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Official Newsletter

CLASIS LAW

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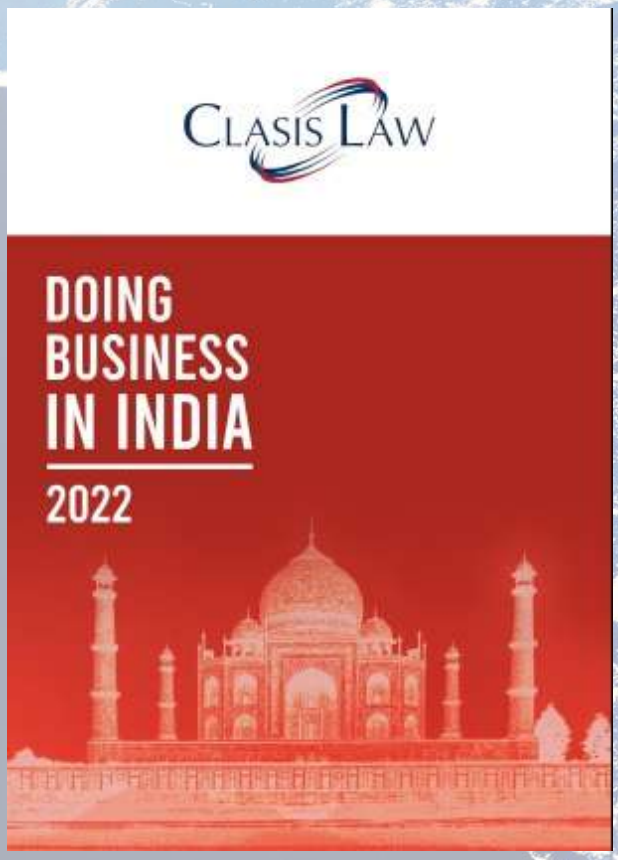
CLASIS LAW

DOING BUSINESS IN INDIA

We are pleased to share 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.



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FEATURED ARTICLE

Retention Bonus

Authors - Clasis Law
Vineet Aneja, *Managing Partner*
Raveena Verma, *Senior Associate*

Retention Bonus is an incentive tool used by businesses to induce employees to stay employed with the company. It is a payment which is over and above the salary and other benefits offered to an employee by the company. It is a common market practice amongst corporates in India to offer retention bonus to employees whom the company wishes to keep on board while undergoing business transitions such as business transfer, merger or acquisition or closure of business. Retention bonus is also offered at times to retain high performing employees to continue with the organisation and to prevent them from considering other employment opportunities whether with competitors or otherwise. Retention payment serves the interest of both, the employees and the company as it motivates the employees to continue providing their services as per the requirements of the company and at the same time, provides an opportunity for the employees to earn additional incentives.

From the company's perspective, such payments (i) increase the productivity of the employees and stimulates them to work more efficiently; (ii) gives the employees a sense of belonging to the organisation and increases their loyalty towards the company; (iii) boosts the morale of the employees and decreases negative emotions towards terminations; and (iv) enables the organisation to retain reliable employees to fulfil specific duties and achieve the overall goals of an organisation. The amount of retention bonus payable, depends on factors such as the salary of the employee, his role within the organization and the time period for which the retention bonus is being considered. It may be a one-time bonus or even a recurring bonus.

As per Indian laws, retention bonus is in the nature of a contingent contract under the Indian Contract Act, 1872. It is considered as conditional/ contingent payment which is repayable if the prescribed conditions are breached by the employee. In case of breach, recovery of the retention bonus is typically made from the dues payable to an employee.

FEATURED ARTICLE

Retention bonuses are agreed to in the form of a letter or an agreement, which clearly sets out the terms and conditions of payment and repayment. A company has recourse under the judicial process for enforcement.

It is important that corporates structure the retention bonus in an efficient manner and ensure that it is a separate payment from and in addition to the salary or other incentives of the employee. It should be an extra discretionary payment which was not otherwise part of the employee's pay package. Depending on the requirements of the company, below are the various models that may be adopted by an organization while structuring the retention bonus scheme:

(i) Paying the retention bonus amount in equal monthly instalments over the applicable retention period and requiring the employee to repay the total retention bonus amounts paid to him if he chooses to resign or is terminated by the company for cause within the retention period.

(ii) Paying the entire retention bonus amount upfront and requiring the employee to repay the retention bonus amount paid to him if he chooses to resign or is terminated by the company for cause within the retention period.

(iii) Paying the entire retention bonus amount upfront and requiring the employee to repay a proportion of the retention bonus amount paid to him depending upon the timing of his exit from the company within the retention period.

(iv) Post payment model wherein a promised retention bonus is paid to employee after he completes a specified duration in the company.

It is advisable that organizations seek professional advice while structuring and drafting retention bonus related documentation in order to safeguard their rights. Certain aspects that become critical in drafting the retention bonus related documentation are (a) identification of the retention period, i.e. period for which the company requires the employee and consequently identifying the exit date; (b) identification of the tasks/ projects that the employee shall undertake during the retention period; (c) defining the duties and responsibilities of the employees during the retention period; (d) structuring the retention amount (e) identification of conditions upon which the retention bonus amount will be payable; (f) consequences and repayment of the retention bonus by the

(g) consequences of misconduct or resignation by an employee during the retention period.

Although helpful, there can also be challenges to a retention bonus, which an organisation may face such as

(i) employees who were planning to leave may continue at their current position for the monetary aspects;
(ii) the attitude of the retained may become disruptive;
(iii) retention bonus provided to employees may inculcate a feeling of resentment in others; and
(iv) the employees could develop an entitlement attitude towards their role in the organization.

Therefore, retention bonuses need to be structured very meticulously so as to achieve the organization's goals and purpose for which the employees are retained. The repayment obligations should be clear so that they may act as a deterrent for them to leave the company during the retention period.

The organisations should also maintain scrutiny over the employees to whom the retention bonus is paid and ensure that the employees who receive retention bonus are worthy of retaining.

Disclaimer

This article is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to herein. This publication has been prepared for information purposes only and should not be construed as a legal advice. Although reasonable care has been taken to ensure that the information in this publication is true and accurate, such information is provided 'as is', without any warranty, express or implied, as to the accuracy or completeness of any such information.

LEGAL UPDATE

"Shall" or "may": Supreme Court rules on whether IBC provisions relating to admission of CIRP applications are mandatory or discretionary

Facts

Vidarbha Industries Power Limited (the appellant) was an electricity generating company that had a coal-fired thermal power plant in the Nagpur district of Maharashtra. As per the Electricity Act 2003, the Maharashtra Electricity Regulatory Commission (MERC) controlled and regulated the appellant and determined the tariffs chargeable by the appellant. Through an international competitive bidding process conducted by the Maharashtra Industrial Development Corporation (MIDC), the appellant was awarded the contract for the implementation of a group power project, which was later converted into an independent power project. Further, the appellant entered into a power procurement agreement with Reliance Industries Ltd (RIL), which was approved by the MERC and the MIDC. In 2015, the MERC approved the final tariff of the appellant's power plant for the financial years 2014-2015 and 2015-2016.

In 2016, the appellant applied to the MERC to "true-up" the aggregate revenue requirement and to determine the tariff in view of the increase in fuel costs, among other things, which had resulted from the rise in the cost of procuring coal to run the power plants. On 20 June 2016, the MERC:

- disallowed a substantial portion of the actual fuel costs for financial years 2014-2015 and 2015-2016; and
- capped the tariff for the financial years 2016-2017 to 2019-2020.

The appellant appealed before the Appellate Tribunal for Electricity (APTEL), challenging the MERC's order. The APTEL allowed the appeal and directed the MERC to allow the appellant the actual cost of coal purchased for its units – that is, 17.3 billion rupees (approximately £173 million). However, the MERC subsequently appealed against the APTEL's order before the Supreme Court.

During the MERC's appeal before the Supreme Court, Axis Bank (the respondent) applied to the National Company Law Tribunal, Mumbai (the adjudicating authority) to initiate a corporate insolvency resolution process (CIRP) against the appellant, under section 7 of the Insolvency and Bankruptcy Code (IBC) 2016. In response, the appellant applied to the adjudicating authority to stay the proceedings under section 7 of the IBC in view of the MERC's appeal pending before the Supreme Court.

The adjudicating authority dismissed the appellant's application. The appellant challenged the adjudicating authority's order before the National Company Law Appellate Tribunal (NCLAT), which dismissed the appellant's challenge. Aggrieved, the appellant approached the Supreme Court under section 62 of the IBC.

Submissions

The appellant's counsel submitted before the Court that the appellant had applied for a stay of proceedings before the adjudicating authority in extraordinary circumstances. The appellant had not been able to pay the respondent on account of being unable to realize a sum of 17.3 billion rupees in terms of the APTEL's order as the MERC had filed an appeal against it. Further, the counsel for the appellant submitted that section 7(5)(a) of the IBC confers discretion on the adjudicating authority to reject an application, even where there is existence of debt, for any reason that the adjudicating authority may deem fit to:

- meet the ends of justice; and
- achieve the overall objective of the IBC, which is the revival of the company and value maximization.

According to the appellant, the use of the word "may" in section 7(5)(a) had to be interpreted to mean that it is discretionary for national company law tribunal (NCLT) to admit an application in every case where there is existence of debt. In this regard, the appellant further submitted that if the legislature had intended that an application must be admitted upon existence of debt, the terminology used in section 7(5)(a) of the IBC would have been "shall" and not "may". The counsel for the appellant further relied on rule 11 of the NCLT Rules and held that a joint reading of section 7(5)(a) with rule 11 made it abundantly clear that the NCLT, on examining the existence of debt and its default, has the discretion to admit an application for the initiation of CIRP.

The counsel for the respondent argued before the Court that section 7(5)(a) of the IBC cast a mandatory obligation on the adjudicating authority to admit an application of a financial creditor once it finds the existence of default on the part of the corporate debtor. The respondent's counsel further argued that as the appellant had defaulted on its payment, there were no grounds for interfering with the concurrent findings of the adjudicating authority and the NCLAT, which had declined to stay the proceedings initiated against the appellant under section 7(5)(a) of the IBC.

Decision

The issue before the Supreme Court for its consideration was whether section 7(5)(a) of the IBC was a mandatory or a discretionary provision.

The Court discussed the objective of the IBC and observed that it had been enacted to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, individuals and partnerships firms in a time-bound manner, to do the following (among other things):

- maximise the value of assets;
- promote entrepreneurship and the availability of credit; and
- balance the interests of all stakeholders and matters connected therewith or incidental thereto.

Next, the Court referred to its judgement in Swiss Ribbons vs Union of Indian(1) and held that there was no doubt that a corporate debtor which owes money should be resolved expeditiously and no extraneous matter should be allowed to obstruct that process. However, the viability and overall financial health of the corporate debtor are not extraneous matters. Applying the principle ruleof interpretation of a statute (i.e, the rule of literal interpretation, as settled by the Court in

Lalita Kumari v State of UP), the Court held that section 7(5)(a) of the IBC confers a discretionary power on the adjudicating authority. If the legislative intent had been to make the provision mandatory, the legislature would have used the word "shall" instead of "may". The Court further clarified that it is only possible to resort to purposive interpretation when the plain words of a statute are ambiguous or, if construed literally, would nullify the object of the statute or lead to an absurd result. In the case of section 7(5)(a), there was no ambiguity and, therefore, no reason to depart from the rule of literal interpretation.

To further emphasise the discretionary nature of section 7(5)(a) of the IBC, the Court differentiated between an application filed by an operational creditor under section 9 from an application filed by a financial creditor under section 7 of the IBC. It observed that the legislature had used the term "shall" in section 9 and "may" in section 7 when the provisions were otherwise identical. Therefore, the intent had been to make section 9(5)(a) mandatory and section 7(5)(a) discretionary. Explaining the rationale behind making this differentiation between the two provisions, the Court held:

The legislature has consciously differentiated between financial creditors and operational creditors, as there is an innate difference between financial creditors, in the business of investment and financing, and the operational creditors in the business of supply of goods and services. Financial credit is usually secured and of much longer duration. Such credits, which are often long-term credits, on which the operation of the corporate debtor depends, cannot be equated to operational debts which as usually unsecured, of a shorter duration and of lesser amount. The financial strength and nature of business of a financial creditor cannot be compared with that of an operational creditor, engaged in the supply of goods and services.

The impact of non-payment of admitted dues could be far more serious on am operational creditor than on a financial creditor.

Elaborating on the manner in which the adjudicating authority was to exercise its discretion under section 7(5)(a) of the IBC, the Court held:

Even though Section 7(5) (a) of the Code may confer discretionary power on the adjudicating authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner. The adjudicating authority has to consider the grounds made out by the corporate debtor against admission, on its own merits.

Applying these principles to the facts of the appeal, the Court held that the adjudicating authority and the NCLAT had erred in holding that once it was found that a debt existed and the corporate debtor was in default, there would be no option to the adjudicating authority but to admit the petition under section 7 of the IBC. The adjudicating authority had erred in disregarding the APTEL's award, passed in favour of the appellant, in view of the fact that in terms of that award, the appellant could realise an amount of 17.3 billion rupees, an amount that far exceeded the financial creditors claim. Accordingly, the Court allowed the appellant's appeal and set aside the orders of the adjudicating authority and the NCLAT.

Endnotes

(1) (2019) 4 SCC 17

'Chicken Zinger' – now a registered trademark

Introduction

In a recent development, the Delhi High Court **("High Court")** permitted the registration of the mark 'CHICKEN ZINGER'*(1)* in favour of Kentucky Fried Chicken International Holdings LLC **("KFC")**.

Facts

On May 30th 2014, KFC filed trademark applications for registration of the marks 'CHICKEN BURGER' and 'PANEER ZINGER' under Classes 29*(2)* and 30*(3)*. Interestingly, while KFC was successful in obtaining a registration for 'PANEER ZINGER' under both the Classes and for 'CHICKEN BURGER' under Class 30, the Registrar of Trademarks refused the registration of 'CHICKEN BURGER' **("subject mark")** under Class 29. By way of the impugned order dated December 24, 2018 read with the Statement of Grounds of a decision dated December 31, 2018, the Registrar of Trademarks held that the mark is not distinctive but descriptive of the characteristics of the goods or services to which it is applied. Thus, the Registrar refused registration of the mark on the grounds that it was hit by Section 9(1)(b)*(4)* of the Trade Marks Act, 1999 **("the Act")**. Hence, KFC filed the instant Appeal before the High Court under Section 91*(5)* of the Act challenging the impugned order.

Findings of the High Court

At the outset, the High Court discussed the meaning and scope of the two words - "CHICKEN" and "ZINGER". The High Court noted that the dictionary meaning of "ZINGER" was *"a thing outstandingly good of its kind"* or *"a wisecrack; punch line"* or *"a surprise question; an unexpected turn of events"*. It was further observed that the use of "ZINGER" in association with "CHICKEN" did not draw an instant connection with the nature of the goods or services and was merely suggestive, at best. The High Court proceeded to note that KFC already held registration of the word marks "ZINGER" and "PANEER ZINGER" in class 29. The High Court also observed that the Registrar's objection under Section 9(1)(b) of the Act was apparently based on the use of the word "CHICKEN" and the fact that KFC cannot have any exclusivity over it. However, the High Court also noted that such a claim had not been made by KFC in their application.

Conclusion

Therefore, in light of the above findings, the High Court set aside the impugned order and further directed the Registrar of Trademarks to proceed with advertisement of the application of the mark 'CHICKEN ZINGER' under class 29 within 3 months. The High Court also clarified that KFC shall not have any exclusive rights in the word 'CHICKEN' and the same would be clarified by the Trademark Registry at the time of advertisement of subject mark and its registration.

1. Kentucky Fried Chicken International Holdings LLC v. The Registrar of Trademarks, C.A. (COMM.IPD-TM) 56/2022, Hon'ble High Court of Delhi, passed on February 07, 2023.
2. Class 29 applies to meats and processed food
3. Class 30 applies to fruits, flowers, vegetables and agricultural products
4. Section 9(1)(b) - Absolute grounds for refusal of registration.
5. Section 91 - Appeals to Appellate Board.

JUDGEMENTS

In the matter of Herb Nutra Lab Private Limited ("Company") for violation of section 42 read with section 62 of the Companies Act, 2013 ("Act")

An appeal was filed by the Company against the order issued by the Registrar of Companies, Chennai **("ROC")** `pursuant to which a penalty of INR 9,00,000/- each was imposed on the Company and its three directors. According to the facts, the Company had filed e form PAS-3 for the allotment of 90,000 equity shares through private placement, however, the Company admitted that the board meeting approved only the allotment of shares with no mention of a private placement.

Further, no general meeting was convened for obtaining the approval of shareholders for issuing the shares through private placement, thereby violating section 42 of the Act. In view of the above, an opportunity of being heard was provided to the Company by the Regional Director, Southern Region **("RD")**, where the authorized representative of the Company appeared and submitted that the Company committed this default unintentionally and due to a lack of knowledge of the provisions and the professionals engaged in this project did not enlighten the Company on the said provisions. The Company also stated that the allotment of the equity shares has been canceled and the amount of INR 9,00,000 collected from the allottees has been refunded to them. RD concluded the matter by reducing the penalty from INR 9,00,000/- each to INR 50,000/- each on the Company and its directors.

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In the matter of Indiabulls Housing Finance Limited ("Company") for violation of section 118(10) of the Companies Act, 2013 ("Act") read with Secretarial Standards 1 issued by Institute of the Institute of Company Secretaries of India ("ICSI")

An inspection of the books of accounts and other records of the Company was conducted under section 206 of the Act, where the Inspecting Officer noted that the Company had not complied with the provisions of section 118(10) of the Act read with Secretarial Standards-1 issued by ICSI by not taking note of the disclosure of interest furnished by two independent directors in the Board meeting of the Company, pursuant to their respective appointments. The Company filed an application for the adjudication of the aforesaid offence. The Regional Director, Northern Region **("RD")** directed ROC to take action against the above application. Accordingly, ROC issued a show cause notice to the Company and its applicants and in response, the Company submitted that it had willfully moved the application to rectify this default committed under the Act. Further, the Company had received disclosure of interest from the two directors, however, inadvertently could not take note of the declarations in its minutes of the meetings held during the financial year 2014-15 and 2016-17. Additionally, it was pleaded not to impose a penalty on a director who was appointed to the Board of the Company after the non-compliance was made. ROC imposed a penalty of INR 50,000/- on the Company and INR 10,000/- each on its Managing Director, Chief Financial Officer, Company Secretary

and its other directors. One of the directors who was appointed in the financial year 2016-17 was liable to a penalty of INR 5,000/-.

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In the matter of Abis Agrotech Private Limited ("Company") for violation of section 232 of the Companies Act, 2013 ("Act")

In the present case, the Company was required the file form CAA-8 along with the order passed by National Company Law Tribunal, Cuttak. **("NCLT")** with the Registrar of Companies, Chhattisgarh **("ROC")** within 210 days from the end of financial year i.e., by October 27, 2022. However, the Company filed the form on December 19, 2022 with a delay of 52 days. ROC issued a show cause notice to the Company and its officers in default and conducted hearing for violation of section 232 of the Act. In response, the directors of the Company submitted that since, the Company was tied-up in completing the annual filings and the Ministry of Corporate Affairs **("MCA")** portal was not working properly, the said delay happened in filing form CAA 8. Further the Company filed the form as and when the MCA portal started working smoothly.ROC concluded the matter by imposing a penalty of INR 61,000/- on Company and INR 50,000/- each on the Directors of the Company.

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In the matter of Archon Engicon Limited ("Company") for violation of section 12(3)(c) of the Companies Act, 2013 ("Act")

In the present case, while conducting an inquiry of the Company by Registrar of Companies, Gujarat **("ROC")**, it was observed from e-form PAS-3 submitted by the Company that the attached board resolution and list of allottees were not in compliance with section 12(3)(c) of the Act. Accordingly, ROC issued an adjudication notice against the Company and its directors. In response, the Resolution Professional **("RP")** appointed for the Company under the Insolvency and Bankruptcy Code, 2016 submitted that since the moratorium period has been effective on the Company from September 7, 2021 pursuant to the order of National Company Law Tribunal, therefore no institution of the suit or continuation of pending suit or proceedings are allowed against the Company. Thereafter, ROC provided a reasonable opportunity of being heard to the Company and its officers in default and fixed a hearing date, however, no one appeared on behalf of the Company or RP. ROC concluded that since the Company made a non-compliance in board resolution dated May 8, 2015 and the moratorium period was effective on the Company from September 7, 2021, the Company and its officers have committed default for the relevant period. Therefore, the ROC imposed a penalty of INR 1,00,000 each on the officers in default for non-compliance with section 12(3)(c) of the Act.

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In the matter of Adani Transmission Step- One Limited ("Company") for violation of section 117 of the Companies Act, 2013 ("Act")

In the present case, the Company filed e form MGT 14 with the Registrar of Companies, Gujarat ("ROC") to submit the resolution for issuance and allotment of compulsorily convertible debentures to Adani Transmission Limited approved at a

meeting of shareholders on September 27, 2022. In terms of the provisions of section 117 of the Act, the aforesaid e form MGT-14 was required to be filed by the Company within 30 days from the date of passing of the resolution; i.e. latest by October 26, 2022. However, the Company filed the same on January 5, 2023, with a delay of 71 days. Accordingly, ROC issued an adjudication notice to the Company and its directors. In response to the notice, authorized representative of the Company admitted the non-compliance and prayed for not imposing any penalty on the Company. ROC concluded the matter by imposing a penalty of INR 17,100 each on the Company and its directors for violation of section 117 of the Act.

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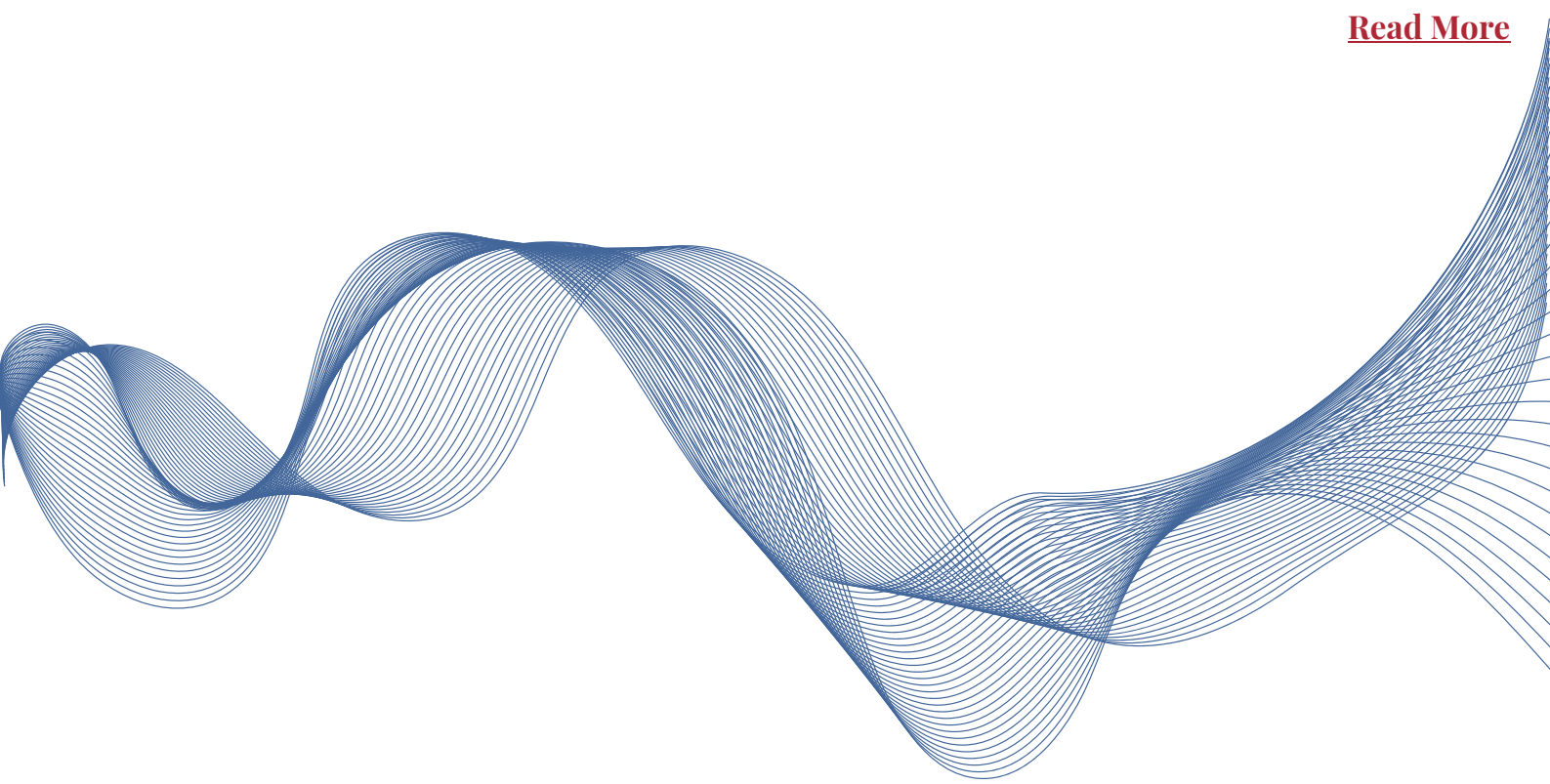

Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT)/Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under

On 3 February 2023, the Securities and Exchange Board of India ("SEBI") issued Guidelines on Anti-Money Laundering (AML) Standards and Combating the Financing of Terrorism (CFT)/Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under. The Prevention of Money Laundering Act, 2002 **("PMLA")** and the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 **("Maintenance of Records Rules")**, as amended from time to time and notified by the Government of India, mandate every reporting entity [which includes intermediaries registered under section 12 of the Securities and Exchange Board of India Act, 1992 (SEBI Act) and stock exchanges], to adhere to client account opening procedures, maintain records and report such transactions as prescribed thereinto the relevant authorities. The Maintenance of Records Rules, *inter alia*, empower SEBI to specify the information required to be maintained by the intermediaries and the procedure, manner and form in which such information is to be maintained. It also mandates the reporting entities to evolve an internal mechanism having regard to any guidelines issued by the regulator for detecting the transactions specified in the Maintenance of Records Rules and for furnishing information thereof, in such form as may be directed by the regulator. The guidelines stipulate the essential principles for combating Money Laundering (ML) and Terrorist Financing (TF) and provide detailed procedures and obligations to be followed and complied with by all the registered intermediaries.

These guidelines shall also apply to the branches of the Stock Exchanges, registered intermediaries, and their subsidiaries situated abroad, especially, in countries which do not apply or insufficiently apply the recommendations made by the Financial Action Task Force (FATF), to the extent local laws and regulations permit. When the local applicable laws and regulations prohibit the implementation of these requirements, the same shall be brought to the notice of SEBI. SEBI has from time to time issued circulars/directives with regard to Know Your Client (KYC), Client Due Diligence (CDD), Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) specifying the minimum requirements. It is emphasized that the registered intermediaries may, according to their requirements, specify additional disclosures to be made by clients to address concerns of money laundering and suspicious transactions undertaken by clients. On and from the issue of this Circular, the earlier circulars issued by SEBI on the subject of Anti-Money Laundering and Combating the Financing of Terrorism, listed out in the Appendix to these guidelines, shall stand rescinded. Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken under the circulars specified in Appendix, shall be deemed to have been done or taken under the corresponding provisions of this Master Circular.

Review of Chapter IX –Green Debt Securities of the Operational Circular for issue and listing of Non-Convertible Securities (NCS), Securitised Debt Instruments (SDI), Security Receipts (SR), Municipal Debt Securities and Commercial Paper (CP) dated August 10, 2021 (hereinafter referred to as the 'NCS Operational Circular'), as amended from time to time

On 3 February 2023, SEBI introduced a circular on

on review of Chapter IX –Green Debt Securities of the Operational Circular for issue and listing of Non-Convertible Securities (NCS), Securitised Debt Instruments (SDI), Security Receipts (SR), Municipal Debt Securities and Commercial Paper (CP) dated 10 August 2021 (hereinafter referred to as the 'NCS Operational Circular'), as amended from time to time. Chapter IX of the SEBI Circular SEBI/HO/DDHS/P/CIR/2021/613 dated 10 August 2021 (updated as on 13 April 2022) specifies the following with reference to issuers of green debt securities:

- Additional disclosure requirements in the offer document;
- Continuous disclosure requirements in an annual report and financial results; and
- Responsibilities of the issuer

In the backdrop of increasing interest in sustainable finance in India as well as around the globe, and with a view to aligning the extant framework for green debt securities with the updated Green Bond Principles (GBP) recognized by IOSCO, SEBI undertook a review of the regulatory framework for green debt securities. Accordingly, the Chapter IX of the NCS Operational Circular shall be replaced with the revised "Initial disclosure requirements for issue and listing of green debt securities" chapter.

Do's and don'ts relating to green debt securities to avoid occurrences of green washing

On 3 February 2023, SEBI introduced the dos and don'ts relating to green debt securities to avoid occurrences of green washing. Regulation 2(1)(q) of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 **('NCS Regulations')**, defines "green debt security" and Chapter IX of the Operational Circular for the issue and listing of Non-Convertible Securities **("NCS")**, Securitised Debt Instruments **("SDI")**, Security Receipts ("SR"), Municipal Debt Securities and Commercial Paper **("CP")** dated 10 August 2021 as amended from time to time **('Operational Circular')**, inter-alia provides the initial and continuous disclosure requirements for entities issuing/proposing to issue green debt securities. The extant framework of 'green debt security' was reviewed recently and consequential changes were brought in the NCS Regulations vide Gazette notification dated 2 February 2023. In the process of consulting the stakeholders, comments/ representations from the market participants, particularly investors, were also received to address the concerns of 'greenwashing'. While there are no universally accepted taxonomies on greenwashing, the generally accepted definition of 'Greenwashing' is, 'making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or business operation'. To address the concerns of market participants, regarding greenwashing, an issuer of green debt securities shall ensure the following to avoid its occurrence:

(i) While raising funds for transition towards a greener pathway, it shall continuously monitor to check whether the path undertaken towards more sustainable form of operations is resulting in reduction of the adverse environmental impact and contributing towards sustainable economy, as envisaged in the offer document.

(ii) It shall not utilize funds raised through green bonds for purposes that would not fall under the definition of 'green debt security' under the NCS Regulations.

(iii) In case any such instances mentioned in (ii) above come to light regarding the green debt securities already issued, it shall disclose the same to the investors and, if required, by majority of debenture holders, undertake early redemption of such debt securities.

(iv) It shall not use misleading labels, hide trade-offs or cherry pick data from research to highlight green practices while obscuring others that are unfavourable on this behalf.

(v) It shall maintain the highest standards associated with the issue of green debt security while adhering to the rating assigned to it.

(vi) It shall quantify the negative externalities associated with the utilization of the funds raised through green debt security.

(vii) It shall not make untrue claims giving the false impression of certification by a third-party entity.

The provisions of this circular shall come into force with immediate effect. The provisions of this circular shall be appended as new Chapter IX-A of the Operational Circular.

Extension of time for filing of e-forms on MCA V3 portal

The Ministry of Corporate Affairs ("MCA") vide general circular no. 03/2023 dated February 07, 2023, allowed additional time of 15 days for filling of 45 e-forms launched on MCA V3 portal on January 23, 2023 without additional fees. Further, additional time of 15 days was allowed for filing e-form PAS-3 which were due to be filed between January 20, 2023 and February 06, 2023, without additional fees. The circular was issued due to change in way of filing on MCA V3 portal.

Issuance of PPIs to Foreign Nationals/Non-Resident Indians (NRIs) visiting India

On 10 February 2023, the Reserve Bank of India **("RBI")** allowed access to Unified Payments Interface (UPI) to foreign nationals and NRIs visiting India. To start with, this facility will be extended to travellers from the G-20 countries at select international airports for their merchant payments (P2M) while they are in the country. Going forward, this will be enabled across all entry points in the country. The Master Directions on Prepaid Payment Instruments (PPIs) dated August 27, 2021 (updated as on November 12, 2021) has been updated by inserting paragraph 10.3 therein. These instructions shall come into effect immediately.

Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2023

On 14 February 2023, SEBI issued the Securities and Exchange Board of India (Real Estate Investment Trusts) (Amendment) Regulations, 2023 and the Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) Regulations, 2023. Amongst other things, the following amendments have been introduced in both regulations:

- Certain new definitions have been introduced or certain definitions have been substituted, such as:
  - Clause g on change in control shall be substituted as follows:

"change in control", - (i) in case of a body corporate, - (A) if its shares are listed on any recognized stock exchange, shall be construed with reference to the definition of control in terms of regulations framed under clause (h) of sub-section (2) of section 11 of the Act; (B) if its shares are not listed on any recognized stock exchange, shall be construed with reference to the definition of control as provided in sub-section (27) of section 2 of the Companies Act, 2013; (ii) in a case other than a body corporate, shall be construed as any change in its legal formation or ownership or change in controlling interest.

Explanation - For the purpose of sub-clause (ii), the expression "controlling interest" means an interest, whether direct or indirect, to the extent of not less than fifty percent of voting rights or interest.

- after clause (zx), the following clause shall be inserted, namely,-

"Senior Management" means the officers and personnel of the investment manager who are members of its core management team, excluding the Board of Directors, and shall also comprise all members of the management, one level below the Chief Executive Officer or Managing Director or Whole Time Director or manager (including Chief Executive Officer and manager, in case they are not part of the Board of Directors) and shall specifically include the Compliance Officer and Chief Financial Officer.

(b) Certain clauses related to the appointment/re-appointment of the investment manager have been introduced.

(c) A new chapter related to the obligations of the investment managers has been introduced.

Both these regulations came to effect from 14 February 2023. Provided that certain sub-regulations within these regulations shall come into effect from 1 April 2023.

Introduction of Foreign Contribution (Regulation) Act (FCRA) related transaction code in NEFT and RTGS Systems

On 16 February 2023, RBI introduced Foreign Contribution (Regulation) Act, 2010 **("FCRA")** related transaction code in NEFT and RTGS Systems. Under the FCRA (amended as on 28 September 2020), foreign contributions must be received only in the "FCRA account" of State Bank of India (SBI), New Delhi Main Branch (NDMB). The contributions to the FCRA account are received directly from foreign banks through SWIFT and from Indian intermediary banks through NEFT and RTGS systems. In terms of extant requirements of Ministry of Home Affairs (MHA), Government of India, the donor details such as name, address, country of origin, amount, currency, and purpose of remittance are required to be captured in such transactions and SBI is required to report the same to MHA on daily basis. Keeping in view the above, necessary changes have been introduced in NEFT and RTGS systems, technical details of which are provided in the annex to this circular. Member banks are advised to incorporate necessary changes in their core banking/middleware solutions to capture the requisite details while forwarding the foreign donations through NEFT and RTGS systems to SBI. The instructions will be effective from 15 March 2023.

Master Circular for Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

On 16 February 2023, SEBI introduced the Master Circular for Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations"). In order to enable the stakeholders to have access to the provisions of the applicable circulars at one place, Master Circular for Takeover Regulations has been prepared. With the issuance of this Master Circular, the directions/instructions contained in the circulars listed out in Annexure-V to this Master Circular, to the extent they relate to the Takeover Regulations, shall stand rescinded. The Master Circular contains formats and procedures which are inter-alia related to

(i) format of documents for activities pertaining to open offers, (ii) format of disclosure documents/reports, (iii) automation of disclosure requirements pursuant to introduction of System Driven Disclosures, (iv) procedure for tendering of shares and settlement through stock exchange, (v) Online Filing System for submission of documents under the Takeover Regulations, (vi) payment of fees, (vii) tendering by shareholders holding securities in physical form. Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in Annexure-V (of this circular), shall be deemed to have been done or taken under the corresponding provisions of this Master Circular.

Implementation of Indian Accounting Standards (Ind AS)

On 20 February 2023, RBI observed that consequent to the implementation of Ind AS, some Asset Reconstruction Companies (ARCs) have been recognizing management fees even though the said fee had not been realized for more than 180 days. To address the prudential concerns arising from continued recognition of unrealised income, RBI decided that ARCs preparing their financial statements as per Ind AS, shall reduce the following amounts from their net owned funds while calculating the Capital Adequacy Ratio and the amount available for payment of dividend:

(a) Management fee recognised during the planning period that remains unrealised beyond 180 days from the date of expiry of the planning period.

(b) Management fee recognised after the expiry of the planning period that remains unrealised beyond 180 days of such recognition.

(c) Any unrealised management fees, notwithstanding the period for which it has remained unrealised, where the net asset value of the Security Receipts has fallen below 50 per cent of the face value.

The amount reduced from net owned funds and amount available for payment of dividend shall be net of any specific expected credit loss allowances held on unrealised management fee referred to in sub-paragraphs (a), (b) and (c) and the tax implications thereon, if any.

The Audit Committee of the Board (ACB) shall review the extent of unrealised management fee and satisfy itself on the recoverability of the same while finalising the financial statements. It shall be ensured that the management fee is computed strictly in accordance with extant regulations.

ARCs shall disclose information on the ageing of the unrealised management fee recognised in their books in the format specified in the circular as part of the Notes to Accounts in the annual financial statements. This circular is applicable to all ARCs preparing their financial statements as per Ind AS.

Further extension of time for filing of 45 e-forms, PAS-3 and Spice+ Part A on MCA-V3 portal

The Ministry of Corporate Affairs ("MCA") vide general circular no. 04/2023 further extended the time for filling 45 e-forms pertaining to companies and e-form PAS-3 without additional fees till March 31, 2023. Further, relaxation has also been provided for the name reservation and resubmission queries related to name availability application(s). The relaxations have been given due to issues with the MCA website in filing the forms.

CORPORATE REGULATORY UPDATES

Ministry of Corporate Affairs allowing physical filing of certain e-forms

The Ministry of Corporate Affairs ("MCA"), on receipt of representations from the stakeholders, issued general circular no. 05/2023 dated February 22, 2023, wherein it allowed physical filing of forms GNL-2 (filing of prospectus related documents and private placement), MGT-12 (filing of prospectus related documents and private placement), PAS-3 (Allotment of Shares), SH-8 (Letter of offer for buy-back of own shares or other securities), SH-9 (Declaration of Solvency) and SH-11 (Return in respect of buy-back of securities) for the period between February 22, 2023 and March 31, 2023 and take acknowledgement for such filing. The form should be filed along with an undertaking from the company that it will also file the relevant form in electronic mode on MCA-21 portal and pay the requisite fees. Further, the company should file a copy of such form on MCA portal as well.

Master Circular for Foreign Venture Capital Investors (FVCIs)

On 3 March 2023, SEBI issued a Master Circular for Foreign Venture Capital Investors (FVCIs). SEBI has been issuing various circulars from time to time for effective regulation of FVCIs. In order to enable the stakeholders to have an access to all the applicable requirements/circulars at one place, the provisions of the said circulars are incorporated in this Master Circular for FVCIs. This Master Circular shall come into force from the date of its issue. This Master Circular rescinds the following circulars/directions issued by SEBI with regard to FVCIs till date:

(a) SEBI Circular No. IMD/DOF-1/FVCI/CIR.No.1/2009 dated 3 July 2009,
(b) SEBI Circular No. SEBI/IMD/DOF-1/FVCI/CIR-1/2010 dated 12 January 2010,
(c) SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/75 dated 6 July 2017.

Notwithstanding such rescission,

(a) anything done or any action taken or purported to have been done or taken under the rescinded circulars, including registrations or approvals granted, fees collected, registration suspended or cancelled, any inspection or investigation or enquiry or adjudication commenced or show cause notice issued prior to such rescission, shall be deemed to have been done or taken under the corresponding provisions of this Master Circular;

(b) any application made to SEBI under the rescinded circulars, prior to such rescission, and pending before it shall be deemed to have been made under the corresponding provisions of this Master Circular;

(c) the previous operation of the rescinded circulars or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the rescinded circulars, any penalty, incurred in respect of any violation committed against the rescinded circulars, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty as aforesaid, shall remain unaffected as if the rescinded circulars have never been rescinded.

Operational Guidance - Amendment to Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018

On 8 March 2023, SEBI issued a circular on Operational Guidance - Amendment to Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018 **("Buy-back Regulations").**

CORPORATE REGULATORY UPDATES

SEBI notified the Securities and Exchange Board of India (Buy-Back of Securities) (Amendment) Regulations,2023 on 7 February 2023. The aforementioned amendment regulations shall come into force on 30th day of the date of notification. Accordingly, the amendment regulations shall be made effective for all buy-back offers where the Board of Directors of the company approve resolution with respect to Buy-back on or after 30th day of the date of notification of this amendment in the official gazette (i.e. 9 March 2023).

As per Clause (vi) of Regulation 16 of the Buy-back Regulations, the buy-back through stock exchanges shall be subject to the restrictions on the placement of bids, price and volume, as specified by SEBI. In this regard, in consultation with the Stock Exchanges, the following restrictions have been set-out for the companies undertaking buy-back through stock exchange route:

(a) The company shall not purchase more than 25% of the average daily trading volume (in value) of its shares or other specified securities in the ten trading days preceding the day in which such purchases are made.

(b) The company shall not place bids in the pre-open market, first thirty minutes and the last thirty minutes of the regular trading session.

(c) The company's purchase order price should be within the range of ±1%from the last traded price.

In this regard, the company as well as its appointed broker shall ensure compliance with the aforesaid provisions. The Stock Exchange shall monitor their compliance and in case of any instance(s) of such non-compliance shall impose appropriate fines and/or other enforcement actions as deemed fit.

As per the sub-clause (c) of Clause (xi) of Regulation 9 and Clause (ii) of Regulation 20 of the Buy-back Regulations, the escrow account shall consist of cash and/or other than cash. The portion of the escrow account in the form of other than the cash shall be subject to the appropriate haircut, in accordance with the SEBI Master Circular for Stock Exchange and Clearing Corporations dated 5 July 2021, as amended from time to time. Merchant Banker to buy-back offer is advised to ensure that the adequate amount after the applicable haircut is available in the escrow account till the completion of all formalities of buy-back.

RECENT EVENTS

A few glimpses of the Holi celebrations at our New Delhi & Mumbai Offices.

Off Beat Section

International Women's Day

Every year on 8 March, International Women's Day is celebrated to commemorate and honor women's accomplishments, raise awareness about gender disparities and discrimination, as well as promote global support for women. A true leader shows up in their community to make a real impact and women around the world do that every day, regardless of their job title or position. Lets read about a few of the India's most inspiring female leaders.

Sudha Murthy

Indian educator, author and philanthropist

She is best known for her philanthropy and her contribution to literature in Kannada and English. She has founded several orphanages, participated in rural development efforts, supported the movement to provide all Karnataka government schools with computer and library facilities, and established Murty Classical Library of India at Harvard University.

Indira Banerjee

Hon'ble Ms. Justice (Retd.)

She is a former Judge of the Supreme Court of India and the 8th female Judge in history of Supreme Court of India. She has served as Chief Justice of Madras High Court, the second woman to hold the position in India. Mere days after her retirement on September 23rd, 2022, she spoke in an interview about the difficulties women face in the legal profession as they must balance their career with the expectation of taking care of their families and households.

Saikhom Mirabai Chanu

Indian Weightlifter

She is an Indian weightlifter, lifted a total of 201 kg to win the Gold Medal at the CWG 2022. She won the silver medal at the 2020 Tokyo Olympics in the Women's 49 kg category apart from various World Championships and multiple medals at the Commonwealth Games. She was awarded the Padma Shri by the Government of India for her contributions to the sport.

Source - https://www.seniority.in/blog/10-women-who-changed-the-face-of-india-with-their-achievements/

Notable Recognitions & Accolades

The Legal 500 2023 rankings

Law Firm Ranking

The LEGAL 500 ASIA PACIFIC LEADING FIRM 2023

- Corporate and M&A
- Labour & Employment
- Shipping

Individual Lawyer Ranking

The LEGAL 500 ASIA PACIFIC RECOMMENDED LAWYER 2023

Vineet Aneja
Managing Partner

Mustafa Motiwala
Partner

Vikram Bhargava
Partner

Neetika Ahuja
Partner

Dinesh Gupta
Associate Partner

Nihal Shaikh
Associate Partner

Vikas Khurana
Senior Associate

Raveena Verma
Senior Associate

Notable Recognitions & Accolades

LEXOLOGY
Legal Influencer
Q2 | 2022

Forbes
Present
LEGAL POWERLIST 2020
in association with legitquest
ENLISTED AS THE TOP LAW FIRM (ABOVE 10 YEARS EXP.)


Forbes
Presents
LEGAL POWERLIST 2021
in association with legitquest
Powerlist 2021

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This is to certify that

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| Labor & Employment | Restructuring, Insolvency & Bankruptcy | Litgation

has been enlisted in the Legal Powerlist 2021 as one of the

TOP LAW FIRM
ABOVE 10 YEARS EXPERIENCE

by an Esteemed Jury Panel comprising:

Brian Carvalho
Editor – Forbes India

March 30, 2022

NOTABLE FIRM
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BENCHMARK LITIGATION
ASIA-PACIFIC 2021

ASIAN LEGAL BUSINESS
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ASIA'S FASTEST GROWING FIRMS 2021

INDIA BUSINESS LAW JOURNAL
AWARD WINNING LAW FIRM
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Tolstoy House,
4th Floor, Tolstoy Marg,
New Delhi – 110 001, India
Tel : +91 11 4213 0000
Fax : +91 11 4213 0099

Bajaj Bhawan,
1st Floor, 226, Nariman Point,
Mumbai – 400 021, India
Tel : +91 22 4910 0000
Fax : +91 22 4910 0099

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