Vol. 11 | November 2023

Official Newsletter

CLASIS LAW

Table of Content

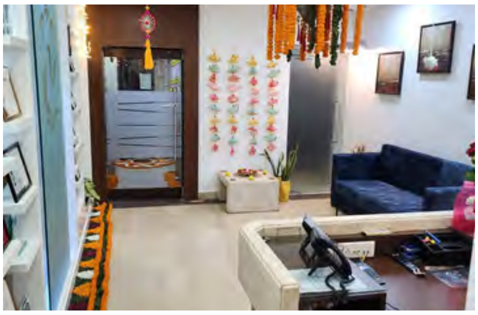
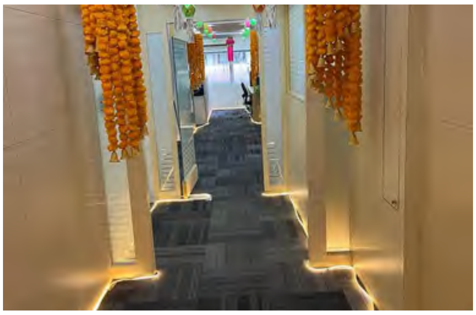
DIWALI CELEBRATIONS

Diwali is over but the joy of festivities remain forever. We are pleased to share a few glimpse of Diwali celebrations at our New Delhi & Mumbai office.







FEATURED ARTICLE

RBI Guidelines on First Loss Default Guarantee: A Credit Line for Fintech Players

Authors
Mr. Dinesh Gupta – Partner
Ms. Jasmeet Munday - Associate
Clasis Law

The Reserve Bank of India **(RBI)** had constituted a working group in January 2021 to study all aspects of digital lending activities by regulated and unregulated entities/players in the financial sector with an aim to regulate the digital lending in India. The working group submitted its report on digital lending to the RBI in November 2021 and provided its recommendations and suggestions with a view to enhance the customer protection and make the digital lending ecosystem safe and sound. While various recommendations of the working group had been accepted and considered by the RBI in the Digital Lending Guidelines **(Guidelines)** issued on 2 September 2022, some of recommendations required further examination by RBI.

With respect to the credit sharing arrangement involving first loss default guarantee **(FLDG)** between the lenders and the lending service providers **(LSPs)**, the working group had expressed its concerns stating that such a synthetic structure enables the unregulated entities to lend without complying with prudential norms and other criteria specified for the lenders since the loan portfolio backed by FLDG is akin to off-balance sheet portfolio of the LSP. Therefore, the working group had recommended that in order to prevent loan origination by unregulated entities, the lenders should not be allowed to enter into any synthetic structure such as FLDG. The recommendation pertaining to FLDG was accepted (in-principle) by the RBI subject to further examination. In the Guidelines, the RBI advised the lenders to adhere to the provisions on synthetic securitisation***(1)*** set out in the SSA Directions***(2)***. These directions do not permit the lenders to undertake synthetic securitisation, they only permit the securitization of exposures purchased from other lenders. Further, pursuant to the RBI directions on transfer of loan exposure **(Loan Transfer Directions)**,**(3)** a contractual arrangement involving loan participation***(4)*** (i.e., transfer of economic interest***(5)***) cannot be entered into by the lenders unless the transferee is a scheduled commercial bank or small financial bank or a NBFC.

FEATURED ARTICLE

On 8 June 2023, the RBI, based on extensive consultations with various stakeholders and in line with its objective of maintaining a balance between innovation and prudent risk management, decided to allow the DLG arrangement in digital lending space and issued the regulatory framework for default loss guarantee in digital lending **(DLG Framework)**.

The DLG Framework has prescribed various *Dos and Don'ts* which would need to be kept in mind by the lenders at the time of entering into an DLG arrangement. Further, the DLG Framework does not allow any actual transfer of underlying loan exposure from the books of the lender to the books of the DLG provider. If a DLG arrangement does not confirm to the guidelines prescribed under the DLG Framework, such an arrangement would be treated as synthetic securitization attracting the provisions of the SSA Directions and/or the Loan Transfer Directions mentioned above.

Key aspects of the DLG Framework are set out herein below:

(a) The guidelines are applicable to the DLG arrangements entered by the banks and/or NBFCs in their digital lending operations (i.e., lending process undertaken by using the digital technologies for customer acquisition, credit assessment, disbursement etc.)

(b) DLG cover can be provided by a LSP *(being a company under the [Indian] Companies Act)* and/or any other bank/NBFC with which the lender has entered into outsourcing arrangements. LSP basically acts as an agent of lenders to carry out one or more of the lenders' functions such as customer acquisition, pricing support, recovery of loan etc. in line with the RBI's directions on outsourcing arrangements. The LSPs would need to publish on their website the total number of portfolios and the respective amount of each portfolio on which they have offered DLG.

(c) The lender and the DLG provider would need to have a legally enforceable contract which must cover, inter alia, the extent of DLG cover, the form of DLG cover, timeline for DLG invocation and the disclosure obligations of the DLG provider (if it is an LSP).

(d) While the DLG provider can provide explicit guarantee to compensate the loss of the lender upto certain percentage of the loan portfolio as per its arrangement with the regulated entity (specified upfront), any implicit arrangement of a similar nature linked to the performance of the loan portfolio of the lender and specified upfront would also be covered under the ambit of DLG arrangement.

In order to regulate the risk which may have to be faced by the lenders in case of a default by the borrowers in repayment of the loan, the RBI has capped the total DLG cover on any outstanding loan portfolio upto 5% of the amount of such portfolio. In case of an implicit DLG arrangement, the DLG provider cannot undertake performance risk of more than the equivalent amount of 5% of the underlying loan portfolio.

(e) DLG would have to be in the form of (i) cash deposit, (ii) fixed deposit with a scheduled commercial bank, or (iii) bank guarantee. Additionally, the tenor of DLG arrangement will be the tenor of the longest loan in the underlying loan portfolio.

(f) In the event of default by the borrowers in repayment obligations, the lenders would be required to invoke the DLG within a period of 120 days from the date of such default. The lenders shall, however, comply with the extant norms on NPA recognition and consequent provisioning irrespective of the DLG cover. Further, the amount of DLG invoked cannot be set off against the underlying individual loans. The amount of recovery, if any, from the underlying loans can be shared with the DLG provider as per contractual arrangement.

(g) At the time of entering into or renewing an DLG arrangement, the lenders would be required to conduct a due diligence on the DLG provider (including obtaining an auditor certified declaration regarding its existing DLG obligations) so as to satisfy itself about the ability of the DLG provider to honour its commitment. Additionally, the lenders would be required to have a board approved policy before entering into any DLG arrangement.

Our Comments

Due to increase in digitization in financial sector in recent years, the structure of financing has changed. The fintech players have eased the process of lending and borrowing since the borrowers are not required to go through the lengthy process of submission of loan application with banks. Earlier, there was an ambiguity regarding the permissibility of the FLDG in the digital lending sector. Since there was no clear restriction/prohibition, various fintech players and lenders were engaged in risk sharing arrangement through FLDG. However, the Guidelines cleared the ambiguity on FLDG in the digital lending space and prohibited the lenders from sharing credit risk through synthetic securitisation. DLG Framework indicates a positive approach of RBI towards the development of the digital lending as it would encourage the fintech players while protecting the interests of the regulated entities. The introductory cap of 5% will ensure that the unregulated players do not cause systemic risk to the lending ecosystem. However, the requirement of of DLG cover being backed by cash deposit or fixed deposit or bank guarantee, which would practically be locked and cannot be used for other business operations, might pose challenge for the fintech players as they may have to raise further funds to meet their cash requirements for the DLG cover. Further, the recent regulatory measures for unsecured consumer credit announced by the RBI may also affect the fintech entities engaged in co-lending/risk-sharing through FLDG and offering unsecured loans in collaboration with the lenders.

*For further information on this topic please contact **Mr. Dinesh Gupta, Partner** (dinesh.gupta@clasislaw.com) & **Ms, Jasmeet Munday, Associate** (jasmeet.munday@clasislaw.com) at Clasis Law.*

Footnotes

1. *"synthetic securitization" means a structure where credit risk of an underlying pool of exposures is transferred, in whole or in part, through the use of credit derivatives or credit guarantees that serve to hedge the credit risk of the portfolio which remains on the balance sheet of the lender but it does not include the use of instruments permitted to lenders for hedging under the current regulatory instructions.*
2. *Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021*
3. *Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021*
4. *"loan participation" means a transaction through which the transferor transfers all or part of its economic interest in a loan exposure to transferee(s) without the actual transfer of the loan contract, and the transferee(s) fund the transferor to the extent of the economic interest transferred which may be equal to the principal, interest, fees and other payments, if any, under the transfer agreement.*
5. *"economic interest" means the risks and rewards that may arise out of loan exposure through the life of the loan exposure.*

Debt Recovery Tribunal cannot entertain claims below the threshold limits set under The SARFAESI Act

Introduction

In a recent judgment*(1)*, the Delhi High Court has clarified that the Debt Recovery Tribunal **("DRT")** cannot entertain a claim for an amount less than the threshold limit i.e. INR 20,00,000/-*(2)* set under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 **("SARFAESI").**

Facts

The Petitioner (IDFC First Bank Limited) entered into a loan agreement for an amount of INR 23,00,000/- with the Respondents. A security interest was created in respect of property situated at Shahdara, Delhi in order to secure the loan and the original title deeds were deposited with the Petitioner for the said purpose.

It was the case of the Petitioner that the Respondents failed to repay the debt and therefore the loan amount was classified as Non-Performing Asset (NPA). As a consequence, the Petitioner issued a demand notice calling upon the Respondents to discharge their liability of INR 24,71,141.85 along with interest and other charges within a period of 60 days. Subsequently, the Petitioner filed an application under Section 14*(3)* of the SARFAESI before the District Court. The District Court, vide its order dated February 9, 2018, appointed a receiver to take possession of the property on behalf of the Petitioner.

Thereafter, the Petitioner sold the property for an amount of INR 21,38,000/- with a remaining outstanding amount of INR 6,92,551.63/-. Therefore, the Petitioner filed an application under Section 13(10)*(4)* of the SARFAESI Act read with Rule 11 of the Security Interest (Enforcement) Rules, 2002 **("SIE Rules")** before the DRT. By its order dated June 20, 2019, the DRT dismissed the application of the Petitioner on the ground that the amount claimed in the application was less than INR 10,00,000/- and was therefore, not within the pecuniary jurisdiction of the DRT. Feeling aggrieved by the said order, the Petitioner filed a writ petition before the Delhi High Court.

Issues involved

The principle questions involved in the present dispute were whether the DRT constituted under the Recovery of Debts and Bankruptcy Act, 1993 **("RDB Act")**, exercises any original jurisdiction for the recovery of debts under the SARFAESI and whether the DRT has the jurisdiction to entertain a claim for less than INR 10,00,000/- under Section 13(10) of the SARFAESI.

Reasons and Conclusions

In regards to the Petitioner's contention that an application under Section 13(10) of the SARFAESI is not an application under the RDB Act and therefore the pecuniary jurisdiction notified under the latter Act would be inapplicable, the Court held that the said argument was unacceptable.

The first reason noted by the Court was that the Section 13(10) of the SARFAESI does not stipulate that the DRT would have the jurisdiction to adjudicate the application filed under the SARFAESI rather it is Section 17 which provides for the jurisdiction of DRT. Thus, for the purposes of ascertaining the jurisdiction, it would become necessary to refer to the RDB Act. Clearly, it is necessary to refer the RDB Act for the purposes of ascertaining the jurisdiction of in respect of an application made under Section 13 (10) of the SARFAESI, there is no ground to disregard the limits of the pecuniary jurisdiction of the DRT under the RDB Act. Secondly, the language of Section 13(10) of the SARFAESI also clearly indicates that it is an enabling provision which enables the creditor to institute an action for the recovery of the balance amount if the debts due to a secured creditor are not fully satisfied from the proceeds of the secured assets. The secured creditor may make an application to the DRT exercising jurisdiction or to a court of competent jurisdiction. It is implicit that a remedy of making an application to DRT is available subject to the jurisdiction of the DRT to decide the same, failing which the creditor is required to approach the court of competent jurisdiction. The Court also observed that a bank or a financial institution has recourse to the RDB Act for the recovery of debts due from borrower. It is difficult to accept that while an original application for an amount less than 20,00,000/- under the SARFAESI would be admissible before the DRT constituted under Section 3 of the RDB Act, the DRT would have no jurisdiction to entertain such a claim under the RDB Act. Thirdly, the Court noted that the provisions of the RDB Act which are essential to the scheme of adjudication of the claim and the recovery of the amount cannot be excluded. If the Petitioner's contention is accepted that an application under Section 13(10) of the SARFAESI must be construed in isolation of the provisions of the RDB Act, the remedy of an appeal under Section 20 of the RDB Act would not be available i.e. neither the creditor nor the borrower would have the right to file an appeal. The Court referred to the Supreme Court's decision in State Bank of Patiala v. Mukesh Jain and Anr***(5)*** wherein it had been held that the INR 10,00,000/- threshold under Section 1(4) of the RDB Act applied to limit the DRT's original jurisdiction. The Court concluded that an application under Section 13(10) of the SARFAESI is an original application under Section 19(1)***(6)*** of the RDB Act, which had a limit set at INR 20,00,000/-***(7).*** Therefore, the remedy under the SARFAESI could not be considered independent of the RDB Act, and the court dismissed IDFC's petition.

Footnotes

1. IDFC First Bank Limited vs Union of India & Ors., W.P. (C) No. 2550/2020 dated November 1, 2023
2. Increased from INR 10,00,000/- vide Gazette Notification dated September 6, 2018 by the Ministry of Finance
3. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured assets.
4. Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the DRT for recovery of the balance amount from the borrower.
5. (2017) 1 SCC 53
6. Jurisdiction of DRT for filing applications
7. (Department of Financial Services)

Applicability of the Principles of 'Earlier Trade Mark' and 'Prior Use' in Trade Mark law

Introduction

In a case that underscores the intricacies of trademark law, this case analyses the Trademark owner's multifaceted claims, ranging from being the 'first in the market' to invoking sections related to deceptive similarity. The Hon'ble Delhi High Court **("Court")** examined the applicability of the principle of *'earlier trade mark'* in circumstances where the trade mark was not registered while the impugned mark was registered.*(1)*

Facts

In this case, the Petitioner, an individual involved in designing products for children under the brand name , filed a rectification petition seeking the removal of a registered trademark*(2)* (impugned mark) being used for mobile phone accessories. The Petitioner's brand was established in 2014, gained international popularity, particularly in the USA, Canada, Australia, and India. The Petitioner's products, including headphones, loudspeakers, and portable media players, are well-received globally, with a strong online presence through platforms like Amazon. The Petitioner had registered the domain name www.rockpapa.com in 2014 and had secured trademark registrations his mark in various countries. The issue arose when the Petitioner discovered that Respondent No. 2 (Mr. Sachin Garg, proprietor of pooja creations) had registered a similar mark under Class 9 for mobile phone accessories in 2020 **("impugned mark")**.

Consequently, the Petitioner filed the present petition, aiming to rectify the register and remove the impugned mark based on Sections 47, 57, and 125 of the Trade Marks Act, 1999 **("the Act")**.

Contentions of the Parties

The Petitioner made the following submissions:

- The Petitioner argued that their trademark, globally recognized and extensively used for products like headphones and loudspeakers, had earned substantial reputation worldwide, including in India.
- They had secured trademarks in various countries and had significant online presence, especially on platforms like Amazon.
- The impugned trademark, used for similar goods, created confusion among consumers, diluting the distinctiveness of the Petitioner's mark.
- It was argued that according to Section 9(1)(a) of the Act, the impugned trademark lacked distinctive character and thus, ought to be removed.
- Additionally, registration of the impugned mark was erroneous under Section 9(2)(a) and Section 57 since the mark was confusingly similar.
- Respondent No. 2's adoption of the Petitioner's mark was in bad faith, aiming to exploit the Petitioner's reputation. It was argued that they were a "person aggrieved" under Section 57 of the Act, justifying the removal of the impugned trademark from the Register.*(3)*
- The Petitioner asserted their superior rights as the prior adopter and user of the trademark, supported by documents like Amazon/Flipkart listings and certificates from chartered accountants, which proved their extensive sales and prior market presence.*(4)*

The Respondent No. 1 (Registrar of Trademarks) argued that the impugned mark had been correctly registered as per the Act. They presented a timeline of the registration process, stating that the Petitioner did not contest the mark during its publication in the Trade Mark Journal. Therefore, the mark proceeded for registration without objection.

Analysis and Findings of the Court

In assessing the Petitioner's multifaceted challenge, the Court delved into each claim. Upon a perusal of Section 11(1)*(5)* and 11(2) of the Act, the Court found that the said provisions are inapplicable to the instant matter. It was observed that the common thread that ran in Section 11(1) and (2) was the identity/similarity with an 'earlier trade mark'. The Court found that the Petitioner failed to establish the same as the Petitioner's trademark was neither a registered trademark in India nor a trademark covered by an application relatable to Section 18*(6)* or Section 36E*(7)* or Section 154*(8)* of the Act.*(9)*

However, the Court opined that the Petitioner was able to substantiate a case of 'prior user'*(10)* of the trademark which was coined and adopted by the Petitioner in 2014 and for which the domain name www.rockpapa.com was secured. The Court was of the view that it was a well settled principle of trade mark law that a prior user's rights would override the rights of a subsequent user, even though the latter's mark may be a registered trademark. Therefore, in wake of prior use of the trademark by the Petitioner, coupled with several registrations abroad, in support of which registration certificates, whose validity was unrivalled, were filed, as well as the continuous and uninterrupted use of the mark in course of trade in respect of the goods, the Court held that the trademark had become distinctive of the goods of the Petitioner and was associated with it. Furthermore, the Court observed that there was every likelihood of confusion amongst the public due to similarity of the rival trademarks and identity of the goods of the competing parties and consequent impact on the reputation and goodwill of the Petitioner. It was further observed that this made the impugned mark vulnerable to cancellation of its registration under Section 11(10)(ii) of the Act which requires the Registrar of Trade Marks, while registering the mark, to take into consideration the bad faith involved, either of the applicant or the opponent, affecting the right relating to the trade mark.

The Court explained that 'bad faith' was an unfair practice involving lack of honest intention, a conscious doing of wrong and not just a mistake which included dealings which fell short of standards of acceptable commercial behaviour. Thus, the Court had little doubt that there was a dishonest intention in adopting the Petitioner's similar mark for identical goods including the word in the same colour, font and style, as a part of the device mark. The dishonest intention was with a view to encash on the goodwill of the trademark of the Petitioner. Therefore, it was held that the impugned trademark was liable to be cancelled and removed from the Register of Trade Marks rectifying the Register.

Lastly, the Court also asserted that removal of the impugned trademark from the Register of Trade Marks was also essential to maintain the purity of the Register. The Court also opined that the Petitioner fit into the description of 'person aggrieved' under Section 57 of the Act since the registration of the impugned trademark operated in restraint of the legal right of the Petitioner emanating from prior, long, continuous and uninterrupted user since 2014.*(11)*

Therefore, the Court found merit in the Petitioner's contentions and allowed the rectification petition thereby directing the Registrar of Trade Marks to remove from the Register the impugned mark registered under Class 9.

Footnotes

1. Kia Wang v. Registrar of Trademarks, 2023 SCC OnLine Del 5844.
2. T.M. No. 4400360.
3. Hardie Trading Ltd. v. Addisons Paint & Chemicals Ltd., (2003) 11 SCC 92 and Somany Ceramics Limited v. Shri Ganesh Electric Co., 2022 SCC OnLine Del 3270.
4. Milmet Oftho Industries v. Allergan Inc., (2004) 12 SCC 624; N.R. Dongre v. Whirlpool Corporation, (1996) 5 SCC 714; S. Syed Mohideen v. P. Sulochana Bai, (2016) 2 SCC 683; and Neon Laboratories Limited v. Medical Technologies Limited, (2016) 2 SCC 672.
5. Relative grounds for refusal of registration.
6. Application for registration of trademark.
7. International registrations where India has been designated.
8. Special provisions relating to applications for registration from citizens of convention countries
9. BPI Sports LLC v. Saurabh Gulati, (2023) 3 HCC (Del) 164.
10. Milmet Oftho (supra), Neon Laboratories (supra) and S. Syed Mohideen (supra)
11. Paine and Co. 's Trade Marks ([1893] 2 Ch. 567 at page 584 = 10 RPC 217 at page 232); Khoday Distilleries Limited (now known as Khoday India Limited) v. Scotch Whisky Association, (2008) 10 SCC 723; Mr. Sanjay Chadha trading as Eveready Tools Emporium v. Union of India, W.P.(C) (IPD) 12/2021 decided on 17.02.2022.

JUDGEMENTS

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

During the inspection it was observed that the Company had made allotment of shares and had received cheques from the allottees, however, it had failed to deposit them into a separate bank account. It was found that the cheques were taken from the allottees and were not endorsed to the bank. As a result, since the cheques were not realised, the allotment money was never credited to the Company's bank account. Hence, there was violation of section 42 of the Act.

The Registrar of Companies, Madhya Pradesh, Gwalior **("ROC")**, served a show cause notice to the Company and its officers in default and subsequently received a response from the Company. Following this, the notice of inquiry was initiated against the Company.

After considering the facts, ROC imposed a penalty of INR 2,00,00,000/- on the Company and its officers in default. Further, it directed the Company to refund the allotment money to the allottees with an interest @ 12% p.a.

Read More

In the matter of N.S.J.L Private Limited ("Company") for violation of section 39(4) and 184(2)(b) of the Companies Act, 2013 ("Act")

(a) During the inspection it was observed that the Company had filed 16 Form PAS-3 with the Registrar of Companies, Maharashtra, Pune **("ROC")**, over the years, wherein the list of allottees was not certified by the signatory of the respective Form PAS-3. The Company submitted that as Form PAS-3 had been digitally signed and certified by the director, therefore, the list of allottees had also been considered as certified since it was enclosed with the certified Form PAS-3. Further, as each allotment was made to approximately 150 allottees, the Company had attached PDF copy of the list of allottees which was converted from software generated excel file to ensure the legibility and comprehensibility of the list of allottees. Additionally, the Company had made several attempts to submit signed copy of list of allottees with each Form PAS-3, however, the legibility of the list was compromised due to compression and size constraints. Thus, it was compelled to attach PDF copy of the list of allottees converted from software generated excel file.

In terms of section 39(4) of the Act read with rule 12 of the Companies (Prospectus and Allotment of securities) Rules, 2014, whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in Form PAS-3 along with the list of allottees stating their names, address, occupation, if any, and number of securities allotted to each of the allottees and the list shall be certified by the signatory of the Form PAS-3 as being complete and correct as per the records of the company. Consequently, ROC levied a penalty of INR 1,00,000/- on the Company and each officer in default for each violation of section 39(4) of the Act.

Read More

(b) During the inspection of the Company, it was observed from the Deposit register and banks statements of the Company that it had received amounts from entities where director or relative of director were proprietor and this fact was not disclosed by the director to the Company in Form IVIBP-I thereby violating section 184(2)(b) of the Act. Accordingly, ROC levied a penalty of INR 1,00,000/- on each defaulting director of the Company.

Read More

In the matter of Ceeta Industries limited ("Company") for violation of section 134(3) of the Companies Act, 2013 ("Act")

During the inspection it was observed that the Board's report attached to the financial statement for the financial year 2019-20 did not disclose that the Company has complied with provisions relating to the constitution of Internal Complaints Committee ("ICC") under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The authorised representative of the Company submitted that as the Company had less than 10 employees in each of its establishment so it was not required to constitute ICC. He also admitted that the non-disclosure of the statement in the Board's report was not intentional. Thereafter, the Registrar of Companies, Karnataka levied a penalty of INR 3,00,000/- on the Company and INR 50,000/- on each officer in default for violation of provisions of section 134(3) of the Act.

Read More

In the matter of Saankhya Labs Private limited ("Company") for violation of section 135(6) of Companies Act, 2013 ("Act")

The Company suo moto filed an application with Registrar of Companies, Jaipur, Rajasthan **("ROC")** for adjudication of non-compliance of section 135 of the Act. The Company was required to spend an amount equivalent to 2% of its average net profit of preceding 3 financial years towards the Corporate Social Responsibility **("CSR")** expenditure for the financial year 2020-21. It was decided by the Company that the CSR commitment would be fulfilled through an ongoing project. The Company had spent a portion of the CSR expenditure and transferred the unspent amount to the Unspent Account with a delay. Similarly in the financial year 2021-22, the unspent amount was transferred into the Unspent Account with delay. Subsequently, ROC levied a penalty of INR 31,26,064/- on the Company and INR 156,204/- on officer in default for the financial year 2020-21 and a penalty of INR 31,21,624/- on the Company and INR 1,56,082/- on each officer in default for the financial year 2021-22 for the violation of provisions of section 135(6) of the Act.

Read More

In the matter of Viraj Profiles Private limited ("Company") for violation of section 42(6) and 42(8) of the Companies Act, 2013 ("Act")

Pursuant to receipt of complaint, the Registrar of Companies, Maharashtra, Mumbai ("ROC") issued letters to the Company to furnish comment(s) against gross irregularities/

illegalities in allotment of 22,00,000 fully paid-up 4% Compulsorily Convertible Debentures ("CCD"). It was observed from the reply of the Company that the Company had not maintained a separate bank account for receipt of application money and it had failed to file Form PAS-3 within 15 days of the allotment of CCD along with the list of allottees. Furthermore, it had not filed Form PAS-4 within 30 days from date of allotment in 2016.

The ROC issued a show cause notice to the Company and its directors/ officers in default. The Company submitted that account opening takes approximately a weeks' time and it was already decided to allot CCD the same day on which the money is received. Hence, the funds were received in regular bank account of Company and separate bank account was not opened. Since the funds were urgently required, they were utilised right after allotment. In addition, as the application money was received in tranches, the allotments were made accordingly and a single Form PAS-3 was filed after all the allotments were made. The Company also submitted that due to lack of knowledge Form PAS-4 was not filed with the ROC. Upon realising the mistake, the Company had rectified the default. After considering the facts, ROC levied a total penalty of INR 2,07,56,000 on the Company, its promoters and directors for violation of provisions of section 42(6) and 42(8) of the Act.

Read More

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

The Company had suo moto filed an application with the Registrar of Companies, Hyderabad **("ROC")** for adjudicating the non-compliance of section 42 of the Act. The Company had failed to maintain a separate bank account for receiving application money and had erroneously utilized the funds before the allotment of shares. After considering all the facts, ROC imposed a penalty of INR 80,00,000/- on the Company and INR 20,00,000/- on each director of the Company. The Company was also directed to refund all the monies accepted in contravention of section 42 with an interest @ 12% p.a. The Company filed an appeal with the Regional Director, South East Region **("RD")**. The authorized representative of the Company submitted that the default was unintentionally committed and due to lack of knowledge of the provisions of the Act. He further submitted that the shares were issued to meet the fund requirements of the Company as it desires to stabilise its business and is running into losses. Hence, the Company is unable to pay such huge penalty. Additionally, the original subscribers to allotment have transferred their shares to third parties. After considering the facts of the appeal, the RD decided to reduce the penalty levied on the Company from INR 80,00,000/- to INR 6,00,000/- and on each officer in default from INR 20,00,000/- to 1,00,000/-.

Read More

Centralized mechanism for reporting the demise of an investor through KRAs

On 3 October 2023, the Securities and Exchange Board of India **("SEBI")** issued a circular on reporting the demise of an investor through KRAs. SEBI decided to introduce a centralized mechanism for reporting and verification in case of the demise of an investor and thereby smoothen the process of transmission in securities market. The circular spells out the operational norms including the obligations of regulated entities, including registered intermediaries that have interface with 'investors'/'account holders' (used interchangeably) who are natural persons. Listed companies wanting to provide the beneficial access to such a centralized mechanism to their investors1holding securities in physical form, are eligible to establish connectivity with KRA through their RTAs.

Requirement of Base Minimum Capital Deposit for Category 2 Execution Only Platforms

On 6 October 2023, SEBI issued a circular on requirement of Base Minimum Capital Deposit for Category 2 Execution Only Platforms. SEBI vide circular dated 13 June 2023 prescribed the regulatory framework for Execution Only Platforms (EOP) for facilitating transactions in direct plans of schemes of Mutual Funds through their technology or digital platforms. An EOP for facilitating transactions in direct plans of schemes of Mutual Funds, means any digital or online platform which facilitates transactions such as subscription, redemption and switch transactions in direct plans of schemes of Mutual Funds. Any entity desirous of operating as an EOP can obtain registration under one of the following two categories:

(a) Category 1 EOP: Entities desirous of operating as Category 1 EOP are required to obtain registration from AMFI and shall act as an agent of AMC(s) and can provide service to investors and other intermediaries. Category 1 EOPs shall follow the guidelines specified by AMFI in consultation with SEBI. Category 1 EOPs are not required to maintain any deposit with AMFI for operating as an EOP.

(b) Category 2 EOP: Category 2 EOPs are required to obtain registration as a Stock Broker in terms of SEBI (Stock Brokers) Regulations, 1992 under the EOP segment of Stock Exchanges. Category 2 EOPs shall operate as an agent of investor and provide services to investors directly and shall not act as an aggregator of the transactions in direct plans of schemes of Mutual Funds. They shall follow various requirements applicable to stock brokers, including maintenance of deposit with the stock exchange.

SEBI vide Circulars dated 19 January 1996, 23 February 2005 and 19 December 2012 had prescribed the requirement of Base Minimum Capital (BMC) deposit for stock brokers trading on stock exchange. BMC is the deposit given by the member of the stock exchange against which no exposure for trades is allowed. In this regard, SEBI decided that the members of stock exchanges functioning only in EOP segment (Category 2 EOP) shall maintain a sum of INR 1 Million with the stock exchange as BMC deposit. However, for members having registration of more than one segment on the same stock exchange, the BMC deposit requirement shall not be additive for such number of segments and shall be the highest applicable BMC deposit, across various segments. The SEBI circulars specified above, stand modified suitably. All other relevant provisions with respect to BMC Deposit shall continue to remain applicable.

The provisions of this circular shall be implemented immediately.

Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Reg

On 7 October 2023, SEBI issued a circular regarding relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. SEBI Master Circular dated 11 July 2023 on compliance with the provisions of the SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 by listed entities **("Master Circular")** inter-alia relaxed the applicability of regulation 36(1) (b) of the LODR Regulations for Annual General Meetings (AGMs) and regulation 44(4) of the LODR Regulations for general meetings (in electronic mode) held till 30 September 2023 (section VI-J of the Master Circular). MCA, vide General Circular No.09/2023 dated 25 September 2023, has extended the relaxation from sending physical copies of financial statements (including Board's report, Auditor's report or other documents required to be attached therewith) to the shareholders, for the AGMs conducted till 30 September 2024. SEBI has also received representations to extend the relaxations mentioned above. In view of the above, SEBI decided to extend the relaxations mentioned at para 1 above till 30 September 2024. It is reiterated that the listed entities shall ensure compliance with the conditions stipulated at para 5.1 and 5.2 of section VI-J of chapter VI of the Master Circular while availing the relaxations provided above.

Union Commerce & Industry Minister unveiled system based automatic 'Status Holder' certificates under Foreign Trade Policy 2023

On 9 October 2023, the Union Commerce & Industry Minister unveiled system based automatic 'Status Holder' certificates under Foreign Trade Policy 2023. Now the exporter will not be required to apply to the office of Directorate General of Foreign Trade (DGFT) for a Status Certificate and the export recognition will be provided by the IT system based on available Directorate General of Commercial Intelligence and Statistics (DGCIS) merchandise export electronic data and other risk parameters. This perspective is a paradigm shift in doing things as it not only reduces compliance burden and promotes ease of doing business but also recognizes the need and importance of collaboration within the Government. At present, the exporter is required to file an online application along with an export certificate from a Chartered Accountant for grant of Status. The DGFT Regional Offices, as per the laid down timelines are supposed to issue the certificate in 3 days. The new arrangement will lead to a simplified regime where no applications are invited from exporters and the certification is granted every year in August based on annual export figures available with the partner government agency i.e. DGCIS.

Exporters who are eligible for a higher status based on additional export data relating to services export, deemed exports or double weightage to some entities like MSME etc., which is not getting captured in disaggregated form presently, can apply online for a Status modification also at a later date.

The Status Holder certification program provides credibility to the Indian exporters in the international markets. In addition, it provides certain other privileges including simplified procedures under FTP 2023 and priority custom clearances on self-declaration basis, exemption from compulsory negotiation of documents through banks, exemption from filing Bank Guarantee for FTP schemes etc. With the launch of this new system, the Department of Commerce, Ministry of Commerce and Industry will be recognizing about 20,000 exporters under FTP 2023 as Status Holders which will be a quantum jump from the earlier number of 12,518 exporters. The biggest increase in Status certification is seen in the 1 Star category, which is the lowest category and requires an export performance of at least US$ 3 Million in the last 3 preceding financial years plus the 3 months of the current financial year. This will enable the Government to hand hold a larger number of small exporting entities and create a vibrant export ecosystem and help reach our export target of US$ 2 Trillion by 2030.

In line with digital India ethos, various e-initiatives have already been implemented where no manual examination or processing is required and various permissions/authorisations are issued under FTP 2023 based on a risk management system and self-declarations of the exporter including 24x7 online issue of Importer Exporter Code number (IEC), issue and renewal of Advance Authorisations.

Notification of certain sections of the Mediation Act, 2023

On 9 October 2023, the Central Government issued a gazette notification appointing 9 October, 2023 as the date on which the provision of the following sections of the Mediation Act, 2023 shall come into force, namely:

(a) Section 1 (Short title, extent and commencement);
(b) Section 3 (Definitions);
(c) Section 26 (Proceedings of Lok Adalat and Permanent Lok Adalat not to be affected);
(d) Sections 31 to 38 (both inclusive) (Chapter VIII - Mediation Council of India);
(e) Sections 45 to 47 (both inclusive) (Miscellaneous and Power of Central Government to issue directions.);
(f) Sections 50 to 54 (both inclusive) (Protection of action taken in good faith; Power to make rules; Power to make regulations; Laying; and Power to remove difficulties.); and
(g) Sections 56 to 57 (both inclusive) (Act not to apply to pending proceedings; and Transitory provision).

Prompt Corrective Action (PCA) Framework for Non-Banking Financial Companies (NBFCs) – Extension to Government NBFCs

On 10 October 2023, the Reserve Bank of India **("RBI")** issued a circular relating to Prompt Corrective Action (PCA) Framework for Non-Banking Financial Companies (NBFCs). RBI introduced PCA Framework for NBFCs on 14 December 2021. The Framework has since been reviewed and RBI has decided to extend the same to Government NBFCs (except those in Base Layer) with effect from 1 October 2024, based on the audited financials of the NBFC as on 31 March 2024, or thereafter.

Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021

On 19 October 2023, RBI issued the master direction updating the Housing Finance Company (Reserve Bank) Directions, 2021. The RBI having considered it necessary in the public interest, and being satisfied that, for the purpose of enabling the RBI to regulate the financial system to the advantage of the country and to prevent the affairs of any Housing Finance Company (HFCs) from being conducted in a manner detrimental to the interest of investors and depositors or in any manner prejudicial to the interest of such HFCs, and in exercise of the powers conferred under sections 45L and 45MA of the Reserve Bank of India Act, 1934 and Sections 30, 30A, 32 and 33 of the National Housing Bank Act, 1987, issued to every HFC, in supersession of the regulations/directions as given in Chapter XVII of these directions, the Non-Banking Financial Company – Housing Finance Company (Reserve

Bank) Directions, 2021. These directions shall come into force with immediate effect. Unless otherwise directed by the Bank, these directions except directions contained in Chapter XII shall be applicable to every Housing Finance Company (HFC) registered under Section 29 A of the NHB Act, 1987. Further, the directions contained in Chapter XII shall be applicable to every auditor of an HFC.

Approval of Central Government for shifting of registered office from one to state to another

The Ministry of Corporate Affairs **("MCA")** vide its notification dated October 20, 2023 notified the Companies (Incorporation) Third Amendment Rules, 2023 to further amend the Companies (Incorporation) Rules, 2014 **("Rules")**. MCA has omitted the words "and may include such order as to costs as it thinks proper" in rule 30(9) of the Rules and it has also inserted a second proviso to rule 30(9).

Pursuant to the aforesaid amendment in rule 30(9), the Central Government shall not allow shifting of registered office of a company from one State or Union Territory to another state if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Companies Act, 2013. However, where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed by Central Government.

Designation of a person for furnishing information with respect to beneficial interest in shares

The Ministry of Corporate Affairs vide its notification dated October 27, 2023 notified the Companies (Management and Administration) Second Amendment Rules, 2023 to further amend Rule 9 of the Companies (Management and Administration) Rules, 2014. Every Indian company is required to designate an individual who shall furnish requisite information with respect to beneficial interest in shares of the company to the Registrar of Companies or any other authorised officer **("Designated Person")**.

The Designated Person can be a company secretary or any key managerial person or any director. The details of such Designated Person are required to be furnished in annual return (in e-form MGT 7). If no Designated Person is appointed by a company, then Registrar shall consider following individual as Designated Person:

(a) Company secretary, if an Indian company has appointed a company secretary; or

(b) Managing Director or Manager, if no company secretary has been appointed; or

(c) Every director, if there is no company secretary or Managing Director or Manager.

Any change in the details of the Designated Person is required to be intimated to the Registrar in e-form GNL 2.

Reporting of non-converted share warrants and conversion of share warrants into shares

The Ministry of Corporate Affairs **("MCA")** vide its notification dated October 27, 2023 notified the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 **("Amendment")** to further amend the Companies (Prospectus and Allotment of Securities) Rules, 2014. As per the Amendment, new requirements with respect to share warrants has been introduced.

Every public company which had issued share warrants under Companies Act, 1956 and did not convert those warrants to shares is now required to:
(a) report the details of the share warrants in the Form PAS-7 (details of pending share warrants) within 3 months from commencement of the Amendment
(b) place a notice for the bearers of share warrants (in Form PAS-8) on its website, if any.
(c) publish the details of the bearers of share warrants in a newspaper in the vernacular language which is in circulation in the district in which the registered office of the company is situated and in English language in an English newspaper. Further, the bearers of the share warrants are also required to surrender the warrants to the company and have the shares dematerialised in their account. The said action is to be completed within 6 months of the commencement of the Amendment.

On failure by the bearer to surrender the share warrants within the prescribed period, the company is required to convert such share warrants into dematerialised form and transfer them to the Investor Education and Protection Fund.

Dematerialisation of shares of private companies

The Ministry of Corporate Affairs vide its notification dated October 27, 2023 notified the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 **("Amendment")** to further amend the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Amendment has made it mandatory for every private company other than a small company and a Government company **("Concerned Company")** to facilitate the dematerialisation of all its securities, in accordance with provisions of the Depositories Act, 1996, and regulations made thereunder, within 18 months of closure of the financial year. The Concerned Company shall ensure that before making any offer for the issue of any securities or buyback of securities or issue of bonus shares or rights offer, on or after 18 months from the closure of the financial year, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised. Similarly. the entire holding of the securities holder who subscribe to any securities on or after 18 months from the closure of the financial year has also been dematerialised. Further, the holder of securities of the Concerned Company on or after 18 months from the closure of the financial year, planning to transfer securities must ensure that the said securities are dematerialised before the transfer.

Maintenance of register of partners

The Ministry of Corporate Affairs **("MCA")** vide its notification dated October 27, 2023 notified the Limited Liability Partnership (Third Amendment) Rules, 2023 **("Amendment")** to further amend the Limited Liability Partnership Rules, 2009 **("Rules")**. Through this Amendment, MCA has inserted new rule 22A in the Rules, which mandates the maintenance of a register of partners of Limited Liability Partnership **("LLP")** in Form 4A from the date of incorporation of the LLP. The register of partners is required to be kept at the registered office of the LLP. The existing LLPs are required to comply with the Amendment by November 25, 2023.

Any changes in the contribution amount, name and details of the partner of the LLP, cessation of the partnership interest is required to be recorded in the register of partners within 7 days of such change.

Declaration of beneficial interest in the contribution of Limited Liability Partnership ("LLP") and designation of a person for furnishing information with respect to beneficial interest in contribution

The Ministry of Corporate Affairs **("MCA")** vide its notification dated October 27, 2023, notified the Limited Liability Partnership (Third Amendment) Rules, 2023 **("Amendment")** to further amend the Limited Liability Partnership Rules, 2009 **("Rules")**. Through this Amendment, MCA has inserted new rule 22B in the Rules regarding the declaration of beneficial interest in any contribution. Accordingly, the following declarations are required to be submitted with the LLP:

(a) The person whose name is entered in the register of partners and does not hold the beneficial interest in contribution, either fully or partly, **("Registered Partner")** shall file declaration in Form 4B with the LLP, specifying the name and details of the beneficial partner within 30 days from the date on which his name is entered in the register of partners or within 30 days from the date of any change, as the case may be.

(b) The person who holds or acquires a beneficial interest in the contribution but whose name is not registered in the register of partners **("Beneficial Partner")** shall file declaration in Form 4C with LLP within 30 days after acquiring such beneficial interest in the contribution of the LLP, specifying the nature of his interest and particulars of the partner in whose name the contribution is registered in the books of the LLP or within 30 days from the date of any change in beneficial interest, as the case may be.

Upon receiving the aforementioned declarations from Registered Partner and the Beneficial Partner, the LLP shall record such declarations in the register of partners and file Form 4D with the Registrar within 30 days from the date of receipt of the declarations. Additionally, the LLP must also specify a designated partner who will be responsible for providing information regarding the beneficial interest in the contribution of the LLP to the Registrar or any other officer authorized by the Central Government. The details of such designated partner will be required to be filed with the Registrar in Form 4. Until a designated partner is specified, all designated partners of the LLP will be deemed responsible for the furnishing the information.

Listing of securities of a public company on foreign stock exchanges

The Ministry of Corporate Affairs vide notification dated October 30, 2023, has notified the enforcement of the provisions of section 5 of the Companies (Amendment) Act, 2020. Through this amendment, the specified public companies are allowed to issue securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions. The rule specifying the class of prescribed companies, permissible foreign jurisdiction and stock exchanges, the requirements around listing is awaited.

Plastic Waste Management (Second Amendment) Rules, 2023

On 30 October 2023, the Ministry of Environment, Forest and Climate Change issued the Plastic Waste Management (Second Amendment) Rules, 2023, to:

(a) provide statutory framework for plastic waste management in the country in an environmentally sound manner; and

(b) further strengthen the effective implementation of rules amendments are being proposed inter alia including use of information technology tools for online reporting replacing multi-step manual reporting and capturing of data at various stages of waste management at state and local authority level; provide for online electronic trading platform for trading of certificates generated by registered plastic waste processors for price discovery.

These rules introduce certain new definitions such as the definition of "carry bags" which is defined as "bags made from plastic material or compostable plastic or biodegradable plastic, used for the purpose of carrying or dispensing, commodities, which have a self-carrying feature but do not include bags that constitute or form an integral part of the packaging in which goods are sealed prior to use".

Further, the rules provide that each plastic packaging should contain the following information, printed in English, namely:

(a) name and registration certificate number for producer or importer or brand owner generated through centralized online portal specified in Schedule II for plastic packaging, in case of, rigid plastic packaging with effect from 1 July 2024, multilayer flexible plastic packaging having more than one layer with different types of plastics, including plastic sachet or pouches, and multi-layered plastic packaging;

(b) name and registration certificate number for producer or importer or brand owner generated through centralized online portal specified in Schedule II for plastic packaging and thickness in case of flexible plastic packaging of single layer including plastic sachet or pouches (if single layer), plastic sheets or like and covers made of plastic sheet, carry bags;

(c) name and registration certificate number for producer or importer or brand owner generated through centralized online portal specified in Schedule II for plastic packaging with effect from 1 January, 2025 and number of certificate issued under clause (h) of sub-rule (4) in case of plastic sheet or like used for packaging and plastic packaging as well as carry bags commodities made of compostable plastic, as applicable;

(d) name and certificate number issued under clause (h) of sub-rule 4 in case of plastic sheet or like used for packaging and plastic packaging as well as carry bags and commodities made of biodegradable plastic.

Provided that the provisions of this sub-rule shall not apply to plastic packaging covered under rule 26 of the Legal Metrology Packaged Commodities Rules, 2011, and in respect of plastic packaging cases where it is technically not feasible to print the requisite information, as per specifications given in the Guidelines for use of Standard Mark and labelling requirements under BIS Compulsory Registration Scheme for Electronic and IT Products. Provided further that the plastic packaging under the first proviso shall be approved by the Central Pollution Control Board. Provided also that the relevant information in respect of plastic packaging under the first and second proviso shall be printed on the packaging that holds together individual units of goods or the individual units of packaging.

Certain other sub-rules have been added/deleted from the Plastic Waste Management Rules, 2016 vide the publishing and notification of the Plastic Waste Management (Second Amendment) Rules, 2023.

Revision in manner of achieving minimum public unitholding requirement – Infrastructure Investment Trusts (InvITs)

On 31 October 2023, SEBI issued a circular regarding revision in manner of achieving minimum public unitholding requirement–Infrastructure Investment Trusts (InvITs). SEBI issued a circular dated 27 June 2023 prescribing methods to achieve minimum public unitholding requirements for InvITs. Subsequently, the said circular was consolidated as Chapter 21 of the Master Circular for InvITs dated 6 July 2023. In addition to the methods listed under para 21.2. of Chapter 21 of the Master circular for InvITs dated 6 July 2023, the following shall be an additional method for privately placed InvITs in order to achieve minimum public unitholding requirements:

- *S. No.* – 10
- *Method* – Issuance of units through preferential allotment
- *Specific Conditions, if any, applicable* – Only units issued to the public shall be considered for compliance with minimum unitholding requirement.

Further, it has been decided that S.No. 7 under para 21.2. of Chapter 21 of the Master circular for InvITs dated July 06, 2023 stands modified as under:

- *S. No.* – 7
- *Method* – Sale of units held by Sponsor(s)/ Investment Manager/Project Manager and their associates/related parties in the open market in any one of the following ways, subject to compliance with the conditions specified:
  - Sponsor(s)/ Investment Manager/ Project Manager and their associates/ related parties can sell upto 2% of the total paid-up unit capital of the InvIT, subject to five times' average monthly trading volume of the units of the InvIT, every financial year till the due date for minimum public unitholding requirement as per InvIT Regulations Provided that the above limit of five times' average monthly trading volume of the units of the InvIT shall not be applicable to a privately placed InvIT.

  (or)

  - Sponsor(s)/ Investment Manager/ Project Manager and their associates/ related parties can sell up to a maximum of 5% of the paid-up unit capital of the InvIT during a financial year subject to the condition that the public unitholding in the InvIT shall become 25% after completion of such sale. The sale can be in a single tranche or in multiple tranches during the said financial year. The number of units to be sold shall not exceed the trading volume of the units of the InvIT during the preceding 12 months from the date of announcement. Provided that the above limit related to the trading volume of units of the InvIT during the preceding 12 months from the date of announcement, shall not be applicable to a privately placed InvIT.
- *Specific Conditions, if any, applicable* –
  - Sponsor(s)/ Investment Manager/ Project Manager and their associates/related parties can use either the mechanism specified at Sl. No. 7(i) or 7(ii) to comply with minimum public unitholding requirements, but not both.
  - The Investment Manager of the InvIT shall, at least one trading day prior to every such proposed sale, announce the following details to the stock exchange(s) where its units are listed:

  - the intention of the Sponsor(s)/ Investment Manager/ Project Manager and their associates/ related parties to sell and the purpose of sale;
  - the details of Sponsor(s)/ Investment Manager/ Project Manager and their associates/ related parties, who propose to divest their unitholding;
  - total number of units and percentage of unitholding in the InvIT that is proposed to be divested; and
  - the period within which the entire divestment process will be completed.
- The Investment Manager of the InvIT shall also give an undertaking to the recognized stock exchange(s) obtained from the Sponsor(s)/ Investment Manager/ Project Manager and their associates/ related parties that they shall not buy any units in the open market on the dates on which the units are being sold by them as stated above.
- The InvIT, its Sponsor(s)/ Investment Manager/ Project Manager and their associates/ related parties shall ensure compliance with all applicable legal provisions including that of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 and InvIT Regulations.

This circular shall come into force with immediate effect.

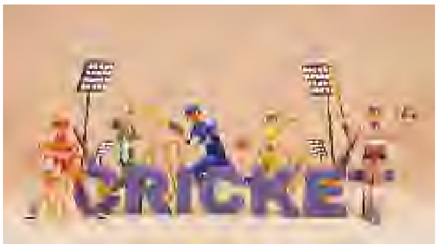
Regulation of Payment Aggregator – Cross Border (PA-Cross Border)

On 31 October 2023, RBI issued a circular regarding regulation of Payment Aggregator – Cross Border (PA – Cross Border). All Payment Aggregators (PAs) which facilitate processing of domestic transactions in online mode are covered within the scope of the following circulars:

a. 'Guidelines on Regulation of Payment Aggregators and Payment Gateways' – (i) DPSS.CO.PD.No.1810/02.14.008/2019-20 dated 17 March 2020 and (ii) CO.DPSS. POLC.No.S33/02-14-008/2020-2021 dated 31 March 2021,
b. 'Processing and Settlement of Export related receipts facilitated by Online Payment Gateways' – A.P. (DIR Series) Circular No. 17 dated 16 November 2010,
c. 'Processing and Settlement of Export related receipts facilitated by Online Payment Gateways – Enhancement of the value of transaction' – A.P. (DIR Series) Circular No. 109 dated 11 June 2013,
d. 'Processing and settlement of import and export related payments facilitated by Online Payment Gateway Service Providers' – A.P. (DIR Series) Circular No.16 dated 24 September 2015, and
e. 'Processing and settlement of small value Export and Import related payments facilitated by Online Export-Import Facilitators (OEIF) (erstwhile OPGSP)' – draft circular issued on 7 April 2022 for seeking feedback from banks and other stakeholders.

Further, instructions for cross-border payment transactions are provided for in the circulars mentioned above at paragraphs 1(c) to 1(e) as well as through specific approval given by the RBI to banks for their collection agent arrangements. Keeping in view the developments that have taken place in the area of cross-border payments, RBI has decided to bring all entities facilitating cross-border payment transactions for import and export of goods and services under direct regulation of the RBI. Such entities shall be treated as Payment Aggregator-Cross Border (PA-CB); details thereof are provided in Annex to this circular. PAs-CB are entities that facilitate cross-border payment transactions for import and export of permissible goods and services in online mode. In the context of PAs, 'escrow account' shall refer to an account wherein PAs pool/ aggregate the amount collected on behalf of the merchants on-boarded by them. Entities, including Authorised Dealer (AD) banks, PAs and PAs-CB, involved in processing/ settlement of cross-border payment transactions for import and export of goods and services, shall comply with these instructions (as updated from time to time).

This directive is issued under Section 10 (2) read with Section 18 of the Payment and Settlement Systems Act, 2007 (Act 51 of 2007), and, Section 10 (4) and Section 11 (1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999), and is without prejudice to permissions/ approvals, if any, required under any other law.



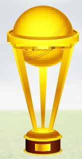
Records! Records! Records!

“Cricket World Cup records”

The international cricket tournament has witnessed path-breaking records by the participating teams this year. The Cricket World Cup is a One Day International (ODI) competition in men's cricket organised by the International Cricket Council (ICC) every four years since it was first held in England. Let's read about a few records of this tournament.

- **Team Record – The Highest innings total**
  - In this year’s tournament – *South Africa* and *India* leading the tally by scoring the highest inning totals.
  - In the year 2015 – *South Africa* and *Australia* scored the highest inning totals.
- **Individual Record – Most runs in a tournament**
  - In this year’s tournament – *Virat Kohli* leads the tally by scoring 765 runs in 11 innings.
  - In the year 2003 – *Sachin Tendulkar* scored highest runs (673) in 11 innings.

- **Team Record – The Lowest innings total**
  - In this year’s tournament – *Sri Lanka* scored the lowest total against India.
  - In the year 2003 – *Canada* scored the lowest total against *Sri Lanka*.



- **The King of the league** *(Not losing a single match by a team in league/group stages)*
  - In this year’s tournament – *India* leads the tally by not losing any league match.
  - In the year 2015 – *India & New Zealand* came to top by not losing any league match.

Source – https://en.wikipedia.org/wiki/List_of_Cricket_World_Cup_records

CLASIS LAW

Notable Recognitions & Accolades

Forbes INDIA
Present
LEGAL POWERLIST 2022
in association with
legitquest
Information • Insight • Intelligence
ENLISTED AS THE
TOP LAW FIRM
(ABOVE 10 YEARS EXP.)

INDIA BUSINESS LAW JOURNAL
AWARD WINNING LAW FIRM
2023
LAW ASIA

ALB
INDIA
LAW AWARDS
2023
FINALIST
THOMSON REUTERS

The LEGAL 500
ASIA PACIFIC
LEADING FIRM
2023

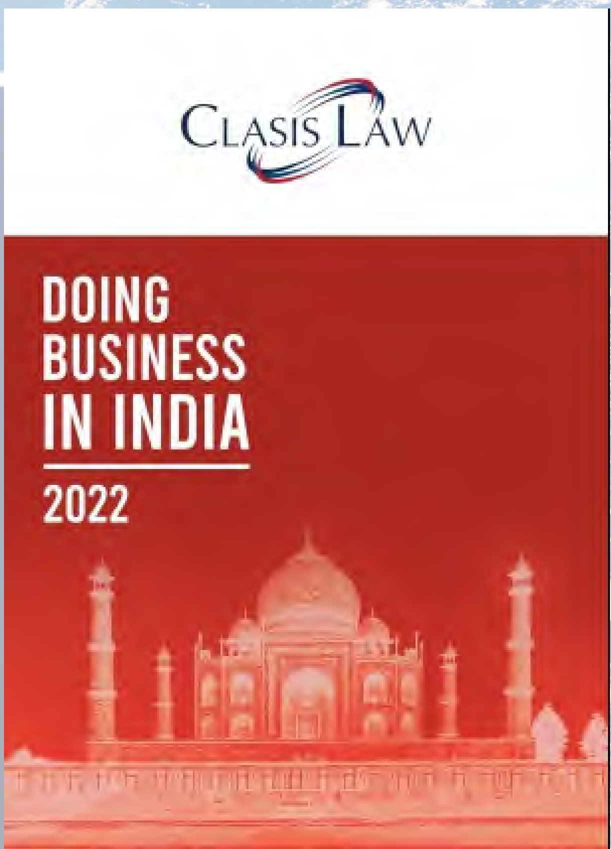
LEXOLOGY
Legal Influencer
Q2 | 2022

NOTABLE FIRM
B
BENCHMARK LITIGATION

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.

Vol. 11 | November 2023

Tolstoy House,
4th Floor, Tolstoy Marg,
New Delhi – 110 001, India
Tel : +91 11 4213 0000
Fax : +91 11 4213 0099

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

Connect with Us

DISCLAIMER: This publication 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. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions.