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Official Newsletter

CLASIS LAW

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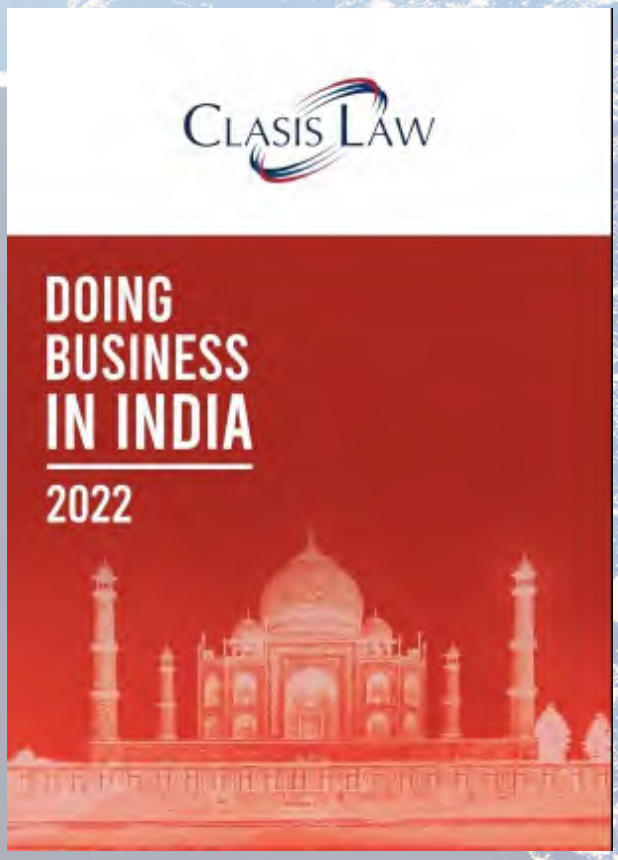
CLASIS LAW

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

Jurisdiction of an Arbitrator to conduct a Consolidated Arbitration

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Introduction

On February 9, 2023, the Hon'ble High Court of Bombay **("High Court")**, refused to interfere in a challenge to an Arbitral Award under Section 34***(1)*** of the Arbitration and Conciliation Act, 1996 **("the Act")**, wherein the arbitrator had consolidated nine separate disputes between the same parties***(2)***.

Facts

The Petitioner, a textile company, entered into nine contracts with the Respondent, a government undertaking, for the purchase of cotton bales. The Respondent alleged that the Petitioner purchased only 1300 cotton bales in lieu of 26,449 cotton bales, thereby committing breach of the nine contracts. Each of the nine contracts contained an identical arbitration clause. In light of the dispute, the Respondent invoked arbitration.

The Respondent (original claimant) filed a consolidated statement of claim pertaining to all the nine contracts as the terms of the contract, the format and the mutual obligations were identical. The Petitioner (original respondent) also filed a consolidated statement of defence and counter-claim, but raised an objection on consolidation of claims by the Respondent. Consequently, the arbitrator framed a specific issue concerning the same.

After recording evidence and hearing arguments, the arbitrator, vide impugned award dated July 24, 2017, held in favour of the Respondent and directed the Petitioner to pay a sum of Rs.25,59,88,023/- plus interest. The counter-claim of the Petitioner was dismissed. Aggrieved, the Petitioner assailed the impugned award by filing a petition under Section 34 of the Act.

Contentions of the Parties

The Petitioner contended that the arbitrator had no power to consolidate disputes arising out of the nine contracts and in the absence of such power, particularly when the Petitioner had not consented for such consolidation, the impugned award was vitiated, was opposed to the fundamental policy of Indian law and therefore, was liable to be set aside.

Further, it was argued that the causes of action arising out of the nine contracts were distinct, and hence, the claims pertaining to each such dispute ought to have been separate and distinct. It was submitted that prejudice was caused to the Petitioner since separate alleged acts of breach of contracts were not taken into consideration by the arbitrator while holding in favour of the Respondent.

Conversely, the Respondent submitted that its statement of claim contained specific details of each separate claim arising out of each separate contract and the Petitioner was aware that the claims were in such context. Despite this, the Petitioner responded by way of a consolidated statement of defence, and the manner in which the evidence was appreciated by the arbitrator demonstrated that each such transaction was taken into consideration separately and the claims made by the Respondent were determined on that basis.

Lastly, the Respondent submitted that the Petitioner was asking the Court, while exercising jurisdiction under Section 34 of the Act, to re-appreciate the evidence and to enter into the merits of the award, which is prohibited under the law laid down by the Supreme Court, particularly after the amendment of Section 34 of the Act.

Findings of the High Court

The High Court firstly noted that the principal question that arose for consideration was as to whether the impugned award passed by the arbitrator was liable to be set aside on the ground that disputes arising out of the nine contracts were consolidated, and a single statement of claim filed on behalf of the Respondent was entertained and allowed in favour of the Respondent.

The High Court firstly examined the scope and extent of jurisdiction available under Section 34 of the Act. In this regard, the High Court concurred with the Supreme Court***(4)*** and observed that arbitral awards cannot be easily interfered with as the Court does not preside in appeal. The Court is prohibited from re-appreciating the evidence and from going into the merits of the arbitral award. The High Court reiterated that the arbitrator is the ultimate master of the quantity and quality of evidence while drawing the arbitral award.

Bearing this in mind, the High Court proceeded to evaluate the petition. The High Court, on a perusal of the judgment of *Duro Felguera, S.A. Vs. Gangavaram Port Limited****(5)*** relied on by the Petitioner, observed that the case was decided in the backdrop of the specific facts which concerned five separate contracts that had independent existence and where one of the contracts was with a foreign company requiring international commercial arbitration. Hence, it was held that there could not be a single arbitral tribunal. The High Court noted that in the present case, the facts were distinguishable.

The High Court was also mindful of the decision of the Supreme Court in the case of *P. R. Shah Shares and Stock Brokers Private Limited Vs. B. H. H. Securities Private Limited****(6)*** wherein the Supreme Court decided on the question of carrying out a single arbitration in a way that would not only be convenient, but necessary for avoiding multiplicity of proceedings and possibility of conflicting decisions.

Furthermore, the High Court, while weighing the Petitioner's contention about being prejudiced, found that it was not even forcefully argued that there was any prejudice caused due to the manner in which the arbitral proceeding was undertaken. The emphasis was on the fact that in the absence of consent of the Petitioner, the arbitrator could not have conducted the consolidated arbitral proceeding. The High Court was not impressed with the said contention, primarily because in the facts and circumstances of the present case, distinct claims arising out of all the nine separate contracts were set out by the Respondent in the statement of claim, evidence was specifically led in respect thereof. It found that the Petitioner had ample opportunity to cross-examine the witnesses and to lead its own evidence, the Petitioner also chose to file a consolidated counter-claim, thereby indicating that it was in the interest of justice that the arbitrator chose to proceed in the said manner. Hence, the High Court rejected the contention of the Petitioner.

Thus, the High Court opined that since the contracts in question were executed between the *same parties*, consisting of *identical arbitration clauses- the only difference being the actual figures of sale and purchase- the nature of dispute* arising from the contracts was identical. Therefore, the High Court held that when specific claims pertaining to each of the said contracts were placed distinctly in the statement of claim, and the fact that the other party also filed a consolidated counter-claim, it could not be said that the arbitrator committed a jurisdictional error in proceeding with the consolidated arbitration.

Conclusion

Therefore, in light of the nature and scope of jurisdiction available with a Court, and its effect considered and laid down by the Supreme Court***(7)***, the High Court held that sufficient grounds were not made out for interfering with the impugned award, either under the head of the award being opposed to public policy of India or it being patently illegal.

Footnotes

1. Application for setting aside arbitral award.
2. BST Textile Mills Pvt. Ltd. v. The Cotton Corporation of India Ltd., Interim Application (L) No. 7323 of 2021 in Commercial Arbitration Petition No. 563 of 2017, Hon'ble Bombay High Court.
3. Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India (NHAI), (2019) 15 SCC 131.
4. Ibid.
5. (2017) 9 SCC 729
6. (2012) 1 SCC 594
7. Id. at 3

LEGAL UPDATE

The Tribunal cannot use its residuary jurisdiction under Section 60 (5) of IBC, 2016 to interpret terms of Agreement related to third party

Introduction

Recently the National Company Law Tribunal, Ahmedabad **(NCLT)** during the adjudication of an application under 60 (5) of the Insolvency and Bankruptcy Code, 2016 **(IBC)** held that the NCLT has limited residuary jurisdiction under 60 (5) of IBC and it cannot interpret terms of agreement which de horses the insolvency.

Facts

An agreement dated April 4, 2016 **(Agreement)** was entered between JBF Petrochemicals **(Corporate Debtor)** and Mangalore Refinery and Petrochemicals Limited **(Respondent)** for the supply of Paraxylene **(Px)** to the Corporate Debtor. Thereafter, the Corporate Debtor was admitted in CIRP on January 28, 2022, and Sundresh Bhat (Applicant) was appointed IRP and a moratorium was declared under Section 14 of IBC, 2016. The present application is filed by Applicant under Section 60 (5) (C) of IBC and Rule 11 of the NCLT Rules, 2016 being aggrieved by the purported termination of the Agreement by the Respondent *inter alia* seeking reliefs to declare the termination notice as void and several other reliefs.

Contentions of the Applicant

The Applicant contended that the Respondent terminated the Agreement vide its letter dated June 14, 2022 informing the Corporate Debtor that since it has committed default in buying Px and there has been no take-off continuously for 3 months. It was further contended by the Applicant that the Respondent cannot terminate the Agreement during the moratorium, thus such termination is bad in law and the Respondent is bound to supply Px to Corporate Debtor.

Contentions of the Respondent

The Counsel for the Respondent refuted the submissions and contended that there was a default on behalf of the Corporate Debtor in lifting the Px as per the terms of the Agreement. Further, the Agreement was eligible for termination much prior to CIRP and there is no breach of the moratorium. It was further contended that Section 60 (5) (C) of IBC cannot be pressed to compel a third party to perform its part of the contract which was eligible for termination prior to the initiation of CIRP. The Respondent pointed out that the Resolution Plan was not affected in the event the Tribunal does not grant any particular relief or concession of prayer requested under Part E of the Resolution Plan.

Observations of the Bench and Decision

The bench observed that the Corporate Debtor was established much prior to 2012 and it could not start its business, also it is not a going concern till date. The bench observed that the Adjudicating Authority has to declare the moratorium under

Section 14 of IBC, 2016 to protect the Corporate Debtor's status as going concern if it is a running unit. Thus, it held that the provision of Section 14 (2A) of IBC, 2016 is to be pressed in service to preserve the status of the Corporate Debtor. The bench also observed that Applicant prayed to direct the Respondent to supply Px to the Corporate Debtor as and when the plant is ready and commissioned. However, the bench opined that its residuary jurisdiction under Section 60 (5) (C) of IBC, 2016 is limited and it has no powers to give finding on the issue whether the agreement between two parties is subsisting or not. The bench was of the view that it cannot interpret the terms of such agreement relating to third party. Further, the bench was of the view that it has been conferred with jurisdiction to entertain and dispose of any question of law or facts ***'Arising out of or in relation to Insolvency Resolution or liquidation process of Corporate Debtor.'*** In the present case, it cannot be said that the Corporate Debtor suffered any erosion of assets during the CIRP. Lastly, the bench placed reliance on the Supreme Court's judgment in case of **Tata Consultancy Services Ltd V/s. SK Wheels (P) Ltd (2022) SCCC 583** wherein the scope of residuary jurisdiction was succinctly explained and held that the NCLT cannot exercise its jurisdiction over matters dehors the insolvency proceedings as it falls beyond the purview of IBC.

Since the issue is de hors the insolvency proceedings, the Hon'ble Tribunal refused to comment on correctness of termination of the Contract by the Respondent. Thus, the Application was rejected.

Suit for control and ownership of a Facebook Group is not a Trademark Dispute

Introduction

In a recent case, the Hon'ble High Court of Bombay **("High Court")**, while quashing an Order passed by the City Civil Court, opined that a suit for ownership, control, and recovery of a Facebook group cannot be termed as a trademark dispute***(1)***.

Facts

The Himalayan Club **("Appellant")**, a registered society, founded in 1928, enjoys wide membership, maintains various publications and organizes several lectures and events. Mr. Kanwar B. Singh **("Respondent No. 1")** was an office bearer of the Appellant assigned with the responsibility of the website, the internet-based groups and social media outreach. On instructions of the Appellant, the Respondent No. 1 created a group on Facebook called 'The Himalayan Club' **("the Facebook group")** wherein he was the e-group moderator and administrator.

The Appellant's case is that the Respondent No. 1 exploited his position and started claiming that the Appellant was not connected with the Facebook group with the intent to usurp the group's control, and had even unilaterally removed other administrators from the group. The Appellant filed a suit before the City Civil Court, Bombay ("Trial Court") inter alia for declaration that the Facebook group is owned by the Appellant and also sought mandatory injunction directing the Respondent No. 1 to hand over the group's control to the Appellant.

In his written statement, the Respondent No. 1 challenged the jurisdiction on the ground that the Facebook group account is an intellectual property and therefore in view of Section 2(3A) of the Bombay City Civil Court Act, 1948***(2)*** **("City Civil Act")**, the Trial Court lacked jurisdiction to decide the suit. The Trial Court framed a preliminary issue based on this objection. The Trial Court, vide its Order dated August 3, 2022 **("impugned order")**, held that it has no jurisdiction to try the suit under section 2(3A) of the City Civil Act. The reason provided by the Trial Court was that since the dispute pertains to ownership of the Facebook group which is a trademark defined under Section 2(1)(m) of the Trademark Act, 1999, **("Trade Marks Act")**, it comes within the ambit of intellectual property. In view thereof, the plaint was returned for presentation before the appropriate Court. Aggrieved, the Appellant challenged the impugned order by way of an Appeal before the High Court.

Contentions of the Parties

The Appellant urged that the Trial Court committed an error apparent on the face of record and the impugned order was contrary to the scheme of Order VII Rule 10 of the CPC. The Appellant contended that the dispute was never in relation to trademark as the Appellant was neither asserting deceptive similarity nor trademark infringement or passing off. Lastly, the Appellant reiterated that the suit before the Trial Court was based on the Facebook group being the property of the Appellant and thus, was maintainable.

Countering the above submissions, the Respondent No. 1 supported the impugned order and contended that the Respondent No. 1, being the creator of the Facebook group, was right in raising a preliminary objection on maintainability. Respondent No. 1 further argued that the Trial Court, having regard to the definition of "trademark" and "intellectual property" was justified in holding that the suit was barred under Section 2(3A) of the City Civil Act. Lastly, the Respondent No. 1 submitted that the Appellant could always present the suit before the Court having competent jurisdiction and, in that view, the Appeal was liable to be dismissed.

Findings of the High Court

At the outset, the High Court examined the ratio of the impugned order. The High Court observed that the Trial Court found that the Facebook group was a media platform for promotion of the Appellant's club. It held that since the Respondent No. 1 was claiming that the Facebook group was private group, the dispute came within the ambit of trademark. The Trial Court had further held that since the dispute pertains to ownership of the Facebook group which is a trademark defined under Section 2(1)(m)*(3)* of the Trade Marks Act, it comes within the ambit of intellectual property under Section 2(3A) of the City Civil Act, and thus, the Trial Court lacked jurisdiction to try the matter. On sifting the contentions of the parties, the High Court found that there exists a dispute as to the ownership of the Facebook group. The High Court noted that the Trade Marks Act provides for registration and better protection of trademarks, and for the prevention of fraudulent marks.

The High Court was firm on the fact that the Facebook group was in no way claimed to have been a registered trademark of the Appellant which the Respondent No. 1 allegedly infringed. The High Court further noted that the Facebook group is an internet-based social media platform which allows its members to exchange ideas and post experiences, photographs, etc. As such, it cannot be said that the Facebook platform is a trademark or a copyright and the Appellant is only seeking recovery and restoration of the same. The High Court also opined that the recovery and restoration of the Facebook group cannot be termed as a trademark dispute.

Conclusion

Under this backdrop, the High Court found that the conclusion drawn by the Trial Court that the suit pertains to intellectual property and thus, the Trial Court has no jurisdiction to entertain the suit, could not be accepted and the Trial Court had misguided itself to that conclusion. The High Court was of the view that the suit is simplicitor for declaration of ownership of the Facebook group based on which a relief of injunction is sought. Therefore, allowing the Appeal, the High Court quashed and set aside the impugned order and held that the Trial Court has jurisdiction to try and decide the suit.

1. The Himalayan Club v. Kanwar B. Singh & Ors., A.O. No. 809 of 2022, Hon'ble High Court of Judicature at Bombay, passed on March 24, 2023.
2. Section 2 (3A) "intellectual property matters" means the suits and civil proceedings relating to trademarks, copyright, patents, designs and geographical indications, plant varieties and the rights of farmers and plant breeders and Lay-out design (Topographies) of Integrated Circuits.
3. Section 2(1)(m) - "mark" includes a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof.

JUDGEMENTS

In the matter of Kandan Mutual Benefit Saswatha Nidhi Limited ("Company") for violation of section 134(3)(q) of the Companies Act, 2013 ("Act")

An inspection of the Company was conducted under section 206 of the Act and it was observed by the inspecting officer that the Company had not made a disclosure in its Board report, for the financial year 2019-20, regarding compliance under Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 **("POSH Act")** which was required under section 134(3)(q) of the Act read with rule 8 and 8A of Companies (Accounts) Rules, 2014.

In terms of provisions of the Act, the Board of a company shall provide a statement in its Board report that it has complied with provisions relating to the constitution of Internal Complaints Committee under the POSH Act. Accordingly, the Regional Director, Ministry of Corporate Affairs, Chennai issued directions to the Registrar of Companies, Tamil Nadu **("ROC")** for taking necessary action against the Company and the officers in default. Thereafter, the ROC issued an adjudication notice to the Company and the officers in default. A hearing was conducted and the Company admitted the violation of section 134(3)(q) of the Act.

Accordingly, the ROC imposed a penalty of INR 3,00,000/- on the Company and INR 50,000/- on the officer in default.

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In the matter of Guvi Geek Network Private Limited ("Company") for violation of section 62(1)(b) of the Companies Act, 2013 ("Act")

An application was received by the Registrar of Companies, Tamil Nadu **("ROC")** for adjudication of offence committed by the Company for violation of section 62(1)(b) of the Act. The Board of directors of the Company in their meeting, unanimously approved the proposal for grant of 327 options under the scheme of employee stock options to identified employees during the financial year 2021-22. However, since the Company was granting options to employees which exceeded 1% of the issued capital, therefore, it was required to obtain the approval of shareholders of the Company by way of a separate resolution for granting of option to identified employees in excess of 1% of its issued capital. The Company inadvertently did not obtain the approval from the shareholders. Subsequently, on becoming aware of such non-compliance, the Company convened an Extra-Ordinary General Meeting and the shareholders accorded their approval by way of special resolution for ratification.

The ROC issued notice of hearing for adjudication of offence/violation and the Company admitted the default.

Accordingly, the ROC imposed a penalty of INR 2,10,000/- on the Company and INR 60,000/- each on the officers in default.

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JUDGEMENTS

In the matter of Lava International Limited ("Company") for violations under the provisions of Companies Act, 2013 ("Act")

An inspection of the Company was conducted under section 206 of the Act and the inspection report was submitted to Regional Director, Northern Region. According to the report, the Company had made the following non-compliances under the Act:

(a) **Violation of section 189(1) of the Act**: While examining the minutes and statutory registers for the financial years from 2017-18 to 2019-20, it was observed that the Company had made the entries of sales-purchase with its related parties in its statutory register maintained under section 189(1) of the Act. However, the same was neither placed before the Board nor signed. Accordingly, a Show Cause Notice **("SCN")** was issued by the Registrar of Companies, Delhi **("ROC")** for the non-compliance of section 189(1) of the Act. The Company in its response admitted the non-compliance and the ROC imposed a penalty of INR 25,000/- each on the officers in default.

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(b) **Violation of section 118(1) of the Act read with Secretarial Standards-1 ("SS-1") issued by the Institute of Company Secretaries of India**: While inspecting the minutes of the Board Meeting, it was observed that the Company did not place its related party transactions before the Audit Committee for obtaining the approval of the Committee in its meeting. Accordingly, the ROC issued a SCN to the Company for the non-compliance of section 118(1) of the Act read with SS-1. The Company admitted the non-compliance and the ROC imposed a penalty of INR 25,000/- on the Company and INR 5,000/- each on the officers in default.

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(c) **Violation of section 118(1) of the Act read with SS-1 issued by the Institute of Company Secretaries of India**: While perusing the minutes for the financial year 2016-17, it was observed that the resolutions placed before the Board for the purpose of bank signatory did not contain the specimen signatures of the authorised signatories. The signatures were also not in the Minutes book of the Company. Thus, it indicated that the minutes of the relevant Board meetings were incomplete in terms of section 118 of the Act. Accordingly, the ROC issued a SCN to the Company for the non-compliance of section 118(1) of the Act read with SS-1. The Company admitted the non-compliance and the ROC imposed a penalty of INR 25,000/- on the Company and INR 5,000/- each on the officers in default.

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(d) **Violation of section 134(3) of the Act**: During the inspection it was observed that, the Company had entered into a settlement agreement on August 7, 2021 with UNIC Memory pursuant to which the Company was liable to pay USD 23 million plus 8% IRR to UNIC Memory before June 30, 2022. The information, being material, was not disclosed in the Director's Report for the financial year 2020-21. The ROC issued a SCN to the Company for the non-compliance of section 134(3) of the Act. The Company admitted the default and ROC imposed a penalty of INR 3,00,000/- on the Company and INR 50,000/- each on officers in default.

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JUDGEMENTS

In the matter of Alpur Solar Private Limited ("Company") for violation of section 42 of the Companies Act, 2013 ("Act")

In the present case, the Company had suo-moto filed an application for adjudication of non-compliance of section 42 of the Act. Accordingly, the Registrar of Companies, NCT of Delhi & Haryana, **("ROC")** issued a letter to the Company. The Company in its response submitted that the Board of Directors had approved the issuance of 34,40,000 equity shares with face value of INR 10/- each to its holding company (i.e., Ekialde Solar Private Limited) on private placement basis. The shareholders of the Company approved the issuance by passing special resolution in its General Meeting. Subsequently, e-form PAS-3 was filed by the Company with the ROC. Further, the Company admitted to the following non-compliances:

a) Violation of section 42(4) by utilizing the funds prior to filing the return of allotment in e-form PAS-3;
b) Violation of section 42(6) due to non-maintenance of separate bank account in a scheduled bank and receipt of funds in the existing bank account of the Company; and
c) Violation of section 42(8) owing to delay of 18 days in filing of return of allotment with ROC in e-form PAS-3.

Basis the admissions made by the Company, ROC issued a Show Cause Notice to the Company and its applicants. It was submitted that the Company had inadvertently issued the shares through private placement route, the intention was to issue shares to its holding company via right issue option for infusion of additional capital.

The ROC imposed a penalty of INR 2,00,000/- on the Company and INR 1,00,000/- on every officer in default and promoter, for each violation of section 42(4) and 42(6) of the Act. Furthermore, a penalty of INR 18,000/- each was levied on the Company and officers in default.

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In the matter of Tilak Proficient Nidhi Limited ("Company") for violation of section 143(3)(d) of the Companies Act, 2013 ("Act")

In the present case, the interest accrued on secured long-term borrowings had not been provided in the Balance Sheet for the year ended March 31, 2021 which thereby affected the true and fair view of the state of affairs of the Company which in turn lead to violation of section 129 read with Schedule III of the Act. Further, the statutory auditor of the Company had not commented on the same in his report for the financial year 2020-21. Hence, the auditor had contravened the provisions of section 143(3)(d) of the Act and was liable for penalty.

The Registrar of Companies, Patna **("ROC")** issued a Show Cause Notice and Notice for Hearing to the auditor. No submission was made by the auditor with respect to the non-compliance.

Therefore, it was concluded that the auditor had violated the provisions of section 143(3)(d) of the Act and a penalty of INR 5,000/- was imposed on the auditor.

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CORPORATE REGULATORY UPDATES

Common and simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination

On 16 March 2023, the Securities and Exchange Board of India **("SEBI")** issued the norms/procedural requirements for processing service requests of investors as an on-going measure to enhance the ease of doing business for investors in the securities market.

The norms/procedural requirements for processing service requests of investors inter-alia are:

(A) Mandatory furnishing of PAN, KYC details and Nomination by holders of physical securities. It shall be mandatory for all holders of physical securities in listed companies to furnish PAN, Nomination, Contact details, Bank A/c details and Specimen signature for their corresponding folio numbers. The detailed requirements are as per Annexure – A to the circular.

(B) Freezing of Folios without PAN, KYC details and Nomination. The folios wherein any one of the cited document/details as above are not available on or after 1 October 2023, shall be frozen by the RTA. The security holder(s) whose folio(s) have been frozen shall be eligible:

- to lodge grievance or avail any service request from the RTA only after furnishing the complete documents/details as mentioned in para 4 of this Circular.
- for any payment including dividend, interest or redemption payment in respect of such frozen folios, only through electronic mode with effect from 1 April 2024. An intimation shall be sent by the Listed Company to the security holder that such payment is due and shall be made electronically only upon complying with the requirements stated in para 4 of this Circular.

(C) Frozen folios shall be referred by the RTA/listed company to the administering authority under the Benami Transactions (Prohibitions) Act, 1988 and/or Prevention of Money Laundering Act, 2002, if they continue to remain frozen as on 31 December 2025.

(D) The RTA shall revert the frozen folios to normal status upon receipt of all the documents/details as above.

(E) Attestation of documents Self-attested copies of documents will be accepted by the RTA for processing of service requests, unless otherwise prescribed in the Companies Act, 2013 or the Rules issued thereunder or in SEBI Regulations or Circulars issued thereunder.

(F) Mode for providing documents/details by investors for various service requests The security holder/claimant may provide the documents/details to the RTAs for various service requests by way of 'In Person Verification' (IPV) or Post or electronic mode with e-sign; unless otherwise prescribed in the Companies Act, 2013 or the Rules issued thereunder or in SEBI Regulations or Circulars issued thereunder. The details of various modes are as per Annexure – B to this circular.

(G) Standardized, simplified and common norms for processing investor service requests. The details with regard to simplified and common norms along with operational guidelines for processing various service requests e.g. mismatch in signature, mismatch in name, change in name, updation of bank details and contact details are provided at Annexure – C to this circular.

(H) Forms for availing various Investor services Investors holding securities in physical mode

interface with the RTAs, inter-alia, for registering/updating the KYC details and for the processing of various service requests. The service requests along with requisite forms are provided at Annexure – D to the circular.

(I) Indemnity For any service request except transmission and request for issuance for duplicate security certificates, indemnity shall not be required unless the same is specifically provided in the Companies Act, 2013 or the Rules issued thereunder or in SEBI Regulations or Circulars issued thereunder.

(J) Display of contact details of RTAs RTAs shall provide their complete contact details (viz. postal address, phone numbers and e-mail address etc.) on their respective websites. The same shall also be provided on the websites of the listed companies and the stock exchanges on which such company is listed. RTA shall arrange to update the same forthwith, as and when there is a change.

(K) All objections by RTA in one instance While processing service requests and related complaints, the RTAs shall raise all objections, if any, in one instance only. The additional information may be sought only in case of any deficiency/discrepancy in the documents/details furnished by the security holder.

(L) Intimation to security holders Listed companies, RTAs and Stock Exchanges shall disseminate the requirements to be complied with by holders of physical securities of all listed companies on their respective websites. Listed companies shall also directly intimate its security holders about folios which are incomplete with regard to details required under point (A) above on an annual basis within 6 months from the end of the financial year. However, for the Financial Year 2022-23, intimation shall be sent by the listed companies on or before 31 May 2023.

This circular shall come into force with effect from 1 April 2023 in supersession of the following circulars issued by SEBI: (a) Circular dated 3 November 2021; (b) Circular dated 14 December 2021.

Master Circular for Portfolio Managers

On 20 March 2023, SEBI issued a Master Circular for Portfolio Managers. For effective regulation of Portfolio Managers, SEBI has been issuing various circulars from time to time. In order to enable the stakeholders to have an access to all the applicable requirements at one place, the provisions of the said circulars issued till 30 November 2022 are incorporated in the Master Circular for Portfolio Managers. The provisions mentioned at paragraphs 2.6 (Written down policies by Portfolio Manager) & 2.7 (Fair and equitable treatment of all clients) of the Master Circular shall be applicable with effect from 1 April 2023. The provisions mentioned at paragraphs 5.4.3 (specified formats for all its clients on quarterly basis within 10 days from end of the quarter. Day-wise data shall be furnished for table headings: “Client Folio AUM”, “PM Pool Demat Account Holding” and “Client Holding Master”) & 5.4.4 (reporting timeline for first time portfolio managers) of the Master Circular shall come into effect from the quarter ending September 2023.

E-wallet investments in Mutual Funds

On 23 March 2023, SEBI issued a circular on e-wallet investments in Mutual Funds. SEBI, vide Circular dated 8 May 2017, permitted use of e-wallet for investment in Mutual Funds within the umbrella limit of INR 50,000 for investments by an investor through both e-wallet and/or cash, per Mutual Fund per financial year. In this context, SEBI ensures that all e-wallets are fully compliant with KYC norms as prescribed by Reserve Bank of India.

All other provisions mentioned in the aforesaid Circular shall remain unchanged. The provisions of this circular shall be applicable with effect from 1 May 2023.

Streamlining the onboarding process of FPIs

On 27 March 2023, SEBI introduced a circular on streamlining of the onboarding process of Foreign Portfolio Investors (FPIs). SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023 were notified on 14 March 2023, for streamlining the onboarding process of FPIs. In terms of Regulation 3(2) of the SEBI (Foreign Portfolio Investors) Regulations, 2019 (hereinafter referred to as **"FPI Regulations")**, an application for the grant of certificate as a foreign portfolio investor shall be made to a Designated Depository Participant **('DDP')** in the Form and manner specified by the Government or the Board from time to time and shall be supported by the fee specified in Part A of the Second Schedule and any documents in the manner specified by the Board from time to time. Accordingly, in order to ease the onboarding process of FPIs and reduce the time taken for granting registration and opening of demat, trading and bank accounts of FPIs, the following modifications to the 'Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors', issued vide SEBI Circular dated 19 December 2022 (hereinafter referred to as 'Master Circular') are specified:

(a) Grant of FPI registration on the basis of scanned copies of application forms and supporting documents:

- The DDP may grant FPI registration to the applicant on the basis of scanned copies of executed Common Application Form ('CAF'), scanned copies of certified supporting documents and applicable fees submitted by the applicant.
- The DDP shall thereafter update the CAF module as per the standard process, for issuance of Permanent Account Number ('PAN').
- Post allotment of PAN to the applicant, the scanned copies of certified Know Your Client ('KYC')documents of the applicant shall be uploaded on the KYC Registration Agencies ('KRA')by the DDP/Custodian. Other intermediaries/entities may access such documents from the KRA and complete their KYC requirements for opening the demat, trading and bank accounts.
- The Custodian shall ensure that appropriate systems and procedures are in place to prevent any activity in such accounts till verification of physical documents is carried out.
- Only upon receipt and verification of the physical documents by the DDP/ Custodian, the Custodian shall make an application to the Clearing Corporation ('CC') for allotment of a CP Code to the FPI and carry out necessary steps for enabling the FPI to transact in the Indian securities markets.

(b) Use of Digital Signatures by FPIs: FPIs may use digital signatures for the purpose of execution of CAF and other registration related documents, provided such digital signatures are in accordance with the provisions of the Information Technology Act, 2000.

(c) Certification of copies of original documents by authorized bank officials using SWIFT mechanism: (i) At present, copies of all documents submitted by the FPI applicants are to be accompanied with originals for verification. In case the original of any document is not produced for verification, then the copies are required to be physically attested by entities authorized for attesting the documents, as mentioned in Para 8 of Part B of the

Master Circular. (ii) In lieu of physical attestation, certification of copies of original documents by authorized bank officials (i.e. officials of Multinational Foreign Banks or any Bank regulated by RBI) through SWIFT mechanism may be accepted by DDPs/Custodians for the purpose of verification of documents. (iii) The authorized bank official shall be required to send copies of original documents to the DDP/Custodian digitally and certify the authenticity of these documents through authentic free format SWIFT message types (such as SWIFT MT 599) sent to the DDP/Custodian.

(d) Verification of PAN through the CAF module available on the websites of the Depositories: (i) In cases where PAN application by the FPI applicant is made via the CAF portal, the DDP/Custodian may verify the PAN of the FPI basis its availability on the CAF module hosted on the website of the depositories, where the PAN is reflected via an automated secure feed from the Income Tax department.

(e) Submission of unique investor group ID by FPI applicants in lieu of complete details of group constituents: (i) At present, an FPI applicant, at the time of registration, is required to provide details of FPIs with whom it shares ownership of more than fifty per cent or common control, under the 'Clubbing of Investment Limit' section of the CAF. Depositories in turn generate a unique FPI investor group ID for identifying each such FPI investor group. (ii) For operational convenience, it is now specified that in case an FPI applicant belongs to an existing FPI investor group, it may submit its unique FPI investor group ID in the CAF, in lieu of providing complete details of all group constituents. In case the applicant wants to club additional FPIs (apart from itself) in such a unique investor group ID, the FPI may only provide details of such additional FPIs, along with the investor group ID.

The provisions of this circular shall be applicable with immediate effect.

Extension of compliance period – Fundraising by large corporates through issuance of debt securities to the extent of 25% of their incremental borrowings in a financial year

On 31 March 2023, SEBI issued a circular extending the compliance period for fund raising by large corporates through issuance of debt securities as follows. Chapter XII of NCS Operational Circular on 'Fund raising by issuance of Debt Securities by Large Corporates' (LCs Chapter), inter-alia, mandates large corporates to raise minimum 25% of their incremental borrowings in a financial year through issuance of debt securities which has to be met over a contiguous block of two years from Financial Year (FY) 2021-22 onwards.

Taking into account the representations from the market participants and on a review of the matter, SEBI decided that the contiguous block of two years over which large corporates need to meet the mandatory requirement of raising minimum 25% of their incremental borrowings in a financial year through issuance of debt securities will be extended to a contiguous block of three years (from the present requirement of two years) reckoned from FY 2021-22 onwards.

Ambedkar Jayanti: the father of the Indian Constitution, Dr. Bhimrao Ramji Ambedkar

Ambedkar Jayanti is celebrated on **April 14** every year to mark the birth anniversary of the father of the Indian Constitution, **Dr. Bhimrao Ramji Ambedkar**. He was an eminent jurist, politician, economist, and social reformer. Lets read a few facts about Bharat Ratna Dr. Bhimrao Ambedkar.

- Dr. Ambedkar is the only Indian whose statue attached to Karl Marx in the London Museum.
- Dr. Babasaheb Ambedkar was the **first Indian** to get a Doctorate (Ph.D.) degree in Economics from abroad.
- Dr. Babasaheb Ambedkar was a master in **64 subjects**. He had knowledge of 9 languages like *Hindi, Pali, Sanskrit, English, French, German, Marathi, Persian*, and *Gujarati*.
- He was the first Indian to advocate in front of the Southborough Commission for the **"Universal Adult Franchise"**.
- He was the first and only person in the world to receive a valuable doctorate degree named **"Doctor All Science"** from the London School of Economics.

Source - https://shorturl.at/iwM28

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