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Official Newsletter

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LEGAL UPDATE

Earnest Money Paid for purchase of land is not 'Financial Debt' under Insolvency and Bankruptcy Code, 2016

Introduction

The National Company Law Appellate Tribunal **("NCLAT")**, in its recent judgement***(1)*** in *S. Chandriah vs Sunil Kumar Agarwal, Resolution Professional of Digjam Limited*,***(2)*** has clarified the position as to whether the payment of earnest money for the purchase of land falls under the category of financial debt under Section 5 (8) of the Insolvency and Bankruptcy Code, 2016 **("Code")**.

The factual matrix giving rise to the present appeals is that one S. Chandriah **("Appellant")** vide letter dated 14.09.2018 to Digjam Ltd **("Respondent/Corporate Debtor")** offered to purchase the surplus land available at the Respondents mill premises at Jamnagar, Gujarat. Subsequently, the Appellant made a payment of INR 7 Crore as earnest money to the Respondent. In the meantime, an application under Section 9 of the Code was admitted and Corporate Insolvency Resolution Process **("CIRP")** was initiated against the Respondent. The Appellant filed its claim under Form-C as a financial creditor. However, the same came to be rejected by the Resolution Professional on the ground that the sum of INR 7 Crores was in the nature of an interest free advance to be adjusted against the sale consideration for the proposed land sale. The Appellant then filed an application before the National Company Law Tribunal, Ahmedabad Bench **("NCLT/Adjudicating Authority")** seeking directions to the Resolution Professional to adjudicate the claim and to admitthe Appellant as a member of Committee of Creditors **("CoC")**. By its order dated 07 February, 2022, the said application was dismissed by the NCLT. Thereafter, a resolution plan submitted by one M/s Finquest Financial Solutions Pvt. Ltd. was approved by the CoC. The said Resolution plan was approved by the NCLT vide order May 27, 2020. Feeling aggrieved by the said orders, the Appellant filed two appeals challenging each of the aforementioned orders dated February 7, 2020 and May 27, 2020 before the NCLAT.

Submissions

In the proceedings before the NCLAT, the Appellant, *inter–alia*, raised the followings contentions:

(1) The adjudicating authority had committed an error in rejecting its claim as Financial Debt/Creditor as it had paid a sum of INR 7 Crores to the Respondent. A receipt with respect to the said transaction had been issued to the Appellant and the payment has not been disputed by the Respondent.

(2) The Resolution Professional had wrongly classified its claim as "other creditors", despite the earnest money being classified as "other financial liability" in the Annual Financial Reports of the Respondent.

(1) Judgment dated July 22, 2022
(2) Company Appeal (AT) Insolvency Nos. 21-22 of 2022

(3) The CoC approved the resolution plan without taking into consideration the interests of all the stakeholders. No amount has been earmarked to the Appellant even though his claim had been admitted as other creditors. The plan envisages nil payment to other creditors. Thus, the plan is not in accordance with the provisions of Section 30 (2) (e) and Section 30 (2) (f) of the Code.

(4) The resolution plan has failed to state as to how the interest of all the stakeholders has been dealt with in compliance of Regulation 38(1-A) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons), Regulations, 2016.

While refuting the arguments raised by the Appellant, the Respondent, inter- alia, made the following submissions:

(1) The claim of the Appellant was rightly admitted in the category of "other creditors" as the Appellant is not a financial creditor. There was no contract between the Appellant and the Respondent for the sale of any land and the earnest money was advanced by the Appellant on its own.

(2) The NCLT was correct in holding that the essential conditions for holding a debt to be Financial Debt within the meaning of Section 5(8) of the Code were not present in this matter and therefore no error has been committed in not accepting the claim of the Appellant as a financial creditor.

(3) The Appellant as "other creditor" is not entitled to payment of any amount as per the provisions of the Code.

Main Issue for Consideration

Whether the payment of earnest money of INR 7 Crores by the Appellant to the Corporate Debtor is a financial debt within the meaning of Section 5(8) of the code?

Observations and Conclusion

The NCLAT referred to Section 5 (8) of the Code as well as the judgments pronounced in *Pioneer Urban Land and Infrastructure Ltd. Vs. Union of India(3)*, *"Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited and Ors(4)* and *Sach Marketing Pvt. Ltd. Vs. Resolution Professional of Mount Shivalik Industries Ltd(5)* and observed that, "For a debt to be financial debt, essential condition to be proved is that the debt is disbursed against the consideration for the time value of money and has a commercial effect of borrowing". Accordingly, it held that the disbursement made by the Appellant to the Corporate Debtor was only a payment of earnest money which was to be adjusted in sale of the land and the disbursement was not in consideration for the time value of money. It was also clarified that the acknowledgment of the liability of earnest money as a financial liability in the annual returns is not akin to admitting it as a "Financial debt". The NCLAT, relying on the judgment of *Essar Steel India Ltd. Committee of Creditors vs. Satish Kumar Gupta(6)* also observed that its powers of judicial review were limited to seeing whether while approving the resolution plan the CoC had taken into account the fact that the Corporate Debtor needs to be kept as a going concern, the need to maximise the value, and whether the interest of all the stakeholders have been taken care of. In the present case, there was no violation of the Section 30 (2) of the Code or Regulation 38 (1-A) of CIRP Regulations. The resolution plan did not contravene any of the provisions of the Code and in fact dealt with all the stakeholders concerns adequately. In its commercial wisdom, the CoC had decided to offer nothing to the "other creditors" which has been approved by the NCLT and does not require interference. Accordingly, the appeals were dismissed.

(3) (2019) 8 SCC 416 | (4) (2020) 8 SCC 401
(5) Company Appeal (AT) Ins. No. 180 of 2021 | (6) (2020) 8 SCC 531

Does dubbing of a film based on assigned copyrights by another person to whom separate rights are assigned in the same film constitute infringement?

A Single Judge bench of the Delhi High Court has recently, in the case of *JA Entertainment Pvt Ltd vs MS Sithara Entertainment and Ors.**(1)*** held that dubbing of a movie based on assigned copyright work by another person, to whom separate rights are assigned vis-à-vis the same copyright work, does not constitute infringement.

Facts

The Plaintiff approached Defendant No. 3, i.e., the producer of a Malayalam film 'Ayyappanum Kozhiyum' **("Film")** and the predecessor of Defendant No, 4, for assignment of Hindi remake rights of the said Film. Pursuant to negotiations, the Plaintiff and Defendant No. 3 and predecessor of Defendant No. 4 executed an Assignment Agreement dated May 13, 2020 **(Plaintiff's Assignment Agreement)** whereby the Hindi remaking rights along with the rights to remake and dub the said Film in Hindi along with the right to add subtitles to the said Film and its Hindi remake were assigned in favour of the Plaintiff.

In March 2022, the Plaintiff came across a trailer of a Telugu Film titled 'Bheemla Nayak' dubbed in Hindi ("Suit Film"). The Plaintiff immediately enquired from Defendant No. 3 about the nature of the rights assigned to Defendant No. 1 who is the producer of the Suit Film. The Defendant No. 3 stated that only limited rights had been assigned to remake the Film in Telugu and supplied the Plaintiff with the Deed of Assignment dated March 18, 2020 executed between Defendant No. 3 and Defendant No. 1. The Plaintiff upon learning that the exploitation rights of the Suit Film had been assigned to one Goldmine Telefilms Pvt. Ltd., issued a notice to Defendant No. 1 to Cease-and-Desist from releasing the Suit Film.

As Defendant No. 1 refused to comply with the requisitions of the said notice, the Plaintiff filed the present suit and subsequent interim application for ad-interim reliefs.

Submissions

The Plaintiff submitted that Defendant nos. 3 and 4 were the original owners of the Film and thus were protected under Section 14 of the Copyright Act, 1957 ("Act"). The Plaintiff by way of the Plaintiff's Assignment Agreement had legally acquired the rights to remake the Film in Hindi and dub the Film in any language, as assigned in their favour. The Plaintiff further submitted that Defendant No. 1's Deed of Assignment dated March 18, 2020 was only to remake the movie in Telugu and subtitle it in any language and thus the Defendant No. 1's act of dubbing the Suit Film in Hindi was an infringement of the Plaintiff's copyright viz. the said Film. The Plaintiff further submitted that as only limited rights in the Film were assigned to Defendant No. 1, Defendant No. 3 remained the owner of the original work by virtue of provisions of Section 18 of the Act. It was further submitted that the Film was not a new work and that the Defendants were required to pass the test of substantial similarity as laid down in *R.G. Anand vs Delux Films and Ors**(2)***.

The Defendant No. 1 submitted that by way of the Deed of Assignment dated March 18, 2020 the Defendant No. 1 had acquired copyrights in the story and for remaking and dubbing the Film into Telugu and subtitling rights into all Indian and world languages and to exploit the same in all formats and media and thus, the said assignment included the right to exploit the Suit Film into all formats including by dubbing the same. It was further submitted that the Deed of Assignment dated March 18, 2020 does not have any negative covenants restricting Defendant No. 1 from exploiting the rights in the remade film.

Defendant No. 1 further submitted that by virtue of the Deed of Assignment dated March 18, 2020, it was in fact the owner of the entire bundle of rights in the remade Suit Film and that the Suit Film had a new name, different star cast and songs thus making the Suit Film a distinctive and separate work. Defendant No. 1 also stated that since the Suit Film was a separate work, they had the complete right to dub or subtitle the said Suit Film in any language. Defendant No. 2 submitted that since the Suit Film was a completely new film, the copyrights in the said Suit Film were with the Defendant No. 1 and thus, the Defendant No. 1 had an unencumbered right to dub the Suit Film.

Analysis by the Court and Conclusion

The Court revisited the provisions of the Act and observed that on a conjoint reading of Sections 17, 2 (d) (v) and 2 (uu) of the Act, it is clear that the author of a work is the first owner of the copyrights related thereto and in relation to a cinematograph film, the producer is the author, and thus the owner of the first copyright vis-à-vis a cinematographic film. The Court thereafter analysed the concept of dubbing in light of the expression 'communication to the public' as defined under Section 2 (ff) of the Act. The Court thereafter referred to the judgement of the Division Bench of the Madras High Court in the matter of *Thiagrajan Kumararaja vs Capital Film Works (India) Pvt Ltd and Anr.**(3)*** wherein the Court had held that dubbing would fall within the ambit of the expression 'communicating to the public' and the producers/authors of the cinematograph film being the owners thereof, would inter alia have the right to both dub and subtitle their work subject to any restrictions. The Court observed that it was not the Plaintiff's case that the Suit Film made by the Defendant No. 1 infringes the copyright of the Plaintiff and had in fact themselves accepted the fact that the Suit Film was completely new.

The Court observed that the Plaintiff's case actually was that the dubbing of Suit Film into Hindi would infringe their copyrights. In order to answer this controversy, the Court revisited the Deed of Assignment dated March 18, 2020 and Plaintiff's Assignment Agreement, and observed that in the former, Defendant No. 3 had assigned the entire rights for remaking and dubbing the said Film in Telugu and subtitling it in all Indian and world languages with the power to alter, delete, add, modify the story and screenplay, renouncing all his rights in the new Telugu film produced or dubbed, whereas in the later agreement, Defendant No. 3 and predecessor to Defendant No. 4 had assigned rights to inter alia make a new cinematograph film based on the Film and the underlying works in Hindi and the right to dub the Film in Hindi or any other language with the right to dub the Hindi film. The Court further observed that *prima facie* the Plaintiff had been assigned the right to remaking and dubbing the Film and *inter alia* included the right to make a new cinematographic film in Hindi with the right to dub the Film in Hindi or any other language and that the right to remake the film in Telugu was not assigned to the Plaintiff. Under the provisions of Section 51 of the Act, a copyright is deemed to be infringed when any person without licence from the owner or registrar or in contravention of the licence conditions, does anything which only the owner can do. The Court stated that since the rights granted to the Plaintiff was not encroached upon by Defendant Nos. 1 and 2, prima facie, there was no case of infringement. The Court further observed that the Plaintiff in light of the Deed of Assignment dated March 18, 2020 cannot have any grievance over the exploitation of the Suit Film in Hindi as the Defendant No. 1 was within his rights to do so. The Court further observed that *prima facie* Defendant No. 2 was the owner of the Suit Film in light of the Deed of Assignment dated March 18, 2020 and the *Thiagrajan Kumararaja**(4)*** judgement and thus was fully within his right to dub the said film. The Court prima facie found that the Plaintiff did not have a cause of action, and thus vacated the previous ad-interim injunctions and disposed of the said interim application.

(1) I.A. No. 4813 of 2022 CS (COMM) 191 of 2022
(2) (1978) 4 SCC 118 | (3) 2017 SCC OnLine Mad 37588 | (4) (supra)

JUDGEMENTS

In the matter of M/s Solid Financial Technologies Private Limited ("Company") for violation of Section 12(3)(c) of the Companies Act, 2013 ("Act")

The Company had filed e form INC-24 on October 22, 2021 with the Registrar of Companies, Bangalore ("ROC") for change in name. While inspecting the aforesaid form and its attachments, it was noticed by the ROC that the Corporate Identity Number ("CIN") was not mentioned on the letterhead of the Company which was a violation of section 12(3)(c) of the Act.
The Company filed an adjudication application on directions of the ROC for non-compliance of the provisions of Section 12(3)(c) of the Act. The Company submitted that the mistake occurred inadvertently and it was immediately rectified.
ROC concluded that it was a one-time default and imposed a token penalty of INR 7,000/- on the Company and INR 2,000/- on every director of the company for the aforesaid violation.

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In the matter of M/s Metro Enviropark Private Limited ("Company") for violation of Section 173 of the Companies Act, 2013 ("Act")

The CompThe Company suo-moto filed an adjudication application to the Registrar of Companies, Karnataka ("ROC") for violation of section 173 of the Act. The Company submitted that, its board meeting was held in the financial year 2019-20 on September 3, 2020 and accordingly the next board meeting was due to be held within 120 days from the previous one, i.e., on or before January 1, 2021. However, the Company convened its next board meeting on April 30, 2021. Hence, the officer who was entrusted with the responsibility of issuing notices for convening Board meetings violated the provisions of section 173 of the Act. The hearing was held on June 17, 2022 and the ROC concluded the matter by imposing a penalty of INR 25,000/- on Shri. Pawan Kumar Jain, the director of the Company who was designated as an officer in default.

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In the matter of M/s Chariot World Tours Limited ("Company") for violation of Section 123 of the Companies Act, 2013 ("Act")

The board of directors of the Company declared a dividend of INR 3/- on every fully paid-up equity share of INR 10/- each, which was approved by the shareholders of the Company on December 30, 2021. As per the provisions of Section 123 of Act, the amount of dividend was required to be deposited in a separate bank account within 5 days from the declaration of dividend, i.e., by January 4, 2022. However, the Company transferred the dividend amount on January 5, 2022, thereby violating the provisions of Section 123 of the Act by one day.

The Registrar of Companies, Bangalore concluded this matter by imposing a penalty of INR 10,000 each on the Company and its Managing Director for violation of Section 123 of the Act.

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JUDGEMENTS

In the matter of M/s SDU Holdings Private Limited ("Company") for violation of Section 88 of the Companies Act, 2013 ("Act")

During the course of an inquiry under section 206 of the Act, it was noticed by the Registrar of Companies, Bangalore ("ROC") that the register of members maintained in Form No. MGT-1 by the Company was incomplete. Hence, there was a violation of provisions of section 88 of the Act.

The ROC issued the hearing notice to the Company and its officer. The Company admitted that the default was made and also informed that the said offence has been made good by updating the registerof members as per the provisions of section 88 of the Act. The ROC concluded the matter by imposing a penalty of INR 3,00,000/- on the Company and INR 50,000/- on its whole-time director for the violation of Section 88 of the Act.

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SEBI issues Circular on Investor Grievance Redressal Mechanism

On 4 July 2022, the Securities and Exchange Board of India **("SEBI")** issued a Circular on "Investor Grievance Redressal Mechanism and Amendment to SEBI Circular no. SEBI/HO/DMS/CIR/P/2017/15 dated 23 February 2017". In terms of the circular, the following has been implemented:

(a) Online Web Based Complaints Redressal System:

SEBI has implemented an online platform (SCORES) designed to help investors to lodge their complaints, pertaining to securities market, against listed companies and SEBI registered intermediaries.

In line with the above, to enable investors to lodge and follow up their complaints and track the status of redressal of such complaints from anywhere, all Recognized Stock Exchanges including Commodity Derivatives Exchanges/Depositories are advised to design and implement an online web based complaints redressal system of their own, which will facilitate investors to file complaints and escalate complaints for redressal through Grievance Redressal Committee (GRC), arbitration, appellate arbitration etc. in accordance with their respective byelaws, rules and regulations. The above redressal mechanism shall be implemented within 6 months from the issuance of this circular. The salient features of the system are enclosed as an Annexure to this Circular. The system is intended to expedite redressal/disposal of investors' complaints as it would also obviate the need for physical movement of complaints.

Further, the possibility of loss, damage or misdirection of the physical complaints would be avoided. It would also facilitate easy retrieval and tracking of complaints at any time.

(b) Hybrid Mode of Conducting GRC and Arbitration/Appellate Arbitration:

During COVID, stock exchanges were advised to conduct GRC and arbitration/appellate arbitration meetings/hearings online for faster redressal of complaints. Due to the online process being time and cost efficient, SEBI decided that the stock exchanges shall continue with the hybrid mode (i.e., online and offline) of conducting GRC and arbitration/appellate arbitration process. The Depositories shall follow the hybrid mode (that is online and offline) of conducting GRC and arbitration/appellate arbitration process.

(c) Amendment to SEBI Circular no. SEBI/HO/DMS/CIR/P/2017/15 dated 23 February 2017:

Clause 1.J.(iii) of the SEBI circular dated 23 February 2017 on amendments pursuant to comprehensive review of Investor Grievance Redressal Mechanism stands replaced as under:

1.J. Speeding up grievance redressal mechanism

"(iii) A client, who has a claim/counter claim upto INR 20 Million and files arbitration reference, will be exempted from payment of the fees specified in Clause 1.J.(i)."

Requirement for obtaining prior approval in case of takeover/acquisition of control of non-bank PSOs and sale/transfer of payment system activity of non-bank PSO

On 4 July 2022, the Reserve Bank of India **("RBI")** issued a notification, amending the M&A norms for non-bank payment system operators **(PSOs)** and introduced the requirement of obtaining prior approval in case of takeover/acquisition of control of a non-bank PSO and sale/transfer of payment system activity of a non-bank PSO **("Notification")**.

RBI reviewed the operations of non-bank PSOs (authorised to operate any Payment System) and notified that they shall require prior approval of RBI in the following cases –

(a) Takeover/Acquisition of control, which may/may not result in change of management.

(b) Sale/Transfer of payment activity to an entity not authorised for undertaking similar activity.

The notification provides that non-bank PSOs shall inform RBI within 15 calendar days in the following cases –

(a) Change in management/directors.

(b) Sale/Transfer of payment activity to an entity authorised for undertaking similar activity.

As a result of the Notification, non-bank PSOs would require prior approval of the RBI in the following cases:

(a) Takeover/acquisition of control, which may or may not result in change of management: In such case, the transferor non-bank PSO shall apply to RBI along with the required information about the proposed directors and complete details about the new shareholders.

(b) Sale/transfer of payment activity to an entity which is not authorised by RBI for undertaking similar activity: In such cases, while the seller entity shall apply to RBI for prior approval, the transferee entity shall apply to RBI for authorisation to carry on the payment activity. In addition to this, the seller entity shall be required to surrender its certificate of authorisation and the transferee entity shall be liable for complying with any regulatory/supervisory action taken by RBI for the period prior to the sale/transfer.

In the above-mentioned cases, the RBI shall endeavour to respond within 45 days after receipt of the complete details from both the entities.

The Notification prescribes the requirement of prior public notice, as follows:

(a) After obtaining RBI approval, a public notice shall be given at least 15 calendar days before effecting the change. The public notice shall indicate the intention and reasons for such changes, particulars of the entities concerned, etc. The notice shall be published in at least one leading national and in one leading local vernacular newspaper (covering the place of the registered office of the respective entities).

(b) The seller/transferor non-bank PSO shall also be required to inform all the stakeholders (agents, bankers, customers, merchants, etc.) of the changes, at least 15 calendar days before effecting the change.

The Notification also prescribed that the authorised non-bank PSO shall inform DPSS, CO, RBI within 15 calendar days in the following cases:

(a) Change in management/directors of non-bank PSO: In such cases, an intimation would need to be filed along with complete details of the directors. Upon receipt of intimation, the RBI would examine the fit and proper status of the management/directors, and if required, may place suitable restrictions.

(b) Sale/Transfer of payment activity to an entity authorised for undertaking similar activity: the entities shall be required to give a public notice at least 15 calendar days before the actual sale/transfer. The public notice shall indicate the intention and reasons for such changes, particulars of the entities concerned, etc.

The notice shall be published in at least one leading national and in one leading local vernacular newspaper (covering the place of the registered office of the respective entities). The seller/transferor non-bank PSO shall also be required to inform all the stakeholders (agents, bankers, customers, merchants, etc.) of the changes at least 15 calendar days before actual sale/transfer.

Overseas foreign currency borrowings of Authorised Dealer Category-I banks

On 7 July 2022, RBI issued a notification on "Overseas foreign currency borrowings of Authorised Dealer Category-I banks".As announced, in paragraph 4 of the press release on Liberalisation of Forex Flows dated 6 July 2022, Authorised Dealer Category 1 banks (AD Cat-I) can utilise the funds raised from overseas foreign currency borrowings between 8 July 2022 and 31 October 2022 (both dates included) in terms of paragraph Part-C(5)(a) of the Master Direction - Risk Management and Inter Bank Dealings dated 5 July, 2016, for lending in foreign currency to constituents in India.
Such lending shall be subject to the end-use prescriptions as applicable to External Commercial Borrowings (ECBs) in terms of paragraph 2.1(viii) of the Master Direction - External Commercial Borrowings, Trade Credits and Structured Obligations dated 26 March, 2019, as amended from time to time. This facility will be available till the maturity/repayment of the overseas foreign currency borrowings.

Investment by Foreign Portfolio Investors (FPI) in Debt - Relaxations

On 7 July 2022, RBI issued a notification on "Investment by Foreign Portfolio Investors **(FPIs)** in Debt-Relaxations". In reference to the press release on “Liberalisation of Forex Flows” dated 6 July 2022 regarding relaxations in the regulatory regime under the Medium-Term Framework, the Foreign Exchange Management (Debt Instruments) Regulations, 2019 and the Circular No.31 dated 15 June 2018 (hereinafter “Directions”), the following relaxations have been made:

(a) In terms of paragraphs 4(b)(i) and 4(b)(ii) of the Directions, short-term investments by an FPI in government securities (Central Government securities, including Treasury Bills and State Development Loans) and corporate bonds shall not exceed 30% of the total investment of that FPI in any category. RBI has now decided that investments by FPIs in government securities and corporate bonds made between 8 July 2022 and 31 October 2022 (both dates included) shall be exempted from the limit on short-term investments till maturity or sale of such investments.

(b) In terms of paragraph 4(b)(ii) of the Directions, FPI investments in corporate bonds were subject to a minimum residual maturity requirement of one year. RBI has now decided to allow FPIs to invest in commercial papers and non-convertible debentures with an original maturity of up to one year, during the period between 8 July, 2022 and 31 October, 2022 (both dates included). These investments shall be exempted from the limit on short-term investments till maturity or sale of such investments. These directions shall be applicable with immediate effect.

‘Fully Accessible Route’ (FAR) for Investment by Non-residents in Government Securities – Additional specified securities

On 7 July 2022, RBI introduced the FAR in pursuance of the announcement made in the Union Budget 2020-21 that certain specified categories of Central Government securities would be opened fully for non-resident investors without any restrictions, apart from being available to domestic investors as well, vide

Circular No. 25 dated 30 March 2020. The Government Securities that were eligible for investment under the FAR ('specified securities') were notified by the Bank, vide circular no. FMRD.FMSD.No.25/14.01.006/2019-20 dated 30 March 2020. In addition, RBI decided to designate the two securities listed in the following Table as well as all new issuances of Government securities of 7-year and 14-year tenors as 'specified securities' under the FAR. Accordingly, these securities will, henceforth, be eligible for investment under the FAR.

(1) ISIN - IN0020220011 | Security - 7.10% GS 2029
(2) ISIN - IN0020220029 | Security - 7.54% GS 2036

These directions shall be applicable with immediate effect.

International Trade Settlement in Indian Rupees (INR)

On 11 July 2022, RBI, in order to promote growth of global trade with emphasis on exports from India and to support the increasing interest of global trading community in INR, decided to put in place an additional arrangement for invoicing, payment, and settlement of exports/imports in INR. Before putting in place this mechanism, AD banks shall require prior approval from the Foreign Exchange Department of Reserve Bank of India, Central Office at Mumbai. The broad framework for cross border trade transactions in INR under Foreign Exchange Management Act, 1999 (FEMA) is as delineated below:

(a) Invoicing: All exports and imports under this arrangement may be denominated and invoiced in Rupee (INR).

(b) Exchange Rate: Exchange rate between the currencies of the two trading partner countries may be market determined.

(c) Settlement: The settlement of trade transactions under this arrangement shall take place in INR in accordance with the procedure laid down in Para 3 of this circular.

In terms of Regulation 7(1) of Foreign Exchange Management (Deposit) Regulations, 2016, AD banks in India have been permitted to open Rupee Vostro Accounts. Accordingly, for settlement of trade transactions with any country, AD bank in India may open Special Rupee Vostro Accounts of correspondent bank/s of the partner trading country. In order to allow settlement of international trade transactions through this arrangement, RBI has been decided that:

(a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller/supplier.

(b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

Documentation: The export/import undertaken and settled in this manner shall be subject to usual documentation and reporting requirements. Letter of Credit (LC) and other trade related documentation may be decided mutually between banks of the partner trading countries under the overall framework of Uniform Customs and Practice for Documentary Credits (UCPDC) and incoterms. Exchange of messages in safe, secure, and efficient way may be agreed mutually between the banks of partner countries. The Circular also, inter-alia, provides for advance against exports, reporting requirements, setting-off of export receivables, bank guarantee, etc.

SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022

On 25 July 2022, SEBI issued the "SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022" which comes into effect from the same date. These amendment regulations amend the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. This amendment regulation has been issued so as to:

(i) Amend regulation 2, sub-regulation (1):

(A) in clause (h), after the words and symbol "mutual funds," and before the words "and any other", the words "Zero Coupon Zero Principal Instruments" shall be inserted.

(B) after clause (zn), the following clause (zo) shall be inserted namely—

"(zo) the expressions "For Profit Social Enterprise", "Not for Profit Organization", "Social Enterprise", "Social Stock Exchange", "draft fund raising document", "final fund raising document", "fund raising document", "Social Auditor" and "Social Audit Firm" shall have the same meaning as assigned to them in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulation, 2018;"

(ii) insert Chapter IX- A (Obligations of Social Enterprises) within the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The provisions of this chapter shall be applicable to; (a) a For Profit Social Enterprise whose designated securities are listed on the applicable segment of the Stock Exchange(s) and (b) a Not for Profit Organization that is registered on the Social Stock Exchange(s).

SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022

On 25 July 2022, SEBI issued the "SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022" which comes into effect from the same date. These amendment regulations have been brought forth by SEBI in order to amend the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. This amendment regulation has been issued so as to insert Chapter X-A (Social Stock Exchange) within the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. The provisions of this chapter shall apply to; (a) a Not for Profit Organization seeking to only get registered with a Social Stock Exchange; (b) a Not for Profit Organization seeking to get registered and raise funds through a Social Stock Exchange; (c) a For Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2022

On 25 July 2022, SEBI issued the "SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2022". These amendment regulations have been brought forth by SEBI in order to amend the SEBI (Alternative Investment Funds) Regulations, 2012 as follows.

(a) In sub-regulation (1) of regulation 2, i. After clause (q), the following clause (qa) shall be inserted, namely, -
"(qa) "not for profit organization" shall have the same meaning as assigned to it in clause (e) of regulation 292A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;"

(b) after clause (t), the following clauses (ta), (tb), (tc) and (td) shall be inserted, namely, -

"(ta) "social enterprise" shall have the same meaning as assigned to it in clause (h) of regulation 292A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;

(tb) "social impact fund" means an Alternative Investment Fund which invests primarily in securities, units or partnership interest of social ventures or securities of social enterprises and which satisfies the social performance norms laid down by the fund;

(tc) "social stock exchange" shall have the same meaning as assigned to it in clause (i) of regulation 292A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;

(td) "social units" means units issued by a social impact fund or schemes of a social impact fund to investors who have agreed to receive only social returns or benefits and no financial returns against their contribution;"

(c) In regulation 3, in sub-regulation (4), in clause (a), the words "social venture funds" shall be substituted with the words "social impact funds".There are further amendments prescribed under this circular.

Restriction on Storage of Actual Card Data

On 28 July 2022, RBI issued a notification on "Restriction on Storage of Actual Card Data (that is Card-on-File (CoF))". RBI decided that with effect from 1 October 2022, no entity in the card transaction / payment chain, other than the card issuers and / or card networks, shall store CoF data, and any such data stored previously shall be purged.
On a review of the issues involved and after detailed discussions thereon with all stakeholders, as also keeping in view that sufficient time has elapsed since the requirements were specified, the following are advised –
(a) There shall be no change in the effective date of implementation of the requirements – all entities, except card issuers and card networks, shall purge the CoF data before 1 October 2022.
(b) For ease of transition to an alternate system in respect of transactions where cardholders decide to enter the card details manually at the time of undertaking the transaction (commonly referred to as "guest checkout transactions"), the following are being permitted as an interim measure –
(i) Other than the card issuer and the card network, the merchant or its Payment Aggregator (PA) involved in settlement of such transactions, can save the CoF data for a maximum period of T+4 days ("T" being the transaction date) or till the settlement date, whichever is earlier. This data shall be used only for settlement of such transactions, and must be purged thereafter.
(ii) For handling other post-transaction activities, acquiring banks can continue to store CoF data until 31 January 2023.
Appropriate penal action, including imposition of business restrictions, shall be considered by the RBI in case of any non-compliance.

Regulation of Payment Aggregators – Timeline for submission of applications for authorisation – Review

On 28 July 2022, RBI issued a notification on "Regulation of Payment Aggregators – Timeline for submission of applications for authorisation – Review". Reference is invited to Reserve Bank of India (RBI) circulars DPSS.CO.PD.No.1810/02.14.008/2019-20 dated 17 March 2020 and CO.DPSS.POLC.No.S33/02-14-008/2020-2021 dated 31 March 2021 on "Guidelines on Regulation of Payment

In terms of these circulars, online non-bank Payment Aggregators (PAs) – existing as on 17 March 2020 – were required to apply to RBI by 30 September 2021 for seeking authorisation under the Payment and Settlement Systems Act, 2007 (PSS Act).

It is observed that applications received from some payment aggregators (PAs) had to be returned as they had not complied with eligibility criteria, including the minimum net worth criterion of INR 150 Million by 31 March 2021. This also implied that they have to discontinue their operations within a period of 6 (six) months from the date of return of application. Though they have the option to apply afresh on meeting the prescribed criteria, ceasing operations may lead to disruption in payment systems. It is also possible that some PAs had not applied to RBI due to non-fulfilment of eligibility criteria.

Keeping in view the disruption caused by the COVID-19 pandemic, and to ensure smooth functioning of the payments ecosystem, RBI decided to allow another window to all such PAs (existing as on 17 March 2020) to apply to RBI. They can apply by 30 September 2022 and shall have a net worth of INR 150 Million as on 31 March 2022. They shall be permitted to continue their operations till they receive communication from RBI regarding the fate of their application. The timeline of 31 March 2023 for achieving the net worth of INR 250 Million shall, however, remain.All other provisions of the circulars referred above, shall continue to be applicable.

Addendum to SEBI Circular on Development of Passive Funds

On 28 July 2022, SEBI issued a Circular on "Addendum to SEBI Circular on Development of Passive Funds". This has reference to SEBI circular No. SEBI/HO/IMD/DOF2/P/CIR/2022/69 dated 23 May 2022 on “Development of passive funds”.

provisions of the said circular are applicable with effect from 1 July 2022. Clause 2(IV)(A) of the aforesaid circular prescribed that in respect of units of exchange traded funds (ETFs), direct transaction with AMCs shall be facilitated for investors only for transactions above a specified threshold of INR 250 Million.
Subsequently, feedback was received from stakeholders expressing certain challenges with respect to implementation of the above clause. Considering the same, SEBI decided that the applicability of clause 2(IV)(A) of the circular shall be 1 November 2022.

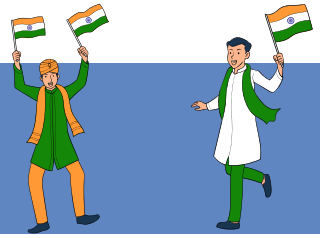
Framework for automated deactivation of trading and Demat accounts in cases of inadequate KYCs

On 29 July 2022, SEBI issued a circular on "Framework for automated deactivation of trading and Demat accounts in cases of inadequate KYCs". SEBI via various circulars which have been issued from time to time, mandated that addresses form a critical part of the Know Your Client (KYC) procedures. Thus, every address recorded for the purpose of compliance with KYC procedure has to be accurate. An intermediary has to update the address from time to time.

However, it has been observed that in some cases accurate/ updated addresses of clients are not maintained. This is borne out of the fact that when SEBI issues any notices, etc. during the course of any enforcement proceedings on such addresses, the same remain unserved.

To ensure that the client furnishes accurate/ updated details of the address and to ensure that KYC details are correct, a framework involving stock exchanges (except commodity derivatives exchanges) and depositories has been issued in this circular. The framework described in this circular shall come into effect from 31 August 2022.

Off Beat Section



Unsung Heroes of India's freedom struggle
Paying tribute to India's freedom fighters

On this prestigious occasion of celebrating 75 Years of Independence of India, The Government of India has celebrated it with great excitement and paid tribute to our freedom fighters. In this edition, lets recall and remember forgotten female heroes of our freedom struggle.

Nirmalnalini Ghosh

A staunch nationalist, Nirmalnalini Ghosh(1893-1976) represents a unique case of a housewife sacrificing her family life for the sake of the freedom struggle. In those days, few women could come out of their domestic shells to take part in the movement.

Nanibala Bandyopadhyay Devi

The first and the only lady State Prisoner of British Bengal arrested under the notorious Bengal Regulation III of 1818, the life story of Nanibala Bandyopadhyay(1888 – 1967) reads like a novel.

Bimalpratibha Debi

Bimalpratibha Debi(1901-1978) spent most of her eventful life in Bengal. She had her initiation into nationalism from her father, Surndranath Mukhopadhyay of the Prabartak Samgha. In 1927, she became the president of the Nikhil Bharat Naojoan Sabha of which Bhagat Singh was the all India president.

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