), applications for pre-arrest or regular bail or a criminal petition would be filed under BNSS and not CrPC.

Case - *XXX vs. State of Arunachal Pradesh*

ANTICIPATORY BAIL CAN BE GRANTED TO A PERSON DECLARED AS PROCLAIMED OFFENDER UNDER SECTION 82 OF CRPC

The ***Supreme Court*** held that there is not a total embargo on grant of anticipatory bail where a person is declared a proclaimed offender under Section 82 of the CRPC. A proclamation is issued against any person who is absconding or concealing himself so that a warrant is not issued against him, to appear before the Court. The Court held that when a person's liberty is in question, the court must consider the circumstances of the case, nature of the offence and the background based on which the proclamation was issued. In this case, there was no evidence that the accused was not cooperating with the investigation. Therefore, the Court set aside the impugned order and granted anticipatory bail subject to terms and conditions imposed by the Trial Court.

Case - *Asha Dubey vs. State of Madhya Pradesh*

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