

**Highlights:****Corporate Brief**

- *MCA notification on the Companies (Appointment and Qualification of Directors) Rules, 2014.*
- *SEBI circular on streamlining the procedure required for seeking prior approval for change in control of Portfolio Managers.*
- *SEBI circular regarding strengthening the Investor Grievance Redressal Mechanism.*
- *RBI notification on provision of service of doorstep banking.*
- *RBI notification on discontinuation of return under Foreign Exchange Management Act, 1999.*
- *MCA notification on Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.*
- *MCA notification on Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2022.*
- *SEBI circular regarding disclosure of shareholding.*

**RERA Brief**

- *Order No. 30/2022 MahaRERA/Secy/File No. 27/136/2022 dated 03.06.2022 regarding the submission of proforma of Allotment letter and Agreement for sale at the time of registration in compliance with Clause (g) of Sub-section 2 of Section 4 of RERA.*
- *Public Notice No. K-RERA/T/102/2020 dated 8.06.2022 regarding the granting of registration for real estate projects with respect to submission of registration application.*
- *Notice No. 384/K-RERA 12022 dated 10.06.2022 regarding the filing of complaints and payment of fee through online registration*
- *Order No. 809/KRERA/2022 dated 23.06.2022 issued by Kerala Real Estate Regulatory Authority in regard to the procedure for filing application for setting aside ex-parte orders, application for restoration of complaints, petitions for restoration of orders and other instructions*
- *Notice dated 24.06.2022 issued by the Real Estate Regulatory Authority for the NCT of Delhi regarding holding physical hearings.*

**NCLT Brief**

- *CASE ANALYSIS: MAHENDRA KUMAR JAJODIA ETC. VS. STATE BANK OF INDIA [CIVIL APPEAL NO. 1871-1872 OF 2022]*

**Litigation Brief**

- *A party cannot claim post-award interim relief under Section 9 of the Arbitration and Conciliation Act, 1996 ("the Act") that is beyond the final relief granted by the Arbitrator*

the effect that in case the person seeking appointment as a director is a national of a country sharing its land border with India, such person is mandated to attach necessary security clearance from the Ministry of Home Affairs, Government of India along with the consent to act as a director in Form DIR-2.

Additionally, in Rule 10, sub rule (1) of the 2014 Rules, a proviso was inserted stating that no application number on submission of Form No. DIR-3 (i.e., application for allotment of Director Identification Number) shall be generated in case the applicant is a national of a country sharing land border with India unless such person furnishes necessary security clearance from the Ministry of Home Affairs, Government of India along with Form No. DIR-3.

The aforesaid changes were reflected in the Annexure to the 2014 Rules in Form DIR-2 and Form No. DIR-3 by adding additional paragraphs with checkboxes to confirm whether necessary security clearance from the Ministry of Home Affairs is required for a particular application or not.

➤ **Vide Circular No. SEBI/HO/IMD-1/DOF1/P/CIR/2022/77 dated 02.06.2022 of Securities and Exchange Board of India ("SEBI"):**

It was notified that:

- **Streamlining the procedure required for seeking prior approval for change in control of Portfolio Managers**

The abovementioned circular superseded the circular of SEBI bearing number SEBI/HO/IMD/IMD-1/DOF1/P/CIR/2021/564 dated 12.05.2021 which laid down the procedure for obtaining approval in case of change in control of Portfolio Managers. The 2022 circular added the requirement of an online application to be made by the Portfolio Manager to SEBI through their intermediary portal for obtaining prior approval. The prior approval granted by SEBI will be valid for 6 (six) months from the date of grant of approval. Applications for fresh registration after the change in control has been effected should be made within 6 (six) months from the date of obtaining approval. The circular further states that clients should be informed about the proposed change in management before it is effected, and to provide an exit option to them without any exit load within a period of minimum 30 (thirty) days from the date of such communication. With respect to matters requiring the sanction of National Company Law Tribunal (NCLT), the circular mandates that the application seeking prior approval for the proposed change must be filed with SEBI before it is filed with NCLT. The in-principle approval granted by SEBI will be valid for 3 (three) months within which the application must be presented to NCLT. To attain the

**Corporate Brief**

➤ **Vide Notification No. CG-DL-E-01062022-236214, dated 1.06.2022 of the Ministry of Corporate Affairs ("MCA"):**

It was notified that:

- **Amendment of the Companies (Appointment and Qualification of Directors) Rules, 2014 ("2014 Rules"), vide the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 ("2022 Amendment Rules")**

By virtue of the said 2022 Amendment Rules, after Proviso to Rule 8 of the 2014 Rules, an additional proviso was inserted to

approval by SEBI, an online application through the SEBI intermediary portal must be submitted by the Portfolio Manager within 15 (fifteen) days from the date of order of NCLT.

➤ **Vide Circular No. SEBI/HO/MIRSD/DOS3/P/CIR/2022/78 dated 03.06.2022 of Securities and Exchange Board of India ("SEBI")**

It was notified that:

- **SEBI amended circular bearing number SEBI/HO/MIRSD/DOC/CIR/P/2020/226 dated 06.11.2020 to further strengthen the Investor Grievance Redressal Mechanism**

SEBI clarified that the sole arbitrator or panel of arbitrators appointed by the stock exchange would be deemed to have the competence to rule on the jurisdiction of any claim relating to disputes between a client and a stock broker that arises out of transactions in stock exchange. It also modified the timeframe to avail the arbitration mechanism of stock exchange in case a complainant is dissatisfied with the recommendation of the Investor Grievance Redressal Committee ("IGRC") and changed it from the erstwhile 6 (six) months to 3 (three) months from the date of the IGRC recommendation. The circular clarified that this time period of 3 (three) months is only applicable where the IGRC recommendation is challenged, not otherwise.

➤ **Vide Notification No. DOR.REG.No.45/19.51.052/2022-23 dated 08.06.2022 of Reserve Bank of India ("RBI")**

It was notified that:

- **Procurement of prior approval from RBI by Primary (Urban) Co-operative Banks (UCBs) to undertake provision of service of doorstep banking**

RBI has allowed financially sound and well managed (FSWM) Urban Co-operative Banks (UCBs) to provide doorstep banking services on a voluntary basis and have provided certain guidelines for the same. The guidelines relate to the services they can offer to customers at their doorstep, including but not limited to pick up cash and instruments against receipt, delivery of demand drafts against withdrawal from account, etc. Eligible UCBs may formulate a scheme in order to render the service of doorstep banking with the approval of their respective Boards. Non-FSWM UCBs are, however, required to seek prior approval from the concerned Regional Office of Department of Supervision of RBI to provide doorstep banking services. RBI has further laid down the guidelines with regard to mode of delivery, delivery process, risk management, transparency and grievance redressal mechanism which the UCBs have to necessarily comply.

➤ **Vide A.P. (DIR Series) Circular No. 05 dated 09.06.2022 of Reserve Bank of India ("RBI")**

It was notified regarding:

- **Discontinuation of Return under Foreign Exchange Management Act, 1999**

RBI discontinued the return "Details of Guarantees Availed and Invoked from Non-Resident Entities" which details the statements for reporting of non-resident guarantees issued and invoked in respect of fund and non-fund based facilities between two persons resident in India, with effect from the quarter ending June 2022.

➤ **Vide Notification No. CG-DL-E-09062022-236437, dated 09.06.2022, of the Ministry of Corporate Affairs ("MCA")**

It was notified that:

- **Amendment of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 ("2016 Rules"), vide the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2022 ("2022 Amendment Rules")**

The 2022 Amendment Rules amended Rule 4 of the 2016 Rules by adding sub-rule (4) which contains that if the Registrar finds the application made in Form STK-2 (i.e., application by company to ROC for removing its name from Register of Companies) or any document annexed within it defective or incomplete and which requires additional information, the Registrar shall request the applicant to correct such errors and re-submit the complete form within 15 (fifteen) days. Failure to abide by the same, would invalidate the form in the electronic record. It further stated that after re-submission, if the Registrar yet again finds the Form to be defective or incomplete, an additional 15 (fifteen) days must be granted to remove the defects therein or to complete the Form, failing which the Form shall be invalidated in the electronic record. The 2022 Amendment Rules further updated Form Number STK - 1 (Notice by Registrar for removal of name of a company from the register of companies), Form Number STK - 5 (Public Notice) and Form Number STK - 5A (Public Notice).

➤ **Vide Notification No. CG-DL-E-10062022-236474, dated 10.06.2022, of the Ministry of Corporate Affairs ("MCA"):**

It was notified that:

- **Amendment of the Companies (Appointment and Qualification of Directors) Rules, 2014 ("2014 Rules") vide the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2022 ("2022 Amendment Rules").**

Vide the 2022 Amendment Rules, sub-rule (5) has been added after sub-rule (4) in Rule 6 in the 2014 Rules. It provides that

the individuals whose names have been removed from the databank under sub-rule (4) may apply for its restoration by paying fee of INR 1,000/- (Rupees One Thousand only). Such restoration may be granted by the Indian Institute of Corporate Affairs subject to fulfillment of 2 (two) conditions- (i) such person's name shall be shown in a different restored category for an year after restoration during which the online proficiency self-assessment test is required to be completed and upon succession completion of such test, the name of such person shall be included in the databank and the fees paid shall be considered valid; (ii) in case the individual fails the test, his/ her name will be removed from the databank and such individual would be required to file a fresh application in order to include the name in the databank.

➤ **Vide Circular No. SEBI/HO/CFD/PoD-1/CIR/2022/92, dated 30.06.2022, of Securities and Exchange Board of India ("SEBI"):**

It was notified that:

• **Modification of SEBI circular bearing number CIR/CFD/CMD/13/2105 dated 30.11.2015**

The aforesaid SEBI circular dated 30.06.2022 modified the SEBI circular dated 30.11.2015 in as much as it mandated disclosure of names of shareholders holding 1% (one percent) or more than 1% (one percent) of shares of the listed entity; and the names of the shareholders who are persons acting in concern (if any) are to be separately disclosed. The circular dated 30.06.2022 further modified the format of Table III (Statement showing shareholding pattern of the Public shareholder) and Table IV (Statement showing shareholding pattern of the Non Promoter-Non Public shareholder).

## Real Estate Brief

➤ **Order No. 30/2022 MahaRERA/Secy/File No. 27/136/2022 dated 03.06.2022 regarding the submission of Proforma of Allotment Letter and Agreement for sale at the time of registration in compliance with Clause (g) of Sub-section 2 of Section 4 of RERA.**

The Maharashtra RERA issued an order dated 03.06.2022 regarding the submission of Proforma of Allotment Letter and Agreement for sale at the time of registration in compliance with Clause (g) of Sub-section 2 of Section 4 of RERA. It directed that the proforma of the letter to be signed by the promoters with the allottees shall be in accordance with model allotment letter as approved by the Authority which provides the cancellation details, deduction amount in case the promoter chooses to cancel as well as giving them the authority to increase the number of days of cancellation and decrease the deduction amount. It also mentions that the proforma must be signed with the allottees as per Annexure A of Rule 10 of the Rules modified and adapted on a case to case basis, and deviations from the Rule

must be highlighted in a different colour. Non-compliance of these rules would subject the application to be rejected as per the proviso of Section 5 of the Act.

➤ **Public Notice No. K-RERA/T/102/2020 dated 8.06.2022 regarding the granting of registration for real estate projects with respect to submission of registration application:**

The Kerala Real Estate Regulatory Authority vide Public Notice No. K-RERA/T/102/2020 dated 08.06.2022 stated that the middle agents dealing with RERA registration application were faulting in dealing with the RERA registration applications by not properly filing them or responding to queries. The promoters are directed to take serious attention and submit timely complete applications to avoid delays in registering the project with K-RERA.

➤ **Notice No. 384/K-RERA 12022 dated 10.06.2022 regarding the filing of Complaints and payment of fee through online registration:**

The Kerala Real Estate Regulatory Authority issued a Public Notice No. 384/K-RERA 12022 dated 10.06.2022 that since that the web portal of the Authority became operational; in accordance with Chapter V, Regulation 6(3) of Kerala- RERA, 13<sup>th</sup> June onwards, all complaints (both Form M and N) and payment of fee shall be made through the web portal. While filing an online complaint, one set of physical copy of complaint including supporting documents verified and signed by the complainant shall mandatorily be filed before the Authority. In case of an unregistered project, sufficient copies with a stamped envelope with the acknowledgment card properly tagged for serving notice shall also be produced. All annexures shall be legibly marked and numbered with bold letters.

➤ **Order No. 809/KRERA/2022 dated 23.06.2022 issued by Kerala Real Estate Regulatory Authority in regard to the procedure for filing application for setting aside ex-parte orders, application for restoration of complaints, petitions for restoration of orders and other instructions:**

The Kerala Real Estate Regulatory Authority issued directions vide Order No. 809/KRERA/2022 dated 23.06.2022 in the matter of setting aside ex-parte orders and in restoration of complaints dismissed for default, stating that such applications can be filed by the affected party upon payment of a standard fee of Rs. 5000 and are granted only in special cases where the applicant is able to prove that the hearing notice was not duly served or not in accordance with the guidelines. No such application may be allowed in respect of any order against which an appeal has been preferred under the Act. Absence of the applicant without due cause would be put to a strict test except for force majeure events like the COVID Pandemic

where the Authority can take judicial notice. Additional guidelines such as who can file the complaint and the different documents to be submitted by different authorities such as if the application is filed by a registered association, a copy of certificate of registration shall be annexed with the complaint; if complainant is represented through an advocate, vakalath shall be attached; if by power of attorney holder, original power of attorney shall be produced for verification.

➤ **Notice dated 24.06.2022 issued by the Real Estate Regulatory Authority for the NCT of Delhi regarding holding physical hearings:**

The Real Estate Regulatory Authority for the NCT of Delhi issued a physical hearing notice dated 24.06.2022 that it will conduct all hearings in a physical mode only in the RERA office from 01.07.2022.

## NCLT Brief

➤ **CASE ANALYSIS: MAHENDRA KUMAR JAJODIA ETC. VS. STATE BANK OF INDIA [CIVIL APPEAL NO. 1871-1872 OF 2022]**

The captioned Civil Appeals were filed before the Hon'ble Supreme Court against the Order dated 27.01.2022 of the National Company Law Appellate Tribunal ("NCLAT") in Company Appeal (AT) (Ins) No. 60 of 2022 and 61 of 2022, which addressed one issue which is as follows:

- i) Whether insolvency proceedings under Section 95 of the Insolvency & Bankruptcy Code, 2016 ("the Code") can be initiated even if no proceeding is pending against the corporate debtor before National Company Law Tribunal ("NCLT")?

### I. BRIEF FACTS:

The State Bank of India ("SBI") had filed an application under Section 95(1) of the Code seeking initiation of Corporate Insolvency Resolution Process ("CIRP") proceedings against the guarantor.

The application filed under Section 95(1) of the Code by SBI was rejected by the NCLT vide Order dated 05.10.2021 on the ground that it was premature. The NCLT premised the said order on the fact that as on date, no CIRP proceedings or liquidation proceedings was pending against the corporate debtor because a resolution plan for the Corporate Debtor was already approved.

The NCLT had held that under Section 60(2) of the Code for an insolvency resolution process to be initiated against the guarantor there must be CIRP proceedings or liquidation process that must be pending against the principal borrower / corporate debtor. Since, that requirement was not satisfied in the present case, the application filed under Section 95(1) of the Code was premature and hence was dismissed.

### II. PROCEEDINGS BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL:

The NCLAT went through Section 60(1) and Section 60(2) of the Code which is also being reproduced herein below for ready reference:

"Section 60: Adjudicating Authority for corporate persons.

*60. (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate persons located.*

*(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or [liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor] shall be filed before such National Company Law Tribunal."*

The NCLAT observed that Section 60(1) of the Code provides that the adjudicating authority for the corporate persons including corporate debtors and personal guarantors shall be the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located.

Further, it was observed that Section 60(2) of the Code requires that where a CIRP or liquidation process of the corporate debtor is pending before 'a' NCLT, the application relating to CIRP of the corporate guarantor or personal guarantor, as the case may be, of such corporate debtor is required to be filed before 'such' NCLT.

The NCLAT clarified that the purpose and object of Section 60(2) of the Code is that when proceedings are pending in 'a' NCLT, any proceeding against Corporate Guarantor should also be filed before 'such' NCLT.

The NCLAT observed that when a particular case is not covered under Section 60(2) of the Code, under Section 60(2) of the Code, an application can be filed in the NCLT having territorial jurisdiction over the place where the registered office of corporate Person is located.

The idea is that both proceedings be entertained by one and the same NCLT. Hence, Section 60(2) of the Code does not in any way prohibit filing of proceedings under Section 95 of the Code even if no proceeding is pending before the NCLT. The NCLAT observed that this was to avoid two different NCLT to take up CIRP of corporate guarantor.

Hence, the NCLAT was of the view that the NCLT erred in holding that since no CIRP or liquidation proceeding of the Corporate Debtor was pending, the application filed under Section 95(1) of the Code by the appellant was not maintainable. Therefore, the NCLAT set aside the Order dated 05th October, 2021 passed by the NCLT and revived the application filed by the appellant under Section 95(1) of the Code before the NCLT.

### III. PROCEEDINGS BEFORE THE HONBLE SUPREME COURT OF INDIA:

Against the Order dated Order dated 27.01.2022 of the NCLAT, Company Appeal (AT) (Ins) No. 60 of 2022 and 61 of 2022 were preferred by the appellant.

Basis the submissions of the appellants and the respondents, the Hon'ble Supreme Court held that there was no cogent reason to entertain the appeals and hence, the impugned order dated 27.01.2022 of the NCLAT did not warrant any interference.

## Litigation Brief

**IN THE MATTER OF:** Zostel Hospitality Private Limited vs. Oravel Stays Private Limited and Anr. (Pronounced by the Hon'ble High Court of Delhi on 14.02.2022 in OMP (I) (Comm.) No. 290 of 2021

### Facts:

1. Zostel Hospitality Private Limited ("**Zostel**") and one of its investor-shareholders Ortis Ventures Private Limited ("**Ortis**") entered into a contract (reduced into writing in the form of a Term Sheet dated 26.11.2015) with Oravel Stays Private Limited ("**Oravel**") by way of which Zostel was required to transfer its hotel business to Oravel and Ortis against which Oravel was to, *inter alia*, transfer to Zostel, its identified assets including 7% of its shareholding.
2. Owing to Oravel's defaults, Zostel was unable to acquire the said identified assets and initiated arbitration proceedings against Oravel. The matter was arbitrated and culminated into an Arbitral Award dated 06.03.2021 ("**Award**"). Thereafter, Zostel petitioned the Delhi High Court, invoking Section 9 of the Arbitration and Conciliation Act, 1996 ("**the Act**"), to ensure that Zostel is able to enjoy the "fruits" of the arbitral proceeding" and that the award is not rendered unenforceable.
3. Zostel had sought the interim protection of restraining Oravel from floating the IPO as the Contract between the parties was premised on the basis that Oravel is a pre-IPO Company. And, therefore, if the IPO is floated, Zostel would be unable to obtain the specific performance of the Term Sheet which provided 7% of the transfer of Oravel's shareholding to Zostel. This would result in the Award becoming worthless.

### Issues:

1. Whether party can claim post-award interim relief under Section 9 of the Act that is beyond the final relief granted by an Arbitrator in the Arbitral Award?
2. Whether the Courts can revisit either the findings or the conclusions given by an Arbitrator in its Arbitral Award?

### Court's Observations & Findings:

- The Delhi High Court, proceeding on the premise that the Arbitral Award is valid and binding on the parties, has taken note of the following key aspects:
  - a. While Zostel had transferred its hotel business to Oravel, Oravel failed to fulfill its obligations under the Term Sheet due to a certain objection raised by Venture Nursery (one of the shareholders of Oravel). And, thus, the "Definitive Agreements" envisaged under the Term Sheet to give effect to the said transfer from Oravel to Zostel could not be executed.
  - b. The Arbitral Award found consensus *ad idem* (complete agreement) regarding transfer of Zostel's hotel business to Oravel in terms of the Term Sheet but found it lacking Draft Definitive Agreements that were circulated, but never executed between the parties.
  - c. The Arbitral Award did not direct the specific performance but merely recognized the right and entitlement of Zostel to take appropriate proceedings for specific performance of the Term Sheet. The Arbitral Award is not a decree for execution of the Definitive Agreements but merely a decree to enable Zostel to take appropriate steps for execution of the Definitive Agreements.
- Hon'ble Court placed reliance on *Dirk India Pvt Ltd v. Maharashtra State Power Generation Co. Ltd*<sup>1</sup>, which was subsequently approved by the Supreme Court having being cited in *Hindustan Construction Co Ltd v. U.O.I.*<sup>2</sup> to delineate the scope of Section 9 of the Act when invoked at a post-award stage. This facet of Section 9 is for the protection intended to safeguard the fruits of an arbitral proceedings until the eventual enforcement of the award. In other words, it only serves to protect the "fruits" of the arbitral award and ensures that the award is not rendered incapable.
- The Delhi High Court then analyzed the "fruits" that can be derived from the Arbitral Award in question and observed that the Arbitral Award provided Zostel with a mere prerogative to specific performance of Oravel's obligations under the Term Sheet and nothing further. It was further observed that the Arbitral Award did not direct Oravel to

immediately hand over the assets as it was to transfer to Zostel on the "closing" of the Term Sheet but merely directed Zostel to take steps towards making Oravel fulfil its obligations as per the Term Sheet.

- ❑ Further the Delhi High Court confirmed the position in *Mayawanti v Kaushalya Devi*<sup>3</sup> regarding the requirement of "complete consensus *ad idem*" for securing the remedy of specific performance. The Supreme Court in *Mayawanti* case had held that if the terms of an agreement are ambiguous, and the parties are not at *ad idem*, the contract ceases to exist in the first place, and consequently, there can be no scope for claiming the remedy of specific performance. It observed that, contrary to Zostel's claim that the parties were on the verge of agreement, the terms of the draft Definitive Agreements were clearly not agreed upon in the present case.
- ❑ It was finally held that the Courts have limited jurisdiction under Section 9 of the Act and cannot revisit either the findings or the conclusions given by an Arbitrator in its Arbitral Award. Therefore, a party cannot claim post-award interim relief under Section 9 of the Act that is beyond the final relief granted by an Arbitrator in the Arbitral Award. Accordingly, the petition filed by Zostel for injuncting Oravel from making the IPO was dismissed.

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<sup>3</sup> (2006) 3 SCC 1