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- Circular issued by Securities and Exchange Board of India ("SEBI") on 10.01.2022 regarding framework for operationalizing the gold exchange in India
- Circular issued by Securities and Exchange Board of India ("SEBI") on 31.01.2022 regarding Change in control of asset management company involving scheme of arrangement under Companies Act, 2013.
- Notification issued by Reserve Bank of India ("RBI") on 14.01.2022 regarding registration of Factors (Reserve Bank) Regulations, 2022.
- Notification issued by Reserve Bank of India ("RBI") on 14.01.2022 regarding registration of Assignment of Receivables (Reserve Bank) Regulations, 2022.

Real Estate Brief

- Circular issued by Maharashtra RERA on 14.01.2022 regarding Disclosure of Information in public domain.
- Circular issued by UP RERA on 29.01.2022 regarding extension of timeline for filling QPR (01-Oct-21 to 31-Dec-21).

NCLT Brief

- Ask energy solutions private limited vs. Shri saikrupa sugar and allied industries limited [c.p. (ib) 2390/mb/2019]

Litigation Brief

- Ramprastha Promoters and Developers Pvt Ltd. And Ors v. Union of India and Ors (Decided by the High Court of Punjab and Haryana on 13.01.2022)

Corporate Brief**➤ Circular issued by SEBI regarding Online Mechanisms for Investor Grievance Redressal**

Securities and Exchange Board of India vide its circular dated 05.01.2022 stated that:

- Investors are encouraged to lodge complaints through online mechanisms like SCORES portal and SCORES mobile application.
- To increase the awareness about online grievance redressal all recognized stock exchanges including Commodity Derivatives Exchange/ Depositories/ Clearing Corporations are advised to provide on their website home pages -:
 - ≡ Link to lodge complaint directly
 - ≡ Link to SCORES website/download SCORES app
- All recognized stock exchanges including Commodity Derivatives Exchange/ Depositories/ Clearing Corporations are advised to:
 - ≡ Make required changes to relevant bye-laws, rules and regulations
 - ≡ Communicate to SEBI the status about implementation of this circular through the Monthly Development Report

➤ Circular issued by SEBI regarding framework for operationalizing the gold exchange in India

Securities and Exchange Board of India vide its circular dated 10.01.2022 stated that:

- SEBI Board in its meeting on September 28,2021 approved the framework for Gold Exchange and SEBI (Vault Managers) Regulations, 2021.
- Government of India vide Gazette notification dated 24.12.2021 has declared "electronic gold receipts" as 'securities' under Section 2(h)(ii)(a) of the Securities Contracts (Regulation) Act 1956, and vide Gazette notification dated 31.12.2021, SEBI (Vault Managers) Regulations, 2021, have been notified, establishing the way for operationalizing of Gold Exchange.
- The stock exchanges desirous of trading in electronic gold receipts (EGRs) may apply to SEBI for approval of trading.
- The Circular shall come into force with immediate effect.
- The Exchanges are advised to:
 - ≡ Take steps to make necessary amendments to the relevant byelaws, rules and regulations for the implementation.
 - ≡ Bring the provisions of this circular to the notice of the members of the Exchange and display it on their website.
 - ≡ Communicate to SEBI, the status of the implementation of the provisions of this Circular.

➤ Circular issued by SEBI regarding Change in control of asset management company

Securities and Exchange Board of India vide its circular dated 31.01.2022 stated that:

- Regulation 22(e) of SEBI (Mutual Fund) Regulations, 1996 requires that no change in the control of the asset management company ("AMC") shall be made without prior approval of the trustees and SEBI.
- To streamline the process of providing approval to the proposed change in control of an AMC involving scheme of arrangement requiring sanction of NCLT under Companies Act, 2013, following has been decided:
 - ≡ The application for the approval of proposed change in control of the AMC under Regulation 22(e) of MF Regulations shall be filed with SEBI prior to filing the application with the NCLT.
 - ≡ Upon being satisfied with compliance of the applicable regulatory requirements, an in-principle approval will be granted by SEBI.
 - ≡ The validity of such in-principle approval shall be 3 (three) months from the date of issuance, within which the application shall also be made to NCLT.
- Within 15 days from the date of order of NCLT, applicant shall submit the following documents to SEBI for final approval:
 - ≡ Application for the final approval.
 - ≡ Copy of the NCLT Order approving the scheme.

- ≡ Copy of the approved scheme.
- ≡ Statement explaining modifications in the approved scheme and the reasons.
- ≡ Details of compliance with the conditions mentioned in the in-principle approval granted by SEBI.
- All other provisions mentioned in the para-C (3) of SEBI Circular dated 04.03.2021 regarding the procedure for Change in Control of AMC shall remain unchanged.
- The provisions of this Circular shall be applicable to all the applications for change in control of AMC for which the scheme(s) of arrangement are filed with NCLT on or after 01.03.2022.
- This circular is issued to protect the interests of investors and to regulate, the securities market.

⇒ Notification issued by RBI regarding registration of Factors (Reserve Bank) Regulations, 2022

Reserve Bank of India vide its notification dated 14.01.2022 notified that:

- The RBI, laid down the following regulations pertaining to the manner of granting Certificate of Registration to companies which propose to do factoring business.
- Definitions
 - ≡ "Non-Banking Financial Company – Factor (NBFC-Factor)" means a non - banking financial company as defined in section 45-I(f) of the RBI Act, 1934, which has its principal business as per Regulation 4 and has been granted a Certificate of Registration (COR).
 - ≡ "Non-Banking Financial Company – Investment and Credit Company (NBFC-ICC)" means any company which is a financial institution carrying on as its principal business – asset finance, the providing of finance by making loans or advances for any activity other than its own and the acquisition of securities, and granted a COR under Section 45IA of the Reserve Bank of India Act, 1934 and is not any other category of NBFCs.
- Net Owned Fund (NOF)
 - ≡ Every company seeking registration as NBFC-Factor shall have a minimum Net Owned Fund (NOF) of INR 5 crore.
- Principal Business Criteria (PBC)
 - ≡ An NBFC-Factor shall make sure that its financial assets in the factoring business account for at least fifty per cent of its total assets and its income obtained from factoring business is not less than fifty per cent of its gross income.
- Registration and incidental matters
 - ≡ Every company intending to undertake factoring business shall make an application to the Reserve Bank for grant of COR as NBFC-Factor under the Act and shall

- ensure compliance with the principal business criteria stipulated the Regulation 4 of the said regulations.
- ≡ Any existing NBFC-ICC, intending to undertake factoring business, shall make an application to the Reserve Bank for grant of COR under the Act if it satisfies the following: (a) not accepting or holding public deposits; (b) total assets of ₹1,000 crore and above; (c) meeting the NOF requirement under regulation 3; (d) regulatory compliance.
- ≡ Any existing NBFC-ICC, which does not satisfy the provided conditions but intends to undertake factoring business, shall approach the Reserve Bank for conversion from NBFC-ICC to NBFC-Factor. Such NBFC-ICCs shall comply with the PBC as provided under Regulation 4.
- ≡ Application for such conversion shall be submitted with all supporting documents meant for new registration as NBFC-Factor, together with surrender of original COR to the NBFC-ICC under Section 45IA of the Reserve Bank of India Act, 1934.
- ≡ An entity not registered with the Reserve Bank, may conduct the business of factoring, if it is an entity mentioned in Section 5 of the Factoring Regulation Act, 2011 i.e. a bank or a body corporate established under an Act of Parliament or State Legislature, or a Government Company.
- ≡ NBFC-Factor or eligible NBFC-ICC which has been granted COR by the Reserve Bank under these regulations, shall commence factoring business within six months from the date of grant of COR.

⇒ Notification issued by RBI regarding registration of Assignment of Receivables (Reserve Bank) Regulations, 2022

Reserve Bank of India vide its notification dated 14.01.2022 notified regulations regarding filing of particulars of transactions with the Central Registry by a Trade Receivable Discounting System (TREDS).

- Registration of assignments of receivables transactions
 - ≡ Where any trade receivables are financed through a TReDS; the concerned TReDS on behalf of the Factor shall, within a period of ten days, file with the Central Registry the particulars of (a) Assignment of receivables in favour of a Factor in **Form I**, (b) Satisfaction of any assignment of receivables on full realization of the receivables in **Form II**. Both to be authenticated by the authorized person using a valid electronic signature.
 - ≡ If the particulars referred in the sub-regulation (1) are not filed within the period specified, the Central Registrar may, on being satisfied on an application

made stating the reasons for the delay, allow the said particulars to be filed within additional time not exceeding ten days, upon payment of the fee as prescribed by Gol in Registration of Assignment of Receivables Rules, 2012

- ≡ Every Form for registration of any transaction relating to assignment of receivables or satisfaction of receivables on realisation shall be accompanied by the fee, as prescribed by Gol in Registration of Assignment of Receivables Rules, 2012, to be paid to the Central Registrar.

Real Estate Brief

➤ Circular issued by Maharashtra RERA regarding disclosure of information

Maharashtra RERA vide its circular dated 14.01.2022, stated that as the chairperson of MAHA RERA is vested with the power of superintendence and direction under section 25 regarding the conduct of affairs and as MAHA RERA's purpose is to ensure that the transactions between promoter and allottees are efficient, transparent along with accountability in order to reduce frauds, the following documents would be made available to the public -:

- Form 1 – certificate issued by the architect at the time of the registration of that ongoing project and for any withdrawal of money from the RERA account.
- Form 2 – Certificate issued by project engineer at the registration of the ongoing project and for withdrawal of money from the RERA account
- Form 2A – Certificate issued by the engineer who is the site supervisor, submitted at the end of every financial year till the project is completed.
- Form 4 – Certificate issued by the architect when the project is completed
- Form 5 – Certificate containing the annual report on the statement of accounts issued on the letter head of the Chartered Accountant who is the auditor of the promoters' company
- Disclosures of booked inventory (building wise) in the project
- Report on security interest created in the real estate project from CERSAI. Available on www.cersai.org.in.
- Declaration of Commencement certificate.

➤ Circular issued by UP RERA regarding extension of timeline for filing of QPR

UP RERA vide its circular dated 29.01.2022, stated that due to the rise in Covid-19 spread, the staff and consultant of the office were affected which led to the work being affected. Data Compilation and Certificates are delayed due to the unavailability of Architects, Engineers and Chartered Accountants on time. Therefore, in light of the recent surge in covid, the timeline for the filling of QPR (01-Oct-21 to 31-Dec-21) has been extended till 28.02.2022.

NCL Brief

➤ ASK ENERGY SOLUTIONS PRIVATE LIMITED Vs. SHRI SAIKRUPA SUGAR AND ALLIED INDUSTRIES LIMITED [C.P. (IB) 2390/MB/2019]

BRIEF FACTUAL BACKGROUND

After the initiation of the Corporate Insolvency Resolution Process ("CIRP") of the corporate debtor under the Insolvency & Bankruptcy Code, 2016 ("Code"), a Settlement Agreement dated 04.09.2021 was executed between the corporate debtor and the operational creditor for settling the dues of the latter. Immediately, upon receiving Form FA, the Interim Resolution Professional ("IRP") filed an application for withdrawal of the CIRP proceedings of the corporate debtor. The Committee of Creditors ("CoC") in this case was constituted after the application seeking withdrawal of the CIRP proceedings of the Corporate Debtor was filed and the first meeting of the CoC was concluded on 29.09.2021.

ISSUE FOR CONSIDERATION

Whether the application filed under Section 12A of the Code could be allowed after the constitution of the CoC?

OBSERVATIONS AND FINDINGS OF THE ADJUDICATING AUTHORITY

The National Company Law Tribunal ("Adjudicating Authority") noted that it is relevant to look at Section 12 of the Code and Regulation 30A(3) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations").

The Adjudicating Authority also referred to the decision of the Hon'ble Supreme Court in *Swiss Ribbons Pvt Ltd and Anrs v/s Union of India*¹ and the decision of the National Company Law Appellate Tribunal ("NCLAT") in *K C Sanjeev v/s. Mr. Easwara Pillai Kesavan Nair (IRP) and Ors*² wherein it was held that the IRP is duty-bound to place the application for withdrawal within three days of its receipt. It was also held that considering the judgment in *Swiss Ribbons(supra)*, the date of filing of the

¹ *Swiss Ribbons Pvt Ltd and Anrs v/s Union of India*, WP (Civil) 99 of 2018.

² *K C Sanjeev v/s. Mr. Easwara Pillai Kesavan Nair (IRP) and Ors*, Company Appeal (AT) (Insolvency) No. 1427 of 2020.

application for withdrawal of the CIRP proceedings to the Adjudicating Authority was material.

In the present case, the IRP was informed about the settlement agreement executed between the Operational Creditor and the suspended director of the Corporate Debtor on 04.09.2021. The CoC was constituted post-filing the application of withdrawal. Therefore, the requirement of obtaining 90 percent approval of the CoC under Section 12A of the Code was not required as the Application for withdrawal had already been filed before the constitution of CoC.

It was observed that at any stage where the CoC is not yet constituted, a party can approach the Adjudicating Authority directly, and the Adjudicating Authority in exercise of the inherent powers under Rule 11 of National Company Law Tribunal Rules, 2016 may allow or disallow an application for withdrawal of the CIRP proceedings. It was further observed that the claim and rights of other creditors as it stood would not be prejudiced/altered by withdrawal of the CIRP proceedings of the Corporate Debtor.

Therefore, the Adjudicating Authority was of the opinion that no prejudice would be caused to the financial creditor if the CIRP proceedings of the Corporate Debtor was withdrawn. It was further stated that the former's rights as a creditor would no way be altered/ affected by the withdrawal of CIRP proceedings of the Corporate Debtor. Thus, the Adjudicating Authority allowed withdrawal of the CIRP proceedings of the Corporate Debtor under Section 12A of the Code.

Litigation Brief

➤ **The Punjab and Haryana High Court clarified that appeals against Real Estate Regulatory Authority orders may only be heard by the Real Estate Appellate Tribunal if they comply with the "pre-deposit" condition, which was not "onerous."**

IN THE MATTER OF: Ramprastha Promoters and Developers Pvt Ltd. And Ors v. Union of India and Ors (Decided by the High Court of Punjab and Haryana on 13.01.2022)

Issues:

- Which authority will have the jurisdiction to direct refund of the amount with/without of interest under to the allottee under Sections 12, 14, 18 and 19 of the Act?
- What is the power of High Court under Article 226 of the Constitution of India to relax the condition of pre-deposit under Section 43(5) of RERA Act, 2016?

Facts:

- A group of writ petitions addressing similar legal issues were filed by the companies in response to the Haryana Real Estate Regulatory Authority's orders.
- The petitioners argued that even if the Act of 2016 contains a legislative remedy of appeal, it Section 43(5) of the Act of 2016 requires a pre-deposit before such an appeal at the promoter's request can be entertained. The statutory requirements offer no room for the Appellate Tribunal to exercise any discretion. The requirement of a pre-deposit is onerous, and it makes it extremely difficult for the petitioner to pursue the statutory remedy of appeal. It was also argued that the Authority mistakenly noted the complaint as being filed under Section 31 of the Act of 2016, when it should have been filed under Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and that the complaint could only be heard by the Adjudicating Officer and not by the Authority. As a result, the Authority acted outside of its jurisdiction in hearing the complaint.
- Under Section 31 of the 2016 Act, the Supreme Court has already decided on the Authority's power to direct refund of the amount, interest on the refund amount, and directing payment of interest for delayed delivery of possession or penalty and interest thereon, all of which are within the Authority's jurisdiction. As a result, any provision of the Rules to the contrary would be meaningless. The Supreme Court having ruled on the Authority's competence and the maintainability of the complaint before the Authority under Section 31 of the Act, it was submitted there is no need to discuss the scope of the complaint's submission under Rules 28 and/or 29 of the Rules of 2017.

Court's Observation:

- Section 43 (5) of the Real Estate (Regulatory and Development) Act, clearly states that the person who is aggrieved by any decision or order issued by the

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Authority or an adjudicating officer under this Act may file an appeal with the Appellate Tribunal having jurisdiction over the matter: Provided, however, that where a promoter files an appeal with the Appellate Tribunal, it will not be entertained unless the promoter first deposits with the Appellate Tribunal at least thirty percent of the penalty, or such higher percentage as may be deducted.

- Referring to the above stated section, the Bench stated that the Real Estate Regulatory Authority (RERA) will have authority to hear a complaint from an allottee seeking a refund of the amount paid plus interest, as well as payment of interest on late delivery of possession and/or penalty and interest thereon.

- The Court observed that Section 43(5) does not supersede the High Court's jurisdiction under Article 226 of the Constitution. There is no bar to the High Court for using its jurisdiction in an appropriate case to alter, modify, or waive the requirements of an obligatory pre-deposit. The bench further added that the powers conferred on it under Article 226 could be used to provide complete justice. The constitutional powers granted to the Writ Court could not be curtailed by a statutory provision in the Act.

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