LEGAL EAGLE

FINANCIAL SECTOR

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MESSAGES

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President, MCCI

The Indian government, over 2023, has consistently emphasized the importance of making India a global hub for innovation. In the backdrop of the pandemic, multiple geopolitical conflicts across the world and a slowing down global economy, India has achieved new prowess in IT and software service industries. However, in the backdrop of government incentives to the IT sector, it is important to ensure that the benefits of a developing economy trickle down to the masses. India is yet to achieve its 2025 goal of becoming a $5 trillion economy. In order to ensure that social and economic development of the citizens go hand in hand with that of the nation, measures to universalize financial inclusion are underway. Legal and regulatory frameworks in India play an exceptionally important role in shaping the financial landscape of the country as well as in ensuring an encouraging environment for innovation in and growth of the IT and software service industries.

MCCI reiterates that the Council on Legal and Corporate Governance will work for the betterment of the citizens as well as the companies in IT sectors. The Council on Legal and Corporate Governance will continue to nourish and develop innovative ideas and entrepreneurship around the world.

Mamta Binani
Chairperson,
Council on Legal and
Corporate Governance,
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Acting on the promise of making the financial sector more inclusive, legitimacy was provided to new methods of payments including pre-paid payment instruments (PPIs). However, any new development which is aimed at widespread use by majority of citizens, needs a legal and regulatory backing to ensure safety and security. Central bank RBI has worked tirelessly towards ensuring a safe digital payment environment and new regulations are being introduced based on exposure of new loopholes and grey areas.

Issue VII of Legal Eagle delves into the importance of promoting innovation, ensuring benefits of economic development trickle down to citizens and efforts undertaken by different government organizations to ensure safe financial inclusion. The Council on Legal and Corporate Governance is proud to publish the Legal Eagle issue to add value to our beloved readers by keeping its members apprised on the latest legal developments.

ARTICLE I

Onshoring the Indian Innovation to the GIFT IFSC

Introduction:

India has been a hub of innovation and technological advancements for many years now. The country's prowess in IT and software development is globally recognized. However, much of this innovation has been offshored to other countries.

The concept of 'onshoring' or bringing these innovations back is a business strategy where services are moved back to the home country. It has been gaining traction in various sectors. One such sector is innovation, particularly in India. This article explores the concept of onshoring Indian innovation to the Gujarat International Finance Tec-City **("GIFT")** and International Financial Services Centre **("IFSC")**.

The Concept of Onshoring:

Onshoring, also known as domestic outsourcing, is a business strategy that involves transferring or relocating a company's operations within its own national borders. This term is often used in the context of production or manufacturing but can also apply to service providers.

Until the 1980s, onshoring was the status quo, with most companies keeping their operations at home. However, during the years of globalization, many companies outsourced or moved their production overseas to benefit from cheaper labor and material costs.

In recent years, there has been a shift back towards onshoring. This shift is driven by several factors:

1. **Cost-saving:** The cost of overseas labor and resources has been increasing. Countries like China and India, once known for their affordable labor, have seen wage and material cost increases as they continue to develop.
2. **Regulatory compliance:** By maintaining domestic operations, businesses find it easier to meet quality demands, material standards, and retain intellectual rights.
3. **Simplified supply chains:** Onshoring makes supply chain management easier as everything can be done and managed in one place using domestic partners.

It's important to note that onshoring is often used interchangeably with "reshoring," but there are subtle differences. Reshoring refers to companies that are in the process of moving their manufacturing activities back to their home country after having them abroad. On the other hand, onshoring refers to companies that don't already have overseas operations and are setting up production within national borders.

While onshoring can stimulate the domestic economy and create jobs, it's not always the best option for every company. The decision depends on various factors including the type, scale, running costs of the business, and the nature of the product or service being produced.

The GIFT IFSC:

The GIFT is India's first IFSC. It is a project initiated by the Government of India to create a world-class financial hub in the country. The aim is to attract global investors and businesses to set up their operations in India, and to provide a conducive environment for the development of financial services such as banking, insurance, capital markets, asset management, and fintech.

The GIFT IFSC offers several benefits to its participants. These include tax incentives, regulatory relaxations, ease of doing business, and access to a large domestic market. By creating an onshore alternative to offshore financial centres, the GIFT IFSC hopes to enhance India's competitiveness in the global financial landscape.

One of the key features of GIFT IFSC is its robust infrastructure. It boasts state-of-the-art facilities and a high-tech communication network. The city is designed to be energy-efficient and sustainable, with a focus on green building principles.

In terms of regulatory benefits, GIFT IFSC operates under a unified regulator - the International Financial Services Centres Authority **("IFSCA")**. This ensures a streamlined and efficient regulatory environment. The IFSCA provides a conducive regulatory environment for financial institutions and eases the process of setting up operations.

Tax incentives are another major draw for businesses. Companies operating in GIFT IFSC enjoy competitive tax rates, exemptions from certain taxes, and simplified tax compliance procedures.

Moreover, GIFT IFSC's strategic location provides easy access to major global financial hubs. Its time zone bridges the gap between western and eastern markets, allowing for 24/7 operations.

By attracting global businesses and investments, GIFT IFSC contributes significantly to India's economic growth and development. It creates jobs, boosts foreign exchange reserves, and promotes the development of ancillary industries.

Indian Innovation Landscape :

The Indian Innovation Landscape with reference to Onshoring and the GIFT IFSC

India is a country with a rich and diverse culture of innovation, entrepreneurship and creativity. The Indian innovation landscape encompasses various sectors, such as information technology, biotechnology, pharmaceuticals, renewable energy, space, defence and social innovation. India has also been making strides in developing its financial sector, especially in the areas of onshoring and the GIFT IFSC.

Onshoring is the process of relocating business activities or services from overseas to the domestic market. Onshoring can help reduce operational costs, enhance customer service, improve quality and compliance, and create more employment opportunities. Onshoring can also foster innovation by enabling closer collaboration between businesses and local stakeholders, such as universities, research institutes, regulators and customers.

The GIFT IFSC is a special economic zone in Gujarat that aims to provide a world-class platform for global financial services. The GIFT IFSC offers various benefits, such as tax incentives, regulatory relaxations, infrastructure facilities, connectivity and security. The GIFT IFSC can facilitate innovation by attracting international talent, capital and technology, and by providing a conducive environment for experimentation, learning and knowledge sharing.

The Indian innovation landscape with reference to onshoring and the GIFT IFSC is thus a dynamic and promising domain that can contribute to the economic growth and social development of the country. By leveraging the strengths and opportunities of both onshoring and the GIFT IFSC, India can enhance its competitiveness and position itself as a global leader in innovation.

Steps taken by Authorities for the Development of IFSC:

The International Financial Services Centres Authority (IFSCA) has been established on April 27, 2020 under the International Financial Services Centres Authority Act, 2019 which is headquartered at GIFT City, Gandhinagar in Gujarat and at present IFSCis the maiden financial services centre in India and IFSCA is the unified authority for the development and regulation of financial products, financial services and financial institutions at IFSC.

Authorities have taken several steps and recommended a slew of measures for the development of IFSC which are enumerated below:

1. The International Financial Services Centres Authority (IFSCA) should balance a robust regulatory framework with ease of doing business and aim to benchmark itself with the ultimate in-class jurisdictions.
2. International retail business can be immediately promoted as there is enough potential.
3. Job creation can be boosted through the International Financial Services Centres Authority (IFSCA).
4. Additional revenue for India can be generated and major funds can be attracted (especially from Indian diaspora) for building infrastructure.
5. IFSCA builds a conducive environment for financial institutions to operate in the IFSC in an effective and efficient manner.
6. Opportunity of FinServ from India is also another major area of development whereby India can be seen globally through IFSC so that India has strong connect with global markets
7. By allowing retail participation including Liberalised Remittance Scheme (LRS) investments by resident Indians.
8. By enabling IFSC Banking Units (IBUs) to provide banking products and solutions to retail and individual clients.
9. It is suggested that IBUs can offer Foreign Currency (FCY) clearing services from the IFSC and allowing IBUs to obtain the Foreign Portfolio Investor (FPI) license and more so the same can be spent in rupee denominated G-secs, corporate bonds and other permissible rupee-denominated securities, if the same is permitted to IBUs.
10. In terms of insurance sector, it is suggested by the panel that permission to Non Resident Indian (NRIs) and Person of Indian Origin (PIOs) to buy life insurance policies from the companies set up at IFSC and by allowing them to pay premium in the currency of their choice.
11. Insurance companies should be allowed to offer health insurance products to NRIs and PIOs, and the insurers be allowed to set the subsidiaries to promote business.
12. IFSC can also take steps into aviation insurance hub in the world and promote business.
13. Resident individuals can also invest in Alternative Investment Funds (AIFs) or Mutual Funds in the IFSC via the LRS route.

Challenges and Solutions:

Despite the potential benefits, onshoring innovations to GIFT IFSC is not without challenges.

1. **Regulatory Hurdles:** While the unified regulatory environment under IFSCA is a significant advantage, it can also pose challenges. Financial institutions may face difficulties in understanding and complying with the new regulations. Moreover, the dynamic nature of financial markets necessitates frequent regulatory updates, which can create uncertainty.
2. **Lack of Awareness:** Despite the numerous benefits offered by GIFT IFSC, there is a lack of

awareness among potential participants about these advantages. Many global investors and businesses are still unaware of the opportunities presented by GIFT IFSC.

3. **Resistance to Change:** Financial institutions, particularly those with established offshore operations, may resist the move to an onshore centre due to the costs and complexities involved in such a transition.

However, these challenges can be overcome with proactive measures and government support:

1. **Addressing Regulatory Hurdles:** The government and IFSCA could conduct regular workshops and training sessions to help financial institutions understand the regulatory environment better. They could also provide guidance and support to businesses during the transition phase.
2. **Increasing Awareness:** The government could launch global marketing campaigns to promote GIFT IFSC and its benefits. Participating in international finance conferences and events could also help increase visibility.
3. **Easing Resistance to Change:** The government could provide additional incentives to businesses that make the transition to GIFT IFSC. This could include financial aid, tax breaks, or technical support.

Concluding Remarks:

At the outset, the onshoring of Indian innovation to the Gujarat International Finance Tec-City (GIFT) and International Financial Services Centre (IFSC) presents a promising opportunity for India to retain its technological advancements within its borders. This move could stimulate the domestic economy, create jobs, and enhance India's competitiveness in the global financial landscape. However, challenges such as regulatory hurdles, lack of awareness, and resistance to change need to be addressed and looked at par. Proactive measures such as regular workshops, global marketing campaigns, and additional incentives could help overcome these challenges. By leveraging the strengths of onshoring and the benefits offered by GIFT IFSC, India has the potential to position itself as a global leader in innovation. This endeavour could significantly contribute to India's economic growth and social development. It is evident from the multitude of exemptions and relaxed framework for opening a business in IFSC, it is evident that the Government is actively taking steps to make IFSC a success story. Further, formation of a unified regulator (i.e. the IFSCA) has brought it a step closer to being fame. Although the government is working to align the IFSC framework with international norms, it will be interesting to observe if foreign companies would even be interested in conducting business through the IFSC. However, the ever-growing financial latent of India might help in bringing these players to the Indian shore. Additionally, the success will definitely and obviously depend on the Government's flexibility to stay updated with contemporary global standards whereby bringing in ease of doing business in IFSC.

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ARTICLE II

Financial Inclusion and Financial Reforms in India: A Legal Perspective

Introduction:

Financial inclusion and financial reforms are critical components of a country's economic growth and development. In India, these concepts have gained significant prominence over the years, with various legal and policy measures aimed at fostering financial inclusion and facilitating financial sector reforms. This article delves into the dynamic landscape of financial inclusion and reforms in India, examining the legal framework that underpins these initiatives. We will explore the recent amendments and regulations that have shaped the financial sector in India, highlighting their implications and the way forward.

Understanding Financial Inclusion:

Financial inclusion is a multifaceted concept that entails ensuring that individuals and businesses have access to affordable and suitable financial products and services. It involves making banking and financial services accessible to all segments of society, especially those who are traditionally excluded from the formal financial system. In India, financial inclusion is a pressing concern due to the vast population and the wide income disparity. Several legal and regulatory steps have been taken to promote financial inclusion in the country.

Legal Framework for Financial Inclusion in India:

The Reserve Bank of India ("RBI"), as India's central bank, plays a pivotal role in shaping the legal framework for financial inclusion. Key legislations and regulations that promote financial inclusion include:

1. The Banking Regulation Act, 1949: This act empowers the RBI to issue licenses to banks, regulate their operations, and enforce policies to promote financial inclusion. The RBI has used this authority to issue licenses to various types of banks, including Small Finance Banks **("SFBs")** and Payments Banks, to extend banking services to underserved areas.

2. Pradhan Mantri Jan Dhan Yojana **("PMJDY")**: Launched in 2014, PMJDY is a flagship financial inclusion program. While not a legal framework in itself, it has significantly impacted financial inclusion through its initiatives, such as the provision of basic savings accounts, accident insurance, and overdraft facilities to account holders.

3. Payment and Settlement Systems Act, 2007: This act regulates payment and settlement systems in India, facilitating digital financial inclusion. It has enabled the growth of mobile payment systems, digital wallets, and Unified Payments Interface **("UPI")** platforms.

4. Micro, Small and Medium Enterprises Development **("MSMED")** Act, 2006: This legislation focuses on providing financial

support to small enterprises, promoting their inclusion in the formal financial system.

5. RBI's Priority Sector Lending **("PSL")** Guidelines: RBI mandates that a certain percentage of banks' lending should be directed towards priority sectors, including agriculture, micro and small enterprises, and education. This ensures that financial institutions actively participate in fostering financial inclusion.

Recent Amendments in the Financial Inclusion Legal Framework

The legal framework for financial inclusion in India has witnessed significant amendments and reforms in recent years. These amendments aim to address the evolving needs of a digital economy, technological advancements, and new financial products and services. Below are some of the notable recent amendments:

1. Amendments to the Payment and Settlement Systems Act, 2007: The payment ecosystem in India has evolved rapidly with the advent of UPI and digital wallets. Amendments to this act have been made to regulate and promote secure digital payments, enhancing financial inclusion by providing easier access to digital financial services.
2. Revised Prudential Guidelines for Payment System Operators: The RBI issued revised guidelines for payment system operators in 2020, emphasizing the importance of risk management and cybersecurity measures. These guidelines are aimed at safeguarding the interests of consumers and fostering trust in digital payment systems.
3. Introduction of Account Aggregator **("AA")** Framework: The AA framework, launched in 2021, allows individuals to aggregate their financial data from various institutions, enabling them to make informed financial decisions. This initiative promotes financial inclusion by empowering consumers to have better control over their finances.
4. Amendment to the Small Finance Banks Licensing Norms: The RBI introduced amendments to the licensing norms for Small Finance Banks, making it easier for such banks to convert into Scheduled Commercial Banks. This move is expected to increase the reach of financial services in underserved areas.
5. Amendment to Banking Correspondent **("BC")** Model Guidelines: The RBI has amended the BC model guidelines to enable non-bank entities to function as BCs. This step is expected to enhance last-mile connectivity, making banking services more accessible in remote areas.

Impact of Recent Amendments

The recent amendments in the legal framework for financial inclusion in India have had several positive effects:

1. Greater Digital Adoption: The amendments have fostered the growth of digital payment systems, making them more secure and efficient. This, in turn, has encouraged more individuals and businesses to adopt digital financial services.
2. Enhanced Consumer Protection: With a focus on risk management and cybersecurity, the amendments have improved consumer protection in the financial sector, ensuring that individuals can trust and use digital financial services without concerns about fraud or data breaches.
3. Greater Access to Financial Services: The introduction of Account Aggregators and the expansion of Small Finance Banks are crucial steps towards extending financial services to underserved populations, including those in rural

areas.

4. Encouraging Competition: The amended BC model guidelines have opened up opportunities for non-bank entities to become Banking Correspondents, fostering competition in the market and potentially leading to better services and more accessible financial options.

Challenges in Achieving Financial Inclusion

While the legal framework and recent amendments have laid a strong foundation for financial inclusion in India, several challenges persist:

1. Last-Mile Connectivity: Ensuring that banking services reach remote and rural areas remains a challenge. Infrastructure development is essential to overcome this obstacle.
2. Digital Literacy: Despite the growth of digital financial services, many individuals, particularly in rural areas, still lack the necessary digital literacy to use these services effectively.
3. Financial Education: Promoting financial education and awareness is vital to empower individuals to make informed financial decisions.
4. Credit Access: While savings and payment services have seen significant improvements, credit access for small businesses and low-income individuals remains a challenge. Expanding credit facilities for these segments is crucial.
5. Data Privacy and Security: As digital financial services expand, protecting individuals' data privacy and financial security becomes increasingly important. The legal framework must continually adapt to address these concerns.

Financial Reforms in India: A Legal Perspective

Financial reforms are integral to a country's economic growth and stability. In India, financial reforms have taken place in various sectors, including banking, insurance, and capital markets. Recent legal developments and amendments have aimed to modernize and enhance the financial sector. Here are some of the key aspects of financial reforms in India:

1. **Banking Sector Reforms:**
   - Merger of Public Sector Banks: The government and the RBI initiated a series of mergers among public sector banks to create larger and more stable entities. This consolidation is aimed at improving efficiency and strengthening the banking sector.
   - Asset Quality Review **("AQR"):** The AQR conducted by the RBI is a significant financial reform that aims to assess the true state of assets in the banking system. This process has been essential in recognizing and addressing non-performing assets **("NPAs")**.
   - Introduction of Prompt Corrective Action **("PCA")** Framework: The PCA framework was revised to introduce stricter norms for banks with weak financials. This is a proactive measure to ensure that banks maintain adequate capital and risk management standards.
2. Insurance Sector Reforms:
   - Increase in Foreign Direct Investment **("FDI")** Limit: The FDI limit in the insurance sector was increased from 49% to 74% in 2021, allowing for greater foreign participation in the sector. This reform is expected to attract more capital and expertise to the insurance industry.
   - Listing of Insurance Companies: The government has proposed that large insurance companies should be listed on the stock exchanges. This move is aimed at enhancing transparency and governance in the sector.
3. Capital Market Reforms:
   - Introduction of Unified Regulator (SEBI Act

Amendments): The Securities and Exchange Board of India **("SEBI")** Act was amended to introduce a unified regulator for the securities market, streamlining regulatory functions and making it more efficient.

- Reforms in Corporate Governance: The legal framework for corporate governance has been enhanced to improve transparency and accountability in listed companies.

4. Fintech and Innovation:
   - The legal framework has been adapted to accommodate fintech innovations, enabling the growth of digital financial services and startups.
   - The introduction of the Regulatory Sandbox by the RBI allows fintech companies to test new products and services in a controlled environment, fostering innovation while ensuring consumer protection.
5. Non-Performing Asset **("NPA")** Resolution:
   - The Insolvency and Bankruptcy Code **("IBC")** was enacted to streamline the process of resolving NPAs and distressed assets. This has had a significant impact on the banking sector's health and asset quality.

Challenges in Financial Reforms

While financial reforms in India have brought about many positive changes, several challenges need to be addressed:

1. Strengthening Financial Institutions: Despite mergers and reforms, some public sector banks still face issues related to governance, risk management, and asset quality. Strengthening these institutions is an ongoing challenge.
2. Insurance Penetration: Despite the increase in the FDI limit, insurance penetration in India remains low. Encouraging more individuals to purchase insurance products is a challenge.
3. Market Volatility: Capital market reforms have improved transparency, but market volatility remains a concern. Regulators need to strike a balance between encouraging investment and preventing excessive speculation.
4. Fintech Regulation: Regulating the rapidly evolving fintech sector while promoting innovation and safeguarding consumer interests is a delicate balance.

Conclusion

Financial inclusion and financial reforms in India are essential for fostering economic growth and development. The legal framework governing these areas has evolved significantly in recent years, with a focus on promoting digital financial services, enhancing consumer protection, and strengthening the financial sector. The recent amendments in various acts and regulations reflect a commitment to adapt to the changing economic landscape and to ensure that financial services are accessible to all. However, challenges persist, such as last-mile connectivity, digital literacy, and credit access, which require ongoing efforts from both the government and the financial industry.

In the realm of financial reforms, the merger of public sector banks, increased FDI limits in insurance, and improved corporate governance are steps in the right direction. Strengthening financial institutions, enhancing insurance penetration, and regulating fintech innovations will be key challenges in the coming years.

The legal perspective on financial inclusion and financial reforms in India demonstrates the vital role that legislation and regulations play in shaping the financial landscape and ensuring that all segments of society have access to the benefits of a growing economy. As India continues to evolve, the legal framework will need to adapt and innovate to meet the ever-changing needs of its people and businesses.

Snippets

1. RBI Releases Compensation Framework for Delay in Updating Credit Information: A compensation mechanism for complainants who have been waiting for credit institutions ("CIs") and credit information companies ("CICs") to update or correct their credit information has been made public by the RBI. Six months from now, this framework will be in effect.

In the event that the complaint is not settled within 30 days of the complaint being filed, the complainants may be entitled to daily compensation of Rs. 100. Any violation of the framework's guidelines will result in penalties that fall under the purview of the Credit Information Companies (Regulation) Act, 2005.

By virtue of the aforementioned Act, the CI or CIC is required to update the credit information within 30 days after receiving a request from a complaint to update the credit information by an appropriate correction, addition, or other means. In accordance with the circular of October 26, 2023, a CI will have 21 days and CICs will have 9 days to address the complaint. This is according to the provisions of the Act and the Credit Information Companies Rules, 2006.

The CI shall be responsible for compensating the complainant if, within the allotted 21 days, it does not submit the complainant's updated credit information to the CICs. Additionally, the CIC would be responsible for paying the compensation if the CI sends the complaint on time but the CIC does not address it within 30 days.

The framework stipulates that, following the determination of the complaint, the compensation sum must be credited to the complainant's bank account within five working days. Under the Reserve Bank - Integrated Ombudsman Scheme, 2021, the complaint may seek the RBI Ombudsman in the event that compensation has been wrongfully denied. According to the circular, complaints about staff compensation, benefits, credit score computation, or other matters will not be covered by the framework. Neither will situations where Section 18 of the 2005 Act provides a remedy for the disagreement.

2. PMLA Third Amendment Rules: Key Highlights The Prevention of Money-laundering (Maintenance of Records) Rules, 2005 were amended and notified on October 17, 2023, by the Ministry of Finance. The bar for identifying beneficial ownership in a partnership business was lowered from 15% to 10% of the partnership's capital or earnings on September 4, the last time these regulations were changed.

The notification's primary

highlights are as follows: -

- The reporting entities are required to confirm the identity of their clients and beneficial owners by "using reliable and independent sources of identification" at the beginning of an account-based relationship, during transactions totaling or exceeding Rs. 50,000, whether they are carried out as a single transaction, a series of related transactions, or during any international money transfer operations. The regulations further emphasize that in order to ascertain the nature of the customer's company, reporting organizations must take "reasonable steps."
- The reporting entity must "immediately" obtain the record or information of such due diligence (conducted by the concerned third party) from the third party or the Central KYC Records Registry if it depends on the third party for client verification as required by Rule 9(1)(a). Prior to the modification, the reporting organizations had two days to get the specified data.
- Money laundering, dangers of terrorist funding, and the scale of the client's company should all be included in the client due diligence programme that the reporting companies created in accordance with the 2005 regulations.
- According to Rule 3A(1), a reporting organization that is a member of a group must carry out group-wide initiatives to combat the funding of terrorism and money laundering. It is envisaged that these initiatives will have measures in place to protect privacy, stop leaks, etc.
- Any suspicious transactions made using any of the modalities specified in Rule 3(1)(D) must be reported to the Director right away. Previously, Rule 8(2) required that the aforementioned information be provided within 7 working days.
- The modification regulations aim to protect the privacy of the data exchanged with the Director under Rule 8 and the records kept under Rule 3 by inserting sub-rule (6) into Rule 8.

3. Recognized Startups Will Not Face Angel Tax Scrutiny: CBDT

The Department for Promotion of Industry and Internal Trade **("DPIIT")** has acknowledged startups; thus, they will not be subject to examination under angel tax regulations, according to a notification issued by the Central Board of Direct Taxes **("CBDT")** on October 10, 2023.

Observations that companies were being selected for examination by CASS **("Computer Aided examination Selection")** led to the decision to issue this instruction and reiterate the qualifying requirements for businesses to benefit from angel tax exemption.

The Income-tax Act, 1961's Section 56(2)(viib) states that an unlisted company's total consideration for issuing shares must be reported under the heading "Income from other sources" if it exceeds the shares' fair market value. In this case, there is a 30.6% tax on the consideration. This clause covers circumstances in which resident investors provide compensation for the issuance of shares. However, on April 1, 2024, the phrase "being a resident" was removed from the aforementioned Section by virtue of the Finance Act, 2023. Consequently, starting in AY 2024–2025, the aforementioned regulation will encompass consideration that unlisted firms receive from non-resident investors that exceeds the FMV of the shares.

The Department has acknowledged 99,380 startups in total thus far. The exemption, however, would only be available to acknowledged startups whose total paid-up share capital and share premium, if any, following the issuance or planned issuance of shares, do not exceed Rs. 25 crores.

Assessing Officers are instructed to stop verifying such businesses if they are selected for examination under angel tax laws. It is made clear that the question of whether the angel tax rules apply will not be investigated throughout the assessment process in the event that the qualified company is also being investigated for other reasons.

4. Foreign Companies Without PAN Can Open Bank Accounts in IFSC-GIFT City: CBDT

The Income-tax Rules, 1962 were amended on October 10, 2023, by the CBDT. As a result, foreign companies and non-resident individuals are no longer required to submit a Permanent Account Number **("PAN")** in order to open bank accounts at the GIFT IFSC. Rather, they will have to turn in a declaration using Form No. 60.

According to the 1962 regulations, PAN must be quoted in documents relating to specific transactions, such the sale of real estate, among other things. Anybody without a PAN, however, is still able to engage in transactions by completing Form No. 60, which requires the provision of transaction information in the required format. This specific exception is applicable to "any person, not being a company or firm," according to the new modification.

The notification also broadens the exclusion from opening bank accounts in IFSC banking units to non-resident people and international corporations that do not have any revenue subject to Indian taxation. Annexure II is further modified by allowing for the updated Form.

"Startups are the engines of exponential growth, manifesting the power of innovation. Several big companies today are startups of yesterday. They were born with a spirit of enterprise and adventure kept alive due to hard work and perseverance and today have become shining beacons of innovation."

Shri Narendra Modi

Maxim Dose

Lease Rental Discounting Agreement

The Apex Court in the case of Infrastructure Leasing and Financial Services Ltd. v HDFC Bank Ltd. & Anr. explained the nature of a Lease Rental Discounting ("LRD") Agreement as under:

"The Lease Rental Discounting (LRD) arrangement - a new kind of financial agreement by which a banker allows credit facilities to a commercial property owner, has the flexibility of ensuring that the asset owner is given access to credit. The dominant condition is that a substantial portion or the entire rent or receivables which the owner would be entitled to are made- sold or assigned, absolutely to the creditor bank. This is with the intention that the borrower's liabilities are discharged automatically from the proceeds payable in respect of the property. Such amounts virtually are by way of unsecured debts."

Strengthening Payment System Regulation in India: An Exemplary Guidance

Introduction

Pre-paid Payment Instruments ("PPIs") are instruments that facilitate purchase of goods and services, conduct of financial services and enable remittance facilities, etc., against the value stored therein. Ever since the introduction of Payment and Settlement System Act 2007, RBI is relentlessly working towards creating a digital i.e., electronic payment system with an environment to achieve a less cash-efficient economy. Though traditional bank products like debit card, credit cards and net banking have not been overlooked in this process, a lot of effort, on the part of RBI, has been made to promote a relatively novel kind of payment instrument known as Prepaid Payment Instruments which is already widely accepted in many developed countries like USA and European countries. This article attempts to capture India's journey with regard to this innovative payment instrument popularly termed as PPI and further highlights the directives issued by various authorities concerning the same.

Concept of PPI

PPIs, a prevalent mode of electronic payments, are payment instruments as per the guidelines provided under the Payment and Settlement Act, 2005. RBI has defined PPIs as instruments of payment that facilitate the buying of goods and services, including the transfer of funds, financial service, and remittances, against the value stored within or on the instrument.

PPIs issued in India are classified under three heads – (a) closed system PPIs; (b) semi-closed system PPIs; and (c) open system PPIs. PPIs may be issued as cards or 10 digital wallets. At the outset, while banks may issue semi-closed and open PPIs subject to approval from RBI, non-bank entities can issue only semi-closed PPIs, subject to authorization from RBI under the Payment and Settlement Systems Act, 2007 **("PSS Act")**.

More frequently referred to as 'e-wallets' or 'gift cards', PPIs are payment instruments that can be used for the purchase of goods or services against this stored value. The PPI Regulations impact products such as e-wallets, gift cards and vouchers, money transfer wallets, meal vouchers, metro/travel rail cards, etc.

The value that is retained in these types of instruments is the amount that the owner paid for it, whether in cash, via a credit card, or by debiting the account (via net banking or a debit card). Prepaid instruments come in a variety of forms, such as paper vouchers, smart cards, mobile wallets, and magnetic strip cards. Each, though, is associated with certain characteristics and terms of usage.

Who Can Issue PPIs?

With regards to non-banking entities such as companies, the requirements to be met by them to be eligible to issue PPIs are as follows- – The company must be incorporated in India. – The minimum paid-up capital of the company must be more than Rs 5 crore. – Minimum positive net worth must be Rs 1 crore at all times.

When it comes to banking institutions, all banks that comply with the eligibility criteria established by the RBI are allowed to issue PPIs. But when it comes to providing Mobile Banking Transactions, only banks that have been approved by the RBI may launch mobile-based PPIs.

In the case of Non-Banking Financial Institutions and entities, they are only allowed to issue PPIs under the semi-closed or closed system. This includes mobile-based PPIs. The only condition to the issuance of PPIs by non-banking entities is that they are required to maintain an escrow account with any scheduled commercial banks in the country.

Various Types of PPI

Based on their nature or extent of acceptability PPIs can broadly be classified into four types which are enumerated below: (i) Closed-system payment instruments (ii) Semi-Closed system payment instruments (iii) Semi-Open system payment instruments and (iv) Open system payment instruments.

1. Closed system payment instruments

These are those that are typically issued by business organizations to be used only there or to obtain certain services from a single service provider that has an agreement in place with the organization. These devices never allow for cash withdrawals and are typically not reloadable. These kinds of devices include gift cards that are given out by businesses, calling cards that are given out by telecom companies, etc. Even speak time or value pre-paid mobile phones may be regarded as closed-system prepaid payment instruments, even when they occasionally allow users to access additional value-added services from the same supplier.

2. Semi-closed system payment instruments

These are payment cards that can be redeemed at a select number of merchant locations that have agreed to accept them under an agreement with the issuer. These are typically issued by outside service providers and do not allow for cash withdrawal. They can be reloadable or non-reloadable.

3. Semi-Open system payment instruments

These are payment cards that can be redeemed at a select number of merchant locations that have agreed to accept them under an agreement with the issuer. These are typically issued by outside service providers and do not allow for cash withdrawal. They can be reloadable or non-reloadable.

4. Open system payment instruments.

These are payment cards that can be used to make purchases at any business that accepts cards and to get cash out of ATMs. These cards include, for instance, bank-issued travel cards that can be used and settled through reputable card issuers.

Strengths of PPI

1. Minimum Formalities:

Prepaid payment instruments are typically issued with the barest minimum of formalities. Payment instruments for closed systems are never issued against a specific user. All that is needed to sign up for semi-closed system payment instruments is a working user ID or email address and a mobile number. Instruments with semi-open systems operate similarly. However, there can be an extra KYC (know your customer) requirement for high-denomination fund transfers or transactions that exceed a minimum amount. The same criterion applies to open system instruments as well.

2. Convenient:

These instruments are available as plastic cards that can be used at merchant sites or as tangible coupons that can be printed off. As an alternative, they could take the shape of virtual cards or wallets that are simple to use by logging in and conducting transactions using PIN or OTP authentication.

3. Time Saving

Using prepaid cards from public transit system operators, such Metro Railway Smart Cards, can assist cut down on the amount of time spent waiting in line to get tickets.

4. No Chance of Debt:

Since these are prepaid cards, the holder is not able to accrue more debt than the amount deposited in them. preventing the holder from ever becoming in debt.

5. Manages Spending Habits:

Prepaid payment cards assist the user in managing his spending habits, in contrast to debit or credit cards. The maximum amount of money that the holder may load is what is truly necessary.

6. No Need to Carry currency:
These devices can be used in place of actual currency. As a result, the user can simply load funds into the devices via methods like cash payments, bank account debits, etc., and utilize those funds in lieu of currency at authorized establishments.

7. Foreign Travel:
Prepaid travel cards, which are essentially open system payment cards, are very useful for cross-border travel since they are typically issued by global card issuers in collaboration with banks.

8. Promotional Offers:
Issuers frequently provide customers with promotional perks, which increases the allure of these instruments. For instance, MOBIKWIK, a semi-closed system tool, provides cash back (referred to as Supercash) on purchases made using their wallet.

PPIs' potential in India

It is true that the demonetization process has unexpectedly accelerated the growth of all digital payment methods. Nonetheless, the steady expansion of these instruments, and particularly PPIs (mostly semi-closed m-wallets), even following re-monetization amply indicates that the Indian public is coming to accept these modes more and more. This is due to the fact that a significant number of elements, such as various prepaid payment instrument varieties, are driving the increasing usage of digital modes of transaction. They are as follows:

a. Costlier transactions are occurring at bank branches and even with ATM withdrawals. Public sector banks like SBI have started charging for several kinds of branch operations and placing a limit on ATM withdrawals. However, new digital payment methods, particularly PPIs (prepaid cards, m-wallets), are bringing in extra features like cash back, reward points, and discounts, which make these tools even more alluring.

b. Due to several regulatory measures, such as the Adhaar linkage with PAN, the need to quote the adhaar for branch transactions above Rs. 50,000, the obligation to deny expenses beyond a certain level for tax purposes, etc., transactions made with cash or checks are becoming more and more risky. Because of all of these, using digital modalities like PPIs is becoming necessary.

c. India's digital ecosystem appears to be quite strong. Communication is becoming easier thanks to information and communication technology, which is also boosting average internet speed and quickly gaining traction even in remote areas with 4G technology. All of them are fostering an atmosphere that is favorable to the expansion of PPIs and other digital payment methods.

d. Since most smart phones are used to access mobile applications, the growth of PPIs issued in electronic format, such m-wallets, is primarily dependent on the adoption of smart phones (apps). In the last few years, India has seen a notable increase in the use of smartphones. The rapid adoption of these instruments is being facilitated by the availability of technology.

e. The distance between India and Bharat has significantly shrunk in the last several years. Even if their standards of living are still very different, at least they have gotten closer in terms of digitalization because of several government programs. The rate of literacy has also significantly increased. The rural population now accepts these digital payment methods because of all of these factors.

f. Compared to opening even a basic service savings account, starting and maintaining a semi-closed system PPI account or purchasing a prepaid card is far simpler and hassle-free. Because of this, these tools are more advantageous than conventional bank accounts and related digital platforms like net banking and debit/credit cards.

g. Last but not the least, the government is taking a very aggressive stance in its attempts to transform India into a cashless digital economy. The popularity of PPIs and other digital payment methods has accelerated due to the introduction of new instruments and the loosening of regulations. Nonetheless, it appears that a major concern for quality transactions is security.

Directives issued by the Authorities regarding PPIs

Authorities like RBI have issued various directives regarding PPI's which are enumerated below:

1. PPI holders shall be

onboarded for UPI by their own PPI issuer only.

2. A PPI issuer shall only link its customer wallets to the handle issued to it.
3. A PPI issuer as PSP shall not onboard customers of any bank or any other PPI issuer.
4. It is required of fintech companies, wallet providers, and non-banking financial institutions to break up any current agreements allowing loans to be extended or facilitated using prepaid payment instruments ("PPI"), such as cards and wallets. The Reserve Bank of India ("RBI") has forbidden extending a credit line through any PPI. This prohibition results from a directive that the regulator published on June 20, 2022 ("Directive")

The Directive

The Directive, which is addressed to all approved non-bank PPI issuers, declares that:

1. the PPI-MD does not permit loading of PPIs from credit lines;
2. any such existing practice is required to be discontinued immediately; and
3. any non-compliance in respect of the above, may attract penal action under the Payment and Settlement Systems Act, 2007.

Brief Legal Framework and Practices Prior to the Directive

PPIs make it easier to purchase goods and services, use banking services, and send money abroad, among other things. The RBI's Master Directions on PPIs, dated 27 August 2021 (updated as on 12 November 2021), govern their issue, loading, reloading, and other matters. "PPI-MD." In accordance with paragraph 7.5 of the PPI-MD, they may be loaded or reloaded using cash, debit to a bank account, credit and debit cards, PPIs (as allowed from time to time), and other payment methods provided by Indian regulated businesses. Subject to a number of restrictions, the PPI-MD's paragraph 7.9 allows PPI issuers—bank and non-bank—to load or reload PPIs through their authorized outlets or through their authorized or approved agents. These conditions include the following:

a. the PPI issuer is responsible as the principal for all acts of omission or commission of their authorised or designated agent; and
b. the PPI issuer must ensure adherence to applicable laws of the land.

Applicability of Directive to Banks vs. Non-bank PPI Issuers

News sources state that interpretations of the RBI's decision to differentiate between the PPI's issuer type and the Directive's non-applicability to bank-issued PPIs are being contemplated. Given that the Directive specifically addresses all non-bank PPI issuers, it is likely that misunderstanding surrounds any such distinction made by the RBI. Hence, based on a combined reading, the clarification under the Directive would apply to both bank and non-bank PPI issuers.

The Directive's Present Situation

1. One could argue that the practice of providing credit lines through PPIs makes cashless transactions more convenient and provides improved protections to ensure that the credit is used for the intended purpose. Benefits like these, business concerns, and the lack of a clear justification for the ban might have confused PPI issuers and other parties. According to reports, several fintech companies and the Payment Council of India have asked the government to take action on the Directive.
2. The Reserve Bank of India directed companies like DreamX to stop offering UPI services operated under a co-branded agreement through the National Payments Corporation of India (NPCI) in an effort to control the Prepaid Payment Instrument players and urge non-PPIs

to obtain a license.

Additionally, this action prohibits any action that involves doing PPI procedures on a third-party software for distribution.

3. RBI makes it very clear that engaging in co-branding is not advised if you lack a license. It is not appropriate for you to rent it out.

4. To run UPI services as a TPAP (Third Party Payments Provider), a business requires both a PSP and a PPI license. Fintech companies lacking one of these licenses collaborate with organizations that do in order to offer their end users these payment services.

Conclusion

In an effort to facilitate the seamless use of prepaid payment instruments for digital payments, the RBI has streamlined the regulations governing them. We go over some of the new regime's biggest changes in this update, along with any possible ramifications. Customers will probably be able to make payments without interruption and without being constrained by the underlying payment system thanks to this. The PPI Directions acknowledge the role of the NPCI and the authorized card networks in accomplishing this goal and provide additional clarification on the implementation of interoperability.

Legal Stalker

Arbitration & Conciliation Act:

1. Court Exercising Powers Under Section 9 of A&C Act Is Not Bound To Strictly Follow Provisions Of Order XXXVIII Rule 5 Of CPC

The Calcutta High Court in **AMR JV v. Orissa Expressway Pvt. Ltd.** has held that the Court exercising powers under Section 9 of the A&C Act is not strictly bound by the provisions of interim relief contained under Code of Civil Procedure, 1908.

The bench held that unlike O. XXXVIII R. 5 of CPC wherein the party seeking relief has to discharge the onus of showing that the other party seeks to obstruct or delay the execution of any decree by disposing of the entirety or part of the property or intends to remove the same from the local limits of the jurisdiction of the Court, Section 9 of the A&C Act does not require the petitioner to show that the opposite party will dissipate the subject matter of the arbitration.

2. Dissenting Opinion Of An Arbitrator Cannot Be Treated As An Award If The Majority Award Is Set Aside

The Supreme Court in **Hindustan Construction Company Limited vs National Highways Authority of India** held that a dissenting opinion cannot be treated as an award if the majority award is set aside.

In this case, a three-member arbitration tribunal passed an award in a dispute between Hindustan Construction Company Limited and National Highways Authority of India. The award was unanimous on most questions while, on others, there was a dissenting view of one of the arbitrators. The Bombay High Court (DB) set aside the award observing that the tribunal's majority views, and award, were based on an implausible interpretation of the contract.

In appeal, the Apex Court bench observed that the awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly. In this context, the court observed that a dissenting opinion cannot be treated as an award if the majority award is set aside. It might provide useful clues in case there is a procedural issue which becomes critical during the challenge hearings. When a majority award is challenged by the aggrieved party, the focus of the court and the aggrieved party is to point out the errors or illegalities in the majority award. The minority award (or dissenting opinion) only embodies the views of the arbitrator disagreeing with the majority. There is no occasion for anyone- such as the party aggrieved by the majority award, or, more crucially, the party who succeeds in the majority award, to challenge the soundness, plausibility, illegality or perversity in the approach or conclusions in the dissenting opinion. That dissenting opinion would not receive the level and standard of scrutiny which the majority award is subjected to.

3. Party Eligible For Interim Protection u/s 9(1) Arbitration & Conciliation Act, Regressive To Relegate To CPC Procedure

The Calcutta High Court in AMR JV vs Orissa Steel Expressway Private Limited has recently allowed applications for appointment of arbitrator u/s 11 and for interim protection u/s 9(1) of the Arbitration & Conciliation Act, 1996 by Prathyusha-AMR, a Joint Venture.

In allowing the plea for appointment of an arbitrator u/s 11 of the

Act, court noted that "a turning point" in negotiations between the parties may 're-vitalise' limitation in order to sustain a 'live claim.'

In further allowing the application for interim protection u/s 9(1) of the Act, the Court observed: "An applicant who comes to the Court for relief in time-sensitive matters cannot be drawn and quartered by being relegated to the stranglehold of Order 38 Rule 5. A party who seeks urgent intervention of the Court cannot be strung to the structure of the statute - which guards against errant defendants – and pilloried for want of incriminating evidence. If the Court drags its feet, the respondent may well deport and decamp with what was intended to be preserved. This would be regressive to the whole purpose of timely, effective, and focused interim relief under section 9(1) of the 1996 Act."

4. Must Be Wary Of Unnecessary Judicial Interference At Every Stage Of Arbitration

The Calcutta High Court in **Damodar Valley Corporation v Reliance Infrastructure Limited** has upheld an arbitral award of ₹1,354 crores in favour of Reliance Infrastructure ("RIL"), arising out of a deal struck with the Damodar Valley Corporation ("DVC") for construction of thermal power plants in Raghunathpur. In upholding the award passed by a panel of three arbitrators, a single-bench noted that India is in dire need of Arbitration reform due to increased judicial interference at every stage. It held:

"Arbitration has been envisaged as a mechanism of dispute resolution which is free from the clutches of redundancy, inefficiency, and delay that plague our litigation system. It seems that arbitration process in India itself is finding it hard to bear the weight of the increasing judicial interference at every stage of the process. This not only impacts the viability of arbitration as a dispute resolution mechanism, but further demotes India's standing as a business friendly destination in a globalised world. There is dire need of arbitration reform in India. This reform must not only reflect in the legislation itself, but also in the mind-set of all the stakeholders."

The Bench however clarified that such powers could only be exercised for the limited purpose of determining whether an award was perverse, or suffered from patent illegality. It held that Courts under Section 34 of the Act are generally not permitted to interfere with the arbitral tribunal's interpretation of evidence, or a finding arrived based on such interpretation. If the arbitral tribunal's finding is so perverse and unreasonable that it could not have been arrived at by any reasonable mind, then the courts are empowered to set aside such finding.

5. Awarding Claim For Loss Of Profit Without Substantial Evidence Is In Conflict With Public Policy Of India

The Supreme Court in the case of M/S Unibros V. All India Radio, Arising Out Of SLP (Civil) No. 8791/2020 held that a claim for damages cannot as a matter of course result in an arbitral award without proof of the claimant having suffered injury while rendering an arbitral award as patently illegal and being in conflict with the "public policy of India". The present decision emphasized the importance of substantial evidence in awarding claims for loss of profit.

"A claim for damages, whether general or special, cannot as a matter of course result in an award without proof of the claimant having suffered injury. The arbitral award in question, in our opinion, is patently illegal in that it is based on no evidence and is, thus, outrightly perverse; therefore, again, it is in conflict with the "public policy of India" as contemplated by section 34(2)(b) of the Act.," **Justices S. Ravindra Bhat and Dipankar Datta.**

Companies Act:

1. Customs Act Does Not Create A Statutory First Charge Overriding Charge In Favour Of Secured Creditor Under S. 529A Of Companies Act

The Supreme Court in **Industrial Development Bank of India (Through Stressed Assets Stabilization Fund Constituted by The Government of India) vs Superintendent of Central Excise and Customs and Ors**. has ruled that in case of winding up of a company, the customs duty owed by the company would be treated as a preferential payment under Section 530(1)(a) of the Companies Act, 1956. But customs duty would not override and be given preference over the payments due to overriding preferential creditors covered under Section 529A of the Companies Act, which include the secured creditors.

The court said that the Customs Act, 1962 does not create a statutory first charge on the customs dues, overriding the charge created in favour of the secured creditor under Section 529A of the Companies Act, 1956. The bench said that the provisions in the Customs Act do not, in any manner, negate or override the statutory preference envisaged in Section 529A of the Companies Act, which treats the workmen's dues and the dues owed to secured creditors as overriding preferential payments in case of winding up of a company. Thus, the court said that the taxes, cesses and rates due to the Central and State governments or local authorities under Section 530 of the 1956 Act, cannot be given priority over the payments/debts mentioned in Section 529A.

2. MCA Eases Shifting of Registered Office for New Management

The Companies (Incorporation) Third Amendment Rules, 2023 have been notified by the Ministry of Corporate Affairs. The notification states that if a new management takes over the company under a resolution plan approved by the adjudicating authority under Section 31 of the Insolvency and Bankruptcy Code, 2016, the company may be permitted to relocate its registered office from one State to another. The revised regulations are now in effect as of October 21, 2023.

According to the Companies Act, 2013, in order to transfer the registered office from one State to another, a specific resolution must be passed and Section 13 of the Act must be followed. The aforementioned Section stipulates that the Central Government must duly approve any changes made to the memorandum.

Consumer Protection Act:

1. If Commercial Use Is By Purchasers Themselves For Earning Livelihood By Self-Employment, They'll Be 'Consumers'

The Supreme Court in **Rohit Chaudhary & Anr. vs M/s Vipul Ltd.** has ruled that a person buying goods either for resale or for use in large-scale profit-making activity, will not be a 'consumer' entitled to protection of the Consumer Protection Act, 1986. However, if the commercial use is by the purchasers themselves for the purpose of earning their livelihood by means of self-employment, such purchasers of goods would continue to be 'consumers'.

While interpreting the expression "commercial purpose" under the Act, the bench said that if the dominant purpose of purchasing the goods or services is for a profit motive and the said fact is evident from the record, such purchaser would not fall under the ambit of 'consumer', as defined under Section 2(1)(d) of the Act.

The bench, however, remarked that if a person purchases the goods or services not for any commercial purpose but for one's own use, it cannot be said that even in such circumstances the transaction would be for a commercial purpose attributing profit motive, excluding the person from the definition of 'consumer'. In other words, if the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of goods would continue to be a 'consumer'.

2. Consumer Disputes Are Non-Arbitrable, Consumers Can't Be Compelled Into Arbitration

"Consumer disputes are assigned by the legislature to public fora, as a measure of public policy. Therefore, by necessary implication such disputes will fall in the category of non¬-arbitrable disputes, and these disputes should be kept away from a private fora such as 'arbitration', unless both the parties willingly opt for arbitration over the remedy before public fora," the judgment authored by Justice Dhulia in the case of M. Hemalatha Devi & Ors V. B. Udayasri, stated.

The Apex Court observed that a party to a dispute cannot be compelled to resort to arbitration merely because it has been provided in the contract, to which the party is a signatory. When one of the parties seeks redressal under a welfare legislation, the arbitrability of the dispute needs to be considered, the Court said.

"The exclusion of a dispute from arbitration may be express or implied, depending again upon the nature of the dispute, and a party to a dispute cannot be compelled to resort to arbitration merely for the reason that it has been provided in the contract, to which it is a signatory. The arbitrability of a dispute has to be examined when one of the parties seeks redressal under a welfare legislation, in spite of being a signatory to an arbitration agreement."

The Court observed that the nature of the dispute, determines the forum for its redressal. In a consumer dispute, the consumer has the option to either approach the consumer forum, or choose arbitration. In the case at hand, the consumer chose to the approach the consumer redressal forum, the Court observed.

"The law gives this choice to the consumer to either avail a remedy under the Consumer Protection Act, by filing a complaint before the Judicial Authority, or go for arbitration. This option is not available to the builder, as they are not 'Consumers', under the 2019 Act. "

Employee Provident Fund Act:

1. 'Basic Wage' Under EPF Act, Cannot Be Equated With 'Minimum Wage' Under Minimum Wages Act

The Supreme Court in **Assistant Provident Fund Commissioner V. M/S G4 Security Services (India) Ltd. & Anr.** dismissed an appeal by the Assistant Provident Fund Commissioner against an order of a division bench of the Punjab and Haryana High Court holding that when the term 'basic wage' has been described under Section 2(b) of the Employee Provident Fund Act 1952, there is no need to make a reference to definition of 'minimum rate of wages' under Section 4 of the Minimum Wages Act, 1948 to give it a more expansive meaning.

The case of the appellant was that for the purposes of determining the amount to be paid towards the provident fund, the employer had wrongly split the wage structure and treated the reduced wage as the basic wage in an attempt to evade paying the correct amount towards provident fund. This was to the detriment of the employees, according to the appellant.

A bench of Supreme Court while dismissing the appeal observed that "In our opinion, once the EPF Act contains a specific provision defining the words 'basic wage' (under Section 2b), then there was no occasion for the appellant to expect the Court to have travelled to the Minimum Wages Act, 1948, to give it a different connotation or an expansive one, as sought to be urged. Clearly, that was not the intention of the legislature."

FEMA Act:

1. Enforcement Officer Competent To File Complaint Under Repealed Provisions Of FERA During Sunset Period Of 2 Years After Enforcement Of FEMA

The Supreme Court in **First Global Stockbroking Pvt. Ltd. & Ors. vs Anil Rishiraj & Anr.** has ruled that the Enforcement Officer appointed and authorized under the repealed provisions of the Foreign Exchange Regulation Act, 1973 (FERA), will continue to have the authority and competence to file a complaint for the offences punishable under the Act before the expiry of the sunset period of 2 years provided under Section 49(3) of the Foreign Exchange Management Act, 1999 (FEMA).

Income Tax Act:

1. Material Disclosed To the Income Tax Settlement Commission Needn't Be Something Which Wasn't Discovered By the Assessing Officer

The Supreme Court in **Kotak Mahindra Bank Limited V. Commissioner Of Income Tax Bangalore And Anr**. has ruled that Section 245H of the Income Tax Act, 1961, which empowers the Settlement Commission to grant immunity from prosecution and penalty to the assessee if he has co-operated with the Settlement Commission and has made "full and true disclosure of his income", cannot be saddled with an artificial requirement that the material "disclosed" by the assessee before the Commission must be something apart from what was "discovered" by the Assessing Officer.

The bench while setting aside the Karnataka High Court's order made the observation that the High Court ought not to have sat in appeal as to the sufficiency of the material and particulars placed before the Commission, based on which the Commission proceeded to grant immunity from prosecution and penalty under Section 245H of the Act.

The court also expressed that frequent interference with the orders or proceedings of the Settlement Commission should be avoided, holding that the High Court should not scrutinize an order or proceeding of a Settlement Commission as an appellate court. The court said, "Unsettling reasoned orders of the Settlement Commission may erode the confidence of the bonafide assessees, thereby leading to multiplicity of litigation where settlement is possible. This larger picture has to be borne in mind."

The bench remarked that the Supreme Court has carved out a very narrow scope for judicial review of the Commission's orders passed in exercise of its discretionary powers. The court said that except on the ground that the order of the Settlement Commission contravenes provisions of the Income Tax Act or has caused prejudice to the opposite party, or on the ground that the order is vitiated by fraud, bias or malice, the court-while exercising powers under Articles 32, 226 or 136 of the Constitution of India cannot interfere with an order of the Commission which is passed in exercise of its discretionary powers.

2. State Amendments Made To VAT Acts After GST Came Into Effect Are Invalid

The Supreme Court in the case of The State of Telangana & Ors. V. M/S Tirumala Constructions., Civil Appeal No(S). 1628 Of 2023 while deciding the appeals arising from judgments of Telangana, Gujarat, and Bombay High Court with respect to the validity of the VAT Amendment Act in their respective states, made several significant findings regarding Section 19 of the Constitution (101st Amendment) Act (Amendment), 2016, which allowed the introduction of the Goods and Services Tax. Inter-alia, the issue was about the legislative competence of the State enactments after 01.07.2017 i.e. beyond the time period prescribed in Section 19. This provision provided the time limit of one year to amend the laws, related to tax on goods and services, in conformity with the express terms of the Amendment.

Court's Observations Interpretation of Section 19

To begin with, the Court interpreted Section 19. It stated that the same provision has three aims. The first is to preserve the existing status quo with regard to the state and central indirect tax regime, for a period of one year from the date of commencement of the Amendment or till a new law is enacted whichever is earlier. The second is authorizing the competent legislatures i.e. the State Legislatures and Parliament to amend existing laws which were in force in states and other parts of the country. The third was the repeal of such laws.

Taking its cue from the aforesaid observations, the Court stated that the fact that Section 19 was meant to be transitional cannot be doubted.

Thereafter, distinguishing between the ordinary and a constitutional law, the Court of the opinion that Section 19 was enacted in the exercise of the constituent power.

Whether the power of amendment or repeal is subject to limitations under Section 19?

Citing the case of **Ramkrishna Ramanath v. Janpad Sabha, 1962 Suppl. (3) SCR 70**, wherein it was held that "the provision by its implication confers a limited legislative power to desire or not to desire the continuance of the levy.," the Court, in the present case, held that this "limited legislative power was not constricted or limited, in the manner alleged by the states; it is circumscribed by the time limit, indicated (i.e. one year, or till the new GST law was enacted). It could, therefore, enact provisions other than those bringing the existing provisions in conformity with the amended Constitution."

The Court concluded:

"Since other provisions of the said Amendment Act, had the effect of deleting heads of legislation, from List I and List II (of the Seventh Schedule to the Constitution of India), both Section 19 and Article 246A reflected the constituent expression that existing laws would continue and could be amended. The source or fields of legislation, to the extent they were deleted from the two lists, for a brief while, were contained in Section 19. As a result, there were no limitations on the power to amend.

The above finding is in view of the vacuum created by the coming into force of the 101st Amendment, which resulted in deletion of the heads of legislation in the two lists aforesaid."

3. Double Taxation Avoidance Agreement Cannot Be Enforced Unless Notified By Centre Under Section 90 Income Tax Act

The Supreme Court in the case of Assessing Officer Circle (International Taxation) New Delhi v. M/s Nestle SA C.A. No. 1420/2023 + ten connected appeals, has held that a Double Taxation Avoidance Agreement **("DTAA")** cannot be given effect to by a court, authority or a tribunal unless it has been notified by the Central Government under Section 90 of the Income Tax Act. Until the Government of India issues a notification as per Section 90, the DTAA treaty is not enforceable per se in Indian courts.

Justice Bhat further said that the following are the conclusions in the judgment:

(a) A Notification under Section 90 of the Income Tax Act is a necessary and a mandatory condition for a court, authority or a tribunal to give effect to a Double Taxation Avoidance Agreement or any protocol changing its terms and conditions which has the effect of altering the existing provisions of law.

(b) The fact that a stipulation in a DTAA or a Protocol with one nation, requires same treatment in respect to a matter covered by its terms, subsequent to its being entered into when another nation (which is member of a multilateral organization such as OECD), is given better treatment, does not automatically lead to integration of such term extending the same benefit in regard to a matter covered in the DTAA of the first nation, which entered into DTAA with India. In such event, the terms of the earlier DTAA require to be amended through a separate notification under Section 90;

(c) The interpretation of the expression "is" has present signification. Therefore, for a party to claim benefit of a "same treatment" clause, based on entry of DTAA between India and another state which is member of OECD, the relevant date is entering into treaty with India, and not a later date, when, after entering into DTAA with India, such country becomes an OECD member, in terms of India's practice.

Before the Top Court, were the batch of appeals arising from decisions of the Delhi High Court involving interpretation of the Most Favoured Nation (MFN) clause contained in various Indian treaties with countries that are members of the Organisation for Economic Cooperation and Development (OECD). Importantly, this clause provides for lowering of rate of taxation at source on dividends, interest, royalties or fees for technical services (FTS) as the case may be, or restriction of scope of royalty/FTS in the treaty, similar to concession given to another OECD country subsequently.

Thus, the issues to be adjudicated were divided into two heads. Firstly, whether there is any right to invoke the MFN clause when the third country with which India has entered into a Double Tax Avoidance Agreement (DTAA) was not an OECD member yet (at the time of entering into such DTAA); and secondly, whether the MFN clause is to be given effect to automatically or if it is to only come into effect after a notification is issued.

The Court bolstered these observations by citing several judgments including **State of Gujarat v. Vora Fiddali Badruddin Mithibarwala, 1964 (6) SCR 461**, and summarised the legal principles driven out of them. These included:

1. The terms of a treaty ratified by the Union do not ipso facto acquire enforceability;
2. The Union has exclusive executive power to enter into international treaties and conventions under Article 73 (read with corresponding Entries - Nos. 10, 13 and 14 of List I of the VIIth Schedule to the Constitution of India) and Parliament, holds the exclusive power to legislate upon such conventions or treaties.
3. Parliament can refuse to perform or give effect to such treaties. In such event, though such treaties bind the Union, vis a vis the other contracting state(s), leaving the Union in default.
4. The application of such treaties is binding upon the Union. Yet, they "are not by their own force binding upon Indian nationals".
5. Law making by Parliament in respect of such treaties is required if the treaty or

agreement restricts or affects the rights of citizens or others or modifies the law of India.

After penning down these observations, the Court opined that upon India entering into a treaty or protocol does not result in its automatic enforceability in courts and tribunals; the provisions of such treaties and protocols do not therefore, confer rights upon parties, till such time, as appropriate notifications are issued, in terms of Section 90(1).

4. Preceding 6 Years Period As Regards 3rd Party To Be Calculated From Date When Documents Are Assigned To Concerned AO

The Supreme Court in the case of Commissioner of Income Tax 14 v Jasjit Singh has rejected the argument of the Income Tax department that Section 153C of the Income Tax Act 1961 empowers the assessing officer to seek information from a third party regarding income tax returns of the period of six years preceding the date of the search of the assessee whose premises was originally searched. The Court held that under Section 153C, a third party would only have to furnish income tax returns of preceding six years, starting from the date when the Assessing Officer assigns the third party's documents to the concerned Assessing Officer and not from the date of the original search. Section 153C does not contemplate calculation of six years period from date of search and seizure, as any delay caused by Assessing Officer in assigning documents to concerned Assessing Officer would obligate the third party to preserve the records of more than six preceding years.

5. Recommendations of 52nd GST Council Meeting

A. Recommendations relating to GST rates on goods and services

I. Changes in GST rates of goods

1. GST rates on "Food preparation of millet flour in powder form, containing at least 70% millets by weight", falling under HS 1901, with effect from date of notification, have been prescribed as:

   a. 0% if sold in other than pre-packaged and labelled form

   b. 5% if sold in pre-packaged and labelled form

2. To clarify that imitation zari thread or yarn made out of metallised polyester film /plastic film, falling under HS 5605, are covered by the entry for imitation zari thread or yarn attracting 5% GST rate. However, no refund will be allowed on polyester film (metallised) /plastic film on account of inversion.

3. Foreign going vessels are liable to pay 5% IGST on the value of the vessel if it converts to coastal run. GST Council recommends conditional IGST exemption to foreign flag foreign going vessel when it converts to coastal run subject to its reconversion to foreign going vessel in six months.

II. Other changes relating to Goods

1. GST Council recommended to keep Extra Neutral Alcohol (ENA) used for manufacture of alcoholic liquor for human consumption outside GST. Law Committee will examine suitable amendment in law to exclude ENA for use in manufacture of alcoholic liquors for human consumption from ambit of GST.

2. To reduce GST on molasses from 28% to 5%. This step will increase liquidity with mills and enable faster clearance of cane dues to sugarcane farmers. This will also lead to reduction in cost for manufacture of cattle feed as molasses is also an ingredient in its manufacture.

3. A separate tariff HS code has been created at 8 digit level in the Customs Tariff Act to cover rectified spirit for industrial use. The GST rate notification will be amended to create an entry for ENA for industrial use attracting 18% GST.

III. Changes in GST rates of services

1. Entries at Sl. No. 3 and 3A of notification No. 12/2017-CTR dated 28.06.2017 exempts pure and composite services provided to Central/State/UT governments and local authorities in relation to any function entrusted to Panchayat/ Municipality under Article 243G and 243W of the Constitution of India. The GST Council has recommended to retain the existing exemption entries with no change.

2. Further, the GST Council has also recommended to exempt services of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation supplied to

Governmental Authorities.

IV. Other changes relating to Services

1. To clarify that job work services for processing of barley into malt attracts GST @ 5% as applicable to "job work in relation to food and food products" and not 18%.

2. With effect from 1st January 2022, liability to pay GST on bus transportation services supplied through Electronic Commerce Operators (ECOs) has been placed on the ECO under section 9(5) of CGST Act, 2017. This trade facilitation measure was taken on the representation of industry association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances. To arrive at a balance between the need of small operators for ease of doing business and the need of large organized players to take ITC, GST Council has recommended that bus operators organised as companies may be excluded from the purview of section 9(5) of CGST Act, 2017. This would enable them to pay GST on their supplies using their ITC.

3. To clarify that District Mineral Foundations Trusts (DMFT) set up by the State Governments across the country in mineral mining areas are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

4. Supply of all goods and services by Indian Railways shall be taxed under Forward Charge Mechanism to enable them to avail ITC. This will reduce the cost for Indian Railways.

B. Measures for facilitation of trade:

i) Amnesty Scheme for filing of appeals against demand orders in cases where appeal could not be filed within the allowable time period:

The Council has recommended providing an amnesty scheme through a special procedure under section 148 of CGST Act, 2017 for taxable persons, who could not file an appeal under section 107 of the said Act, against the demand order under section 73 or 74 of CGST Act, 2017 passed on or before the 31st day of March, 2023, or whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107. **In all such cases, filing of appeal by the taxpayers will be allowed against such orders upto 31st January 2024**, subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. **This will facilitate a large number of taxpayers, who could not file appeal in the past within the specified time period**.

ii) Clarifications regarding taxability of personal guarantee offered by directors to the bank against the credit limits/loans being sanctioned to the company and regarding taxability of corporate guarantee provided for related persons including corporate guarantee provided by holding company to its subsidiary company: The Council has inter alia recommended to:

(a) issue a circular clarifying that when no consideration is paid by the company to the director in any form, directly or indirectly, for providing personal guarantee to the bank/ financial institutes on their behalf, the open market value of the said transaction/ supply may be treated as zero and hence, no tax to be payable in respect of such supply of services.

(b) to insert sub-rule (2) in Rule 28 of CGST Rules, 2017, to provide for taxable value of supply of corporate guarantee provided between related parties as one per cent of the amount of such guarantee offered, or the actual consideration, whichever is higher.

(c) to clarify through the circular that after the insertion of the said sub-rule, the value of such supply of services of corporate guarantee provided between related parties would be governed by the proposed sub-rule (2) of rule 28 of CGST Rules, 2017, irrespective of whether full ITC is available to the recipient of services or not.

iii) Provision for automatic restoration of provisionally attached property after completion of one year: The Council has recommended an amendment in sub-rule (2) of Rule 159 of CGST Rules, 2017 and **FORM GST DRC-22** to provide that the order for provisional attachment in **FORM GST DRC-22** shall not be valid after expiry of one year from the date of the said order. This will facilitate release of provisionally attached properties after expiry of period of one year, without need for separate specific written order from the Commissioner.

iv) Clarification on various issues related to Place of Supply: The Council has recommended to issue a Circular to clarify the place of supply in respect of the following supply of services:

(i) Supply of service of transportation of goods, including by mail or courier, in cases where the location of supplier or the location of recipient of services is outside India;

(ii) Supply of advertising services;

(iii) Supply of the co-location services.

v) Issuance of clarification relating to export of services-: The Council has recommended to issue a circular to clarify the admissibility of export remittances received in Special INR Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services in terms of the provisions of sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017.

vi) Allowing supplies to SEZ units/ developer for authorised operations for IGST refund route by amendment in Notification 01/2023-Integrated Tax dated 31.07.2023: The Council has recommended to amend Notification No. 1/2023-Integrated Tax dated 31.07.2023 w.e.f. 01.10.2023 so as to allow the suppliers to a Special Economic Zone developer or a Special Economic Zone unit for authorised operations to make supply of goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax dated 31.07.2023) to the Special Economic Zone developer or the Special Economic Zone unit for authorised operations on payment of integrated tax and claim the refund of tax so paid.

C. Other measures pertaining to law and procedures:

i) Alignment of provisions of the CGST Act, 2017 with the provisions of the Tribunal Reforms Act, 2021 in respect of Appointment of President and Member of the proposed GST Appellate Tribunals: The Council has recommended amendments in section 110 of the CGST Act, 2017 to provide that:

- an advocate for ten years with substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court to be eligible for the appointment as judicial member;
- the minimum age for eligibility for appointment as President and Member to be 50 years;
- President and Members shall have tenure up to a maximum age of 70 years and 67 years respectively.

ii) Law amendment with respect to ISD as recommended by the GST Council in its 50th meeting: GST Council in its 50th meeting had recommended that ISD (Input Service Distributor) procedure as laid down in Section 20 of the CGST Act, 2017 may be made mandatory prospectively for distribution of ITC in respect of input services procured by Head Office (HO) from a third party but attributable to both HO and Branch Office (BO) or exclusively to one or more BOs. The Council has now recommended amendments in Section 2(61) and section 20 of CGST Act, 2017 as well amendment in rule 39 of CGST Rules, 2017 in respect of the same.

Tenancy Law:

1. Can't Invoke S.5 Limitation Act Where Statute Prescribes Lesser Time Period For A Particular Purpose

The Supreme Court in the case of Debasish Paul & Anr V. Amal Boral, Civil Appeal No.6565 Of 2023 held that Section 5 of Limitation Act, 1963 (Extension of prescribed period in certain cases) cannot be used to extend the time limit prescribed when a lesser time period has been specifically provided under the relevant act for a particular purpose.

In the case at hand, the Court was referring to Section 7 of the West Bengal Premises Tenancy Act, 1997, under which a tenant can file an application for protection against eviction, which specifies that an extension of time for paying arrears of rent may be granted only once and for not more than two months. Section

40 of the Act says that the Limitation Act will apply to proceedings and appeals under the Act.

"We are of the view that a combined reading of the two statutes would suggest that while the Limitation Act may be generally applicable to the proceedings under the Tenancy Act, the restricted proviso under Section 7 of the said Act, providing a time period beyond which no extension can be granted, has to be applicable," the Court said.

The Court also observed that in a dispute regarding tenancy, where there is no dispute on the admitted amount of rent, all arears of rent need to be deposited.

"There is also a larger context in this behalf as the Tenancy Acts provide for certain protections to the tenants beyond the contractual rights. Thus, the provisions must be strictly adhered to. The proceedings initiated on account of non-payment of rent have to be dealt with in that manner as a tenant cannot occupy the premises and then not pay for it. This is so even if there is a dispute about the rent. The tenant is, thus, required to deposit all arrears of rent where there is no dispute on the admitted amount of rent and even in case of a dispute. The needful has to be done within the time stipulated and actually should accompany the application filed under Sub-Sections (1) & (2) of Section 7 of the said Act. The proviso only gives liberty to extend the time once by period not exceeding two months," the Court said.

Insolvency & Bankruptcy Code:

1. Cannot Ask Successful Resolution Applicant To Pay Arrears Payable By Corporate Debtor For Grant/Restoration Of Electricity Connection

The Supreme Court in Tata Power Western Odisha Distribution Limited & Anr. V Jagannath Sponge Private Limited has held that under the Insolvency and Bankruptcy Code, 2016 ("IBC"), once the Resolution Plan stands approved by the National Company Law Tribunal (NCLT), the Electricity Department cannot demand payment of arrears, which were payable by the Corporate Debtor, from the Successful Resolution Applicant for restoration/grant of electricity connection.

2. EPFO Employees Must Comply With IBC Timeline For Filing Claims; Default Officers Must Face Action

The Supreme Court in Employees Provident Fund Organization V. Fanendra Harakchand Munot held that the Commissioner and employees of the Employees Provident Fund Organization (EPFO) must ensure that they comply with the timelines under the Insolvency and Bankruptcy Code, 2016. The Apex Court also stated that in case of failure to comply with the timelines, action must be taken against erring employees.

The bench observed that "..We are of the view that the Commissioner and employees of the EPFO must take steps to ensure that there is compliance with the timelines provided under the Insolvency and Bankruptcy Code, 2016. Failure may have legal consequences. The employees of the EPFO must be aware of the consequences in order to ensure compliance. In case there is dereliction of duty, action should be taken against erring employees in accordance with law."

3. Moratorium Under IBC Inapplicable To Agreements Under Convention & Protocol Relating To Aircraft, Aircraft Engines, Airframes And Helicopters

The Ministry of Corporate Affairs ("MCA"), Government of India, has issued a notification dated 03.10.2023 published in the Gazette of India, intimating that Section 14(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC") would be inapplicable to transactions, arrangements or agreements, under the Convention and the Protocol relating to aircraft, aircraft engines, airframes and helicopters.

Section 14(1) of IBC imposes a moratorium with respect to the entity (Corporate Debtor) which has been admitted into Corporate Insolvency Resolution Process (CIRP) under the IBC. Imposition of moratorium ensures value maximization of the Corporate Debtor during the CIRP, by prohibiting any form of recovery, institution of suits, continuation of proceedings, transfer/alienation of assets, enforcement of security interest, recovery of property et al against the Corporate Debtor.

In view of the Convention and

Protocol, the Central Government, in the exercise of the powers under Section 14(3)(a) of IBC, has notified that moratorium under Section 14(1) of IBC shall not apply to transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes, and helicopters.

The notification states "Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (3) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies that the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), shall not apply to transactions, arrangements or agreements, under the Convention and the Protocol, relating to aircraft, aircraft engines, airframes and helicopters."

4. IBBI Clarifies Interpretation Regarding Liquidator's Fee Under Regulation 4(2)(B) Of Liquidation Process Regulations

The Insolvency and Bankruptcy Board of India **("IBBI")** has released a circular dated 28.09.2023, clarifying the interpretation and computation of the Liquidators' fee under Regulation 4(2)(b) of IBBI (Liquidation Process) Regulations, 2016 ("Liquidation Regulations").

Regulation 4 of Liquidation Regulations provides for Liquidator's fee. Regulation 4(1) and 4(1A) provide that the fee payable to the liquidator be decided by the Committee of Creditors (CoC) or Stakeholders' Consultation Committee (SCC), as the case may be. If the liquidators' fee is not fixed under Regulation 4(1) and 4(1A), then Regulation 4(2)(b) provides that the liquidator shall be entitled to a fee as a percentage of the amount realized net of other liquidation costs, and of the amount distributed, for the balance period of liquidation.

- Regulation 4(2)(b) provides that the fee shall be "as a percentage of the **amount realized** net of other liquidation costs, and of the amount distributed, for the balance period of liquidation…."

Clarification: "Amount realized" shall mean amount realised from assets other than liquid assets such as cash and bank balance including term deposit, mutual fund, quoted share available on start of the process after exploring compromise and arrangement, if any.

- The term "Amount of Realization (exclusive of liquidation costs)" given in the table in Regulation 4(2)(b) mandates that all liquidation costs are to be deducted from the realization amount. However, as per regulation 4(2)(b), "other liquidation cost" is to be deducted from realization. There is a gap in understanding in the market about what components of the liquidation cost are to be excluded from the liquidation cost to derive "other liquidation cost".

Clarification: The "other liquidation cost" in regulation 4(2)(b) shall mean liquidation cost paid in priority under Section 53(1)(a), after excluding the liquidator's fee.

- Section 53 of IBC provides for order of priority for making distribution out of proceeds from sale of assets. Furthermore, the table in Regulation 4(2)(b) provides for liquidator's fees to be calculated as a percentage of the 'Amount Distributed to Stakeholders'.

Clarification: "Amount distributed to stakeholders" shall mean distributions made to the stakeholders, after deducting CIRP and liquidation cost.

- Different interpretations are being made for the words "Amount of Realisation /Distribution" used in table in the Regulation 4(2)(b). Though, most of them are interpreting it correctly to mean the cumulative value of assets realised till date, few are interpreting it to mean the value of assets realized during the first six months and then the next six months, and so on.

Clarification: "Amount of Realization /Distribution" shall mean the cumulative value of the amount realized/ distributed which is to be bifurcated in various slabs as per column 1 and thereafter the same is to be bifurcated into realization/ distribution in various periods of time and then corresponding fee rate from the table is to be taken.

- Period for calculation of fee - liquidators are suo-moto excluding various time periods such as stay by the court on sale of a particular asset, delay in relinquishment by secured creditor, for the purpose of calculating the fee. However, since the liquidator works under the overall guidance of the Adjudicating Authority, any such exclusion should have stamp of judicial authority and should be only for the asset for which such exclusion has been granted.

Clarification: Exclusion for purpose of fee calculation is to be allowed only when the same has been explicitly provided by the Hon'ble NCLT/NCLAT or any other court of law and will operate only for the asset which could not have been realized during the excluded period.

5. Time-Barred Recovery Certificate Can Be Segregated From Composite Claim Under Section 7

The Supreme Court in the case of Tottempudi Salalith v State Bank Of India & Ors. ruled that in a composite application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") based on several Recovery Certificates issued by the Debt Recovery Tribunal, if any of the Recovery Certificate(s) is barred by limitation, then the same can be segregated from the composite claim. However, as the decree (Recovery Certificate) would still be alive, it can be treated as a claim made in the Corporate Insolvency Resolution Process (CIRP) in view of the Public Announcement.

6. Doctrine Of Election Can't Prevent Financial Creditor From Initiating CIRP Against Corporate Debtor

The Supreme Court in the case of Tottempudi Salalith v State Bank Of India & Ors. held that the 'Doctrine of Election' cannot be applied to prevent a Financial Creditor from approaching the National Company Law Tribunal (NCLT) for initiation of Corporate Insolvency Resolution Process ("CIRP") against a Corporate Debtor, under the Insolvency and Bankruptcy Code, 2016 (IBC).

The Bench observed, "The question of election between the fora for enforcement of debt under the 1993 Act and initiation of CIRP under the IBC arises only after a recovery certificate is issued. The reliefs under the two statutes are different and once CIRP results in declaration of moratorium, the enforcement mechanism under the 1993 Act or the SARFAESI Act gets suspended. In such circumstances, after issue of recovery certificate, the financial creditor ought to have option for enforcing recovery through a new forum instead of sticking on to the mechanism through which recovery certificate was issued.

On the issue of applicability of Doctrine of Election, the Court opined that the said doctrine is embodied in the law of evidence, which bars prosecution of the same right in two different fora based on the same cause of action. However, in the case under consideration, the recovery proceedings before the DRT commenced in 2014 when IBC had not come into existence.

Reliance was placed on Kotak Mahindra Bank Limited vs A. Balakrishnan and Anr., 2022 LiveLaw (SC) 534, wherein it was held as under:

"To conclude, we hold that a liability in respect of a claim arising out of a recovery certificate would be a "financial debt" within the meaning of clause (8) of Section 5 IBC. Consequently, the holder of the recovery certificate would be a financial creditor within the meaning of clause (7) of Section 5 IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the recovery certificate."

The Court noted that in Kotak Mahindra Bank Limited vs A. Balakrishnan and Anr., the right of the Financial Creditor to invoke the mechanism under the IBC after the issue of the recovery certificate stood acknowledged as a valid legal course.

While differentiating between the mechanisms under the Recovery of Debts and Bankruptcy Act, 1993 ("1993 Act") and the IBC, it was observed as under:

"The enforcement mechanism for a recovery certificate is an independent course, which a financial creditor may opt for realisation of its dues crystalised under the 1993 Act, instead of chasing the mechanism under the 1993 Act. The IBC itself is not really a debt recovery mechanism but a mechanism for revival of a company fallen in debt, but the procedure envisaged in the IBC substantially relates to ensuring recovery of debts in the process of applying such mechanism."

The Court held that the doctrine of election cannot be applied to prevent the Financial Creditors from approaching the NCLT for initiation of CIRP.

"The question of election between the fora for enforcement of debt under the 1993 Act and initiation of CIRP under the IBC arises only after a recovery certificate is issued. The reliefs under the two statutes are different and once CIRP results in declaration of moratorium, the enforcement mechanism under the 1993 Act or the SARFAESI Act gets suspended. In such circumstances, after issue of recovery certificate, the financial creditor ought to have option for enforcing recovery through a new forum instead of sticking on to the mechanism through which recovery certificate was issued. Thus, the doctrine of election cannot be applied to prevent the financial creditors from approaching the NCLT for initiation of CIRP."

SARFAESI Act:

1. Borrower's Right To Redeem Mortgage Extinguishes Once Bank Publishes Auction Notice For Secured Asset

The Supreme Court in Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. And Ors. held that the borrower's right of redemption of mortgage under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) will get extinguished once the bank publishes an auction notice for the sale of the secured asset. It was also clarified that the need to protect the sanctity of the auction process carried under the SARFAESI Act and asserted that the banks were to duty bound to follow provisions of law just like other litigants.

The Court also stated that "The High Courts that they should not entertain petition under Article 226 of the Constitution, if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act."

2. As per Unamended S.13(8), Borrower Has Right To Redeem Available Till Sale Certificate Is Registered & Possession Is Handed Over

The Supreme Court in the case of Surinder Pal Singh V. Vijaya Bank & Ors. ruled that:

The net result is that the right of the Borrower to redeem would be available till the sale certificate is registered and the possession is handed over after which the Borrower will not have a right for redemption under the unamended provision of Section 13 (8) of the SARFAESI Act."

It may be noted that Celir LLP vs. Bafna Motors (Mumbai) Pvt. Ltd. & Ors was a case concerning Section 13(8) as amended in 2016.

Others:

1. Directions Issued by Supreme Court Against Manual Scavenging

The Supreme Court in the case of Dr. Balram Singh vs Union of India, Writ Petition (Civil) No. 324/2020 issued a slew of directions to the Union and the State Governments to ensure that the abhorrent practice of manual scavenging is totally put to an end by strict implementation of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

The directions are as follows:

(1) The Union should take appropriate measures and frame policies, and issue directions, to all statutory bodies, including corporations, railways, cantonments, as well as agencies under its control, to ensure that manual sewer cleaning is completely eradicated in a phased manner, and also issue such guidelines and directions as are essential, that any sewer cleaning work outsourced, or required to be discharged, by or through contractors or agencies, do not require individuals to enter sewers, for any purpose whatsoever;

(2) All States and Union Territories are likewise, directed to ensure that all departments, agencies, corporations and other agencies (by whatever name called) ensure that guidelines and directions framed by the Union are embodied in their own guidelines and directions; the states are specifically directed to ensure that such directions are applicable to all municipalities, and local bodies functioning within their territories;

(3) The Union, State and Union Territories are directed to ensure that full rehabilitation (including employment to the next of kin, education to the wards, and skill training) measures are taken in respect of sewage workers, and those who die;

(4) The court hereby directs the Union and the States to ensure that the compensation for sewer deaths is increased (given that the previous amount fixed, i.e., 10 lakhs) was made applicable from 1993. The current equivalent ₹ of that amount is Rs. 30 lakhs. This

shall be the amount to be paid, by the concerned agency, i.e., the Union, the Union Territory or the State as the case may be. In other words, compensation for sewer deaths shall be 30 lakhs. In the event, dependents of any victim have not been paid such amount, the above amount shall be payable to them. Furthermore, this shall be the amount to be hereafter paid, as compensation.

(5) Likewise, in the case of sewer victims suffering disabilities, depending upon the severity of disabilities, compensation shall be disbursed. However, the minimum compensation shall not be less than 10 lakhs. If the disability is ₹ permanent, and renders the victim economically helpless, the compensation shall not be less than 20 lakhs.

(6) The appropriate government (i.e., the Union, State or Union Territories) shall devise a suitable mechanism to ensure accountability, especially wherever sewer deaths occur in the course of contractual or "outsourced" work. This accountability shall be in the form of cancellation of contract, forthwith, and imposition of monetary liability, aimed at deterring the practice.

(7) The Union shall device a model contract, to be used wherever contracts are to be awarded, by it or its agencies and corporations, in the concerned enactment, such as the Contract Labour (Prohibition and Regulation Act), 1970, or any other law, which mandates the standards – in conformity with the 2013 Act, and rules, are strictly followed, and in the event of any mishap, the agency would lose its contract, and possibly blacklisting. This model shall also be used by all States and Union Territories.

(8) The NCSK, NCSC, NCST and the Secretary, Union Ministry of Social Justice and Empowerment, shall, within 3 months from today, draw modalities for the conduct of a National Survey. The survey shall be ideally conducted and completed in the next one year.

(9) To ensure that the survey does not suffer the same fate as the previous ones, appropriate models shall be prepared to educate and train all concerned committees.

(10) The Union, State and Union Territories are hereby required to set up scholarships to ensure that the dependents of sewer victims, (who have died, or might have suffered disabilities) are given meaningful education.

(11) The National Legal Services Authority (NALSA) shall also be part of the consultations, toward framing the aforesaid policies. It shall also be involved, in co-ordination with state and district legal services committees, for the planning and implementation of the survey. Furthermore, the NALSA shall frame appropriate models (in the light of its experience in relation to other models for disbursement of compensation to victims of crime) for easy disbursement of compensation.

(12) The Union, State and Union Territories are hereby directed to ensure coordination with all the commissions (NCSK, NCSC, NCST) for setting up of state level, district level committees and commissions, in a time bound manner. Furthermore, constant monitoring of the existence of vacancies and their filling up shall take place.

(13) NCSK, NCSC, NCST and the Union government are required to coordinate and prepare training and education modules, for information and use by district and state level agencies, under the 2013 Act.

(14) A portal and a dashboard, containing all relevant information, including the information relating to sewer deaths, and victims, and the status of compensation disbursement, as well as rehabilitation measures taken, and existing and available rehabilitation policies shall be developed and launched at an early date.

2. RBI Extends PCA Framework to Govt NBFCs from Oct 2024

The Reserve Bank of India declared on October 10, 2023, that it would expand the scope of the Prompt Corrective Action (PCA) Framework to include Government Non-Banking Financial Companies (NBFCs), with the exception of those in the base layer. Starting on October 1, 2024, the same will take effect.

The methodology will be implemented by using the NBFC's audited financial statements as of March 31, 2024, or later.

The PCA framework was formerly limited to banks. In December 2021, a new PCA framework that took into account NBFC expansion and its effects on other financial system segments was extended to NBFCs. Under this system, the RBI's supervisory evaluation or the company's audited annual financial performance would determine which NBFCs fall under the PCA. Supervisory intervention will be initiated in the event that the defined risk thresholds are breached. This will allow the RBI to take necessary measures, which may include the remedial steps listed in the framework.

There are two categories of remedial actions: obligatory and discretionary. The RBI takes mandatory measures in response to threshold breaches, including limitations on dividend distribution and guarantee issuance. Furthermore, under the RBI Act, the RBI has the authority to take a number of discretionary steps, including putting limitations on investment operations, filing an application for insolvency under the Insolvency and Bankruptcy Code, 2016, and removing managerial personnel.

It is made clear that the RBI is free to take any additional remedial action it sees proper, and that these steps are not all-inclusive.

3. Govt Amends Aircraft Rules to Foster Ease of Doing Business

The Ministry of Civil Aviation has made a great advancement by amending the 1937 Aircraft Rules to improve aviation safety and facilitate economic transactions. The Ministry requested feedback on the draft regulations last year, and on October 10, 2023, the finished modification rules were issued following careful consideration of the recommendations submitted.

Among the significant adjustments made in accordance with the amendment regulations are the following: -

- Under Rule 39C(1), a Commercial Pilot's Licence has a 10-year validity duration instead of the previous 5-year one.
- Prior to licences or ratings being renewed under Rule 42(1), the Director-General's mandated conditions for recent experience and competency in order to exercise license or rating privileges must be fulfilled.
- Under Rule 66, the government's jurisdiction over individuals who exhibit false lights in the vicinity of aerodromes has been expanded from five kilometers to five nautical miles. The types of lights that fall under this category include lantern kites, wish kites, laser lights, and more. The government also has the authority to put out lights that are left on for more than a day without being cared to and to take action against light displays that jeopardize the aircraft's ability to operate safely. As per the modification guidelines, in the event that the source of the light cannot be identified or changes places, it must be notified to the authorities immediately.
- Since Rule 118 was deemed unnecessary, it has been removed, which applied to the validity of foreign licenses.
- When an individual with a valid Air Traffic Controller Licence is unable to fulfill the required movement or watch hours to meet the prescribed recency or competency requirements, they must complete the necessary skill assessment and at least 10 hours of simulated exercises, including emergencies.

4. New NBFC Regulatory Regime: Scale-Based Regulation Directions 2023

The Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulation) Directions 2023 (SBR Master Directions), which the RBI released on October 19, 2023, eliminates the systemically significant and non-systemically important NBFC classification system.

The Non-Banking Financial Company–Non-Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 and the Non-Banking Financial Company–Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 (collectively, the Erstwhile Regulatory Regime) have been superseded by the SBR Master Directions. The long-awaited harmonisation of the Former Regulatory Regime with the Scale Based Regulation framework for NBFCs—which was released by the RBI on October 22, 2021, and went into effect on October 1, 2022—is now possible thanks to the SBR Master Directions.

INTERACTIVE SESSION

Fill in the Blanks

1. The Calcutta High Court has directed in the case of Ishaan Plastics Pvt. Ltd. & Anr. Vs The Deputy Commissioner of State Tax Bureau of Investigation (South Bengal) Durgapur Zone & Ors., that in the case where there was a 9-hour time gap between the expiry of the ___________ and the interception of the vehicle, the penalty shall be refunded.

2. The Kolkata Bench of ____ has quashed the service tax demand on the transport of goods with loading and shifting from private railway sidings to stacking yards.

3. The Kolkata Bench of Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) has held that data recovered from the _______________ does not have any evidentiary value to prove the clandestine clearance of silico manganese. This ruling was given in the case of Attitude Alloys (P) Ltd. Versus Commissioner of Central Excise, Bhubaneswar-II.

4. The Central Board of Direct Taxes (CBDT) has notified income tax exemption to pension funds, namely, the _______________________________.

5. The RBI recently published ________________________________ brings an end to the basic categorization of systemically important and non-systemically important NBFCs.

6. Under the SBR Master Directions, the NPA classification norm applicable to all NBFCs-BL (non-systemically important non-deposit taking NBFC) (including formerly non-systemically important NBFCs) stands changed to the overdue period of more than ________.

7. Effective from October 2022, the SBR Framework categorised all the NBFCs into the following four categories: (i) _____________, (ii) _____________________, (iii) __________________, and (iv) __________________________.

Answers: 1. e-way bill;
2. Customs, Excise, and Service Tax Appellate Tribunal (CESTAT);
3. pen drive; 4. Stichting Pensioenfonds ABP;
5. Scale Based Regulation Directions, 2023 ;
6. 90 days;
7. (i) base layer (NBFC-BL), (ii) middle layer (NBFC-ML), (iii) upper layer (NBFC-UL); (iv) top layer (NBFC-TL)

ABOUT MCCI

MCCI is a 122 years old non-government, not-for-profit, industry-led and industry-managed organization, with 700 direct members and 15,000 indirect members covering a wide cross-section of small, medium & large industries, trade and services besides, 10 Associations of Industry & Trade are also affiliated to MCCI.

MCCI addresses various aspects of the industry, trade and service sectors, their issues & Challenges and through several learning and best practices forums, guide them to the future. MCCI also helps members to explore international business opportunities through its international connect initiatives.

MCCI has been working on the development of an indigenous vibrant industrial base in the country, especially in Eastern India. The indomitable spirit and quest to build an institution to safeguard the interests of the indigenous business community led to the birth of Vaishya Sabha and with the changing times, now it stands as MCCI. MCCI has evolved to reinvent itself to address the challenges in this era of new normal.

MCCI works as a bridge between businesses and the policy makers to create a conducive economic environment for the industry to prosper and flourish while benefitting all the stakeholders in the economy. The Executive Committee, which has 30 Councils reporting to it, is the principal facilitating structure of the Chamber.

We are one of the leading Chambers of Eastern India relentlessly working for the betterment of MSMEs through several initiatives. MSME Helpdesk, IP facilitation, connecting with Banking and Financial institutions, technology for MSMEs, besides taking up members' issues at the appropriate level. Several Business meets are organized for the benefit of the members.

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