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FEATURED ARTICLE



Family Office(s) in Gift City: An Attractive Option to Invest and Manage the Family Funds

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Introduction

The concept of family office has gained prominence in India over the past 8-10 years, especially due to an increase in the number of the high net worth individuals (**HNIs**) who have started exploring the family office as one of most efficient and effective means for investment, wealth management and succession planning. In view of the growing interest of the HNIs and ultra HNIs in family offices in India as well as offshore countries, the expert committee constituted by the International Financial Services Centres Authority (**IFSCA**) recommended a separate regulatory regime and a favourable environment for Indian as well as foreign individuals so as to attract HNIs and ultra HNIs across the globe to set-up their family offices in International Financial Services Centres (**IFSC**). So far, Gujarat International Finance Tec-City (**Gift City**) has been recognised as the IFSC by the Indian government, and it is the sole operational IFSC in India.

The recommendations of the expert committee were considered by the IFSCA in IFSCA (Fund Management) Regulations, 2022 (**Fund Regulations**) which provide a separate framework for family offices in IFSC. The Fund Regulations allow setting up of family investment fund (**FIF**) in IFSC to act as self-managed fund for pooling money only from a single family. This article discusses some of the key aspects of the Fund Regulations related to, inter alia, structure, eligibility and investments options of FIFs established to act as single-family office(s) in IFSC.

Structure of Family Office(s) in IFSC

The Fund Regulations provide adequate flexibility regarding the structure of a FIF. A FIF can be set up in the form of a company, contributory trust, limited liability partnership (**LLP**), or any other form as may be permitted by the IFSCA from time to time.

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A FIF needs to maintain a minimum corpus⁽¹⁾ (i.e investments or assets under management) of USD 10 million within a period of 3 years from the date of obtaining a certificate of registration from the IFSCA. An investment professional would need to be appointed by every FIF to manage the investments. A FIF cannot seek investments from individuals or entities outside of the single family, but it may share economic interest with its employees, directors, fund management entities or other persons providing services to the FIF. In this respect, the FIF may also accept contributions from such third parties for the limited purpose of granting economic interest to them, not exceeding twenty percent (20%) of the FIF's profits.

Who can set up Family Office(s) in IFSC?

A FIF can be set in IFSC by a single family. The Fund Regulations initially restricted the scope of a single family to a group of individuals who are the lineal descendants of a common ancestor, including their spouses (*including widows and widowers, whether remarried or not*) and children (*including stepchildren, adopted children, and ex nuptial children*). However, earlier this year in March 2023⁽²⁾, the IFSCA clarified that a single family will also include sole proprietorship firms, partnership firms, company, LLPs, trusts, or body corporate, in which an individual or a group of individuals of a single-family exercises control and directly or indirectly holds "substantial economic interest⁽³⁾".

This circular has expanded the ambit of the definition of 'single family' and would enable the family-owned entities to set up family office(s) in the IFSC provided that such entities meet the above-mentioned criteria of control and substantial economic interest.

Where can a family office invest?

The Fund Regulations provide various options for the family offices to invest the family funds and diversify the family investments. FIFs have a wide range of investment options available to them including unlisted securities, securities listed or to be listed in IFSC or India or foreign jurisdictions, debt securities, units of mutual funds or alternate investment funds in India or foreign jurisdictions, money market instruments, and by way of contribution in limited liability partnership. FIFs set up in IFSC are allowed to invest in India as well as foreign jurisdictions. While any investment in Indian entities/assets by a FIF will have to comply with foreign exchange regulations (including sectoral cap, pricing guidelines and other provisions of the foreign direct investment (FDI) policy in case of equity or equity-linked investments), any investment outside India by a FIF will be outside the purview of [Indian] foreign exchange laws.

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Family office(s) in IFSC by non-residents (including non-resident Indians (NRI))

The Fund Regulations have opened up a new avenue for the foreign residents (including NRIs) and/or their family-owned entities to create and set up their investment entity in India without being required to comply with the FDI policy and the foreign exchange rules⁽⁴⁾. Any repatriation of funds outside India from IFSC does not require any regulatory approval.

For instance, as per the extant FDI policy and the foreign exchange rules, prior government approval is required for any foreign investment in core investment company or an investing entity engaged in activity of investing in the capital of other Indian companies/LLPs (where such investing entity is not registered with the Reserve Bank of India **(RBI)** as a non-banking financial company). However, no such government approval will be required for foreign investment in an investment entity set up in IFSC. Further, foreign investment in a trust is not permitted unless such trust is an investment vehicle such as venture capital fund, real estate investment trust and infrastructure investment trust. However, such restriction will not apply in case the FIF in the nature of trust is formed in IFSC.

Family Office(s) in IFSC by Indian residents

While the new overseas investment **(OI)** framework notified in August 2022⁽⁵⁾ allows the Indian entities to invest in financial service activities abroad subject to certain conditions, the OI framework does not allow Indian residents to invest in a foreign entity engaged in financial service activities. It is learnt that the RBI has clarified to the bankers that the intent of the OI framework is not to allow Indian residents to set up (directly or indirectly) family office(s) outside India.

The restriction of making OI by the resident individuals only in an operating foreign entity not engaged in financial services activity does not apply to an investment made in an entity set up in IFSC. In view of this, the resident individuals and/or the family-owned entities of the resident individuals fulfilling the criteria of single-family office can set up FIFs in IFSC to manage their overseas investments. Any direct investment in FIF by Indian residents will have to comply with the liberalised remittance scheme **(LRS)** and the OI framework. The permissible remittance limit under LRS is USD 250,000 per financial year. The investment in FIF set up in IFSC by the family-owned companies will need to be in compliance with the OI framework. Where the FIF is set up as a company or an LLP, then the investment by family-owned entities in such FIF will qualify as ODI and will have to comply with the limits on financial commitment (which is 400% of the net worth of the Indian investing entity) and other provisions applicable to the ODI transactions.

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However, any investment (including sponsor contribution) in units of an overseas investment fund, which is duly regulated by the regulator for the financial sector in the host jurisdiction, will be considered as overseas portfolio investment (OPI). Therefore, it appears that the investment in FIF set up in the form of a trust will qualify as OPI. However, the news reports suggest that the RBI has taken a view that since FIF is a self-managed and family-controlled fund pooling money from a single family, any investment in FIF should qualify as ODI. A clarification from the RBI on this aspect is necessary to clear the persisting ambiguity in the nature of investment.

Our thoughts

The start-up ecosystem in India offers a good investment opportunity for HNIs. In fact, as per the reports, various HNIs have invested/are looking to invest their funds in Indian start-ups either directly or through investment funds for wealth creation and accumulation. There are various fiscal incentives (including tax exemption, tax holiday period, concessional rate of tax, stamp duty exemptions etc.) available to the entities set up in IFSC. The capital account restrictions set out in the foreign exchange regulations do not apply to non-residents investments in the FIFs established in IFSC. Further, since the family office is set up to invest and manage the money of a single-family and not the third parties, the IFSCA has prescribed a simpler compliance mechanism for the family office. With a diverse range of investment options and favourable regulations, Gift City is likely to attract domestic as well as foreign individuals (including non-resident Indians) who are looking to set up their family offices in India.

*For further information on this topic please contact **Mr. Dinesh Gupta, Partner** (dinesh.gupta@clasislaw.com) & **Mr. Shubham Tandon, Associate** (shubham.tandon@clasislaw.com) at Clasis Law.*

Footnotes

1. "corpus" means the total amount of funds committed by investors to the fund management entity under a scheme by way of a written contract or any such document as on a particular date.
2. Circular no. F.No.333/IFSCA/FIF/2022-23 dated 1 March 2023 issued by the IFSCA.
3. The term 'substantial economic interest' means 90% economic interest which has to be in the nature of shareholding (in case of a company) or profit-sharing rights (in case of a partnership or LLP) or beneficial interest (in case of a trust).
4. The Foreign Exchange Management (Non-debt Instruments) Rules, 2019
5. The Foreign Exchange Management (Overseas Investment) Rules, 2022, and the Foreign Exchange Management (Overseas Investment) Regulations, 2022

Disclaimer

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

LEGAL UPDATE



No Claims to be admitted after approval of the Resolution Plan by Committee of Creditors

Introduction

In a recent ruling, the Supreme Court of India delivered a significant pronouncement concerning the admission of claims within the framework of the Insolvency and Bankruptcy Code, 2016 (**IBC**). The Court expressed apprehensions regarding the admission of claims after the Committee of Creditors (**COC**) had accepted a Resolution Plan, but before the plan received formal approval from the Adjudicating Authority (**NCLT**). The Court was of the opinion that such a practice could potentially perpetuate the Corporate Insolvency Resolution Process (**CIRP**) endlessly, leading to adverse consequences for the insolvency regime.

Facts

The present appeal was preferred by M/s. RPS Infrastructure Ltd (**Appellant**) against the Resolution Professional of the Corporate Debtor, M/s KST Infrastructure Private Limited (**Respondent**). The origin of the dispute lay in a conflict between the Corporate Debtor and the Appellant, prompting the initiation of arbitration proceedings. Subsequently, the arbitration process culminated in an award in favour of the Appellant in August 2016 (**Award**). Dissatisfied with this outcome, the Corporate Debtor initiated proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (**Act**) to assailed the said Award. As Sec 34 application was decided in favour of the Appellant, the Corporate Debtor preferred

an appeal u/s 37 of the Act has remained pending till date. Concurrently, a petition to initiate CIRP was filed against the Corporate Debtor which was admitted and an IRP was appointed in March 2019. The process of constitution of COC, submission and approval of resolution plan was completed by July 2020. However, before submission of plan to the NCLT, the Appellant apprised the Resolution Professional of its pending claim, under the Award. However, the Respondent rejected this claim on two primary grounds: a substantial delay of 287 days and the fact that the COC had already given its approval to a Resolution Plan. The Appellant thereafter made an application u/s 60(5) of the IBC before the NCLT challenging the Respondent's decision pending approval of the Resolution Plan by the NCLT. The NCLT allowed the reliefs claimed by the Petitioner on the grounds: that the amount towards the arbitral award would have had reflected in the Corporate Debtor's books; if the books were unavailable, the Respondent was bound to obtain and verify the same; since the CIRP announcement was made through public newspapers, the Appellant might have missed the same. The Respondent preferred an appeal before the National Company Law Appellate Tribunal (**NCLAT**) against the order of the NCLT. The NCLAT while allowing the appeal, *inter alia* held the following: proper service for inviting claims had been carried out by Respondent no.1 in accordance with IBBI Regulations, the Appellant failed to file their claim promptly upon learning of CIRP initiation, and if any new claims are accepted, the resolution plan as approved by the COC shall stand jeopardised. Hence, this appeal.

LEGAL UPDATE

Issues raised and Arguments Advanced

The Appellant's primary contention revolved around the classification of their claim, arising from the Award. They argued that it should be categorized as contingent, given the proceedings ongoing u/s 37 of the Act. The Appellant cited the recent judgement of Rainbow Papers⁽¹⁾ to buttress their arguments. The essence of their argument was that resolution plans ought to incorporate provisions for contingent claims, as the pending appeal might nullify their claim if not appropriately addressed.

In addition, the Appellant raised questions about the rigid interpretation of the timeline prescribed u/s 12 of the IBC. Citing the precedent of Essar Steel⁽²⁾, they asserted that it should be considered a directory provision rather than mandatory. Furthermore, they contended that the NCLAT should have treated their claim as a contingent liability, aligning with the viewpoint of the adjudicating agency. The Appellant also alleged a lack of awareness regarding the initiation of the CIRP, asserting that the Corporate Debtor had failed to disclose this information. They argued that had they been informed about the CIRP's commencement, they might not have initiated the application for the execution petition's restoration in November 2019.

The Respondent submitted that the Appellant should be considered to have had implied knowledge of the CIRP, as the prescribed procedures for inviting claims under the IBC and the IBBI Regulations were duly followed. The Respondent further submitted that they made several attempts to collect all claims, including initiating an application under Section 19 of the IBC to secure the Corporate Debtor's records, however failed to obtain them. The Respondent argued that accepting the Appellant's delayed claim could potentially result in a flood of litigation.

Furthermore, the Respondent contended that there was no need to establish a framework for contingent claims, as the resolution plan was meticulously prepared based on the information memorandum and comprehensively addressed the outstanding claims. The Respondent relied on the recent judgment in Paschimanchal Vidyut Vitran Nigam Ltd⁽³⁾, indicating that the principles laid down in the Rainbow Papers Judgment were confined to specific facts in that case.

Observations of the Court and conclusion

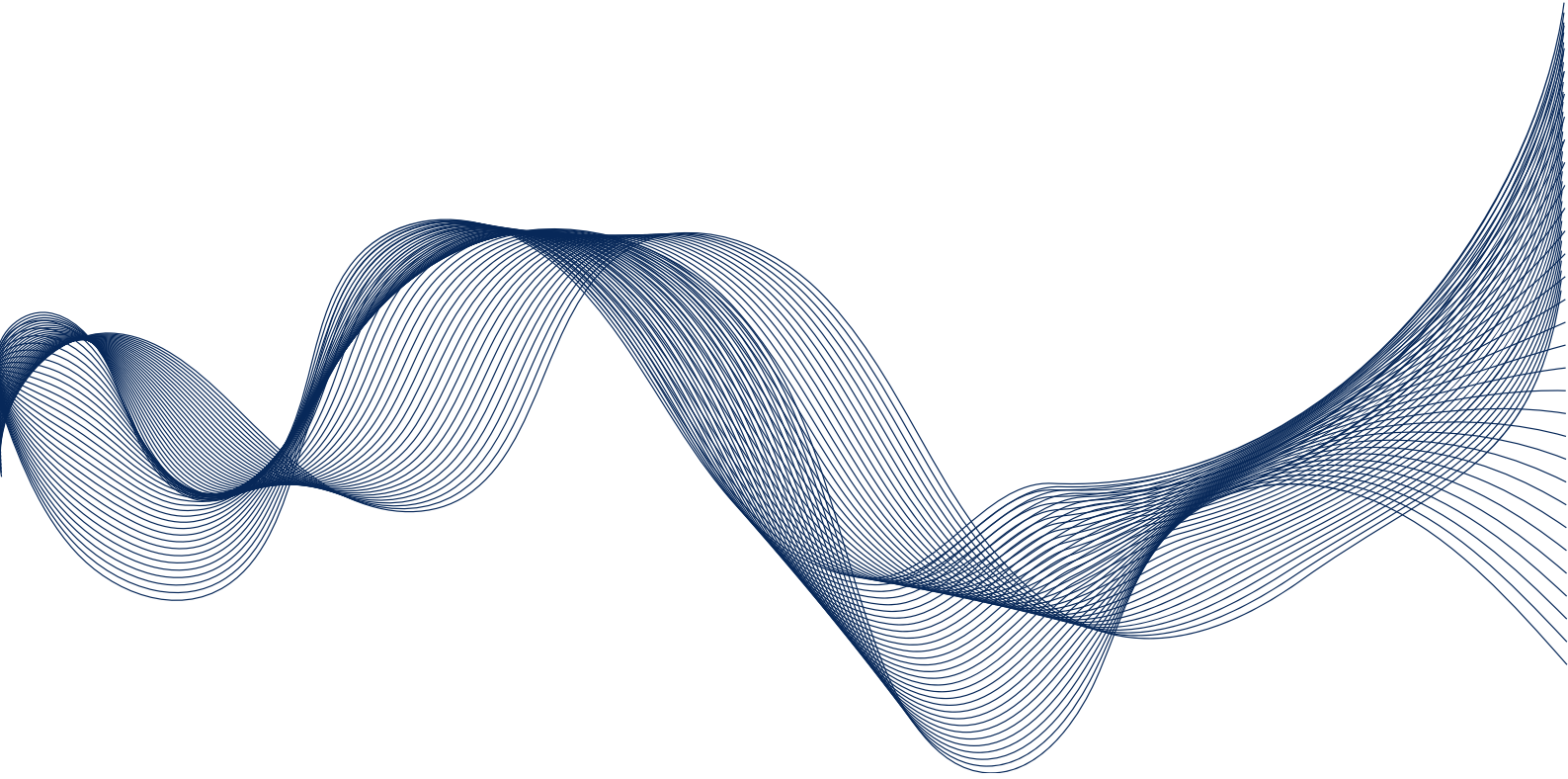
The Court's firstly addressed the matter of knowledge acquisition concerning the initiation of CIRP. In accordance with Sec 15 of the IBC and Regulation 6 of the IBBI Regulations, the public announcement of CIRP through newspapers is deemed to constitute knowledge. The Court emphasized that the contention of being unaware of such newspaper announcements should not be entertained, particularly when raised by a commercial entity. Regarding the contentious issue of whether the Resolution Professional should condone the Appellant's delay in filing their claim, the Court underscored that the IBC inherently operates within a structured timeframe. It stated that while exceptions may exist to extend time limits, the crux is whether this case falls within the parameters of such exceptions. The Appellant's delay spanned a substantial 287 days and was a commercial entity actively engaged in litigation with the Corporate Debtor which the Court deemed significant. Given these circumstances, the Court opined that the Appellant should have exercised greater diligence in ascertaining whether CIRP was indeed underway. In essence, the Court held that the Appellant's lapse had left them with limited recourse. The Court further held that merely because the Resolution Plan was not yet accepted by the NCLT does not mean that the plan can go back and forth and make CIRP an endless process.

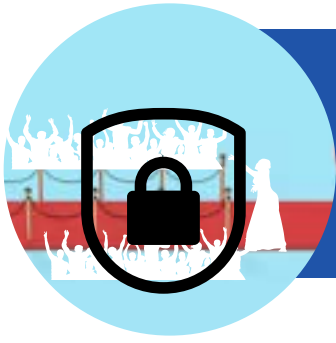
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The Court observed that in light of the Essar Steel case where Court cautioned against allowing claims after the resolution plan has been accepted by the COC, the Resolution Plan could not be opened to the detriment of the resolution applicant. The Court thus dismissed the appeal.

Footnotes

1. 2022 SCCOnline SC 1162
2. (2020) 8 SCC 534
3. 2023 SCC OnLine SC 842





Protection of Personality Rights of Celebrities

Introduction

In a suit filed by actor Anil Kapoor, the Hon'ble High Court of Delhi (“**Court**”) issued an interim *ex-parte* injunction order, prohibiting social media channels, e-commerce websites and the general public from infringing his personality rights.⁽¹⁾

Facts

In this case, the Plaintiff, Mr. Anil Kapoor, a renowned Indian actor with an extensive career in the Indian film industry, television, and endorsements, filed a Suit to safeguard various aspects of his personality- including his name, image, likeness, voice, etc.- from misuse on the internet.

Having appeared in over 100 films and numerous TV shows, the Plaintiff stated that he has gained recognition both nationally and internationally and consequently has also received numerous awards, including Filmfare Awards, National Film Awards, and more.

The Plaintiff emphasized the commercial value of his name and persona while looking to protect his personality rights, publicity rights, and associated elements such as his voice, image, and unique expressions, an example of which is the style and dialogue delivery of the Marathi slang expression “*jhakaas*”. Hence, along with the present Suit, he also filed an Interim Application seeking an order of temporary injunction prohibiting use of his attributes while asserting his copyright and

common law rights, including protection against passing off and unfair competition.

Contentions of the Parties

The Plaintiff contended that the Defendants as enlisted in the Suit have engaged in various illegal activities related to the misuse of the Plaintiff's persona such as:

- **Misusing Photographs:** The Defendants are using the Plaintiff's photographs to promote events and collect fees for his supposed attendance as a motivational speaker.
- **Morphed Images:** Morphed images of the Plaintiff are being used to sell prints, create mobile phone wallpapers, and promote merchandise.
- **Voice and Dialogues:** The Plaintiff's voice, dialogues, and movie names are used as ringtones.
- **Merchandise:** The Defendants are selling various products like magnets, T-shirts, cups, stickers, and keychains featuring the Plaintiff's photographs, often with the word 'Jhakaas'.
- **Face Masks:** Face masks with the Plaintiff's pictures are being advertised and sold.
- **Electronic Stickers:** Electronic stickers with the Plaintiff's image are being sold.
- **Posters:** The Plaintiff's name and photographs are used for posters.
- **Suits:** Suits are being sold under the Plaintiff's name and image.
- **Forged Autographs:** Forged autographs of the Plaintiff are being provided.
- **Morphed Images and Videos:** Images and videos of the Plaintiff in a morphed manner are being created.
- **Artificial Intelligence:** Artificial Intelligence is used to create derogatory images and videos of the Plaintiff, sometimes combined with other actresses' faces.

INTELLECTUAL PROPERTY UPDATE

- **Cartoon Characters:** Images of the Plaintiff as cartoon characters are generated using Artificial Intelligence.
- **GIF Images:** GIF images of the Plaintiff are circulated on social media.
- **Domain Names:** Domain names like www.anil Kapoor.in, www.anil Kapoor.net, and www.anil Kapoor.com are being squatted on.
- **Fake Pornographic Videos:** Fake pornographic videos of the Plaintiff, often alongside other actresses, are created and disseminated.

The Plaintiff argued that elements of a personality such as name, image, likeness, voice, and other attributes are protectable elements.⁽²⁾ Additionally, the Plaintiff referred to the proposed guidelines titled 'Prevention and Regulation of Dark Patterns 2023' issued under the Consumer Protection Act, 2019, to contend that the Defendants were employing dark patterns⁽³⁾ by charging fees for the Plaintiff's supposed services. The Plaintiff also presented documents showing the offensive use of other celebrities' images to highlight the broader societal implications.

Analysis and Findings of the Court

At the outset, the Court made some peripheral observations pertaining to personality rights. It was noted that reputation and fame can transcend into damaging various rights of a person including his right to livelihood, right to privacy and right to live with dignity within a social structure.

The Court asserted that there can be no justification for any unauthorised platform to mislead consumers like the various Defendants have done by way of the above-mentioned actions. It was observed that a celebrity's right of endorsement would in fact be a major source of livelihood for the celebrity, which cannot be destroyed by permitting unlawful dissemination without lawful authorisation.

It was also noted that any form of misuse or commercial use of a celebrity's name, voice, persona, likeness had also been disapproved by the Supreme Court.⁽⁴⁾ The Court stated that in light of the plethora of technological tools and artificial intelligence that are freely available for any illegal and unauthorised user to use, the Court cannot turn a blind eye to such misuse of a personality's name and other elements of his persona.

The Court was of the firm opinion that dilution, tarnishing, blurring and squatting of domain names were all actionable torts. It was further opined that fame and reputation, while valuable, must be protected against misuse that infringes on a person's rights. While free speech and expression are protected rights, when these cross a certain threshold and harm an individual's personality or associated attributes, they become illegal. Under the above circumstances, it was found that the Plaintiff had satisfied the Court for grant of interim injunction in that a prima facie case for grant of an ex-parte injunction was shown, balance of convenience was in favour of the Plaintiff and if the injunction was not granted, the Court was satisfied that it will lead to irreparable loss to the Plaintiff. Consequently, the Court granted an ex-parte injunction in favour of the Plaintiff, restraining the Defendants from misusing his attributes and personality rights, including the use of technological tools for commercial gain. The Defendants were prohibited from using the Plaintiff's attributes for any commercial purpose and were directed to lock and suspend the domain names www.anil Kapoor.in, www.anil Kapoor.net, and www.anil Kapoor.com which the Court, on request of the Plaintiff, directed to be transferred to him upon payment of requisite charges.

Footnotes

1. Anil Kapoor v. Simplify Life India & Ors., LA. 18237/2023 (u/O XXXIX Rules 1 & 2 CPC) in CS (COMM) 652/2023, Hon'ble High Court of Delhi, decided on September 20, 2023.
2. Bette Midler v. Ford Motor Company [849 F.2d 460 (1988)]; Vanna White v. Samsung Electronics America [971 F.2d 1395 (1992)].
3. Dark patterns include practices on the internet that are deceptive in nature in order to somehow mislead and trick the consumers, and subvert or impair their decision-making skills, which is violative of consumer rights.
4. R. Rajagopal v. State of T.N., (1994) 6 SCC 632.

JUDGEMENTS

In the matter of Smith N Smith Chemicals Limited (“Company”) for violation of section 134(3)(o) of Companies Act, 2013 (“Act”)

The Company had suo moto filed an application with the Registrar of Companies, NCT of Delhi and Haryana (“ROC”) for adjudication of non-compliance of section 134(3)(o) and 135(5) of the Act.

The net profit of the Company exceeded INR 5 crores in the FY 2019-20 due to which it was required to spend at least 2% of the average net profits of the Company made during the three immediately preceding financial years as a part of its Corporate Social Responsibility (“CSR”) obligation during FY 2020-21. However, the Company disclosed in its Board report for FY 2020-21 that it was not required to constitute a CSR Committee as it did not fall within the purview of section 135(1) of the Act and, accordingly, it was not required to formulate CSR Policy.

At the hearing, the Company's authorised representative submitted that the default occurred due to lack of awareness of directors and the said default took place during the COVID period. He further submitted that upon realizing the default, the Company had transferred an amount equivalent to the CSR liability to PMCARES Fund on February 7, 2023 to fulfil its CSR obligation for FY 2020-21. The Company then requested the ROC to levy a penalty on only the executive director. The ROC ordered the Company to provide the details of

the directors who had signed the Board report for FY 2020-21. Thereafter, ROC levied a penalty of INR 3,00,000/- on the Company and INR 50,000/- on each director of the Company for violation of section 134(3)(o) of the Act.

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In the matter of Kan Biosys Private Limited (“Company”) for violation of section 117(1) of Companies Act, 2013 (“Act”)

The Company had suo moto filed an application with the Registrar of Companies, Maharashtra, Pune (“ROC”) for adjudication of non-compliance of section 117(1) of the Act.

The Company in its application stated that it was required to file the Board resolution in Form MGT-14 for re-appointment of Managing Director by July 23, 2022. However, it had not filed the said form within the stipulated time as prescribed in the Act.

The Company and the directors in response to the adjudication notice submitted that due to inadvertence Form MGT-14 could not be filed within the prescribed period. The form was filed later on March 15, 2023.

Consequently, ROC levied a penalty of INR 16,750/- on the Company and INR 16,750/- on the Managing Director for violation of provisions of section 117(1) of the Act.

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JUDGEMENTS

In the matter of Dexter Biochem Private Limited (“Company”) for violation of section 140(2) of Companies Act, 2013 (“Act”)

During examination of records of the Company on MCA21 portal, it was observed that M/s DKN & Associates (“DKN”) was appointed as statutory auditors of the Company for a period of five financial years from April 1, 2015 to March 31, 2020. Further, the Company had appointed M/s P.U. Nensonaiya & Co. as statutory auditors of the Company for the period from April 1, 2017 to March 31, 2022. Hence, no compliance of section 140(2) was made by DKN. A show cause notice was issued by the Registrar of Companies, Gujarat, Dadra & Nagar Haveli (“ROC”) to DKN. As no reply was received from DKN, the ROC issued a letter to the Company and DKN to clarify the matter along with supporting documents inquiring whether the Company had removed DKN or had DKN resigned as statutory auditors of the Company. The ROC received a reply from the Company that it had requested DKN to file Form ADT-3 for intimating their resignation to the ROC. On the date of hearing the authorized representative of DKN submitted that due to ill health conditions of the auditor, DKN was unable to file Form ADT-3 for its resignation in a timely manner. However, it had filed Form ADT-3 on the MCA21 portal on June 8, 2023 with an additional fee. Further, as the office address of DKN had changed the adjudication notice was returned undelivered. Subsequently, ROC imposed a penalty of INR 1,00,000/- on DKN for non-compliance of section 140(2) of the Act.

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In the matter of Starnet Breeding and Research Farms Private Limited (“Company”) for violation of section 118 of the Companies Act, 2013 (“Act”) read with Secretarial Standards 2 (“SS-2”) and Secretarial Standards 1 (“SS-1”) issued by the Institute of Company Secretaries of India

(i) During the inspection of the books of accounts and financial statements of the Company, it was observed from the minutes of annual general meeting (“AGM”) that the date of entry of minutes in the minutes book and the time of conclusion of the AGM held in the year 2016, 2017 and 2018 was not mentioned. Hence, it had violated provisions of section 118 of the Act read with SS-2.

The authorised representative of the Company accepted the default at the hearing. Thereafter, the Registrar of Companies, Jaipur, Rajasthan (“ROC”) levied a penalty of INR 37,500/- on the Company and INR 7,500/- each on the officers in default.

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(ii) During the inspection of the books of accounts and financial statements of the Company, it was observed from the minutes of Board meeting that the date of entry of minutes in the minutes book, the time of conclusion of the Board meeting, date and place of signing of the minutes, and each page of the minutes was not initialled by the Chairman. Hence, it had violated provisions of section 118 of the Act read with SS-1. The authorised representative of the Company accepted the default at the hearing. Subsequently, the ROC imposed a penalty of

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INR 1,25,000/- on the Company and INR 25,000/- each on the officers in default.

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In the matter of Resonance Eduventures Limited (“Company”) for violation of section 177 and 178 of the Companies Act, 2013 (“Act”)

(i) The Company suo moto filed an application with Registrar of Companies, Jaipur, Rajasthan (“ROC”) for violation committed by it by not constituting the Nomination and Remuneration Committee as required under the provisions of section 178 of the Act, for the period from November 19, 2019 to April 15, 2021.

The authorised representative of the Company admitted the default at the hearing and submitted that the Company had constituted the Nomination and Remuneration Committee w.e.f. April 15, 2021. Thereafter, ROC levied a penalty of INR 5,00,000/- on the Company and INR 1,00,000/- each on the Managing Director cum Chief Executive Officer and the Company Secretary.

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(ii) The Company suo moto filed an application with ROC for violation committed by it by not constituting the Audit Committee as required under the provisions of section 177 of the Act for the period from November 19, 2019 to April 15, 2021.

The authorised representative of the Company admitted the default at the hearing and submitted that the Company had constituted the Audit Committee w.e.f. April 15, 2021.

Subsequently, ROC imposed a penalty of INR 5,00,000/- on the Company and INR 1,00,000/- each on the Managing Director cum Chief Executive Officer and the Company Secretary.

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CORPORATE REGULATORY UPDATES

Limited Liability Partnership (Second Amendment) Rules, 2023

On 1 September 2023, the Ministry of Corporate Affairs issued the Limited Liability Partnership (Second Amendment) Rules, 2023. The Limited Liability Partnership (Second Amendment) Rules, 2023 substitute Form 3 (Information with regard to Limited Liability Partnership Agreement and changes, if any, made therein) and Form 4 (Notice of appointment, cessation, change in name/address/designation of a designated partner or partner and consent to become a partner/designated partner) of the Limited Liability Partnership Rules, 2009.

Change in Mode of Payment with respect to SEBI Investor Protection and Education Fund Bank Account

On 4 September 2023, the Securities and Exchange Board of India (“SEBI”) issued a Master Circular for Change in Mode of Payment with respect to SEBI Investor Protection and Education Fund Bank Account. Reference is made to the circular dated 23 July 2020 where in SEBI had prescribed that the amounts shall be credited to the SEBI Investor Protection and Education Fund through online mode or by way of a demand draft (DD) in favour of the Board (i.e. SEBI IPEF). Henceforth, remittances to SEBI IPEF shall be made only through the below mentioned link. SEBI has opened a new bank account to facilitate market participants to make payment to SEBI Investor Protection and Education Fund (SEBI IPEF). In this regard, a link has been provided in the Homepage of SEBI website (www.sebi.gov.in) under the head “Click here to make payment to SEBI IPEF”. The link enables the remitter to make payment in any of the following manner:

- Net banking
- NEFT/RTGS

- Debit Cards
- UPI

While making the remittances online, through the above link, remitters shall furnish the requisite information like name of the payer, PAN, mobile number, email ID, the purpose for which payment is made, the amount to be paid, etc.

New format of Abridged Prospectus for public issues of Non-Convertible Debt Securities and/or Non-convertible Redeemable Preference Shares’

On 4 September 2023, SEBI issued a circular prescribing the new format of Abridged Prospectus for public issues of Non-Convertible Debt Securities and/or Non-convertible Redeemable Preference Shares’. Section 2(1) of the Companies Act, 2013 defines an abridged prospectus as a memorandum containing such salient features of a prospectus as may be specified by SEBI by making regulations in this behalf. Further, Section 33(1) of the Companies Act, 2013 states that no form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an Abridged Prospectus. As per Regulation 2(1) (a) of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (“NCS Regulations”) “abridged prospectus” means a memorandum accompanying the application form for a public issue containing such salient features of a prospectus as specified by the Board. Further, in terms of Regulation 32(3) of the NCS Regulations, abridged prospectus shall be in the format as specified in Part B of Schedule I of the NCS Regulations. In order to further simplify, provide greater clarity and consistency in the disclosures across various documents and to provide additional but critical information in the abridged Prospectus, the format for disclosures in the abridged Prospectus has been revised and is placed at Annex-I of this Circular.

CORPORATE REGULATORY UPDATES

Further, instructions to investors for completing the application form is specified in Annex-II. Issuer/ Merchant Bankers/ syndicate members like brokers who are involved in the public issue shall disclose the same on their websites during the period a public issue is kept open. This Circular shall be applicable for all public issues opening on or after 1 October 2023. Accordingly, for public issues that open on or after 1 October 2023, the format of an Abridged Prospectus shall be as per Annex-I of this Circular instead of Part B of Schedule I of the NCS Regulations. A copy of the Abridged Prospectus shall be made available on the website of issuer, merchant bankers, registrar to an issuer and a link for downloading Abridged Prospectus shall be provided in issue advertisement for the public issue. Further, the issuer/ Merchant Bankers shall insert a Quick Response (QR) code on the last on the last page of the Abridged Prospectus. The scan of such QR code on the Abridged prospectus would lead to the Prospectus. Further, the issuer entity/Merchant Bankers shall insert a QR code on the front page of the documents such as front outside cover page, advertisement, etc. as deemed fit by them. The scan of the QR code would lead to the prospectus or abridged prospectus as applicable. The Issuer/Merchant Bankers shall ensure that the disclosures in the Abridged Prospectus are adequate, accurate and do not contain any misleading or misstatement.

Furthermore, the Issuer/Merchant Bankers shall ensure that the qualitative statements in the Abridged Prospectus shall be substantiated with quantitative factors. Also, no qualitative statement shall be made which cannot be substantiated with quantitative factors. The Stock Exchanges are directed to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on their website. This circular is issued in exercise of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992

and Regulation 55 read with Regulation 32(3) of the NCS Regulations to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. The contents of this circular will appropriately be added to Chapter II (Application form and Abridged Prospectus) of the Master Circular dated 10 August 2021, for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper, as updated.

Operation of Pre-Sanctioned Credit Lines at Banks through Unified Payments Interface (UPI)

On 4 September 2023, the Reserve Bank of India ("RBI") issued a circular on operation of pre-sanctioned credit lines at banks through Unified Payments Interface (UPI). Currently, savings account, overdraft account, prepaid wallets and credit cards can be linked to UPI. As announced, the scope of UPI has been expanded by inclusion of credit lines as a funding account. Under this facility, payments through a pre-sanctioned credit line issued by a Scheduled Commercial Bank to individuals, with prior consent of the individual customer, are enabled for transactions using the UPI System. Banks may, as per their Board approved policy, stipulate terms and conditions of use of such credit lines. The terms may include, among other items, credit limit, period of credit, rate of interest, etc.

Board nomination rights to unitholders of Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs)

On 11 September 2023, SEBI issued two circulars on the board nomination rights to unitholders of Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs). Regulation 4(2) (h) of SEBI (Infrastructure Investment Trusts)

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Regulations, 2014 (“InvIT Regulations”) and Regulation 4(2)(g) of SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) respectively inter-alia provide that unitholder(s) holding not less than 10% of the total outstanding units of the InvIT or REIT (as the case may be), either individually or collectively, shall be entitled to nominate one director on the board of directors of the Investment Manager, in the manner as may be specified by the Board. Accordingly, the framework to exercise board nomination rights by the Eligible Unitholder(s) has been specified in this circular. The Investment Manager of the InvIT or REIT (as the case maybe) shall, within 10 days from the end of each calendar month, review whether the Eligible Unitholder(s) who have exercised the board nomination right, continue to have/hold the required number of units of InvIT or REIT (as the case maybe) and make a report of the same. The Investment Manager of the InvIT or REIT (as the case maybe) shall submit such report to the Trustee of the InvIT or REIT (as the case maybe). This circular shall come into force with immediate effect.

Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2023

On 18 September 2023, the Ministry of Environment, Forest and Climate issued and notified the Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2023. These rules amend the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 by inserting the following Chapter VII (Extended Producer Responsibility for Used Oil), after Chapter VI of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The rules aim to update and refine the regulations governing the management and transboundary movement of

hazardous and other wastes. The newly added Chapter VII imposes liability on the stakeholders – producers of base oil, importers of used oil etc. These rules also set up a robust framework for handling hazardous and other wastes like used oil. These rules shall come into force from 1 April 2024.

Warehousing (Development and Regulation) Registration of Warehouses (Amendment) Rules, 2023

On 18 September 2023, the Ministry of Consumer Affairs, Food and Public Distribution issued and notified the Warehousing (Development and Regulation) Registration of Warehouses (Amendment) Rules, 2023 thereby amending the Warehousing (Development and Regulation) Registration of Warehouses Rules, 2017. The amendment rules of 2023, substituted Schedule 7 of the 2017 Rules and has essentially brought changes in the net worth requirement for registration with the authority. These amendment rules of 2023 shall come into force from 18 September 2023.

Women’s Reservation Bill, 2023

On 20 September 2023 and 21 September 2023, both houses of the Parliaments passed the Women’s Reservation Bill 2023 (Bill) which seeks to amend the Constitution of India. The Bill seeks to reserve one-third of the total number of seats in Lok Sabha and state legislative assemblies for women.

Key features of the Bill

- Reservation for women: The Bill reserves, as nearly as may be, one-third of all seats for women in Lok Sabha, state legislative assemblies, and the Legislative Assembly of the National Capital Territory of Delhi.

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This will also apply to the seats reserved for Scheduled Castes (SCs) and Scheduled Tribes (STs) in Lok Sabha and states legislatures.

- **Commencement of reservation:** The reservation will be effective after the census conducted after the commencement of this Bill has been published. Based on the census, delimitation will be undertaken to reserve seats for women. The reservation will be provided for a period of 15 years. However, it shall continue till such date as determined by a law made by Parliament.
- **Rotation of seats:** Seats reserved for women will be rotated after each delimitation, as determined by a law made by Parliament.

Redressal of investor grievances through the SEBI Complaint Redressal(SCORES) Platform and linking it to Online Dispute Resolution platform

On 20 September 2023, SEBI issued a circular on redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to Online Dispute Resolution platform.

SEBI Complaint Redressal System (SCORES) is a centralised web based complaint redressal facilitation platform launched in 2011 vide circular dated 3 June 2011 (bearing reference number CIR/OIAE/2/2011) to provide a facilitative platform for the benefit of the aggrieved investors, whose grievances against (a) listed company, (b) registered intermediary or (c) market infrastructure institution (“**Entities**”) remain unresolved. Since then, SEBI has revised and strengthened the process of facilitating the redressal of grievances by such Entities. Currently, the process of investor grievances redressal on SCORES is governed by the Master Circular dated 7 November 2022 on “Processing of investor complaints against listed companies in SEBI Complaints Redress System–SCORES”. In order to strengthen the existing

investor grievance handling mechanism through SCORES by making the entire redressal process of grievances in the securities market comprehensive by providing a solution that makes the process more efficient by reducing timelines and by introducing auto-routing and auto-escalation of complaint, SEBI notified the Securities and Exchange Board of India (Facilitation of grievance Redressal Mechanism) (Amendment) Regulations, 2023 and amended the regulations as mentioned under ‘Schedule I’ vide notification dated 16 August 2023. Consequently, it becomes necessary to revise the extant process for redressal of investors’ grievances against Entities and provide for a mechanism through which Designated Bodies (as specified in ‘Schedule II’) may monitor the process of the redressal of investors’ grievances by Entities. The revised framework for handling of complaints received through SCORES platform for Entities and for monitoring the complaints by designated bodies is specified in ‘Annexure I’ of this circular. The other general provisions applicable to all Entities concerning SCORES portal are at ‘Annexure II’.

Implementation of this circular:

- (a) Notwithstanding anything contained in this circular or any other circular, the Entities shall, submit the Action Taken Report (“ATR”) on SCORES within 21 calendar days from the date of receipt of the complaint.
- (b) The provisions of this circular related to work flow of processing of investor grievances by Entities and framework for monitoring and handling of investor complaints by the Designated Bodies shall come into force with effect from 4 December 2023.
- (c) The designated bodies referred to in the Schedule II (“Designated Bodies”) may apply for SCORES Authentication and/or for Application

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Programming Interface (API) integration as per Annexure I within such period so as to ensure that Designated Bodies can comply with provisions of this circular by 4 December 2023 and onwards.

This Circular shall rescind the Master Circular dated 7 November 2022 above with effect from 4 December 2023. 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 Circular; (b) 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 has never been rescinded.

Master Direction - Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023

On 21 September 2023, RBI issued the Master Direction - Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023. These Directions are applicable to the All India Financial Institutions (AIFIs) regulated by the Reserve Bank, viz. the Export-Import Bank of India (EXIM Bank), the National Bank for

Agriculture and Rural Development (NABARD), the National Bank for Financing Infrastructure and Development (NaBFID), the National Housing Bank (NHB) and the Small Industries Development Bank of India (SIDBI). Over the years, the role of the AIFIs in the Indian financial system has undergone significant change reflecting the changes in their business models. As the Indian economy grows further, the AIFIs are increasingly being seen as key institutions to promote the flow of direct or indirect credit to the economic sectors they cater to. RBI has therefore decided to extend Basel III Capital framework to the AIFIs as detailed in this circular.

The Master Direction that shall come into effect from 1 April 2024, aims to consolidate instructions given vide multiple circulars between 1994 and 2016. The Master Direction is aimed at protecting the interests of the depositors and investors and has created several checks and balances as per the BASEL III framework. The prudential regulation has laid down the guidelines on the minimum capital requirement, supervisory review and evaluation process, guidelines for imposing market discipline, leverage ratio framework, about the exposure norms of AIFIs, about significant investment made by the AIFIs, prudential norms for classification, valuation and operation of the investment portfolio of the AIFIs & resource raising norms. The Master Direction is meant to ensure that the guidelines set in the Basel III framework are satisfied, thereby protecting the investments made by the Indian investors and depositors and preventing a repetition of 2008 Global Financial Crisis.

Extension for conducting general meeting through Video Conferencing (“VC”) or Other Audio-Visual Means (“OAVM”)

The Ministry of Corporate Affairs (“MCA”) vide its General Circular No. 09/2023 dated September, 25

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2023, has allowed the companies, whose annual general meeting (“AGM”) is due in the year 2023 or 2024, to conduct their AGMs through VC or OAVM on or before September 30, 2024, in accordance with requirements laid down in Para 3 and 4 of General Circular No. 20/2020 dated May 5, 2020. Further, in continuation of General Circular No. 14/2020 dated April 8, 2020, General Circular No. 03/2022 dated May 5, 2022, and General Circular No. 11/2022 dated December 28, 2022 issued by MCA, it has also allowed the companies to conduct their Extra Ordinary General Meeting(s) through VC or OAVM or transact items through postal ballot in accordance with the framework provided in the aforesaid Circulars up to September 30, 2024. Additionally, all the other requirements provided in the said Circulars shall remain unchanged.

Misplay of information – Secured assets possessed under the SARFAESI Act, 2002

On 25 September 2023, RBI issued a circular on Display of information–Secured assets possessed under the SARFAESI Act, 2002. As a part of the move towards greater transparency, it has been decided that the Regulated Entities (REs) of the Reserve Bank which are secured creditors as per the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 (Act), shall display information in respect of the borrowers whose secured assets have been taken into possession by the REs under the Act. REs shall upload this information on their website in the format as prescribed in the Annex to this circular. The first such list shall be displayed on the website of REs within six (6) months from the date of this circular, and the list shall be updated on monthly basis.

Master Circular for Merchant Bankers Registered with SEBI

On 26 September 2023, SEBI issued a circular Merchant Bankers Registered with SEBI. SEBI has been, from time to time, issuing various circulars/directions to Merchant Bankers under the relevant provisions of the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 and extant securities laws. In order to enable the stakeholders to have access to all such circulars at one place, this Master Circular in respect of Merchant Bankers has been prepared and issued. The comprehensive Master Circular takes into account:

- (a) Registration related matters,
- (b) General obligations and responsibilities, and
- (c) Other guidelines.

Extension of timeline for verification of market rumours by listed entities

On 30 September 2023, SEBI issued a circular regarding extension of timeline for verification of market rumours by listed entities. The proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**LODR Regulations**”) inter-alia requires top 100 listed entities by market capitalization with effect from 1 October 2023 and top 250 listed entities by market capitalization with effect from 1 April 2024 to mandatorily verify and confirm, deny or clarify market rumours. SEBI decided to extend the effective date of implementation of the proviso to regulation 30(11) of the LODR Regulations for top 100 listed entities by market capitalization, to 1 February 2024 and for top 250 listed entities by market capitalization, to 1 August 2024.

RECENT EVENTS



Outline: Arbitration & Mediation ADR

23 September 2023

Mustafa joined an engaging panel discussion on "Crafting Consensus: Harnessing the Power of Arbitration and Mediation for Effective Alternative Dispute Resolution in Corporate and Commercial Matters" at the Forbes India Legal Powerlist Summit in association with Legit Quest held on 23rd Sep 2023.

Off Beat Section



World Food Day!

*"Water is life, water is food.
Leave no one behind"*

World Food Day is an international day celebrated every year on 16th October to commemorate the founding date of the *United Nations Food and Agriculture Organization (FAO)* in 1945. Every year a theme is adopted to celebrate this day which highlights the areas that require action and provides a common goal. The theme for the year 2023 is *"Water is life, water is food. Leave no one behind"* centered around "Water" since water is essential to life on Earth. Let's read about a few initiatives/celebrations started in different countries to mark this day.



Food Safety and Standards Authority of India (FSSAI) commemorated World Food Day by launching several innovative initiatives to strengthen food safety administration and scale up the 'Eat Right India' movement. In order to strengthen food safety administration, FSSAI launched the 'Food Safety Mitra (FSMs)' scheme, Eat Right Jacket, a training course for domestic workers and others.



World Food Day has been a tradition in the United States since a year after the first World Food Day. The Iowa Hunger Summit has been held since 2007 and is organized by the World Food Prize in conjunction with their annual symposium in Des Moines, Iowa.



In 2005, the celebrations were organized in Qujing City, China (where numerous ethnic minorities live) by the Ministry of Agriculture and the Government of Qujing City, with the participation of a number of senior officials of the Government.



Notable Recognitions & Accolades

Clasis Law was felicitated as one of the **"Top Law Firms"** (*above 10 years of experience*) by Forbes India in association with Legitquest. Vineet Aneja and Mustafa Motiwala received the award from the Hon'ble Justice Hima Kohli at a grand event held on September 23, 2023.





Notable Recognitions & Accolades

Vineet Anreja was felicitated as one of the **“Top Managing Partners”** and **“Top Individual Lawyers”** (above 10 years of experience) by the Hon’ble Justice Hima Kohli and Hon’ble Justice Sanjay Karol in a grand event organized by Forbes India in association with Legit Quest held on 23rd Sep 2023.





Notable Recognitions & Accolades

Mustafa Motiwala was felicitated as one of the **“Top Individual Lawyers”** (above 10 years of experience) by the Hon’ble Justice Sanjay Karol in a grand event organized by Forbes India in association with Legit Quest held on 23rd Sep 2023.





Notable Recognitions & Accolades

Clasis Law ranked as a *"Notable Firm"* in M&A and Insolvency & Restructuring by IFLR1000 Asia Pacific 2023 annual rankings.

Ranked Areas of practice in the IFLR 1000 Rankings 2023 edition

M&A

Insolvency & Restructuring



Notable Recognitions & Accolades



LEXOLOGY
Legal Influencer



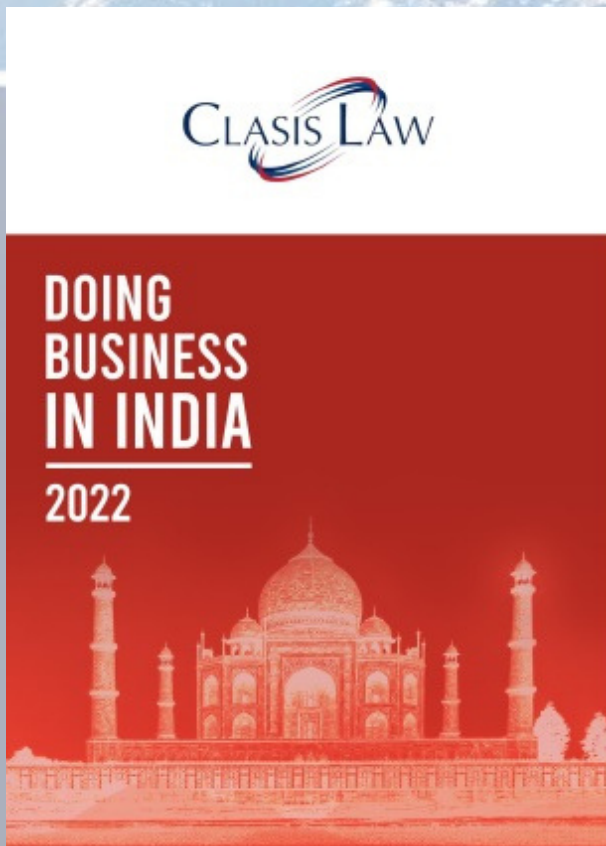
Q2 | 2022



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.



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

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