Vol. 12 | December 2022

Official Newsletter

CLASIS LAW

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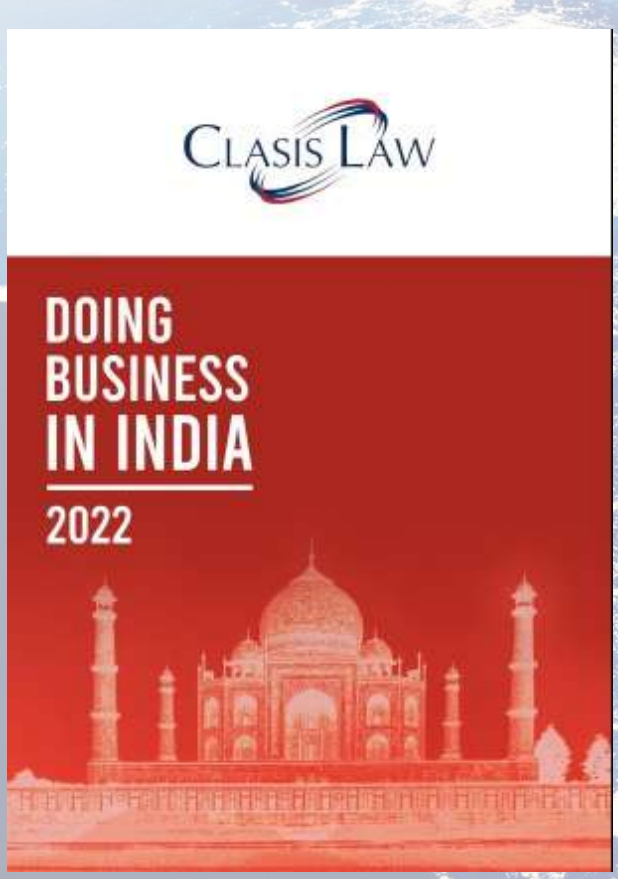
CLASIS LAW

DOING BUSINESS IN INDIA

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



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

Key amendments by the regulatory authorities in the year 2022

In the past few years, corporates and firms faced numerous amendments in corporate laws and other allied laws applicable to the Indian Inc, which has changed the compliance and corporate governance practice in the Indian market. The series of amendments are prescribed by the market regulators like the Ministry of Corporate Affairs **('MCA')**, the Securities Exchange Board of India **('SEBI')**, and the Reserve Bank of India **('RBI')** in 2022.

MCA has made the norms stricter for the investment/directorship from neighboring countries, empowered the Registrar of Companies **('ROC')** to make physical verification to the registered offices of the corporates, etc. whereas SEBI has introduced the new stock exchange, i.e., social stock exchange for social enterprises. The key amendments notified by MCA, SEBI, and RBI during the year 2022 (up to November 15, 2022) have been discussed.

Amendments implemented by MCA:

Investment and directorship from land-sharing countries

In 2020, to curb the opportunistic takeovers/ acquisitions of Indian companies, Department for Promotion of Industry and Internal Trade **('DPIIT')** laid down the restriction on direct or indirect investment from the entity(ies) of the country which shares the land border with India, which was followed by the amendment in Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

To align the compliance process with the requirement of FEMA regulations, MCA introduced new norms by issuing a series of amendments under the Companies Act, 2013 **("Act")** on various dates in 2022, related to the investment in Indian companies either directly or as a beneficial owner of an investment in Indian companies by the persons, which shares a land border with India or a citizen of any such country. Further, amendments are also implemented with respect to the management of Indian entities, where if any individual who belongs to the land border sharing country, proposed to be appointed in Indian companies as a director, would need to seek clearance from the Ministry of Home Affairs before proposing his/her candidature as a director in Indian companies.

Physical verification of registered offices from the ROC

In August 2022, MCA amended the Companies (Incorporation) Rules, where if the ROC has reasonable cause to believe that the company is not carrying any business or operation from its registered office, then the ROC can make a visit at the registered office and it may also issue physical verification report, basis the physical verification carried out at the registered office.

Changes in the definition of 'small company'

In September 2022, MCA enhanced the statutory threshold limit for determining small companies. The definition of a small company has been enhanced to a paid-up capital of INR 4 Crore and turnover of INR 40 Crore. MCA has enhanced the statutory limits to ensure that compliance requirements by such businesses are minimized and they can focus more on carrying out their business.

Key amendments by the regulatory authorities in the year 2022

Amendments in Corporate Social Responsibility ('CSR') provisions

In September 2022, MCA notified the amendment in CSR Policy Rules, whereby Rule 3(2) of the CSR Policy Rules was deleted. Before this amendment, the applicability of the CSR provisions and the requirement related to the constitution of CSR Committee was determined from Section 135(1) of the Act read with Rule 3(2) of the CSR Policy Rules.

In September 2018, section 135(1) was amended wherein the criteria for determining the constitution of CSR committee, based on the statutory limits, i.e. having a net worth of INR 5000 million or more, or turnover of INR 10000 million Crore or more or a net profit of INR 50 million or more, was to be determined basis the immediately preceding financial year. However, Rule 3(2) of the CSR Policy Rules was not aligned with the amendment in Section 135 which continued with the requirement to constitute a CSR committee and comply with the CSR provisions for a 3 year period.

To eliminate the above-mentioned ambiguity, the amendment in CSR Policy in the month of September 2022 was notified by the MCA and the said rule was deleted thereby implying that an Indian company would need to assess the applicability of CSR provisions basis the immediately preceding year's threshold. Further, a proviso has been inserted in Rule 3(1) of CSR Policy Rules that if an Indian company has any amount in its Unspent CSR Account, then such company would be required to constitute a CSR Committee and comply with the provisions of Section 135.

Upgradation of the MCA portal from version 2 to version 3

MCA is in the process to upgrade its portal from version 2 to version 3, in order to ensure the smooth filing of company-related forms on the MCA version 3 portal by the Companies. The transition is done in a phased manner.

Therefore, it can be witnessed from the above amendments that MCA has been striving hard to make the compliance practice stricter for large corporate, and on other hand, they have been taking a liberal stand on compliance requirements by small companies.

Moving forward, various policies and regulations were implemented by SEBI for the listed companies during the year 2022. Some of the key amendments notified by SEBI are listed below.

Amendments implemented by SEBI

Social Stock Exchange Framework:

In July 2022, SEBI notified the framework for the introduction of the Social Stock Exchange ('SSE'), where social enterprises can raise funds from the public. Social enterprises which are eligible to participate in the listing are (i) Not for Profit Organization **('NPO')** and (ii) For Profit Social Enterprises. SEBI has prescribed the regulations by amending SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 **('SEBI LODR Regulations')**, SEBI (Issue of Capital and Disclosure Requirement)

Regulations **('SEBI ICDR Regulations')**, and SEBI (Alternate Investment Funds) Regulations. SEBI further prescribed the provisions that to meet the eligibility criteria for listing on SSE, social enterprises should carry out at least 1 out of 16 broad social activities, which include eradicating hunger, poverty, malnutrition and inequality; promoting healthcare; promote education, employability and livelihoods; gender equality empowerment of women.

Separately, SEBI also issued a circular in September 2022, with the detailed requirement for registration with SSE, minimum disclosure requirements by NPO for raising funds through the issuance of Zero Coupon Zero Principle Instruments, annual disclosure to be made by entities, etc. The introduction of SSE is a novel concept and will boost the fund-raising of non-profit and for-profit social organizations.

Zero Coupon Zero Principle Instruments***(1)*** are a kind of bond instrument. When the entities issue these instruments and raise money, it is not in form of a loan or debt, but a donation and therefore, fund raising by the issuance of this instrument does not attract interest payment.

Appointment, re-appointment and removal of Independent Director

SEBI has implemented new provisions for the appointment, re-appointment and removal of independent directors in listed companies. If the resolution proposed to be passed as a special resolution before the shareholders for the appointment of independent directors is defeated because of the want of requisite majority votes, then if the proposed resolution is approved by at least 50% of the shareholders and if the votes cast by public shareholders in favour of the resolution exceed the votes cast by the public shareholders against the resolution, then the appointment of such independent director(s) would be considered as approved by the shareholders.

Therefore, the new provisions notified in SEBI LODR Regulations will ensure the active participation of public shareholders by considering their voting rights for the appointment of independent directors. Further, SEBI has also implemented the provisions that removal of independent directors who were appointed through the aforesaid process, can be removed only by following the same process.

Separate posts of Chairman and Managing Director/Chief Executive Officer made voluntary

SEBI mandated the separation of posts for Managing Director **('MD')**/ Chief Executive Officer **('CEO')** from Chairman of the Company. The said provision was notified in the year 2018 and was about to come into effect on April 1, 2022. Considering the difficulties faced by listed companies in separating the posts of MD/ CEO from Chairman, SEBI had relaxed the mandatory provisions for such separation and made it voluntary for the listed companies to separate the posts at their discretion.

Our detailed article titled "SEBI made separate posts of Chairman and Managing Director voluntary for listed entities" can be read here***(2)***.

Key amendments by the regulatory authorities in the year 2022

Appointment/Re-appointment process of Director or Manager once rejected by shareholders

In the year 2021, SEBI notified the amendment that the appointment of an individual on the Board of Directors or as a manager of the listed companies through the board would need to be approved by the shareholders in the next general meeting or within three months, whichever is earlier. The said provisions were implemented to ensure that shareholders' approval is obtained immediately after the board approval, so that any rejection by the shareholders' will not have a major impact on the action taken by such directors, during their tenure from the board approval.

In the year 2022, SEBI further inserted the provision making the appointment of such individual stricter. If the appointment/re-appointment of an individual in the Board of Directors or manager, is once rejected by the shareholders and if the same individual is being proposed for appointment/re-appointment on the Board of Directors or as a manager, then the company will need to seek prior approval from the shareholders. This provision will ensure that once an individual is rejected by shareholders cannot be further appointed without prior approval of the shareholders and an adequate justification to be provided by the Board for recommending such individual for appointment/re-appointment.

Amendments made by RBI

Overseas Direct Investment:

In August 2022, the Ministry of Finance and RBI issued notifications to revamp the old regime of Overseas Direct Investment **('ODI')** provisions with new rules and regulations. Erstwhile the ODI guidelines permitted the Indian entities to extend loans or guarantee to or on behalf of joint ventures **(JV)**/wholly owned subsidiary **(WOS)** outside India. However, with the notification of a new set of rules and regulations, the word JV and WOS has been substituted with the word 'foreign entity' which means any entity incorporated or registered outside India, including International Financial Services Centers, that have limited liability (except for entity in the strategic sector). Further, the concept of "control" has been introduced, which gives the right to appoint a majority of directors or control management or policy decision exercise.

In the new regime, the scope of overseas investment has been enhanced and an Indian entity may lend or invest not only in the equity of a foreign entity but also, they can invest in debt instruments issued by the foreign entity subject to compliance with these guidelines. Overall, a lot of changes have been made in the regulations related to Overseas Investment by Indian entities, such as the introduction of the concepts of pricing guidelines, late submission fees for delay in reporting, the requirement of obtaining no objection certificate **("NOC")** from lender bank in specific circumstances, etc.

Uniformity in a slab of Late Submission Fees under the Foreign Exchange Management Act, 1999 *('FEMA')*

The concept of Late Submission Fees **('LSF')** was introduced by RBI for reporting delays in Foreign Investments **('FI')**, External Commercial Borrowings **('ECB')**, and Overseas Investment **('OI')**, so that the

companies do not have to go through a long process of compounding for administrative default. However, the LSF prescribed under FI, ECB and OI were different and in order to bring uniformity in the slab of LSF, RBI issued a notification on September 30, 2022, thereby bringing uniformity in the LSF for delayed reporting under FEMA Act.

Guidelines for compensation of Managerial Personnel in NBFC

The business of a Non-Banking Financial Corporation **('NBFC')** involves various financial control, risk management, compliance, and internal audit. Key Managerial Personnel **('KMP')** and Senior Management are involved to mitigate the risk which is involved in the business operation of NBFC. Therefore, it is important to ensure that the compensation paid to KMPs and Senior Management needs to be reasonable, considering all the relevant factors including adherence to statutory requirements and industry practices.

RBI vide its notification dated April 29, 2022, laid down the guidelines for all the NBFCs (except those categorized under 'Base Layer' and Government owned NBFC). All the NBFCs are required to constitute the Nomination and Remuneration Committee **('NRC')**. The NRC shall have the same functions, powers and duties as laid down in the Companies Act, 2013. These RBI guidelines would also require to be followed by NRC while performing their functions, power and duties. Further, NRC shall ensure that the compensation payable to the KMP and Senior Management, shall comprise fixed and variable pay components, to compensate them keeping in view their risk-taking positions.

Compliance function and Role of Chief Compliance Office in NBFC

RBI vide its notification dated April 11, 2022, highlighted the requirement of an independent Compliance Function and a Chief Compliance Officer in NBFC, which will become applicable to the Upper Layer (NBFC-UL) and Middle Layer (NBFC-ML) w.e.f. April 1, 2023, and October 1, 2023, respectively. NBFCs are required to put in place a Board approved policy and a Compliance Function, including the appointment of a Chief Compliance Officer **('COO')**.

The scope of the Compliance Function shall ensure strict observance of all statutory and regulatory requirements for the NBFC. The Board shall ensure that the appropriate Compliance Policy is in place and it should be reviewed periodically.

LEGAL UPDATE

CIRP APPLICATION MAINTAINABLE ON INTEREST COMPONENT EVEN WITHOUT PRINCIPAL AMOUNT BECOMING PAYABLE

Introduction

In its recent judgement in ***Base Realtors Private Limited vs Grand Realcon Private Limited(1)***, the National Company Law Appellate Tribunal **("NCLAT")** has held that an application under Section 7***(2)*** of the Insolvency and Bankruptcy Code, 2016 **("Code")** by a financial creditor is maintainable on the interest component becoming due even without the principal amount being due and payable.

Facts

Grand Realcon Private Limited **("Respondent")** allotted 5,60,000 debentures of INR 1000 each to the Base Realtors Private Limited **("Appellant")** on 31.04.2011. As per the debenture certificate issued on 13.04.2021, the Appellant was at liberty to redeem the allotted debentures at any time after the expiry of one year from the date of their issuance i.e., 13.04.2021 but before the date of maturity i.e., 31.03.2026. Also, the debentures carried interest at a coupon rate of 6% pa payable at the end of every quarter starting from 13.04.2021.

Accordingly, at the end of quarters ending June, September and December 2021, interest aggregating to an amount over INR 2,39,00,000 (Indian Rupees two crores thirty-nine lakhs) accrued in favour of the Appellant.

However, the Respondent did not pay the Appellant the amounts accrued at the end of each quarter, despite the Appellant issuing default notices at the end of each quarter. The Appellant filed an application under Section 7 of the Code before National Company Law Tribunal, New Delhi **("Adjudicating Authority")** which came to be dismissed on the ground that the interest amount did not fall within the definition of "financial debt" until and unless the principal amount also became due and payable. Aggrieved, the Appellant preferred an appeal before NCLAT.

Issue for consideration before NCLAT

Whether an application under Section 7 of the Code can be filed and maintained in respect of the component of interest which became due and payable without asking for the principal amount which has not yet become due and payable?

Submissions by both parties

At the time of arguments, the Appellant submitted that an application under Section 7 of the Code was maintainable even on the component of the interest as under the provisions of the Code "financial debt"***(3)*** includes any debt with interest, if any, disbursed against the consideration for the time value of money. It further referred to Supreme

Court's decision in ***M/s Orator Marketing Pvt Ltd vs M/s Samtex Desinz Pvt Ltd(4)*** wherein it was held that interest free loan is a financial debt and submitted that on a similar analogy interest which has become due and payable would attract the provisions of Section 7 of the Code. The Respondents vehemently argued that as per the scheme of the Code, financial debt means a debt along with interest and not the interest independently.

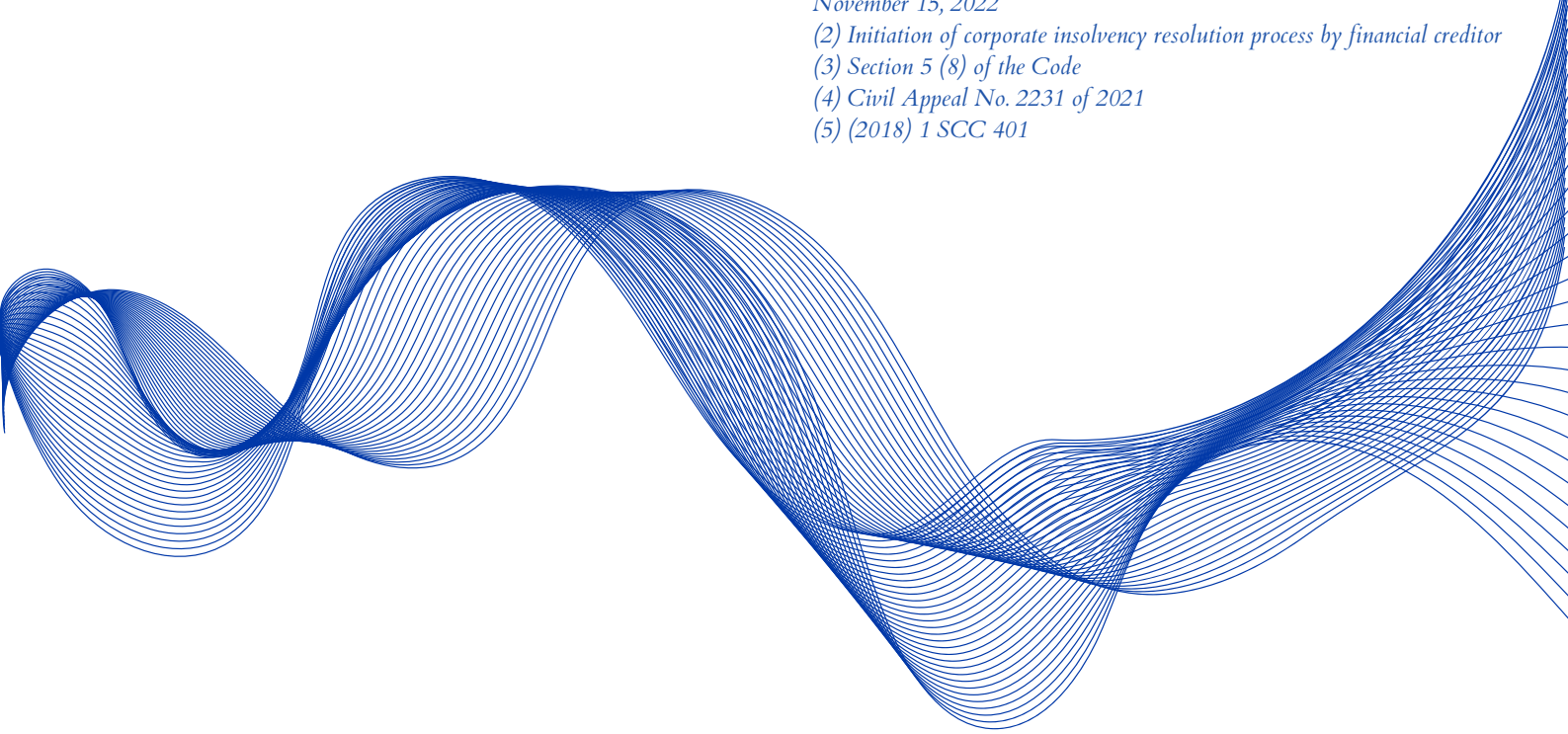
Observations and decision of NCLAT

At the outset, the NCLAT referred to the definition of "debt" and "default" contained in Section 2(11) and 3(12) of the Code respectively and observed that "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid. The debt has also been defined as a liability in respect of claim towards a financial debt or operational debt and the claim means the right to payment. Applying the said law to the present case, the NCLAT opined that there is no dispute that the amount of interest became due and payable by the Corporate Debtor to the Appellant in view of the condition enumerated in the debenture which says that the debenture shall carry a coupon rate of 6% p.a. on the face value plus securities premium on quarterly rests and also in view of Section 71(8) of the Act. The NCLAT also relied on the Supreme Court's judgement in ***Innovative Industries Ltd vs ICICI Bank(5)*** and held that a default is a condition precedent to maintaining an application under Section 7 of the Code.

Further, the NCLAT also considered the judgment in *Orator Marketing (Supra)* and finally held that that an application under Section 7 of the Code in respect of the interest component is maintainable even without asking for the principal amount which has not yet become due and payable.

Applying the abovementioned principles to the facts and circumstances of the present case, the NCLAT held that the Appellants application filed on the basis of the interest payable without the principal amount becoming due and payable was maintainable. Accordingly, the appeal was allowed.

(1) Company Appeal (AT) (Ins) No. 882 of 2022, judgement dated November 15, 2022
(2) Initiation of corporate insolvency resolution process by financial creditor
(3) Section 5 (8) of the Code
(4) Civil Appeal No. 2231 of 2021
(5) (2018) 1 SCC 401



Suit alleging passing off can be amended to include remedy against trademark infringement where cause of action is same

The Karnataka High Court in its recent judgment*(1)* in ***Milaap Social Ventures India Pvt. Ltd. vs. Google India Pvt. Ltd(2)*** has held that a plaint alleging passing off can be amended to include the remedy against trademark infringement where cause of action is the same.

The brief facts of the case are that Milaap Social Ventures India Pvt. Ltd **("Petitioner/Plaintiff")** has instituted a suit for injunction again Google India Pvt. Ltd. **("Respondent No. 1/Defendant")** from passing off the Plaintiff's trademark "MILAAP" before the Trial Court. The claim of the Plaintiff is that the Respondents is using the Plaintiff's mark "MILAAP" for which it had filed a registration application before the Trademark Registry to divert traffic to its own website crafted and designed by Google. Therefore, the Plaintiff was compelled to issue a cease-and-desist notice to the Respondents against using the Plaintiff's mark as key word and stop passing off the Plaintiff's trademark. During the pendency of the suit, the Plaintiff's mark "MILAAP" came to be registered as Trademark no. 3428351. Therefore, the Plaintiff filed an application seeking amendment of the plaint to include the remedy of trademark infringement by the Defendants for using the mark "MILAAP" in its key words and metatags.

The said application was dismissed by the Trial Court on the ground that no justifiable grounds exist to allow the amendment application. It held that if the amendment is allowed, the same would relate back to the date of filing of the suit and therefore, it would cause serious prejudice to the interest of the Defendants as they would be liable for the acts which may amount to infringement of trademark under Trade Marks Act. Further, the learned Judge was also of the view that the Petitioner/Plaintiff is entitled to file a separate suit for infringement of trademark based on a new cause of action. Feeling aggrieved by the order, the Plaintiffs filed a Writ Petition under Article 227 of the Constitution of India before the Karnataka High Court.

After examining the arguments and judicial precedents placed by both sides, the High Court observed that the rejection of the amendment application by the Trial Court on the ground that the Plaintiff's can maintain a separate suit and therefore, they cannot seek amendment of the plaint is patently erroneous. In this regard, the High Court relied on the Supreme Court's judgment in ***Sampath Kumar vs Ayyakannu & Another(3)*** wherein it has been held that if an amendment application is resisted only on the ground that the Plaintiff can maintain a separate suit there should no impediment in allowing the amendment to avoid multiplicity of proceedings.

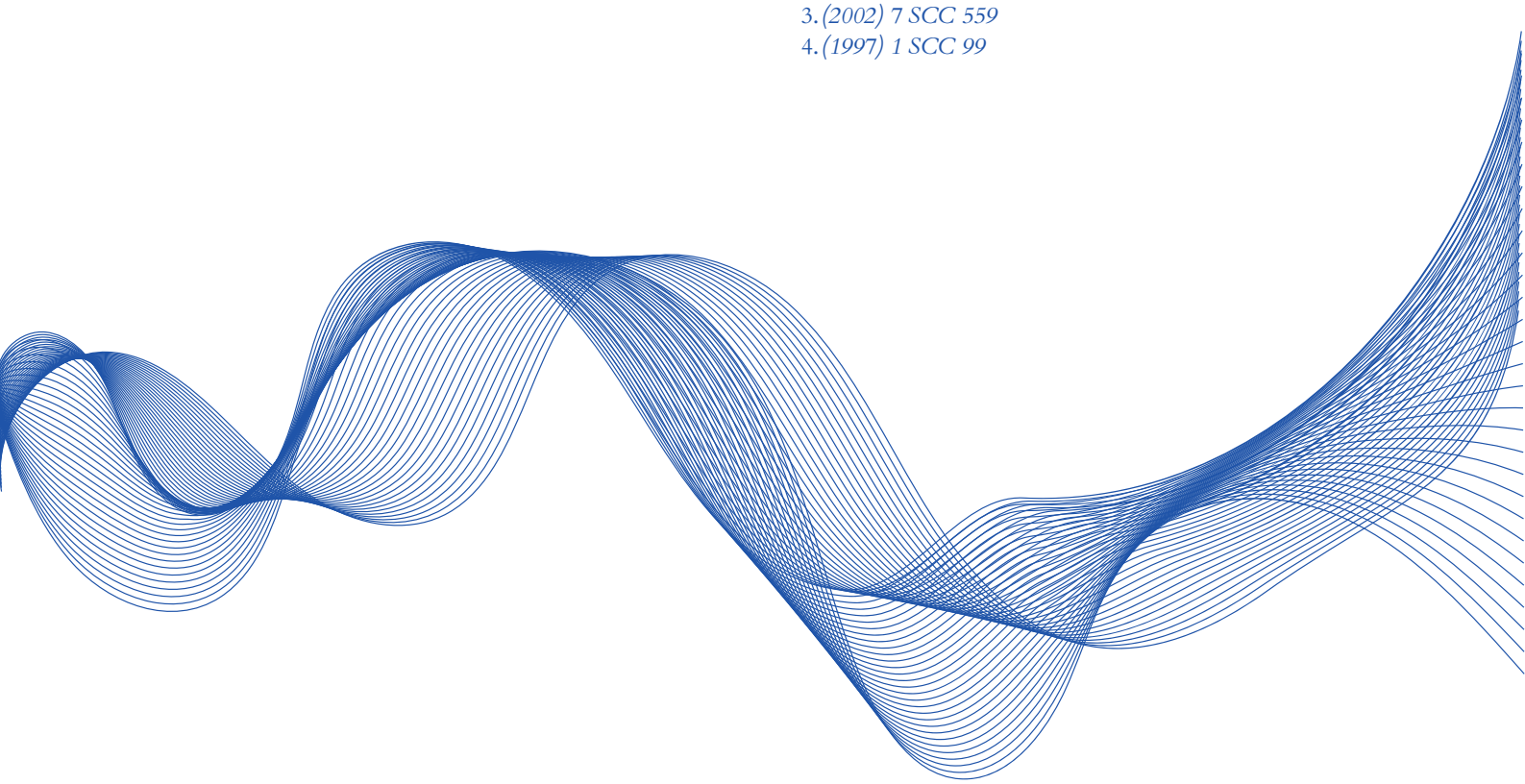
The High Court also took note of the Apex Court's judgment in ***Bengal Waterproof Limited vs. Bombay Waterproof Manufacturing Company and Another(4)*** wherein it has been held that in an infringement action as the cause of action is continuous and so long as the infringement continued, the right to sue also keeps accruing. Similarly, the controversy relating to passing off, cause of action is obviously continuous and keeps accruing. Applying the said principle to the present case, the High Court opined that cause of action for maintaining of the suit on account of passing of or infringement is virtually based on the same set of facts. Therefore, if plaintiffs, post registration of trademark, intends to amend the plaint and incorporate the relief on account of infringement, at the most it amounts to enlargement of that wrong which is initially filed alleging passing off. The High Court clarified that in the present suit, the Plaintiffs do not intend to convert the suit for passing off into a suit for

infringement. By proposed amendment, plaintiffs intend to add additional reliefs relating to infringement.

Further, The High Court observed that the application is resisted by the Defendants only on the ground that the additional relief is based on subsequent events and therefore, same cannot be decided in a suit which is one for passing off. If the proposition and contention propagated by the Defendants is to be accepted and if Plaintiff has to be relegated to file a separate suit, it would only lead to multiplicity of proceedings between the parties which should be avoided. Merely because the suit for passing off is covered under the common law and a cause of action for infringement of trademark is governed under special statute, that in itself cannot be a ground to decline the leave to the plaintiffs to amend the plaint.

It was also held by the High Court that if the cause of action for infringement and passing off actions are substantially identical and same in law and both the reliefs are virtually based on the same fundamental idea, the Plaintiff's prayer to incorporate the relief relating to infringement of trademark would not fundamentally change the character of the suit and it would only be in the nature of an alternative relief.
In light of the above observations, the High Court set aside the impugned order and allowed the writ petition. The Court permitted the Petitioner/Plaintiff to amend the plaint and incorporate the proposed amendment. The Defendants were also granted an opportunity to file an additional written statement.

1. *Dated November 23, 2022*
2. *Writ Petition No. 6220 of 2022*
3. *(2002) 7 SCC 559*
4. *(1997) 1 SCC 99*



JUDGEMENTS

In the matter of M/s Kosher Realhome Private Limited (the "Company") in relation to filing of e form AOC-4 under the Companies Act, 2013 ("Act")

The Registrar of Companies, NCT of Delhi & Haryana ("ROC") observed that, in e form AOC-4 (form for filing financial statements with the ROC) filed on October 11, 2022, the Company had annexed financials statements of a different company. In this regard, the ROC issued a notice to the Company. In response to the notice, the Company admitted the fact that it had attached wrong financial statement and the observation of ROC is correct.

As per the provisions of the Act and rules made thereunder, the authorized signatory and the professional, if any, certifying a form is liable for the correctness of the contents of such form and its annexures. ROC levied a penalty of INR 5,000/- on Mr. Ved Prakash, Director of the Company, who was authorised by the Board of Directors to certify the form.

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In the matter of M/S Arkay Sea Logistics Limited (the "Company") for violation of Section 137 under the Companies Act, 2013 ("Act")

The Registrar of Companies, Gujarat ("ROC") filed a criminal complaint before the court against the Company and its three directors in 2017 for non-filing of the financial statement for the financial year 2014-15, which was required to be filed within thirty (30) days from the date on which the annual general meeting of the Company was held or due to be held. The Company and one of its directors filed an application in e form GNL-1 to adjudicate the offence along with a copy of the resolution that was passed by the Board for declaring one of the directors namely Mr. Mahendramal Gang as an officer in default under section 2(60) of the Act with the responsibility of compliance of the provisions of the Act.

ROC fixed a hearing for giving a reasonable opportunity of being heard to the Company and its three directors. The authorized representatives of the Company appeared and contended that keeping in view the ease of doing business, the Ministry of Corporate Affairs ("MCA") had decriminalized some of the offences under various sections of the Act. In this regard, MCA had directed that all the cases pending under this Act or previous Companies Act, can be considered for the adjudication process which is now decriminalized. ROC passed the order by levying a penalty of INR 82,800 on the Company and INR 50,000 each on all three directors. Since the Company had not filed any form with the ROC, intimating that one of its directors is an officer in default, therefore, the penalty was levied on all three directors.

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In the matter of M/S I2IT Private Limited (the "Company") for violation of Section 203 of the Companies Act, 2013 ("Act")

In the present case, the Company failed to appoint Company Secretary with in a period of

six months from the date on which the Company Secretary of the Company resigned. Hence, the Company violated the provisions of section 203 of the Act read with rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. In this regard, the Registrar of Companies, Pune **("ROC")** issued a notice to the Company and its officers in default. The ROC received a response on behalf of the Company that since the Company has not commenced its commercial business on a large scale and there is no major work in the secretarial department, therefore the Company Secretary has not been appointed by the Company. ROC concluded the matter by levying a penalty of INR 500,000 each on the Company and its officer in default for the aforesaid violation for a period of 607 days.

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In the matter of M/s Abhineet Nursing Homes and Laparoscopic Centre Private Limited (the "Company") for contravention of section 92 of the Companies Act, 2013 (the "Act")

In the present case, the Registrar of Companies, Patna **("ROC")** observed that the Company did not file its Annual Return i.e., Form MGT-7 for the financial year 2018-19 which was required to be filed in compliance with section 92 of the Act within sixty (60) days from the date of annual general meeting **("AGM")**. Accordingly, ROC issued a show cause notice to the Company and its directors but had not received any reply from and on behalf of the Company or its directors. Consequently, ROC issued a "Notice for Hearing" to the Company and its directors to appear in the hearing and submit its response at least one day prior to the date of the hearing fixed. On the date of the hearing, neither anyone appeared on behalf of the Company and its directors nor any reply had been received. After considering facts and circumstances of the case, the ROC imposed a penalty of INR 118,400 on the Company and INR 50,000/- each on its directors.

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In the matter of DME Development Limited (the "Company") for violation of Section 149 of the Companies Act, 2013 ("Act")

The DurIn the present case, the Registrar of Companies, NCT of Delhi & Haryana ("ROC") observed that the paid-up share capital of the Company as per financial year 2020-21 exceeded the threshold provided under the Act for appointment of woman director on Board, however, the Company did not make the requisite appointment. The ROC issued a show cause notice to the Company and its officers in default. The Company submitted that, all the equity shares of the Company are held by the National Highway Authority of India ("NHAI") and as per the articles of association of the Company, all the directors in the Company were to be appointed by NHAI only. It was further stated that the Directors should not be penalized as they took the steps for appointing a women director by forwarding the proposal to NHAI. ROC concluded the matter by stating that since the officers of the Company are not in a position to take necessary steps to rectify the default, only the Company would be liable to pay a penalty of INR 211,000 for aforesaid violation.

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CORPORATE REGULATORY UPDATES

Seeking dormant status by newly incorporated companies under Employees' State Insurance Act, 1948

The registration with Employee State Insurance Corporation **("ESIC")** is mandatory for new companies at the time of incorporation through the portal of Ministry of Corporate Affairs **("MCA")**. However, such companies were required to comply with the provisions of Employees' State Insurance Act, 1948 **("Act")** only if the required threshold limit of employees was attained. Recently, it was brought to notice that the new companies registered with ESIC through MCA portal, having no employees and not required to comply with the provisions of the Act, were being issued inspection notices.

In order to avoid unnecessary action against the companies not meeting the threshold, ESIC directed the Regional Offices and Sub-Regional Offices to issue standard emails to newly incorporated companies to start compliance of the Act from the date when the required threshold limit of employees is attained. In order to be exempted from the requirements under the Act, the companies would need to seek 'dormant status' under the Act, pursuant to incorporation till the time the requisite threshold limit is attained. The dormant status can be attained for a maximum of six months at a time and can be further extended by six months till the time the required threshold limit under the Act is attained. In case a company does not seek extension of dormant status, the ESIC registration will be automatically reactivated and the company will have to commence the compliance with the provisions of the Act including filing of monthly return.

Union Finance Minister approves India's First Sovereign Green Bonds Framework

On 9 November 2022, the Union Minister for Finance & Corporate Affairs approved the final Sovereign Green Bonds framework of India. This approval will further strengthen India's commitment towards its Nationally Determined Contribution (NDCs) targets, adopted under the Paris Agreement, and help in attracting global and domestic investments in eligible green projects. The proceeds generated from issuance of such bonds will be deployed in Public Sector projects which help in reducing carbon intensity of the economy.

Green bonds are financial instruments that generate proceeds for investment in environmentally sustainable and climate-suitable projects. By virtue of their indication towards environmental sustainability, green bonds command a relatively lower cost of capital vis-à-vis regular bonds and necessitates credibility and commitments associated with the process of raising bonds.

In the above context, India's first Sovereign Green Bonds framework was formulated and as per the provisions of the framework, Green Finance Working Committee was constituted to validate key decisions on issuance of Sovereign Green Bonds.

Further, CICERO, an independent and globally renowned Norway-based Second Party Opinion provider, was appointed to evaluate India's green bonds framework and certify alignment of the framework with ICMA's Green Bond Principles and international best practices. After due deliberation and consideration, CICERO has rated India's Green Bonds Framework as 'Medium Green' with a "Good" governance score.

The Framework comes close on the footsteps of India's commitments under "Panchamrit" as elucidated by the Prime Minister of India, in November 2021.

Agency Commission for Direct Tax collection under TIN 2.0 regime

On 14 November 2022, the Reserve Bank of India **("RBI")** issued a circular in relation to Agency Commission for Direct Tax collection under TIN 2.0 regime. After implementation of TIN 2.0 regime for collection of direct taxes, it has been decided to modify paragraph 21 of the captioned Master Circular. The modified paragraph 21 will read as follows:

"Agency banks are required to submit their claims for agency commission in the prescribed format to CAS Nagpur in respect of Central government transactions and the respective Regional Office of Reserve Bank of India for State government transactions. However, agency commission claims with respect to GST receipt transactions and transactions related to direct tax collection under TIN 2.0 regime will be settled at Mumbai Regional Office of Reserve Bank of India only and accordingly all agency banks, authorized to collect GST and direct tax collection under TIN 2.0, are advised to submit their agency commission claims pertaining to the respective receipt transactions at Mumbai Regional Office only. The agency commission for transactions related to direct tax under OLTAS will be continued to be settled at CAS, Nagpur, RBI. The formats for claiming agency commission for all agency banks and separate and distinctive sets of certificates to be signed by the branch officials and Chartered Accountants or Cost Accountants are given in Annex 2, Annex 2A and Annex 2B respectively. These certificates would be in addition to the usual Certificate from ED/CGM (in charge of government business) to the effect that there are no pension arrears to be credited / delays in crediting regular pension/arrears thereof."

All other instructions of the Master Circular on Conduct of Government Business by Agency Banks - Payment of Agency Commission dated 1 April 2022 remain unchanged.

Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022

On 14 November 2022, the Securities and Exchange Board of India **("SEBI")** issued the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022. They shall come into force from 14 November 2022.

These amendment regulations have been issued to amend the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. The key amendments are as follows:

(a) In regulation 25, sub-regulation (2A), the following proviso is inserted –

"Provided that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made under sub-regulation (2A):

Provided further that an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution."

(b) In regulation 32, in sub-regulation (6) and in sub-regulation (7), the words "public or rights issue are substituted with the words "public issue

or rights issue or preferential issue or qualified institutions placement".

(c) In regulation 52, in sub-regulation (1), the following proviso shall be inserted before the existing proviso, namely, -

"Provided that for the last quarter of the financial year, the listed entity shall submit un-audited or audited quarterly and year to date standalone financial results within sixty days from the end of the quarter to the recognized stock exchange(s):"

(d) In regulation 52, in sub-regulation (1), in the existing proviso,

- after the word "provided" and before the words "that in case of entities which have listed", the word "further" shall be inserted.
- the words "the information is submitted to stock exchanges" shall be deleted.

(e) In regulation 52, in sub-regulation (2), (i)under clause (d), the existing proviso shall be substituted with the following, namely –

"Provided that issuers, which are required to be audited by the Comptroller and Auditor General of India under applicable law, shall submit: (i) un-audited financial results along with the limited review report issued by the Comptroller and Auditor General of India or an auditor appointed by the Comptroller and Auditor General of India or a Practising Chartered Accountant, to the stock exchange(s), within sixty days from the end of the financial year; and (ii)the financial results, audited by the Comptroller and Auditor General of India, to the stock exchange(s), within nine months from the end of the financial year."

(f) The amendment regulation also provides that after regulation 59 and before regulation 60, the following regulation shall be inserted, namely, -

"Draft Scheme of Arrangement and Scheme of Arrangement."

(g) The amendment regulation also provides that after regulation 94 and before regulation 95, the following shall be inserted, namely, -*"Draft Scheme of Arrangement & Scheme of Arrangement in case of entities that have listed their non-convertible debt securities or non-convertible redeemable preference shares".*

(h) Schedule XI shall be substituted with the following, namely –

"Schedule XI –Fee in respect of draft scheme of arrangement [see regulations 37, 59A, 94 and 94A]

1. *An entity with listed specified securities, or listed specified securities and listed non-convertible debt securities or non-convertible redeemable preference shares, shall, along with the draft scheme of arrangement, remit a fee at the rate of 0.1% of the paid-up share capital of the listed/ transferee/ resulting company, whichever is higher, post the sanction of the scheme by the National Company Law Tribunal: Provided that the total amount of fees payable shall not exceed five lakh rupees.*
2. *An entity with only listed non-convertible debt securities or non-convertible redeemable preference shares, shall, along with the draft scheme of arrangement, remit a fee at the rate of 0.1% of the amount of outstanding debt of the listed/ transferee/ resulting company, whichever is higher, post the sanction of the scheme by the National Company Law Tribunal: Provided that the total amount of fees payable shall not exceed five lakh rupees.*
3. *The fees shall be paid by way of direct credit to the bank account of the Board through NEFT/RTGS/IMPS or any other mode allowed by RBI or by means of a demand draft in favour of "Securities and Exchange Board of India"*

payable at Mumbai."

Extension of the SEBI Settlement Scheme, 2022

On 21 November 2022, SEBI published a public notice to extend the SEBI Settlement Scheme, 2022. Vide public notice dated 19 August 2022, SEBI has introduced the Settlement Scheme, 2022 ("the Scheme") in terms of Regulation 26 of SEBI (Settlement Proceedings) Regulations, 2018 which provides a one-time settlement opportunity to those entities that have executed trade reversals in the stock options segment of BSE during the period from 1 April 2014 to 30 September 2015 and against whom adjudication proceedings have been initiated and are pending before any forum or authority.

This settlement period commenced on 22 August 2022 and was to end on 21 November 2022. It has been observed that during the last few days, large number of entities have shown interest in availing the Scheme. Considering the interest of entities in availing the Scheme, the competent authority has extended the period of the Scheme till 21 January 2023.

Reporting of trades in non-convertible securities under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

On 24 November 2022, SEBI issued a circular relating to entities buying, selling, trading or otherwise dealing in listed non-convertible securities. SEBI, vide Circular dated 10 August 2021 (as amended from time to time) ("Circular"), prescribed the requirements pertaining to operational and other aspects relating to the issue and listing of Non-convertible Securities. In the said Circular, Chapter XVI on 'Reporting of Trades', inter alia, contains provisions relating to reporting, clearing and settlement of OTC trades by all person(s) dealing in non-convertible securities. It is observed that information on OTC trades in listed Non-convertible Securities provided to the Stock Exchange(s) by the investors is incomplete and/or inaccurate. This, in turn, amounts to incorrect and distorted information being displayed on the Stock Exchanges' websites. In order to address the issue, it has been decided all OTC trades shall be reported in a uniform format specified in (3) below. Consequently, paragraph 1.3 of Chapter XVI, titled, "Reporting of Trades", of the Operational Circular shall be replaced as follows:

"1.3. The reporting of OTC trades in non-convertible securities shall be made by all person(s) dealing in such securities irrespective of whether they are SEBI registered intermediaries or otherwise, as per the format prescribed."

Stock Exchanges shall monitor the compliance of this circular/chapter XVI of the Circular and bring to the notice of SEBI, periodically, discrepancies in reporting of OTC trades by investors. The provisions of this circular shall come into force from 1 January 2023.

Inclusion of Goods and Service Tax Network (GSTN) as a Financial Information Provider under Account Aggregator Framework

On 23 November 2022, RBI issued a circular on inclusion of Goods and Service Tax Network (GSTN) as a Financial Information Provider under Account Aggregator Framework. With a view to facilitate cash flow-based lending to MSMEs, it has been decided to include Goods and Services Tax Network (GSTN) as a Financial Information Provider (FIP) under the Account Aggregator (AA) framework. Department of Revenue shall be the regulator of GSTN for this specific purpose and Goods and Services Tax (GST) Returns, viz. Form

GSTR-1 and Form GSTR-3B, shall be the Financial Information. Accordingly, the select instructions contained in the Master Direction – Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016 dated September 02, 2016 have been amended, as detailed in the Annex to the circular.

Operations of subsidiaries and branches of Indian banks and All India Financial Institutions (AIFIs) in foreign jurisdictions and in International Financial Services Centers (IFSCs) - Compliance with statutory/regulatory norms

On 1 December 2022, RBI issued a circular on operations of subsidiaries and branches of Indian banks and All India Financial Institutions (AIFIs) in foreign jurisdictions and in International Financial Services Centers (IFSCs) - Compliance with statutory/regulatory norms.

RBI had vide circular dated 1 December 2008 and circular dated 12 May 2014 issued instructions to Indian banks and AIFIs on the issue of dealing in financial products by their branches/subsidiaries operating outside India. On a review, it was felt that a framework needs to be in place to allow them to undertake activities which are not specifically permitted in the Indian domestic market and also to specify the applicability of these instructions to International Financial Services Centers (IFSCs) in India including Gujarat International Finance Tec-City (GIFT City).The framework are applicable to all banks regulated by the Reserve Bank (excluding co-operative banks, Regional Rural Banks and Local Area Banks) and All India Financial Institutions (AIFIs). They shall come into force with immediate effect.

Key features of the framework:

(1) Dealing in financial products

(a) The foreign branches/foreign subsidiaries of Indian banks/AIFIs can deal in financial products, including structured financial products, which are not available or are not permitted by the Reserve Bank in the domestic market without prior approval of Reserve Bank, subject to compliance with conditions specified in paragraph 3 of these directions and those prescribed by the host regulator.

(b) The branches/subsidiaries of Indian banks/AIFIs operating in IFSCs including those operating out of GIFT City may also deal in financial products, including structured financial products, which are not available or are not permitted by the Reserve Bank in the domestic market subject to compliance with all applicable laws/regulations and conditions stipulated in paragraph 3 below and those prescribed by the host regulator.

(2) Conditions for dealing in financial products

While allowing branches/ subsidiaries in foreign jurisdictions as well as in IFSCs to deal in such products, the parent Indian bank/AIFI shall ensure that:

(a) dealing in such products is done with the prior approval from their Board and, if required, the appropriate authority in the concerned jurisdictions.
(b) they have adequate knowledge, understanding, and risk management capability for handling such products.
(c) they act as market makers for products only if they have the ability to price/value such products and the pricing of such products is demonstrable at all times.

(d) their exposure and mark-to-market (MTM) on these products are appropriately captured and reported in the returns furnished to the Reserve Bank. They shall provide information about dealing in such financial products as may be specified by the Reserve Bank in the manner and format and within the time frame as prescribed by the Reserve Bank.
(e) they do not deal in products linked to Indian Rupee unless specifically permitted by Reserve Bank.
(f) they do not accept structured deposits from any Indian resident; and
(g) they adhere to the suitability and appropriateness policies as mandated by the Reserve Bank and the host regulators, as applicable.

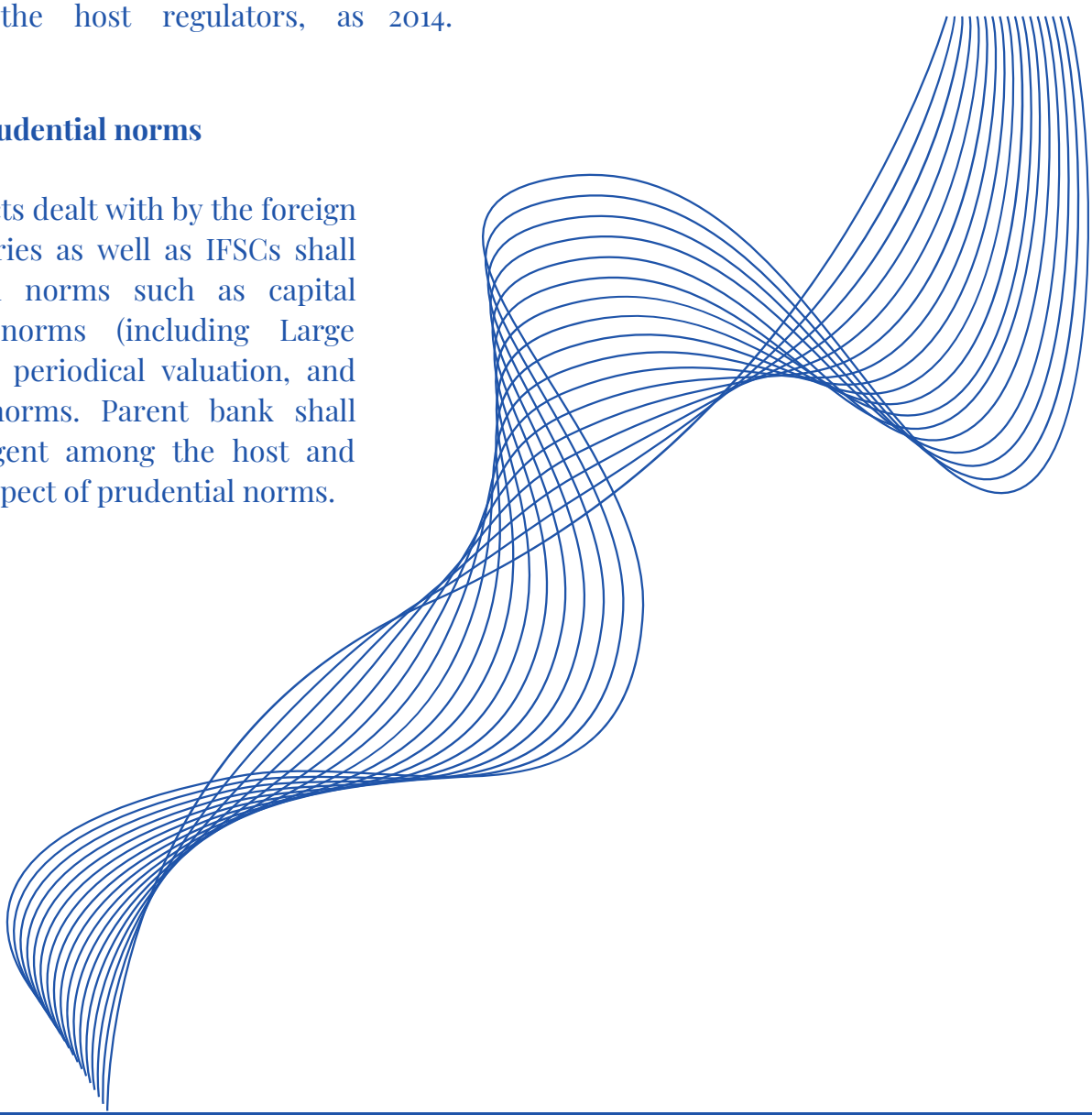
(3) Compliance with prudential norms

(a) The financial products dealt with by the foreign branches and subsidiaries as well as IFSCs shall attract the prudential norms such as capital adequacy, exposure norms (including Large Exposure Framework), periodical valuation, and all other applicable norms. Parent bank shall adhere to more stringent among the host and home regulations in respect of prudential norms.

(b) In case the current norms of the Reserve Bank do not specify prudential treatment of any financial product, the parent bank/AIFI shall seek specific guidance from Reserve Bank.

(4) Activities subject to Indian laws

The activities of branches/subsidiaries in foreign jurisdictions and IFSCs shall be subject to the laws in India, unless specifically exempted by law. With the issuance of these directions, the following circulars shall stand repealed: (a) Circular DBOD.No.BP.BC.89 /21.04.141/2008-09 dated December 1, 2008; and (b) Circular DBOD.No.BP.BC.111/21.04.157/2013-14 dated May 12, 2014.



Christmas Traditions Around the World

Christmas is an annual festival commemorating the birth of **Jesus Christ**, observed on *December 25* as a religious and cultural celebration among billions of people around the world. While Christmas may have started as a Christian holiday, people from all over the world have embraced the festive season and added their own traditions along the way. Lets read about some interesting and famous traditions of a few countries.

Sweden - The **Yule Goat** has been a Swedish Christmas symbol dating back to ancient pagan festivals. However, in 1966, the tradition got a whole new life after someone came up with the idea to make a giant straw goat, now referred to as the ***Gävle Goat***. The goat is more than 42 feet high, 23 feet wide, and weighs 3.6 tons. Each year, the massive goat is constructed in the same spot.

Philippines - Every year, the city of San Fernando holds Ligligan Parul (or Giant Lantern Festival) featuring dazzling parols (lanterns) that symbolize the Star of Bethlehem. Each parol consists of thousands of spinning lights that illuminate the night sky. The festival has made San Fernando the ***"Christmas Capital of the Philippines."***

Switzerland - Swiss families make their own advent calendars for the holiday season. These calendars are either given to children as a surprise or made together as a fun activity. Each day's bag reveals a new surprise or treat, with the biggest gift on Christmas Eve.

Source - https://www.countryliving.com/entertaining/g4933/christmas-traditions-around-the-world/

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Brian Carvalho
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