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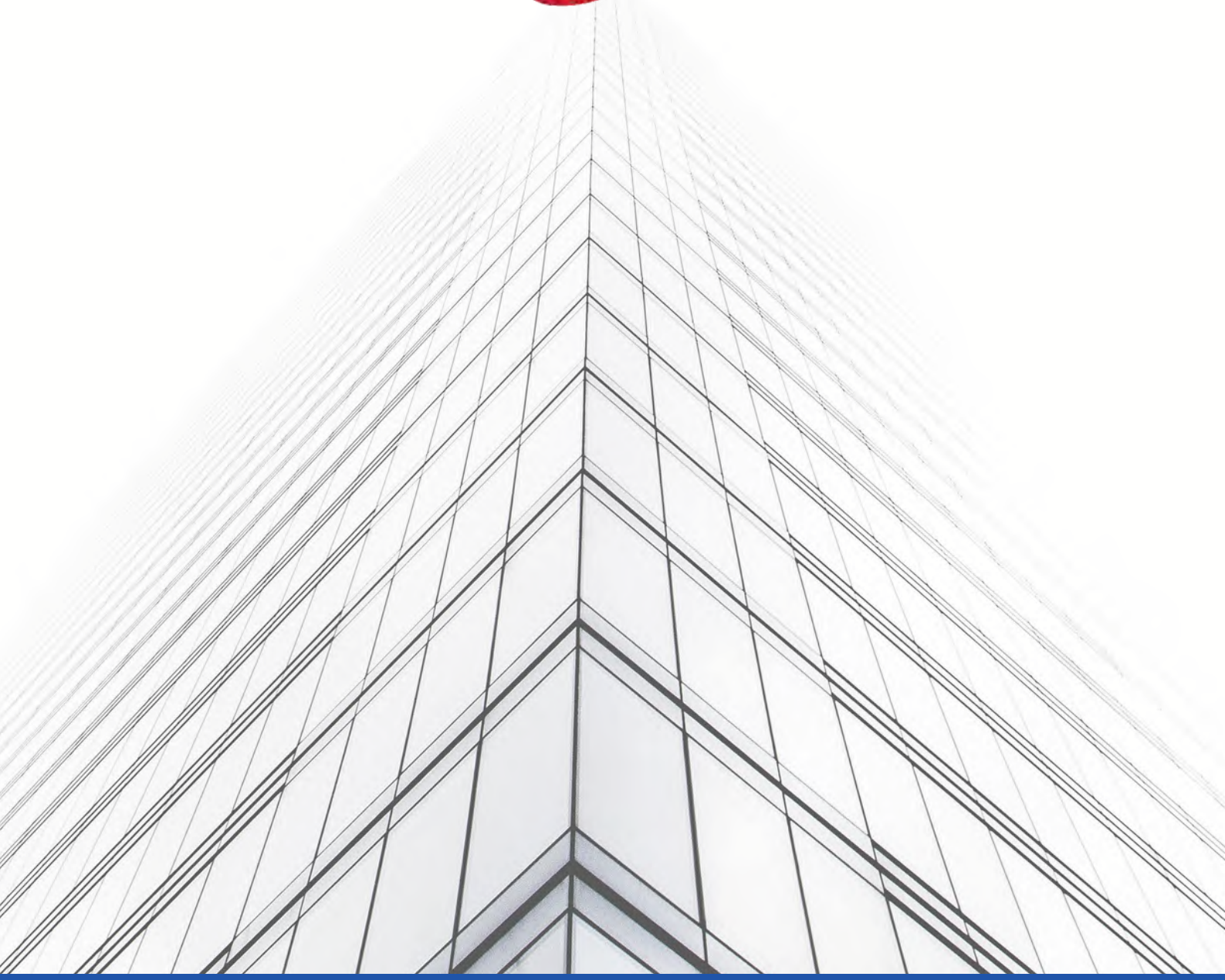
Official Newsletter

CLASIS LAW



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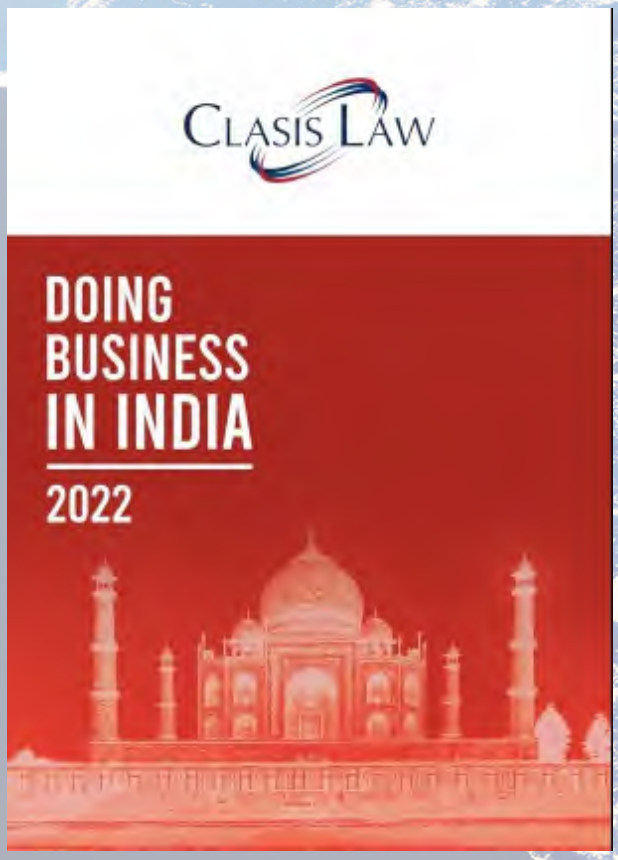
CLASIS LAW

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

An Alternate mechanism for the Appointment, Re-appointment and Removal of Independent Directors in Listed Companies

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The independent directors **("IDs")** act as a bridge between the management and the shareholders of the Company and hold the key responsibility of safeguarding the interest of the stakeholders, including the minority shareholders. The Companies Act, 2013 **("CA 2013")** has laid down the criteria for IDs for all types of companies whereas SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 **("LODR Regulations")** laid down additional criteria for IDs in the listed companies. Over a period of time, there have been no significant amendments in the provisions of IDs in CA 2013, however, SEBI has been proactively strengthening the provisions related to IDs for listed companies to ensure that corporate governance is upheld in the listed companies.

Regulatory framework for appointment, re-appointment, and removal of IDs

The appointment and re-appointment of IDs are prescribed under section 149 of the CA 2013, wherein an individual can be appointed as an ID of a company for a term up to 5 consecutive years by passing an **ordinary resolution** (i.e., at least 50% approval) in the general meeting and he/she would be further eligible for re-appointment as an ID by passing a **special resolution** (i.e., at least 75% approval) in the general meeting. While the tenure of IDs under LODR Regulations is in line with CA 2013, the appointment or re-appointment of IDs in listed entities is subject to the approval of shareholders in the form of a **special resolution** only. Therefore, the listed companies would need to seek a special resolution (and not an ordinary resolution) in case of the appointment of IDs. In order to further strengthen the process of appointment, re-appointment or removal of IDs in listed companies, SEBI vide its notification, i.e., SEBI (LODR) (Sixth Amendment) Regulations, 2022 **("2022 amendment")** introduced the alternative mechanism for the appointment of IDs in the listed entities wherein, if a resolution for the appointment of IDs fails to pass by 75% approval from the shareholders, then the listed companies would need to follow the alternate mechanism (given below) for ensuring the decision for appointment of IDs are made in fair and sensible manner:

(a) Whether the votes cast by all the shareholders in favor of the resolution is more than the votes cast against the resolution (i.e., more than 50% approval from all shareholders) and;
(b) Whether the votes cast by the public shareholders in favor of the resolution are more than the votes, if any, cast by them against the resolution (i.e., at least 50% approval from public shareholders).

When both the above-mentioned conditions of the alternate mechanism are fulfilled, the appointment of IDs would be deemed to be approved by the shareholders.

The process for removing an ID would depend on whether they were initially appointed by passing a special resolution, or by an alternate mechanism. If the IDs were appointed through a special resolution, the same procedure would need to be followed for the removal. For the IDs appointed through an alternate mechanism (stated above) then such IDs can only be removed through the alternate mechanism.

The intention of the market regulators behind the implementation of the alternate mechanism is to limit the influence of the promoter(s) on the process of appointment of IDs by virtue of their shareholding. Although the introduction of an alternate mechanism in regulation 25(2A) is limited in its applicability under the following two instances:

- *Not applicable in case of re-appointment of IDs:*

The text of Regulation 25(2A) is, *"The **appointment, re-appointment** or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution."*

The proviso to regulation 25(2A) which implements the alternate mechanism is applicable only in the case of the appointment of IDs. The opening of sub-regulation 2A of regulation 25 talks about "appointment" as well as "re-appointment" of IDs, however, the proviso of regulation 25(2A) only laid down the emphasis only on the appointment of IDs. In general parlance, the word "appointment" includes "re-appointment" and therefore, there was a margin of ambiguity with the interpretation of sub-regulation 2A, where it may be construed that the entire sub-regulation (i.e., alternate mechanism) will be applicable in both the case, i.e., "appointment" and "re-appointment".

If that was the case, then an alternate mechanism (i.e., ordinary resolution) in case of re-appointment of IDs would lead to a violation of the correspondence section under the CA 2013, wherein it requires special resolution for re-appointment of IDs. Therefore, the alternate mechanism is not applicable in case of re-appointment of IDs. The same was clarified by SEBI in its agenda papers for the board meeting held on September 30, 2022. Further, with the amendment in the LODR Regulations dated January 17, 2023, SEBI has clarified that the provisions laid down under regulation 17 (1C) are applicable in case of both appointment and re-appointment of Directors after inserting the word "or Re-appointment". In light of this, one might infer that the appointment does not include re-appointment in LODR Regulations.

- *Not applicable in case of an individual has attained the age of 75 years:*

As per Regulation 17(1A), no listed company shall appoint a person or continue the directorship of any person as a non-executive director (including IDs) who has attained the age of 75 years unless a special resolution is passed to that effect. The listed companies generally come up with a single resolution for the appointment of IDs and specific approval for the age of IDs of 75 years or above. In such instances, the alternate mechanism would be a failure as it requires a 'majority of minor' approval for appointment on one hand, and a special resolution would be needed in case of appointment of an individual above 75 years of age on the other hand. Even if the listed companies propose two separate resolutions (i) for appointment of IDs and (ii) specific approval for the aspect of 75 years of age; then it would be the hypothetical situation to say where one is not in favour of the first resolution *(appointment)* but support the second resolution *(an aspect of 75 years age)*. Therefore, the alternate mechanism does not appear to hold good in the case of the appointment of individuals who have attained the age of 75 years as IDs. In the nutshell, there has been inconsistency in the provisions of CA 2013 and SEBI LODR regulations, when it comes to appointment, re-appointment and removal of IDs. While there is the provision of an alternate mechanism for the appointment and removal of IDs in SEBI LODR, the correspondence provision is not available in SEBI LODR regulations. Similarly, the re-appointment of IDs requires a special resolution under CA 2013 and therefore, SEBI will not be in a position to implement an alternate mechanism for re-appointment. However, to remove this ambiguity SEBI has already given the recommendation to MCA to consider amendments in the CA 2013 so as to incorporate the alternative mechanism for the purpose of re-appointment of Independent Directors, at least for listed entities.

LEGAL UPDATE

Mere initiation of insolvency proceedings will not have an overriding effect on Arbitration proceedings

Introduction

In a recent judgment*(1)*, A single Bench of the Hon'ble Bombay High Court **("High Court")** has held that held that, mere filing of an Application for the initiation of Corporate Insolvency Resolution Process **("CIRP")** by a financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 **("IBC")** is not enough to invoke the bar of Section 238*(2)* of the Code. Therefore, the same would not bar the appointment of an Arbitrator under Section 11(6)*(3)* of the Arbitration and Conciliation Act, 1996 **("Arbitration Act").**

Facts

Sunflag Iron & Steel Co. Ltd. **("Applicant")** entered into an agreement dated August 30, 2019 with J. Poonamchand & Sons **("Respondent")** which provided for resolution of disputes through arbitration. Disputes arose between the parties and the Applicant invoked the arbitration clause and filed an application before the Bombay High Court for appointment of an arbitrator under Section 11(6) of the Arbitration Act. The application was opposed by the Respondent.

Arguments

The counsel for Applicant submitted that mere initiating of proceeding for CIRP under IBC does not restrict the Court from deciding application under Arbitration Act. The Applicant pointed out that no orders had yet been passed by the National Company Law Tribunal **("NCLT")** against the proceedings instituted by the Respondent under IBC. The counsel for Respondent opposed the application on the ground that it had approached NCLT under Section 7 of the IBC and therefore the proceedings under Section 11 were inapplicable and impermissible. Further, it was contended by the Respondent that Section 238 of IBC would have an overriding effect on Section 11(6) of the Arbitration Act, which then cannot be invoked.

Analysis and Findings

After hearing the arguments of both parties, the High Court analysed the provisions of Section 7 to 9 of the IBC which deals with initiation of CIRP by operational and financial creditors and the overriding effect of Section 238 of IBC Code. The court observed that the admission of the application after recording its satisfaction as contemplated under Section 7(5) of the IBC would be the starting point where the bar under section 238 of IBC can be said to be capable of being invoked and the mere filing of an application under section 7(1) of IBC cannot be said to be enough to invoke the bar. Furthermore section 7(5) of IBC permits the Adjudicating Authority/NCLT to reject the application where it is of the opinion default has not occurred thereby indicating that the mere filing of an application would not act as a bar to any proceedings under other statutes until and unless the satisfaction as contemplated by Section 7(4) r/w Section 7(5)(a) of IBC is recorded by the

Adjudicating Authority/NCLT and the application is admitted. The High Court also relied upon the law laid down in *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund and others*(4) and *Vidya Drolia and others v. Durga Trading Corporation*(5) wherein the Supreme Court had clarified that the trigger point is not the filing of the application under Section 7 of IBC but admission of the same on determining of default.

Conclusion

On the basis of aforementioned observation, the High Court held that there is no hindrance in appointment of an arbitrator under Arbitration Act and allowed the application.

Footnotes

- Sunflag Iron & Steel Co. Ltd vs J. Poonamchand & Sons, 2023 SCC OnLine Bom 1214 dated June 5, 2023
- 238. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.
- 11(6) – "Where, under an appointment procedure agreed upon by the parties, —

(a) a party fails to act as required under that procedure; or
(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or
(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure a party may request"

- (2021) 6 SCC 436
- (2021) 2 SCC 1

Evidence by way of Affidavit not Mandatory for determining well-know status of Trademark

Introduction

The Delhi High Court in its recent judgment***(1)*** has clarified that for determination of well-known status of a trademark, evidence by way of affidavit cannot be held to be a mandatory requirement for grant of well-known status under the Trademark Act, 1999 **("TM Act")** and the Trademark Rules, 2017 **("TM Rules")**.

Facts

The brief facts giving rise to the present appeal are that Kamdhenu Limited **("Appellant")** claiming to be the owner and proprietor of the trademark *"KAMDHENU"* in relation to various goods and services, filed an application***(2)*** dated August 17, 2017 before the Registrar of Trademarks, New Delhi **("Respondent")** seeking inclusion of the trademark *"KAMDHENU"* in the List of Well-Known Trademarks. In its Application, the Respondent stated that the mark *"KAMDHENU"* was adopted in the year 1994 and has been used on goods such as TMT steel bars, plywood, PVC pipes, allied goods, plaster of paris, water proofing compounds, wall putty etc. The Appellant also claimed that it had expanded its business over the years and venturing into milk, dairy products, mineral water, paint, real estate etc. and other businesses. Thus, in view of the enormous goodwill it enjoys, and diversification into various businesses, the Appellant sought a declaration as a *"well-known mark"* under section 11 (8) of the TM Act and Rule 124 of the TM Rules. Along with the said application the Appellant also filed several supporting documents such as judicial orders recognizing the Kamdhenu brand as a well-known mark, newspaper, advertisement, contracts, invoices, list of successful cases where the Appellant obtained an injunction in respect of *"KAMDHENU"* etc. By way its order dated April 23, 2019 passed by the Respondent under Rule 124 of the TM Rules, the Appellant's application was rejected. The primary reason stated for the rejection of the application was stated to be that the Appellant had failed to provide evidence of the well-known status of the mark by way of an affidavit. The Appellant initially preferred an appeal before the Intellectual Property Appellate Board in 2019. However, following the abolition of the Board and the enactment of the Tribunal Reforms Act, 2021, the appeal was transferred to the Delhi High Court.

Judicial Analysis

After hearing the arguments presented by both parties, the Court opined that the question which had arisen for the Court's consideration in the present case was - what is the nature of the evidence and the documents which are to be filed by an Applicant for determination as a well – know trademark under Section 11 of the TM Act read with Rule 124 of the TM Rules. In response to the question, the Court observed that the evidence would have to be substantially documentary in nature, which would establish contemporaneous and continuous use, repetition and good will. Such documents could, inter-alia, include:

- Invoices showing use of the mark in a large geographical area rather than a restricted area;
- Promotion and advertising of the mark through investment made as also copies of electronic and print advertising;
- Participation in exhibitions, trade fairs, any market survey, decisions of Courts enforcing the trademark in respect of related or unrelated goods;
- The consumer base for the concerned product or service and any material that would establish the recognition of the mark by the said consumer base, such as a market survey;
- Number of C&F Agents, wholesale distributors, retail distributors, and retailers;
- Exposure to e-commerce platforms;
- Any rewards or recognition;
- Balance sheets, chartered accountant certificates, and other accounting-related documents to establish sales figures and investment on promotion advertising etc.

In relation to the Rule 124 of the TM Rules, the Court observed that the said rule uses the words *"evidence and documents"* which could also include affidavits by way of evidence and other documents. However, it cannot be held that an affidavit would be mandatory, so long as there is sufficient evidence. The Court also opined that considering the provisions in the Evidence Act, 1872, the nature of the determination by the Registrar would in any event entail filing of the documentary evidence, as mere affidavits by way of evidence without supporting documents may not be sufficient to establish the well-known status of the mark.

On the other hand, documentary evidence without an affidavit can still establish well-know status of the mark as the statement of case would be setting out the relevant description of the documents. Some documents could even be publicly acknowledged and verifiable documents. These documents may not require an affidavit to verify the authenticity or genuity. Some facts could be of such a nature that they could be placed by way of an affidavit, and no documents may exist to support such facts. Thus, there is no hard and fast rule that an affidavit is mandatory. The Court also took note of the public notice(3) relied upon by the Defendant and held that the said notice does not specifically mention the requirement of an affidavit. Therefore, considering the legal position, i.e. the Evidence Act and the public notice, it was held that in order for determination of a well-known status of a trademark, affidavit by way of evidence cannot be held to be a mandatory requirement for grant of well-known status under TM Act and TM Rules. However, documentary evidence would be required. The Court also explained that in the process of determination, if the Registrar is of the opinion that any particular documents needs to be supported by way of an affidavit, the Registrar can always give an opportunity to the applicant to file such an affidavit rather than rejecting an application in a completely summary manner. The non-filing of the application will not be completely fatal to the application for determining well-known status.

Conclusion

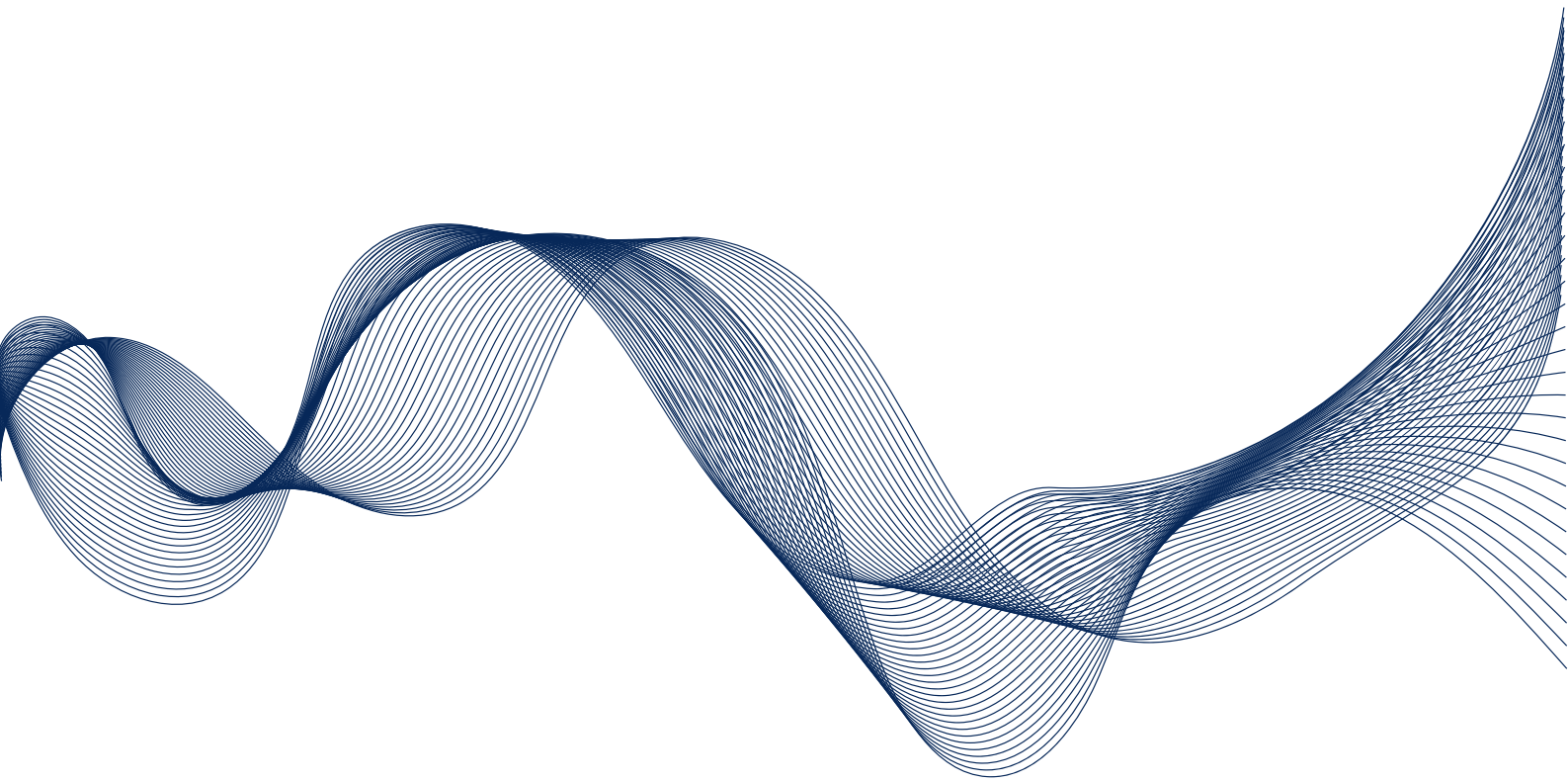
In relation to the present matter, the Court noted that the Appellant had filed documents on record in support of its claim for well-known status. The Appellant had also filed Court orders recognizing the trademark proprietorship or ownership. The Court, thus, held that under such circumstances the Trademark Registry ought to have, if it was of the opinion that an affidavit was required, given an opportunity to the Appellant to file such an affidavit without going through the statement of the case, the materials and the documents which were filed with the Application. Non -filing of the affidavit could not have resulted in dismissal of the Application itself.

Therefore, the Court gave an opportunity to the Appellant to file a supporting affidavit, and any further document in support of its application for grant of well-known status for its mark *"KAMDHENU"*. These documents were directed to be filed before the Registrar of Trademark within 8 weeks after which a hearing is to be afforded to the Appellants by the Registrar.

In light of the above terms, the appeal was allowed and disposed of.

Footnotes

1. C.A. (COMM.IPD-TM) 66/2021 Kamdhenu Ltd. vs The Registrar of Trade Marks; dated July 06, 2023
2. TM-M 764900
3. Public Notice dated May 22, 2017 bearing CG Office/TMR/Well-Known TM/355



JUDGEMENTS

In the matter of M/s Yuva Nidhi Company Limited ("Company") for violation of section 180(1)(c) of the Companies Act, 2013 ("Act")

It was observed from the financial statements filed by the Company for the financial years 2015-16, 2016-17 and 2017-18 that the amount borrowed by the Company exceeded the statutory limit of borrowings permitted under section 180(1)(c) of the Act. Further, the Company had not obtained the shareholders' approval for such borrowings beyond statutory limit. In this regard, the Registrar of Companies, Gujarat, Dadra and Nagar Haveli ("ROC") issued an adjudication notice to the Company and its officers in default and provided an opportunity of being heard. However, neither did anyone submit a reply on behalf of the Company and its directors, nor did anyone appear in the hearing conducted by the ROC.

Therefore, ROC imposed a penalty of INR 2,00,000/- on the Company and INR 50,000/- each on four Directors of the Company.

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In the matter of M/s Firmroots Private Limited ("Company") for violation of section 117 of the Companies Act, 2013 ("Act") read with MCA general circular no. 14/2020

The Company filed an adjudication application before the Registrar of Companies, Karnataka **("ROC")** for non-compliance with section 117 of the Act. As per facts, the Company conducted an extraordinary general meeting **("EGM")** through video conferencing for appointment of statutory auditor. According to the general circular no. 14/2020 dated April 8, 2020, issued by the Ministry of Corporate Affairs, a copy of resolutions passed at a general meeting conducted through audio-video conferencing shall be filed in form MGT-14 within 60 days from the date of such meeting.

The Company filed e-form MGT-14 with a delay of 231 days. In order to adjudicate this non-compliance, ROC conducted a hearing. At the hearing, the directors of the Company explained that one of the officers responsible for this non-compliance had resigned from the Company and had not responded to the matter despite the Company's efforts to contact him. They argued that a penalty should also be imposed on the officer in default for this non-compliance.

Further they also submitted that the Company is a start up entity (registered with DPIIT), hence, lesser penalties should be imposed. After considering all the facts, the ROC imposed a penalty of INR 16,500/- each on the Company and its present directors, and INR 10,200/- on the Company Secretary.

Additionally, a penalty of INR 15,300/- was imposed on a former director who was also the person responsible for such filing and hence the officer in default, for violation of section 117 of the Act read with general circular no. 14/2020.

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JUDGEMENTS

In the matter of M/s Simpliance Technologies Private Limited ("Company") for violation of rule 9A(3)(a) of Companies (Prospectus and Allotment of Securities) Rules, 2014 ("Rules") under Companies Act, 2013 ("Act")

The Company *suo moto* filed an adjudication application with the Registrar of Companies, Karnataka **("ROC")** to adjudicate the non-compliance of rule 9A(3)(a) of Rules. According to rule 9A(3)(a) of Rules, every security holder of an unlisted public company is required to get securities dematerialized if he/she intends to transfer its securities on or after October 2, 2018. The application stated that on November 26, 2018, 353 equity shares of the Company were transferred in the physical mode without undergoing dematerialization and such transfer was approved by the Board of Directors of the Company. The ROC issued an adjudication notice to inform the parties involved about the scheduled hearing date for the matter. During the hearing, the authorized representative of the Company admitted the default and stated that the Company had rectified the non-compliance by converting the securities into dematerialized form. As a result of the non-compliance, ROC imposed a penalty of INR 10,000/- each on the Company and its two executive directors (officers in default).

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In the matter of M/s Teleone Consumers Product Private Limited ("Company") for violation of section 118 of the Companies Act, 2013 ("Act")

On conducting an inspection on the Company under section 208 of the Act, the Inquiry Officer mentioned in its report that the Company had failed to comply with the provisions of Section 118 of the Act. According to the report, the Company did not mention the date of signing of minutes and the serial number of the meetings in its minutes book.

As per Section 118 of the Act, every company shall adhere to secretarial standards on general and board meetings, as specified by the Institute of Company Secretaries of India which, *inter alia,* includes that every company should mention the serial number of its Board meeting in the minutes and the minutes of the Board meeting should be signed and dated by the Chairman of the meeting or the Chairman of the next meeting. The Registrar of Companies, NCT of Delhi and Haryana **("ROC")** issued a show cause notice to the Company and its Directors, however, the Company did not submit any reply in this regard. Therefore, the ROC imposed a penalty of INR 75,000/- on the Company and INR 15,000/- on the two Directors of the Company.

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In the matter of M/s Shethji Agri Commodity Private Limited ("Company") for violation of section 10A (1)(a) of the Companies Act, 2013 ("Act")

The Registrar of Companies, Gujarat, Dadra & Nagar Haveli ("ROC") observed that the Company was incorporated on September 18, 2021, and accordingly form INC 20A was required to be filed within 180 days of the date of incorporation. However, the Company failed to complete the filing. Consequently, the ROC

JUDGEMENTS

issued a notice in form STK-1 to the Company and its officers in default, initiating action for removal of name of the Company from the register of companies. The Company filed e-form INC 20A with a delay of 254 days. An adjudication notice was issued by the ROC to the Company and its directors for contravention of such delayed filing.

The authorized representative of the Company submitted that during the financial year 2021-22, the Company was unable to commence its business due to COVID. The ROC imposed a penalty of INR 25,000/- on the Company and INR 50,000/- on its officer in default.

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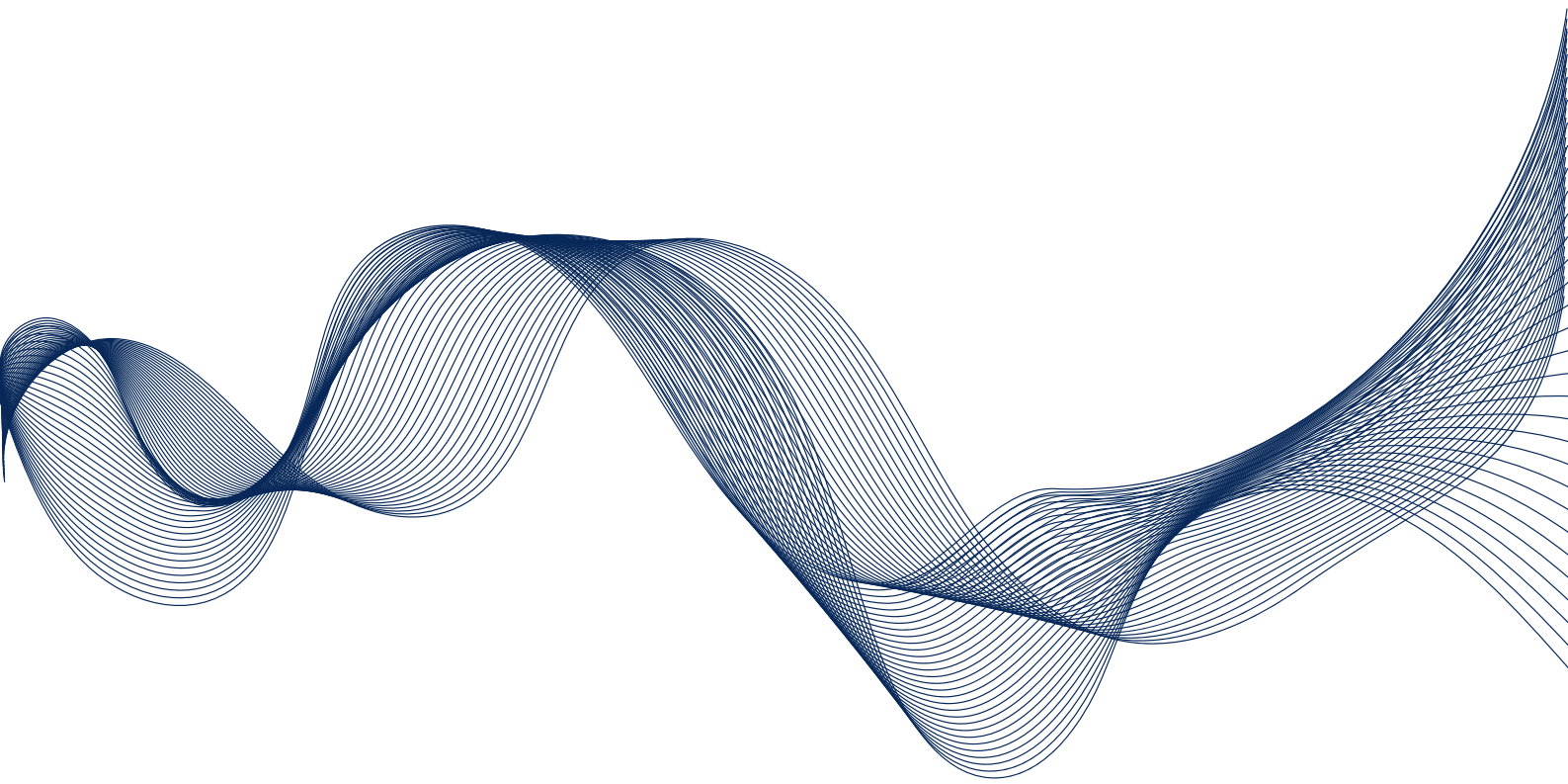

Transactions in Corporate Bonds through Request for Quote (RFQ) platform by Stock Brokers (SBs)

On 2 June 2023, the Securities and Exchange Board of India **("SEBI")** issued a circular relating to transactions in Corporate Bonds through Request for Quote (RFQ) platform by Stock Brokers (SBs).

SEBI has been taking steps to increase the liquidity on RFQ platform of stock exchanges to enhance the transparency and disclosure pertaining to trading in secondary market in corporate bonds. Certain stipulations have been made for transactions on RFQ platform by Mutual Funds, Portfolio Management Services and Alternate Investment Funds.

Similarly, SEBI decided to take steps to increase liquidity on RFQ platform vis-à-vis trading in Corporate Bonds (CBs) by SBs, as under:

(a) With effect from 1 July 2023, for all the trades in proprietary capacity, SBs shall undertake at least 10% of their total secondary market trades by value in CBs in that month by placing/seeking quotes through one-to-one (OTO) or one-to-many (OTM) mode on the RFQ platform of stock exchanges.

(b) Further, with effect from 1 April 2024, for all the trades in proprietary capacity, SBs shall undertake at least 25% of their total secondary market trades by value in CBs in that month by placing/seeking quotes through OTO or OTM mode on the RFQ platform of stock exchanges.

(c) SBs shall consider the trades executed by value through OTO or OTM mode of RFQ with respect to the total secondary market trades in CBs, during the current month and immediate preceding two months on a rolling basis. Only trades pertaining to proprietary capacity of SBs shall be considered for the purpose of such calculations.

(d) Further, in terms of SEBI Circular SEBI/HO/DDHS/P/CIR/2022/142 dated 19 October 2022, quotes on RFQ platform can be placed to an identified counterparty (i.e. 'one-to-one' mode) or to all the participants (i.e. 'one-to-many' mode). SBs are encouraged to place bids (in proprietary capacity or for clients) on RFQ platform through OTM mode, as the same shall contribute towards achieving better price discovery.

Risk Management and Inter-Bank Dealings- Non-deliverable derivative contracts (NDDCs)

On 6 June 2023, the Reserve Bank of India **("RBI")** issued a circular on Risk Management and Inter-Bank Dealings - Non-deliverable derivative contracts (NDDCs). As per the extant regulatory framework, AD Cat-I banks operating International Financial Services Centre (IFSC) Banking Units (IBUs) are permitted to offer non-deliverable derivative contracts (NDDCs) to persons resident outside India. Such derivatives are cash-settled in foreign currency. With a view to developing the onshore INR NDDC market and providing residents the flexibility to efficiently design their hedging programmes, RBI decided to permit:

(a) AD Cat-I banks operating IBUs to offer NDDCs involving INR to resident non-retail users for the purpose of hedging. Such transactions shall be cash settled in INR; and

(b) The flexibility of cash settlement of NDDCs transactions between two AD Cat-I banks, and between an AD Cat-I bank and a person resident outside India in INR or any foreign currency.

Accordingly, the amendments being made to the Master Direction – Risk Management and Inter-Bank Dealings dated 5 July 2016, as amended from time to time, are placed at Annex along with the

circular. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 and are without prejudice to permissions/ approvals, if any, required under any other law.

Expanding the Scope of Trade Receivables Discounting System

On 7 June 2023, RBI issued a circular to expand the scope of the 'Guidelines for the Trade Receivables Discounting System **(TReDS)**. In order to ease constraints faced by Micro, Small and Medium Enterprises (MSMEs) in converting their trade receivables to liquid funds, the Reserve Bank of India (RBI) issued the 'Guidelines for the Trade Receivables Discounting System (TReDS)' (updated as on 2 July 2018). The guidelines allow financing/discounting of MSME receivables on "without recourse" basis by permitted financiers. Currently, three entities operate TReDS platforms in the country; one more entity has also been given in-principle authorisation to operate such platform.

Based on the experience gained, and as announced in the Statement on Developmental and Regulatory Policies dated 8 February 2023, RBI decided to make the following enhancements to the TReDS guidelines :

(a) Facilitate insurance for transactions: Financiers place their bids on the TReDS platforms keeping in view the credit rating of buyers. They are generally not inclined to bid for payables of low-rated buyers. To overcome this, an insurance facility is being permitted for TReDS transactions, which would aid financiers to hedge default risks, subject to the following:

- Apart from MSME sellers, buyers and financiers, insurance companies are permitted to participate as "fourth participant" in TReDS.
- In their business/operational rules, the TReDS platform operators may specify the stage at which insurance facility can be availed.
- Premium for insurance shall not be levied on the MSME seller.
- Collection of premium and related activities could be enabled through National Automated Clearing House (NACH) system used for settlement of TReDS transactions.
- Based on consent received from financiers and insurance companies, TReDS platforms could facilitate automated processing of insurance claims and specify timelines for their settlement through the NACH system.
- As of now, the credit insurance shall not be treated as a Credit Risk Mitigant (CRM) to avail any prudential benefits.

(b) Expand the pool of financiers: TReDS transactions fall under the ambit of "factoring business", and banks, NBFC-Factors and other financial institutions (as permitted by RBI) can presently participate as financiers in TReDS. The Factoring Regulation Act, 2011 (FRA) allows certain other entities/institutions to undertake factoring transactions. Accordingly, all entities/institutions allowed to undertake factoring business under FRA and the rules/regulations made thereunder, are now permitted to participate as financiers in TReDS. This would augment availability of financiers on TReDS platforms.

(c) Enable secondary market for Factoring Units (FUs): TReDS guidelines provide for the discounted/financed FUs to have a secondary market, which is, however, not introduced yet. Given the experience gained, TReDS platform operators may, at their discretion, enable a

secondary market for transfer of FUs within the same TReDS platform. Such transfers shall, however, be subject to the applicable provisions of RBI's 'Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021' dated September 24, 2021 (as updated from time to time), including the eligibility of transferor/transferee as specified in paragraph 3 of the said Master Direction.

(d) Settlement of FUs not discounted/financed: On an average, 17% of FUs uploaded on TReDS platforms are not discounted/financed; for such FUs, TReDS guidelines require buyers to pay MSME sellers outside the system. To overcome the inconvenience caused to MSME sellers and buyers as well as for better reconciliation, TReDS platform operators shall now be permitted to undertake settlement of all FUs – financed/discounted or otherwise – using the NACH mechanism used for TReDS. Timeline for funds settlement shall be subject to the provisions of TReDS guidelines (under reference) as well as other relevant statutes like the Micro, Small and Medium Enterprises Development Act, 2006.

(e) Display of bids: TReDS platforms facilitate transparent and competitive bidding by the financiers. To make the process more transparent, the platforms may display details of bids placed for an FU to other bidders; the name of the bidder shall, however, not be revealed.

Review of the Reserve Bank of India (Call, Notice and Term Money Markets) Directions, 2021

On 8 June 2023, RBI issued a circular reviewing the Reserve Bank of India (Call, Notice and Term Money Markets) Directions, 2021. On a review, RBI decided that henceforth, Scheduled Commercial Banks (excluding small finance banks and payment banks) may set their own limits for borrowing in Call and Notice Money Markets. As in the case of Term Money Market borrowing, Scheduled Commercial Banks shall put in place internal board approved limits for borrowing through Call and Notice Money Markets within the prudential limits for inter-bank liabilities prescribed by Department of Regulation. The instruction shall be applicable with immediate effect.

Framework for Compromise Settlements and Technical Write-offs

On 8 June 2023, RBI issued the framework for Compromise Settlements and Technical Write-offs. The RBI has issued various instructions to regulated entities (REs) regarding compromise settlements in respect of stressed accounts from time to time, including the Prudential Framework for Resolution of Stressed Assets dated 7 June 2019 **("Prudential Framework")**, which recognises compromise settlements as a valid resolution plan. With a view to provide further impetus to resolution of stressed assets in the system as well as to rationalise and harmonise the instructions across all REs, as announced in the Statement on Developmental and Regulatory Policies released on 8 June 2023, RBI decided to issue a comprehensive regulatory framework governing compromise settlements and technical write-offs covering all the REs, as detailed in the annexure to this circular. In terms of the annexure to the aforesaid circular issued by RBI on 8 June 2023, Regulated Entities (REs) shall put in place Board-approved policies for undertaking compromise settlements with the borrowers as well as for technical write-offs.

- Compromise settlement for this purpose shall refer to any negotiated arrangement with the borrower to fully1 settle the claims of the RE against the borrower in cash; it may entail some sacrifice of the amount due from the borrower on the part of the REs with corresponding waiver of claims of the RE against the borrower to that extent.

- Technical write-off for this purpose shall refer to cases where the non-performing assets remain outstanding at borrowers' loan account level, but are written-off (fully or partially) by the RE only for accounting purposes, without involving any waiver of claims against the borrower, and without prejudice to the recovery of the same.

The provisions of this framework shall be applicable to all REs to which this circular is addressed and shall be without prejudice to the provisions of the Prudential Framework, or any other guidelines applicable to the REs on resolution of stressed assets.

These instructions on operationalizing the framework have been issued in exercise of the powers conferred by Sections 21 and 35A of the Banking Regulation Act, 1949 read with Section 56 of the Banking Regulation Act, 1949; Chapter IIIB of the Reserve Bank of India Act, 1934 and Sections 30A, 32 and 33 of the National Housing Bank Act, 1987. They shall come into force with immediate effect and REs shall take necessary steps to ensure compliance with these instructions.

Guidelines on Default Loss Guarantee (DLG) in Digital Lending

On 8 June 2023, RBI issued Guidelines on Default Loss Guarantee (DLG) in Digital Lending. A reference is invited to Para (3.4.3.1) of Section C of Annex-II to the RBI Press Release "Recommendations of the Working group on Digital Lending – Implementation" dated 10 August 2022 in terms of which it was stated that the recommendation pertaining to First Loss Default Guarantee (FLDG) was under examination with the Reserve Bank.Arrangements between Regulated Entities (REs) and Lending Service Providers (LSPs) or between two REs involving default loss guarantee (DLG), commonly known as FLDG, has since been examined by the Bank and it has been decided to permit such arrangements subject to the guidelines laid down in the Annex to this circular. DLG arrangements conforming to these guidelines shall not be treated as 'synthetic securitisation' and/or shall also not attract the provisions of 'loan participation'. The guidelines shall come into effect from the date of this Circular. These directions are issued under sections 21, 35A and 56 of the Banking Regulation Act, 1949, sections 45JA, 45L and 45M of the Reserve Bank of India Act, 1934, section 30A of the National Housing Bank Act, 1987 and section 6 of the Factoring Regulation Act.

Participation of Mutual funds in repo transactions on Corporate Debt Securities

On 8 June 2023, SEBI issued a circular on participation of Mutual funds in repo transactions on Corporate Debt Securities. SEBI vide circular dated 11 November 2011 and circular dated 15 November 2012 allowed mutual funds to participate in repo transactions on corporate debt securities. In partial modification to the above circulars, SEBI decided:

(a) The Mutual Funds can participate in repos on following corporate debt securities:

- Listed AA and above rated corporate debt securities
- Commercial Papers (CPs) and Certificate of Deposits (CDs)

(b) For the purpose of consideration of credit rating of exposure on repo transactions for various purposes including for Potential Risk Class (PRC) matrix, liquidity ratios, Risk-o-meter etc., the same shall be as that of the underlying securities, i.e., on a look through basis.

(c) For transactions where settlement is guaranteed by a Clearing Corporation, the exposure shall not be considered for the purpose

of determination of investment limits for single issuer, group issuer and sector level limits.

(d) All other conditions mentioned in the abovementioned circulars shall remain the same.

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023

On 14 June 2023, SEBI issued the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023. The key amendments made by way of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 are as follows:

(a) Vacancy of Compliance Officer/ Director/ CEO/ CFO/ Managing Director, Whole Time Director or Manager (KMP) - Vacancy caused by resignation in any of the above post has to be filled within 3 months from the date of such vacancy. However, it shall not be applicable if the Listed Company fulfils the requirement of Composition of Board of Directors. Vacancy caused by resignation in any of the above post shall not be fill by appointing a person in interim capacity unless such vacancy is filled in accordance with laws applicable in case of fresh appointment to such office.

(b) Appointment of Director with effect from 1 April 2024, the continuation of a Director (NEDs not liable to retire by rotation) serving on the BODs of a Listed Company shall be subject to the approval by the shareholders in a general meeting at least once in every 5 years from the date of their appointment or re-appointment. Continuation of Directors serving on the BODs of a Listed Company as 31 March 2024, without the approval of the Shareholders for the last five years or more shall be subject to the approval by the shareholders in a general meeting to be held after 31 March 2024.

Exemptions: i) WTD, MD, Manager, ID or Director retiring by rotation, if Shareholders approval obtained for their reappointment or continuation pursuant to these regulations or Companies Act, 2013 and has been complied with. ii) Directors appointed pursuant to Court Order or Tribunal or Nominee Director of the Government on the Board of a Listed Company other than public sector Company or Nominee Director of a financial sector regulator on the Board of a Listed Company, Director nominated by FIs registered with RBI, Director nominated by Debenture Trustee.

(c) Cyber Security Details of Cyber Security incidents or breaches or loss of data or documents shall be disclosed along with the Quarterly Corporate Governance Reports filed with the Stock Exchanges.

(d) Threshold Limits for disclosure of events or information Now the Threshold Limits defined for disclosure of events or information, whose value or the expected impact in terms of value, exceeds the lower of the following: i) 2% of turnover as per last audited consolidated financial statements; ii) 2% of net worth as per last audited consolidated financial statements (not applicable if in negative); iii) 5% of average net profit or loss after tax of last 3 consolidated financial statements. However if the criteria above is not applicable but if in the opinion of BODs the events or information if material, it may be disclose. Any continuing event or information which becomes material pursuant to notification of these amendments regulations shall be disclosed within 30 days from the date of coming into effect of these regulations. Such policy shall assist the relevant employees in identifying any potential material event or

information and reporting the same to authorised KMP u/r 30(5).

(e) Now Company shall disclose events or information to Stock Exchanges: i) Within 30 minutes from the Board Meeting in which decision taken; ii) Within 12 hours, if the information is emanating from the Company; iii) Within 24 hours, if the information is not emanating from the Company.

(f) Top 100 Listed Companies w.e.f. 1.10.2023 and top 250 w.e.f. 1.4.2024 Listed Companies shall confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature, within 24 hours of such information. If listed Entity confirm the reported event/information, it shall also provide current status of event/information.

(g) Disclosure requirements for certain types of agreements binding Listed Companies. All the shareholder, promoters, promoter group entities, related parties, directors, KMPs and employees of listed entity/holding/subsidiary/associate, who are parties to the agreements, which impact the management or control of Listed Company or create any liability or impose any restriction that subsist as on the date of notification or being entered later on, shall inform the listed entity within 2 working days of entering into the agreement and listed entity shall in turn disclose to the Stock Exchange and place it on its website. Listed Companies shall disclose the number of above agreements, their salient features, including the link where the complete details of such agreements are available, in the Annual Report for the FY 2022-23 or for the FY 2023-24.

(h) Special rights to Shareholders. Any special rights granted to the Shareholders of the Listed Company shall be approved by Shareholders in a General Meeting by way of Special Resolution once in every 5 years.

(i) The listed entity shall submit its Financial Results for the quarter/financial year immediately succeeding the period for which FS have been disclosed in the offer documents for IPO in accordance with the specified timelines or 21 days from the date of listing, whichever is later.

(j) Business Responsibility and Sustainability Report (BRSR) applicable on top 1000 Companies and assurance of the BRSR core for itself and its value chain, shall be obtained in the manner as may be specified by the Board from time to time.

(k) Sale, Lease or otherwise disposal of an undertaking outside scheme of arrangement Listed Company carrying out Sale, Lease or otherwise disposal of an undertaking shall take prior of approval of Shareholders by way of Special Resolution and also disclose the object and commercial rationale for carrying out such transaction in the Explanatory Statement to the Notice Exemption: Above provision is not applicable to transaction entered into by Listed Company with its wholly owned subsidiary.

(l) Now Schedule of analysts or institutional investors meet needs to be reported at least 2 working days in advance (excluding the date of intimation and the date of meet).

(m) Intimation to Stock Exchanges within 1 working day by way of certificate regarding status of payment of interest or dividend or repayment or redemption of principal of non-convertible securities.

Master Circular on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule19 of the Securities Contracts (Regulation) Rules, 1957

On 20 June 2023, SEBI issued the Master Circular on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957.

SEBI, from time to time, has been issuing various circulars/directions which lay down the detailed requirements to be complied by listed entities while undertaking schemes of arrangements. In order to enable the users to have access to the applicable circulars at one place, Master Circular in respect of schemes of arrangement has been prepared.With the issuance of this Master Circular, the directions/instructions contained in the Circulars listed out in Schedule I to this Master Circular shall stand rescinded. Notwithstanding such rescission,

(a) Anything done or any action taken or purported to have been done or taken under the rescinded circulars, 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.

The Master Circular is divided into two parts – namely - PART -I: Requirements before the Scheme of arrangement is submitted for sanction by the National Company Law Tribunal (NCLT) and PART-II: Application for relaxation under Sub-rule (7) of rule19 of the Securities Contracts (Regulation) Rules,1957.

Master Circular for Issue of Capital and Disclosure Requirements

On 21 June 2023, SEBI issued the Master Circular on Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 **("ICDR Regulations 2018")**. In order to enable the stakeholders to have access to all such circulars at one place, this Master Circular under the ICDR Regulations 2018 has been prepared. The Master Circular is divided into the following chapters –

1. Non-compliance with certain provision of SEBI ICDR Regulations 2018,
2. Streamlining the process of Rights Issue,
3. Disclosures in offer document,
4. Online Filing System,
5. Compensation to Retail Individual Investors (RIIs) in an IPO,
6. Guidelines on issuance of non-convertible debt instruments along with warrants ('NCDs with Warrants') in terms of Chapter VI – Qualified Institutions Placement of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018,
7. Framework for the process of recognition of investors for the purpose of Innovators Growth Platform, and
8. Issue Summary Document (ISD) and dissemination of issue advertisements.

CORPORATE REGULATORY UPDATES

Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

On 22 June 2023, RBI issued a circular on Remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS).

Presently, remittances to IFSCs under LRS can be made only for making investments in securities in terms of Circular No. 11 dated 16 February 2021. In view of the gazette notification no. SO 2374(E) dated 23 May 2022 issued by the Central Government, it is directed that Authorised Persons may facilitate remittances by resident individuals under purpose 'studies abroad' as mentioned in Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 for payment of fees to foreign universities or foreign institutions in IFSCs for pursuing courses mentioned in the gazette notification ibid.

Master Direction on Minimum Capital Requirements for Operational Risk

On 26 June 2023 RBI issued the Reserve Bank of India (Minimum Capital Requirements for Operational Risk) Directions, 2023. The effective date of implementation of these Directions shall be communicated separately.

All existing approaches viz. Basic Indicator Approach (BIA), The Standardised Approach (TSA)/ Alternative Standardised Approach (ASA) and Advanced Measurement Approach (AMA) for measuring minimum operational risk capital (ORC) requirements shall be replaced by the new Standardised Approach (hereafter referred to as the 'Basel III Standardised Approach') with coming into effect of these Directions.

Until then, the minimum operational risk regulatory capital requirements shall be computed in accordance with the instructions contained in paragraph 9 of 'Master Circular – Basel III Capital Regulations' issued vide circular dated 12 May 2023, as amended from time to time. Applicability - The provisions of these Directions shall apply to all Commercial Banks (excluding Local Area Banks, Payments Banks, Regional Rural Banks, and Small Finance Banks).

Master Circular for listing obligations and disclosure requirements for Non-convertible Securities, Securitized Debt Instruments and/or Commercial Paper

On 29 July 2023, SEBI issued a circular for listing obligations and disclosure requirements for Non-convertible Securities, Securitized Debt Instruments and/or Commercial Paper.

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 **('Listing Regulations')**, prescribes the continuous disclosure requirements for issuers of listed Non-convertible Securities, Securitized Debt Instruments and Commercial Paper. Multiple circulars have been issued, over the years, covering the operational and procedural aspects thereof. For effective regulation of the corporate bond market and to enable the issuers and other market stakeholders to get access to all the applicable circulars at one place, this Master Circular has been prepared. This Master Circular is a compilation of the relevant existing circulars, with consequent changes.

The stipulations contained in these circulars have been detailed chapter-wise in this circular.

Mission Moon - India's major achievements in moon exploration

In the last few decades, India's space program has come a long way and India is now considered as one of the key players in the global space community. One of the latest space achievements conducted by India is the launch of the "*Chandrayaan-3*" mission. Let's quickly read about India's major achievements in Moon exploration.

Chandrayaan – 1

India's first successful moon mission, *Chandrayaan – 1*, was launched in *October 2008* and discovered the presence of water molecules on the Moon.

Chandrayaan – 2

The success of the first lunar mission of the Indian Space Research Organization inspired it to launch *Chandrayaan -2* in July 2019. Unfortunately, the mission failed to attempt a soft landing on the moon but data was captured with respect to the moon's surface and atmosphere.

Chandrayaan – 3

It is India's third lunar mission and second attempt to make a soft landing on the Moon's surface. It took off from the Satish Dhawan Space Center in Sriharikota on *14th July 2023*. The primary goals of the Chandrayaan-3 mission are.

- Demonstrate a safe and soft landing on the surface of the Moon,
- Conduct rover operations on the Moon, and
- Conduct on-site experiments on the Lunar surface.

Source - https://timesofindia.indiatimes.com/india/a-timeline-of-indias-tryst-with-moon-exploration/articleshow/97367427.cms?from=mdr
https://en.wikipedia.org/wiki/Chandrayaan_programme

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