



This Newsletter covers key Regulatory & Policy Updates, Government Notifications and Judicial Pronouncements.

REGULATORY & POLICY UPDATES

Securities and Exchange Board of India issued a circular revising the mechanism for redressal of investor grievances through SCORES platform.¹

The Securities and Exchange Board of India (“SEBI”) issued a circular dated 20.09.2023 (“SCORES Circular”) revamping the redressal mechanism of investor grievances provided through the SEBI complaint redressal system (“SCORES”) platform, with a view to link and align it with the online dispute resolution platform and the SEBI (Facilitation of Grievance Redressal Mechanism) (Amendment) Regulations 2023 issued on 16.08.2023. The SCORES Circular shall replace the Master Circular on processing of investor

complaints against listed companies dated 07.11.2022, from 04.12.2023.

The key highlights of the new framework under the SCORES Circular are:

Step 1- Filing and handling of complaints: Once an investor’s complaint is lodged against an entity on SCORES platform, such entity is required to resolve such complaint and upload an Action Taken Report (“ATR”) on the platform within 21 days from receipt of such complaint.

Step 2- First review: In the event the complainant is not satisfied by the resolution provided, or the entity fails to upload the ATR within 21 days as specified, the ‘Designated Body’ for such entity (such as Stock Exchange for listed companies, stock brokers and, RTAs; the Trustee Association

¹ SEBI SCORES Circular

of India for Debenture Trustees; and the Association of Investment Bankers of India for merchant bankers and bankers to an issue, etc.) shall take up the first review with the concerned entity. Such entity shall then submit an ATR to the Designated Body within the time stipulated in this regard.

Step 3- Second review: In the event the complainant is not satisfied with the resolution provided by the Designated Body, or the concerned Designated Body has not submitted the ATR within 10 calendar days, SEBI may take cognizance of the complaint for second review through the SCORES platform.

Consequences of failure to redress investor complaints by listed companies: For certain identified categories of complaints, such as non-receipt of bonus, of dividend (or interest for delay), or of duplicate share certificate, of fractional entitlement, of securities after transfer, of securities in public or rights issue, etc., the designated stock exchanges (“DSE”) shall have the power to levy a fine of INR 1,000 per day for each day of complaint under Regulation 13(1) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (failure to take adequate steps for expeditious redressal of investor complaints). Importantly, if a listed company fails to redress an investor grievance and or pay the fine levied, the concerned DSE shall issue a notice to the promoters of the listed company to ensure compliance. In the event of continued failure to comply with instructions, the DSE has the power to direct depositories to freeze the entire shareholding of the promoter(s) in such listed company as well as all other securities held in the demat account of the promoter(s) and take any other action as the DSE deems appropriate.

Reserve Bank of India issues circular on release of movable/immovable property documents on repayment/settlement of personal loans.²

The Reserve Bank of India (“RBI”) issued a circular dated 13.09.2023 addressed to all Commercial Banks, Co-Operative Banks, NBFCs, and All India Financial Institutions, etc. (collectively “Regulated Entities” or “REs”) regarding release of documents relating to movable/immovable property provided as security by the borrower after repayment or settlement of personal loans (“RBI Circular”).

‘Personal loans’ refers to loans given to individuals and consist of (a) consumer credit, (b) education loan, (c) loans given for creation/ enhancement of immovable assets (e.g., housing, etc.), and (d) loans given for investment in financial assets (shares, debentures, etc.).

The RBI Circular has been issued in light of divergent practices being followed by REs with respect to releasing

documents relating to movable/immovable property provided as security upon closure of loan accounts.

The key instructions to the REs in the RBI Circular are:

- i. Within 30 days of full repayment/settlement of the loan accounts, REs are required to release all the original movable/immovable property documents and remove any associated charges registered with any registry.
- ii. Borrowers have been given option of collecting the original movable/immovable property documents either from the banking outlet/branch where the loan account was serviced or from any other office of the REs where the documents are available, as per preference of the Borrower.
- iii. The timeline and place of return of original movable/immovable property documents will be provided under the loan sanction letters issued on or after the effective date of the loan.
- iv. REs are required to come up with clear procedures for returning of original movable/immovable property documents to the legal heirs in case of contingent events like demise of the borrower. Such procedure has to be displayed on the website of REs.
- v. In the event REs fail to release the original movable/immovable property documents or fail to file charge satisfaction form with the registry within 30 days of full repayment/ settlement, REs shall communicate the reasons for such delay to the borrower. In cases where such delays are attributable to the RE, the borrower is entitled to receive compensation of INR 5,000 for each day of delay.
- vi. In the event of partial or complete loss or damage of original documents, REs shall be obligated to assist the borrower in obtaining duplicate or certified copies of such documents, cover the associated costs and provide compensation as stated above. However, in such event REs shall have an additional 30 days for completing the process of obtaining the duplicate/ certified copies, and penalties for the delay shall be applied only thereafter (i.e., after the total period of 60 days from date of full repayment/ settlement of the loan account).
- vii. The RBI Circular is applicable to all cases where the release of such documents is due on or after 1st December 2023.

RBI instructs all lenders to disclose the details of borrowers whose assets are in their possession under the SARFAESI Act.³

RBI issued a circular dated 25.09.2023 instructing all REs (that are ‘secured creditors’ under the Securitization and Reconstruction of Financial Assets and Enforcement of

² [RBI Circular on Release of Property Documents](#)

³ [RBI Notification 2023-24/63](#)

Securities Interest Act, 2002) to display details of the borrowers whose secured assets are in possession of the REs, in the prescribed format. The first such list of details shall be displayed on the website of the respective REs within six (6) months from the date of this circular and shall thereafter be updated on a monthly basis.

Insolvency and Bankruptcy Board of India notifies the Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations 2023⁴

The Insolvency and Bankruptcy Board of India (“IBBI”) has issued the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations 2023 (“CIRP Amendment Regulations”).

The key highlights of the CIRP Amendment Regulations are:

- i. Under new Regulation 2D, financial/ operational creditors, while filing an application under Sections 7 or 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”), are now required to also submit along with evidence, a chronology of the debt and default including the date when the debt became due, date of default, dates of part payments (if any), date of last acknowledgment of debt and the limitation applicable.
- ii. New Regulation 3A has been added which provides a detailed process for personnel of the corporate debtor to assist and cooperate with the resolution professional, for ensuring accountability with respect to the assets of the corporate debtor. Under the new regulation, the promoters and personnel of the corporate debtor are now obligated to provide a list of all assets and records that are being handed over to the resolution professional/ interim resolution professional (“RP”/ “IRP”). In the event the RP is not provided such list of assets, then the RP is required to prepare such list of assets and records. The RP is also required to verify such list from the information in the balance sheet of the corporate debtor.
- iii. In order to provide greater flexibility to creditors, the time period for submission of claims by creditors has been extended. The revised Regulation 12(1) allows creditors to file claims with the RP until the earlier of (i) date of issue of request for resolution plans under Regulation 36B, and (ii) 90 days from insolvency commencement date.
- iv. Regulation 13 has been amended to provide additional obligations on the RP with respect to verification of claims after the expiry of the period specified in Regulation 12 (also amended). In relation to such delayed claims received at least 7 days prior to the date of creditors’ meeting, the RP is required to verify, and categories all

claims received as acceptable or non-acceptable. Thereafter, RP shall put the claims categorised as acceptable to the committee of creditors at its next meeting for its recommendation for inclusion in the list of creditors and treatment in the resolution plan. The RP shall also submit such claims before the Adjudicating Authority for condonation of delay and adjudication wherever applicable.

- v. New Regulation 30B has been inserted that enables the committee of creditors to approve an audit of the corporate debtor. Such audit shall be conducted by an insolvency professional with appropriate qualifications. The expenses of such audit shall be treated as part of insolvency resolution process cost.
- vi. Regulation 36B has been amended to provide that RP shall issue the information memorandum, evaluation matrix, and request for resolution plan within 5 days from the issue of the final list of prospective resolution applicants under Regulation 36A, as opposed to the provisional list of prospective resolution applicants under Regulation 36A(10), as per the regulations prior to the amendment.

GOVERNMENT NOTIFICATIONS

Ministry of Corporate Affairs extends the timeline for holding of Annual General Meetings and EGM due in 2023 and 2024 through VC or OAVM.⁵

Ministry of Corporate Affairs (“MCA”) by its General Circular No. 9/2023 dated 25.09.2023 (“MCA General Circular”), in continuation of the Extant Circulars⁶ has allowed companies to hold their annual general meetings (“AGM”) and extra-ordinary general meeting (“EGM”) in the years 2023 and 2024 through video conference or other audio-visual means (“OAVM”) or transact items through postal ballot, up to 30th September 2024 in accordance with the requirements laid down in the Extant Circulars.

However, the MCA General Circular explicitly states that this extension by the MCA should not be treated as providing any extension of the statutory timelines for holding AGMs/ EGMs as stipulated under the Companies Act, 2013.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that the borrower’s right of redemption of mortgage property under SARFAESI Act extinguishes once the bank has published an auction notice for the sale of the secured property.

⁴ [Insolvency Resolution Process for Corporate Persons\) \(Second Amendment\) Regulations 2023.](#)

⁵ [MCA General Circular No.09/2023.](#)

⁶ In respect of AGMs: General Circular No. 20/2020 dated 05.05.2020, General Circular No. 10/ 2022 dated 05.05.2022 and General Circular No. 10/2022 dated 28.12.2022. In respect of EGMs: General Circular No. 14/2020 dated 08.04.2020, General Circular No. 03/ 2022 dated 05.05.2022 and General Circular No. 11/2022 dated 28.12.2022.

The Supreme Court in its judgment dated 21.09.2023 in the matter of *Celir LLP v. Bafna Motors (Mumbai) Pvt Ltd.*⁷ held that the right of the borrower to redeem the mortgage of a secured asset extinguishes after the publication of the auction notice by the banks as per Section 13(8) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (“SARFAESI Act”).

In this case, Bafna Motors (“Borrower”) availed a credit facility from Union Bank of India (“Bank”) and mortgaged a parcel of land as security. The Borrower defaulted on its payment obligations and subsequently the account was declared a non-performing asset. The Bank thereafter issued a demand notice under Section 13(2) of SARFAESI Act that the Borrower failed to pay, and the Bank put the secured asset to auction.

Celir LLP (“Celir”) was declared as the successful bidder in the auction for asset mortgaged by the Borrower, and it deposited the bid amount with the Bank. At this time, the Borrower filed a redemption application before DRT Mumbai as well as a writ petition before the Bombay High Court for redemption of mortgage and expressed its willingness to pay the outstanding amount to the Bank. The High Court allowed the writ petition filed by the Borrower.

Celir, aggrieved by the order of the High Court, filed the present appeal before the Supreme Court.

The Supreme Court held that the failure on the part of the Borrower in tendering the entire dues before the publication of the auction notice as per Section 13(8) of the SARFAESI Act constituted an “extinguishment of the right of redemption of mortgage”, and once Section 13(8) stage was over and the auction was concluded, the Borrower did not have any right of redemption under Section 13(8). The Court further held that as per amended Section 13(8), the right of redemption of mortgage was clearly restricted until the date of publication of the sale notice under the SARFAESI Act.

The Court observed that it was the duty of the courts to protect the sanctity of auctions, and courts ought not to interfere with auctions as it would lead to a loss of public confidence in the process.

The Court also remarked that the Bank had failed to issue the sale certificate as per Rule 9(6) of the Security Interest (Enforcement) Rules, 2002 (“Rules”) despite Celir having paid the entire amount as per the auction. The Court further observed that banks could not enter into private arrangements with borrowers pursuant to a sale notice under Rule 9(2) of the Rules nor can they withhold the sale certificate under Rule 9(6). The Court remarked that banks could not act in a manner

that was contrary to the law and keep the sword hanging on the neck of an auction purchaser.

Supreme Court refers ‘N.N. Global Judgment’ to seven-judge bench to decide on the issue whether arbitration clause in an unstamped agreement is enforceable.

The Supreme Court through its order dated 26.09.2023 in the matter of *M/s. Bhaskar Raju & Brothers v. M/s. Dharmaratnakara Rai Bahadur Arcot*⁸ referred the issue of whether the unstamped/insufficiently stamped arbitration agreements are unenforceable to a 7-judge bench.

The reference has been made while hearing a curative petition against the ruling of the judgment in 2020 which held that an arbitration clause in an insufficiently stamped agreement cannot be acted upon by the court. While hearing the curative petition, the validity of the judgment delivered by a 5-judge bench in April 2023 in the case of *M/s. N.N. Global Mercantile Pvt Ltd. v. M/s. Indo Unique Flame Ltd.* (“N.N. Global”) was also considered.

In N.N. Global, the 5-judge bench answered the reference by a 3:2 majority and held that an instrument that is unstamped/insufficiently stamped cannot be said to be a contract enforceable in law within the meaning of Section 2(h) of the Indian Contract Act, 1872. The Court held that the N.N. Global judgment has larger ramifications and caused limitless uncertainty in the area of arbitration law, which requires consideration by a larger bench. The matter is listed for hearing on 11th October 2023 before the 7-judge bench.

High Court of Delhi held that after initiation of an investigation by SFIO under Companies Act, 2013, a parallel probe by separate agency on the same facts and circumstances is not permissible.

The Delhi High Court in its judgment dated 15.09.2023 in the matter of *Ashish Bhalla v. State & Anr.*⁹ has held that once investigation is initiated by Serious Fraud Investigation Office (“SFIO”) under the Companies Act, 2013 (“CA 2013”), no other investigative agency is allowed to parallelly investigate the matter on the same facts and circumstances.

The Court held that after investigation into the affairs of a company has been initiated by SFIO, there is no reason for any other agency to conduct investigation. Under Section 212 of CA 2013, SFIO is a specialized agency consisting of experts from diverse fields with the expertise, knowledge, and requisite information and has a demarcated/ specialised investigation mechanism. SFIO has vast powers to investigate and enquire into the affairs of a company pursuant to directions from the Central Government.

⁷ Civil Appeal No. 5542-5543 of 2023.

⁸ Curative Petition (C) No. 44 of 2023 in R.P. (C) No. 704 of 2021.

⁹ CrI. M.C. No. 298 of 2023.

The court further opined that a conjoint reading of Section 212 (2) and 212(17)(a) of CA 2013 indicates that upon transfer of an investigation to SFIO, no other investigative agency can proceed with the investigation of an offence arising out of the same facts and circumstances.

High Court of Delhi held that mere allegations of fraud would not render a dispute non-arbitrable.

The High Court of Delhi in its judgement dated 11.09.2023 in the matter of *M/s JRA Infratech v. Engineering Projects (India) Limited*¹⁰ held the arbitrator and not the court under Section 11 of the A&C Act, should decide whether the dispute is arbitrable.

The Court also observed that mere filing of a criminal complaint does not establish the allegations of fraud that would render dispute non-arbitrable.

In the instant matter, the Court noted that there is no dispute on the existence of the arbitration agreement. Engineering Products (India) Limited (“EPIL”) has merely raised the objection of existence of a criminal complaint against M/s JRA Infratech (“JRA”) and that cannot by itself lead to a conclusion that any fraud or forgery was committed by the EPIL. It is only when a court comes to a definite conclusion that the arbitration agreement is void, that a court, under Section 11 of A&C Act, can decline to refer the parties to arbitration despite the existence of an arbitration clause.

High Court of Calcutta held that the timelines under Section 29A of the Arbitration and Conciliation Act, 1996 are mandatory, and application for extending the mandate of the arbitrator must be made prior to the termination/expiry of such mandate.

The High Court of Calcutta in its judgement dated 06.09.2023 in the matter of *Rohan Builders (India) Pvt. Ltd v. Berger Paints India Limited*¹¹ held that the timelines prescribed under Section 29A of Arbitration and Conciliation Act, 1996 (“A&C Act”) are mandatory and any application for extension of the mandate of the arbitrator must be made during the continuation of such mandate and not thereafter.

In the instant matter, Rohan Builders (India) Pvt. Ltd. (“Rohan Builders”) preferred three applications seeking extension of the arbitrator’s mandate. The question before the High Court was whether the mandate of the arbitrator under Section 29A(4) of the A&C Act can be extended after the mandate has been terminated.

The Court observed that Sections 29A(4) and (5) of A&C Act do not contemplate extension of the mandate of the arbitrator after 18 months from the date of completion of the pleadings

unless the courts extend the mandate of the arbitrator(s) upon sufficient cause being shown. The word “extended” appearing in Section 29A(4) of A&C Act means that the mandate of the arbitral tribunal must be in existence or subsisting at the time of making the application for extension of the mandate.

Further, the Court observed that parties must take effective time-bound steps for extension of the arbitral tribunal’s mandate for making the award within the subsistence of the mandate and not after the mandate expires by the operation of law. Hence, a party cannot be permitted under Section 29(4) to seek extension of the arbitrators’ mandate if the application for such extension has been made after the expiry/termination of such mandate under Section 29A(3) of the A&C Act.

The Central Electricity Regulatory Commission extends the levelized generic tariff for FY 2023-24.

The Central Electricity Regulatory Commission (“CERC”), in a *suo moto* order dated 08.09.2023 in Petition No. 10/SM/2023¹², has extended its earlier order in Petition No. 14/SM/2022 until further orders are issued, extending the levelized generic tariff for FY 2023-24.

CERC had passed an order *suo moto* in Petition No. 14/SM/2022 on 07.11.2022 notifying the levelised generic tariff for FY 2022-23 under Regulation 8 of the Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2020 (“RE Tariff Regulations”) which requires CERC to determine a generic tariff for the RE projects.

In the recent order, CERC has noted that it has already initiated the process of reviewing the RE Tariff Regulations for the next Control Period and that the revised regulations shall be notified after undertaking the due regulatory process.

NCLT Kochi held that the liquidator shall not be responsible for filing of the Income Tax return of a company going through liquidation under IBC.

NCLT, Kochi Bench in its judgement dated 15.09.2023 in the matter of *Mr. Vinod Balachandran, Liquidator of Albanna Engineering (India) Pvt. Ltd. v. Bharat Petroleum Corporation Ltd*¹³ held that liquidator of a company is not required to file such company’s income tax return.

NCLT relied on the judgment of NCLAT in the matter of *Om Prakash Agarwal v. Chief Commissioner of Income Tax (TDS) and Anr*¹⁴ and held that as there is no specific provision under the Income Tax Act 1961, IBC or IBBI (Liquidation Process) Regulations, 2016, requiring a liquidator to file the income tax return, the liquidator is not required to file the

¹⁰ Arb. P. 800/2022

¹¹ A.P No. 328 of 2023

¹² Petition No. 10/SM/2023

¹³ IA (IBC)/84/KOB/2023 IN IBA/38/KOB/2019

¹⁴ Company Appeal (AT) (Insolvency) No. 624 of 2020

income tax return of the relevant company under liquidation and accordingly any party which is required to make a payment to such company shall not deduct TDS on such payment.

NCLT Delhi ruled that backdoor entry of promoters/ suspended management into the corporate debtor by obtaining an MSME certificate for the corporate debtor is not permissible.

The NCLT, New Delhi Bench, in its judgment dated 18.09.2023, in the matter of *M/s Hi-Tech Resource Management Limited v M/s Overnite Express Limited*¹⁵, held that neither Section 25 nor Section 28 of IBC empowers the RP or Committee of Creditors (“CoC”) to obtain a Micro Small and Medium Enterprise (“MSME”) certificate to enable the backdoor entry of the suspended management through the resolution process into the corporate debtor, who are otherwise barred under Section 29A of IBC to submit a resolution plan.

It may be noted that Section 29A prohibits the suspended management of a corporate debtor from submitting a resolution plan for such an entity. However, as per Section 240A of IBC, this prohibition under Section 29A is not

applicable to a promoter/ suspended management of a corporate debtor registered as an MSME.

NCLT observed that the MSME certificate obtained by the suspended management of a corporate debtor after the commencement of the corporate insolvency resolution process (CIRP) will be in violation of Section 17(1)(b) of IBC 2016, as upon commencement of the CIRP of a corporate debtor, the powers of the management of such corporate debtor stands suspended and such powers are exercised by the IRP/ RP only. It was further observed that an RP/CoC can obtain an MSME certification for a corporate debtor if it is for the purpose of availing the available under the MSME Act, 2006.

NCLT further observed that the benefits of Section 240A of IBC can only be availed by an entity whose registration or certification as an MSME has been completed prior to the commencement of CIRP of a corporate debtor.

ABOUT SAGUS LEGAL

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¹⁵ Company Petition No. (IB)-2240(ND)/2019