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Official Newsletter

CLASIS LAW

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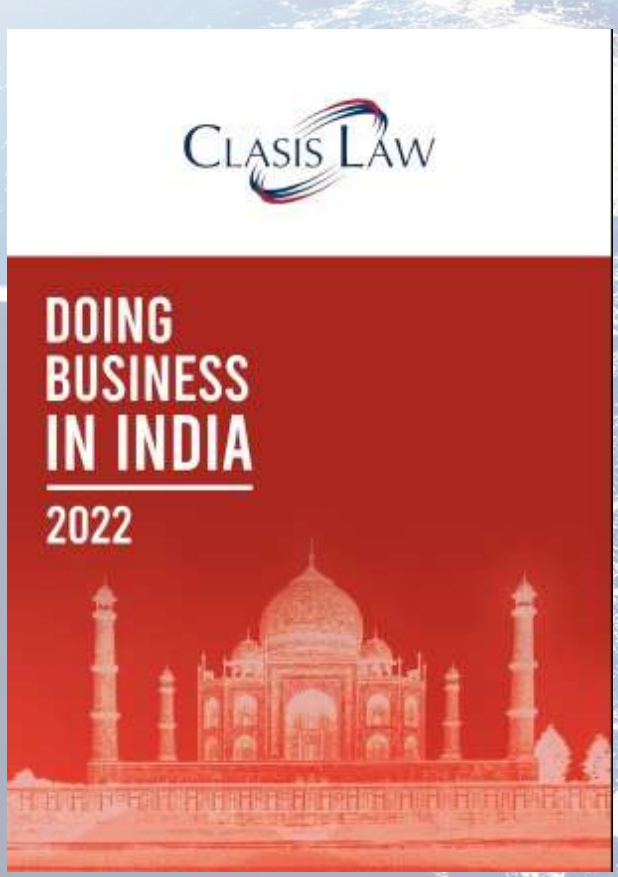
CLASIS LAW

DOING BUSINESS IN INDIA

We are pleased to announce the launch of the **Fourth Edition** of our guide titled ***"Doing Business in India"***. The guide intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.



Please scan the **QR code** above the download the e-version of the book. Alternatively, you may also write to us at info@clasislaw.com for the copy.

GUEST ARTICLE

Product Recall Under FSSAI Act

By -
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Tata Starbucks Pvt Ltd

Introduction

In today's fast-paced world, consumers are more concerned than ever about the safety and quality of the products they purchase. Food safety, in particular, has become a top priority for many people. This is where the Food Safety and Standards Authority of India (FSSAI) comes in. The FSSAI is responsible for ensuring that all food products sold in India are safe and meet quality standards. In order to do this, the FSSAI has the authority to recall any food product that poses a threat to public health.

What is meant by product recall?

A product recall is a process where a company recalls a product from the market because it is either defective or poses a safety hazard. In the food industry, a recall can be initiated by the FSSAI if a product is found to be unsafe for consumption. The FSSAI will then order the company to remove the product from the market and recall it from all retail stores and distributors. The FSSAI has the authority to recall any food product that poses a threat to public health. This includes products that are contaminated, mislabeled, or contain dangerous ingredients. The FSSAI can also recall a product if it does not meet the standards set by the FSSAI for food safety and quality.

The recall process Is initiated by the FSSAI, and the company is responsible for carrying out the recall. The company must inform all retailers, distributors, and consumers about the recall and instruct them to return the product. The company must also provide a refund or replacement for the recalled product.

It is important for companies to have a recall plan in place so that they are prepared if a recall is necessary. The recall plan should include the following steps:

- **Identification of the problem:** The company should identify the problem that has caused the recall and determine the extent of the problem.
- **Notification of the FSSAI:** The company should notify the FSSAI of the problem and the extent of the recall.
- **Notification of retailers, distributors, and consumers:** The company should inform all retailers, distributors, and consumers about the recall and instruct them to return the product.
- **Return and refund:** The company should provide a refund or replacement for the recalled product.
- **Investigation:** The company should investigate the cause of the problem and take steps to prevent it from happening in the future.
- **Communication:** The company should communicate with the public about the recall and what steps it is taking to ensure that the problem does not happen again.

It is important for companies to act quickly when a recall is necessary. Delaying the recall can lead to serious health consequences for consumers and damage the reputation of the company. Companies should also be transparent about the recall and the steps they are taking to ensure that the problem does not happen again. Consumers play an important role in product recalls as well. They should be aware of the recall process and what to do if they have a recalled product. Consumers should follow the instructions provided by the company and return the product to the retailer or distributor. Consumers should also be vigilant about food safety and report any suspicious products to the FSSAI.

In conclusion, product recalls are a necessary part of ensuring food safety in India. Companies should be prepared for a recall and have a plan in place to carry it out quickly and efficiently. Consumers should be aware of the recall process and what to do if they have a recalled product. The FSSAI plays a crucial role in ensuring that all food products sold in India are safe and meet quality standards. By working together, we can ensure that all food products sold in India are safe and of the highest standards.

Disclaimer *– The views expressed here are of the author alone and do not represent the views of any organization and readers should not act based on this information without seeking professional legal advice.*

LEGAL UPDATE

Nature of Financial Debt doesn't change upon breach of Consent Terms?

Introduction

Recently the National Company Law Appellate Tribunal, Delhi **(NCLAT)** during the adjudication of an appeal filed by Priyal Kantilal Patel V/s. IREP Credit Capital Pvt Ltd & Anr. held that the nature of financial debt would not change on account of breach of consent terms.

Facts

Rajesh Landmark Projects Pvt Ltd **(Appellant)** had issued debentures to IREP Credit Capital Pvt Ltd & Anr **(Respondent)**. An application under section 7 of the Insolvency and Bankruptcy Code 2016 **(IBC)** was filed by the Respondent on December 20, 2019 being CP No. 45/IBC/NCLT/MB/MAH/2020. In the said Company Petition consent terms were entered into between parties wherein the Respondent agreed to withdraw the Petition. It was agreed in the consent terms that in case of default the Respondent shall be entitled to claim the entire outstanding amount and revive the Petition. Subsequently, there was a default by the Appellant and the Respondent instead of reviving the Petition filed a fresh Petition basis the claim of the original Petition. The said Petition was admitted by NCLT, Mumbai vide order dated October 10, 2022 against which the Appellant has filed the present appeal.

Submissions on behalf of the Appellant

The Counsel for the Appellant submitted that in case of breach of consent terms, Section 7 filed was not maintainable as a breach of consent terms does not furnish any right to initiate Section 7 because the said breach cannot be treated as to be financial debt. Further, he relied on judgment of **Amit Kumar Agarwal Vs Tempo Appliances Pvt Ltd. (2020 SCC Online NCLAT 1202)** decided on November 25, 2020 as well as judgment in **Dr. Gopal Krishnan MS & Anr. V/s. Mr. Ravindra Beleyur & Anr [CA(AT)(CH)(INS) No. 316 of 2022].** It was further submitted by the counsel that there is no consensus for initiating Section 7 Application amongst the Debenture Holders and Respondents were only 12% Debenture Holder.

Submissions on behalf of the Respondent

The Counsel for the Respondent refuted the submissions and contended that the nature of the debt claimed under Section 7 remains a financial debt. By virtue of consent terms which were entered into earlier Petition, the nature of debt shall not be changed. The case in hand is not a case wherein the Respondent was trying to enforce the consent terms between the parties rather the Petition was filed claiming as "financial debt" and

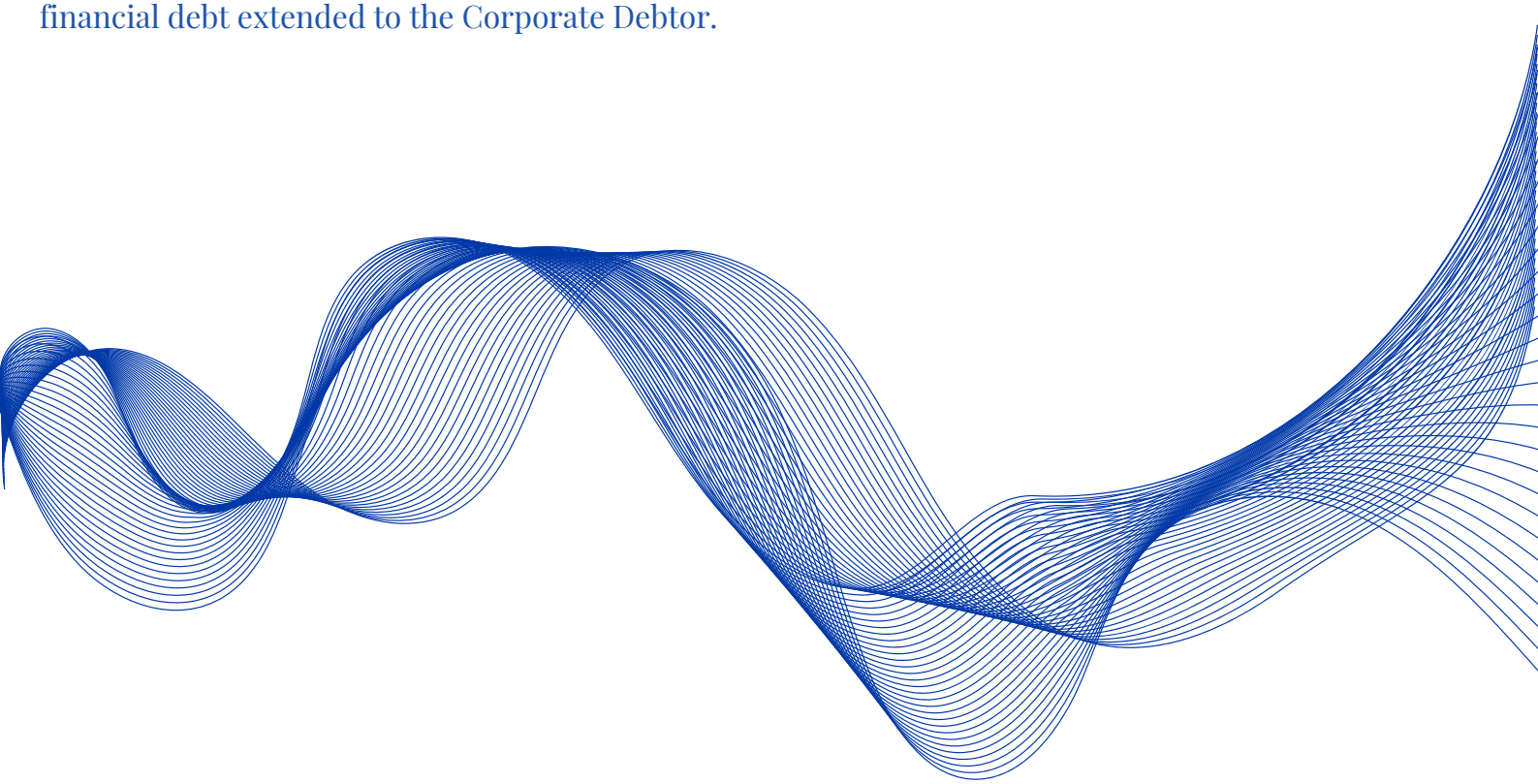
the Petition was rightly admitted. In addition to that, as per consent terms there was a clear stipulation that in case of default revival application can be filed. However, the Respondent filed a fresh application which cannot be defeated on the above-mentioned grounds referred by the Appellant.

Observations and decision of NCLAT

The Petition was not only filed on the breach of the consent terms but rather on the original financial debt. Further, the Court was of the view that judgment of **Amit Agrawal** relied on by the Appellant was a case where Section 7 was filed on the ground of default in payment of settlement agreement wherein it was held that default in payment of settlement agreement does not constitute a financial debt. The facts of present case are clearly distinguishable. In the present case, the Section 7 has been filed on the basis of the original financial debt extended to the Corporate Debtor.

Mere breach of consent terms in earlier Petition would not wipe out the financial debt nor would it change the character of debt upon breach of terms. The judgment of **Dr Gopal Krishnan MS (supra)** is also distinguishable as the Court in that case came to the conclusion that debt is not financial debt. The Court noticed that clause 9 of the consent terms had stipulation for revival of the Petition and the mere fact that instead of revival a fresh Petition filed should not be reason to reject the Petition and not to entertain the Petition. Further, the Court also rejected the second argument of the Appellant that the majority debenture holders have not initiated any Section 7 Application shall not preclude the Respondent to initiate Section 7 Application on its own.

Thus, the court was pleased to dismiss the appeal.



THE RIGHTS TO SEEK CANCELLATION OF A MARK AND RECTIFICATION OF REGISTER UNDER SECTIONS 57 AND 124 OF THE TRADE MARKS ACT ARE INDEPENDENT OF EACH OTHER

Introduction

In a latest development, the Hon'ble High Court of Delhi **("High Court")**, has held that the right to seek cancellation of a mark and rectification of register under Sections 57 or Section 124(1)(b)(ii) of the Trade Marks Act, 1999 **("the Act")** are independent rights and both are available for invocation by the interested party***(1)***.

Facts

In September 2021, Respondent No. 1(Plaintiff) filed a commercial suit **("Suit")** before the Commercial Court, Karkardooma, Delhi **("Trial Court")** against the Petitioner/Defendant and also sought interlocutory injunction. It was alleged that the Petitioner/Defendant's use of its mark 'JAIN SHIKANJI' was the same as the Respondent No.1/Plaintiff's registered mark. The interlocutory injunction was granted by the Trial Court and was challenged by the Petitioner/Defendant***(2)*** before the High Court. The said Appeal is presently pending before the High Court wherein no interim orders have been passed till date.

Thereafter, the instant petition under Sections 57***(3)*** and 125(2)***(4)*** of the Act was filed by the Petitioner seeking cancellation of the registration of the mark in Jain SHIKANJI favour of Respondent No. 1 and consequent rectification of the trade mark register.

Contentions of the Parties

Respondent No. 1/Plaintiff contented that the petition was not maintainable in light of Section 124 of the Act. Section 124 provides for stay of proceedings where the validity of registration of the trade mark is questioned and applies in cases where a suit alleging infringement of trade mark is pending before a Civil Court. Further, Section 124(1)(a) applies where, in a suit for infringement of a trademark, the defendant pleads that registration of the plaintiff's trade mark is invalid. It was thus argued that as per section 124, once a suit for infringement is filed by the plaintiff against the defendant, and the defendant raises the plea of invalidity of the plaintiff's mark as a ground of defence in the said suit, the defendant loses the right to independently invoke Section 57 of the Act to seek rectification of the register and cancellation of the plaintiff's mark.

On the other hand, the Petitioner/Defendant contended that in order for Section 124(1)(a) to be applicable, it is paramount for the Petitioner (Defendant in Suit) to have pleaded in the Suit that registration of Respondent No. 1/Plaintiff's trade mark is invalid. It was argued that since the Petitioner never made such pleadings in the suit therefore, the conditions of section 124 (1) (a) are not satisfied and therefore the present petition was maintainable.

Findings of the High Court

At the outset, while discussing the ingredients of Section 124(1) of the Act, the High Court observed that clause (ii) in Section 124(1) provides that if no proceedings for rectification of the register, in relation to the trade mark of either of the parties in the suit, are pending before the Registrar of Trademarks, and the trial court is satisfied that the plea regarding invalidity of registration, as raised in the suit is, *prima facie*, tenable, then:

(i) the Court is required to raise an issue regarding validity of the contested trade mark; and

(ii) adjourn the case for three months to enable the party assailing the validity of the contested trade mark to apply to the High Court for rectification of the register.

However, the High Court found that clause (ii) in Section 124(1) would not be applicable to the case of the Petitioner/ Defendant as the Petitioner/ Defendant had not urged any plea for invalidity of registration of Respondent No. 1's mark.

The High Court proceeded to clarify that Section 124 of the Act would apply only in selective instances envisaged in the provision and enumerated under:

(i) there must be a suit by a plaintiff against a defendant alleging infringement, by the defendant, of the plaintiff's trademark;
(ii) the defendant must, in the said suit, raise a plea of invalidity of the plaintiff's trademark;
(iii) at that time, no proceedings for rectification should be pending; and
(iv) the trial court hearing the suit should be *prima facie* satisfied that the plea of invalidity of the plaintiff's trademark, as raised by the defendant, is tenable.

The High Court further observed that in the judgment of the Supreme Court in the case of **Patel Field Marshal Agencies v. P.M. Diesels Ltd.*(5)***, it was held that where the procedure under Section 124(1)(ii) of the Act is set in motion, the High Court would acquire control over the issue of validity of the contested trade mark only when:
(i) in the first instance, the civil court expresses prima facie agreement with the plea of invalidity as raised;
(ii) an issue is framed in that regard;
(iii) the matter is adjourned by the civil court; and
(iv) the defendant, thereafter, moves for rectification of the register.

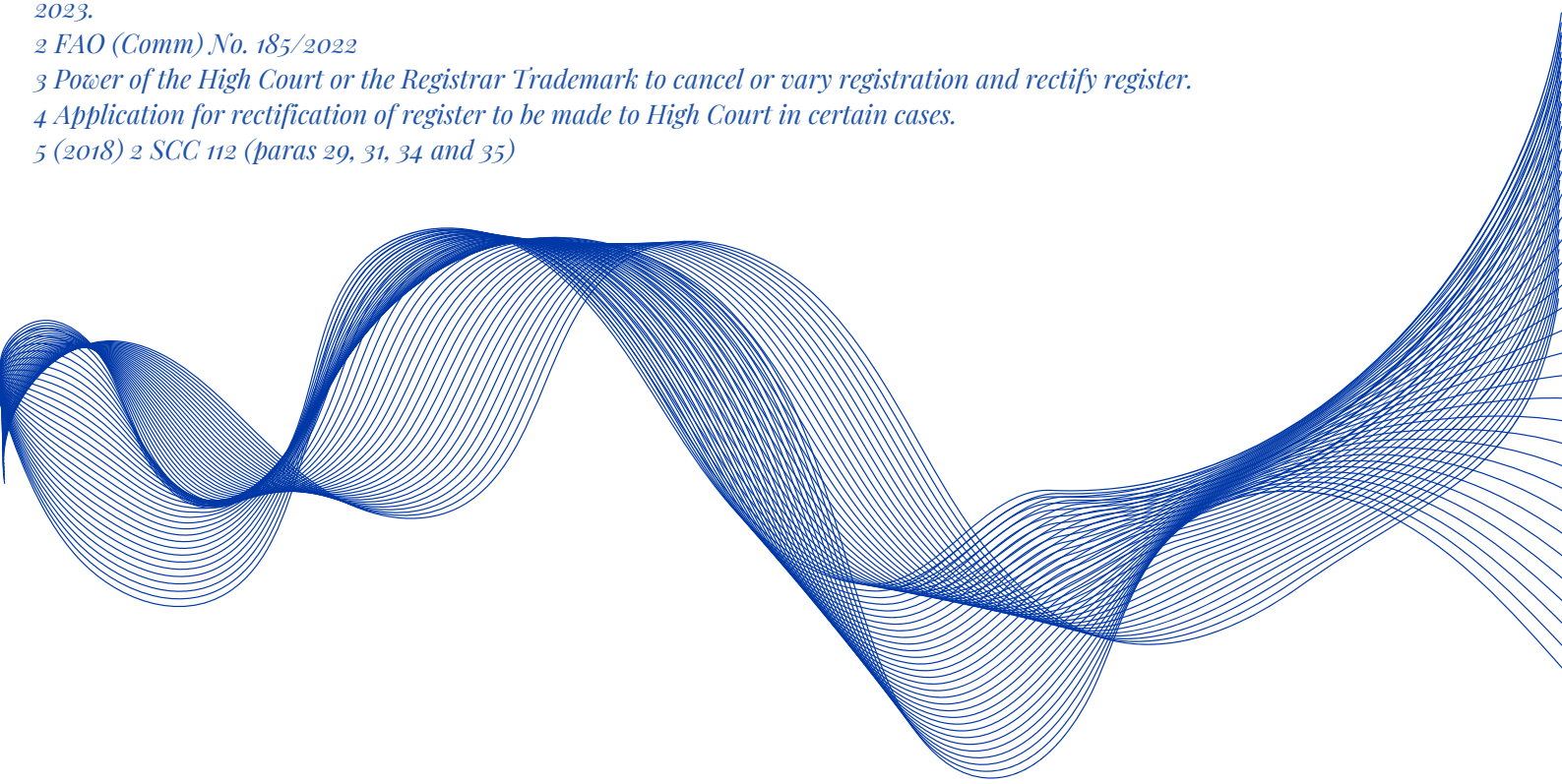
The High Court opined that the Supreme Court, in Patel Field Marshal Agencies (supra) had held that the right conferred on a defendant in an infringement suit for rectification of the register of marks as provided under Section 124 is a right that is independent of other rights under the Act for the same purpose. Therefore, it must be treated as being available in addition to the right conferred by Section 57 and cannot be read to be in abrogation of Section 57 of the Act. Clarifying the aforementioned position, the High Court held that, while the right under Section 57 remains available, if an infringement suit has been filed by the opposite party and the defendant pleads invalidity of the plaintiff's mark as a ground of defence to the suit, the defendant would acquire an independent right under Clause (ii) of Section 124(1) of the Act to move the High Court for rectification of the register. The High Court also opined that neither is there any clause in Section 57 which makes it subject to any other provision in the Act nor does one find any non-obstante clause which would accord Section 124 pre-eminence over other provisions of the Act.The High Court further opined that Section 124 cannot possibly be read in a manner as to defeat the right of the petitioner (defendant in the suit) to defend the independent right of the petitioner to invoke Section 57.

Conclusion

Therefore, in light of the above backdrop, the High Court held that the present petition was maintainable and that the rights to seek cancellation of a mark and rectification of the register, conferred by Section 57 and by Section 124(1)(ii) of the Act, are independent rights.

Footnotes

1 Anubhav Jain v. Satish Kumar Jain & Anr., C.O. (COMM.IPD-TM) 55/2021, Hon'ble High Court of Delhi, passed on January 09, 2023.
2 FAO (Comm) No. 185/2022
3 Power of the High Court or the Registrar Trademark to cancel or vary registration and rectify register.
4 Application for rectification of register to be made to High Court in certain cases.
5 (2018) 2 SCC 112 (paras 29, 31, 34 and 35)



JUDGEMENTS

In the matter of Gandharv Gems Private Limited ("Company") for violation of section 138 of the Companies Act, 2013 ("Act")

In the instant case, the Ministry of Corporate Affairs had issued directorate for inquiry of the Company under section 206(4) of the Act. During inspection, it was observed that the Company was required to appoint an Internal Auditor under section 138 of the Act as the turnover of the Company for the financial year 2017-18 exceeded INR 200 Crores, which was beyond the threshold limit that exempts a company from appointing an Internal Auditor. However, the Company did not appoint Internal Auditor for the FY 2018-19 and 2019-20.Consequently, the Registrar of Companies, Gujarat **("ROC")** issued a notice for adjudication to the Company and the officers in default. However, the notice was received back undelivered with the postal remarks **"LEFT"** and no response was received from and on behalf of the Company and its officers.

The ROC provided the reasonable opportunity of being heard by issuing several written notices to the Company and its officers to appear. However, neither any reply was submitted for and on behalf of the Company or its directors nor any individual appeared before the ROC.

ROC concluded the matter by imposing a total penalty of INR 20,000/- on the Company and INR 90,000/- on the Directors of the Company for violation of section 138 for the financial year 2018-19 and 2019-20.

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In the matter of M/s Easy Pay Private Limited ("Company") for violation of section 117 of the Companies Act, 2013 ("Act")

During the procedural scrutiny of e-form MGT-14 filed by the Company with respect to alteration of articles of association, the Registrar of Companies, Gujarat **("ROC")** noted that the e-form was filed with a delay of 200 days. The statutory time limit for filing e form MGT-14 is within 30 days of passing a resolution. Therefore, as per the provisions of section 117 of the Act, the e form INC 28 for condonation of delay was required to be filed first. Further, it was also observed that the Company did not attach the copy of special resolution and copy of notice of the extraordinary general meeting with e form MGT-14 which also is a non-compliance under section 117 of the Act. In this regard, the ROC issued an adjudication notice to the Company and its officers, however, no response was received from the Company or its officers. Thereafter, a written notice was issued to the Company and hearing date was fixed. An authorized representative appeared before the ROC on behalf of the Company and its officers in default, admitted the default and pleaded to not charge any penalty. ROC concluded the matter by imposing a penalty of INR 30,000/- each on the Company and its two directors for complete period of default (i.e. 200 days) and a penalty of INR 15,200/- was imposed on one of the directors who was appointed after the non-compliance was done for remaining period of default (i.e. 52 days).

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JUDGEMENTS

In the matter of M/s Rokad App Private Limited ("Company") for violation of section 12(3) of the Companies Act, 2013 ("Act")

In the present case, the Registrar of Companies, Chhattisgarh **("ROC")** observed that the documents filed by the Company viz. board resolution/ extraordinary general meeting resolution and notice of the meetings as attached with e form SH-7 (e form for notice to the Registrar for the increase of authorized share capital of the Company), the details such as corporate identity number, telephone number, fax number, email, website address and registered office address of the Company were not mentioned. It was further observed that the aforementioned details were also missing in the copy of resolution attached with e form ADT-1 (form for filing intimation regarding appointment of auditor) as available in the records of Ministry of Corporate Affairs **("MCA")**. Therefore, ROC issued an adjudication notice to the Company and its directors under section 454 of the Act. In response, the Company submitted a written reply admitting the fact that a clerical mistake was committed on the part of Company while uploading the documents on the MCA portal and further assured the ROC that they would be more vigilant in future filings. After considering the reply, the ROC opined that since the Company had admitted the non-compliance with section 12, no physical appearance of the Directors was required for hearing purpose. Consequently, ROC concluded the matter by imposing a penalty of INR 1,00,000/- each on the Company and its Directors.

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In the matter of M/s Sonasuman Constech Engineers Private Limited ("Company") for violation of section 143 of the Companies Act, 2013 (Act)

In the present case, the Registrar of Companies, Patna **("ROC")** issued an adjudication notice to the Auditors of the Company for violation of section 143 of the Act. Pursuant to the provision of section 129 of the Act, the financial statement shall give true and fair view of the state of affairs of a company, shall comply with the accounting standards notified under section 133 and be presented in the form as provided in schedule III of the Act. Further, section 143 implies that the auditor of a company shall provide comments in its report if the aforesaid requirements are not complied with while filing a financial statement. While reviewing e form AOC-4 of the Company, the ROC observed non-disclosures in the financial statements filed for FY 2018-19 and 2019-20, which inter alia includes the following:

- *Shareholding Pattern*: the shareholding of shareholder(s) holding more than five percent shares in the Company, number of shares issued, subscribed and fully paid, and the reconciliation of shares outstanding at the beginning and at the end of the reporting period was not disclosed in the financial statement;
- *Classification of Borrowings*: The Company had disclosed the advances/borrowings taken from its relatives and customers however, neither the Company had provided the classification and sub-classification of such borrowings as secured or unsecured nor the nature of security of long-term borrowings was disclosed in the financial statement;

- *Related Party disclosure:* The Company had not disclosed the name of the related party and the nature of the related party relationship which was required to be disclose in accordance with AS-18 irrespective the fact whether the transactions have been done between the related parties or not.

The ROC did not receive any reply from the auditors of the Company, therefore, a penalty of INR 10,000/- each for FY 2017-18 and 2018-19 and INR 5,000/- for FY 2019-20 was levied on the Statutory Auditors for the respective financial years.

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In the matter of ID Fresh Foods (India) Private Limited ("Company") for violation of section 42(6) of the Companies Act, 2013 ("Act")

An appeal was filed before the Regional Director, south east region ("RD") against the order passed by the Registrar of Companies, Karnataka ("ROC") for violation of section 42 of the Act. According to the facts, pursuant to a share subscription agreement dated September 10, 2014 for issuance of compulsorily convertible preference shares ("CCPS"), the Company received INR 64,38,000/- in its bank account from five subscribers.

However, the necessary compliances under the Act, such as, approval for issuance of CCPS through board resolution, circulation of letter of offer to proposed allottees in form PAS-4 and maintenance of records in form PAS-5, were not done. Besides the above, the Company was required to issue CCPS within 60 days from the date of receipt of amount in its bank account. However, the Company did not issue CCPS and refunded the subscription money after a year, which was beyond the due date for refund.

After considering all the facts, ROC imposed a penalty of INR 20,00,000/- on the Company and INR 11,00,000/- each on four directors (directors during the time of such issuance). ROC further advised the Company to pay interest of 12% per annum to the subscribers for the delay in repaying back the money to the subscribers. Consequently, the Company filed appeal and prayed before RD to reduce the quantum of penalty on the ground that the Company is a loss-making company and has accumulated losses.

The RD modified the aforesaid ROC order and reduced the penalty to INR 8,00,000/- on the Company and INR 1,50,000/- each on the four directors (directors during the time of such issuance). RD further directed to pay interest of 12% per annum to the subscribers for the period, money was kept by the Company.

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CORPORATE REGULATORY UPDATES

Ministry of Electronics and Information Technology issues draft rules for Online Gaming

On 2 January 2023, the Ministry of Electronics and Information Technology issued draft rules by amending the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, in order to incorporate online gaming. The gaming industry in India was previously regulated by the individual state Governments, however, due to the constant desire of the gaming industry to be regulated by a central law, the Government decided to make the Ministry of Electronics and Information Technology (MeitY) the central regulatory authority for the online gaming industry. The Government also decided to bring the online gaming industry under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The salient features of the Draft Rules are as follows:

- Establishment of self-regulatory bodies (SRBs). An SRB may be either a non-profit company registered under section 8 of the Companies Act, 2013 or a society registered under the Societies Registration Act, 1860. Such SRBs shall have to be registered with MeitY.
- Online gaming intermediaries shall have to abide by additional and more stringent due diligence.
- Restrictions pertaining to betting are prevalent.
- Online gaming intermediary shall have to appoint: (i) a chief compliance officer who is a resident in India; and (ii) a nodal contact person (other than the chief compliance officer) for coordination with the law enforcement agencies and officers to ensure compliance to their orders or requisitions.

The appointment of MeitY as the regulatory authority shall provide clarity and uniformity within the law and allow the online gaming industry to grow in a regulated and well controlled environment.

SEBI issues circular on facility of conducting meetings of unit holders of InvITs through Video Conferencing or Other Audio Visual means

On 12 January 2023, the Securities and Exchange Board of India ("SEBI") issued a Circular on "Facility of conducting meetings of unit holders of InvITs through Video Conferencing or Other Audio Visual means". Regulation 22(3)(a) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 provides that an annual meeting of all unit holders shall be held not less than once a year within one hundred twenty days from the end of financial year and the time between two meetings shall not exceed fifteen months. In addition to that, Investment Manager of InvITs are also required to hold meetings of unit holders for certain matters specified under SEBI (Infrastructure Investment Trusts) Regulations, 2014. In order to allow maximum participation of unitholders in the meeting and for better governance, SEBI decided to allow Investment Manager of the InvIT to conduct meetings of unitholders through Video Conferencing or Other Audio Visual means. While conducting meetings of unit holders through Video Conferencing or Other Audio Visual means, the Investment Manager of the InvIT is required to adopt the procedures mentioned below, in addition to any other requirement specified under the SEBI (Infrastructure Investment Trusts) Regulations, 2014:

(a) The recorded transcript of the meeting held through Video Conferencing or Other Audio Visual means shall be maintained in safe custody of the Investment Manager of the InvIT and shall also be uploaded by the Investment Manager of the InvIT on the website of the InvIT as soon as possible after the conclusion of the meeting.

(b) Convenience of different persons positioned in different time zones shall be kept in mind by the Investment Manager of the InvIT before scheduling the meeting.

(c) All care must be taken to ensure that such meetings conducted through Video Conferencing or Other Audio Visual means allow two-way teleconferencing for the ease of participation of the unitholders and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the email address of the InvIT.

(d) The facility for joining the meeting shall be kept open at least fifteen minutes before the time scheduled to start the meeting and shall not be closed until the expiry of fifteen minutes after such scheduled time.

(e) Before the actual date of the meeting, the facility of remote e-voting shall be provided.

(f) Only those unitholders that are present in the meeting and have not cast their vote on resolutions through remote e-voting and are otherwise not barred from doing so, shall be allowed to vote through the e-voting system at the meeting.

(g) The chairperson of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all reasonable efforts have been made by the Investment Manager of the InvIT to enable unitholders to participate and vote on the items being considered in the meeting.

(h) The chairperson present at the meeting shall also ensure that the facility of e-voting system is available for the purpose of conducting a poll during the meeting held through Video Conferencing or Other Audio Visual means on the business to be considered during the meeting.

(i) At least one independent director of Investment Manager of the InvIT and the auditor of the InvIT or his/her authorized representative who is qualified to be the auditor shall attend such meeting.

(j) The notice for the meetings of unitholder shall make disclosures with regard to the manner in which framework provided in this circular shall be available for use by the unitholders and shall also contain clear instructions on how to access and participate in the meeting. Investment Manager of the InvIT shall also provide a helpline number through the registrar and share transfer agent, technology provider or otherwise, for unitholders who need assistance with the technology before or during the meeting. Such notice shall also include the certain particulars as mentioned in the circular.

(k) The notice to the unit holders may be given through emails registered with the InvIT or with depositories.

(l) Manager of the InvIT shall contact all unit holders whose email addresses are not registered with the depositories, over possible/available mode of communication for registration of their email addresses.

(m) Manager of the InvIT shall ensure that all other compliances associated with the provisions relating to meeting of unit holders are complied with and documents required to be provided to unit holders, if any, are provided through electronic mode.

The Investment Manager of the InvIT shall disclose to the Stock Exchange and Trustee that the meeting of unit holders will be conducted through Video Conferencing or Other Audio Visual means. The trustee of the InvIT shall attend meeting of unit holders and monitor the meetings conducted through Video Conferencing or Other Audio Visual means.

The objective behind enabling participation of unitholders through Video Conferencing or other Audio Visual means is to ensures maximum participation of the unitholders in the decision-making process, irrespective of their geographical location, and delivers collaborative in-person experience at their convenience.

SEBI issues Circular on Facility of conducting meetings of unit holders of REITs through Video Conferencing or Other Audio-Visual means

On 12 January 2023, SEBI has issued a Circular on "Facility of conducting meetings of unit holders of REITs through Video Conferencing or Other Audio-Visual means". Regulation 22(3) of SEBI (Real Estate Investment Trusts) Regulations, 2014 provides that an annual meeting of all unit holders shall be held not less than once a year within one hundred twenty days from the end of financial year and the time between two meetings shall not exceed fifteen months. Further, Manager of REITs are also required to hold meetings of unit holders for certain matters specified under SEBI (Real Estate Investment Trusts) Regulations, 2014. Enabling participation of unit holders through Video Conferencing or other Audio Visual means ensures maximum participation of the unit holders in the decision-making process, irrespective of their geographical location, and delivers collaborative in-person experience at their convenience.

In order to allow maximum participation of unit holders in the meeting and for better governance, SEBI decided to allow the Manager of the REIT to conduct meetings of unit holders through Video Conferencing or Other Audio Visual means. While conducting meetings of unit holders through Video Conferencing or Other Audio Visual means, the Manager of the REIT is required to adopt the following procedure, in addition to any other requirement specified under the SEBI (Real Estate Investment Trusts) Regulations, 2014:

(a) The recorded transcript of the meeting held through Video Conferencing or Other Audio Visual means shall be maintained in safe custody of the Manager of the REIT and shall also be uploaded by the Manager of the REIT on the website of the REIT as soon as possible after the conclusion of the meeting.

(b) Convenience of different persons positioned in different time zones shall be kept in mind by the Manager of the REIT before scheduling the meeting.

(c) All care must be taken to ensure that such meetings conducted through Video Conferencing or Other Audio Visual means allow two-way teleconferencing for the ease of participation of the unit holders and the participants are allowed to pose questions concurrently or given time to submit questions in advance on the email address of the REIT.

(d) The facility for joining the meeting shall be kept open at least fifteen minutes before the time scheduled to start the meeting and shall not be closed until the expiry of fifteen minutes after such scheduled time.

(e) Before the actual date of the meeting, the facility of remote e-voting shall be provided.

(f) Only those unit holders that are present in the meeting and have not cast their vote on resolutions through remote e-voting and are otherwise not barred from doing so, shall be allowed to vote through the e-voting system at the meeting.

(g) The chairperson of the meeting shall satisfy himself and cause to record the same before considering the business in the meeting that all reasonable efforts have been made by the Manager of the REIT to enable unit holders to participate and vote on the items being considered in the meeting.

(h) The chairperson present at the meeting shall

also ensure that the facility of e-voting system is available for the purpose of conducting a poll during the meeting held through Video Conferencing or Other Audio Visual means on the business to be considered during the meeting.

(i) At least one independent director of Manager of the REIT and the auditor of the REIT or his/her authorized representative who is qualified to be the auditor shall attend such meeting.

(j) The notice for the meetings of unit holder shall make disclosures with regard to the manner in which framework provided in this circular shall be available for use by the unit holders and shall also contain clear instructions on how to access and participate in the meeting. Manager of the REIT shall also provide a helpline number through the registrar and share transfer agent, technology provider or otherwise, for unit holders who need assistance with the technology before or during the meeting. Such notice shall also include the particulars mentioned in the circular.

(k) The notice to the unit holders may be given through emails registered with the REIT or with depositories.

(l) Manager of the REIT shall contact all unit holders whose email addresses are not registered with the depositories, over possible/available mode of communication for registration of their email addresses.

(m) Manager of the REIT shall ensure that all other compliances associated with the provisions relating to meeting of unit holders are complied with and documents required to be provided to unit holders, if any, are provided through electronic mode.

The Manager of the REIT shall disclose to the Stock Exchange and Trustee that the meeting of unit holders will be conducted through Video Conferencing or Other Audio Visual means. The trustee of the REIT shall attend meeting of unit holders and monitor the meetings conducted through Video Conferencing or Other Audio Visual means. The reason for doing so is to allow maximum participation of the unit holders in the decision-making process, irrespective of their geographical location, and to deliver collaborative in-person experience at their convenience.

RBI issues Master Directions on Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023

On 16 January 2023, the Reserve Bank of India ("RBI") issued the "Reserve Bank of India (Acquisition and Holding of Shares or Voting Rights in Banking Companies) Directions, 2023". These master directions are to be read with the 'Guidelines on Acquisition and Holding of Shares or Voting Rights in Banking Companies' issued by RBI. These directions are issued with the intent of ensuring that the ultimate ownership and control of banking companies are well diversified and the major shareholders of banking companies are 'fit and proper' on a continuing basis. The provisions mentioned within these directions shall apply to all banking companies (as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949), including Local Area Banks (LABs), Small Finance Banks (SFBs) and Payments Banks (PBs) operating in India. The master directions *inter-alia*, provide for (i) procedure for prior approval (of acquisition), (ii) continuous monitoring arrangements such as due diligence, (iii) reporting requirements, (iv) repeal and other provisions.

CORPORATE REGULATORY UPDATES

Amendment in disqualification of Directors rules

MCA notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2023 ("Amendment") to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014. The notification came into effect on January 23, 2022. As per the Amendment, every director is required to inform the company in form DIR-8 about his disqualification under Section 164(1) or 164 (2) of the Companies Act, 2013, prior to his or her appointment or re-appointment in the company. Earlier, this form was only required to be filed to the company in case the disqualification of director as per section 164(2) of the Act. On receipt of form DIR-8 from a director, the company is required to file e-form DIR-9 with the MCA within 30 days of receipt. Further, an application for removal of disqualification of director is to be made before the Regional Director in e-form DIR-10.

Migration of MCA e-forms from V2 toV3 portal

MCA amended various rules framed under the provisions of Companies Act, 2013 **("Act")**, in order to effect the migration of 56 e-forms from MCA V2 to V3 portal. The e-forms have been made web-based and updated to include additional details such as furnishing the latitude, longitude and photograph of registered office in e-form INC 20A, e-form INC 22 and e-form AOC-5.

The requirement of certain attachments has been done away with and in its place the requisite/concerned person is now required to provide a declaration, which is included in the respective e-form.

Further, the e-forms for company filings are categorised under straight through process ("STP") and non-STP mechanism, wherein ROC scrutinises the forms which are to be approved under the non-STP mechanism. Now, under the V3 portal, certain forms have been moved to STP mechanism and therefore, in relation to such forms, the onus of compliance of provisions of the Act has been shifted to practicing professionals.

RBI releases Discussion Paper on Securitisation of Stressed Assets Framework

On 25 January 2023, RBI released a Discussion Paper on Securitization of Stressed Assets Framework (SSAF). As part of the Statement on Developmental and Regulatory Policies released on 30 September 2022, RBI had proposed to introduce a framework for securitization of stressed assets, in addition to the ARC route. Accordingly, RBI has released the Discussion Paper on SSAF.

The Discussion paper broadly covers nine relevant areas of the framework including asset universe, asset eligibility, minimum risk retention, regulatory framework for special purpose entity and resolution manager, access to finance for resolution manager, capital treatment, due diligence, credit enhancement, and valuation. It draws upon similar frameworks introduced in other jurisdictions, while trying to keep it structurally aligned with the framework for securitization of standard assets. RBI has asked for comments on the Discussion Paper to be submitted by 28 February 2023.

The Kala Ghoda Arts Festival

The ***Kala Ghoda Arts Festival*** in Mumbai is a yearly exhibition and celebration of cinema, dance, theatre, music, films, comedy, literature, and other art forms. The 9-day event began in *1999* and has grown to become one of Mumbai's largest multicultural festivals. The event draws massive engagement from art lovers in Mumbai, with a footfall of over 1.5 lakh every year. And this year is going to be no different. The 2023 edition of the Kala Ghoda Arts Festival was held from **February 4 to 12**. Lets read about some interesting facts about one of India's largest multicultural festival.

The festival is organised by the Kala Ghoda Association. The association was formed on 30th October 1998 with the aim of maintaining and preserving the heritage of the Kala Ghoda area - South Mumbai's beloved art district.

With the aim of promoting arts, crafts and cultural heritage in the precinct, all funds raised from the Festival every year are directed towards the restoration efforts undertaken by the Association.

The name Kala Ghoda can be traced to the old equestrian statue of King Edward VII, which was placed at the centre of the large node on the old Esplanade Road.

Source - https://kalaghodaassociation.com/

Notable Recognitions & Accolades

The Legal 500 2023 rankings

Law Firm Ranking

The LEGAL 500 ASIA PACIFIC LEADING FIRM 2023

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- Labour & Employment
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Individual Lawyer Ranking

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Former Member - Law Commission of India | Dr. Menaka Guruswamy, Senior Advocate | Mr. Rajshekhar Rao, Senior Advocate |
Dr. Amar Kumar Pandey, (IPS) DGP & DG Fire and Emergency Services, Ph.D in Law NLSIU, Bangalore

Brian Carvalho
Editor – Forbes India

March 30, 2022

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