DUA ASSOCIATES
THE BRIEFCASE

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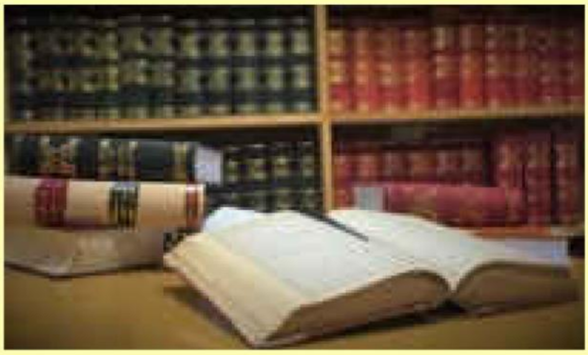

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NEWS AND NEWS MAKERS AT DUA ASSOCIATES

INSIGHTS

I. STAMP DUTY ON ISSUANCE OF SHARES – RECENT AMENDMENTS

The recent amendments to the Indian Stamp Act, 1899 ("**Indian Stamp Act**"), have come into effect on and from July 01, 2020, by way of a Notification dated March 30, 2020, issued by the Ministry of Finance, Government of India. The said amendments to the Indian Stamp Act were made pursuant to the Finance Act, 2019 ("**Finance Act**"). These amendments *inter alia* aim to create a mechanism to enable States to collect stamp duty on securities and market instruments, at one place, by one agency (i.e., through the Stock Exchange or Clearing Corporation authorised by it, or by the Depository), on one instrument. The amendments further prohibit States from *charging* or *collecting* stamp duty on security transactions, for which the Stock Exchange, Depository and/ or Clearing Corporations, have been designated to collect the stamp duty.[1] Such security transactions, as per the amendments, cover not only transfer of shares, but also the *issuance of shares*.[2] The stamp duty payable for the issuance of securities (other than debentures) is 0.005% of the market value of such securities. The definition of 'securities' includes, within its scope, shares as well.

The amendments to the Indian Stamp Act envisage a significant change in the manner in which stamp duty is levied and collected in relation to the issue, sale or transfer of securities. While on one hand, the amendments to the Indian Stamp Act are expected to support compliance, and discourage motivations for 'rate shopping', by recommending lower and uniform rates for each instrument across the country, it may be noted that the amendments made in relation to the issuance of shares will be required to be approved and notified by State legislatures as well.

Article 246 of the Constitution stipulates that the Central Government has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule ("**Union List**"), and the Legislature of any State has exclusive power to make laws, for such State, or any part thereof, with respect to any of the matters enumerated in List II in the Seventh Schedule ("**State List**").

Accordingly, the Central Government, as per Entry 91, in the Union List, has the sole authority to prescribe the rate of stamp duty in respect of '*bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, <u>transfer of shares</u>, debentures, proxies and receipts*', as they appear in the Union List, and the State Government has the sole authority to prescribe the rate of stamp duty in respect of items not covered under the Union List, as per Entry 63 of the State List. In this regard, it is relevant to note that the Union List does not include the power to fix the rate of stamp duty for the issuance of shares. The Finance Act, however, has now prescribed the rate of stamp duty for the *<u>issue of securities</u>*. As stated above, in terms of Section 2(23A) of Indian Stamp Act, the term "securities" includes shares as well.

In case of States which do not have their own stamp duty legislation, the rates as set out in Schedule I of the Indian Stamp Act will be applicable. In other States, like Karnataka for example, the legislature has set out the stamp duty applicable for various instruments under the State's own stamp duty legislation. As per Section 72(2) of the Karnataka Stamp Act, 1957 ("**KS Act**") the rates prescribed under the Indian Stamp Act have been made non-applicable to items listed under Entry 63 of the State List, and Entry 44 of Concurrent List (List III).

The amended stamp duty rate prescribed by the Finance Act stipulates that for issue of security (other than debenture), a stamp duty of 0.005% shall be payable. However, as per Article 16 of the Schedule to the KS Act,

[1] Refer to Section 9A(3) of the Indian Stamp Act.
[2] Refer to Section 9A of the Indian Stamp Act.

the duty payable on the issue of a certificate or document evidencing a right or title to any share, is 0.1%. As per Section 3 of the KS Act read with the definition of 'instrument' under Section 2(j) of the KS Act, the term 'document' liable to duty, includes a 'record maintained in an electronic form', which includes dematerialised shares. Therefore, the stamp duty rate set out in Article 16 of the Schedule to the KS Act should apply to the issue of dematerialised shares and not the rates set out in the Indian Stamp Act.

As per the press release issued by the Ministry of Finance, the amendments have been introduced to the Indian Stamp Act *after due deliberations and consultations with the States.*[3] It is therefore expected that the state legislatures will incorporate changes to their respective stamp duty legislations to ensure alignment with the recent amendments to the Indian Stamp Act.

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II. LIABILITY OF ENDORSERS – FINALLY CODIFIED

"*With great power comes great responsibility*", the proverb that was popularised by our friendly neighbour Spider-man, is what best explains what will now be expected from celebrities while endorsing any product or service. The Consumer Protection Act, 2019 ("**COPRA 2019**") that has now replaced the erstwhile Consumer Protection Act, 1986 has introduced some significant changes with several far-reaching implications for all concerned. The new framework strives for stronger protection of consumer rights, easier processes for consumers to file complaints, mediation of disputes and stricter provisions for product liability. There are also specific provisions relating to e-commerce, direct selling, penalties for misleading advertisements, celebrity endorsements and the appointment of a new authority to regulate consumer matters.

Ever since the Indian economy opened up and right through the progress of the modern business environment in the 1990s, advertising has undoubtedly emerged as one of the most important and strongest marketing tools for all businesses. A vast majority of the advertisements feature celebrities. The two most dominant categories of celebrities ruling the roost in the advertising industry are film stars and sportspersons, specially the cricketers. Of course the impact of advertisement is time tested. Ours is an idol crazy country where celebrities, and particularly film stars and cricketers are worshipped like Gods. It is only natural that when people see their idols endorsing any product or service, invariably they tend to emulate their heroes, perhaps with the endeavour to get some sense of proximity with the lifestyle which they could otherwise only dream of. Celebrities have often become synonymous with the brands that they endorse. In fact, as per the Duff and Phelps celebrity Brand Valuation Report 2018, celebrity led endorsements have increased from 650 endorsements in 2007 to 1660 endorsements in 2017, representing a steady compounded annual growth rate of 10%. Given how blindly the masses follow what their revered stars endorse, morally speaking, it is paramount for the celebrities to ensure that the claims made in their endorsements are correct and not misleading.

Although this has been subject matter of debates on various occasions including in some court cases, but arguably there did not exist any codified law in India stipulating obligation and liability on the part of an endorser for making misleading claims. The pitch of the debate often heated where any celebrity made irresponsible and unsubstantiated claims about a product or service. In this regard, the Code for Self-Regulation of Advertising Content in India issued by the Advertising Standards Council of India ("**ASCI Code**") provided certain guidelines for celebrities stipulating, *inter-alia*, that the claims made in celebrity endorsements should not be misleading, false or unsubstantiated. The celebrities were expected to conduct sufficient due diligence of the claims and

[3] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1635399

statements in relation to the product/service being endorsed in order to ensure the veracity of their claims. However, the ASCI Code being voluntary in nature, did not really provide any statutory sanctions or penalties for any misleading or false claims advertised by the celebrities.

With the advent of COPRA 2019, the entire paradigm of endorsements is definitely going to now get regulated. This new law clearly casts an obligation upon an endorser or a person advertising a product or service to be certain of the claims made in its advertisement. 'Endorsement' in relation to an advertisement has been defined to mean: (*i*) any message, verbal statement, demonstration; or (*ii*) depiction of the name, signature, likeness or other identifiable personal characteristics of an individual; or (*iii*) depiction of the name or seal of any institution or organisation, which makes the consumer to believe that it reflects the opinion, finding or experience of the person making such endorsement. Applying this to the ever growing social media and digital marketing platforms, it will necessarily include the latest category of celebrities, that is, the 'social influencers' as well. This definition further makes it crystal clear that the very fact that a person is making an endorsement by way of an advertisement actually assumes that the core intention of such an endorsement is to make the consumers believe that it reflects the opinion, finding or experience of the person making such endorsement, that is, based on some diligence by the endorser.

Section 21 of COPRA 2019, which has come into effect on July 24, 2020, now provides for penalties for misleading advertisements made by endorsers. Pursuant to the said provisions, if the relevant authority under COPRA 2019, being the Central Consumer Protection Authority ("**Central Authority**") is satisfied after investigation, that any advertisement is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights, it may issue directions to discontinue such advertisement or to modify the same in such manner and within such time as it may specify. The Central Authority may also impose a penalty on the endorser of the false or misleading advertisement which may extend to ten lakh rupees (approx. USD 13,500) and up to fifty lakh rupees (approx. USD 67,500) for every subsequent contravention. The Central Authority may also prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year and up to three years for every subsequent contravention.

As for the defence available to the endorsers, COPRA 2019 stipulates that no endorser shall be liable to a penalty as mentioned above, if he/she has exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed. In other words, if the endorser cannot demonstrate that it has done the requisite due diligence to verify the veracity of the claims, there is no way the endorser will escape penalty if the advertisement were to fall foul of the provisions of the COPRA 2019.

Undoubtedly, these changes are welcome and they seem to have factored in various issues that have been raised time and again about accountability of the celebrities, particularly given the fan following they enjoy. These also seem to have factored in the core essence of the ASCI Code in relation to responsibilities of endorsers. That said, these provisions will fundamentally alter the way in which contracts between celebrities / social influencers and such companies / brands are negotiated and drawn out as the celebrities / social influencers would naturally seek to safeguard themselves against potential claims. As the celebrities will now have far greater responsibility / liability, it will not be unusual for them to insist on detailed representations and indemnities from the companies / brands in relation to various features and qualities of the product and services as well as in relation to compliance with the provision of COPRA 2019. Jurisprudence that can only be developed with time will determine the standards of due diligence to be exercised by the celebrities / social influencers for evading penalties / actions by the Central Authority.

These provisions should ensure that companies and more importantly, the celebrities as well as social influencers, are far more responsible in relation to the products and / or services they endorse and the claims they make. There is no chance that they can claim ignorance about the real facts by saying that they were provided with a script. That is simply not going to be enough and they ought to act more responsibly.

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III. COVID – THE CREATOR OF IMMUNITY BOOSTERS

'Immunity', one of the many buzzwords that popped up when the COVID pandemic struck, is now a much talked about subject, replacing even the weather when it comes to making small talk. Never before has immunity assumed such importance, and true enough, the market is now flooded with all kinds of 'immunity boosters' that hold out various promises to potential consumers. Now, an 'immunity booster' may not have been taken very seriously, and the efficacy of immunity boosters have been questioned and have even been disregarded, not so long ago. Enter 'COVID', and things have changed overnight. While the cause and effects of this dreaded virus remain unknown, to a very large extent, in the short time that it has wreaked havoc across the world, cases have demonstrated that a healthy and strong immune system remains the key to battling the coronavirus and to hopefully emerging unharmed. As a result, immunity boosters, in their various forms, have found their way into the lives of people like never before.

Products which are termed as 'immunity boosters' or products which can generally help with the well-being of a person, can primarily be consumed in two forms, food and medicines. While medicines are strictly governed by the Drugs and Cosmetics Act, 1940, and a consumer would usually take such medicines with a prescription or advice from a doctor, foods are more freely available and consumed, with the choice of consumption being almost entirely that of the consumer. It is also observed that a large number of the immunity boosters are being introduced and sold as 'food', rather than as a medicine/ drug, possibly for the reason that now products such as nutraceuticals, health supplements, food for special dietary use, food for special medical purpose, etc., are all classified as food products governed by the Food Safety and Standards Act, 2006.

The promotion of foods, today, specifically immunity boosters, lies with the manner in which these products are advertised, and the claims that are being made in relation thereto. Advertising, which includes the making of statements and claims in relation to these products is regulated through a myriad of laws, with the principal legislation being the Food Safety and Standards Act, 2006, under which the Advertising and Claims Regulations are formulated. In addition, the code formulated by the Advertising Standards Council of India, and known as the 'ASCI Code', though a voluntary set of guidelines, is something that the industry should pay close attention to. While the FSSA is something which has been around for a while now, and the basic premise of this law is that advertisements and claims must be truthful and should always be substantiated with appropriate/ adequate scientific evidence, the Advertising and Claims Regulations were specifically drafted to regulate advertisements and claims, and was brought into being, as recent as in 2018. To add to this, the Consumer Protection Act, 2019 was recently brought into force in July, 2020, and this Act while regulating misleading advertisements, has introduced a close monitoring of 'endorsers' of products, and even sets out a penalty for such endorsers, when there is a misleading advertisement. Towards this end, the Central Consumer Protection Authority has recently issued a set of draft guidelines, seeking comments and suggestions from stakeholders, for the prevention of false or misleading advertisements as well for due diligence to be carried out for endorsements.

Advertisements and claims, therefore, today, have to be created with extreme caution, keeping in mind the multiple laws which regulate this. The claims and statements, being made, must be capable of being substantiated with proper evidence, failing which, questions could be raised, resulting in the requirement of having to either modify the claim, or even remove the claim in relation to a product. Anyone intending to advertise a product should ensure that such claim, statement or advertisement, not only complies with the positive requirements in the law, but also does not fall within that which has been prohibited. For instance, the FSSA frowns upon claims and statements being made, which state that a food product has curative or preventive effects and is something that can possibly prevent a disease or cure one.

To discuss immunity boosters and products which are generally for the wellbeing of people, the level of scrutiny would be much higher, in comparison to a product which would not be making such challenging claims, such as a product of water or a staple, like rice, etc. Advertising and human psychology are closely linked, and most advertisements are known to, and more often intended to, reach the subconscious mind of a targeted consumer. The situation today, with the COVID pandemic, could, at times, tempt a marketer to make claims which could have an exaggerating effect, without a real intention to mislead or confuse a consumer. Further, the kind of products that immunity boosters are, could result in them also be categorised as those 'special foods' under the FSSA, such as nutraceuticals, health supplements, etc., which have a further level of regulation, which relate to claims being made as well. Therefore, any person, prior to making any claims/ statements or even advertising a product must understand as to whether such claims/ statements are even permitted and should ensure the required compliance, as today, it is not only the advertisement and the product owner who would face questioning but also the endorser of the products.

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UPDATES

I. RBI, FEMA & FDI

i. Foreign Exchange Management (Export and Import of Currency) (Amendment) Regulations, 2020

The Reserve Bank of India ("**RBI**") has, by way of Notification No. FEMA 6 (R)/(2)/2020-RB dated August 11, 2020 ("**Notification**") amended the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 ("**Principal Regulations**").

In terms of the Notification, a new Regulation 9 has been inserted by virtue of which the RBI has been given power to allow any person to import or export currency notes of the Government of India and /or the RBI subject to such terms and conditions as the RBI may stipulate.

The Notification came into effect on August 18, 2020.

The full text of the Notification can be accessed here

ii. Review of the Foreign Direct Investment Policy in Defence Sector

The Government of India (through the Department for Promotion of Industry and Internal Trade) by way of Press Note 4 (2020 Series) ("**PN4**") dated September 17, 2020 has amended Paragraph 5.2.6 of the extant Foreign Direct Investment ("**FDI**") policy which is related to the 'Defence' sector as contained in Consolidated FDI Policy, 2017. Upon the PN4 coming into effect, the permissible foreign investment limit in the Defence sector under automatic route will increase from 49% (Forty Nine Percent) to 74% (Seventy

Four Percent). Further, for companies seeking new industrial licences, FDI up to 74% (Seventy Four Percent) will be permitted under the automatic route.

Additionally, any infusion of fresh foreign investment up to 49% (Forty Nine Percent) in a company not seeking industrial license or which already has Government approval for FDI in Defence sector will have to make a mandatory submission of a declaration with the Ministry of Defence, Government of India in case of change in shareholding pattern / transfer of stake by existing investor to the new foreign investor for FDI up to 49% (Forty Nine Percent), within 30 days of such change (which declaration was not required to be made prior to PN4 coming into effect). Further, any proposal for FDI beyond 49% (Forty Nine Percent) from such companies would require Government approval.

Foreign investments in the Defence sector would now be subject to scrutiny on grounds of 'National Security' and the Government has the right to review any foreign investments in Defence sector which may affect the 'National Security'. Also, upon the PN4 coming into effect, foreign investment in the Defence Sector will additionally be subject to security clearance by the Ministry of Home Affairs, Government of India.

Please note that the provisions set out in PN4 will come into effect only upon a notification being issued under the Foreign Exchange Management Act, 1999 ("FEMA"), which is yet to be issued.

The full text of the Press Note can be accessed here.

iii. Foreign Exchange Management (Non Debt Instruments) (Third Amendment) Rules, 2020

The Government of India (through the Department for Promotion of Industry and Internal Trade) by way of Press Note 2 (2020 Series) ("**PN2**") dated March 19, 2020 had amended Paragraph 5.2.9 of the extant FDI policy which is related to the 'Civil Aviation' sector as contained in Consolidated FDI Policy, 2017. Pursuant to the amendment, the permissible foreign investment limit in Air India Limited had been increased from 49% (Forty Nine Percent) to 100% (One Hundred Percent) under the automatic route, in the event of such investment was being made by non-resident Indians, who are Indian nationals.

The Central Government has now by way of Notification No. S. O. 2442 (E) ("**Notification**") amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 to incorporate the above changes (proposed by the DPIIT) pursuant to the PN2. The amendment came into effect from July 27, 2020.

The full text of the Notification can be accessed here.

iv. Changes to Operational Guidelines for FPIs and DDPs under SEBI (Foreign Portfolio Investors), Regulation, 2019

The Securities and Exchange Board of India ("**SEBI**"), vide circular number IMD/FPI&C/CIR/P/2019/124 dated November 05, 2019, had issued certain guidelines ("**Operational Guidelines**") *inter alia* for Foreign Portfolio Investors ("**FPIs**") under SEBI (Foreign Portfolio Investors), Regulations 2019.

In terms of the Operational Guidelines, FPIs were permitted to write-off securities only with respect to shares of companies which are unlisted or illiquid or suspended or delisted. However, in view of the requests received from various stake holders, SEBI, vide circular number SEBI/HO/IMD/FPI&C/CIR/P/2020/177 dated September 21, 2020 ("**Circular**") decided to permit the

FPIs to write-off shares of all companies which they are unable to sell. In this regard, the process detailed at Paragraph 17 of Part C of the Operational Guidelines is required to be complied with.

The full text of the Circular can be accessed here. The full text of the Operational Guidelines can be accessed here.

II. CORPORATE

i. Circular in relation to the dispatch of Notice, by Listed Companies, for a Rights Issue

The Ministry of Corporate Affairs ("**MCA**") had, by way of General Circular No. 21/2020, dated May 11, 2020 ("**Circular I**"), provided a clarification that the failure or inability of a listed company to dispatch the notice, in terms of Section 62(2) of the Companies Act, 2013 ("**Companies Act**"), through registered post or speed post or courier, for a rights issue, would not be viewed as a violation of the Companies Act, as long as the rights issue is opened up prior to July 31, 2020 and the relevant circulars issued by the Securities and Exchange Board of India are complied with.

The MCA has, by way of General Circular No. 27/2020, dated August 3, 2020 ("**Circular II**"), extended the granted relaxation upto December 31, 2020.

The full text of Circular I and Circular II can be accessed here and here, respectively.

ii. The Companies (Acceptance of Deposits) Rules, 2014 - Amended

The MCA has, by way of Notification No. G.S.R. 548 (E), dated September 7, 2020, brought into force with immediate effect, the Companies (Acceptance of Deposits) Amendment Rules, 2020 ("**Amendment Rules**"), which has the effect of amending the Companies (Acceptance of Deposits) Rules, 2014 ("**Deposit Rules**").

In terms of the Amendment Rules, the term 'deposit' has been defined in the Deposit Rules, to exclude an amount of Rs. 25,00,000/- (Rupees twenty five lakh only) or more, which is received by a start-up company, by way of a convertible note, in a single tranche, from a person. Such convertible notes, however, are required to be convertible into equity shares or repayable within a time period not exceeding 10 (ten) years from the date of issue. The Amendment Rules have increased the time period for repayment from 5 (five) years to 10 (ten) years.

Further, in relation to the exemption granted to private companies which are 'start-up companies', in relation to the maximum limit with respect to deposits which may be accepted, in terms of Rule 3 of the Deposit Rules, the Amendment Rules have extended the applicability of the exemption to companies which have been start-up companies for 10 (ten) years, from the date of incorporation, whereas earlier, private companies which had been start-up companies for 5 (five) years only, from the date of incorporation, were so exempted.

The Amendment Rules have also replaced the notification to be referred to, for ascertaining whether a private company would be recognized as a start-up company. The notification that needs to be referred to for this purpose is Notification No. G.S.R. 127 (E), dated February 19, 2019, issued by the Department for Promotion of Industry and Internal Trade.

The full text of the Amendment Rules can be accessed here.

iii. Section 92(3) of the Companies Act, 2013 - Enforced

The MCA has, by way of Notification No. S.O. 2920 (E), dated August 28, 2020, brought into force and effect, immediately, Section 92(3) of the Companies Act.

In terms of Section 92(3) of the Companies Act, every company, if it has a website, is required to place a copy of the annual return on the same, and the web-link of such annual return is also required to be disclosed in the Board's report.

The full text of the Notification can be accessed here.

iv. The Companies (Management and Administration) Rules, 2014 - Amended

The MCA has, by way of Notification No. G.S.R. 538 (E), dated August 28, 2020, brought into force, with immediate effect, the Companies (Management and Administration) Amendment Rules, 2020 ("**Amendment Rules**"), which has the effect of amending the Companies (Management and Administration) Rules, 2014.

In terms of the Amendment Rules, if a company discloses the web link of its annual return, in the report of the Board, in accordance with Section 92(3) of the Companies Act, such a company would not be required to attach the extract of the annual return, in Form No. MGT-9, with the report of the Board.

The full text of the Amendment Rules can be accessed here.

v. Schedule VII to the Companies Act, 2013 - Amended

The MCA has, by way of Notification No. G.S.R. 525 (E), dated August 24, 2020, brought into force with immediate effect, a substitution of item (ix), in Schedule VII of the Companies Act.

Schedule VII of the Companies Act lists out the activities which may be included by companies in their corporate social responsibility policies, and this amendment has the effect of setting out, in detail, the organisations to which contributions may be made, as a part of the corporate social responsibilities of companies.

The full text of the Notification can be accessed here.

vi. The Companies (Corporate Social Responsibility Policy) Rules, 2014 - Amended

The MCA has, by way of Notification No. G.S.R. 526 (E), dated August 24, 2020, brought into force with immediate effect, the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 ("**Amendment Rules**"), which has the effect of amending the Companies (Corporate Social Responsibility Policy) Rules, 2014 ("**CSR Rules**").

The Amendment Rules provide for an exemption to the definition of 'CSR Policy', in terms of Rule 2(1)(e) of the CSR Rules. In view of the amendment, companies which are engaged in research and development of new vaccines, drugs and medical devices, in the normal course of their business, are now allowed to undertake research and development of new vaccines, drugs and medical devices related to COVID-19, as an activity for their CSR Policy, for the financial years 2020-21, 2021-22 and 2022-23.

The Amendment Rules, however, subjects the above to: (i) such research and development activities being carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Companies Act, 2013; and (ii) the details of such activities being disclosed separately in the Annual Report on CSR, which is included in the Board's Report.

The full text of the Notification can be accessed here.

vii. Circular - Extension of time limit for filing Form CRA-4, in relation to cost audit reports

The MCA has, by way of General Circular No. 29/2020, dated September 10, 2020 ("**Circular**"), granted an extension of the timeline for filing Form CRA-4.

The Circular provides that the submission of the cost audit report, by the cost auditor, to the board of directors, by November 30, 2020, instead of September 30, 2020, would not be viewed as a violation of the Companies Act and the rules made thereunder. Companies will, accordingly, be required to submit Form CRA-4, within 30 (thirty) days from the receipt of the cost audit report, by the company.

The Circular further states that companies who have availed an extension in the timeline for holding the annual general meeting, for the financial year which ended on March 31, 2020, may file Form CRA-4, within the resultant extended period for the filing of the financial statements under Section 137 of the Companies Act.

The full text of the Circular can be accessed here.

viii. The Companies (Meetings of Board and its Powers) Rules, 2014 – Amended

The MCA, by way of Notification No. G.S.R. 590(E), dated September 28, 2020, has brought into force the Companies (Meetings of Board and its Powers) Third Amendment Rules, 2020, which has the effect of extending the time period, from September 30, 2020 to December 31, 2020, for the holding of board meetings through video conference or other audio-visual means, in relation to matters which are otherwise required to be dealt with only a physical meeting of the board of directors.

The full text of the Notification can be accessed here.

ix. Circular - Extension for passing ordinary and special resolutions by video conferencing or other audio-visual means

The MCA has, by its General Circular No. 33/2020, dated September 28, 2020, extended up to December 31, 2020 (*from September 30, 2020*), the permission to hold extra-ordinary general meetings through video conferencing or other audio-visual means, for the passing of ordinary and special resolutions. The Circular clarifies that all the other terms and conditions in relation to the aforesaid would be the same, as is contained in the earlier circulars issued on the subject.

The full text of the Circular can be accessed here.

x. Circular - Extension of the Companies Fresh Start Scheme, 2020

The MCA has, by way of its General Circular No. 30/2020 dated September 28, 2020, extended the Companies Fresh Start Scheme, 2020 ("**Scheme**"), until December 31, 2020. The Scheme had been introduced by way of General Circular No. 12/ 2020 dated March 30, 2020 and was initially effective from April 1, 2020, up to September 30, 2020.

The full text of the Circular can be accessed here.

xi. Circular - Extension of the Scheme for filing of forms for the creation and modification of charges

The MCA has, by way of General Circular No. 32/2020 dated September 28, 2020, in furtherance to General Circular No. 23/ 2020 dated June 17, 2020, which introduced a Scheme for the relaxation of time for the filling of forms in relation to the creation and modification of charges under Section 77 of the Companies Act, 2013, extended the relaxation granted, to December 31, 2020.

The full text of the Circular can be accessed here.

xii. The Companies (Appointment and Qualification of Directors) Rules, 2014 – Amended

The MCA has, by way of Notification No. G.S.R. 589(E), dated September 28, 2020, brought into force the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020, which has the effect of amending Rule 6(1)(a) of the Companies (Appointment and Qualification of Directors) Rules, 2014. The amendment extends the time period, from September 30, 2020 to December 30, 2020, for filing the online application, by individuals, who had been appointed as independent directors, as on December 1, 2019, for the inclusion of their names in the data bank of independent directors.

The full text of the Notification can be accessed here.

xiii. Circular – Extension for the deposit repayment reserve

The MCA has, by way of General Circular No. 34/2020 dated September 29, 2020, extended the timeline for the creation of the deposit repayment reserve, as provided in the Companies Act, to December 31, 2020. The timeline to invest or deposit 15% (fifteen percent) of the debentures maturing under the Companies (Share Capital and Debentures) Rules, 2014, has also been extended to December 31, 2020. All the other terms and conditions as applicable, and set out in the earlier circulars, on the matter, will continue to be applicable.

The full text of the Circular can be accessed here.

III. COMPETITION

i. CCI dismisses allegations of abuse of dominance against Whatsapp in relation to Unified Payments Interface

The Competition Commission of India ("**CCI**") has dismissed allegations of abuse of dominance against WhatsApp, Inc. in relation to the bundling of WhatsApp's Unified Payments Interface ("**UPI**") application with its messaging platform.

The case, filed by an individual advocate, alleged that the automatic installation of the UPI interface with the messaging application of WhatsApp amounted to bundling and leveraging by a dominant entity in violation of Sections, 4(2)(a)(i), 4(2)(d) and 4(2)(e) of the Competition Act 2002 ("**Act**").

The CCI considered the "market for over-the-top ("**OTT**") messaging applications through smartphones' as the relevant market. The CCI noted that WhatsApp is the most widely used application for social messaging. The CCI opined that given its popularity and wide usage, for one-to-one as well as group communications and its distinct and unique features, WhatsApp seems to be dominant. Further, the network effects enjoyed by WhatsApp lead to increased switching costs, thus disincentivizing new players from entering the market.

As regards the allegations of abuse of dominance, the CCI held that mere pre-installation of the UPI interface in the messenger app does not amount to imposition of unfair terms and conditions on the users. As clarified by WhatsApp, the user has to separately register for it which necessarily requires the users to accept terms of the service agreement and privacy policy. Such registration requires providing additional information and undertaking additional steps to link their bank account, as per the framework laid down by the National Payments Corporation of India ("**NPCI**") for UPI digital payment apps. Thus, in the absence of any explicit or implicit imposition which takes away this discretion, mere integration does not seem to contravene Section 4(2)(a)(i) of the Act.

On the allegations of bundling/tying, the CCI noted that the users are not mandatorily required to use the WhatsApp Pay feature while using WhatsApp. In the absence of mandatory usage requirement of the tied product, the allegation of tying cannot sustain.

As regards the allegation of leveraging, the CCI held that there exist significant market players with substantial market shares in UPI payments market. In such a market, it seems implausible that WhatsApp Pay will automatically garner a market share, merely on account of its pre-installation. More so, given the fact that WhatsApp ecosystem does not involve paid services as such for normal users, it seems unlikely that the consumer traffic will be diverted by WhatsApp using its strength in the messenger market. Thus, this allegation under Section 4(2)(e) of the Act also does not seem to be made out.

The CCI held that no *prima-facie* case has been made out by the Informant and proceeded to dismiss the matter.

The full text of the CCI Order can be accessed here.

ii. CCI closes case of bid-rigging by manufactures of 14.2 kg LPG cylinders

The CCI has dismissed a case of alleged bid-rigging of tenders of Bharat Petroleum Corporation Limited ("**BPCL**") by cylinder manufacturers for procurement of 14.2 kg LPG cylinders.

The investigation was commenced suo-moto by the CCI in 2014 when the CCI noticed that the price bids of bidders in tender of 2010 for BPCL inviting bids for 55 plants in 18 states were either identical of near identical. The CCI ordered detailed investigation of the conduct of 17 opposite parties in the case. The investigation of conduct of 6 opposite parties was considered as the other 11 parties had already been penalized for a similar conduct in another investigation. The CCI noted that these parties ought to have been investigated for the purpose of completeness of investigation but adopted another course of action due to the peculiar circumstances prevalent in the market. The CCI clarified that this shall not be treated as a precedent in any manner either by any of the parties to the case or any other person or in any other investigation in future. The investigation found the conduct of 5 opposite parties as violative of Section 3(3) of the Act.

The CCI referred to the decision of the Hon'ble Supreme Court in *Rajasthan Cylinders and Containers Limited vs Union of India* to support the view that the investigation in the market in the present case has yielded no different results. The report in this regard based on an examination of the procurer viz. BPCL, finds that for finalising the L-1 rate, BPCL negotiates with the bidders and, it is BPCL which decides the price at which the tender has to be awarded.

In light of the above decision of the Hon'ble Supreme Court, the CCI proceeded to close the case on account of the prevalent market conditions in the industry.

The full text of the CCI Order can be accessed here.

iii. CCI penalizes brake blocks manufacturers for bid-rigging railway tenders

The CCI has found the conduct of 10 opposite parties in violation of Section 3 of the Act in relation to tenders issued by various divisions of the Indian Railways for procurement of brake blocks and other components.

A reference was made to the CCI by multiple divisions of the railways stating that various bidders were quoting identical bids in the tenders issued by the railway divisions for automotive components including brake blocks.

The detailed investigation revealed that opposite parties used to decide the prices and quantities to be quoted by them in the various tenders floated by Indian Railways and other entities for the procurement of brake blocks. The investigation recommended violation of Section 3(3) of the Act for cartelization and bid-rigging.

The CCI noted that the parties maintained excel sheets to create a record a quantities quoted and the price against tenders of the railways. The CCI also took note of the E-mails exchanged between the opposite parties documenting the collusion and understanding between with respect to the tenders. The CCI agreed with the findings of the investigation and held that the conduct of the opposite parties amounted to a violation of Section 3(3) of the Act. The CCI also held guilty the persons-in-charge of the opposite parties for the violation of Section 48 of the Act.

As far as the penalty for the violation is concerned, the CCI took note of the prevailing situation with respect to the pandemic as well as the cooperation offered by the opposite parties during the investigation and inquiry in case, to refrain from imposing any penalty in the present case.

The full text of the CCI Order can be accessed here.

iv. CCI dismisses allegations of abuse of dominance against Amazon India

The CCI has dismissed a case of alleged abuse of dominance against Amazon India and its subsidiaries. The case was filed by an entity (Lifestyle Equities, C.V.) which manufactures and sells apparel in India under the brand 'Beverly Hills Polo Club', alleging that its products were being sold on the website of

Amazon India at cheaper rates as compared to the website of the Informant itself. It was alleged that the conduct of Amazon has resulted in exclusionary effect on the business of Informant in India.

The CCI noted that Amazon India faces stiff competition in the market for services provided by online platforms for selling fashion merchandise in India. Such competition comes from entities such as Flipkart India, Shopclues.com, Paytm Mall, etc. In light of the same, it cannot be prima-facie held that Amazon India is dominant in the said relevant market, and the allegations of abuse cannot be considered. The case has been dismissed accordingly.

The full text of the CCI Order can be accessed here.

v. CCI approves acquisition of shareholding in Escorts Limited by Kubota Corporation, Japan

The CCI has approved transactions resulting in: (i) acquisition of 9.09% shareholding in Escorts Limited by Kubota Corporation; and (ii) Acquisition of 40% shareholding in Kubota Agricultural Machinery India Private Limited ("**KAI**") from Sumitomo Corporation by Kubota, and thereafter acquisition of 40% shareholding in KAI from Kubota by Escorts. KAI will eventually become a 60:40 JV between Kubota and Escorts. At present, KAI is a 60:40 JV between Kubota and Sumitomo.

The CCI noted that Kubota (directly and indirectly) and Escorts exhibit horizontal overlaps in the segments of manufacture and sale of: (i) tractors; (ii) combine harvesters; and (iii) diesel engines.

From the submission of the parties, the CCI noted that the combined market share of the parties will be [10-15%] in the segment of tractors and combine harvesters and [0-5%] in the segment of diesel engines. Further, the incremental market share is insignificant and there are several players present in each segment. The CCI concluded that the above-mentioned two steps are not likely to cause appreciable adverse effect on competition in the market and approved the transaction.

The full text of the CCI Order can be accessed here

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IV. INSOLVENCY & BANKRUPTCY

A. REGULATORY UPDATES

i. The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2020 - Amended

The Insolvency and Bankruptcy Board of India ("**Insolvency Board**") *vide* its gazette notification dated August 5, 2020 bearing no. IBBI/2020-21/GN/REG062 has published the Insolvency and Bankruptcy Board of India (Liquidation Process) (Third Amendment) Regulations, 2020 to amend the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. The said amendment *inter alia* inserts a clarification to Regulation 4(2)(b) dealing with the Liquidator's Fee in cases where there is no decision taken by the Committee of Creditors under Regulation 39D of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It has been clarified that if a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him and where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.

The full text of the Notification can be accessed [here](#).

ii. The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2020 – Amended

The Insolvency Board *vide* its gazette notification dated August 5, 2020 bearing no. IBBI/2020-21/GN/REG.063 has published the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Second Amendment) Regulations, 2020 to amend the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017. It substitutes the existing Regulation 5 which deals with appointment of liquidator to now state that the corporate person shall appoint an insolvency professional to conduct the voluntary liquidation process and if required may replace such liquidator by appointment of another insolvency professional as the liquidator by way of a resolution of members or partners, or contributories, as the case may be. Such resolution is required to contain the terms and conditions of appointment of the liquidator including the remuneration payable to him. On being appointed as a liquidator, the insolvency professional is required to intimate the Insolvency Board about such appointment within 3 (Three) days of appointment.

The full text of the Notification can be accessed [here](#).

iii. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2020 – Amended

The Insolvency Board *vide* its gazette notification dated August 7, 2020 bearing no. IBBI/2020-21/GN/REG064 has published the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2020 to amend the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by amending the following Regulations:

- Regulation 4A (by insertion of sub-regulation(aa)) - to now state that the three insolvency professionals identified by the interim resolution professional for representation of the creditors in a class must be from the State or Union Territory, which has the highest number of creditors in the class as per records of the corporate debtor.

- Regulation 16(A)(9) (by substitution) - to now provide that the authorised representative shall circulate the agenda to the creditors in a class and may seek their preliminary views on any item in the agenda to enable it to effectively participate in the meeting of the committee of creditors.

- Regulation 39(3) (by substitution) - to now state that post evaluation of all compliant resolution plans as per evaluation matrix, the committee of creditors shall vote on all compliant resolution plans simultaneously. In the event one resolution plan is submitted if it received the requisite number of votes i.e. sixty-six percent of voting share then it shall be considered approved. Further, if two or more resolution plans are submitted then the resolution plan which receives the highest votes, but not less than sixty-six percent of voting share, shall be considered as approved.

The full text of the Notification can be accessed [here](#).

iv. The Insolvency and Bankruptcy Code (Second Amendment), 2020 - Amended

The Ministry of Law and Justice vide its gazette notification dated September 23, 2020 has published the Insolvency and Bankruptcy Code (Second Amendment), 2020 (no. 17 of 2020) to amend the Insolvency and Bankruptcy Code, 2016 ("**IBC**") by insertion of the following sections:

- Section 10A which states that no application shall ever be filed for initiation of corporate insolvency resolution process ("**CIRP**") of a corporate debtor under Sections 7, 9 and 10 of the IBC in respect of a default committed on March 25, 2020 or for a period of six months thereafter. Section 10A further provides that the said period may be extended upto an additional period of six months as and when notified at later date.

- Section 66(3) which states that no application shall be filed by the resolution professional under Section 66(2) of the IBC (i.e. an application for a director or partner to make contributions to the assets of the corporate debtor for not exercising due diligence to minimize the potential loss to the creditors of a corporate debtor which they knew would end up in CIRP) in respect of the default against which CIRP is suspended under Section 10A of the IBC.

- The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 stands repealed.

The full text of the Notification can be accessed here.

v. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 - Amended

The Ministry of Corporate Affairs *vide* its gazette notification dated September 24, 2020 bearing no. S.O. 3265(E) has whilst exercising its powers conferred under Section 10A of the IBC published a notification, post Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, which states that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor under Sections 7, 9 and 10 of the IBC in respect of a default committed for a further period of three months from September 25, 2020.

The full text of the Notification can be accessed here.

B. JUDICIAL PRONOUNCEMENTS

i. Adish Jain v. Sumit Bansal

[Company Appeal (AT) (Insolvency) No.379 of 2020 decided on August 10, 2020 by the National Company Law Appellate Tribunal]

Background

The Corporate Debtor was a regular buyer of Aluminium Ingots and Wire Rods and had a running account with the Operational Creditor. Appellant (a shareholder of the Corporate Debtor) claimed that the Principle Operational Debt claimed by the Operational Creditor pertains to purchase of Aluminium Ingots and Wire Rods. The Operational Creditor had issued a legal notice and thereafter a demand notice to the Corporate Debtor. In reply, the Corporate Debtor specifically stated that, as on March 31, 2018 all amounts have been reconciled between both the Parties, but remained silent about any subsequent transactions. Even in the reply to the demand notice, no specific pleading with respect to any dispute regarding quality, quantity, price of the goods and services *per se* was raised. While admitting the Application under Section 9, National Company Law Tribunal, New Delhi ("**NCLT Delhi**") observed that, the dispute raised by the Corporate Debtor is illusionary and moonshine, which is up-stretched with an intention to erase its liability and defeat the claim made by the Operational Creditor.

The present Appeal was filed before the Hon'ble National Company Law Appellate Tribunal ("**NCLAT**") challenging the Order passed by the NCLT Delhi admitting the Section 9 Application filed by the Operational Creditor. Aggrieved by the said Order, the shareholder of the Corporate Debtor – M/s J.P. Engineers Pvt. Ltd., preferred the present Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**").

Whilst dealing with the present appeal, the Operational Creditor submitted before Hon'ble NCLAT that the statement of 'Confirmation of Accounts', relied upon by the Appellant, is dated April 1, 2019 and is for the period subsequent to March 31, 2018 and as the said document date is subsequent to the issuance of the demand notice and there are no tenable grounds to explain the reasons for the Operational Creditor to have signed this document, specially keeping in view that, the 'Confirmation of Accounts' shows 'Nil' balance.

Findings of the Court

The Hon'ble NCLAT reiterated and examined the ratio laid down by the Hon'ble Supreme Court in the case of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited* and held that the 'existence of the dispute' must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. Further, it was held that the adjudicating authority must follow the mandate of Section 9 of IBC, and in particular the mandate of Section 9(5) of the IBC, and thereafter admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the IBC.

Observations and Analysis

The Hon'ble NCLAT observed that there is no documentary evidence filed by the Appellant to substantiate their plea that all accounts have been reconciled and signed by both the Parties except for filing confirmatory letters which portray discrepancies and therefore does not inspire confidence. Further, both the defences raised by the Appellant regarding existence of a dispute and satisfaction of the debt are mutually exclusive and cannot co-exist as a debt cannot be disputed and discharged at the same time. The Hon'ble NCLAT has whilst placing reliance upon the principle laid by the Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited held that the Appellant did not raise any plausible contention requiring further investigation and the argument raised is not substantiated by any evidence as such the 'dispute' does not truly exist in fact and is spurious. Therefore, Hon'ble NCLAT dismissed the appeal filed by the Appellant and ordered that there is no illegality or infirmity in the Order passed by the Adjudicating Authority.

ii. Sushil Ansal v. Alok Tripathi & Ors.

[Company Appeal (Insolvency) No.452 of 2020 decided on August 14, 2020 by the National Company Law Appellate Tribunal]

Background

Two homebuyers had jointly booked two units under the real estate project namely Sushant Golf City situated at Lucknow with Ansal Properties and Infrastructure Limited/ Corporate Debtor. The builder buyer agreements were executed in September 2014 wherein Corporate Debtor had agreed to complete construction within a period of two (2) years from the date of commencement of construction. However, Corporate Debtor failed to complete the projects within the stipulated time period and the homebuyers accordingly approached the Real Estate Regulatory Authority ("**RERA**") which granted a decree to the homebuyers for an amount of about Rupees Seventy-Three (73) Lakhs and issued recovery certificates to the homebuyers against the Corporate Debtor. Thereafter, upon Corporate Debtor's failure to make the payments to the homebuyers, instead of seeking execution, the homebuyers/ financial creditors approached the NCLT Delhi under Section 7 of the IBC on account of non-payment of the amount along with penalty as decreed by the RERA. NCLT Delhi admitted the application and declared a moratorium on the assets of Corporate Debtor and appointed an interim resolution professional who received claims from more than two hundred and fifty (250) allottees. Corporate Debtor's director Mr. Sushil Ansal, thereafter, approached the Hon'ble NCLAT contesting the order passed by the NCLT Delhi.

During the pendency of the appeal, a joint application was filed before the Hon'ble NCLAT for withdrawal of the application under Section 7 of the IBC on the basis of a settlement deed having been executed between the parties on June 1, 2020 by invoking Rule 11 of the NCLAT Rules, 2016.

Findings of the Court

The Hon'ble NCLAT has deliberated on the following issues:

- Whether this is a fit case for invoking Rule 11 of the NCLAT Rules to allow the parties to settle the dispute?

- Whether the application filed by the homebuyers under Section 7 of the IBC was not maintainable?

The Hon'ble NCLAT has, while refusing to invoke Rule 11 of the NCLAT Rules observed that the committee of creditors had not been constituted, however, invoking a settlement would be detrimental to the interests of the other claimants who have submitted their claims including the other allottees and would not be in consonance with the object of the IBC. The Hon'ble NCLAT held that in this case where interests of the majority of stakeholders are in serious jeopardy, it would be inappropriate to allow settlement with only two (2) creditors which may amount to perpetrating of injustice. Exercise of inherent powers is such cases would be a travesty of justice.

Whilst examining the second issue the Hon'ble NCLAT had analysed the definition of financial creditor and financial debt under Sections 5(7) and 5(8) of the IBC respectively and observed that as per Section 5(8)(f) of the IBC any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing would fall within the ambit of a financial debt and the explanation provides that any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing. As such to determine whether the debt is a financial debt, one would need to see whether the debt was disbursed against the consideration for the time value of money which may include an amount raised from an allottee under a real estate project, and whether such transaction has the commercial effect of a borrowing. The Hon'ble NCLAT came to a finding that the Respondents had approached the NCLT Delhi in the present case as decree holders, and not as allottees in a real estate project. It was held that while a decree-holder is covered by the definition of a creditor under Section 3(10) of the IBC, a decree holder does not fall within the class of creditors classified as financial creditors and cannot initiate a corporate insolvency resolution process ("**CIRP**") under Section 7 of the IBC.

The Hon'ble NCLAT observed that the Respondents approached the NCLT Delhi only with a view to execute the decree issued by the RERA and relying upon its decision in *G. Eswara Rao v. Stressed Assets Stabilisation Fund and Ors*., the Hon'ble NCLAT concluded that the Respondents' application was not maintainable. In view of the above, the Hon'ble NCLAT had set aside NCLT Delhi's impugned order admitting the application under Section 7 of the IBC.

iii. Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. and Anr.

[Civil Appeal No.6347 of 2019 decided on August 14, 2020 by the Supreme Court of India]

The present appeal was filed before the Hon'ble Supreme Court of India under Section 62 of the IBC against the judgment and order passed by the Hon'ble NCLAT, whereby, the Hon'ble NCLAT had rejected the contention that, the application made by Respondent No. 2 under Section 7 of the IBC, seeking initiation of a CIRP in respect of the Corporate Debtor (Respondent No. 1 herein), is barred by limitation. The Hon'ble NCLAT declined to interfere with the order passed by the NCLT, for commencement of CIRP as prayed for by the Respondent No. 2/ Financial Creditor.

The Appellant contended that limitation period for an application under Section 7 of the IBC is three years as per Article 137 of the Limitation Act,1963 where the date of alleged "default" is the starting point of limitation; and in the present case, such date of default being specifically mentioned as July 8, 2011, the application filed by the Respondent No. 2 in the month of March 2018 is barred by limitation. The Respondents submitted before the Hon'ble Supreme Court that the liability in relation to the debt in question having been consistently acknowledged by the Corporate Debtor in its balance sheets and annual reports, as such fresh period of limitation is available from the date of every such acknowledgment and hence, the application is within time. The Hon'ble Court dealt with the issue whether the application made by Respondent No. 2 under Section 7 of the IBC is within limitation.

Findings of the Court

The Hon'ble Court stated that IBC is a beneficial legislation intended to put the Corporate Debtor back on its feet and is not a mere money recovery legislation and CIRP is not intended to be adversarial to the Corporate Debtor but is aimed at protecting the interests of the Corporate Debtor. Further, it was stated that the intention of the IBC is not to give a new lease of life to debts which are time-barred and the period of limitation for an application seeking initiation of CIRP under Section 7 of the IBC is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues.

The trigger for initiation of CIRP by a Financial Creditor is default on the part of the Corporate Debtor and such right to apply under the IBC accrues on the date when default occurs. It was also stated that the default referred under the IBC is that of actual non-payment by the Corporate Debtor when a debt has become due and payable and if the default had occurred over three years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned. An application under Section 7 of the IBC is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to this application.

Observation and Analysis

The Hon'ble Court observed that the application made by the Respondent No. 2 under Section 7 of the IBC in the month of March 2018 for seeking initiation of CIRP in respect of the Corporate Debtor with specific assertion of the date of default as July 8, 2011, is clearly barred by limitation for having been filed much later than the period of three years from the date of default as stated in the application. The Hon'ble Court, further observed that the NCLT had not examined the question of limitation, the Hon'ble NCLAT had decided the question of limitation on entirely irrelevant considerations and the attempt on the part of the Respondents to save the limitation with reference to the principles of acknowledgment having been found was unsustainable as such the impugned orders are set aside and the application filed by the Respondent No. 2 for seeking initiation of CIRP was rejected for being barred by limitation. Consequently, all the proceedings undertaken in the said application under Section 7 of the IBC, including appointment of insolvency resolution professional, stood annulled.

V. LITIGATION & ARBITRATION

i. Aarka Sports Management Pvt. Ltd. v. Kalsi Buildcon Pvt. Ltd.

[Arbitration Petition No.662 of 2019 before the High Court of Delhi, decided on July 6, 2020]

Background

The Petitioner has filed the Petition for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") pursuant to the arbitration agreement between the parties contained in the operation, maintenance and management agreement dated March 16, 2018. The Respondent has disputed the jurisdiction of the Hon'ble High Court of Delhi on the basis that neither Delhi is the seat of arbitration nor any cause of action arose at Delhi. Further it was submitted that the agreement was drawn at Ranchi, signed at Lucknow and the place of performance/execution of the agreement was Patna, Bihar.

Findings of the Court

The Hon'ble Court has summarised the principles on deciding the seat of Arbitration:

- Section 20(1) of the 1996 Act empowers the parties to determine the seat of arbitration. The parties are at liberty to choose a neutral seat of arbitration where neither the cause of action arose nor the parties reside or work and Sections 16 to 20 of the Code of Civil Procedure, 1908 ("**CPC**") would not be attracted.

- Once the seat is determined, the competent court of that place shall have exclusive jurisdiction to deal with all matters relating to arbitration agreement between the parties.

- If the parties have not determined the seat of arbitration, the seat of arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the 1996 Act.

- If the parties have not agreed on the seat of the arbitration, the court competent to entertain an application under Section 11 of the 1996 Act would be the "Court" as defined in Section 2(1) (e) of the Act read with Sections 16 to 20 of the CPC.

The Hon'ble Court had observed that the arbitration agreement dated March 16, 2018 does not stipulate any seat of arbitration and the agreement categorically provides that parties shall approach court of proper jurisdiction. Therefore, it was observed that exclusive jurisdiction is subject to other clauses of the agreement.

Observations and Analysis

The Hon'ble High Court has held that the seat of the arbitration shall be determined by the Arbitral Tribunal under Section 20(2) of the 1996 Act. Since the parties have not agreed on the seat of the arbitration, the Court within the meaning of Section 2(1)(e) of 1996 Act read with Sections 16 to 20 of CPC would be competent to entertain an application under Section 11 of the 1996 Act. As such it was observed that the High Court of Delhi lacked territorial jurisdiction as Delhi was not the seat of arbitration and no cause of action arose at Delhi, the Respondent does not work at Delhi, the agreement was drawn at Ranchi, signed at Lucknow and was to be performed at Patna. The petition was dismissed on grounds of want of territorial jurisdiction.

ii. Dahiben v. Arvindbhai Kalyanji Bhanusali (D) thr. L.Rs. and Ors.

[Civil Appeal No.9519 of 2019 before the Supreme Court of India, decided on July 9, 2020]

Background

This Civil Appeal was filed to challenge the impugned Judgment passed by a Division Bench of the Gujarat High Court, which affirmed the Order of the trial Court, allowing the application filed by Defendant Nos. 2 and 3/Respondent Nos. 2 and 3 holding that the suit filed by the Appellant and Respondent Nos. 9 to 13 herein (the "Plaintiffs") was barred by limitation. The subject-matter of the present proceedings pertains to a plot of agricultural land of old tenure ("**suit property**") which was owned by the Plaintiffs and the land was under restrictive tenure under Section 73AA of the Land Revenue Code. The Plaintiffs had previously filed an application before the Collector, to obtain permission for selling the suit property which was non-irrigated to Respondent No. 1/Defendant No.1 and stated that they had no objection for selling the suit property. On obtaining permission from the Collector, the Plaintiffs sold the suit property to Respondent No. 1 and the Respondent No. 1 subsequently sold the suit property to Respondent Nos. 2 and 3 vide a registered Sale Deed.

The Plaintiffs then filed Special Civil Suit against the original purchaser i.e. Respondent No. 1 and had also impleaded the subsequent purchasers i.e. Respondent Nos. 2 and 3 as Defendants and prayed that the Sale Deed between the Plaintiff and the Respondent No.1 be cancelled and declared as being illegal, void, ineffective and not binding on them, on the ground that the sale consideration fixed by the Collector, had not been paid in entirety by Respondent No. 1. The Hon'ble Trial Court had on the basis of the settled position in law held that the suit of the Plaintiffs was barred by limitation and allowed the application under Order VII Rule 11(d) of CPC. The Hon'ble High Court affirmed the findings of the Hon'ble Trial Court and held that the suit was barred by limitation since it was filed beyond the period of limitation of three years. Aggrieved by the impugned Judgment and Order passed by the Hon'ble High Court, the original Plaintiff No.1 had filed the present Civil Appeal.

Findings of the Court

The Hon'ble Supreme Court observed that if the case made out in the Plaint is to be believed, it would mean that almost 99% of the sale consideration allegedly remained unpaid throughout. It is, however inconceivable that if the payments had remained unpaid, the Plaintiffs would have remained completely silent for a period of over 5 and ½ years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount, till the filing of the present suit in December 2014.

The Hon'ble Supreme Court reiterated the case of *Vidyadhar v. Manikrao and Anr cited at (1999) 3 SCC 573.,* wherein it was held that the words "price paid or promised or part paid and part promised" indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

Observations and Analysis

While placing reliance on the aforesaid judgment the Hon'ble Supreme Court held that even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. As such, the Plaintiffs may have other remedies in law for recovery of the balance consideration and cannot be granted the relief of cancellation of the registered Sale Deed.

Further, the Hon'ble Supreme Court held that the delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The Plaintiffs have also failed to discharge the onus of proof that the suit was filed within the period of limitation as such the plaint is liable to be rejected. Thus, the present suit is an abuse of the process of the court and bereft of any merit.

iii. Pyaridevi Chabiraj Steels Pvt. Ltd. v. National Insurance Company Ltd. & Ors.

[Consumer Complaint No.833 of 2020 before the National Consumer Dispute Redressal Commission, decided on August 28, 2020]

Background

The Complainant had taken an insurance policy on June 2, 2016 from National Insurance Company Limited ("**NICL**") under its Standard Fire and Special Perils Policy for its factory premises. The Complainant further took an additional security coverage by paying additional premium.

As stated by the Complainant, Howrah Region where the factory premises of the Complainant is situated was severely hit by heavy rainfall, storm and river water flooding causing extensive coverage of water logging of Howrah Region for several days. Further, the Complainant claimed that the flood water caused considerable damage to buildings, plants and machinery as well as stocks of the Complainant and claimed the loss suffered from NICL. NICL repudiated the claim of the Complainant constraining the Complainant to file a complaint before the National Consumer Dispute Redressal Commission ("**NCDRC**").

The Hon'ble NCDRC has dealt with the issue of maintainability of the complaint because the value of the consideration i.e. premium paid for taking the insurance policies was only Rs. 4,43,562/- (Rupees Four Lakhs Forty Three Thousand Five Hundred and Sixty Two), being less than the consideration of more than Rs. 10,00,00,000/- (Rupees Ten Crores) provided under Section 58 (1)(a)(i) of the Consumer Protection Act, 2019 ("**2019 Act**").

Findings of the Court

The Hon'ble NCDRC stated that under the Consumer Protection Act, 1986, the pecuniary jurisdiction was to be determined by taking the value of the goods or services and compensation, if any, claimed.

However, the Parliament, while enacting the 2019 Act was conscious of this fact and to ensure that a consumer should approach the appropriate consumer forum whether it is District, State or National only on the basis of the value of the consideration paid while determining the pecuniary jurisdiction and not value of the goods or services and compensation. As such, specific provisions have been made in Sections 34 (1), 47 (1) (a) (i) and 58 (1) (a) (i) of the 2019 Act accordingly.

Observation and Analysis

The Hon'ble NCDRC has held that for determining the pecuniary jurisdiction of the District Commission, State Commission or National Commission, the value of the goods or services paid as consideration alone has to be taken and not the value of the goods or services purchased/ taken along with the compensation claimed. As such, the said complaint was dismissed by the Hon'ble NCDRC, whilst holding that it has no jurisdiction to entertain the present consumer complaint as the value of consideration paid by the Complainant is only Rs.4,43,562/-, which is not above Rs.10,00,00,000/-.

VI. LABOUR & EMPLOYMENT

i. Government of Karnataka introduces the Industrial Disputes and Certain Other Laws (Karnataka Amendment) Ordinance, 2020

The Governor of Karnataka vide Ordinance No. 15 of 2020 dated July 31, 2020 has promulgated the Industrial Disputes and Certain Other Laws (Karnataka Amendment) Ordinance, 2020 **("Ordinance")** in order to boost the ease of doing business in the State. The Ordinance brings about significant changes in three important labour laws, as follows:

i. **The Industrial Disputes Act, 1947:** Section 25K of the Industrial Disputes Act, 1947, relating to layoffs, retrenchment and closure in certain establishments, has been amended and now made applicable to an industrial establishment where the number of workmen employed is not less than 300 (three hundred) instead of the earlier provision of 100 (one hundred) workmen.

ii. **The Factories Act, 1948:** The threshold limit for applicability of the Factories Act, 1948 has now been increased from 10 (ten) or more workers to 20 (twenty) or more workers for factories operating with the aid of power and from 20 (twenty) or more workers to 40 (forty) or more workers for factories operating without the aid of power. Further, the Ordinance also increases the overtime limit for workers from 75 (seventy five) hours per quarter to 125 (one hundred and twenty five) hours.

iii. **The Contract Labour (Regulation and Abolition) Act, 1970:** By way of an amendment to the Contract Labour (Regulation and Abolition) Act, 1970, its applicability has been restricted to establishments that have employed at least 50 (fifty) workmen as contract labour, instead of the earlier position of 20 (twenty) or more workmen.

The full text of the Notification can be accessed here.

ii. Government of Madhya Pradesh promulgates the Labour Laws (Madhya Pradesh Amendment) Ordinance, 2020

The Government of Madhya Pradesh vide Ordinance No. 8 of 2020 dated August 20, 2020 has promulgated the Labour Laws (Madhya Pradesh Amendment) Ordinance, 2020 **("Ordinance")** to amend the Factories Act, 1948 and the Contract Labour (Regulation and Abolition) Act, 1970, in their application to the State of Madhya Pradesh. The key changes brought about by the Ordinance are discussed below:

i. **The Factories Act, 1948:** The definition of 'factory' under Section 2(m) has been amended thereby increasing the threshold limit for applicability of the said Act from 10 (ten) or more workers to 50 (fifty) or more workers for factories operating with the aid of power. Further, by way of the Ordinance, the provision in respect of premises carrying on manufacturing processes without the aid of power has been deleted from the definition of 'factory'.

ii. **The Contract Labour (Regulation and Abolition) Act, 1970:** The threshold for applicability of the said Act has been increased from 20 (twenty) or more workmen to 50 (fifty) or more workmen.

The full text of the Notification can be accessed here.

iii. Government of Haryana notifies the Factories (Haryana Amendment) Act, 2018

The Government of Haryana vide Notification No. Leg.17/2020 dated July 20, 2020, has notified the Factories (Haryana Amendment) Act, 2018 **("Amendment Act")** to amend the Factories Act, 1948 as applicable to the State of Haryana. The Amendment Act, *inter alia*, brings about the following key changes:

i. The threshold limit for applicability of the Factories Act, 1948 has been increased from 10 (ten) or more workers to 20 (twenty) or more workers for factories operating with the aid of power and from 20 (twenty) or more workers to 40 (forty) or more workers for factories operating without the aid of power.

ii. The total number of hours of overtime work in any quarter has been increased from 75 (seventy five) hours to 115 (one hundred and fifteen) hours.

iii. A new Section 106-B has been inserted which provides for compounding of offences specified in the Fourth Schedule, if committed for the first time. Accordingly, a new schedule (Fourth Schedule) of list of compoundable offences has been added after the third schedule for the State of Haryana.

*****In order to ease burden on the employers due to the Covid-19 pandemic, similar amendments to labour & employment statutes have also been introduced by other State Governments including Punjab, Gujarat, Himachal Pradesh and Goa, among others.***

The full text of the Notification can be accessed here.

iv. Three new Labour Codes get President's assent

On September 23, 2020, the Parliament of India passed three key labour reforms bills: (i) the Occupational Safety, Health and Working Conditions Code Bill, 2020; (ii) the Industrial Relations Code, 2020; and (iii) the Code on Social Security, 2020. The three Codes received the President's assent on September 28, 2020 and have been published in the Official Gazette on September 29, 2020 for general information. They shall come into force on such date as the Central Government may notify. Key provisions of the said Codes are as follows:

i. **The Occupational Safety, Health and Working Conditions Code, 2020** (No. 37 of 2020) (**"Occupational Safety Code"**) consolidates 13 labour laws relating to safety, health and working conditions of workers including laws such as the Factories Act, 1948, the Mines Act, 1952 and the Contract Labour (Regulation and Abolition) Act, 1970, among others. Some key provisions of the Occupational Safety Code are as follows:

a) **Applicability:** The Occupational Safety Code shall apply to establishments employing at least 10 (ten) workers, and to all mines and docks. All establishments where hazardous activities are carried out also come under the purview of this Code.

b) **Registration:** The Occupational Safety Code provides for "one registration" for all establishments having 10 (ten) or more employees. However, for the applicability of all other provisions of the Code in respect of factories, except registration, the threshold has been fixed as 20 (twenty) workers in a factory (with power) and 40 (forty) workers in a factory (without power). Establishments covered by the Code will be required to register within a period of 60 (sixty) days from the date of commencement of this Code.

c) **Duties of employers:** Every employer is *inter alia* required to: (i) provide a workplace free from hazards; (ii) comply with occupational safety and health standards declared under the Code; (iii) provide free annual health examinations in such establishments or to such employees, as may be prescribed; (iv) issue a letter of appointment to every employee.

d) **National Occupational Safety and Health Advisory Board:** The National Occupational Safety and Health Advisory Board shall be established under this Code to advise the Central Government on matters *inter alia* relating to implementation of the provisions of the Code and on policy matters relating to occupational safety and health.

e) **Safety Committees:** The appropriate Government may require an establishment to constitute a Safety Committee, which shall consist of representatives of both employers and workers.

f) **Welfare facilities:** The employer shall be responsible to provide such welfare facilities as may be prescribed by the Central Government, including facilities for washing, bathing places and locker rooms, canteen (*where more than 100 workers are ordinarily employed*), first-aid boxes etc. Such facilities shall also be provided to contract labour that may be employed in the establishment.

g) **Work hours & Leave:** No worker shall be required or allowed to work in an establishment for more than 8 (eight) hours in a day. For overtime work, a worker shall be paid wages at the rate of twice the rate of wages. Further, no worker shall be allowed to work in an establishment for more than 6 (six) days in a week.

h) **Inspectors:** The appropriate Government may by way of notification appoint Inspector-cum-Facilitators to exercise such powers as conferred on them under the Occupational Safety Code. Additional special powers have been given to the Inspector-cum-Facilitator in respect of factories, mines, dock work and building & other construction work.

i) **Employment of Women:** Women shall be allowed to be employed in all establishments for all types of work. With their consent, women may also be employed in night shifts before 6 AM and beyond 7 PM, subject to such conditions relating to safety, holidays and working hours as may be prescribed.

j) **Contract Labour:** Part I of Chapter XI of the Occupational Safety Code lays down certain special provisions for Contract Labour and applies to every establishment in which 50 (fifty) or more contract labour are employed or were employed during the preceding twelve months. Contractors supplying or executing work through contract labour shall be required to obtain a license under the Code. Part II-VIII of Chapter XI of the Occupational Safety Code lays down certain special provisions in relation to Inter-State Migrant Workmen, Audio-Visual Workers, Mines, Beedi & Cigar Workers, Building & Other Construction Workers, Factories and Plantation, respectively. Factories may also be required to obtain a license to operate under the Occupational Safety Code.

k) **Offences & Penalties:** In case of contravention of any of its provisions by an establishment, the Occupational Safety Code prescribes a penalty of Rs. 2,00,000/- (Rupees Two Lakhs) which may be extended up to Rs. 3,00,000/- (Rupees Three Lakhs). Additionally, the Code also prescribes penalties for causing obstruction to Inspector-cum-Facilitator, non-maintenance of register, records and non-filing of returns, falsification of records, for contravention of provisions of duties relating to safety provisions resulting in an accident etc. Where the employee violates any provisions of the Code, he will be subject to a fine of up to Rs. 10,000/- (Rupees Ten Thousand).

The full text of the Notification can be accessed here.

ii. **The Industrial Relations Code, 2020** (No. 35 of 2020) (**"Industrial Code"**) consolidates and amends the laws relating to Trade Unions, conditions of employment in industrial establishment/undertaking, investigation and settlement of industrial disputes and other related matters. The Industrial Code seeks to amalgamate, simplify and rationalise the relevant provisions of three labour laws, *viz.*: (i) the Trade Unions Act, 1926; (ii) the Industrial Employment (Standing Orders) Act, 1946; and (iii) the Industrial Disputes Act, 1947. Some key provisions of the Industrial Code are as follows:

a) **Strike:** The definition of 'Strike' has been expanded to include "the concerted casual leave on a given day by 50% (Fifty Percent) or more workers employed in an industry."

b) **Worker:** The definition of 'Worker' has been expanded to include working journalists as defined in the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 and sales promotion employees as defined in the Sales Promotion Employees (Conditions of Service) Act, 1976.

c) **Fixed Term Employment:** The Industrial Code makes provision for 'fixed term employment' and *inter alia* provides that such workers shall be eligible for all statutory benefits available to a permanent worker proportionately according to the period of service rendered by him even if his period of employment does not extend to the qualifying period of employment required in the statute.

d) **Grievance Redressal Committee:** Every industrial establishment employing 20 (twenty) or more workers shall have one or more Grievance Redressal Committees for resolution of disputes. The Committee shall have equal representation from the employer and workers (*with adequate representation of women workers*) and the total number of members shall not exceed 10 (ten).

e) **Trade Unions:** 7 (seven) or more members of a trade union can make an application for its registration. Trade Unions having membership of at least 10% (Ten Percent) or 100 (one hundred) workers, whichever is less, will be registered.

f) **Negotiating Union:** The Industrial Code provides for establishment of a negotiating union or negotiating council, in an industrial establishment having registered Trade Unions for negotiating with the employer. In case there is only one Trade Union in an industrial establishment, the employer is required to recognize such Trade Union as the sole negotiating union of the workers whereas in case of multiple Trade Unions, the Trade Union which has the support of 51% (Fifty One Percent) of workers on the muster roll of that establishment will be recognized as the sole negotiating union.

g) **Standing Orders:** Every industrial employment employing 300 (three hundred) or more workmen shall be required to prepare standing orders on certain matters. The Central Government shall make model standing orders relating to conditions of service and other incidental matters. Based on the model standing orders, the employer shall be required to prepare draft standing orders within a period of six months from the date of commencement of the Code.

h) **Voluntary reference to Arbitration:** The Industrial Code permits voluntary reference of an industrial dispute to arbitration where the employer and workers agree to do so by way of a written agreement. Nothing contained in the Arbitration & Conciliation Act, 1996 shall apply to arbitrations under the Industrial Code.

i) **Resolution of disputes:** The Industrial Code makes provisions for appointment of Conciliation Officers to mediate and promote the settlement of industrial disputes. If no settlement is arrived at, either party may make an application to the Industrial Tribunal established under the Code. The Industrial Tribunal shall consist of a Judicial Member and an Administrative Member. The Central Government may also constitute National Industrial Tribunals for settlement of disputes which: (i) involve questions of national importance; or (ii) are of such nature that industrial establishments situated in more than one State are likely to be interested in.

j) **Strikes & Lock-outs:** The Code prohibits strikes and lock-outs in all industrial establishments without giving notice of 14 (fourteen) days to the employer.

k) **Lay-off & Retrenchment:** Industrial establishments such as factories, mines and plantations with at least 300 (three hundred) workers are required to obtain prior permission from the appropriate Government before lay-off, retrenchment or closure. The appropriate Government may increase this threshold by way of a notification. Any violation of these provisions shall be punishable with a fine of Rs. 1,00,000/- (Rupees One Lakh), which may extend up to Rs. 10,00,000/- (Rupees Ten Lakhs).

l) **Unfair Labour Practices:** No employer/worker/Trade Union shall commit any unfair labour practice as specified in Second Schedule appended to the Industrial Code. These include matters such as restricting workers from forming Trade Unions, establishing employer sponsored Trade Unions of workers, coercing workers to join Trade Unions, damage to employer's property and preventing any worker from attending work.

m) **Compounding of offences:** The Industrial Code provides for compounding of offences by a Gazetted Officer, as the appropriate Government may, by notification, specify, for a sum of 50% (Fifty Percent) of the maximum fine provided for such offence punishable with fine only and for a sum of 75% (Seventy Five Percent) provided for such offence punishable with imprisonment for a term which is not more than one year, or with fine.

n) **Power to exempt:** The appropriate Government has the power to exempt any industrial establishment or any class of industrial establishments from the provisions of the Industrial Code.

The full text of the Notification can be accessed here.

iii. **The Code on Social Security, 2020** (No. 36 of 2020) (**"Social Security Code"**) amends and consolidates the laws relating to social security with the goal to extend social security to all employees and workers, either in the organized or unorganized or any other sectors. The Social Security Code consolidates nine labour laws including the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Employees State Insurance Act, 1948, the Maternity Benefit Act, 1961 and the Payment of Gratuity Act, 1972, among others. A notable feature of this Code is that it extends the protection of welfare measures to gig workers, platform workers and unorganized workers, *inter alia*, on matters relating to life & disability cover, health & maternity benefits and old age protection. Some important provisions of the Social Security Code are as follows:

a) **Social Security Schemes:** Under the provisions of the Social Security Code, the Central Government may notify various social schemes for the benefit of workers including Employees' Provident Fund ("**EPF**") Scheme, Employees' Pension Scheme ("**EPS**") and Employees' Deposit Linked Insurance ("**EDLI**") Scheme. Additionally, the Government may also notify Employees' State Insurance ("**ESI**") Scheme to provide sickness, maternity and other benefits, Gratuity to workers on completing five years of employment (or less than five years in certain cases such as for journalists and fixed term workers), maternity benefits to women employees, cess welfare of building and construction workers and compensation to employees and their dependents in the case of occupational injury or disease.

b) **Social Security Organisations:** The Social Security Code provides for the establishment of several bodies to administer the social security schemes, such as: (i) Central Board of Trustees of the Employees' Provident Fund; (ii) Employees State Insurance Corporation to administer the ESI Scheme; (iii) National Social Security Board for formulating schemes for unorganized workers, gig workers and platform workers; (iv) Unorganised Workers' Social Security Boards to be constituted by every State

Government; and (v) State Building Workers' Welfare Boards to be constituted by every State Government to administer schemes for building workers.

c) **Employees Provident Fund:** As per the Social Security Code, the EPF scheme has been made applicable to every establishment having 20 (twenty) or more employees. The contributions made by the employer to EPF shall be 10% (Ten Percent) of the wages for the time being payable to each of the employees (whether employed directly or through a contractor), and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% (Ten Percent) of the wages, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Social Security Code.

d) **Employees State Insurance ("ESI"):** Chapter IV on ESI Corporation will apply to all factories/establishments that employ 10 (ten) or more employees, other than a seasonal factory. It shall also be applicable to an establishment, which carries on such hazardous or life-threatening occupation as notified by the Central Government, in which even a single employee is employed. Additionally, the Central Government may, by notification, also frame ESI schemes for gig workers, unorganized workers and plantation workers.

e) **Voluntary Coverage:** The Social Security Code provides for voluntary coverage of establishments under Chapter III (EPF) and Chapter IV (ESI) where the employer and the majority of employees of that establishment have agreed that the provisions of Chapter III or Chapter IV, as the case may be, should be made applicable to the concerned establishment.

f) **Gratuity:** The provisions of gratuity have been made applicable to: (i) every factory, mine, plantation, port and railway company; and (ii) every shop or establishment in which 10 (ten) or more employees are employed, or were employed, on any day of the preceding 12 (twelve) months, and such shops or establishments as may be notified by the appropriate Government from time to time.

g) **Compounding of Offences:** The Social Security Code allows compounding of offences relating to Chapter III and Chapter IV, if the said offences are committed for the first time and punishable with: (i) fine only; or (ii) imprisonment for a term which is not more than one year and fine. For the purposes of offences relating to other provisions of the Social Security Code, compounding may be allowed upon the offender making payment to the appropriate Government as follows: (i) in case an offence is punishable with fine only, half of the maximum fine provided for that offence; and (ii) in case an offence is punishable with imprisonment for a term which is not more than one year and also with fine, three-fourth of the maximum fine provided for that offence.

h) **Application of Aadhar:** Aadhar number has been made mandatory for availing benefits and services under the Social Security Code.

The full text of the Notification can be accessed here.

NEWS AND NEWS MAKERS AT DUA ASSOCIATES

i. **Our Chairman, C.R. Dua** has been invited to serve as **Chair of the Board** of **Procter & Gamble Hygiene and Healthcare Limited, effective September 24, 2020.** He will also continue to be an **Independent Director** on the same board, a role he assumed effective August 25, 2020. In this role as Chairman, Mr. Dua as an eminent legal luminary and an experienced Board member will contribute immensely through his knowledge and wide ranging perspectives, besides extending support in developing a shorter-and longer-term strategic direction for the company.

ii. **Dr. Gulshan Rai**, Sr. Advisor, Dua Associates, joined the Global Board of Directors of The U.S. Chamber of Commerce's U.S.-India Business Council ("**USIBC**"). He is now part of an eminent group of luminaries, including business icons and professional stalwarts, whose role is to provide industry and strategic guidance to the Council. Dr. Rai's over 35 years of experience in different areas of Information Technology including cyber security and cyber laws would undoubtedly help further the advocacy agenda of this premier voice of industry and bring new perspectives on the key issues of cyber security and data privacy that countries and corporations today are grappling with.

iii. Advocate & Solicitor **Shiraz Patodia** of Dua Associates, along with two other prominent legal and consulting professionals initiated the India Chapter of Women's White Collar Defence Association ("**WWCDA**"). WWCDA was founded in 1999 with the Washington D.C. Chapter to address the glaring lack of women in white collar practice and in existing professional white collar organisations. This initiative by Shiraz Patodia is a significant development for women in the legal profession in India and presents a huge opportunity for all at Dua Associates to further build our Firm's White collar Crime practice.

iv. **Kunal Mehra,** Partner at the Firm was a Winner at the 5th Annual Legal Era "**40 Under 40 Rising Star Awards 2020**" **-** Recognising Young Lawyers for their Vision, Leadership, Innovation & Accomplishments. Kunal is one of the 40 winners out of an unprecedented 212 entries received this year for this category. This award appropriately reflects Kunal's growth and hard work on complex client assignments.

v. In the midst of the lockdown, Dua Associates concluded signing of a transaction involving SINCH AB, a Swedish listed company which entered into an agreement to acquire the Indian company, ACL Mobile Limited, for about $70 million (INR 5,350 million). The Technology, Media and Telecom team of the Firm comprising of Partners **Munish Sharma** and **Gunjan Malviya, Sunil Malik,** Senior Advisor, and **Rashi Jain**, Associate, represented ACL Mobile and the sellers of ACL Mobile, an enterprise communication platform provider of communication-based solutions. This was the Firm's first ever major deal conducted entirely online.

vi. Billed as one of the largest transactions in the Real Estate sector in Tamil Nadu this year, Dua Associates Chennai assisted CapitaLand India in its investment of INR 1500 crores towards the development of a Tech Park in Chennai. Front ended by **Sajiv Kumar P.V,** Partner, Dua Associates Chennai, the team comprising of **R. Ganesan**, Partner, **A.T. Chandrasekhar**, Principal Associate and **Kavya Vivek**, Associate, handled this high profile engagement. It is also noteworthy that this is the first investment in India by the Singapore based investor CapitaLand Limited after its global acquisition of Ascendas Singbridge Pte Ltd.

vii. Prime Minister, Narendra Modi spoke about the need to boost toys manufacturing owing to its huge potential for bringing a transformative change by promoting 'Vocal for Local' under the AatmaNirbhar Bharat campaign. In line with this, Dua Associates Bengaluru, with **B.R. Srinivas** as the relationship Partner for this client, the team led by **Brijita Prakash**, Partner and **Aishwarya Narayan**, Associate, assisted Aequs Infrastructure Private Limited by providing legal advice on the land acquisition of approximately 300 acres located in Koppal district, Karnataka, for the establishment of a toy manufacturing cluster, which will house all the vendors and principal manufacturers in one location. Once set up, this cluster is envisaged as the largest toy manufacturing centre in Asia and expected to generate employment for about 2000 workmen, in rural Karnataka.

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