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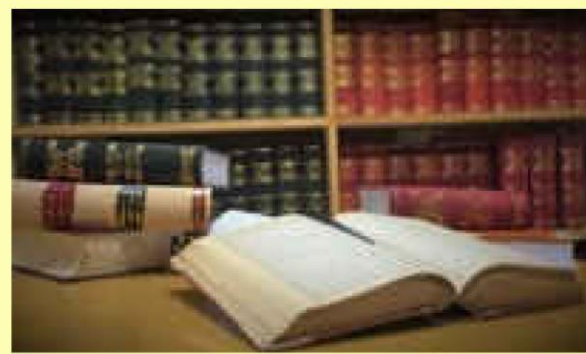

Table of Contents

INSIGHTS

I. MERGERS & ACQUISITION LANDSCAPE – LOOKING BACK TO LOOK AHEAD

UPDATES

I. FEMA & FDI

i. External Commercial Borrowings (ECB) Policy – Relaxation in the period of parking of unutilised ECB proceeds in term deposits
ii. Sponsor Contribution to an Alternative Investment Fund (AIF) set up in Overseas Jurisdiction, including International Financial Services Centres (IFSCs)
iii. Foreign Exchange Management (Borrowing and Lending) (Amendment) Regulations, 2021
iv. Investment by Foreign Portfolio Investors (FPI) in Government Securities: Medium Term Framework (MTF)
v. Liberalised Remittance Scheme for Resident Individuals – Reporting
vi. Master Direction – Reporting under Foreign Exchange Management Act, 1999

II. CORPORATE

i. Circular – Extension of Time to Conduct Extraordinary General Meetings through Video Conferencing or Other Audio-Visual Means
ii. Amendment – The Companies (Meetings of Board and its Powers) Rules, 2014
iii. Clarification on Corporate Social Responsibility (CSR) Funds
iv. Clarification on the gap between holding two consecutive Board Meetings
v. Relaxation on the filing of the Forms for the creation or modification of Charges
vi. Relaxation on the levy of Additional Fees for filing Forms under the Companies Act, 2013

III. COMPETITION

i. WhatsApp LLC v. Competition Commission of India & Anr.
ii. Amazon Seller Services Private Limited and Ors. v. Competition Commission of India and Ors.
iii. In Re: Neha Gupta v. Tata Motors Ltd. and Ors.
iv. In Re: Confederation of Real Estate Developers Association of India v. Greater Noida Industrial Development Authority and Ors.
v. S. Kannan v. Asian Paints Ltd.
vi. Tamil Nadu Power Producer Association v. Chettinad International Coal Terminal (P.) Ltd.

IV. INSOLVENCY & BANKRUPTCY

A. **Regulatory Updates**

i. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021
ii. Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021
iii. The Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021

iv. The Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021
v. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2021
vi. Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021

B. **Judicial Pronouncements**

i. Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited
ii. Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr.
iii. Lalit Kumar Jain v. Union of India and Others
iv. Mr. Joseph Jayananda v. Navalmar (UK) Ltd. & Anr.
v. Next Orbit Ventures Fund v. Print House India Pvt Ltd. & Others

V. LITIGATION & ARBITRATION

i. PASL Wind Solution Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.
ii. Inox Renewables Limited v. Jayesh Electricals Limited
iii. M/s. Fumo Chem Pvt. Ltd. v. M/s Raj Process Equipments and Systems Pvt. Ltd.

VI. LABOUR & EMPLOYMENT

i. Central Government notifies Section 142 of the Social Security Code, 2020
ii. Notified: Draft Code on Social Security (Employee’s Compensation) (Central) Rules, 2021
iii. The Delhi Government mandates principal employers to register Inter-State Migrant workers with the Labour Department

INSIGHTS

I. MERGERS & ACQUISITION LANDSCAPE – LOOKING BACK TO LOOK AHEAD

Strap: *While the pandemic has been an incredibly difficult time for all sectors, it has kick-started a reforms cycle in India.*

The Genesis of Growth

Post the 1991 reforms, as India emerged as an attractive investment destination and as global interest in Indian companies and assets grew, there was inevitably a steady rise in Mergers & Acquisition (M&A) activity in India. The flow of such transactions in India, picked up pace towards the end of the last millennium and the beginning of the new. The sectors leading this activity were the chemicals, drugs and fertilisers sector, information technology, telecom and financial services and the services sector[1]. An era of globalisation spurred by technology resulted in accelerated M&A activity in various other domains as well, and India continued to be at the centre of global interest as a result of having one of the highest economic growth rates in the world, a large, young talent pool and an aspirational growing middle class.

Surging Ahead

Between 2015-2019, India saw more than 3,600 M&A deals with an aggregate value of over USD 310 billion[2]. About 70% of the growth in M&A activity in 2018 was led by distressed deals, enabled through the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016[3] ("**IBC**"). Some of the largest deals during that period include Walmart's US$ 16 billion investment in Flipkart and Rosneft-led Russian consortium's acquisition of Essar Oil for USD 13 billion.

In 2019, in spite of the global economic turbulence, the strained US-China trade relationship and geopolitical instability of the past years impacting a few quarters of M&A activity in India like in other jurisdictions, according to the United Nations Trade and Development (UNCTAD), India attracted foreign direct investment of USD 51 billion in 2019, marking a 20% increase from 2018. This can be attributed to corporate India's resilience and remaining remarkably steadfast to growth strategies. Some of the top deals of 2019 were ArcelorMittal and Japan's Nippon Steel's acquisition of Essar Steel India for USD 7.21 billion which was a successfully competed IBC acquisition and the largest deal of 2019 and RA Hospitality Holdings (Cayman) increasing its stake to 30% in Oravel Stays Private Limited (OYORooms.com) for USD 2 billion. The manufacturing sector led the deal values with a 29% share. The year also recorded some high-value deals in the energy space with the sector recording 18 transactions and a 16% share in total M&A deal values. On the other hand, the information technology sector led deal volumes with an 18% share, followed by start-ups and pharma, which together accounted for 28% of total deal volumes.[4]

***2020*: Prolonged Pause, Recovery & Reforms**

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[1] Mergers & Acquisitions in India: A sectoral analysis Priya Bhalla Moti Lal Nehru College (E), University of Delhi, India, International Journal of Business and Economic Development Vol. 2 Number 2, July 2014

[2] "India M & A report 2019" published by Bain & Company and the Confederation of Indian Industry

[3] "India M & A report 2019" published by Bain & Company and the Confederation of Indian Industry

[4] Grant Thornton: Annual Deal Tracker 2020

The year 2020 began with the dismal performance of the capital markets and to compound the economic woes, the world was caught in the maelstrom of COVID-19 which brought growth to a grinding halt with significant adverse impact across the global M&A market. According to Refinitiv, India Inc's M&A deals in 2020 fell to a three-year low of USD 38.1 billion in the first half of 2020, a 14.1% decline compared to the first half of 2019.[5] However, there was a quick rebound in the latter half of 2020, wherein India ranked fifth for total transactions' value in the post-global financial crisis period with deal values amounting to a little over USD 80 billion across around 1,268 transactions, which is a 7% increase in terms of value as compared to 2019.[6] It should be noted that investment by global giants such as Facebook, KKR, General Atlantic and Google in Reliance's Jio Platforms form a large part of the total deal values in 2020. This was also a year for consolidation, as domestic consolidation accounted for 50% of the total deal value in the year 2020[7].

While the IT and healthcare sectors witnessed a spurt in M&A activity, others like aviation and construction, are still in the throes of a major slowdown due to the COVID-19 pandemic. However, certain industries like auto and hospitality which were struggling, are expected to see stronger growth in 2021-22 and there is cautious optimism on the deals front.

It is no secret that many business groups with varied interests and robust financials will look at rejigging their businesses at this point and therefore be on the lookout for reasonably priced deals to possibly expand and/or diversify in order to fortify or make operations more sustainable. On the other hand, there may be many enterprises with an established presence in certain verticals or geographies which could look at potentially entering into new territories and business segments. Stressed sectors/ industries will have to evaluate their group structures and make an assessment of the restructuring requirements, while others may also consider consolidation to ensure business continuity. Such a consolidation could either be horizontal or vertical combination thereby unlocking potential and facilitating exit with higher returns while achieving better economies of scale.

A key trend which is likely to play out, is that private equity fund houses which are flush with liquidity will carry out in the days ahead, acquisitions of companies who may announce their inability to service their payments to financial institutions/ other lenders on account of the pandemic impacting their business operations badly.

All the aforesaid will certainly lead to enhanced M&A activity even if the transactions may not commence or close immediately.

To tide over the COVID-19 pandemic crisis, the Government has undertaken several key policy measures and reform interventions to increase investor confidence. There have been several initiatives undertaken by the Government of India like fast tracking investment clearance through an empowered group of secretaries, a proposed new public sector enterprise policy, electronics manufacturing clusters scheme, a new tariff policy in the power sector, private participation in coal sector and various reforms in the Companies Act, 2013 to promote ease of doing business in India. That said, the recent amendments proposed in the Finance Bill 2021, particularly the proposal to not regard goodwill as part of the intangible assets block effective April 1, 2020, consequently denying depreciation may adversely impact buyers and act as a blow to internal group

[5] https://www.businesstoday.im/current/corporate/ma-activity-in-india-touch-3-year-low-of-381-billion-in-h1-refinitiv/story/408592.html
[6] PWC: Deals in India Annual Review and outlook for 2021
[7] PWC: Deals in India Annual Review and outlook for 2021

restructuring and strategic M&A deals. M&A transactions already consummated with the tax benefit on goodwill factored in, the deal IRRs considered by corporate India would undergo a significant change. Similarly, for M&A negotiations presently underway, buyers will need to factor in the impact of these changes in finalising the acquisition price and may have to undertake valuation exercise afresh.

While undeniably the COVID-19 pandemic has been an incredibly difficult time for all sectors, it has kickstarted a reforms cycle in India which may boost economic activity in the near future and may after all be a silver lining.

***2021 and Beyond*: The Road Ahead**

COVID-19 pandemic has brought about a rethink of strategies and realignment of priorities by companies to ensure business sustainability, continuity and financial stability. Technology has played a key role in helping businesses stay afloat in these times and is expected to be key to driving M&A activity in India. The real estate sector which had seen a major downturn even prior to the COVID-19 pandemic will likely bounce back with the Government making efforts to boost growth in this sector, given its high employment generation potential. There is also considerable interest in the ed-tech, fintech, defence, pharma and healthcare sectors as they provide innovative solutions to India’s infrastructure problems in these sectors.

Consolidation is expected to continue to fuel major deals in 2021 and beyond and the outlook is reassuringly bright on the back of a slew of reforms and an improved regulatory framework aimed at pump-priming the economy. The optimism on the continued momentum in M&A activity moving forward, partly stems from the Indian Prime Minister’s policy of “Atmanirbhar Bharat” which translates into 'self-reliant India' aimed at making India "a bigger and more important part of the global economy". It is also led by companies being confronted with the urgency to make strategic investments to help better navigate the complexities of an uncertain world.

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UPDATES

I. FEMA & FDI

i. External Commercial Borrowings (ECB) Policy – Relaxation in the period of parking of unutilised ECB proceeds in term deposits

The Reserve Bank of India has, by way of A.P. (DIR Series) Circular No.01 dated April 07, 2021 (“**Circular**”) decided to relax the period of parking of ECB proceeds as a one-time measure with a view to provide relief to the ECB borrowers affected by the Covid-19 pandemic.

Pursuant to the Circular, the unutilised ECB proceeds drawn down on or before March 01, 2020 can be parked in term deposits with AD Category-I banks in India prospectively for a n additional period up to March 01, 2022, i.e., for a period of 24 (twenty four) months as compared to a maximum period of 12 (twelve) months cumulatively provided generally under the Master Direction on ECBs, Trade Credits and Structured Obligations.

The full text of the Circular can be accessed here. The full text of the Master Direction on ECBs, Trade Credits and Structured Obligations can be accessed here.

ii. Sponsor Contribution to an Alternative Investment Fund (AIF) set up in Overseas Jurisdiction, including International Financial Services Centres (IFSCs)

The Reserve Bank of India (**"RBI"**) has, by way of A.P. (DIR Series) Circular No. 04 dated May 12, 2021 ("**Circular**") decided that any sponsor contribution from a sponsor Indian Party ("**IP**") to an Alternative Investment Fund ("**AIF**") set up in an overseas jurisdiction, including International Financial Services Centres ("**IFSCs**") in India, as per the laws of the host jurisdiction, will be treated as Overseas Direct Investment ("**ODI**").
Subsequently, the RBI has also updated the existing Master Directions on Direct Investments by Residents in Joint Venture or Wholly Owned Subsidiary Abroad to record the understanding of the Circular.

The full text of the Circular can be accessed here. The updated Master Directions on Direct Investments by Residents in Joint Venture or Wholly Owned Subsidiary Abroad can be accessed here.

iii. Foreign Exchange Management (Borrowing and Lending) (Amendment) Regulations, 2021

The Reserve Bank of India (**"RBI"**) has, by way of Notification No. FEMA.3(R)2/2021-RB dated May 24, 2021 ("**Notification**"), amended the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018.

The Notification inserted new sub clause (iii) to clause (A) of Regulation 7 which states that an AD bank in India may lend to a person resident outside India for making margin payments in respect of settlement of transactions involving Government Securities, subject to such terms and conditions as may be specified by the RBI.

The full text of the Notification can be accessed here.

iv. Investment by Foreign Portfolio Investors (FPI) in Government Securities: Medium Term Framework (MTF)

The Reserve Bank of India (**"RBI"**) has, vide A.P. (DIR Series) Circular No. 05 dated May 31, 2021 ("**Circular**"), amended the Schedule 1 of the Foreign Exchange Management (Debt Instruments) Regulations, 2019 ("**Principal Regulation**").

Pursuant to the Circular, the RBI has revised the investment limits by FPIs with respect to Government Securities and State Development Loans for the financial year 2021-2022.

The full text of the Circular including the revised investment limits can be accessed here.

v. Liberalised Remittance Scheme for Resident Individuals – Reporting

The Reserve Bank of India (**"RBI"**), by way of A. P. (DIR Series) Circular No. 106 dated May 23, 2013 ("**Original Circular**") required AD Category-I banks to upload data in respect of number of applications received and the total amount remitted under the Liberalised Remittance Scheme on Online Return Filing System ("**ORFS**").

The RBI has, by way of A.P. (DIR Series) Circular No. 07 dated June 17, 2021 ("**Circular**") decided to collect this information through the eXtensible Business Reporting Language ("**XBRL**") system instead of the ORFS. AD Category–I banks shall upload the requisite information on XBRL system on or before the fifth of the succeeding month from July 01, 2021 onwards.

The full text of the Circular can be accessed here.

vi. Master Direction – Reporting under Foreign Exchange Management Act, 1999

The Reserve Bank of India (**"RBI"**) has updated the existing Master Direction on Reporting under the Foreign Exchange Management Act, 1999. The RBI has clarified that the calculation of late submission fee in cases of delay in reporting shall be calculated from the day post the completion of the stipulated period (*i.e.*, from the date of receipt of funds / allotment or transfer of shares) and end on the day, preceding the day on which RBI receives the transaction report.

The updated Master Direction can be accessed here.

II. CORPORATE

i. Circular – Extension of Time to Conduct Extraordinary General Meetings through Video Conferencing or Other Audio-Visual Means

The Ministry of Corporate Affairs has, by way of General Circular No. 10/ 2021, dated June 23, 2021, in view of the resurgence of the Covid-19 pandemic, provided an extension to companies to conduct their extraordinary general meetings, through video conferencing and other audio-visual means and transact items through postal ballot, up to December 31, 2021. All of the other terms and conditions of the earlier circulars issued on the matter would remain the same and would have to be complied with.

The full text of the General Circular can be accessed here.

ii. Amendment – The Companies (Meetings of Board and its Powers) Rules, 2014

The Ministry of Corporate Affairs has by way of Notification No. G.S.R. 409(E), dated June 15, 2021, brought into force with immediate effect the Companies (Meetings of Board and its Powers) Amendment Rules, 2021 ("**Amendment Rules**"), which has the effect of amending the Companies (Meetings of Board and its Powers) Rules, 2014 ("**Principal Rules**").

The Amendment Rules have omitted Rule 4 of the Principal Rules, which restricted certain matters, such as the approval of the financial statements, boards report, etc., from being dealt with in a meeting of the board held through video conferencing, or other audio-visual means.

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

iii. Clarification on Corporate Social Responsibility (CSR) Funds

The Ministry of Corporate Affairs ("**MCA**") has by way of General Circular No. 09/2021, dated May 5, 2021, clarified that spending of CSR funds towards creating health infrastructure for COVID care, establishment of medical oxygen generation and storage plants, etc., would be eligible CSR activities in terms of item nos. (i) (*promoting health care and sanitation*) and (xii) (*disaster management*) of the Schedule VII to the Companies

Act, 2013. It has further been clarified that companies may undertake the activities or projects or programmes, either directly by themselves or in collaboration as shared responsibility with other companies. This, however, is subject to the fulfilment of all the requirements under the Companies (Corporate Social Responsibility Policy) Rules, 2014 and the various guidelines issued by the MCA, from time to time.

The full text of the General Circular can be accessed here.

The MCA has by way of General Circular No. 05/2021, dated April 22, 2021, clarified that the spending of CSR funds for setting up of makeshift hospitals and temporary Covid care facilities, would be eligible CSR activities, under item nos. (i) (*promoting health care and sanitation*) and (xii) (*disaster management*) of Schedule VII to the Companies Act, 2013. Companies are permitted to undertake such activities, in consultation with the respective state governments, subject to the fulfilment of all the requirements under the Companies (Corporate Social Responsibility Policy) Rules, 2014 and the various guidelines issued by the Ministry.

The full text of the General Circular can be accessed here.

The MCA has by way of a Circular dated May 20, 2021, provided a clarification to the top 1,000 companies in terms of 'market capitalisation', that had received an appeal from the Secretary, MCA, on March 30, 2020, to contribute to the 'PM CARES Fund', over and above their statutory CSR obligations, as prescribed under Section 135(5) of the Companies Act, 2013 for the financial year 2019–2020.

In terms of the Circular, the MCA has clarified that those companies who have contributed to the 'PM CARES Fund', on March 31, 2020, which was over and above their statutory requirements for the financial year 2019–2020, could 'offset' the excess amount contributed by them, towards the statutory amount required to be spent on CSR, for the financial year 2020–2021, subject however to certain conditions.

The full text of the Circular can be accessed here.

iv. Clarification on the gap between holding two consecutive Board Meetings

The Ministry of Corporate Affairs has by way of General Circular No. 08/2021, dated May 3, 2021, clarified that in view of the resurgence of the Covid-19 pandemic, the gap of a maximum of 120 (One Hundred and Twenty) days, between 2 (Two) consecutive board meetings, as required in terms of Section 173 of the Companies Act, 2013, would now be extended by a period of 60 (Sixty) days, thereby now permitting the maximum gap to be 180 (One Hundred Eighty) days, for the first 2 (two) quarters of the financial year 2021-2022, i.e., for quarter April 2021 - June 2021, and for quarter July 2021 - September 2021.

The full text of the General Circular can be accessed here.

v. Relaxation on the filing of the Forms for the creation or modification of Charges

The Ministry of Corporate Affairs ("**MCA**") has by way of General Circular No. 07/2021, dated May 3, 2021, and General Circular No. 12/2021, dated June 30, 2021, relaxed the time for filing forms related to the creation or modification of charges, under the Companies Act, 2013 ("**Companies Act**"), specifically in relation to the filing of Form CHG-1 and Form CHG-9, by a company or a charge holder, on account of the resurgence of Covid-19.

For all such charges created/ modified before April 1, 2021, and whereby the date within which the abovementioned forms were to be filed has not expired as of April 1, 2021, the period from April 1, 2021 to July 31, 2021, will not be taken into consideration, for counting the number of days under Section 77 or Section 78 of the Companies Act. If, however, the forms are not filed within this period, the first day after March 31, 2021, would be reckoned as August 1, 2021.

Further, if a charge is created between any date from April 1, 2021 to July 31, 2021, the period from the date of creation / modification of the charge till July 31, 2021, would not be reckoned for the purpose of counting of days under Section 77 or Section 78 of the Companies Act. Instead, in the event the form is not filed within such period, the first day after the creation/ modification of charge would be reckoned as August 1, 2021, for the purpose of counting the number of days within which the form is required to be filed.

This relaxation in time, for filing such charge related forms, would not be applicable to certain filings, the details of which have been set out in the General Circular No. 07/ 2021.

The full text of the General Circulars can be accessed here and *here.*

vi. Relaxation on the levy of Additional Fees for filing Forms under the Companies Act, 2013

The Ministry of Corporate Affairs has by way of General Circular No. 06/2021, dated May 3, 2021, and General Circular No. 11/2021, dated June 30, 2021, extended the time period for filing certain forms under the Companies Act, 2013, the Limited Liability Partnership Act, 2018, and the rules made thereunder, without the payment of additional fees, in view of the resurgence of Covid-19. All such forms, except Form CHG-1, Form CHG-4, and Form-CHG-9, which were due to be filed during the period between April 1, 2021 and July 31, 2021, can now be filed by August 31, 2021, and no additional fees, on account of delay of filing the said forms will be levied.

The full text of the General Circulars can be accessed here and *here*.

III. COMPETITION

i. WhatsApp LLC v. Competition Commission of India & Anr.

[W.P.(C) 4378/2021 and W.P.(C) 4407/2021, decided on 22.04.2021 by the Delhi High Court]

The Delhi High Court ("**Delhi HC**") has refused to set aside Competition Commission of India ("**CCI**") order dated March 24, 2021 ("**Impugned Order**") where CCI had issued a *suo-moto* investigation against messaging service WhatsApp Inc., for alleged abuse of dominance in relation to its recently updated privacy policy regarding data-sharing between WhatsApp and Facebook.

Background:

The CCI in the Impugned Order had considered that WhatsApp was *prima-facie* dominant in the market for over-the-top messaging apps through smartphones in India. Further, the CCI was of the *prima-facie* opinion that the 'take-it-or-leave-it' nature of privacy policy and terms of service of WhatsApp and the information sharing stipulations mentioned therein, required a detailed investigation in view of the market position and market power enjoyed by WhatsApp.

Before the Delhi HC, it was argued by WhatsApp and Facebook that CCI should not have interfered and started the probe, since this was not a competition issue. It was further argued that since the issue with respect to personal data of users, sharing of personal data etc. was already pending before the Supreme Court of India, CCI should not have intervened.

Findings of the Court:

The Delhi HC observed that merely because of the pendency of proceedings before the Supreme Court and other Courts, CCI could not be said to be bound to necessarily hold its hands and not exercise the jurisdiction otherwise vested in it, under the statute. The Delhi HC also observed that the order passed by the CCI was purely administrative in nature and did not entail any consequence on the civil rights of the petitioner(s).

The Delhi HC accordingly held that the Impugned Order could not be said to be without jurisdiction or so perverse so as to be quashed by the court in exercise of its extra-ordinary jurisdiction.

This judgement is under appeal before a division bench of the Delhi HC [*LPA 163/2021*].

ii. Amazon Seller Services Private Limited and Ors. v. Competition Commission of India and Ors.

[W.P. Nos. 3363 of 2020 and 4334 of 2020 (GM-RES) decided on 11.06.2021 by Karnataka High Court]

The Karnataka High Court ("**Kar HC**") has dismissed the writ petitions filed by Amazon Seller Services Pvt. Ltd. ("**Amazon**") and Flipkart Internet Pvt. Ltd. ("**Flipkart**") challenging an order passed by the Competition Commission of India ("**CCI**") dated January 13, 2020 ("**Impugned Order**") directing investigation under Section 26(1) of the Competition Act, 2002 ("**Competition Act**") by the Director General.

Background:

Before the Kar HC, it was argued by Amazon and Flipkart that the Impugned Order was ultra vires the object and purpose of Competition Act and the said order suffers from non-application of mind. It was also argued that the CCI had not formed any prima facie opinion with regard to contravention of any provision and no notice was provided to them by the CCI, which was not the practice is earlier cases.

The CCI argued that an order made under Section 26(1) of the Competition Act by the Commission was an 'Administrative Order' directing conducting of departmental proceedings and it did not determine any right or obligation of parties nor entailed any civil consequences. Further, the Petitioners, among other things, have not challenged the inherent jurisdiction of the CCI to direct investigation.

Findings by the Court:

The Kar HC observed that an order under Section 26(1) of the Competition Act passed by the CCI was an 'administrative direction' to one of its wings departmentally and without entering upon any adjudicatory process. Further, the said provision does not mention about issuance of any notice to any party before or at the time of formation of an opinion by the CCI on the basis of information received by it.

The Kar HC also observed that that the CCI had examined the material produced by the informant, information available in public domain etc., and had looked into the information in detail and applied its mind. Further, in a

writ petition filed under Article 226 of the Constitution of India, seeking judicial review, the High Court could examine only the decision-making process with the exception namely the cases involving violation of fundamental human rights.

The Kar HC accordingly dismissed the writ petitions. As per current information available, this judgement is under appeal before a division bench of the Kar. HC.

iii. In Re: Neha Gupta v. Tata Motors Ltd. and Ors.

[Case No. 21/2019 and Case No. 16/2020, decided on 4.05.2021 by Competition Commission of India]

The Competition Commission of India ("**CCI**") by a common order initiated investigation against Tata Motors Ltd. and some others for imposing unfair terms and conditions in dealership agreements entered into with its dealers.

Background:

In the first case, i.e., case no. 21 of 2019, Varanasi Auto Sales Pvt. Ltd. was appointed as an authorized dealer of Tata Motors to sell commercial vehicles ("**CVs**"), spare parts, accessories etc. in various district of Uttar Pradesh. It was alleged that for meeting business needs, every authorised dealer of Tata Motors was obligated to raise finance / loan from banks and/ or NBFCs such as Tata Capital and Tata Motors Finance. Further, to sustain and retain the market share, Tata's business model encompasses both manufacturing and financing of CVs, which was abusive and anti-competitive. It was also alleged that the OPs, viz., Tata Motors Ltd., Tata Capital Financial Services Ltd., Tata Motors Finance Ltd. dictated and restricted the finance facility as per their discretion.

In the second case, i.e., case no. 16 of 2020, it was alleged that the OPs had abused their dominant position by compelling the Informant to start the dealership of passenger/ utility vehicle segment of Tata Motors. It was also alleged that the finance facility extended by Tata Capital and Tata Motors Finance took away the decision-making power of the dealer and unfairly imposed liability of unpaid instalments of the borrower on the dealer.

Findings of the CCI:

The CCI was of a *prima facie* view that Tata Motors had indulged in the practice of coercing the dealers to bill vehicles as per its own needs and requirements, which resulted in swarming dealers with a stock of slow-moving vehicles and may further impair the financial health of the dealer. The CCI was also of a view that there were certain clauses in the dealership agreement which were in the form of unfair imposition upon dealers besides resulting in denial of market access.

In light of the above findings, the CCI held that a *prima facie* case of contravention of the provisions of Section 3(4) and Section 4 of the Competition Act, 2002 ("**Competition Act**") was made out against Tata Motors, and the matter was required to be investigated. In light thereof, the CCI directed the DG to conduct an investigation into the matter as per Section 26(1) of the Competition Act.

iv. In Re: Confederation of Real Estate Developers Association of India v. Greater Noida Industrial Development Authority & Ors.

[Case No. 34/2020; Case No. 37/2020 and Case No. 38/2020 decided on 4.05.2021 by Competition Commission of India]

The Competition Commission of India ("**CCI**") by a common order dismissed cases where allegations were made regarding abuse of dominant position by Greater Noida Industrial Development Authority ("**GNIDA**") pursuant to lease deed, which allegedly also contained one-sided conditions.

Background:

In the case no. 34 of 2020, it was alleged that OP, i.e., GNIDA abused its dominant position in contravention of the provisions of Section 4 of the Competition Act, 2002 ("**Competition Act**"). The principal grievance against GNIDA included non-disclosure and allotment of encumbered land to the developers and charging of premium as well lease rent for the same; one-sided clause in the lease deed such as, no liability on GNIDA of providing clear land to the developers, no clause which granted the developer any choice to opt for cancellation and refund of the deposited amounts in the event of any deviation or breach on part of GNIDA etc.

In the case no. 38 of 2020, it was alleged that GNIDA had abused its dominant position by acting in a completely abusive and arbitrary manner. The principal grievance against GNIDA included demand of additional farmer compensation even though there was no clause in the lease deed; abuse of discretion; inclusion of patently one-sided clauses in the lease deed such that the developer had no right but to succumb to the impositions by GNIDA etc.

Findings of the CCI:

The CCI considered the allegations and response of GNIDA and was of the view that no interference was warranted in the matters. The CCI considered the reasons placed on record by GNIDA and observed that the justifications offered by GNIDA appeared to have some merit and the same had to be seen and appreciated in a holistic manner. Further, the CCI observed that the lease deeds referred in the matters dated back to as early as July 2010, October 2010, June 2014 and no justifiable reasons was offered for approaching the Commission at this belated stage.

As such, the CCI was of the view that there was no *prima facie* case and the matters were ordered to be closed forthwith in terms of the provisions of Section 26(2) of the Competition Act.

v. S. Kannan v. Asian Paints Ltd.

[Case No. 53 of 2020 decided on 12.04.2021 by Competition Commission of India]

The Competition Commission of India ("**CCI**") dismissed a case of alleged abuse of dominance filed against Asian Paints Limited.

Background:

It was alleged that the Ops., viz., Asian Paints Ltd., Mr. K.B.S. Anand (MD & CEO) and Mr. K. Sundaram (Addl. Manager) had filed a police complaint against the Informant for selling damaged products and for saying

that it was Asian Paints. This resulted in a criminal case being filed in the court of the Learned District Munsif-cum-Judicial Magistrate, Arcot against M/s. Arcus Enterprises.

The Informant stated that this was patently false allegation raised by Asian Paints in abuse of its dominant position to drive small scale competitors out of the market by creating barriers to entry and denying market access.

Findings of the CCI:

The CCI observed that the allegations related to a criminal complaint being instituted against the Informant by the OPs, in which the investigation was underway. Further, it cannot be said that the filing of criminal complaint was with a view to oust competition and such an action was an abuse under Section 4 of the Competition Act, 2002 ("**Competition Act**").

The CCI further noted that no facts or evidence had been brought on record which indicated violation of either of Section 3 or Section 4 of the Competition Act. In addition, there was no relationship either of horizontal or vertical nature, which existed between the parties which could be examined under Section 3 of the Competition Act. Consequently, CCI observed that there existed no prima facie case and no indulgence from CCI was required.

vi. Tamil Nadu Power Producer Association v. Chettinad International Coal Terminal (P.) Ltd.

[Case No. 73 of 2015 decided on 9.04.2021 by Competition Commission of India]

The Competition Commission of India ("**CCI**") dismissed the case of alleged abuse of dominance against the OP, i.e., Chettinad International Coal Terminal (P) Ltd ("**CICTPL**") in the relevant product market of '*provision of common user coal terminal services at sea-ports in and around Kamarajar Port and common user coal terminals at Krishnapatnam Port*'.

Background:

CICTPL, a special purpose vehicle, is a terminal operator at Kamarajar Port. The Informant is an association of power producers located around Chennai which utilizes the CICTOL's services.

It was alleged that prior to commencement of CICTPL in March 2011, its members as well as other buyers of coal in the adjoining areas were importing coal through Chennai Port Trust ('**CHPT**'). Pursuant to an order of the Madras High Court, prohibiting the import of coal from CHPT, CICTPL allegedly catapulted to the position of dominance and drastically increased its common user coal terminal charges.

By an order dated January 4, 2016, the CCI directed the DG to investigate the matter and to submit an investigation report, pursuant to which, a report was submitted.

Findings of the CCI:

The CCI observed that the presence of the Krishnapatnam Port poses significant competitive constraints on CICTPL, so much so that it could not be held as dominant. Further, from the percentage of common users using Krishnapatnam port, it was apparent that users were using both these ports simultaneously. Therefore, to say

that CICTPL held a position of strength so as to enable it to act independent of the market forces, was not appropriate.

The CCI also observed that although total quantity of coal imported at both CICTPL and Krishnapatnam had increased over the years, the share of CICTPL had declined from 2013-14 onwards, whereas share of Krishnapatnam had increased during same period.

Therefore, the conduct of CICTPL, regardless of being opportunistic, was not found to be dominant in the relevant market and the case was directed to be closed.

IV. INSOLVENCY & BANKRUPTCY

A. REGULATORY UPDATES

i. The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021

The President of India has promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 ("**Ordinance**") on April 4, 2021, to amend the Insolvency and Bankruptcy Code, 2016 ("**Code**"), in order to provide for an efficient alternative resolution process for corporate persons classified as Micro, Small and Medium Enterprises ("**MSMEs**") under the Code. The aforementioned amendment is effective from April 4, 2021. The Ordinance seeks to introduce a pre-packaged insolvency resolution process ("**PPIRP**") for MSMEs to alleviate the distress caused to them in the aftermath of the COVID-19 pandemic, keeping in mind the unique nature of their business by *inter alia* the insertion/ modification of the following provisions:

- Chapter IIIA of Part II of the Code (Sections 54A to 54P) titled *"Pre-packaged Insolvency Resolution Process"* being inserted: This newly introduced resolution process is available only in respect of corporate debtors classified as MSMEs under Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006.

- The entire pre-packaged insolvency resolution process as provided under Sections 54A to 54P of the Code can be summarised in brief as under:

  - **Pre-conditions:** The management of a corporate debtor should issue a declaration for initiating the PPIRP, which must be accompanied with an appropriate resolution of the partners, and the approval of at least 66% (sixty six percent) of the unrelated financial creditors of the corporate debtor to that effect. Further, the corporate debtor should not be undergoing or have undertaken the corporate insolvency resolution process ("**CIRP**"), during the 3 (three) years preceding the initiation date of the PPIRP. The corporate debtor should also not be ineligible to be a resolution applicant under Section 29A of the Code and no order of liquidation should have been passed against the corporate debtor.

  - **Role of the Resolution Professional:** An insolvency professional will be appointed as the resolution professional ("**RP**"), who should be proposed by and approved by the unrelated financial creditors. The RP would perform the required duties, as prescribed, from the date of his/ her appointment. The RP is also specifically required to prepare a report during the application process confirming that the application filed by the corporate debtor is in consonance with the newly inserted PPIRP provisions under the Code.

- **Admission/ Rejection of the Application for initiation of PPIRP:** The Adjudicating Authority ("**AA**') will either admit or reject the application for the initiation of the PPIRP within 14 (fourteen) days from the date of filing the application. The entire PPIRP is to be completed within a period of 120 (one hundred and twenty) days, out of which the RP is given 90 (ninety) days' time to file the resolution plan, and the AA is given 30 (thirty) days' time to approve the resolution plan. A moratorium will be declared by the AA during the PPIRP, and the RP would make a public announcement of the initiation of the PPIRP.

- **Consideration and Approval of Resolution Plans:** Within 7 (seven) days of the PPIRP commencement date, a committee of creditors ("**CoC**") would be constituted on the basis of the confirmed list of claims. The corporate debtor is required to submit a base resolution plan to the RP within 2 (two) days of the PPIRP commencement date. The CoC may either approve the plan or reject it if it impairs any claims owed by the corporate debtor. In the event the base resolution plan is not approved, resolution plans from prospective resolution applicants may be invited to compete with the base resolution plan. After evaluation, the CoC may select a plan that is significantly better, by a majority of at least 66% (sixty six percent) of the CoC and the said plan should be submitted to the AA for its approval. In certain cases where the resolution plan impairs certain claims of the corporate debtor, the CoC may require the promoters of the corporate debtor to dilute their shareholding, control or voting rights in the corporate debtor.

- **Termination of the PPIRP**: If no resolution plan is approved, then the RP can apply for termination of the PPIRP. Even before the approval of the resolution plan, the RP can apply for termination of the PPIRP if the CoC, by a majority of at least 66% (sixty six percent), decides that the PPIRP should be terminated. Where, during the PPIRP, the AA has already passed an order vesting the management of the corporate debtor with the RP (on the ground that during the PPIRP, the affairs of the corporate debtor have been conducted in a fraudulent manner or there has been gross mismanagement of the affairs of the corporate debtor) then, in the event the RP applies for termination of the PPIRP, the AA can terminate the PPIRP and must pass an order of liquidation of the corporate debtor and further declare that PPIRP costs shall be included as part of the liquidation costs.

- **Management and control of the affairs of the RP:** An interesting aspect is that the management of the affairs of the corporate debtor during the PPIRP continue to be with the Board of Directors or partners, subject to certain conditions and restrictions. However, in cases of gross mismanagement or if the affairs are being carried out in a fraudulent manner, the AA can vest management of the corporate debtor with the RP. In cases where the resolution plan does not provide for change in management or control of the corporate debtor, the AA will pass a liquidation order.

- **Appeal:** The order approving the resolution plan is appealable on the grounds mentioned under Section 61(3) of the Code.

- Suitable amendments have also been made to Sections 4, 5, 11, 33, 34, 61, 65, 77, 209, 239 and 240 of the Code, to support the PPIRP provisions. The amendment to Section 4 of the Code provides that the minimum amount for default was to be specified by the Central Government, with Rs. 1,00,00,000/- (Rupees one crore) being the ceiling limit. It is pertinent to note that by way of a Notification dated April 9, 2021, issued by the Ministry of Corporate Affairs, the Central Government has specified Rs. 10,00,000/- (Rupees ten lakhs only) as the minimum amount of default for matters relating to PPIRP of

corporate debtors, under Chapter III-A of the Code. *The full text of the Notification can be accessed here*.

- Section 11A has been inserted in the Code to govern the order of disposal of applications under Section 54C and under Sections 7, 9 and 10 of the Code. It is specifically provided that where an application is filed under Section 54C within 14 (fourteen) days of any application being filed under Sections 7, 9 and 10 of the Code, which is pending, then the application under Section 54C should be disposed first. However, if the application under Section 54C is filed after 14 (fourteen) days of the application being filed under Section 7, 9 and 10 of the Code, then the application under Sections 7, 9 and 10 of the Code will be disposed first. However, this provision would not apply to those applications that are pending as on the date of the commencement of the Ordinance.

- Sections 67A and 77A have been inserted in the Code to impose penalties on officers of the corporate debtor who manage the affairs of the corporate debtor fraudulently and to provide for punishment of offences relating to the PPIRP.

The full text of the Ordinance can be accessed here.

ii. Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021

To govern all matters relating to the pre-packaged insolvency resolution process ("**PPIRP**"), the Central Government, in exercise of its powers under Section 239(2)(fd)(1) and Section 54C of the Insolvency and Bankruptcy Code, 2016 ("**Code**") has issued the Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 ("**PPIRP Rules**") on the April 9, 2021, which have come into effect from April 9, 2021. The PPIRP Rules specify a format for applying, under Section 54C of the Code, for initiation of the PPIRP by a corporate applicant, in Form-1. The said application is required to be accompanied with an affidavit, along with documents or records as clearly specified in Form-1. A fee of Rs. 15,000/- (Rupees fifteen thousand only) is payable on each application filed under Section 54C of the Code. The application is to be filed in the electronic form, however, if the said facility is unavailable, physical filing is permitted in the prescribed manner. Advance service of the application under Section 54C of the Code to the Insolvency and Bankruptcy Board of India is mandatory under the PPIRP Rules. Further, the filing of the application under Section 54C of the Code should be in accordance with Rules 20, 21, 22, 23, 24 and 26 of the National Company Law Tribunal Rules, 2016.

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

iii. The Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021

The Insolvency and Bankruptcy Board of India ("**Board**"), has by way of the Notification dated April 9, 2021, published the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 ("**PPIRP Regulations**") to govern the pre-packaged insolvency resolution process ("**PPIRP**") proceedings. The PPIRP Regulations have come into force and effect from April 9, 2021. A brief outline of the key provisions under the PPIRP Regulations are as follows:

- **Initiation of PPIRP:** Regulation 14 of the PPIRP Regulations provide that a meeting of the unrelated financial creditors would be convened by the corporate applicant and a notice of at least 5 (five) days should be provided, unless a shorter time is agreed upon. The notice must be issued in Form P2 of the

PPIRP Regulations. The financial creditors would appoint the Resolution Professional ("**RP**") and the terms of his/ her approval would be in Form 3 of the PPIRP Regulations, which would also include the fee payable to him/ her and the expenses incurred for performing the duties and conducting the PPIRP process. The insolvency professional would provide the consent to be appointed as the RP, in Form P1 of the PPIRP Regulations. The eligibility criteria, fee, powers, and duties of the RP are provided under Regulation 7 to 10 of the PPIRP Regulations. The financial creditors' approval for filing the application under Section 54A(3) of the Insolvency and Bankruptcy Code, 2016 ("**Code**") should be in Form P4 of the PPIRP Regulations. The written consent of the RP to act as the authorized representative should be in Form P5 of the PPIRP Regulations.

- **Application before the Adjudicating Authority:** The application filed by the corporate applicant, under Form 1 of the Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 ("**PPIRP Rules**") should be accompanied with the requisite declarations, as required under Section 54A and 54C of the Code, i.e., declaration by the directors/ partners for initiating the PPIRP and declarations regarding existence of avoidance transactions, which should be in Form P6 and Form P7 of the PPIRP Regulations, respectively. Once the RP's appointment is approved, the RP is required to file a report as required under Section 54B in Form P8 of the PPIRP Regulations.

- **PPIRP after the Application is admitted:** Once the PPIRP application is admitted, the RP is required to make a public announcement of the same in Form P9 of the PPIRP Regulations. Thereafter, the corporate debtor is required to submit a list of claims in Form 10 of the PPIRP Regulations, along with details of the respective creditors, their security interest and guarantees with the RP, which will be verified and confirmed from the records by the RP. After verification of the claims, the RP will constitute a committee of creditors ("**CoC**") of the corporate debtor, in accordance with Regulation 25 of the PPIRP Regulations. In case the corporate debtor has no financial creditors, the CoC will consist of the unrelated operational creditors. Further, an information memorandum should be prepared and submitted by the corporate debtor in accordance with Regulation 40 of the PPIRP Regulations, within 2 (two) days of the insolvency commencement date, which would be finalised and submitted by the RP before the CoC.

- **Submission of Resolution Plans and its approval:** The corporate debtor is required to submit a base resolution plan, which can be considered and approved by the CoC if it discharges the debts owed to the operational creditors. If the resolution plan is not accepted by the CoC, the RP is required to invite prospective resolution applicants to submit their resolution plans. This invitation is required to be published in Form P11 of the PPIRP Regulations. The essential particulars of the resolution plan are provided under Regulation 44 and 45 of the PPIRP Regulations. The resolution plan with the highest score would be considered by the CoC for approval. When a resolution plan is approved by the CoC, the RP is required to submit an application along with a compliance certificate in Form P12 of the PPIRP Regulations to the AA for approval. Where no resolution plan is approved by the CoC, the RP is required file an application in Form P13 of the PPIRP Regulations for termination of the PPIRP process.

- **Management of the affairs of the Corporate Debtor:** The management of affairs of the corporate debtor, during the PPIRP process, continues to be with the erstwhile Board of Directors or the partners, subject to conditions mentioned under Regulation 50 of the PPIRP Regulations. However, if the RP is of the opinion that affairs of the corporate debtor are being conducted in a fraudulent manner or are being mismanaged, the RP is required to file an application in Form P14 of the PPIRP Regulations before the AA to vest the management of the corporate debtor with the RP.

The full text of the PPIRP Regulations can be accessed here.

iv. The Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021

The Insolvency and Bankruptcy Board of India by way of a Notification, dated April 13, 2021, bearing No. IBBI/2020-21/GN/REG072, has published the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2021 ("**IU Regulations**") to amend, with immediate effect, the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 by *inter alia* inserting/ substituting the following regulations:

- Clauses (ba) and (bb) have been inserted in Sub-Regulation (3) in Regulation 15 of the IU Regulations, which require the byelaws of information utilities to provide for minimum service quality standards and to provide for quality standards and quality standards certification.
- Sub-Regulation (1) of Regulation 27 of the IU Regulations has been substituted whereby timelines have been prescribed for the user to submit information to the information utility. The user is required to submit information updated till the last day of every month in Form-C to the information utility in the first week of the following month. Further, in cases of information of default, information should be updated within 7 (seven) days of its occurrence.

- Regulation 36A in the IU Regulations has been inserted requiring the information utility to publish quarterly statistics relating to debt related information which should provide for distribution of debts in terms of currency, geography, sector, size, tenor, type, lending arrangement, and incidence of default.

- Form-C which is used by the user to submit information to the information utility has been substituted.

The full text of the Notification can be accessed here.

v. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2021

The Insolvency and Bankruptcy Board of India by way of the Notification dated April 27, 2021, bearing No. IBBI/2020-21/GN/REG073, has published the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2021 to, with immediate effect, amend the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 ("**IP Regulations**") by *inter alia* inserting/ substituting the following regulations:

- Insertion of a proviso after the proviso in Clause (ca) of Sub-Regulation (2) of Regulation 7 of the IP Regulations, which provides that for the financial year 2020-2021, an insolvency professional should pay to the Insolvency and Bankruptcy Board of India ("**Board**"), the fee calculated at the rate of 0.25 percent of the professional fee earned for the services rendered by him/ her, as an insolvency professional, in the preceding financial year on or before June 30, 2021.

- Insertion of a proviso after the proviso in Clause (b) and insertion of a proviso after the proviso in Clause (c) of Sub-Regulation (2) of Regulation 13 of the IP Regulations, which provide that when an individual ceases to be a director or partner or joins as a director or partner of an insolvency

professional entity, then, on and from April 27, 2021 till December 31, 2021, the insolvency professional entity shall inform the Board, within 30 (thirty) days of such cessation or such joining.

- Insertion of a proviso after the proviso in Clause (ca) of Sub-Regulation (2) of Regulation 13 of the IP Regulations, which provide that for the financial year 2020-2021, an insolvency professional entity shall pay to the Board, the fee calculated at the rate of 0.25 percent of the turnover of the services rendered by it as an insolvency professional entity in the preceding financial year on or before June 30, 2021.

The full text of the Notification can be accessed here.

vi. Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021

The Insolvency and Bankruptcy Board of India by way of the Notification dated April 27, 2021, bearing No. IBBI/2020-21/GN/REG074 has published the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Second Amendment) Regulations, 2021 to, with immediate effect, amend the Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 by *inter alia* inserting/ substituting the following regulations:

- Insertion of a proviso after the proviso in sub-clause (5) in clause 12A of the Schedule which provides that an authorisation for assignment would be deemed to have been issued or renewed, if the authorisation for the assignment is not so issued, renewed or rejected within 30 (thirty) days of the date of receipt of the application, with respect to applications received between April 27, 2021 and October 31, 2021.

- The words “seven days” is substituted for the words “fifteen days” in sub-clause (7) in clause 12A of the Schedule, thereby increasing the time period for filing an appeal before the Membership Committee against an order of rejection of the application for issuance or renewal of the authorisation for assignment.

- Insertion of a proviso after the proviso in sub-clause (7) in clause 12A of the Schedule which provides that an aggrieved applicant may file an appeal before the Membership Committee within 30 (thirty) days of the date of receipt of the order rejecting the application for issuance of the authorisation for assignment which has been issued between April 27, 2021 and October 31, 2021.

The full text of the Notification can be accessed here.

B. JUDICIAL PRONOUNCEMENTS

i. Ghanashyam Mishra and Sons Private Limited through the Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited

[Judgment dated April 13, 2021, of the Hon'ble
Supreme Court of India, in Civil Appeal No. 8129 of 2019]

Background:

The Hon'ble Supreme Court clubbed 4 (four) matters together due to the similar questions of law arising from them. The common denominator in the matters were the fact that proceedings were instituted in alternative forums against the corporate debtor, subsequent to the approval of the resolution plan by the National Company Law Tribunal ("**NCLT**"). These proceedings were initiated for the recovery of dues not provided for in the resolution plan.

The 2 (two) issues before the Hon'ble Supreme Court were-

- *First*, whether all creditors (including the Central Government, State Government or any local authority) are bound by the resolution plan, once approved by NCLT and whether any creditor is entitled to initiate proceedings for recovery of any of the dues from the corporate debtor which do not form part of the resolution plan after approval of the same by the NCLT?

- *Second*, whether the amendment to Section 31 of Insolvency and Bankruptcy Code, 2016 ("**IBC**"), was clarificatory/ declaratory or substantive in nature?

Findings of the Court:

The Hon'ble Supreme Court placed reliance on various cases, including K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150, which established that the commercial wisdom of the Committee of Creditors is given paramount importance.

The Hon'ble Supreme Court held that Section 31 of the IBC clearly provides that once a resolution is approved by the NCLT, it is binding upon all parties including the corporate debtors, creditors, guarantors and other stakeholders. It was held that the resolution plan includes comprehensive information regarding the corporate debtor ensuring complete disclosure of all assets and liabilities of the debtor, curated by the resolution professional, as per Section 29 of IBC, read with Regulation 36 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and hence the authoritative purpose of making the resolution plan obligatory on all interested parties is that after the assent of the resolution plan, no unexpected cases ought to be flung on the fruitful applicant. It was further held that the predominant reason was that resolution applicant should begin with a new record based on the resolution plan assented and that on the off chance that subsequent litigation is allowed, the very computations based on which the applicant presents its arrangements, would go haywire and the arrangement would be impossible.

It was reiterated that it is a settled principle that if a correction is only explanatory or clarificatory in nature, it would be considered to have retrospective application and if the equivalent is substantive in nature, no such assumption can be made. The Hon'ble Supreme Court held that the amendment to Section 31 of the IBC which was the subject matter in the present case was made to clarify the uncertainty in the legislation. The Court further provided 2 (two) reasons for highlighting the declaratory/ clarificatory nature of the amendment. *Firstly,*

it held that the words "other stakeholders" already present in Section 31 of the IBC definitely covered the Central Government, any State Government or any local authority. *Secondly,* that the definition of "operational debt" is broad enough to cover claims in respect of dues arising under any law and payable to the Central Government, any State Government or any local authority. Thus, it was held that there was no substantive amendment as the amendment introduced could already be deduced from the then existent language of the provision and the 2019 amendment to the IBC is declaratory and clarificatory in nature and is effective from the date on which Code came into effect.

The Hon'ble Supreme Court therefore concluded that claims of the parties, which are not included in the resolution plan could not be agitated by them before the other fora, and that the Respondents were not entitled to recover any claims or claim any debts owed to them from the corporate debtor, accruing prior to the transfer of the control of the corporate debtor to the successful resolution applicant.

ii. Asset Reconstruction Company (India) Limited v. Bishal Jaiswal & Anr.

[Judgment dated April 15, 2021, of the Hon'ble Supreme Court of India, in Civil Appeal No. 323 of 2021]

Background:

For setting up a thermal power project in Jharkhand, the corporate debtor had availed loans from various lenders. State Bank of India being one of the lenders had declared the account of the corporate debtor as a 'NPA' and subsequently issued a loan recall notice to the corporate debtor. The consortium of original lenders had assigned the debts owed to them to the Appellant.

The Appellant had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") before the National Company Law Tribunal ("**NCLT**"), Calcutta Bench, for a default amounting to Rs. 5997,80,02,973/- from the corporate debtor. Since the form did not include the dates, the Appellant filed a supplementary affidavit before the NCLT and to highlight the date of default had annexed the copies of the balance sheet of the corporate debtor, submitting that the defaulter has acknowledged their liability.

The NCLT admitted the application. The corporate debtor filed an appeal before the National Company Law Appellate Tribunal ("**NCLAT**") against the admission and relied upon V. Padmakumar v. Stressed Assets Stabilization Fund, Company Appeal (AT) (Insolvency) No. 57 of 2020 decided on March 12, 2020 (Padmakumar) in which the NCLAT had held that entries in balance sheet would not amount to acknowledgement of debt for the purpose of extending limitation under Section 18 of the Limitation Act, 1963 ("**Limitation Act**"). After a preliminary hearing before the NCLAT, the bench referred the matter to the acting chairman of the NCLAT to reconsider the judgement in Padmakumar. The five-member NCLAT bench refused to adjudicate the question referred stating, that the reference to the bench was itself incompetent. Hence the appeal before the Hon'ble Supreme Court of India.

Findings of the Court:

The questions before the Hon'ble Supreme Court in appeal were –

- Whether entries in a balance sheet of a corporate debtor would amount to an acknowledgement of liability as required under Section 18 of the Limitation Act?

- Whether the extension of the limitation period under Section 18 of the Limitation Act would be applicable to proceedings under the IBC in view of the expression "as far as maybe" in Section 238A of IBC governing the applicability of the Limitation Act to proceedings under the IBC?

The Hon'ble Supreme Court considered a plethora of judgements and the provisions of the Companies Act, 2013 on balance sheet and filing of financial statements. The Hon'ble Supreme Court upheld the finding in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, AIR 1962 Cal 115, stating that "*there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission*" is the correct position of law, and reasoned that it would depend on facts of each case. It reiterated that it would depend on whether the entry made in the balance sheet by any particular creditor is unequivocal or has been entered into with any caveats and after perusal of the facts of the case and acknowledgement of liability being established, limitation could be extended as under Section 18 of the Limitation Act.

On the aspect of extension of Limitation Act to the IBC the Hon'ble Supreme Court considered the Report of the Insolvency Law Committee, March 2018 and the judgements of the Apex court in Sesh Nath Singh v. Baidyabati Sheoraphuli Co-Operative Bank Ltd, Civil Appeal No. 9198 of 2019 decided on March 22, 2021 and Laxmi Pat Surana v. Union Bank of India, Civil Appeal No. 2734 of 2020 decided on March 26, 2021 and observed that the IBC did not exclude the application of the various provisions of the Limitation Act to proceedings under it before the NCLT/ NCLAT. The Hon'ble Supreme Court reasoned that the object of Section 238A of the IBC was clarificatory in nature and being procedural has a retrospective effect. It further held that the purpose of the amendment was to not resurrect time barred debts, but at the same time application of Section 18 of the Limitation Act to provide a fresh period of limitation is permitted and not barred.

The Hon'ble Supreme Court also overruled the earlier decision of the NCLAT in *Padmakumar* on account of being contrary to the catena of judgements as laid down by the Hon'ble Supreme Court.

iii. Lalit Kumar Jain v. Union of India and Others

[Judgment dated May 21, 2021 of the Hon'ble Supreme Court of India in Transferred Case (Civil) No. 245/2020]

Background:

The batch of petitions which were disposed off *vide* the common judgment dated May 21, 2021 of the Hon'ble Supreme Court of India all pertained to a challenge to the *vires* and validity of the Notification bearing S.O. 4126(E) dated November 15, 2019 issued by the Ministry of Corporate Affairs, Central Government ("**Impugned Notification**"). The Impugned Notification may be accessed here.

The Impugned Notification brought into force various provisions of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") only with respect to personal guarantors to corporate debtors, i.e., Section 2(e); Section 78 (except with regard to fresh start process); Sections 79, 94-187 (both inclusive); Section 239(2)(g), (h) and (i); Section 239(2)(m) to (zc); Section 239(2)(zn) to (zs) and Section 249.

The main arguments in the petitions before the Hon'ble Supreme Court revolved around the Impugned Notification being an exercise in excessive delegation, i.e., that the power delegated under Section 1(3) of the IBC is only as regards the point(s) in time when different provisions of the IBC can be brought into force and it does not permit the Central Government to notify parts of the provisions of the IBC or to limit the application of the provisions to certain categories of persons. It was further argued that the provisions of the IBC brought into

effect by the impugned notification are not severable as they do not specifically or separately deal with or govern insolvency proceedings against personal guarantors to corporate debtors and they only deal with individuals and partnership firms.

Findings of the Court:

The Hon'ble Supreme Court after considering extensive case law on excessive and conditional delegation has held that there was sufficient legislative guidance for the Central Government to distinguish and classify personal guarantors separately from other individuals and that the parliamentary intent was to treat personal guarantors differently from other category of individuals. It therefore held that the Impugned Notification is not an instance of legislative exercise or amounting to impermissible and selective application of the provisions of the IBC and the Impugned Notification was issued within the powers granted by Parliament, and in valid exercise of it.

The Hon'ble Supreme Court has also adjudicated on the argument that once a resolution plan is accepted and a corporate debtor has been discharged of its liability, the personal guarantor whose liability is co-extensive with that of the principal debtor is also discharged of his/ her liability. On the said aspect, the Hon'ble Supreme Court has held that in view of the fact that an involuntary act of the principal debtor leading to a loss of security would not absolve a guarantor of its liability, the sanction of a resolution plan and finality imparted to it by Section 31 of the IBC does not *per se* operate as a discharge of a guarantor's liability (subject of course to the terms of the guarantee itself).

iv. Mr. Joseph Jayananda v. Navalmar (UK) Ltd. & Anr.

[Judgment dated April 07, 2021 of the Hon'ble National Company Law Appellate Tribunal, Principal Bench, New Delhi in Company Appeal (AT) (Insolvency) No. 718 of 2020]

Background:

The Appellate jurisdiction of the National Company Law Appellate Tribunal, Principal Bench, New Delhi ("**NCLAT**") had been invoked by the Appellant challenging the judgment dated May 29, 2020 of the National Company Law Tribunal, Bengaluru Bench ("**NCLT**") in Company Petition (IB) No. 324/BB/2019 admitting the petition filed by Respondent No. 1 under Section 9 of the Insolvency & Bankruptcy Code, 2016 ('**IBC**") and initiating the Corporate Insolvency Resolution Process ("**CIRP**") against the Respondent No. 2 company with certain consequential directions enumerated thereunder. The appeal before the NCLAT was filed by one of the suspended directors of the Respondent No. 2 company.

The main contentions raised by the Appellant before the NCLAT were that the Respondent No. 1 could not be categorised as an Operational Creditor as defined under the IBC, the debt was not an Operational Debt as defined under the IBC and that the debts claimed by Respondent No. 1 were barred by limitation. The core issues before the NCLAT were:

- Whether the alleged debt was an operational debt?
- Whether the alleged debt was barred by limitation?
- Whether the Petition filed under Section 9 of the IBC was not maintainable on the pre-existing disputers ground?

Findings of the NCLAT:

The NCLAT, taking into account the facts of the case proceeded to hold that even the portion of the alleged debt which was in the nature of monies advanced by the Operational Creditor to the Corporate Debtor were advance payment for work to be done in the future and was an Operational Debt as defined under Section 5(21) of the IBC. The NCLAT further held that there were no pre-existing disputes between the parties since the debt and default question had already been proved between the parties. Further, the NCLAT while deliberating on the issue of whether Section 18 of the Limitation Act, 1963 would be applicable to a proceeding initiated under the IBC observed that, the said section would be applicable and that the fresh period of limitation in respect of a debt claimed would start from the point in time when the Corporate Debtor acknowledges the liability of such a debt before the expiration of the prescribed period of limitation.

v. Next Orbit Ventures Fund v. Print House India Pvt Ltd. & Others

[Judgment dated April 13, 2021 of the Hon'ble National Company Law Appellate Tribunal, New Delhi, Principal Bench in Company Appeal (AT) Insolvency No. 417 of 2020]

Background:

The appellate jurisdiction of the Hon'ble National Company Law Appellate Tribunal, New Delhi, Principal Bench ("**NCLAT**") was invoked by an unsuccessful resolution applicant Next Orbit Ventures Fund ("**Appellant**") challenging the order passed by the National Company Law Tribunal, Mumbai Bench approving the resolution plan submitted by SIFY Technology Limited ("**Successful Resolution Applicant**").

The main ground of challenge was that the resolution plan, approved by the Committee of Creditors ("**CoC**") and the Adjudicating Authority, intends to change the core business of the Corporate Debtor from a printing business to that of running data centres. According to the Appellant such a complete change in the nature of business of the Corporate Debtor was in contravention to the objectives of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") and thus the Adjudicating Authority has erred in approving the Resolution Plan under challenge.

The Respondents comprising the Resolution Professional, CoC and the successful Resolution Applicant, submitted that the 'Corporate Debtor' was in the business of printing and leasing and as the printing business was not viable, owing to several micro factors affecting the enterprise, substantial portion of the premises was not being utilized for printing business but was let out to generate rent revenue and therefore SIFY was considering transforming the existing infrastructure to a Data Center by investing additional capital and converting the vacant lands for these Data Centres resulting in employment opportunities for about 150 (one hundred and fifty) people and consequently resulting in maximization of value of the assets and stakeholders. It was further submitted that there are no restrictions under the IBC that the Successful Resolution Applicant cannot change the line of business to keep the Company as a going concern.

Findings of the NCLAT:

As per the NCLAT, the main point for consideration in this Appeal was whether the Resolution Plan approved under Section 31 of the IBC by the Learned Adjudicating Authority is in contravention with the scope and objective of the IBC which is 'Resolution', 'maximization of value of assets of the Corporate Debtor', 'promoting entrepreneurship', 'availability of credit and balancing interest of all stakeholders'.

The NCLAT quoted the 'intent of the Code' as expressed in Clause 5.3.3 of the Bankruptcy Law Reforms Committee ('**Committee**') report of 2015 and expressed that the Committee has advocated that there should be freedom given to the market, to propose solutions on keeping the entity as a going concern. The decision as to how the Insolvency is to be resolved and the mode and manner in which the debt is to be restructured will only emanate from the deliberations of CoC in response to the current economic and market scenario.

The NCLAT after analysing the impugned resolution plan upheld the validity of the same. In doing so it observed that the Supreme Court has given paramount importance to the decision of CoC, which is taken on the basis of commercial wisdom and cannot be interfered with excepting under the limited scope as provided under Sections 30 and 31 of the IBC. It held that merely because the 'Resolution Plan' does not stick to the core printing business, in its truest sense, it cannot be said that the approved 'Resolution Plan' lacks the right vision and proposition specially in the light of the converging market forces and refocused business models.

The NCLAT also held that keeping a corporate debtor as a 'going concern' does not mean that the nature of the business cannot be changed with an objective to add value or create synergy and if it is viewed in this perspective, it would be interpreting the word 'going concern' in a very narrow compass which is not the scope and objective of the IBC.

Lastly, the NCLAT held that the IBC [*Regulation 37 of the IBBI (Insolvency Resolution Process For Corporate Persons) Regulations, 2016*] provides for restructuring of the Corporate Debtor, change in technology, change in portfolio of goods and services produced or rendered by the Corporate Debtor as long as the scope and objective of the IBC is not hampered and therefore if the Resolution Plan contemplates a change in the nature of business to another line when the existing business is obsolete or non-viable, it cannot be construed that the Resolution Plan is not feasible or viable, as was contended by the Appellants.

V. LITIGATION & ARBITRATION

i. PASL Wind Solution Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.

[Civil Appeal No. 1647 of 2021 decided on 20.04.2021 by the Hon'ble Supreme Court of India]

The Supreme Court has clarified that two Indian parties can choose a foreign seat of Arbitration.

The Hon'ble Supreme Court of India, by its recent three-judge bench decision in *PASL Wind Solution Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.* (Civil Appeal No. 1647 of 2021) dated April 20, 2021, has decided the question as to whether two Indian contracting parties to a contract in India could agree to resolve their disputes through a foreign seated arbitration. The Hon'ble Supreme Court has held:

- There is no illegality in two Indian contracting parties to agree to a foreign seated arbitration; and
- Any award delivered in such proceedings will be a Foreign Award within the meaning of the Indian Arbitration and Conciliation Act 1996 and enforceable in India as such if the seat of arbitration is in a country that is a signatory to the New York Convention; and
- The challenge to any such agreement under Section 23 of the Indian Contract Act (as being against Indian public policy and therefore void) and under Section 28 of the Contract Act (as being in restraint of legal proceedings and therefore void) were no longer available.

The Hon'ble Supreme Court has also upheld the right of parties to seek interim relief under Section 9 of the Arbitration & Conciliation Act, 1996 before Indian courts for foreign seated arbitrations.

Prior to this judgment, there were conflicting decisions by various High Courts on the issue as to whether 2 (two) Indian parties can choose a seat outside India.

The decision in this judgement clearly shows the pro arbitration approach of the Hon'ble Supreme Court.

Background:

In the present case, 2 (two) Indian companies i.e., PASL Wind Solution Pvt. Ltd. ("**PASL**") and GE Power Conversion Pvt. Ltd. ("**GE**") (*99% subsidiary of General Electric Conversion International SAS, France, which in turn was a subsidiary of the General Electric Company, United States*), entered into a settlement agreement dated December 23, 2014, to resolve the disputes which arose between them. The settlement agreement contained a dispute resolution clause, which provided for arbitration in Zurich under the Rules of Conciliation and Arbitration of the International Chamber of Commerce ("**ICC**"). Upon certain disputes arising under the settlement agreement, PASL issued a request for arbitration to the ICC on July 3, 2017 and thereafter, the parties agreed for resolution of disputes by a sole arbitrator.

During the arbitration proceedings, GE filed a preliminary application challenging the jurisdiction of the Sole Arbitrator on the ground that 2 (two) Indian parties cannot choose a foreign seat of arbitration. GE's preliminary application was dismissed by the arbitrator, and the same was not challenged by either of the parties. Subsequently, final award was passed in favor of GE and PASL was directed to pay GE, a sum of Rs. 2,59,76,330/- and US $40,000/- in legal costs and expenses along with interest.

GE initiated enforcement proceedings under the Arbitration & Conciliation Act, 1996 ("**the Act**") before the Hon'ble Gujarat High Court. GE also filed an application under Section 9 of the Act, seeking interim reliefs. At this stage, PASL filed an application under section 34 of the Act challenging the award, before the Small Causes Court, Ahmedabad (*later transferred to the Commercial Court, Ahmedabad*), and took a stance that the seat of arbitration was Mumbai. Thereafter, the Hon'ble Gujarat High Court by the impugned order, held that 2 (two) Indian parties can choose a foreign seat of arbitration, which in this case, was Zurich. It was also held by the Hon'ble Gujarat High Court that where two parties choose a foreign seat, they cannot make an application for interim reliefs under Section 9 of the Act.

Findings of the Court:

The following are some of the key findings of the Hon'ble Supreme Court:

<u>Seat of the arbitral proceedings</u>: The Hon'ble Supreme Court observed that at the case hearing conference held on June 28, 2018, it was decided that the venue of the hearing would be Mumbai, and the seat of the arbitration would remain as Zurich, Switzerland. The Hon'ble Supreme Court further observed that closest connection test relied upon by PASL would only apply if it were unclear that a seat has been designated either by the parties or by the tribunal. In this case, the seat was clearly designated both by the parties and by the tribunal, and the same was accepted by both the parties.

<u>Seat of Arbitration and Party Autonomy</u>: The Hon'ble Supreme Court observed that section 28(1)(a) of the Act (*Rules applicable to substance of disputes*) makes no reference to an arbitration being conducted between 2

(Two) Indian parties in a country other than India, and cannot be held, to interdict two Indian parties from resolving their disputes at a neutral forum in a country other than India.

It was further held that the balancing act between freedom of contract and clear and undeniable harm to the public must be resolved in favour of freedom of contract as there was no clear and undeniable harm caused to the public in permitting two Indian nationals choosing to resolve their disputes through a foreign seated arbitration.

The Hon'ble Supreme Court concluded by stating that nothing stands in the way of party autonomy in designating a seat of arbitration outside India even when both parties happened to be Indian nationals.

Ingredients of a Foreign Award sought to be enforced under Part II: The Hon'ble Supreme Court observed that for an award to be a 'foreign award' in terms of Section 44 of the Act, there was no requirement that one of the parties must be a foreign party [*as stipulated in Section 2(1)(f) of the Act]*. In addition, Section 44 of the Act, merely provided that the award must be in respect of disputes that arise between 'persons' and does not accord any regard to their nationality, residence, or domicile.

Right of parties to seek interim relief under Section 9 of the Act: The Hon'ble Supreme Court further upheld the right of parties to seek interim relief under Section 9 of the Act, in such cases.

ii. Inox Renewables Limited v. Jayesh Electricals Limited

[Civil Appeal No. 1556 of 2021 decided on 13.04.2021 by the Hon'ble Supreme Court of India]

The Supreme Court has held that it is open for parties to an arbitration agreement to change the seat of arbitration by mutual agreement.

Background:

In the Present case, Gujarat Chemicals Limited ("**GCL**") and Jayesh Electricals Limited ("**JEL**") executed a Purchase Order ("**PO**") dated January 28, 2012 for manufacture and supply of power transformers at wind farms. The PO contained an arbitration clause, which among other things, provided for Jaipur as the venue of arbitration. The said clause also provided that in the event of arbitrators' award being not acceptable, the parties should be free to seek lawful remedies under the law of India and the jurisdiction for the same would-be courts in the State of Rajasthan.

A slump sale of the entire business of GFL took place in favour of the Inox Renewables Limited ("**IRL**") by a business transfer agreement ("**BTA**") dated March 30, 2012. JEL was not a party to the BTA. Clause 9.11 and 9.12 of BTA designated Vadodara as the seat of the arbitration. Thereafter, JEL filed an application in the Hon'ble Gujarat High Court for appointment of an Arbitrator under section 11 of the Arbitration and Conciliation Act, 1996 ("**the Act**") under the PO, and the court appointed a sole arbitrator.

The Ld. Arbitrator passed an award dated July 28, 2018, in favour of JEL, which was challenged by IRL in the Commercial Court of Ahmedabad under section 34 of the Act. The Commercial Court dismissed the application for lack of jurisdiction and held that the courts at Vadodara alone would have exclusive jurisdiction. An appeal was filed by IRL before the Hon'ble Gujarat High Court, which was dismissed. Thereafter civil appeal was filed before the Hon'ble Supreme Court against the judgment of the Hon'ble Gujarat High Court.

Findings of the Court:

The Hon'ble Supreme Court adjudicated upon the issue that whether by mutual consent parties have specifically shifted the venue/place of arbitration from Jaipur to Ahmedabad.

The Court relied on its earlier judgement in BGS SGS SOMA JV vs. NHPC Limited, (2020) 4 SCC 234 and also referred to the Ld. Arbitrator's observation that by mutual agreement, Jaipur as a "venue" was replaced by Ahmedabad. The Hon'ble Supreme Court further held that once the seat of arbitration was replaced by mutual agreement to be at Ahmedabad, the Courts at Rajasthan would no longer be vested with jurisdiction as exclusive jurisdiction was now be vested in the Courts at Ahmedabad, given the change in the seat of arbitration.

In view of the aforesaid observations, the Hon'ble Supreme Court allowed the appeal and set aside the impugned judgment of the Hon'ble Gujarat High Court. The Hon'ble Supreme Court also referred the parties to the courts at Ahmedabad for the resolution of petition under Section 34 of the Act.

iii. M/s. Fumo Chem Pvt. Ltd. v. M/s Raj Process Equipments and Systems Pvt. Ltd.

[Transfer Petition (C) No. 755 of 2021 decided on 12.04.21 by the Hon'ble Supreme Court of India]

Convenience of one of the parties cannot be a ground to transfer a case under Section 25 of the Code of Civil Procedure, 1908.

Background:

In this case, Raj Process Equipments and Systems Pvt. Ltd. ("**RPES**") was required to install certain items (spray dryer) in Fumo Chem Pvt. Ltd. ("**FCPL**") manufacturing unit. Certain dispute arose between the parties over supply of the items. Thereafter, FCPL filed a suit in the Commercial Court, Ahmedabad seeking compensation and damages on account of failure on the part of RPES in effecting proper installation. Subsequently, RPES also filed a suit in the court of Ld. Civil judge, Senior Division, Pune.

By this transfer petition, FCPL sought transfer of the subsequent suit instituted by RPES against FCPL in the Court of learned Civil Judge, Senior Division, Pune to the Commercial Court, Ahmedabad, as common issues were involved in both the suits.

Findings of the Court:

The Hon'ble Supreme Court held that there may be some overlapping issues involved in both the suits, but that factor alone does not confer the right on the petitioners /FCPL to bring the suit of respondent /RPES to the jurisdiction of their choice where they have already instituted a suit, albeit for an independent set of reliefs. The Court observed there was no bar in the Code of Civil Procedure ("**the Code**") in institution of two different suits in two courts by the same set of parties on same set of facts. The party having approached the court first however has the right to apply before the court in which the subsequent suit was instituted for stay of the latter proceeding, as per Section 10 of the Code, if the matters in issue in both the suits are directly and substantially the same.

The Hon'ble Supreme Court observed that functional convenience of one of the parties in commercial litigations cannot determine exercise of jurisdiction of this Court under Section 25 of the Code. Also, it was observed that a petitioner seeking transfer of a case involving business-related disputes from one jurisdiction to

another would have to establish some grave difficulty or prejudice in prosecuting or defending the case in a forum otherwise having power to adjudicate the cause. No such case of outstanding prejudice was made out by the petitioners / FCPL, in the present case and accordingly the transfer petition was dismissed.

VI. LABOUR & EMPLOYMENT

i. Central Government notifies Section 142 of the Social Security Code, 2020

The Ministry of Labour & Employment, by way of Notification No. S.O. 1730 (E) dated April 30, 2021, had appointed May 3, 2021 as the date on which the provisions of Section 142 of the Code on Social Security, 2020 ("**Code**"), would come into force. Section 142 of the Code provides that the employees or unorganised workers should, to register as beneficiaries for social security benefits or avail other social security services, establish his/ her identity or, as the case may be, the identity of his/ her family members or dependants, through their Aadhaar number/s. The notification of this provision will enable the Ministry of Labour & Employment to collect the Aadhar details for the database of beneficiaries under the various social security schemes.

The full text of the Notification can be accessed here.

ii. Notified: Draft Code on Social Security (Employee's Compensation) (Central) Rules, 2021

The Ministry of Labour & Employment, by way of Notification No. G.S.R. 385(E) dated June 3, 2021, has notified the draft Code on Social Security (Employee's Compensation) (Central) Rules, 2021 (**"Draft Rules"**), inviting objections and suggestions, if any, from the stakeholders. The Draft Rules will supersede the Employee's Compensation Rules, 1924, the Employee's Compensation (Transfer of Money) Rules, 1935 and the Employee's Compensation (Venue of Proceedings) Rules, 1996 made by the Central Government under the erstwhile Employee's Compensation Act, 1923. The Draft Rules make provisions relating to the manner of application for claims or settlement, rate of interest for delayed payment of compensation, venue of proceedings and transfer of matters, notice and manner of transmitting money from one competent authority to another, and arrangements with other countries for the transfer of money paid as compensation.

The full text of the Notification can be accessed here.

iii. The Delhi Government mandates principal employers to register Inter-State Migrant workers with the Labour Department

The Government of the National Capital Territory of Delhi has issued Circular No. F.No.PA/Addl.LC/Lab/2021/499 dated May 14, 2021, by way of which, principal employers employing or (having employed during the last 12 months) workers through outsourcing, have been directed to mandatorily register with the Labour Department, through the e-district portal of the Government of the NCT, Delhi, available at https://edistrict.delhigovt.nic.in/. Further, every inter-state migrant workman should be issued a passbook by the contractor containing details of employment and should be provided other benefits, as provided in the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

The full text of the Circular can be accessed here.

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