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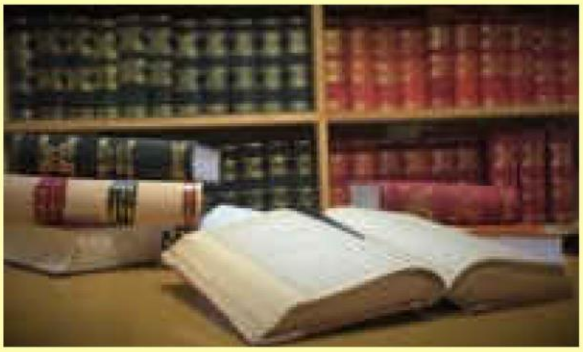

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UPDATES

I. FEMA & FDI

i. Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

The Reserve Bank of India ("**RBI**") has by way of Notification No. FEMA 23(R)/(5)/2021-RB dated September 8, 2021 ("**Notification**") amended the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015.

The Notification has substituted sub regulation 1, clause (ii) of Regulation 15 to include that the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Inter-Bank Offered Rate ("**LIBOR**") or other applicable benchmark as may be directed by the RBI.

In furtherance to the Notification, the RBI by way of A.P. (DIR Series) Circular No. 13 dated September 28, 2021, has authorised the Authorised Dealer banks to use any other widely accepted/ alternative reference rate in the currency concerned for such transaction, as the benchmark rate.

The full text of the Notification can be accessed here and the full text of the Circular can be accessed here.

ii. Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2021

The Government of India by way of Notification No. S.O. 3206(E) dated August 6, 2021, has amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

The Notification has inserted an Explanation under Rule 23 in sub-rule (7), in clause (i), after sub-clause (B), for the purpose of sub-clause (A) which states that an investment made on a non-repatriation basis, by an Indian entity which is owned and controlled by NRI(s) shall not be considered for calculation of indirect foreign investment.

The full text of the Notification can be accessed here.

iii. Foreign Exchange Management (Non-debt Instruments) (Second Amendment) Rules, 2021

The Government of India by way of Notification No. S.O. 3411(E) dated August 19, 2021 ("**Notification**"), has amended certain provisions of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, to enable the increase in the foreign direct investment limit, in the insurance sector from 49% (Forty Nine Percent) to 74% (Seventy Four Percent).

According to the Notification, applications for foreign direct investment in private banks, having joint ventures or subsidiaries in the insurance sector, may be addressed to the Reserve Bank of India, for consideration, however, in consultation with the Insurance Regulatory and Development Authority of India ("**IRDA**"). This is to ensure that the limit of the foreign investment of 74% (Seventy Four Percent) in the insurance sector is not breached. The Notification also mandates that an Indian insurance company having foreign investment, must have resident Indian citizens, as the majority of its directors, majority of its key management persons, and at least one among its chairperson of the Board, its managing director, and it's chief executive officer.

The Notification mandates that an Indian insurance company having foreign investment must comply with the provisions under the Indian Insurance Companies (Foreign Investment) Rules, 2015, as well as the applicable rules and regulations notified by the Department of Financial Services or IRDA, from time to time.

The full text of the Notification can be accessed here.

II. CORPORATE

i. Extension of time for holding the annual general meeting - Orders

The Ministry of Corporate Affairs has by way of an office memorandum dated September 23, 2021, instructed the Registrars of Companies to pass orders in their respective jurisdictions, to extend the due date for holding the annual general meetings for companies, whose financial year had ended on March 31, 2021, to November 30, 2021.

Accordingly, the Registrars of Companies, in multiple states, have issued orders, extending the time period by 2 (two) months, i.e., to November 30, 2021, by which date companies are required to hold their annual general meetings for the financial year 2020 – 21. It has been clarified that companies would not be required to file Form GNL-1, seeking such an extension.

ii. FAQ on Corporate Social Responsibility

The Ministry of Corporate Affairs has by way of General Circular No. 14/ 2021, dated August 25, 2021, published a set of frequently asked questions (FAQs) and the responses to the same in relation to the Corporate Social Responsibility ("**CSR**") activities to be undertaken by companies, in terms of Section 135 and Schedule VII to the Companies Act, 2013 ("**Companies Act**"), and the Companies (Corporate Social Responsibility Policy) Rules, 2014 ("**CSR Rules**").

The FAQs have been issued in view of the recent amendments made to Section 135 of the Companies Act, and the CSR Rules, and in suppression of certain previous clarifications and FAQs issued by the Ministry of Corporate Affairs. The FAQs provide clarity on the applicability of CSR, the manner in which such CSR activities are to be undertaken, the CSR expenditure, the treatment of unspent CSR amounts, impact assessment and CSR reporting and disclosure.

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

iii. The Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019 – Amended

The Ministry of Corporate Affairs has by way of Notification No. G.S.R. 580(E) dated August 19, 2021, brought into force with immediate effect, the Companies (Creation and Maintenance of Databank of Independent Directors) Second Amendment Rules, 2021 ("**Amendment Rules**"). The Amendment Rules have the effect of amending the Companies (Creation and Maintenance of Databank of Independent Directors) Rules, 2019 ("**Principal Rules**").

The Amendment Rules have inserted Rule 6 to the Principal Rules in terms of which the Indian Institute of Corporate Affairs is required to send an annual report, within 60 (sixty) days from the end of every financial year to those individuals whose names are included in the data bank, and also to those

companies, wherein such individuals are appointed as independent directors. The Amendment Rules have further inserted a schedule setting out the format in which the aforementioned annual report should be sent.

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

iv. The Companies (Appointment and Qualification of Directors) Rules, 2014 - Amended

The Ministry of Corporate Affairs has by way of Notification No. G.S.R. 579(E) dated August 19, 2021, brought into force with immediate effect, the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021 ("**Amendment Rules**"). The Amendment Rules have the effect of amending the Companies (Appointment and Qualification of Directors) Rules, 2014 ("**Principal Rules**").

The Amendment Rules have substituted Rule 6(4)(B) of the Principal Rules, which relate to those individuals who are not required to pass the online proficiency self-assessment test, within 2 (two) years from the date of inclusion of their names in the data bank of persons offering to become independent directors. The substituted rule relates to those individuals who fall within the pay scale of a Director or equivalent or above, in any Ministry or Department of the Central Government or State Government handling matters related to commerce, corporate affairs, finance, etc., or for those affairs related to Government companies, or statutory corporations carrying on commercial activities.

The Amendment Rules further inserts a proviso to Rule 6(4)(B) of the Principal Rules providing that such individuals who have practiced in the capacity of an advocate of a court, a chartered accountant, a cost accountant, or a company secretary, for at least 10 (ten) years, would not be required to pass the required online proficiency self-assessment test.

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

v. The Companies (Specification of Definitions Details) Rules, 2014 – Amended

The Ministry of Corporate Affairs has by way of Notification No. G.S.R. 539(E), dated August 5, 2021, brought into force with immediate effect, the Companies (Specification of Definitions Details) Third Amendment Rules, 2021 ("**Amendment Rules**"). The Amendment Rules have the effect of amending the Companies (Specification of Definitions Details) Rules, 2014 ("**Principal Rules**").

The Amendment Rules have inserted an explanation to the definition of 'electronic mode' set out in Rule 2(1)(h) of the Principal Rules. The explanation states that the electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres, set up under Section 18 of the Special Economic Zones Act, 2005, would not be construed as 'electronic mode', for the purposes of Section 2(42) of the Companies Act, 2013.

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

vi. The Companies (Registration of Foreign Companies) Rules, 2014 – Amended

The Ministry of Corporate Affairs has by way of Notification No. G.S.R. 538(E) dated August 5, 2021, brought into force with immediate effect, the Companies (Registration of Foreign Companies) Amendment Rules, 2021 ("**Amendment Rules**"). The Amendment Rules have the effect of amending the Companies (Registration of Foreign Companies) Rules, 2014 ("**Principal Rules**").

The Amendment Rules have inserted an explanation to the definition of 'electronic mode' set out in Rule 2(1)(c) of the Principal Rules. The explanation states that the electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres, set up under Section 18 of the Special Economic Zones Act, 2005, would not be construed as 'electronic mode', for the purposes of Section 2(42) of the Companies Act, 2013.

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

vii. Exemptions – Section 387 to 392 of the Companies Act, 2013

The Ministry of Corporate Affairs has by way of Notification No. S.O. 3156(E) dated August 5, 2021, exempted both: (a) foreign companies; and (b) companies incorporated or to be incorporated outside India, whether such company has or has not established, or when formed may or may not establish a place of business in India, from complying with the provisions of Sections 387 to 392 (both inclusive) of the Companies Act, 2013. The exemption is, however, to the extent that they relate to the offering for subscription in the securities, requirements relating to the prospectus, and all matters incidental thereto in the International Financial Services Centres, set up under Section 18 of the Special Economic Zones Act, 2005.

The full text of the Notification can be accessed here.

viii. Clarification on spending of CSR (Corporate Social Responsibility) funds

The Ministry of Corporate Affairs has issued General Circular No. 13/ 2021 dated July 30, 2021, which clarifies that the spending of CSR funds for Covid-19 vaccinations, for persons other than employees and their families, is an eligible CSR activity under Item No. (i) (*promoting health care including preventive health care*) and Item No. (xii) (*disaster management*) of Schedule VII to the Companies Act, 2013. It is however clarified that companies may undertake the aforesaid activities, subject to complying with all the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014, and the various circulars and guidelines issued by the Ministry of Corporate Affairs, in relation to CSR, from time to time.

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

ix. The Companies (Amendment) Act, 2020 – Enforced

The Ministry of Corporate Affairs has by way of Notification No. S.O. 2904(E), dated July 22, 2021, appointed September 1, 2021, as the enforcement date for Section 4 of the Companies (Amendment) Act, 2020 ("**Amendment Act**").

Section 4 of the Amendment Act has the effect of amending Section 16 of the Companies Act, 2013, which sets out the manner in which a company should rectify its name. In terms of Section 4 of the Amendment Act, in the event that a company defaults in complying with a direction of the Regional Director, issued in accordance with Section 16(1) of the Companies Act, 2013, the Central Government would allot a new name to the company, in accordance with the rules set out, and the Registrar of Companies would enter the new name of the company, in the register of companies and also issue a fresh certificate of incorporation with the new name. The company would, however, have the right to subsequently change its name, in accordance with Section 13 of the Companies Act, 2013.

The full text of the Notification and the Amendment Act can be accessed here and here.

x. The Companies (Incorporation) Rules, 2014 – Amended

The Ministry of Corporate Affairs has by way of Notification No. G.S.R. 503(E), dated July 22, 2021, introduced and brought into force from September 1, 2021, the Companies (Incorporation) Fifth Amendment Rules, 2021 ("**Amendment Rules**"). The Amendment Rules have the effect of introducing a new provision to the Companies (Incorporation) Rules, 2014 ("**Principal Rules**").

The Amendment Rules have inserted Rule 33A to the Principal Rules, which sets out the manner in which the name of a company is to be set out, in the event that the company fails to change its name or new name, within the prescribed timelines, in accordance with the direction issued under Section 16(1) of the Companies Act, 2013, by the Regional Director. The name of the aforesaid company would be the letters 'ORDNC', i.e., Order of Regional Director Not Complied, along with the year of passing of the direction, the serial number and the existing CIN of the company. This name of the company would be entered in the register of companies, without any further act or deed by the company, and the Registrar of Companies would issue a fresh certificate of incorporation in a newly introduced form, i.e., Form INC-11C.

Additionally, the Amendment Rules also state that the abovementioned course of action would not apply in the event that the company has filed Form INC-24, which is pending disposal, even at the expiry of 3 (three) months from the date of issue of the direction by the Regional Director, unless the said form has been subsequently rejected.

Once the name of the company has been changed, as set out above, the company is required to undertake the necessary compliances in terms of Section 12 of the Companies Act, 2013, such as setting out the statement 'Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)", in brackets below the name of company, wherever its name is printed, affixed or engraved, etc. The aforesaid statement, however, would not be required to be mentioned, in the event that the company subsequently changes its name in accordance with Section 13 of the Companies Act, 2013.

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

III. COMPETITION

i. Flipkart Internet Private Limited & Anr. v. Competition Commission of India & Ors.

[Petition for Special Leave to Appeal (C) No.11558/2021 with SLP(C) No. 11615/2021, decided on August 9, 2021 by Supreme Court of India]

Background:

The Supreme Court of India has dismissed the Special Leave Petitions filed by Amazon Seller Services Pvt. Ltd. ("**Amazon**") and Flipkart Internet Pvt. Ltd. ("**Flipkart**"), against the order of Division Bench of the Karnataka High Court ("**Kar HC**") dismissing the writ petitions filed by Amazon and Flipkart with a prayer to quash a probe ordered by the Competition Commission of India ("**CCI**"), to probe into alleged anti-competitive practises by them.

The CCI by its order dated January 13, 2020, had directed an investigation under Section 26(1) of the Competition Act, 2002 ("**the Act**") by the Director General ("**DG**") against Amazon and Flipkart. Against this, the said e-commerce companies, filed writ petitions before the Kar HC, which were dismissed on June 11, 2021. Against this order, writ appeals were filed before a division bench of the Kar HC, which were also dismissed.

Findings by the Supreme Court:

The Supreme Court by its order dated August 9, 2021, held that there was no reason to interfere with the impugned orders passed by the Kar HC dismissing the writ appeals of the petitioners. Thus, the Supreme Court has paved way for the CCI probe.

ii. Meru Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd. & Ors.

[Case No. 96 of 2015, decided on 14.07.2021 by Competition Commission of India]

The CCI has dismissed a complaint by Meru Travel Solutions Pvt. Ltd. ("**Meru/Informant**") alleging that Uber India Systems Pvt. Ltd. & Ors. ("**Uber/OPs**") had contravened the provisions of the Act by indulging in predatory pricing with an intention to drive out its competitors like Meru, thereby abusing its dominant position.

Background:

As per the Informant, owing to its dominant position, Uber adopted certain abusive practices, which inter-alia included offering unreasonable discounts to the customers leading to low/predatory prices. Further, as per the Informant, Uber employed an incentive policy which was not economically justified, and it was only aimed at exclusively engaging the drivers to its network so as to exclude its competitors having access to such drivers, thus violating Section 4(2) and 3(1) of the Act.

Findings by the CCI:

The CCI after considering the submissions and the DG Investigation Report, observed that the relevant market was the market for 'Radio Taxi services in Delhi NCR'. The CCI further observed that given the highly competitive market with fluctuating market shares of Uber and Ola, Uber was not dominant in the relevant market. It was also observed that despite the alleged practices of Uber, which have been argued to be anti-competitive, Ola had grown in the market in almost equal measure and the competitive constraints posed by Ola and Uber on each other outweigh the anti-competitive effects alleged by Meru.

As regards, the exclusive contracts with the drivers, the CCI observed that the impugned conduct of exclusivity of drivers to the cab aggregator platform through an 'agreement' driven by incentives did not meet the legal test of an exclusionary agreement causing an appreciable adverse effect on competition ("**AAEC**") in this particular case.

Accordingly, the CCI did not find merit in the argument of Meru that the incentives and rating mechanism adopted by Uber for its driver partners led to any AAEC in the market. The CCI accordingly closed the case.

iii. In Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-à-vis dealers

[Suo Motu Case No. 01 of 2019, decided on 23.08.2021 by Competition Commission of India]

The CCI has imposed a penalty of Rs. 200 Crores on Maruti Suzuki India Ltd. ("**Maruti**") for indulging in Resale Price Maintenance ("**RPM**") by imposing a Discount Control Policy ("**DCP**") on its dealers. CCI also directed Maruti to cease and desist from continuing with such conduct.

Background:

The present case was taken up suo motu by the CCI based on an anonymous e-mail received from a purported Maruti dealer, wherein it was, inter alia, alleged that Maruti sales policy was against the interest of customers as well as the provisions of the Act. It was alleged that the dealers of Maruti in the West-2 Region (Maharashtra State other than Mumbai & Goa) were not permitted to give discounts to their customers beyond that was prescribed by Maruti, in the announced 'consumer offer', and if a dealer was found giving extra discounts, a penalty was levied upon by Maruti. It was further alleged that a cartel was formed by Maruti within the dealerships, which was a policy of Maruti. Further, similar DCP was implemented by Maruti across India, specifically in cities where more than 4 to 5 dealerships operated.

Findings by the CCI:

The CCI after considering the submissions by Maruti and the DG Investigation Report, noted that Maruti not only imposed the DCP on dealers, but also enforced the same by monitoring dealers through Mystery Shopping Agencies, imposing penalties on them and threatening strict action like stoppage of supply, collection and recovery of penalty and utilisation of the same. The CCI concluded that the imposition of maximum discount limits by Maruti upon its dealers amounts to RPM within the meaning of Section 3(4) of the Act. Further, it was held that the RPM enforced upon the dealers by Maruti led to denial of benefits to the consumers in terms of competitive prices being offered by Maruti dealers. In addition, such arrangements perpetuated by Maruti restricted intra-brand competition amongst Maruti dealers, as it impaired their ability to compete with respect to prices in the sale and distribution of Maruti brand cars and also leads to the lowering of inter-brand competition in the passenger vehicles market. The CCI also observed that the arrangement/agreement put in place by Maruti also resulted in creation of barriers to new entrants/dealers in the market as the new dealers would take into consideration restrictions on their ability to compete with respect to prices in the intra-brand competition of Maruti brand of cars.

iv. Eaton Power Quality Pvt Ltd v. Competition Commission of India

[W.P.(C) 6797/2020, decided on 10.09.2021 by Delhi High Court]

The Delhi High Court has held that the CCI does not have powers to review its own order. The present writ petition was filed by Eaton Power Quality Pvt. Ltd. challenging the impugned order dated August 11, 2020, passed by CCI.

Findings by the Delhi High Court:

The Hon'ble Delhi High Court, placing reliance on *Mahindra Electricity Mobility Limited and Anr. Vs. Competition Commission of India and Anr*, reiterated that the CCI has no power to review its own orders

post the repeal of Section 37 of the Act. The Court noted that previously, Section 37 of the Act permitted review; however, after the 2007 amendment repealed that provision. The Court further observed that the CCI does not have the power to review, but limited rectification powers, under Section 38 of the Act.

The High Court further observed that the functions performed by the CCI were administrative functions, expert functions, quasi-judicial functions as also adjudicatory functions. It was further observed that if the parties have been heard once, even at the stage of imposition of penalty, it was not necessary for a hearing to be given, so long as broadly the procedure is fit and fair.

v. Informant (Confidential) v. Grasim Industries Limited (GIL)

[Case No. 51 & 54 of 2017, decided on 6.08.2021 by Competition Commission of India]

The CCI has found that Grasim Industries Limited ("**GIL**") abused its dominant position by charging discriminatory prices to its customers, denying market access and imposing supplementary obligations upon its customers in violation of Section 4 of the Act.

Background:

In this case, three information were filed in the year 2017 against GIL alleging, inter alia, contravention of the provisions of Sections 3(4) and 4 of the Act. It was alleged that GIL did not disclose its discount policies, provided differential treatment to customers, contractually forced its customers to disclose information like production and export as a precondition for supply and discounts etc. It was also alleged by the Informants that GIL had withdrawn / delayed sales terms (credits / discounts) and refused to supply Viscose Staple Fibre ("**VSF**"), resulting in a wipe-out of business of one of the informants.

Findings by the CCI:

The CCI held that GIL, being a dominant entity, manufacturing and supplying an indispensable input/raw material to downstream domestic spinners, is entrusted with a special responsibility not to discriminate amongst its buyers. Accordingly, the CCI held that such conduct of GIL was unfair and discriminatory in violation of Section 4(2)(a)(ii) read with Section 4(1) of the Act.

The CCI further held that GIL had abused its dominant position in the relevant market of 'the market for supply of VSF to spinners in India' by charging discriminatory prices to its customers, denying market access and imposing supplementary obligations upon its customers in violation of the provisions of Sections 4(2)(a)(ii), 4(2)(c) and 4(2)(d) read with 4(1) of the Act. The CCI further directed GIL to cease and desist from indulging in such practices, which were found to be in contravention of the provisions of the Act.

vi. In Re: Steel Authority of India Limited & Anr. v. M/s. Mahimanand Mishra & Ors.

[Case No. 12/2021, decided on 7.07.2021 by Competition Commission of India]

The CCI has dismissed a complaint by Steel Authority of India Limited ("**Informant No. 1/SAIL**") and Paradip Port Trust ("**Informant No. 2**") seeking investigation into alleged cartelisation in stevedoring at the Paradip Port.

Background:

As per SAIL, a transparent process of open tender was followed for engaging the services of stevedoring contractor at Paradip Port, and despite of the same, illegal cartelisation seems to have occurred among the stevedoring agencies.

It was averred that the OPs (OP-2 to OP-4) are partners in the firm M/s. Mahimanand Mishra (OP-1), and the said individuals were also the shareholders and Directors of Orissa Stevedores Ltd., one of the stevedoring agencies. The scrutiny of the tender documents by SAIL revealed that both the legal entities, despite having a common management, are separate legal entities and were possessed of separate experience certificates and distinct licenses from Paradip Port Trust. Further, while there was nothing in the regulations and tendering process to eliminate such entities with common Directors, or to restrict tendering process to one such entity, nevertheless the same seems to point towards illegal cartelisation.

Findings by the CCI:

The CCI after considering the submissions observed that the allegations raised by the Informants against the OPS were not concrete in nature and merely contained general allegations of existence of cartel between the stevedores in Paradip Port involving the OPs without indicating the nature of the cartel, who all were the members of cartel, how the cartel operated, the restrictions brought about by the cartel in terms of Section 3(3) of the Competition Act, 2002 ("**the Act**") and how bids issued by SAIL have been manipulated or rigged by the members of the cartel including the OPs. CCI further held that bald allegations not supported by any kind of supporting material/documents could not be the basis for initiating an investigation under the provisions of Section 26(1) of the Act.

The CCI accordingly held that there was no prima facie case, and the information filed was directed to be closed forthwith against the OPs.

IV. INSOLVENCY & BANKRUPTCY

A. REGULATORY UPDATES

i. Insolvency and Bankruptcy Code, 2016 - Amended

The Insolvency and Bankruptcy Code (Amendment) Act, 2021 ("**IBC Amendment Act**") was published in the Official Gazette on August 12, 2021, after receipt of the assent of the President of India, on August 11, 2021.

The IBC Amendment Act replaces the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 ("**Ordinance**"), earlier promulgated by the President of India on April 4, 2021, under Article 123 of the Constitution of India.

The IBC Amendment Act is to be deemed to come into force on April 4, 2021, which was the date on which the Ordinance (*which the Act replaces*) had earlier been promulgated to amend the Insolvency and Bankruptcy Code, 2016 ("**Code**"). The IBC Amendment Act seeks to insert/ modify provisions of the Code in order to provide for an efficient alternative resolution process, for corporate persons classified as Micro, Small and Medium enterprises, by the introduction of a pre-packaged insolvency resolution process for such enterprises.

We have earlier discussed, in detail, the changes brought about by the Ordinance in our previous edition of the Briefcase which may be accessed here.

The full text of the IBC Amendment Act can be accessed here.

ii. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 – Amended

The Insolvency and Bankruptcy Board of India ("**Board**") by way of a Notification dated July 14, 2021, bearing No. IBBI/2021-22/GN/REG075, has published the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021 ("**Amendment CIRP**"). The Amendment CIRP has the effect of amending the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, by inserting/ substituting *inter alia* the following regulations, with effect from July 14, 2021:

- **Regulation 3** – In sub-regulation (1) and (2), the words "a resolution professional" have been substituted by the words "an interim resolution professional or a resolution professional, as the case may be". Consequently, an insolvency professional, would be eligible to be appointed as an interim resolution professional (in addition to a resolution professional) for a CIRP of a corporate debtor, if he and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor. Pursuant to this substitution, the interim resolution professional is required to make all disclosures, as prescribed at the time of his appointment, in accordance with the Code of Conduct. Suitable changes have been also made to sub-regulation (3), to include interim resolution professionals within its ambit.

- **Regulation 4** – Certain amendments have been made to Regulation 4, wherein the words "a resolution professional" have been substituted by the words "an interim resolution professional or a resolution professional, as the case may be". By virtue of these amendments, powers have been granted to resolution professionals (in addition to an interim resolution professional) to access the books of account, records and other relevant documents and information, to the extent relevant for discharging his duties under the Insolvency and Bankruptcy Code, 2016 ("**Code**").

- **Regulation 4B** – By virtue of this insertion, the insolvency professional is now required to disclose all the former name(s) and registered office address(es) changed during the period of 2 (two) years preceding the commencement date of insolvency of the corporate debtor, along with current name and address in every communication, record or any other documents.

- **Regulation 27** – This regulation has been substituted whereby interim resolution professionals and resolution professionals can appoint any professional in addition to the registered valuers appointed under sub-regulation (1), to assist them in the discharge of their duties in the conduct of the corporate insolvency resolution process, if such services are not available with the corporate debtor. Certain persons are excluded from being appointed as the professional in view of their relationship with the corporate debtor, or the resolution professional.

- **Sub-regulation (1B) in Regulation 40B** – By virtue of this insertion, the resolution professional is required to form an opinion on transactions covered under Sections 43, 45, 50 and 66 of the Code, by 75th day, make determination on such transactions by 115th day, and file an application before the Adjudicating Authority by 135th day from the insolvency commencement date. Sub-

regulation (1B) of Regulation 40B requires the resolution professional to file Form CIRP 8, intimating details of his opinion and determination under Regulation 35A, by 140th day from the insolvency commencement date. The Form CIRP 8 is required to be filed for all ongoing corporate insolvency resolution processes and for those commencing on or after July 14, 2021, i.e., the commencement of the Amendment CIRP.

The insertions and substitutions are applicable to corporate insolvency resolution processes that are ongoing, and which have commenced on or after the date of commencement of the Amendment CIRP i.e., July 14, 2021.

The full text of the Notification can be accessed here.

iii. The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 - Amended

The Insolvency and Bankruptcy Board of India ("**Board**") by way of a Notification dated July 22, 2021, bearing No. IBBI/2021-22/GN/REG077, has published the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2021 ("**IP Regulations**"). The IP Regulations have the effect of amending the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, by inserting/ substituting *inter alia* the following regulations, with effect from July 22, 2021:

- **Sub-clause (iii) in Clause (c) under Regulation 5** - By virtue of this substitution, the qualification and experience prescribed for the eligibility as an insolvency professional has been expanded. This now includes within its ambit, law graduates and people experienced in management holding a Master's Degree or Post Graduate Diploma in Management from a university established or recognised by law, or an Institute approved by the All India Council of Technical Education, with an experience of 10 (ten) years in these fields.

- **Regulation 12 –** The words "its shares" in clause (c) of sub-regulation (1) of this regulation has been substituted with "equity shares", to clarify that the majority of shares to be held by insolvency professionals should be only equity shares and not preference shares. Further, the proviso to sub-regulation (1) has been substituted, now requiring the 'Insolvency Professional Entity' recognised before July 22, 2021, to have a net worth of not less Rs. 1,00,00,000/- (Rupees one crore) and that the majority of its equity shares should be held by insolvency professionals, who are its directors, in case it is a company, on or before the December 31, 2021.

- **Sub-regulation (3) and Sub-regulation (4) under Regulation 12 –** By virtue of this insertion, the Board is required to acknowledge an application received for recognition as an insolvency professional entity within 7 (seven) days of its receipt. The Board may ask for additional documents, information or clarifications or may call upon the director or partners of the applicant to appear before it for any clarification.

- **Sub-regulation (1) under Regulation 13 –** By virtue of this substitution, a timeline has been provided for the Board to grant the certificate of recognition as an insolvency professional, if it is satisfied that the applicant is eligible under the IP Regulations. Within 60 (sixty) days of the date of receipt of the application, the Board is required to grant the certificate of recognition. The time taken by the applicant for submitting additional documents or clarifications would be excluded. If the Board is of the opinion that recognition should not be granted, then the Board

shall intimate the applicant of its opinion along with reasons thereof and the applicant would be provided an opportunity to submit an explanation within 15 (fifteen) days. Within 30 (thirty) days of the receipt of the explanation, the Board shall either grant the certificate of recognition or reject the application.

- **Clauses (b) and (c) in Sub-regulation (2) under Regulation 13:** The words 'seven' have been substituted with the word 'thirty' thereby extending the time granted to insolvency professional entities to inform the Board about the admission and cessation of directors/ partners from 7 (seven) days to 30 (thirty) days.

- **Insertion of a clarification after clause 22 in the First Schedule –** Through this clarification, the Board has restricted the limit of assignments that a particular insolvency professional would have, at a particular point of time, i.e., a maximum 10 (ten) assignments as resolution professional in a corporate insolvency resolution process, out of which a maximum of 3 (three) assignments can have admitted claims of more than Rs. 1000 crores each.

The full text of the Notification can be accessed here.

iv. Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 - Amended

The Insolvency and Bankruptcy Board of India by way of its Notification dated July 22, 2021, bearing No. IBBI/2021-22/GN/REG076, has published the Insolvency and Bankruptcy Board of India (Model Bye - Laws and Governing Board of Insolvency Professional Agencies) (Third Amendment) Regulations, 2021. This amends the Insolvency and Bankruptcy Board of India (Model Bye - Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016, with effect from July 22, 2021, by substituting Sub-clause (5) in clause 24 in the Schedule. By virtue of this substitution, the monetary penalties imposed by the Disciplinary Committee of an insolvency professional agency would be credited to the Fund of the Insolvency and Bankruptcy Board, constituted under Section 222 of the Insolvency and Bankruptcy Code, 2016 ("**Code**"), and not the Insolvency and Bankruptcy Fund under Section 224 of the Code.

The full text of the Notification can be accessed here.

B. JUDICIAL PRONOUNCEMENTS

i. Anjali Rathi & others v. Today Homes & Infrastructure Pvt. Ltd and others

[Judgment of the Hon'ble Supreme Court of India, dated September 8, 2021, in SLP(C) No. 12150 of 2019 with Civil Appeal 5231-5238 of 2019 with SLP (C) No. __2021 (Arising out of SLP (C) Diary No. 45043 of 2019)]

Background:

The petitioners before the Hon'ble Supreme Court of India were home buyers in a group housing project, which was being developed by the first respondent. Since the apartments were not delivered within the stipulated time in 2014, and the project was abandoned by the developer, the petitioners instituted proceedings before the National Consumer Dispute Redressal Commission ("**NCRDC**") seeking for refund of their money with interest. By way of its order dated July 12, 2018, the NCRDC had allowed the claim

of the petitioners. The petitioners initiated execution proceedings under Section 25 and 27 of the Consumer Protection Act, 1986, before the NCRDC.

On April 1, 2019, the NCRDC had disposed off the execution proceedings, by observing that the first respondent had failed to refund the money as directed by the NCDRC and directed the refund of money within 2 (two) weeks, failing which the director of the company would be taken into custody and all the properties of the judgment debtor would be attached to recover the decretal amount. The NCDRC, however, had clarified that the said order would gain effect after disposal of proceedings before the Hon'ble Delhi High Court, wherein certain interim directions of the NCDRC had been challenged and were pending adjudication. Against this order, Civil Appeals Nos. 5231- 5238 of 2019 were filed by the petitioners.

On October 31, 2019, proceedings were initiated against the first respondent before the National Company Law Tribunal ("**NCLT**") under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") by an operational creditor. After admission of the petition, the corporate insolvency resolution process was initiated, and a moratorium was declared under Section 14 of the Code. This order of NCLT resulted in the filing of SLP (C) Diary No. 45043 of 2019 by other homebuyers stating that these proceedings were only initiated to stall the refund of decretal amount to the homebuyers.

The petitioners lodged their claims before the resolution professional. The Hon'ble Supreme Court by way of an order dated July 8, 2021, had directed a meeting of the committee of creditors which included only the representatives of the homebuyers, and no financial institutions. By a vote of 96.93%, the committee of creditors had approved the resolution plan submitted by a consortium of home buyers. The resolution plan was pending approval of the NCLT under Section 31(1) of the Code.

Findings of the Court:

The Hon'ble Supreme Court, while refusing to pass orders attaching the personal properties of the promoters, pending approval of the resolution plan submitted by the consortium of home buyers has clarified the right of the petitioners to move against the promoters of the corporate debtor, when a moratorium has been declared under Section 14 of the Code.

The Hon'ble Supreme Court referring to its judgment in ***Moharaj v. Shah Bros. Ispat (P.) Ltd, (2021)6 SCC 258***, pertaining to proceedings under Section 138 and 141 of the Negotiable Instruments Act, 1881, clarified that the moratorium under Section 14 of the Code was only in relation to the corporate debtor and not in respect of the directors/ management of the corporate debtor, against whom proceedings could continue. It was thus held that the petitioners were not prevented by the moratorium under Section 14 of the Code, from initiating proceedings against the promoters of the corporate debtor in relation to honouring their settlements, as reached before the Hon'ble Supreme Court.

Since the resolution plan was pending approval of the NCLT, the petitioners were also given the liberty to take recourse of the available remedies under law, after the decision of the NCLT on the approval of the application under Section 31(1) of the Code.

ii. National Spot Exchange Limited v. Mr. Anil Kohli, Resolution Professional for Dunar Foods Limited

[Judgment of the Hon'ble Supreme Court of India dated September 14, 2021, in Civil Appeal No. 6187 of 2019]

Background:

This appeal was filed by the appellant before the Hon'ble Supreme Court of India against the order dated July 5, 2019, passed by the National Company Law Appellate Tribunal, New Delhi ("**NCLAT**"), in Company Appeal (AT) (Insolvency) No. 683/2019. The NCLAT by way of its order dated July 5, 2019, had refused to condone the delay of 44 (forty four) days in preferring an appeal against the order passed by the National Company Law Tribunal, Mumbai Bench ("**NCLT**"). The NCLT had rejected an application filed by the appellant challenging rejection of its claim filed before the Insolvency Resolution Professional ("**IRP**").

The State Bank of India had initiated insolvency proceedings before the NCLT under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("**Code**") against one, Dunar Foods Limited (**"Corporate Debtor"**) on the premise that the Corporate Debtor had taken credit limits by hypothecating the commodities kept by the Corporate Debtor in the warehouse of the appellant. The petition was admitted by the NCLT, the corporate insolvency resolution process commenced, and an IRP was appointed. Thereafter, the IRP invited claims from the creditors of the Corporate Debtor and the appellant submitted its claim to the IRP. The appellant's claim, however, was rejected by the IRP, pursuant to which, the aggrieved appellant challenged the said order of rejection by the IRP before the NCLT. The NCLT upheld the decision of the IRP by way of an order dated March 6, 2019, and the appellant preferred an appeal before the NCLAT. There was however a delay of 44 (forty four) days in filing the appeal before the NCLAT, as the said appeal was to be filed within a maximum period of 45 (forty five) days (30 (thirty) days + 15 (fifteen) days) in terms of Section 62(2) of the Code.

The NCLAT, going by the literal interpretation of the language in the proviso to Section 62(2) of the Code, dismissed the appeal on the ground that it had no jurisdiction to condone delay beyond 15 (fifteen) days after the expiry of the 30 (thirty) day period provided for filing an appeal and thereby held that the appeal was barred by limitation. Aggrieved by the order of the NCLAT, the appellant preferred an appeal before the Hon'ble Supreme Court.

Findings of the Court:

The Hon'ble Supreme Court held that the NCLAT had not committed any error in not condoning the delay of 44 (forty four) days, which was beyond the period of 15 (fifteen) days, and that delay beyond 15 (fifteen) days could not have been condoned by the NCLAT, as per the proviso contained in Section 61(2) of the Code. The Hon'ble Supreme Court by placing reliance on a catena of decisions of the coordinate, as well as the constitutional benches of the court held that though in a given situation, a provision may cause hardship, unless Parliament has carved out any exception by a provision of law, the period of limitation has to be given effect to. The Hon'ble Supreme Court further held that what cannot be done directly, cannot be done indirectly and therefore rejected the prayer of the appellant seeking condonation of delay in filing the appeal by invoking powers of the Hon'ble Supreme Court under Article 142 of the Constitution of India.

iii. Dena Bank v. C. Shivakumar Reddy and Anr.

[Judgment of the Hon'ble Supreme Court of India dated August 4, 2021, in Civil Appeal No. 1650 of 2020]

Background:

The civil appeal was filed before the Hon'ble Supreme Court of India under Section 62 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") against a judgment and final order dated December 18, 2019, passed by the National Company Law Appellate Tribunal ("**NCLAT**") in Company Appeal (AT)(Insolvency) No. 407 of 2019. By way of its order dated December 18, 2019, the NCLAT had held that the insolvency petition filed by the appellant (financial creditor) before the National Company Law Tribunal, Bengaluru Bench ("**NCLT**") was barred by limitation and therefore set aside the order of admission passed by the NCLT, in CP (IB) No. 244/BB/2018 filed by the appellant.

The appellant is a bank, Respondent No. 2 is the Corporate Debtor (Kavveri Telecom Infrastructure) and Respondent No. 1 is the director of the Corporate Debtor. On December 23, 2011, the appellant bank by virtue of a letter had sanctioned a certain term loans and letters of credit cum buyers' credit to the Corporate Debtor. Thereafter, the Corporate Debtor defaulted in repayment of dues to the appellant bank on September 20, 2013, and subsequently, the loan account of the Corporate Debtor was declared to be a Non Performing Asset (**"NPA"**) on December 31, 2013.

In this regard, a legal notice was sent by the appellant bank on December 22, 2014, calling upon the Corporate Debtor to make payment of the dues owed to the appellant bank. No repayment was made by the Corporate Debtor and hence proceedings were initiated under Section 19 the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (*now the Recovery of Debts and Bankruptcy Act, 1993*). The Debt Recovery Tribunal ("**DRT**") passed its final judgment on March 27, 2017, granting recovery of the dues amounting to Rs. 52,12,49,438/- (Rupees fifty two crores twelve lakhs forty nine thousand four hundred and thirty eight only), along with future interest at the rate of 16% p.a., from date of filing the application till date of realization. Further, a recovery certificate was also issued on May 25, 2017.

In the meanwhile, two 'one time settlement' proposals were issued by the Corporate Debtor on March 3, 2017 and May 25, 2017, to the appellant bank. Both the proposals were rejected by the appellant bank and the appellant bank initiated proceedings under Section 7 of the Code against the Corporate Debtor on October 12, 2017, post issuance of a demand notice to the Corporate Debtor.

The NCLT, by an order dated March 21, 2019, admitted the petition and appointed an Insolvency Resolution Professional ("**IRP**"). While admitting the application, the NCLT also rejected the objections raised by the Corporate Debtor regarding the application under Section 7 of the Code being beyond the prescribed limitation period.

The Corporate Debtor appealed against the order dated March 21, 2019 under Section 61 of the Code and the NCLAT set aside the order of the NCLT and dismissed the application under Section 7 on the grounds that the application was barred by limitation. It is against the aforementioned order of the NCLAT that the instant appeal was preferred to the Hon'ble Supreme Court. The Hon'ble Supreme Court formulated the following issues to be adjudicated on in the Appeal:

1. Whether there is a bar to amendment of pleadings of an application under Section 7 of the Code or to the filing of additional documents apart from those filed along with the application under Section 7 of the Code?

2. Whether an application under Section 7 of the Code would be barred by limitation from the date of declaration of the loan account as an NPA, despite there being a subsequent acknowledgement of the liability under Section 18 of the Limitation Act, 1963?

3. Whether a final judgment of the DRT or the recovery certificate issued by the DRT could be construed as a fresh cause of action to initiate proceedings under Section 7 of the Code?

Findings of the Court:

Dealing with the first issue, the Hon'ble Supreme Court highlighted that with respect to proceedings under Section 7 of the Code, there is no scope for elaborate pleadings. The application under Section 7 is required to be in the prescribed format and as a result, it cannot be compared with pleadings in a plaint. Further, the same standards which apply to a plaint, will not apply here. While elucidating upon the scheme of the Code as discussed in the cases of *Innoventive Industries v. ICICI Bank, (2018) 1 SCC 407* and *Swiss Ribbons Private Limited and Anr. v. Union of India, (2019) 4 SCC 17*, it was held that there was no bar for amendment of pleadings or on filing of documents in addition to the ones filed along with the application. This was held in view of the fact that there exists no express provision to the contrary. It was further held that while the time period highlighted under Section 7(4) of the Code is merely directory in nature and not mandatory and no penalty lies in this regard, as per the discretion of the Adjudicating Authority, inordinate delays may not be accepted.

Dealing with the second issue, placing reliance on *Sesh Nath Singh v. Baidyabati Sheoraphuli, 2021 SCC OnLine SC 244*,the Hon'ble Supreme Court held that Section 18 of the Limitation Act, 1963 would apply to the Code. Having previously held that there is no bar to filing of additional documents, the Court went on to further hold on the basis of the additional documents on record that, the date of declaration of the loan account as an NPA, would not be the date from which the cause of action arises, but the date of subsequent acknowledgement of liability (if made before the expiry of the period of limitation) would be the date from which the cause of action arises. It was noted that while it was true to contend that the Section 7 application highlighted September 30, 2013, as the date of default, it is not correct to say that there was no averment thereafter indicating acknowledgement of the debt. Since amendment of pleadings was allowed, it was held that the Adjudicating Authority rightly looked at the amended pleadings. Further, even if the acknowledgement is undated, it was held that, evidence may be lead to prove the date of its signing.

Dealing with the third issue, it was held that a fresh cause of action would arise in view of a judgment delivered by the DRT or any other tribunal or court and upon issuance of a certificate of recovery, if the amount due or a part of it continues to remain unpaid by the Corporate Debtor.

Pertinently, it was also reiterated by the Hon'ble Supreme Court that the provisions of the Limitation Act, 1963 would not apply to the Code verbatim. In view of Section 238A of the Code and on the basis of *Sesh Nath Singh v. Baidyabati Sheoraphuli, 2021 SCC OnLine SC 244*, the Court noted that the words "as far as may be" in Section 238A of the Code indicates that the provisions of the Limitation Act, 1963 would not apply to the extent that there are any inconsistencies with the provisions of the Code.

iv. Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Private Limited

[Judgment dated August 10, 2021, of the Hon'ble Supreme Court of India in Civil Appeal No. 1137 of 2019]

Background:

The appeal before the Hon'ble Supreme Court of India arose out of an order passed by the National Company Law Appellate Tribunal ("**NCLAT**"), which had set aside the decision of the National Company Law Tribunal ("**NCLT**") which had rejected the application filed by the Respondent ("**OIAPL"**) under Section 9 of Insolvency and Bankruptcy Code, 2016 ("**Code**"), seeking initiation of the corporate insolvency resolution process against the appellant.

OIAPL was awarded an engineering construction contract for carrying out Mashkour Sugar Project in Sudan and the same was funded by a Dollar Line of Credit ("**LoC**") extended by the Government of India ("**GoI**") to the Republic of Sudan through the Exim Bank of India ("**Exim Bank**"). The said line of credit was extended in 2 (two) tranches. Kay Bouvet Engineering Limited ("**Kay Bouvet**"), the appellant in the instant case, was appointed as the sub-contractor of OIAPL and a tripartite agreement was reached between the 3 (three) parties, namely, Mashkour Sugar Company Limited ("**Mashkour**"), OIAPL and Kay Bouvet. Under the agreement, Mashkour was to release payment to OIAPL and in turn it was to release payment to the Kay Bouvet on the furnishing of requisite bank guarantees by Kay Bouvet.

Pursuant to certain developments, on June 15, 2017, Mashkour terminated the contract with OIAPL for failure on its part to perform its duties and appointed Kay Bouvet as the contractor for the unutilized portion of the GOI's line of credit. Consequently, a demand notice under Section 8 of the Code was served upon Kay Bouvet by OIAPL alleging default under the tripartite agreement, and asking for a refund of the advance amount paid to Kay Bouvet. Thereafter, OIAPL filed a petition under Section 9 of the Code before NCLT claiming to be an operational creditor of Kay Bouvet. The same was, however, dismissed by the NCLT by way of the Order dated July 26, 2018, on the count that there was an existing dispute between the parties. Being aggrieved by the Order, OIAPL filed an appeal before NCLAT and the same was allowed with a direction passed to NCLT, Mumbai to admit the petition filed by OIAPL.

The issue before the Hon'ble Supreme Court was:

"*Whether the claim of Kay Bouvet with regard to the "existence of a dispute" can be considered to be one which is spurious, illusory or not supported by evidence*".

Findings of the Court:

The Supreme Court, relying upon its decision in *Mobilox Innovations Private Limited* v. *Kirusa Software Private Limited (2018) 1 SCC 343*, held that all that the Adjudicating Authority is required to ascertain, at the stage of admission of a petition, as to whether there is a plausible contention which requires further investigation, and that the question of an existing dispute raised by respondent is not a patently feeble legal argument or an assertion of fact unsupported by evidence.

In this regard, the Court held that an application for initiating corporate insolvency resolution process has to be rejected if a dispute truly exists in fact and is not spurious, hypothetical or illusionary. Further, it was held that the Court is not required to be satisfied as to whether the defense is likely to succeed or not, but only as to whether it is real. Pertinently, it noted that the material placed on record amply clarifies that the

initial payment which was made to Kay Bouvet as a sub contractor, by OIAPL (*who was a contractor at the time*), was made on behalf of Mashkour and from the funds received by OIAPL from Mashkour.

On the facts it was held that it was also clear that when a new contract was entered into between Mashkour and Kay Bouvet directly, Mashkour had directed the said amount of Rs.47,12,10,000/- (Rupees forty seven crores twelve lakhs ten thousand only) be adjusted against the supplies to be made to Mashkour for the purpose of completing the project. Therefore, the Court stated that it was abundantly clear that the amount of Rs.47,12,10,000/- (Rupees forty seven crores twelve lakhs ten thousand only) which was paid to it by OIAPL, was paid on behalf of Mashkour from the funds released to OIAPL by Exim Bank on behalf of Mashkour, and as such cannot be said to be a dispute which is spurious, illusory or not supported by the evidence placed on record.

The Hon'ble Supreme Court therefore concluded that NCLT had rightly rejected the application of OIAPL after finding that there existed a dispute between Kay Bouvet and OIAPL and therefore, an order under Section 9 of the Code could not have been passed. The Court found that NCLAT had patently misinterpreted the factual as well as legal position and erred in reversing the order of NCLT and directing admission of petition under Section 9 of the Code.

v. Pratap Technocrats (P) Ltd. And Others v. Monitoring Committee of Reliance Infratel Limited and another

[Judgement dated August 10, 2021, of the Hon'ble Supreme Court of India in Civil Appeal No. 676 of 2021]

Background:

The instant appeal before the Hon'ble Supreme Court of India under Section 62 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") was filed against an order of the National Company Law Appellate Tribunal ("**NCLAT**") dated January 4, 2021, upholding the approval by the National Company Law Tribunal ("**NCLT**") of the resolution plan formulated during the corporate insolvency resolution process of s Reliance Infratel Limited ("**Corporate Debtor**"). By way of the Order dated May 5, 2018, corporate insolvency resolution process ("**CIRP**") was commenced against the Corporate Debtor under the Code. Pursuant to formation of the Committee of Creditors ("**COC**"), resolution plans were invited by the Resolution Professional ("**RP**") and 4 (four) potential resolution applicants submitted plans. The plan submitted by Reliance Digital Platform and Project Services Limited was approved by the COC on March 3, 2020, with 100% of the financial creditors approving it.

The resolution plan submitted by the successful applicant was accepted by the NCLT by way of the Order dated December 3, 2020. The Appellants herein who were operational creditors of the Corporate Debtor, challenged the order of NCLT before the NCLAT on several grounds notably that the claims of the appellant had not received fair and equitable treatment in the resolution plan accepted by the NCLT.

However, the NCLAT dismissed the appeal by way of the Order dated January 4, 2021, and held that there was no substance in the case. Aggrieved by this, the Appellants herein approached the Supreme Court under Section 62 of the Code.

The two issues before the Hon'ble Supreme Court were:

- Does the exclusion of some indirect financial creditors from the COC, subsequent to the approval of the resolution plan by the NCLT bear any consequence on the validity of the resolution plan?

- What is the scope of jurisdiction of the NCLT and NCLAT while adjudicating on challenges to the approval of a resolution plan?

Findings of the Court:

On the first issue of change in the CoC, subsequent to approval of the resolution plan by the NCLT, the Hon'ble Supreme Court held after appreciating the facts of the case that since the resolution plan had been approved by 100% of the financial creditors on the COC, removal of some financial creditors from the COC does not affect the validity of the approval to the resolution plan. It was further observed that the modification of the COC did not affect the liquidation value of the amounts payable to operational creditors and hence the same did not have any bearing on the contents of the resolution plan.

On the second issue of scope of jurisdiction of the NCLT and NCLAT while adjudicating on challenges to approval of a resolution plan, the Hon'ble Supreme Court placed reliance on various cases such as *K Sashidhar v. Indian Overseas Bank, (2019) 2 SCC 1; Committee of Creditors of Essar Steel India Limited (through authorized signatory) v. Satish Kumar Gupta and Others (2020) 8 SCC 531* and *Swiss Ribbons Private Limited & Anr. v. Union of India (2019) 4 SCC 17* to reiterate that under the Code, the commercial wisdom of the COC is given paramount importance; that once the requirements of the Code are fulfilled, the NCLT and NCLAT are duty bound to abide by the discipline of the statutory provisions. It was further clarified that neither the NCLT nor the NCLAT have unchartered jurisdiction in equity unlike courts in other jurisdictions of the world under their respective insolvency legislations. It was reiterated that the scope of jurisdiction of the NCLT and NCLAT in adjudicating on approval / challenge to a resolution plan are set out in detail in the provisions of the Code, which is a complete code and hence their jurisdiction arises within and as a product of a statutory framework. Applying the said principles, the Hon'ble Supreme Court held that the resolution plan in the instant case had been duly approved by a requisite majority of the COC in conformity with Section 30(4) of the Code and therefore, the NCLT has rightly restricted its examination as per the provisions of Section 31(1) of the Code to determine if the requirements of Section 30(2) of the Code have been fulfilled in the plan as approved by the COC.

vi. Orator Marketing Private Limited v. Samtex Desinz Private Limited

[Judgment dated July 26, 2021, of the Hon'ble Supreme Court of India in Civil Appeal No. 2231 of 2021

Background:

The appellate jurisdiction of the Hon'ble Supreme Court of India was invoked by the appellant challenging the judgement dated March 8, 2021 passed by the National Company Law Appellate Tribunal ("**NCLAT**") in Company Appeal (AT) (Insolvency) No. 1064 of 2020, whereby the NCLAT dismissed the appeal of the appellant and confirmed the order of the National Company Law Tribunal, New Delhi ("**NCLT**"). The NCLT had dismissed the petition in CP (IB) No. 908/ND/2020 filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 ("**Code**") on the ground that the appellant is not a financial creditor of the respondent, as the appellant is an assignee of the debt in question and no interest was payable on the loan amount as per the loan agreement.

The question before the Hon'ble Supreme Court was whether a person who gives a term loan to a corporate person, free of interest, on account of its working capital requirements is a financial creditor, and therefore competent to initiate the corporate insolvency resolution process under Section 7 of the Code.

Findings of the Court:

The Hon'ble Supreme Court allowed the appeal and set aside the judgement and order of NCLAT and NCLT holding that the appellant was not a financial creditor on account of the debt not falling within the purview of financial debt.

The Hon'ble Supreme Court after considering precedent on the principles of interpretation of statutes held that the definition of 'Financial Debt' in Section 5(8) of the Code cannot be read in isolation, without considering the object and purpose of the statute. The Hon'ble Supreme Court therefore concluded that the definition of financial debt in Section 5(8) of the Code does not expressly exclude an interest free loan and financial debt would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.

vii. Hytone Merchants Private Limited v. Satabadi Investment Consultants Private Limited

[Judgment dated June 30, 2021, of the Hon'ble National Company Law Appellate Tribunal, New Delhi, Principal Bench in Company Appeal (AT) Insolvency No. 258 of 2021]

Background:

The appellate jurisdiction of the Hon'ble National Company Law Appellate Tribunal, New Delhi, Principal Bench ("**NCLAT**") was invoked by the Financial Creditor – Hytone Merchants Private Limited challenging the order passed by the National Company Law Tribunal, Kolkata Bench ("**NCLT**") which dismissed the company petition filed by the Appellant under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**"). Upon analysis of the financial position of Satabadi Investment Consultants Private Limited ("**Corporate Debtor**"), the NCLT had held that the petition was filed in collusion with the Corporate Debtor. The NCLT had further observed that the master data of the Corporate Debtor revealed that it has given corporate guarantees of Rs. 482,42,00,000/- (Rupees four hundred and eighty two crores forty two lakhs only). On further enquiry and from the perusal of the statements for the financial year 2018-19 of the Corporate Debtor, it was also observed that the net worth of the Corporate Debtor was Rs. 15,36,39,015/- (Rupees fifteen crores thirty six lakhs thirty nine thousand and fifteen only) and the NCLT concluded that it was hard to fathom that a company having such a net worth is not able to make a payment of Rs. 3,00,000 /- (Rupees three lakhs only), being the amount claimed in the petition. It was held that the petition had been filed by the appellant in collusion with the Corporate Debtor and the petition was dismissed.

The main ground of challenge before the NCLAT on behalf of the Appellant was that the NCLT does not have any discretion under the provisions of Section 7(5) of the Code to dismiss a petition which was complete in all respects as required by law and which clearly showed that the Corporate Debtor was in default of a debt due and payable. It was further urged that neither the master data nor the financial statements of the Corporate Debtor were even part of the records in the petition and reliance on the same without affording the appellant an opportunity to make any submissions on the same amounted to a violation of natural justice.

Findings of the Tribunal:

As per the NCLAT, the main point for consideration in the appeal was

"*Whether the petition complying with all requirements of Section7(5) of the Insolvency and Bankruptcy Code, 2016, but if it appears that the Application is filed collusively, not with the intention of Resolution of Insolvency, and so with malicious intent, or malafides, then whether the Application can be rejected relying on Section 65 of the Code?*"

The NCLAT after analysing the various provisions of the Code and more specifically Section 7(5) of the Code and categorically held that the use of the phrase '*it may*' in Section 7(5) of the Code itself leaves the scope for discretion to be exercised by the NCLT in admitting or rejecting an application filed by a financial creditor even if such application was otherwise complete under the Code and a default has occurred.
The NCLAT relying upon the judgment of the Hon'ble Supreme Court of India in the case of *Arcelor Mittal India Private Limited v. Satish Kumar Gupta and Others, Civil Appeal Nos. 9402-9405 of 2018,* observed that the Hon'ble Supreme Court, while interpreting the statutory provision of Section 29 A of the Code, recognised the principle of lifting the corporate veil in matters relating to insolvency under the Code. In the said case the Court had held that the corporate veil may be lifted when a statute itself contemplates lifting the veil, or improper conduct is intended to be prevented. The NCLAT noted that the concept of the corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. It further held that, where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

Relying on the recognition accorded by the Hon'ble Supreme Court to the lifting of the corporate veil in relation to the Code, the NCLAT referred to Section 65 of the Code which provides for punishment or fraudulent or malicious initiation of proceedings. The NCLAT held that Section 65 of the Code will also be applicable to prevent fraudulent or malicious initiation of proceedings as well, apart from providing punishment for the same. It was held that when a statute makes a provision for punishment for any wrong, it also contains deemed power to prevent it and therefore it cannot be said that Section 65 will be applicable only after initiation of the corporate insolvency resolution process fraudulently or with malicious intent. Another observation of importance by the NCLAT was that the Adjudicating Authority should be very cautious in admitting applications to ensure that the Corporate Debtor is not dragged into corporate insolvency resolution process with *mala fide* intentions for any purpose other than the resolution of insolvency. The NCLAT therefore held that before admitting an application, every precaution is necessary to be exercised so that the insolvency process is not misused for any purposes other than the resolution of insolvency.

Upholding the order passed by the Kolkata Bench, the NCLAT held that there is a plausible contention to form an opinion of collusion in the case at hand. The NCLAT observed that the Corporate Debtor was a company with a net worth of Rs. 15,36,39,015/- (Rupees fifteen crores thirty six lakhs thirty nine thousand and fifteen only) that had already given a corporate guarantee worth Rs. 482,42,000,00/- (Rupees four hundred and eighty two crores forty two lakhs only) and is now unable to repay a loan of Rs. 3,00,000 /- (Rupees three lakhs only). It was observed that, the Corporate Debtor, in its reply, has not disputed that it has extended the corporate guarantee worth Rs. 482,42,00,000 /- (Rupees four hundred and eighty two crores forty two lakhs only). The NCLAT concluded that since the master data of the Corporate Debtor reflects that the Corporate Debtor is also a corporate guarantor and has extended the corporate guarantee

of a considerable amount worth Rs. 482,42,00,000 (Rupees four hundred and eighty two crores forty two lakhs only), therefore, the plausible contention cannot be ruled out that the Corporate Debtor colluded with the appellant to escape its liability as a corporate guarantor.

V. LITIGATION & ARBITRATION

i. Arcelor Mittal Nippon Steel India Ltd. v. Essar Bulk Terminal Ltd.

[Civil Appeal No. 5700 of 2021 decided on September 14, 2021 by the Supreme Court of India]

Background:

In the present case, Arcelor Mittal Nippon Steel India Ltd. ("**Arcelor**") and Essar Bulk Terminal Ltd. ("**Essar**") entered into an agreement for Cargo Handling at Hazira Port. Certain disputes arose between the parties under the said agreement, and thereafter Arcelor invoked the arbitration clause by a notice of arbitration. Essar did not respond to the said notice. Thereafter, Arcelor approached the Hon'ble Gujarat High Court under Section 11 of the Arbitration & Conciliation Act, 1996 ("**the Act**") for appointment of an Arbitral Tribunal. Arcelor also filed an application under Section 9 of the Act before the District Court seeking interim reliefs. The District Court reserved orders in the Section 9 Petition on June 7, 2021. The Hon'ble High Court allowed the petition under Section 11 of the Act and appointed a three-member Arbitral Tribunal on July 9, 2021. Subsequently, on July 16, 2021, Arcelor filed an application before the District Court seeking reference of the interim application filed under Section 9 of the Act to the Arbitral Tribunal. On July 16, 2021, the District Court dismissed the application filed by Arcelor. Against this order, Arcelor filed a R/Special Civil Application in the Hon'ble Gujarat High Court. The Hon'ble High Court dismissed the petition filed by Arcelor, holding that the District Court has the power to consider whether the remedy under Section 17 of the Act is inefficacious and pass necessary orders under Section 9 of the Act.

Findings of the Supreme Court:

The Hon'ble Supreme Court adjudicated upon the issue as to whether the bar of Section 9(3) of the Act operates where the application under Section 9(1) of the Act had not been "entertained" till the constitution of the Arbitral Tribunal.

The Hon'ble Supreme Court observed that the expression "entertain" means to consider by application of mind to the issues raised, and not filing of the application. In determining whether an application under Section 9 of the Act has been entertained or not, the Court would have to see as to whether the process of consideration has commenced, and/or whether the Court has applied its mind to some extent before the constitution of the Arbitral Tribunal.

The Court thus held that once an Arbitral Tribunal was constituted, the Court would not entertain and/or take up for consideration and apply its mind to an application for interim measure, unless the remedy under Section 17 of the Act, is inefficacious, even though the application may have been filed before the constitution of the Arbitral Tribunal. However, when an application has already been taken up for consideration and is in the process of consideration or has already been considered, the question of examining whether a remedy under Section 17 of the Act is efficacious or not would not arise.

The Court while allowing the Appeal held that in the present case, the hearing on petition under Section 9 of the Act stood concluded, and accordingly the bar of Section 9(3) of the Act would not operate.

The Court further observed that even if an application under Section 9 of the Act had been entertained before the constitution of the Tribunal, the Court always has the discretion to direct the parties to approach the Arbitral Tribunal, if necessary by passing a limited order of interim protection, particularly when there had been a long time gap between hearings.

ii. Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.

[Civil Appeal No. 5627 of 2021 decided on September 9, 2021 by the Supreme Court of India]

Background:

In the present case, a Concession Agreement ("**CA**") was entered into between Delhi Metro Rail Corporation Ltd. ("**DMRC**") and Delhi Airport Metro Express Pvt. Ltd. ("**DAMEPL**") for design, installation, commissioning, operation and maintenance of the Airport Metro Express Line ("**AMEL**") project at New Delhi. Subsequently, DAMEPL terminated the CA as, according to it, among other things, the defects that were pointed out were not cured. Thereafter arbitral tribunal was constituted, and tribunal awarded a total amount of Rs. 2782.33 Crores, along with further interest, as Termination Payment to be made to DAMEPL.

DMRC filed a petition under Section 34 of the Act for setting aside the award of the Arbitral Tribunal before the Hon'ble Delhi High Court ("**DHC**"), which was dismissed by the single judge of the DHC. DMRC filed an appeal under Section 37 of the Act before the DHC. The DHC in exercise of its power partly set aside the Arbitral Award. The DHC held that the award suffered from the vices of perversity, irrationality, and patent illegality.

Findings of the Supreme Court:

The Hon'ble Supreme Court adjudicated upon the issue as to whether in exercise of its power under Section 37 of the Act, the Division Bench of the DHC was right in interfering with the award passed by the Arbitral Tribunal in favour of DAMEPL.

The Hon'ble Supreme Court held that the views taken by the Arbitral Tribunal was a plausible view. Further, it was held that a possible view expressed by the Tribunal on construction of the terms of the CA could not be substituted by the Hon'ble High Court. The Hon'ble Supreme Court held that the arbitrator was the sole judge of the quality as well as the quantity of the evidence. In addition, since members of the Tribunal were qualified engineers, their award was not meant to be scrutinized in the same manner as one prepared by legally trained minds.

In the context of narrow scope of judicial interference under Section 34 of the Act, the Court observed that the limited grounds available to the courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. It was further held that there was a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the Act and the endeavour be made to preserve this object, which is minimal judicial interference with arbitral awards. It was further held that apart, several judicial

pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

The Hon'ble Supreme Court accordingly set aside the impugned judgment of the DHC and upheld the Arbitral Award.

iii. Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd. & Anr.

[Civil Appeal Nos. 8343-8344 of 2018 decided on August 10, 2021 by the Supreme Court of India]

Background:

In this case, a representation agreement was entered into between Integrated Sales Services Ltd. ("**ISS**"), a company based in Hong Kong and DMC Management Consultants Ltd. ("**DMC**"), a company registered in Nagpur, India. Certain disputes arose between the parties, which led to the constitution of arbitral tribunal and passing of an award. In the arbitral award, applying the law of Delaware, the Ld. Arbitrator directed DMC to pay $6,948,100.00 to ISS, among other things. In the said award, the arbitrator lifted the corporate veil to hold non signatories liable. Thereafter, ISS / Decree Holder sought enforcement of the said foreign award before the Hon'ble Bombay High Court ("**BHC**").

The BHC held that the agreement and the arbitration clause cannot be enforced against persons who were non-signatories, even though such non-signatories may have participated in the arbitration, as no acquiescence or estoppel could apply to issues relatable to jurisdiction.

Findings of the Supreme Court:

The Hon'ble Supreme Court held that the execution petition was maintainable against the non-signatories. The Court reiterated that the grounds mentioned in Section 48 of the Act are not to be read expansively, but narrowly.

As regards ground mentioned in Section 48(1)(a) of the Act, the Court observed that the same was available only to parties to the agreement. The Court held that a non-signatory's objection was outside the construction of the said section.

In the context of Section 48(1)(b) of the Act, the Court distinguished between award passed in violation of the principle of natural justice and award devoid of reasons. The Court observed that Section 48(1)(b) does not speak of absence of reasons in an arbitral award at all. Further, the only grounds on which a foreign award cannot be enforced under Section 48(1)(b) were natural justice grounds relatable to notice of appointment of the arbitrator or of the arbitral proceedings, or that a party was otherwise unable to present its case before the arbitral tribunal, all of which were events anterior to the making of the award.

As regards, Section 48(1)(c) of the Act, the Court clarified that the same was available when the disputes could be said to be outside the scope of the arbitration agreement between the parties – and not to whether a person who was not a party to the agreement can be bound by the same.

The Court further observed that the foreign award could not be challenged on the ground that damages have been awarded on no basis whatsoever. It was further observed that Section 47(1)(c) of the Act being

procedural in nature did not go to the extent of requiring substantive evidence to "prove" that a non-signatory to an arbitration agreement could be bound by a foreign award.

iv. Amazon.Com NV Investment Holdings LLC v. Future Retail Limited and Ors.

[Civil Appeal No. 4492-4493 of 2021 decided on August 6, 2021 by the Supreme Court of India]

Background:

In this case, proceedings were initiated by the Amazon.com NV Investment Holdings LLC ("**Amazon**") before the Hon'ble Delhi High Court ("**DHC**") under Section 17(2) of the Act to enforce the award/order dated October 25, 2020, of an Emergency Arbitrator. The DHC by its order of March 18, 2020, held that an Emergency Arbitrator's award is an order under Section 17(1) of the Act. An appeal was filed against this order before the DHC, which stayed the learned Single Judge's order. A Special Leave Petition was filed before the Hon'ble Supreme Court against the order of the division bench of the DHC.

Findings of the Supreme Court:

The Hon'ble Supreme Court adjudicated upon the issue as to whether an "award" delivered by an Emergency Arbitrator under the Arbitration Rules of the SIAC Rules could be said to be an order under Section 17(1) of the Act.

The Court held that the Emergency Arbitrator's orders would be covered by the Act. The Court further held that definition of "arbitral tribunal" contained in Section 2(1)(d) did not restrict Section 17(1) of the Act, making it applicable only to an arbitral tribunal that can give final reliefs by way of an interim or final award. The Court observed that insofar as Section 17(1) of the Act is concerned, the "arbitral tribunal" would, when institutional rules apply, include an Emergency Arbitrator.

The Court also held that an emergency award can be enforced under the provisions of Section 17(2) of the Act. Additionally, the expression "any proceedings", occurring in Section 9(1) and Section 17(1) of the Act, would also be an expression comprehensive enough to take in enforcement proceedings. The Court held that, if an order under Section 9(1) of the Act is flouted by any party, proceedings for enforcement of the same are available to the court making such orders under Section 9(1) of the Act. These powers were, therefore, traceable directly to Section 9(1) of the Act - which then takes the Court to the Code of Civil Procedure ("**CPC**"). The Court held that thus, an order made under Order 39 Rule 2-A, in enforcement of an order made under Section 9 of the Act, would also be referable to Section 9(1) of the Act.

The Court further clarified that no appeal would lie against an order passed in enforcement proceedings under Section 17(2) of the Act. The Court lastly held that under CPC, that disobedience need not be wilful for attracting the provision of Order 39 Rule 2A.

Analysis:

It is significant to note that the decision in *Amazon-Future* was delivered in the context of an India-seated arbitration where SIAC Rules were adopted. Insofar as foreign seated arbitrations are concerned, until there is any further judicial or legislative intervention, parties will have to adopt an indirect mechanism by filing an independent application for interim relief under Section 9 of the Arbitration Act, based on the emergency award / order. However, it is hoped that the categorical finding of the Supreme Court on the validity of an

emergency award in the *Amazon-Future* decision, will assist a party armed with an emergency award / order of a foreign emergency arbitrator, to obtain protective reliefs from Indian courts. Some countries have already amended their arbitration laws to recognize and give validity to emergency awards / orders. It remains to be seen whether the Indian legislature will also follow suit and expressly provide statutory recognition to emergency awards / orders, both, for India-seated and for foreign seated arbitrations.

v. South Eastern Coalfields Ltd. and Others v. S. Kumar's Associates AKM (JV)

[Civil Appeal No. 4358 of 2016 decided on July 23, 2021 by the Supreme Court of India]

Background:

In this case, the S. Kumar's Associates AKM (JV), i.e., the Respondent was declared as the successful bidder pursuant to a tender floated by South Eastern Coalfields Ltd., i.e., the Appellant.

A Letter of Intent ("**LOI**") was issued in favour of the Respondent, which provided as follows:

- A direction was issued to the Respondent to mobilize equipment etc.;
- The respondent was called upon to deposit Performance Security Deposit and sign the Integrity Pact;
- The work order would be issued and the agreement would be executed at the Area Office.
- The date of commencement of work was be intimated to the issuing office and agreement may be concluded within 28 days as per the provisions of the tender document.

The Respondent accordingly mobilized equipment and commenced the work. However, due to certain breaches, the Appellant issued show-cause notice to the Respondent threatening to terminate the work awarded and get it executed by another contractor at the risk and cost of the Respondent. Thereafter, the work was awarded by the Appellant to some other contractor and damages were sought from the Respondent towards risk and cost.

A writ petition was filed under Articles 226 & 227 of the Constitution of India before the Hon'ble Chhattisgarh High Court seeking quashing of the termination letter and the recovery order. The writ petition was admitted and in the final order it was mentioned that after deducting the bid security amount, the balance amount out of Rs. 10 lakh was to be refunded to the Respondent. Against the impugned order of the Hon'ble High Court, the Special Leave Petition was filed.

Findings of the Supreme Court:

The Hon'ble Supreme Court held that no concluded contract had been arrived at *inter se* the parties. The Court further observed that merely because the Respondent had mobilized its resources, it cannot lead to the conclusion that a contract stood concluded between the parties.

The Court held that the Appellant, at best, was entitled to forfeiture of the bid security amount, and cancellation of the 'award', but not cancellation of contract and damages on account of risk and cost.

vi. The Project Director, NHAI v. M. Hakeem

[SLP (Civil) No. 13020 of 2020 decided on July 20, 2021 by the Supreme Court of India]

Background:

In this case, all the appeals concerned notifications issued under the provisions of the National Highways Act and awards passed thereunder. In these cases, the Court under Section 34 of the Act, enhanced the amount of compensation awarded by the Arbitral Tribunal.

Findings of the Supreme Court:

The Hon'ble Supreme Court adjudicated upon the issue as to whether the power of a court under Section 34 of the Act to "set aside" an award of an arbitrator would include the power to modify such an award.

The Hon'ble Supreme Court reiterated that Section 34 of the Act did not include within it a power to modify an award. The Court observed that the 'limited remedy' under Section 34 of the Act was co-terminus with the 'limited right', namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Act.

The Hon'ble Supreme Court while distinguishing various other judgments where the Hon'ble Supreme Court had modified/reduced the rate of interest, held that that these orders were passed by the Hon'ble Supreme Court in the exercise of its power under Article 142 of the Constitution of India and therefore, cannot be used to read into Section 34 of the Act, a power to modify.

VI. LABOUR & EMPLOYMENT

i. Auto-renewal of Registration - Andhra Pradesh Shops & Commercial Establishments Act, 1988

The Government of Andhra Pradesh has by way of Notification No. G.O.Ms.No.11 dated August 13, 2021, introduced an auto-renewal of the registration under the Andhra Pradesh Shops and Commercial Establishments Act, 1988, on the submission of a self-certification, along with the payment of an online fee. The move is directed towards reducing the burden of regulatory compliances.

The full text of the Notification can be accessed here.

ii. Revision of working hours in Karnataka - Shops & Establishments

The Government of Karnataka has by way of Notification No. E-LD 4 LET 2019 (P) dated July 20, 2021 (**"new Notification"**), amended the previous Notification No. E-LD 4 LET 2019 dated January 2, 2021 (**"old Notification"**), thereby revising the working hours as stipulated under the old Notification, which permitted prescribed shops & commercial establishments in the State to operate 24*7. As per the new Notification, the working hours of an employee should not exceed 9 (nine) hours (*instead of eight hours under the old Notification*) on any day and 48 (forty-eight) hours in any week, with a condition that the total number of hours of work, including overtime should not exceed 10 (ten) hours in any day (*except on the day of stock-taking and preparation of accounts*) and the total number of overtime hours worked by an employee should not exceed 50 (fifty) hours in a period of 3 (three) continuous months.

The full text of the Notification can be accessed here.

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