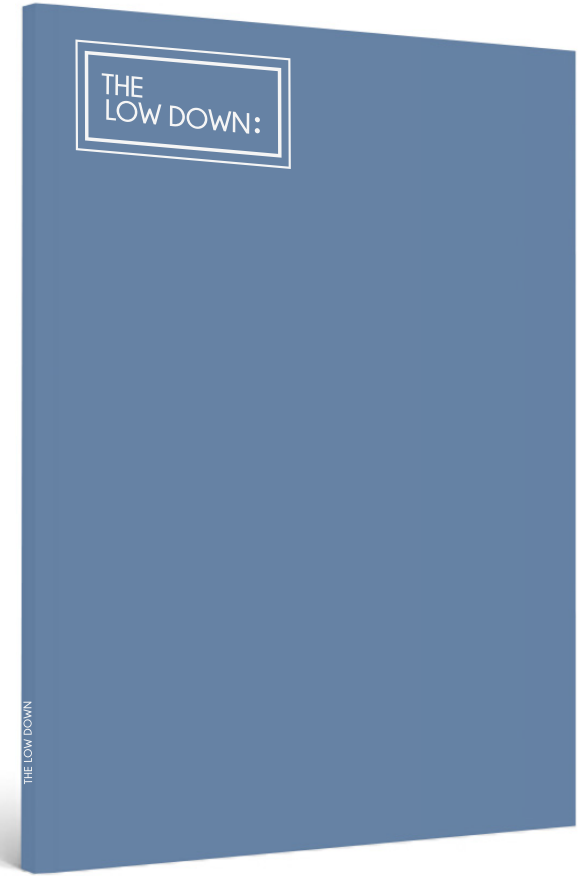

IT IS
ALL
INSIDE

THE LOW DOWN:

Lex Consult Newsletter: A quarterly ‘Low Down’ of legal updates in the corporate world

LEX CONSULT EDITORIAL I MAY AND JUNE 2024

SEGMENT ONE

Reserve Bank of India (RBI)

RBI amendment to Foreign Exchange Management (Non-debt Instruments) Rules, 2019

The RBI by way of its notification on Foreign Investment in India - reporting in single master form dated 07 June 2018, and Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019, mandated investment vehicles (including Alternative Investment Funds (**AIFs**) to file Form InVi within 30 days from the issue of units to foreign investors. Form InVi did not bar AIFs from issuing partly paid-up units to its foreign investors. However, during mid-2023, it was observed that the Authorised Dealer Banks (**AD Banks**) were not accepting Form InVi for issuance of partly paid-up units by AIFs to their foreign investors. RBI on 14 March 2024 amended the Foreign Exchange Management (**Non-debt Instruments)** Rules, 2019 enabling issuance of partly paid units to persons resident outside India by investment vehicles.

RBI has now decided to regularize the issuance of partly paid units by AIFs to persons resident outside India undertaken before the said amendment, through compounding under Foreign Exchange Management Act, 1999.

It is pertinent to note that before approaching RBI for compounding, AD Category-I banks may ensure that the necessary administrative action, including the reporting of such issuances by AIFs to RBI, through the Foreign Investment Reporting and Management System (**FIRMS**) Portal and issuance of conditional acknowledgements in relation to these reporting's, are completed

The RBI has issued a notification dated 7 June 2024 on Investment in Overseas Funds under Foreign Exchange Management (Overseas Investment) Directions, 2022 (**OI Directions**), opening the gates for investors to make investment in overseas funds by removing certain restrictions given under OI Directions. Paragraph 1(ix)(e) of the erstwhile OI Directions stated that overseas funds shall be treated as Overseas Portfolio Investment (**OPI**) subject to following two conditions:

(i) The investment can only me made in 'units' of an overseas fund, and

(ii) The overseas fund had to be regulated by the financial regulators in the host jurisdiction.

The amendments made by the RBI removed the above-mentioned restrictions. Now, investment is allowed in any instrument, regardless of its form. Moreover, the above-mentioned restrictions restricted Indian General Partners (**GPs**) to set up funds in jurisdictions like Singapore and USA, as in these jurisdictions financial regulatory authorities only regulate the investment manager and not the investment fund. By allowing OPI in funds regulated by their managers, the RBI has enabled GPs to set up their funds in commercially viable jurisdictions without concerns about the permissibility of Indian investments in these jurisdictions. This amendment is a positive step as it expands the range of investment options available to Indian investors, thereby granting them access to broader markets.

Expansion of Investment Opportunities for Indian Investors: Amendment to the Foreign Exchange Management (Overseas Investment) Directions, 2022

SEGMENT TWO

Securities and Exchange Board of India (SEBI)

S E B I

SEBI's Amendment to Listing Obligations and Disclosure Requirements Regulations 2024

The SEBI has introduced SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024 (Amendment) amending the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR**) by implementing the following regulations:

Regulation 3 - Applicability of the Regulations: The Amendment states that the list on the market capitalization of listed entities shall be prepared by recognized stock exchanges as of 31 December 2024 and stock exchanges are required to compile a list of entities ranked by average market capitalization from 1 July to 31 December 2024 as opposed to earlier which was based on the market capitalization of a single day, specifically 31 March.

Regulation 21 - Risk Management Committee: The Amendment stipulates that the time period between 2 consecutive meetings of the risk management committee shall not be more than 210 days as opposed to earlier which was 180 days.

Regulation 26A - Vacancies in Respect of Certain Key Managerial Personnel: The Amendment mandates that listed entities, which are obligated to secure approval from regulatory authorities to fill vacancies in key positions must fill such vacancies within a period of 6 months as opposed to earlier which was 3 months from the date of vacancy.

SEBI INDUSTRIAL STANDARDS FOR VERIFICATION OF MARKET RUMOURS

Background: SEBI by way of its Listing Obligations and Disclosure Requirements (**Second Amendment**) Regulations, 2023, (**Amendment**) dated 15 June 2023, amended Regulation 30 (11) of the SEBI (Listing Obligations and Disclosure Requirements), 2015. According to the proviso inserted by the Amendment, top 250 listed companies must confirm or deny within 24 hours of trigger of material price movement any report event or information in the mainstream media which is not general in nature, and which indicates that a rumour of an impending specific event or information is circulating in the market (**Compliance**).

Circular: SEBI by way of *circular dated 21 May 2024* (**Circular**) informed that the timeline for the Compliance for top 100 listed companies comes into effect from 01 June, 2024, and for top 250 listed companies from 01 December, 2024. Furthermore, if a market rumour is confirmed by a company within 24 hours, then the unaffected price framework provided in this Circular is implemented.

Additional circulars: Pursuant to the directions of SEBI, an *industry standard note on verification of market rumours* (Industry Standard Note) was published which provides guidance and clarity to the concerned listed companies regarding the Compliance. Additionally, a framework for material price movement dated 21 May 2024 was also published on the stock exchanges' websites providing for parameters to determine material price movement and matters incidental thereto.

SEBI'S UPDATE ON DISCLOSURE OF MATERIAL CHANGES BY FPI

The SEBI recently published a *circular dated 5 June, 2024* (**Circular**) which introduced timelines for intimation of material changes/events under the *Foreign Portfolio Investors (**FPI**) Regulations, 2019 (**FPI Regulations**)*.

Regulation 22 of the FPI Regulations mandates that an FPI shall notify SEBI and/or Designated Depository Participants (**DDP**) of any material change in the information previously provided to SEBI and/or DDP.

The Circular has categorised "material change" into two categories: (i) Type I material changes and (ii) Type II material changes. Type I include material changes that prevent the FPI from obtaining registration, necessitate that the FPI apply for new registration, prevent the FPI from purchasing securities, etc. Type II material changes include deletion of sub-fund/share classes or any equivalent structure that invests in India and any material change other than that mentioned under Type I. The timeline for intimation and submission of documents for Type I and Type II material changes is 7 and 30 days respectively.

SEBI ALLOWS 100% PARTICIPATION OF NRIS, OCIS AND RIS IN FPIS BASED IN IFSCS.

The SEBI on 26 June 2024 *amended the SEBI (Foreign Portfolio Investor) Regulations, 2019* and thereafter on 27 June 2024 published a *circular* in connection to the said amendment. The amendment and the circular have made certain changes to the eligibility criteria of Foreign Portfolio Investors (**FPIs**). Now, Non-Resident Indians (**NRIs**), Overseas Citizens of India (**OCIs**) or Resident Indian (**RIs**) may be constituents of the applicants for grant of certificate of registration as a FPI if:

(i) the contribution of an individual NRI, OCI or RI is less than 25% of the total contribution in the corpus of the applicant;

(ii) the aggregate contribution of NRIs, OCIs and RIs is less than 50% of the total contribution in the corpus of the applicant;

(iii) the contribution of RI is made through the liberalised remittance scheme and is in global funds whose Indian exposure is less than 50%; and

(iv) the NRI, OCI and RI are not in control of the applicant.

SEGMENT THREE

Ministry of Corporate Affairs (MCA)

MINISTRY OF CORPORATE AFFAIRS

Penalty for Violation Under Section 89 and Section 90 of the Companies Act, 2013 (Act) in the matter of LinkedIn Technology Information Private Limited

Facts: LinkedIn Technology Unlimited Company had filed a form MGT-6 dated 29 January 2024 wherein it is reported that LinkedIn Technology Unlimited Company is a registered holder (**Registered Holder**) and LinkedIn Ireland Unlimited Company is a beneficial owner in respect of 01 equity share of LinkedIn Technology Information Private Limited (**Company**). This was contrary to the filings made in the financial statements of the Company.

Issue: Non-compliance under Section 89 and Section 90 of the Act.

Judgment: MCA held that LinkedIn Ireland Unlimited Company was always the beneficial owner (**Beneficial Owner**) since the incorporation of the company and the duty of the Beneficial Owner and the Registered Holder to make declarations actually arose after the incorporation of the Company in 2009. Further, with respect to Section 90 of the Act, MCA stated that Mr. Ryan Roslansky was the significant beneficial owner (**SBO**) of the Company, on account of his ability to exercise control on the board of directors of the Company. The MCA also noted that Mr. Ryan Roslansky reports to Mr. Satya Nadella and is part of Microsoft's senior leadership team. Thus, Mr. Satya Nadella was also the SBO of the Company as per Section 90 of the Act. Thus, Mr. Satya Nadella and Mr. Ryan Roslansky are liable for penalties under Section 90(10) of the Act for failing to report as required by Section 90(1) of the Act.

Penalty imposed on Samsung Display Noida Private Limited for not declaring its Significant Beneficial Owners

The Registrar of Companies, Uttar Pradesh (**RoC**) issued an order against Samsung Display Noida Private Limited (**SDNPL**) for violating Section 90 of the Companies Act, 2013 (**Act**), emphasizing that even if a person holds proxy control in a company vested through a legally remote mechanism, he will be identified as a Significant Beneficial Owner (**SBO**).

SDNPL is a wholly-owned subsidiary of Samsung Display Corporation Ltd (**SDC**), which is in turn owned by Samsung Electronics Corporation (**SEC Korea**) and Samsung SDI Corporation Limited, Korea (**SDI Korea**), with shareholdings of 84.8% and 15.2%, respectively. Furthermore, both SEC Korea and SDI Korea have major shareholders from companies owned by Mr. Lee Jae-Yong and his family members.

According to RoC, SDNPL failed to file the required e-form BEN-2 for declaring SBO as per Section 90 of the Act. The RoC held that Mr. Lee, along with his family, exercised indirect control over SEC Korea. Mr. Lee Jae-Yong was bestowed by the Board of SEC Korea with unbridled power to make decisions despite the company having a chairman as per the articles of association. Therefore, SDNPL should have reported Mr. Lee Jae-Yong as an SBO. This shows a form of proxy control vested through a legally remote mechanism and therefore enough control to influence the managerial decisions of the SDNPL. As a result, RoC imposed a penalty of Rs. 8,14,200 on SDNPL for non-compliance of Section 90 of the Act.

SEGMENT FOUR

National Company Law Appellate Tribunal (NCLAT)/

National Company Law Tribunal (NCLT)

N C L A T

CLAIM FOR REFUND OF A SECURITY DEPOSIT UNDER A LEAVE AND LICENSE AGREEMENT DOES NOT CONSTITUTE AN OPERATIONAL DEBT

The NCLAT in *Carestream Health India Private Limited. vs. Seaview Mercantile LLP* held that the refund of a security deposit linked to a contractual obligation does not constitute an operational debt under the Insolvency and Bankruptcy Code, 2016 (**Code**).

Facts: The parties entered into a Letter of Intent (**LOI**) for leasing a unit for which the appellant submitted a security deposit. Consequently, pursuant to negotiations for termination of the letter of intent, the appellant sought for a refund of the security deposit.

Issue: Does the appellant qualify as an "operational creditor" under the Code?

Judgment: As per Section 5(21) of the Code, "operational debt" is defined as a claim in respect of the provision of goods or services, including employment, or a debt arising under any law for the time being in force. NCLAT observed that the claim for the refund of a security deposit under the LOI does not pertain to the provision of goods or services but rather to a contractual obligation contingent upon executing a leave and license agreement. NCLAT thereby held that the application filed under Section 9 is not maintainable, as the appellant cannot be treated as an operational creditor, since the claim did not arise from the provision of goods or services. It was further held that the *scope of "operational debt" does not encompass situations like security deposits unrelated to any immediate service rendered*.

The NCLT in the case of *Mr. Ajay Tajpuriya & Anr. vs. Goel Ganga Infrastructure & Real Estate Pvt. Ltd. & Ors.* held that the allocation of shares at a discounted price (lower than the fair market value at the time of offer) is unfair to current members.

Facts: The Petitioners, Ajay R. Tajpuriya and Manoj R. Tajpuriya, originally held 50% of the paid-up share capital in the Respondent Company, however due to alleged illegal share allotments (allocation of shares at a face value of Rs. 100/-, while the book value of such shares was at Rs. 299.86) by the Respondents, their stake was significantly reduced. The Petitioners filed the petition citing acts of oppression and mismanagement by the Respondents under the provisions of the Companies Act.

Issue: Whether the actions of the Respondents amounted to oppression and mismanagement?

Judgement: The NCLT observed that according to the Companies Act, 2013, it is required that shares be allotted at a value that is equal to or greater than the fair market value at the time of the offer. The allocation of shares at a discounted price, without sufficient justification, was deemed to be an oppressive act towards the current members to whom no such allotment had been made.

N C L T

ALLOCATING SHARES AT A DISCOUNTED PRICE IS UNFAIR TO CURRENT MEMBERS, NCLT (MUMBAI)

SEGMENT FIVE

The Supreme Court (SC)/ High Courts (HC)

SC | HC

ADVOCATES NOT LIABLE UNDER THE CONSUMER PROTECTION ACT, 2019 FOR DEFICIENCY OF SERVICES

The SC on 14 May 2024 in *Bar of Indian Lawyers through its President Jasbir Singh Malik v. D.K. Gandhi PS National Institute of Communicable Diseases and Another* held that the services rendered by advocates practicing the legal profession are excluded from the definition of "service" under the Consumer Protection Act, 2019.

Facts: The National Consumer Disputes Redressal Commission (**NCDRC**) had earlier held that complaints alleging deficiency in services rendered by advocates/lawyers would be maintainable under the Consumer Protection Act, 2019. Aggrieved by this order, various bar associations and individual advocates filed appeals before the SC.

Issue: Whether "deficiency in service" against advocates would be maintainable?

Judgment: The SC held that the legislative intent behind the Consumer Protection Act, 2019 was to protect consumers from unfair trade practices and unethical business practices and not to include professions or services rendered by professionals within its purview. A service hired from an advocate falls under a "contract of personal service", which is excluded from the definition of "service" under Section 2(42) of the Consumer Protection Act, 2019.

To curb misleading advertisements, the SC orders for a self-declaration framework for submitting self-declarations by advertisers

The SC by way of an order dated 07 May 2024 in *Indian Medical Association & Anr. v. Union of India & Ors.* (**Order**), ordered for setting up of a self-declaration framework for advertisers to protect the interests of consumers against misleading advertisement.

Facts: The SC was hearing a case against Patanjali over publication of misleading advertisements and inefficiency of various government agencies in enforcing the law to curb misleading advertisements.

Issue: A lack of framework and effective implementation of law to curb misleading advertisements.

Judgment: The SC observed that misleading advertisements are being published without any accountability on the part of the manufacturers, promoters and advertisers. The SC recognised the right of a consumer to be made aware of the quality of products. The SC thereby ordered for a self-declaration framework for the advertisers to declare that their advertisements are in compliance with the relevant laws and not misleading.

Interpretation of "Court" under Section 29A of the Arbitration and Conciliation Act, 1996

The SC in *Chief Engineer (NH) PWD v. M/s BSC & C and C JV* settled the interpretation of the term "Court" possessing the jurisdiction to determine an application under Section 29A of the Arbitration and Conciliation Act, 1996 (**A&C Act**) through its order dated 13 May 2024.

Facts: M/s BSC & C and C JV (**Respondent**) moved an application in the Commercial Court of Shillong (**Commercial Court**) for the extension of the mandate of an arbitral tribunal during the ongoing delayed arbitration proceedings.

Issue: Interpretation of the term "Court" under Section 29A of the A&C Act.

Judgment: The SC dismissed the petition and held that "Court" as mentioned under Section 29A of the (A&C Act) is to be understood as the "principal civil court of original jurisdiction in a district" as provided under Section 2(1)(e) of the A&C Act. Additionally, the SC stated that the power under Section 29A (6) of the A&C Act for substitution of arbitrators in case one or more of them causes delay, is only a consequential power vested in the same court which is empowered to decide on the extension of the mandate of the arbitral tribunal under Section 29A (4) A&C Act.

SC
HC

FLEXIBILITY OF TIMELINES IN POSH CASES

On 11 June 2024, the Madras HC (**Court**) in *R. Mohanakrishnan vs Deputy Inspector General of Police* adopted a liberal approach with respect to timelines for filing of a sexual harassment at workplace case.

Facts: A sexual harassment complaint was lodged against the petitioner, for an incident which had occurred on April 2018. In December 2022, the Internal complaint committee (**ICC**) started enquiry in the matter and later submitted its report. The petition was filed seeking to quash the enquiry report which was submitted by the ICC.

According to Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH**), complaints should be lodged within 3 months of the occurrence of the incident for which the timeline can be extended up to 6 months.

Judgment: The Court dismissed the petitioner's claim and highlighted the ongoing mental distress by the victim. According to the Court, in cases of severe allegations of harassment (such as rape or continuous molestation or harassment), the complaint can be reported beyond the statutory limit prescribed. According to the Court, when the offence is of a serious nature having the effect of causing grave mental trauma and stress to the victim, it may push the victim to a dilemma not to reveal or complain due to the fear of secondary and tertiary victimization.

SEGMENT SIX

Artificial Intelligence (AI)

Amendment to Organisation for Economic Co-operation and Development (OECD) Principles on AI

In light of the rapidly evolving and developing AI industry, notably the emergency advanced AI technologies such as generative and general-purpose AI, the OECD Ministerial Council Meeting (**MCM**), on 03 May 2024, adopted several amendments to the landmark OECD Principles on AI, namely, the 'Recommendations on AI' (**Principles**).

Background: The Principles – the first intergovernmental standard on AI, was adopted by the OECD MCM on 22 May 2019 with the aim to foster innovation and trust in AI by promoting the responsible stewardship of trustworthy AI while ensuring respect for human rights and democratic values.

Amendment: In an effort to: (i) encourage moral and responsible AI development and use; and (ii) address AI-associated challenges, the revised Principles include a greater emphasis on privacy, intellectual property rights, safety, and information integrity. Some key features of the revision to the Principles are: (i) Amendment to the definition of 'AI system'; (ii) Reflecting the growing importance of addressing mis- and disinformation, and safeguarding informationintegrity in the context of generative AI; (iii) Addressing safety concerns, etc.

Singapore Publishes a Model AI Governance Framework for Generative AI

On 30 May 2024, the Singapore's 'AI Verify Foundation' and 'Infocomm Media Development Authority' issued and published a Model AI Governance Framework for Generative AI (**Framework**). The Framework seeks to set forth a systematic and balanced approach to address generative AI concerns while continuing to facilitate innovation. The Framework identifies the following 9 key governance dimensions to foster a trusted ecosystem:

(i) Accountability, which incentivises players to be responsible to end-users;
(ii) Data, which signifies a need to ensure data quality, such as through the use of trusted data sources;
(iii) Trusted Development and Deployment;
(iv) Incident Reporting;
(v) Testing and Assurance;
(vi) Security;
(vii) Content Provenance;
(viii) Safety and Alignment Research & Development; and
(ix) AI for Public Good.

FIU imposed fine on Binance - cryptocurrency exchange

The India's Financial Intelligence Unit (**FIU**), by way of a notice dated 19 June 2024, imposed aa fine of INR 18.8 crore on one of the world's largest cryptocurrency exchanges – Binance Holdings Limited (**Binance**). This fine was imposed on Binance by the FIU for operating illegally in India without complying with the Prevention of Money Laundering Act, 2002 and its regulations. Subject to payment of such fine and compliance with regulations, Binance can now operate and provide its services as a virtual assets provider.

Singapore Publishes a Model AI Governance Framework for Generative AI

On 10 June, 2024, Meta issued a public announcement through its official blog that it would delay proceeding with its initiative to use public data shared by adults on Facebook and Instagram (**Meta's users**), for training its large language models (**LLMs**). This change came in response to a complaint lodged by the Austrian organization 'None of your business (**NOYB**)' with the Irish Data Protection Commission (**DPC**), Meta's lead regulators, regarding Meta's intentions to use personal data of Meta's users. Some of their concerns are set out below:

(i) seeking implicit consent of Meta's users instead of explicit consent; and

(ii) failure of proposing any limitation with respect to the timeline of data proposed to be used for training of the LLMs.

SEGMENT SEVEN

OTHER UPDATES

No objection certificates (NOCs) for manufacture of unapproved/banned/new drugs solely for export purpose to be obtained from the Central Drugs Standard Control Organization (CDSCO) Zonal offices

The Ministry of Health and Family Welfare ruled that starting 15 May 2024 applications for NOCs for the manufacture of unapproved, banned, or novel medications purely for export purpose must be submitted online through CDSCO zonal offices. As a result effective 15 May 2024, the authority provided to the State licensing authority is revoked and the head of the corresponding CDSCO Zonal Office will be issuing such NOCs. All manufacturers must get a nomination of certification from the appropriate Zonal Offices of the CDSCO via the SUGAM portal online before receiving a manufacturing license from the State licensing authority to manufacture unapproved, banned, or novel pharmaceuticals for export.

Self-declaration by advertisers now made mandatory by the Ministry of Information and Broadcasting

The Ministry of Information and Broadcasting (**Ministry**) issued a *notification dated 03 June, 2024*, (**Notification**) wherein a self-declaration framework has been set up for advertisers/advertising agencies that wish to advertise on television channels, print or digital media. Accordingly, it was made mandatory for all advertisers wishing to release an advertisement after 18 June 2024, to submit a certificate through the broadcast seva portal of the Ministry before telecast on television channels, and in respect of print/digital media through Press Council of India portal. This Notification was pronounced pursuant to the SC's order in *Indian Medical Association & Anr. v. Union of India & Ors*, wherein SC mandated for a self-declaration framework for the advertisers to declare that their advertisements are in compliance with the relevant laws and are not misleading in any respect.

However, the Ministry released a *fresh advisory on July 3, 2024* wherein advertisers issuing advertisements regarding the food and health sector are advised to upload an annual self-declaration certificate.

Workmen cannot be denied permanent status who have worked uninterruptedly for 480 days in 2 years

In Tamil Nadu Medical Services Corporation Limited v. Tamil Nadu Medical Services Corporation Employees Welfare Union, the SC held that workmen cannot be denied permanent status who have worked uninterruptedly for 480 days in 2 years under Section 3 of Tamil Nadu Industrial Establishments (**Conferment of Permanent Status to Workmen**) Act, 1981 (**Act**).

Facts: The workmen filed a case against the Tamil Nadu Medical Services Corporation Limited (**Appellant**), as they sought regularization under the provisions of the Act.

Issue: Whether the workmen are entitled to permanent status under Section 3 of the Act?

Judgment: The SC observed that Section 7 of the Act exempts only those workmen who are engaged in the construction of buildings and the like or other construction work be it structural, mechanical, or electrical. Considering that the workmen worked for 480 days continuously for 24 months make them eligible for permanent status under Section 3 of the Act.

In Bina Rani Paul and Ors. v. The State of Tripura, the Tripura HC held that the Payment of Gratuity Act, 1972 is applicable to Anganwadi workers and Anganwadi helpers.

Facts: Bina Rani Paul and Ors (**Petitioners**) are Anganwadi workers and Anganwadi helpers working in various Anganwadi centres. The Petitioners demanded gratuity and other benefits. However, it was refused on the basis of ineligibility for payment of gratuity.

Issue: Whether Anganwadi workers and Anganwadi helpers are eligible for gratuity payments?

Judgment: The SC observed that despite there being only 2 Anganwadi workers and helpers in each Anganwadi centre, they are being engaged in Anganwadi centres through a single order of the government. Thus, it cannot be claimed that an Anganwadi centre has less than 10 workers which would render them ineligible for gratuity pursuant to Section 3(b) of the Act. Therefore, the Petitioners are eligible for payment of gratuity.

Anganwadi workers and Anganwadi helpers are now eligible for payment of gratuity in Tripura.

The IRDAI has imposed a fine of INR 1 crore on Go Digit General Insurance for not disclosing a change in the conversion ratio of compulsorily convertible preference shares (**CCPS**). The IRDAI granted certificate of registration to the insurer subject to various conditions, including the condition that the insurer shall be a public company and no change in the structure or composition of the company or changes in the shareholding pattern of the promoters shall be made except with the prior permission of IRDAI. The failure to furnish complete particulars of the revision violated Section 26 of the Insurance Act, 1938 which governs the disclosure and reporting requirements concerning significant changes and transactions within insurance companies.

Insurance Regulatory and Development Authority of India (IRDAI) Penalty on Go Digit General Insurance

REVERSE FLIPPING OF INDIAN STARTUPS

Reverse flipping, a trend among startups, involves relocating their holding company and intellectual property back to India to benefit from favourable economic policies and increased investor confidence. Some of the key players exercising reverse flipping include, PhonePe, Groww, Razorpay and Flipkart, all of which have embraced this strategy to capitalize on the better opportunities available in India.

Reasons for reverse flipping:

The attractiveness of the Indian market has been bolstered by the Government of India's focused initiatives, reforms, and schemes which have created a conducive environment for startups to thrive and grow within the country. Additionally, India's favourable economic policies, including tax breaks and funding assistance and the institutional support provided by the International Financial Services Centres Authority (**IFSCA**) further encourages startups to consider India as their preferred operational base.

Challenges and Suggestions:

Policies in India need to be further enhanced to attract and retain startups in the country. Investors' discomfort with the policy environment, concerns related to the ability to repatriate their funds at a reasonable tax rate, and taxation of employees have been key factors driving the reverse flipping trend. In conclusion, while the reverse flipping trend presents significant opportunities for Indian startups, it is essential for policymakers to address the existing challenges to foster a more robust and sustainable entrepreneurial ecosystem in India.

IBBI SEEKS TO TIGHTEN THE NOOSE AROUND GUARANTORS OF BANKRUPT FIRMS

The Insolvency and Bankruptcy Board of India (**IBBI**) came up with a discussion paper dated 19 June, 2024 on proposed amendments to the Insolvency Resolution Process for Corporate Process Regulations, 2016 (**CIRP Regulations**).

IBBI is looking to tighten regulations around guarantors of bankrupt firms. IBBI has emphasized that the CIRP Regulations shall be amended to clarify that the resolution plan submitted by the resolution applicant shall not extinguish the rights of the creditors to proceed against guarantors and enforce realisation of guarantees governed through various guarantee agreements. This move is aimed at holding guarantors more accountable and ensuring that they fulfill their obligations when a company they have guaranteed goes bankrupt. The discussion paper was floated as a broader strategy to strengthen the insolvency framework in India and ensure that those who provide guarantees for corporate loans cannot easily escape their obligations when the principal debtor defaults. IBBI has taken precedence from the SC's verdict in the matter of Lalit Kumar Jain vs. Union of India, clarifying that approval of a resolution plan of a corporate debtor does not automatically release its guarantors from their liability.

The Government of Telangana by way of a notification G.O.Ms. No. 5, dated 7 June, 2024 (**Notification**) has exempted all Information Technology Enabled Services (**ITES**) and Information Technology (**IT**) establishments from the provisions of Sections 15 (Opening and closing hours), 16 (Daily and weekly hours of work), 21 (Special provision for young persons), 23 (Special provision for women), and 31 (Other holidays) of the Telangana Shops and Establishments Act, 1988 (**Act**) for a period of 4 years with effect from 30 May 2024, subject to certain conditions which are set out below.

Compliances in lieu of the Act are as follows:

(i) Employees shall not work for more than 48 hours in a week;

(ii) One holiday in a week is mandatory;

(iii) Various security and safety measures for young and women employees;

(iv) Compensatory holidays with wages for working on notified holidays;

(v) Confidentiality of information of women employees;

(vi) Pick up and drop off facilities for employees along with certain security measures;

(vii) Maintaining of integrated registers and filing of integrated returns as per G.O.Ms. No. 23, LET&F Department, dated 24.03.2016, etc.

The Government of Telangana exempts IT & ITeS companies from certain labour law compliances for the next 4 years

Karnataka government exempts information technology/startup companies from certain labour law compliances for the next 5 years

The Government of Karnataka by way of notification no. LD 328 LET 2023 dated June 10, 2024 (**Notification**) has extended the existing exemption for the information technology/startup sector companies in Karnataka from the applicability of Industrial Employment (**Standing Orders**) Act, 1946 (**IESO Act**) for the next 5 years from the date of publication of the Notification.

The exemption is contingent upon each employer adhering to conditions such as establishing an internal committee under the Sexual Harassment of Women at Workplace (**Prevention, Prohibition and Redressal**) Act, 2013, a grievance redressal committee consisting of an equal number of representatives from the employer and employees, informing the jurisdictional Deputy Labour Commissioner and the Commissioner of Labour, Karnataka about any disciplinary actions taken against employees, etc. The Notification does not identify any fines that may arise from non-compliance with the aforementioned conditions. Furthermore, the Notification states that with the implementation of the new Industrial Relations Code, 2020, the exemptions created by this Notification shall cease to exist.

The Ministry of Finance discourages the use of arbitration in contracts of domestic procurement

The Ministry of Finance (**MoF**) has by way of an office memorandum dated 3 June 2024 issued guidelines to Government entities/companies, Central Public Sector Enterprises (**CPSEs**), public sector banks (**PSBs**), etc., discouraging the use of arbitration as the preferred alternate dispute resolution mechanism.

According to the guidelines, MoF has suggested that (i) Arbitration clause should not be automatically/routinely included in procurement contracts/tenders; (ii) Arbitration should be restricted to disputes with a value less than INR 10 crores (**Norm**); (iii) Inclusion of arbitration clause covering disputes with a value more than the Norm should be based on application of mind and approval of the Secretary or Managing Director as the case may be; (iv) Preference to be given to institutional arbitration; (v) Mediation under Mediation Act, 2023 should be encouraged as a dispute resolution mechanism; (vi) Dispute of high value may be referred to a high level committee consisting of retired judges/officers; etc.

Promoting Manufacturing Incubators for Startups

The Department for Promotion of Industry and Internal Trade (**DPIIT**) has been actively promoting the establishment of manufacturing incubators to support startups in the manufacturing sector. The overarching objective is to foster innovation in manufacturing by encouraging collaboration between startups, corporates, and autonomous institutes. Engagement with various stakeholders, including unicorns, large corporates, and industry veterans, highlights the importance of setting up manufacturing incubators and the benefits of active collaboration with manufacturing startups. The DPIIT organized events like the 'Startup Mahakumbh' festival to promote the institutionalization of manufacturing incubators. Various Government of India initiatives like the Startup India, Atal Incubation Centres (**AICs**), National Initiative for Developing and Harnessing Innovations (**NIDHI**) and others offer benefits to eligible entities for availing incubator programs.

Deep Tech Startup Policy

The Ministry of Commerce is preparing to introduce a deep tech startup policy aimed at unlocking long-term funds for companies in the sector. This policy is set to focus on research, development, innovation, intellectual property, and funding access for deep tech startups. It plans to establish a fund of funds to support these companies, including investment in alternative investment funds. The Government of India is seeking inputs from various ministries and departments to finalize the policy, which will provide umbrella guidelines for State Governments and startups in the deep-tech space, aiming to foster growth, innovation, and sustainability in the sector.

DPIIT's 100-Day Action Plan

The Department for Promotion of Industry and Internal Trade (**DPIIT**) in India is focusing on easing early-stage funding for startups, reducing compliance burdens, and lowering logistics costs as part of its 100-day action plan. Efforts are underway to lower the compliance burden through the Jan Vishwas Bill amendments and to identify sectors needing manufacturing incentives. In addition, the plan includes flagship schemes like Open Network for Digital Commerce, PM GatiShakti, and Production-Linked Incentive Schemes.

Empowering MSMEs Through ONDC: A Government Initiative

The Government of India has launched a significant initiative aimed at supporting Micro, Small, and Medium Enterprises (**MSMEs**) to join the Open Network for Digital Commerce (**ONDC**) platform. The scheme, with an outlay of INR 277 crores, is designed to facilitate the onboarding of 5 lakh MSMEs on ONDC. Notably, half of these beneficiary MSMEs are expected to be women-owned enterprises. The scheme's core objective is to enable MSMEs to leverage the ONDC network to commence selling their products online.

Karnataka Cabinet Puts On Hold The Bill Seeking To Implement Reservations In Private Sector Jobs.

The Government of Karnataka had approved the draft State Employment of Local Candidates in Industries Factories and Other Establishments Bill (**Bill**), which mandates the following:

(i) 50% of management jobs;

(ii) 75% of non-management jobs; and

(iii) 100% of Group C and D blue collar jobs to be reserved for Kannadigas.

If the Bill is passed by the State assembly and is notified, the private sector companies will have to employ Kannadigas to the extent of the abovementioned thresholds. Penalty for non-compliance is INR 10,000 to INR 25,000. As per various press reports, the Bill is put on hold amid backlash from stakeholders.

Medical Termination of Pregnancy (Amendment) Rules, 2024

The Ministry of Health and Family Welfare by way of notification dated 10 June 2024 amended the Medical Termination of Pregnancy Rules, 2003 (**Rules**). Under the Rule 3B and in Form E of the Rules, the word 'mental retardation' was substituted with the more inclusive word 'women with intellectual disability'. This change permits women with intellectual disabilities to obtain termination of pregnancy up to 24 weeks of gestation.