MONTHLY ROUND-UP

Embracing the new normal

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ARBITRABILITY OF DISPUTE INVOLVING ALLEGATIONS OF FRAUD

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It is a trite law that all subject matter of disputes cannot be adjudicated by arbitration in India. The Arbitration and Conciliation Act, 1996 **("Arbitration Act")** also makes it clear that an arbitral award will be set aside if the courts finds that the subject matter of the dispute is not capable of settlement by arbitration(1). The Arbitration Act does not specifically exclude any category of disputes as being non-arbitrable. The Indian Courts over the years have recognized various subject matters of dispute to be exclusively tried by public fora and subject matters which are generally considered as non-arbitrable. The issue of arbitrability of disputes involving allegations of fraud has also been considered by the Indian Courts on various occasions. However, there has been lack of clarity in this regard, particularly as to when an allegation of fraud in a dispute will render it non-arbitrable. The Supreme Court of India recently in the case of ***Avitel Post Studioz Limited and Others Versus HSBC PI Holdings (Mauritius) Limited(2) ("Avitel")*** has considered in detail the substantive law in India qua arbitrability when allegations of fraud are raised by one of the parties to the arbitration agreement. The Supreme Court has also laid down the yardstick to differentiate disputes involving serious allegations of fraud which will vitiate the arbitration agreement between the parties as oppose to allegations of fraud simpliciter which is amenable to arbitration.

Brief Factual Background:

A Share Subscription Agreement **("SSA")** was entered into between HSBC and Appellants. HSBC invested USD 60 Millions in order to acquire 7.8 % of paid-up capital of Avitel India. The SSA contained an arbitration clause. The parties thereafter entered into a Shareholder's Agreement **("SHA")** which defined the relationship between the parties. The SHA also contained an arbitration clause which was identical to the arbitration clause under the SSA.

The case of HSBC was that the aforesaid agreements were entered between the parties on the basis of the representation made by the promoter's family of the Appellants that they are in course of finalizing a contract with British Broadcasting Corporation ("BBC") for converting BBC's film library from 2D to 3D. That the monies invested by HSBC will be used to buy equipment for Avitel Dubai to service BBC's contract and this contract with BBC was expected to generate considerable revenue. After investing, HSBC discovered that BBC contract was non-existent and was a set up to induce HSBC into investing. That most of the sum invested by HSBC have been siphoned off to companies in which promoter family had stake. In view of the disputes between the parties, arbitration was initiated and final award was passed in favor HSBC. The Appeals before the Supreme Court arose from the proceedings under Section 9 of the Arbitration Act initiated by HSBC before the Bombay High Court to secure the subject matter of award (pending enforcement) by seeking order of deposit of the full claim amount. The main contention raised by the Appellants before the Supreme Court was that disputes between the parties involves allegations of serious criminal offences such as forgery and impersonation and such dispute would not be arbitrable. That criminal proceeding arising from these facts is also pending consideration.

(1) Section 34 (2) (b) and 48 (2) of the Arbitration Act
(2) 2020 SCC OnLine SC 656

Relevant Findings:

The Supreme Court of India after considering the relevant jurisprudence regarding arbitrability of disputes involving allegations of fraud including its recent decision in *Rashid Raza v. Sadaf Akhtar(3)* wherein the Supreme Court referred the relevant findings of *A.Ayyasamy v. A. Paramasivam(4)*, has affirmed that only a dispute involving *'serious allegations of fraud'* would result in exception to arbitration.

The Supreme Court has further set out and relied on the following two tests to determine that *serious allegations of fraud* has arisen, consequently resulting in rendering the disputes between the parties as non-arbitrable.

(a) When it is held that arbitration clause or agreement itself cannot be said to exist in case and where court finds that a party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all; or

(b) When allegations are made against the State or its instrumentalities, thus necessitating the hearing of the case by a writ court. In such cases questions are raised which are not predominantly questions arising from the contract itself or breach thereof, but questions arising in the public law domain;

Thus, *serious allegations of fraud* arise only if either of the aforesaid two tests is satisfied and not otherwise. The Supreme Court also held that the mere fact that a criminal proceedings can or have been instituted in respect of disputes which can be subject matter of disputes under section 17 of the Contract Act, 1872 and/or of the tort of deceit, would not lead to a conclusion that a dispute which is otherwise arbitrable, ceases to be so.

After applying the aforesaid tests in the *Avitel* matter, the Supreme Court did not find that there are *serious allegations of fraud* involved in the matter to consequently nullify the arbitration agreement between the parties. Further, in view of the strong prima facie case in favor of HSBC, the Supreme Court upheld that USD 60 Million to be maintained/set aside by Avitel for the purpose of enforcement of Award in India.

Conclusion

The Supreme Court in the *Avitel* case has elaborately considered and provided the much needed clarity regarding arbitrability of a dispute involving allegations of fraud. The tests and the findings laid down in this case shall be a gauging precedent for matters where a plea of fraud is raised and exception to arbitration is sought. This shall also caution the parties from seeking undue judicial intervention to opt out of arbitration by merely making allegation of fraud and consequently seeking to nullify the effect of arbitration agreement. This is clearly one more step to demonstrate that Indian Courts are in aid of arbitration.

(3) (2019) 8 SCC 710
(4) (2016) 10 SCC 386

AIRLINE TICKET CANCELLATION DURING LOCKDOWN: FULL REFUND OR CREDIT SHELL?

Pravasi Legal Cell & Ors. Vs. UOI & Ors.- W.P.(C)D.No.10966 of 2020

The Hon'ble Supreme Court of India on October 1, 2020 decided a batch of writ petitions which were filed inter alia seeking appropriate direction(s) for refund of the ticket amounts which were collected from the passengers of various flights as the same were cancelled by airlines operating both – domestic and international flights on account of lockdown imposed due to Covid-19.

After considering the contentions raised by the parties in the respective writ petitions, grievances of the passengers regarding the refund of the ticket amount and taking into account the workable solutions proposed by the Ministry of Civil Aviation in consultation with all the stakeholders including the airlines, the Hon'ble Court disposed of these writ petitions with inter alia the following directions:

1. If a passenger has booked a ticket during the lockdown period (March 25, 2020, to May 24, 2020) for any domestic or international travel and refund is sought against such booking being cancelled, the airline shall refund the full amount without any cancellation charges within a period of three weeks from the date of cancelation.
2. If the cancelled ticket had been booked during the lockdown period through a travel agent for traveling within the lockdown period, the airline will have to refund the agent, who will immediately transfer the money to the passenger.
3. Passengers who booked tickets at any period of time but for travel after 24th May, 2020 – refund of fares shall be governed by the provisions of Civil Aviation Requirements (CAR).
4. For international travel, when the tickets have been booked on an Indian carrier and the booking is ex ¬India, if the tickets have been booked during the lockdown period for travel within the lockdown period, immediate refund shall be made.
5. If the tickets are booked during the lockdown period for international travel on a foreign carrier and the booking is ex ¬India for travel during the lockdown period, full refund shall be given by the airlines and said amount shall be passed on immediately by the agent to the passengers if tickets are booked through agents. In all other cases airline shall refund the collected amount to the passenger within a period of three weeks.
6. In all other cases, the airlines shall endeavour to refund the collected amount to the passenger within 15 days from day of order. If on account of financial distress, any airline(s) is not able to do so, they shall provide credit shell, equal to the amount of fare collected, in the name of passenger when the booking is done either directly by the passenger or through travel agent so as to consume the same on or before 31st March, 2021. It is open for the passenger to either utilize such credit shell on any route of their choice or the passenger can transfer the credit shell to any person including the travel agent through whom the ticket has been booked and the airlines shall honour such a transfer. Such credit shell can be utilized by the concerned agent through whom the ticket is booked, for third party use and even in cases where credit shell is transferred to a third party, same is to be utilized only through the agent who has booked the ticket at the first instance.
7. In cases where passengers have purchased the ticket through an agent, and credit shell is issued in the name of passenger, such credit shell is to be utilized only through the agent who has booked the ticket. In such cases when the credit shell credit shell is not utilized by 31st March, 2021, refund of the fare collected shall be made to the same account from which account amount was received by the airline.
8. Airlines opting for credit shell mechanism will have to enhance the value of the credit shell by 0.5% every month on the face value of fare amount collected, between the date of cancellation and 30th June, 2020. Thereafter, credit shell shall be enhanced by 0.75% every month up to 31st March, 2021.

*2018 (167) DRJ 417

AUTOMATION OF CONTINUAL DISCLOSURES UNDER REGULATION 7(2) OF SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015-SYSTEM DRIVEN DISCLOSURES

On 9 September 2020, the Securities and Exchange Board of India **("SEBI")** issued a circular in relation to system driven disclosures in terms of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 **("PIT Regulations")** and further amended the PIT Regulations. SEBI decided to implement the system driven disclosures for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of company (hereinafter collectively referred to as entities) under Regulation 7(2) of PIT Regulations. To begin with, the system driven disclosures shall pertain to trading in equity shares and equity derivative instruments i.e. Futures and Options of the listed company (wherever applicable) by the entities. The procedure for implementation of the system driven disclosures is also provided as an annexure to this circular. The Depositories and Stock Exchanges shall make necessary arrangements such that the disclosures pertaining to PIT Regulations are disseminated on the websites of respective stock exchanges with effect from 1 October 2020. The system would continue to run parallel with the existing system i.e. entities shall continue to independently comply with the disclosure obligations under PIT Regulations as applicable to them till 31 March 2021. As currently done, the disclosures generated through the system shall be displayed separately from the regular disclosures filed with the exchanges. This circular supersedes the earlier circulars dated 1 December 2015, 21 December 2016 and 28 May 2018 with respect to implementation of system driven disclosures under PIT Regulations.

AUTOMATION OF INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING PROCESSES IN BANKS

On 14 September 2020, the Reserve Bank of India **("RBI")** issued a circular on automation of income recognition, asset classification and provisioning processes in banks. In order to ensure the completeness and integrity of the automated Asset Classification (classification of advances/investments as NPA/NPI and their upgradation), Provisioning calculation and Income Recognition processes, banks are advised to put in place / upgrade their systems to conform to the following guidelines latest by 30 June 2021.

(a) Coverage

(i) All borrowal accounts, including temporary overdrafts, irrespective of size, sector or types of limits, shall be covered in the automated IT based system (System) for asset classification, upgradation, and provisioning processes. Banks' investments shall also be covered under the System.
(ii) Asset classification rules shall be configured in the System, in compliance with the regulatory stipulations.
(iii) Calculation of provisioning requirement shall also be System based as per pre-set rules for various categories of assets, value of security as captured in the System and any other regulatory stipulations issued from time to time on provisioning requirements.
(iv) In addition, income recognition / derecognition in case of impaired assets (NPAs/NPIs) shall be system driven and amount required to be reversed from the income account should be obtained from the System without any manual intervention.
(v) The System shall handle both down-grade and upgrade of accounts through Straight Through Process (STP) without manual intervention.

(b) Frequency

(i) The System based asset classification shall be an ongoing exercise for both down-gradation and up-gradation of accounts. Banks should ensure that the asset classification status is updated as part of day end process. Banks should also be able to generate classification status report at any given point of time with actual date of classification of assets as NPAs/NPIs.

Over and above this, the circular provides certain exceptions as well as system and audit requirements.

LISTING AND TRADING OF UNITS OF INFRASTRUCTURE INVESTMENT TRUSTS (INVITS) AND REAL ESTATE INVESTMENT TRUSTS (REITS) ON RECOGNIZED STOCK EXCHANGES IN INTERNATIONAL FINANCIAL SERVICES CENTRES (IFSC)

On 16 September 2020, SEBI decided to permit 'Units of InvITs and REITs by whatever name called in the Permissible Jurisdictions' as permissible security under sub-clause (vi) of Clause 7 of SEBI (IFSC) Guidelines, 2015. Accordingly, 'Units of InvITs and REITs by whatever name called in the Permissible Jurisdictions' meeting the following conditions may be permitted to list on stock exchanges operating in IFSC:

(a) Such InvITs and REITs which are incorporated/settled in Permissible Jurisdictions, as may be notified by the Government of India from time to time pursuant to notification dated 18 September 2019 in respect of sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 200. ;In this regard, the Government of India vide notification dated 28 November 2019, has notified the list of Permissible Jurisdictions in pursuance of notification dated 18 September 2019. Accordingly, the list of Permissible Jurisdictions for the purpose of this clause are: (i) United States of America -NASDAQ, NYSE (ii) Japan -Tokyo Stock Exchange (iii) South Korea -Korea Exchange Inc. (iv) United Kingdom excluding British Overseas Territories-London Stock Exchange (v) France -Euronext Paris (vi) Germany -Frankfurt Stock Exchange (vii) Canada -Toronto Stock Exchange.

(b) Such InvITs and REITs are regulated by the securities market regulator(s) in the Permissible Jurisdictions.

(c) Such InvITs and REITs are listed on any of the specified international exchanges in the Permissible Jurisdiction. List of International Exchanges for the purpose of this clause are the same as the Permissible Jurisdictions mentioned in clause (a) above.

Stock exchanges in IFSC shall evolve a detailed framework prescribing the initial and continuous listing requirements for such InvITs and REITs whose units are listed/proposed to be listed on stock exchanges in IFSC. The applicability of this circular is subject to such conditions that may be prescribed by SEBI, RBI and other appropriate authority from time to time.

DPIIT ISSUES PRESS NOTE REGARDING REVISION OF FDI LIMITS IN THE DEFENCE SECTOR

On 17 September 2020, the Department for Promotion of Industry and Internal Trade (DPIIT) released Press Note No.4 (2020 series) in relation to review of Foreign Direct Investment (FDI) in Defence Sector. As per the Press Note:

(a) While 100% FDI is permitted in the Defence sector, FDI up to 74% under the automatic route shall now be permitted and government route beyond 74%, wherever it is likely to result in access to modern technology or for other reasons to be recorded.

(b) FDI up to 74% under automatic route shall be permitted for companies seeking new industrial licenses. Further, infusion of fresh foreign investment up to 49%, in a company not seeking industrial license or which already has Government approval for FDI in Defence, shall require mandatory submission of a declaration with the Ministry of Defence in case change in equity/shareholding pattern or transfer of stake by existing investor to new foreign investor for FDI up to 49%, within 30 days of such change. Proposals for raising FDI beyond 49% from such companies will require prior Government approval.

(c) Licence applications will be considered by the DPIIT, Ministry of Commerce & Industry, in consultation with Ministry of Defence and Ministry of External Affairs.

(d) Foreign investment in the sector is subject to security clearance by the Ministry of Home Affairs and as per guidelines of the Ministry of Defence.

(e) The investee company should be structured to be self-sufficient in the areas of product design and development. The investee/joint venture company along with the manufacturing facility should also have maintenance and life cycle support facility of the product being manufactured in India.

(f) Foreign investments in the Defence Sector shall be subject to scrutiny on grounds of National Security and Government reserves the right to review any foreign investment in the Defence Sector that affects or may affect national security.

(g) This press note will come into effect from the date of the FEMA notification.

The position so far (i.e. till the aforementioned press note comes into effect) is that, while 100% FDI is permitted in the Defence sector, upto 49% FDI is permitted under the automatic route and FDI beyond 49% is permitted under the government route wherever it was likely to result in access to modern technology or for other reasons to be recorded.

REGULATORY MEASURES TO CONTINUE

On 18 September 2020, SEBI decided that the regulatory measures introduced vide SEBI Press Release dated 20 March 2020 shall continue to be in force till 29 October 2020 keeping in mind the COVID-19 pandemic situation. The stock exchanges and clearing corporations will be issuing necessary instructions to the market participants in this regard.

IMPLEMENTATION OF THE CUSTOMS (ADMINISTRATION OF RULES OF ORIGIN UNDER TRADE AGREEMENTS) RULES, 2020

On 18 September 2020, the Ministry of Finance issued a press release that the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 **("CAROTAR, 2020")**, notified on 21 August 2020, shall come into force from 21 September 2020 upon completion of the 30 day period that was given to importers and other stakeholders to familiarize themselves with new provisions.

CAROTAR, 2020 implements the commitment of Finance Minister in her Budget Speech 2020 to protect the domestic industry from misuse of free trade agreements **(FTAs)**. CAROTAR, 2020 read with Central Board of Indirect Taxes and Customs **(CBIC)** circular dated 21 August 2020 supplement the existing operational certification procedures prescribed under different trade agreements (FTA/ PTA/ CECA/ CEPA). An importer is now required to do due diligence before importing the goods to ensure that they meet the prescribed originating criteria. A list of minimum information which the importer is required to possess has also been provided in the rules along with general guidance. Also, an importer would now have to enter certain origin related information in the Bill of Entry, as available in the Certificate of Origin. The new Rules will support the importer to correctly ascertain the country of origin, properly claim the concessional duty and assist Customs authorities in smooth clearance of legitimate imports under FTAs. Hence, the CBIC has been actively engaging with stakeholders through webinars and other means to guide them on compliance with the new Rules and to clarify any doubts that they may have. The new Rules would strengthen the hands of the customs in checking any attempted misuse of the duty concessions under FTAs.

PARLIAMENT PASSES THE FARMERS' PRODUCE TRADE AND COMMERCE (PROMOTION AND FACILITATION) BILL, 2020 AND THE FARMERS (EMPOWERMENT AND PROTECTION) AGREEMENT OF PRICE ASSURANCE AND FARM SERVICES BILL, 2020 AND THE PRESIDENT GIVES HIS ASSENT TO THE BILLS

On 20 September 2020, the Parliament passed the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 and the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020. The two bills are aimed at transforming agriculture in the country and raising farmers' incomes. The two bills were passed by Lok Sabha on 17 September 2020 and were passed by the Rajya Sabha on 20 September 2020.

(a) The main provisions of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 are:

(i) The new legislation will create an ecosystem where the farmers and traders will enjoy freedom of choice of sale and purchase of agri-produce.
(ii) It will also promote barrier-free inter-state and intra-state trade and commerce outside the physical premises of markets notified under State Agricultural Produce Marketing legislations.
(iii) The farmers will not be charged any cess or levy for sale of their produce and will not have to bear transport costs.
(iv) The Bill also proposes an electronic trading in transaction platform for ensuring a seamless trade electronically.
(v) In addition to mandis, freedom to do trading at farmgate, cold storage, warehouse, processing units etc.
(vi) Farmers will be able to engage in direct marketing thereby eliminating intermediaries resulting in full realization of price.

(b) The main provisions of the Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill, 2020 are:

(i) The new legislation will empower farmers for engaging with processors, wholesalers, aggregators, wholesalers, large retailers, exporters etc., on a level playing field. There is price assurance given to farmers even before sowing of crops. In case of higher market price, farmers will be entitled to this price over and above the minimum price.
(ii) It will transfer the risk of market unpredictability from the farmer to the sponsor. Due to prior price determination, farmers will be shielded from the rise and fall of market prices.
(iii) It will also enable the farmer to access modern technology, better seed and other inputs.
(iv) It will reduce cost of marketing and improve income of farmers.
(v) Effective dispute resolution mechanism has been provided for with clear time lines for redressal.
(vi) Impetus to research and new technology in agriculture sector.

On 24 September 2020, the President gave his assent to the bills thereby making them laws which were published in the official gazette and have been in effect from 5 June 2020.

WRITE-OFF OF SHARES HELD BY FPIS

On 21 September 2020, SEBI decided to permit Foreign Portfolio Investors (FPIs) to write-off shares of all companies which they are unable to sell. In this regard, the process detailed at para 17 of Part C of the Operational Guidelines for FPIs and Designated Depository Participants (DDPs) issued under SEBI (Foreign Portfolio Investors), Regulations 2019 on 5 November 2019 shall be complied with.

In the said Operational Guidelines, write-off of securities held by FPIs who wish to surrender their registration was permitted only in respect of shares of companies which are unlisted / Illiquid / suspended / delisted.

MARGINAL STANDING FACILITY (MSF) - EXTENSION OF RELAXATION

On 28 September 2020, RBI decided to continue with the Marginal Standing Facility (MSF) relaxation for a further period of six months, i.e., up to 31 March 2021, with a view to providing comfort to banks on their liquidity requirements as also to enable to continue to meet Liquidity Coverage ratio (LCR) requirements. On 27 March 2020 banks were allowed to avail of funds under the MSF by dipping into the Statutory Liquidity Ratio (SLR) by up to an additional 1% of net demand and time liabilities (NDTL), i.e., cumulatively up to 3% of NDTL. This facility, which was initially available up to 30 June 2020 was extended up to 30 September 2020 (on 26 June 2020), in view of disruptions imposed by COVID-19. This dispensation provides increased access to funds to the extent of INR 1.49 lakh crore, and also qualifies as high-quality liquid assets (HQLA) for the LCR.

ENACTMENT OF THE COMPANIES (AMENDMENT) ACT, 2020, THE FOREIGN CONTRIBUTION (REGULATION) AMENDMENT ACT, 2020 AND THE BILATERAL NETTING OF QUALIFIED FINANCIAL CONTRACTS ACT, 2020

On 28 September 2020, the Companies (Amendment) Act, 2020, the Foreign Contribution (Regulation) Amendment Act, 2020 and the Bilateral Netting of Qualified Financial Contracts Act, 2020 were given the President's assent and came into force from the same date. By way of these enactments, amendments have been made to certain provisions of the Companies Act, 2013 and the Foreign Contribution (Regulation) Act, 2010 and a new legal framework for bilateral netting of qualified financial contracts (which are over the counter derivatives contracts) has been enacted.

The salient features of the Companies (Amendment) Act, 2020 are as follows:

(i) Producer companies: Under the Companies 2013 Act **("2013 Act")**, certain provisions from the Companies Act, 1956 continued to apply to producer companies. These included provisions on their membership, conduct of meetings, and maintenance of accounts. Producer companies include companies which are engaged in the production, marketing and sale of agricultural produce, and sale of produce from cottage industries. The Amendment Act removes these provisions and adds a new chapter in the 2013 Act with similar provisions on producer companies.

(ii) Changes to offences: The Amendment Act makes three changes. First, it removes the penalty for certain offences. For example, it removes the penalties which apply for any change in the rights of a class of shareholders made in violation of the 2013 Act. Note that where a specific penalty is not mentioned, the 2013 Act prescribes a penalty of up to INR 10,000 which may extend to INR 1,000 per day for a continuing default. Second, it removes imprisonment in certain offences. For example, it removes the imprisonment of 3 years applicable to a company for buying back its shares without complying with the provisions of the 2013 Act. Third, it reduces the amount of fine payable in certain offences. For example, it reduces the maximum fine for failure to file annual return with the Registrar of Companies from INR 500,000 to INR 200,000.

(iii) Under the 2013 Act, one person companies (i.e., companies with only one member) or small companies (i.e., with lower paid-up share capital and turnover thresholds) are only liable to pay up to 50% of the penalty for certain offences (such as failing to file annual return). The Amendment Act: (i) extends this provision to all producer companies and start-up companies, (ii) extends this provision to apply to violation of any provision of the 2013 Act, and (iii) limits the maximum penalty to INR 200,000 for the company and INR 100,000 for a defaulting officer.

(iv) Direct listing in foreign jurisdictions: The Amendment Act empowers the central government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions.

(v) Exclusion from listed companies: The Amendment Act empowers the central government, in consultation with the Securities and Exchange Board of India, to exclude companies issuing specified classes of securities from the definition of a "listed company".

(vi) Remuneration to non-executive directors: The 2013 Act made special provisions for payment of remuneration to executive directors of a company (including managing director and other whole-time directors) if the company has inadequate or no profits in a year. For example, if a company had an effective capital of up to INR 50,000,000, the annual remuneration to its executive directors cannot exceed INR 6,000,000. The Amendment Act extends this provision to non-executive directors, including independent directors.

(vii) Periodic financial results for unlisted companies: The Amendment Act empowers the central government to require classes of unlisted companies (as may be prescribed) to prepare and file periodical financial results, and to complete the audit or review of such results.

(viii) Benches of NCLAT: The Amendment Act establishes benches of the National Company Law Appellate Tribunal. These shall ordinarily sit in New Delhi or such other place as may be notified.

The salient features of the Foreign Contribution (Regulation) Amendment Act, 2020 are as follows:

(i) It adds public servants (as defined under the Indian Penal Code) to the list of persons who are prohibited to accept any foreign contribution. Public servant includes any person who is in service or pay of the government, or remunerated by the government for the performance of any public duty.

(ii) Under the Foreign Contribution (Regulation) Act, 2010 **("Act"),** foreign contribution could not be transferred to any other person unless such person was also registered to accept foreign contribution (or had obtained prior permission under the Act to obtain foreign contribution). The amendment amends this to prohibit the transfer of foreign contribution to any other person. The term 'person' under the Act includes an individual, an association, or a registered company.

(iii) It adds that any person seeking prior permission, registration or renewal of registration must provide the Aadhaar number of all its office bearers, directors or key functionaries, as an identification document. In case of a foreigner, a copy of the passport or the Overseas Citizen of India card for identification must be provided.

(iv) It adds that the Government may also restrict usage of unutilised foreign contribution for persons who have been granted prior permission to receive such contribution. This may be done if, based on a summary inquiry, and pending any further inquiry, the Government believes that such person has contravened provisions of the Act.

(v) It provides that the Government may conduct an inquiry before renewing the certificate to ensure that the person making the application: (i) is not fictitious or benami, (ii) has not been prosecuted or convicted for creating communal tension or indulging in activities aimed at religious conversion, and (iii) has not been found guilty of diversion or mis-utilisation of funds, among others conditions.

The salient features of the Bilateral Netting of Qualified Financial Contracts Act, 2020 **("Act")** are as follows:

(i) Bilateral netting: Netting refers to offsetting of all claims arising from dealings between two parties, to determine a net amount payable or receivable from one party to other. The Act allows for enforcement of netting for qualified financial contracts.

(ii) Qualified financial contracts (QFC): QFC means any bilateral contract notified as a QFC by the relevant authority. The authority can be RBI, SEBI, Insurance Regulatory and Development Authority of India (IRDAI), Pension Fund Regulatory and Development Authority (PFRDA) or International Financial Services Centres Authority (IFSCA). The Central government may, by notification, exclude contracts between certain parties or containing certain terms from being designated as QFCs.

(iii) Qualified financial market participant: The relevant authority may, by notification, designate an entity regulated by it as a qualified financial market participant to deal in QFCs. This would include entities such as non-banking finance companies (NBFCs), insurance companies and pension funds.

(iv) Applicability: The provisions of the Bill will apply to QFCs between two qualified financial market participants, where at least one party is an entity regulated by the specified authorities (RBI, SEBI, IRDAI, PFRDA or the IFSCA).

(v) Enforceability of netting: The Act provides that netting of QFCs is enforceable if the contract has a netting agreement. Netting agreement is an agreement that provides for the netting of amounts involving two or more QFCs. A netting agreement may also include a collateral arrangement. Collateral arrangement is a form of security provided for one or more QFCs in a netting agreement. It may include a pledge of assets, or an arrangement to transfer the title to a collateral or a third-party guarantor.

COMPANIES FRESH START SCHEME ("CFSS")

The MCA in furtherance to its earlier circular no. 12/2020 dated March 30, 2020 introducing CFSS released circular no. 30/2020 dated September 28, 2020 thereby extending the applicability of CFSS till December 31, 2020 which was set to expire on September 30, 2020.

LLP SETTLEMENT SCHEME, 2020

The MCA in furtherance to its earlier circular no. 13/2020 dated March 30, 2020 introducing LLP Settlement Scheme, 2020, released circular no. 31/2020 dated September 28, 2020, thereby extending the applicability of LLP Settlement Scheme till December 31, 2020 which was set to expire on September 30, 2020.

***The extension of the aforesaid schemes will inter alia provide an opportunity to non-compliant companies/ LLPs for completing his historical non-compliances without payment of additional fee.**

SCHEME FOR RELAXATION OF TIME FOR FILING FORMS RELATED TO CREATION OR MODIFICATION OF CHARGES

The MCA in furtherance to its earlier circular no. 23/2020 dated June 17, 2020 introducing scheme for relaxation of time for filing forms related to creation or modification of charges released circular no. 32/2020 dated September 28, 2020 thereby granting extension in the due date of the aforementioned scheme till December 31, 2020.

CONVENING OF EXTRA-ORDINARY GENERAL MEETINGS

The MCA vide its circulars no. 14/2020 dated April 8, 2020, 17/2020 dated April 13, 2020 and 22/2020 dated June 15, 2020, had inter alia allowed companies to convene their extra-ordinary general meetings through video conference or any other audio visual means till September 30, 2020. In furtherance to the above circulars, the MCA vide its circular no. 33/2020 dated September 28, 2020, has allowed companies to convene their EGMs through video conference or any other audio visual means till December 31, 2020.

COMPANIES (MEETINGS OF BOARD AND ITS POWERS) THIRD AMENDMENT RULES, 2020

The MCA vide its notification dated September 28, 2020 issued the Companies (Meetings of Board and its Powers) Third Amendment Rules, 2020 thereby further amending the Companies (Meetings of Board and its Powers) Rules, 2014 and providing relaxation to companies for convening their board meetings for restricted matters through video conference or any other audio visual means till December 31, 2020.

COMPANIES (AMENDMENT) ACT, 2020("AMENDMENT ACT")

The lower house (Lok Sabha) and the upper house (Rajya Sabha) of the Parliament has passed the Companies (Amendment) Bill, 2020 ("Bill") on September 19, 2020 and September 22, 2020 respectively. Thereafter, the President of India gave assent to the Bill on September 28, 2020 and the Amendment Act, 2020 was introduced to further amend the Companies Act, 2013.

The major amendments brought under the Amendment Act are as follows:

(i) Decriminalization of various non-compoundable offences under the Act.

(ii) Reduction in quantum of penalty for certain offences by small companies, one person companies and start-up companies.

(iii) Introduction of a new chapter on producer companies.

(iv) Exclusion of certain classes of companies from the definition of listed company.

(v) Exemption to certain class of persons from complying with the requirements of declaration of beneficial holding.

(vi) Extension of the provision related to payment of remuneration to executive directors to non-executive directors including independent directors;

(vii) Exemption to companies with a CSR liability of up to INR 50 Lakh a year from setting up of CSR Committees.

ESIC ISSUES 'COVID-19 SAFE WORKPLACE GUIDELINES FOR INDUSTRY AND ESTABLISHMENT'

The Employees' State Insurance Corporation issued 'COVID-19 Safe Workplace Guidelines for Industry and Establishment' to provide comprehensive planning guidance for employers and workers to help identify risk levels of Covid-19 and to determine appropriate control measures. In addition to the basic infection control measures, i.e. wearing masks, frequently washing hands, observing respiratory etiquette, maintaining social distance and frequently cleaning and sanitizing workplace, the guidelines also specify preventive measures for workplace. These measures are – (i) engineering controls (such as creating physical modification, barriers, enabling outdoor air ventilation, etc.); (ii) administrative controls (such as discouraging visitors to enter workplace, not using biometric attendance systems, giving flexible working hours/ work from home option to the employees, documentation such as invoices, filings to be made online, tie up with a medical practitioner, making use of Aarogya Setu application mandatory, etc.); and (iii) providing personal protective equipment to the employees while they are in the workplace. Further, risk assessment and mitigation plan have also been provided under the guidelines which assist the employer on how to deal with low, medium and high level risk situations. The guidelines are in the form of a booklet which consolidates all important measures into a ready reckoner of action points to make the workplace safe.

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

On 29 September 2020, SEBI, in view of the situation emerging out of the COVID-19 pandemic, granted certain relaxations for raising of equity capital. On similar lines the extant guidelines for preferential issue and institutional placement of units by listed InvITs and the guidelines for preferential issue and institutional placement of units by listed REITs stand modified.

RELAXATION WITH RESPECT TO VALIDITY OF SEBI OBSERVATIONS AND REVISION IN ISSUE SIZE

On 29 September 2020, SEBI, after due consideration, decided that the certain relaxations with respect to validity of SEBI Observations and filing of fresh offer document in case of increase or decrease of issue size beyond a particular threshold (as mentioned at Sr. No. 1(ii) of SEBI Circular dated 21 April 2020) for revision in issue size upto 50% shall continue till 31 March 2021. This is in view of the prevailing conditions due to COVID-19 and the relaxations granted in April 2020 will continue for some more time. Secondly, the validity of the SEBI observations expiring between 1 October 2020 and 31 March 2021 shall be extended upto 31 March 2021, subject to an undertaking from lead manager to the issue confirming compliance with Schedule XVI of the ICDR Regulations, 2018 while submitting the updated offer document to the Board. This circular shall come into force with effect from 1 October 2020.

SEBI HELD ITS BOARD MEETING AND THE DECISIONS IT TOOK IN SUCH BOARD MEETING

On 29 September 2020, the SEBI board meeting took place through video-conferencing and the SEBI Board, inter-alia, took the following decisions:

(i) Amendments to SEBI (Debenture Trustee) Regulations, 1993, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Listing Obligations and Disclosure Requirements), 2015 - The Board approved the proposal of strengthening the role of Debenture Trustees (DT(s)) so as to protect the interest of debenture holders. The DT(s) shall exercise independent due diligence of the assets on which charge is being created. The DT(s) shall take required action by convening the meeting of debenture holders for enforcement of security, joining the inter-creditor agreement (under the framework specified by RBI), etc. DT(s) shall also carry out continuous monitoring of the asset cover including obtaining mandatory certificate from the statutory auditor on half yearly basis. Further, the issuer company shall create recovery expense fund at the time of issuance of debt securities that may be utilised by DT(s) in the event of default, for taking appropriate legal action to enforce the security.

(ii) Amendments to Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 - The Board decided to grant exemption from the Reverse Book Building process (RBB) for delisting of listed subsidiary, where it becomes the wholly owned subsidiary of the listed parent pursuant to a scheme of arrangement. To be eligible to take this route, the listed holding company and the listed subsidiary should be in the same line of business. Both the companies should be compliant with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, specifically, the regulations (no. 11, 37 and 94) pertaining to processing of the schemes of arrangement.

(iii) Setting up of a Limited Purpose Repo Clearing Corporation - The Board approved the proposal to facilitate setting up of a Limited Purpose Repo Clearing Corporation.

(iv) Amendments to SEBI (Mutual Funds) Regulations, 1996 –

(a) Introduction of Code of Conduct for Fund Managers and Dealers - Currently, the SEBI (Mutual Funds) Regulations, 1996 **("MF Regulations")** provide for Asset Management Companies (AMCs) and Trustees to follow a Code of Conduct. Also under current MF Regulations, CEO is entrusted with several responsibilities. The Board after deliberation, approved the amendment of MF Regulations to introduce a Code of Conduct for Fund Managers including Chief Investment Officers and Dealers of AMCs. Further, the Chief Executive Officer will be responsible to ensure that the Code of Conduct is followed by all such officers.

(b) AMCs permitted to become self-clearing member - The Board approved amendment to MF Regulations to enable Asset Management Companies to become a self-clearing member of the recognised Clearing Corporations to clear and settle trades in the debt segment of recognised stock exchanges, on behalf of its mutual fund schemes.

(v) Amendment to SEBI (Alternative Investment Funds) Regulations, 2012 - The Board approved amendment to SEBI (Alternative Investment Funds) Regulations, 2012 which includes definition of 'relevant professional qualification' and provides that the qualification and experience criteria of the investment team, may be fulfilled individually or collectively by personnel of key investment team of the Manager. Further, the regulatory amendment, inter-alia, covers the constitution of an Investment Committee by the Manager for approving investment decisions, responsibilities of Manager and members of such Investment Committee of an Alternative Investment Fund.

(vi) Disclosure of information related to forensic audit of listed entities - In order to address the gaps in availability of information on forensic audit of listed entities, the Board decided that in case of initiation of such audits, listed entities shall make certain disclosures to stock exchanges, without any application of materiality.

BASEL III FRAMEWORK ON LIQUIDITY STANDARDS – NET STABLE FUNDING RATIO (NSFR) – FINAL GUIDELINES

On 29 September 2020, RBI decided that the Net Stable Funding Ratio (NSFR) guidelines will come into effect from 1 April 2020. The NSFR guidelines ensure reduction in funding risk over a longer time horizon by requiring banks to fund their activities with sufficiently stable sources of funding in order to mitigate the risk of future funding stress.

BANKING REGULATION (AMENDMENT) ACT, 2020

On 29 September 2020, the Ministry of Law and Justice, published in the official gazette the Banking Regulation (Amendment) Act, 2020 which amends the Banking Regulation Act, 1949 and comes into force from 26 June 2020, except section 4 (which, in so far as it, relates to–

(a) primary co-operative banks, be deemed to have come into force on the 29 June 2020;

(b) state co-operative banks and central co-operative banks, come into force on such date as the Central Government may by notification in the Official Gazette, appoint.)

In relation to its applicability, the amendment further states that notwithstanding anything contained in the National Bank for Agriculture and Rural Development Act, 1981, the Banking Regulation (Amendment) Act, 2020 shall not apply to–

(a) a primary agricultural credit society; or

(b) a co-operative society whose primary object and principal business is providing of long-term finance for agricultural development,

if such society does not use as part of its name, or in connection with its business, the words "bank", "banker" or "banking" and does not act as drawee of cheques.

The Banking Regulation (Amendment) Act, 2020 also inter-alia deals with the Issue and regulation of paid-up share capital and securities by co-operative banks.

RELAXATION IN TIMELINES FOR COMPLIANCE WITH REGULATORY REQUIREMENTS

On 1 October 2020, SEBI issued a circular with regard to 'Relaxation in timelines for compliance with regulatory requirements'. SEBI had earlier provided relaxations in timelines for compliance with various regulatory requirements by the trading members / clearing members/ depository participants, vide various circulars. It has now been decided to further extend the timelines for compliance with the regulatory requirements by the trading members / clearing members, as under:

Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/61 dated 16 April 2020	**S.No. for which timeline is extended**	**Extended timeline / Period of exclusion**
Maintaining call recordings of orders /instructions received from clients.	XI	31 December 2020
Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/62 dated 16 April 2020.	**S.No. for which timeline is extended**	**Extended timeline / Period of exclusion**
KYC application form and supporting documents of the clients to be uploaded on system of KRA within 10 working days	III	Period of exclusion shall be from 23 March 2020 till 31 December 2020
Compliance requirements for which timelines were extended vide SEBI circular SEBI/HO/MIRSD/DOP/CIR/P/2020/141 dated 29 July 2020.	**S.No. for which timeline is extended**	**Extended timeline / Period of exclusion**
Cyber Security & Cyber Resilience Audit for the year ended 31 March 2020	--	31 December 2020

STANDARDIZATION OF TIMELINE FOR LISTING OF SECURITIES ISSUED ON A PRIVATE PLACEMENT BASIS UNDER (A) SEBI (ISSUE AND LISTING OF DEBT SECURITIES) REGULATIONS, 2008 (SEBI ILDS), (B) SEBI (ISSUE AND LISTING OF NON-CONVERTIBLE REDEEMABLE PREFERENCE SHARES) REGULATIONS, 2013 (SEBI NCRPS), (C) SEBI (PUBLIC OFFER AND LISTING OF SECURITISED DEBT INSTRUMENTS AND SECURITY RECEIPTS) REGULATIONS, 2008 (SEBI SDI) AND (D) SEBI (ISSUE AND LISTING OF MUNICIPAL DEBT SECURITIES) REGULATIONS, 2015 (SEBI ILDM)

On 5 October 2020, SEBI, after discussions and taking feedback from market participants, decided to stipulate the following timelines under the SEBI ILDS, SEBI NCRPS, SEBI SDI and SEBI ILDM:

S. No.	Details of Activities	Due Date
1	Closure of issue	T day
2	Receipt of funds	To be completed by T+2 trading day
3	Allotment of securities	To be completed by T+2 trading day
4	Issuer to make listing application to Stock Exchange(s)	To be completed by T+4 trading day
5	Listing permission from Stock Exchange(s)	To be completed by T+4 trading day

Depositories shall activate the ISINs of debt securities issued on private placement basis only after the Stock Exchange(s) have accorded approval for listing of such securities.

Further, in order to facilitate re-issuances of new debt securities in an existing ISIN, Depositories are advised to allot such new debt securities under a new temporary ISIN which shall be kept frozen. Upon receipt of listing approval from Stock Exchange(s) for such new debt securities, the debt securities credited in the new temporary ISIN shall be debited and the same shall be credited in the pre-existing ISIN of the existing debt securities, before they become available for trading.

In case of delay in listing of securities issued on privately placement basis beyond the timelines specified above, the issuer shall;

(i) pay penal interest of 1% p.a. over the coupon rate for the period of delay to the investor (i.e. from date of allotment to the date of listing)

(ii) be permitted to utilise the issue proceeds of its subsequent two privately placed issuances of securities only after receiving final listing approval from Stock Exchanges.

The contents of this circular shall come into force with effect from 1 December 2020.

REVIEW OF DIVIDEND OPTION(S) / PLAN(S) IN CASE OF MUTUAL FUND SCHEMES

On 5 October 2020, SEBI, based on the recommendations of Mutual Funds Advisory Committee (MFAC), decided to stipulate the following

(i) All the existing and proposed Schemes of Mutual Funds shall name/ rename the Dividend option(s) in the following manner:

Option / Plan	Name
Dividend Payout	Payout of Income Distribution cum capital withdrawal option
Dividend Re-investment	Reinvestment of Income Distribution cum capital withdrawal option
Dividend Transfer Plan	Transfer of Income Distribution cum capital withdrawal plan

(ii) Offer documents shall clearly disclose that the amounts can be distributed out of investors capital (Equalization Reserve), which is part of sale price that represents realized gains. Further, AMCs shall ensure that the said disclosure is made to investors at the time of subscription of such options/plans.

(iii) AMCs shall ensure that whenever distributable surplus is distributed, a clear segregation between income distribution (appreciation on NAV) and capital distribution (Equalization Reserve) shall be suitably disclosed in the Consolidated Account Statement provided to investors as required under Regulation 36(4) of SEBI (Mutual Funds) Regulations, 1996 and SEBI Circular dated 12 November 2014.

The provisions mentioned in the table shall be effective from 1 April 2021.

PRODUCT LABELING IN MUTUAL FUND SCHEMES –RISK-O-METER

On 5 October 2020, SEBI, based on the recommendation of Mutual Fund Advisory Committee (MFAC), reviewed the guidelines for product labeling in mutual funds and inter-alia decided that:

(i) Risk Level of a scheme will be depicted by "Risk-o-meter", by way of a risk diagram,

(ii) The risk-o-meter shall have following six levels of risk for mutual fund schemes (a) Low Risk, (b) Low to Moderate Risk (c) Moderate Risk (d) Moderately High Risk (e) High Risk and (f) Very High Risk

(iii) The detailed guidelines for evaluation of risk levels of a scheme along with few examples are provided at Annexure A to the circular. Pursuant to calculation of risk value of the scheme portfolio based on the methodology specified in Annexure A, risk level of a scheme shall be depicted by risk-o-meter.

(iv) Based on the scheme characteristics, Mutual Funds shall assign risk level for schemes at the time of launch of scheme/New Fund Offer.

(v) Any change in risk-o-meter shall be communicated by way of Notice cum Addendum and by way of an e-mail or SMS to unitholders of that particular scheme.

(vi) Risk-o-meter shall be evaluated on a monthly basis and Mutual Funds / AMCs shall disclose the Risk-o-meter along with portfolio disclosure for all their schemes on their respective website and on AMFI website within 10 days from the close of each month.

(vii) Mutual Funds shall disclose the risk level of schemes as on March 31 of every year, along with number of times the risk level has changed over the year, on their website and AMFI website.

(viii) Mutual Funds shall publish the scheme wise changes in Risk-o-meter in the Annual Reports and Abridged summary:

This contents of this circular shall be in force with effect from 1 January 2021, to all the existing schemes and all schemes to be launched on or thereafter. However, mutual funds may choose to adopt the provisions of this circular before the effective date.

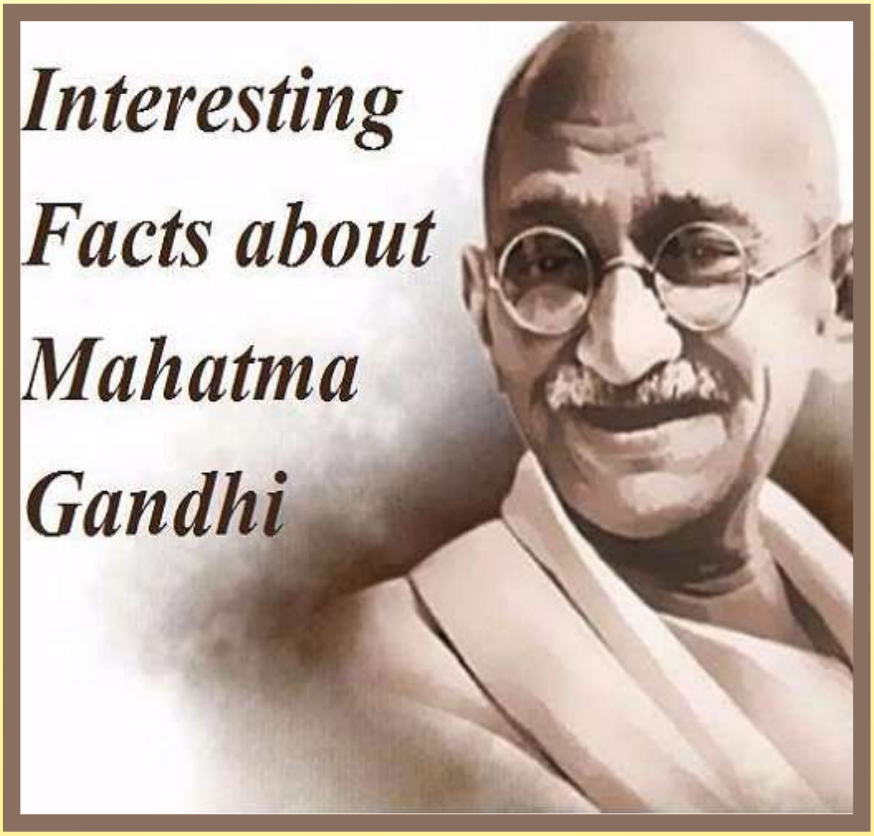
ALB VIRTUAL
In-House Legal Summit 2020

CLASIS LAW | 10 YEARS OF EXCELLENCE

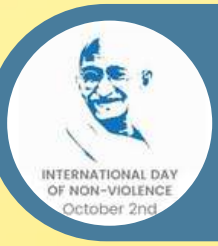
Vineet Aneja, Managing Partner and Head of Corporate Commercial Practice at Clasis Law was invited as a speaker at the Asian Legal Business inaugural Virtual In-House Legal Summit 2020.

The summit comprised of multiple sessions wherein Vineet shared & discussed various aspects of "Doing Business in India in the New Normal". The virtual summit was designed to bring together attendees from all across South East Asia & UAE.

Off Beat Section

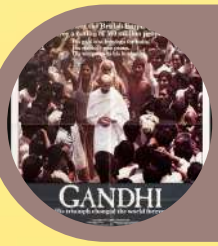


Mahatma Gandhi was born on 2 October, 1869 Porbandar, Gujarat. This year marks the 151st anniversary of Gandhi Ji. He was the father of the Indian independence movement. Let us have a look at few interesting facts about Mahatma Gandhi "Bapu".



His birthday (2nd October) is commemorated worldwide as "International Day of Nonviolence".

Gandhi ji established a small colony, "Tolstoy Farm" at an 1100 acre site, 21 miles from Johannesburg, South Africa for his colleagues in the Satyagraha struggle.



"Gandhi" in 1982 was an epic historical drama film based on Mohandas Karamchand Gandhi which won the Academic Award for the best motion picture.

Mahatma Gandhi was nominated for the Nobel Peace Prize in 1937, 1938, 1939, 1947, and, finally, a few days before he was murdered in January 1948.

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