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Highlights:**Corporate Brief**

- SEBI circular on disclosures in abridged prospectus and front cover page of offer document.
- SEBI circular on Guidelines on Accounting with respect to Indian Accounting Standards (IND AS).
- MCA notification for Companies (Accounts) Amendment Rules, 2022.
- MCA notification for LLP (Amendment) Rules, 2022.
- Reserve Bank of India press release on Monetary Policy Statement, 2021-22 Resolution of the Monetary Policy Committee.
- RBI press release on Master Direction – Reserve Bank of India (Credit Derivatives) Directions, 2022.
- RBI notification for Transactions in Credit Default Swap (CDS) by Foreign Portfolio Investors – Operational Instructions.
- Reserve Bank of India notification for 'Voluntary Retention Route' (VRR) for Foreign Portfolio Investors (FPIs) investment in debt.
- Reserve Bank of India notification with regard to implementation of core financial services solution by NBFCs.

RERA Brief

- Order issued by Kerala RERA on 04.02.2022 regarding extension of registration of projects.
- Notice issued by Bihar RERA on 07.02.2022 regarding inspection of areas by an authorized officer.
- Notification issued by Karnataka RERA on 10.02.2022 regarding National Lok Adalat date.
- Notice issued by Bihar RERA on 18.02.2022 regarding documents submitted without case number.
- Notification issued by Karnataka RERA on 21.02.2022 regarding national Lok Adalat.
- Public Notice issued by Kerala RERA on 22.02.2022 regarding registration of real estate projects.

NCLT Brief

- *Telha Sareshwala Vs. Parsoli Motors Works Pvt. Ltd & Ors. [Company Appeal (AT) (Ins) No. 1115 of 2020].*

Corporate Brief**⇒ Vide Circular No. "SEBI/ HO/ CFD/ SSEP/ CIR/ P/2022/14" dated 04.02.2022, of Securities and Exchange Board of India, ('SEBI'):**

SEBI has published the disclosures to be made on the abridged prospectus and the front cover page of offer document. The new framework will be applicable for all issues opening after February 4. SEBI intends to ensure better clarity and consistency in disclosures and to make available crucial information in the abridged prospectus. Under the revised format, a company will have to disclose about name of the promoter, details of offer to public, types of issue, fresh issue and offer for sale (OFS) component, total issue size and share reservations details on the front page of the abridged prospectus.

Also, the company is required to make disclosure about details of OFS by promoter, promoter group and other shareholders.

In the abridged prospectus containing salient features of the Red Herring Prospectus (RHP), the company will have to disclose about price band and minimum bid lot under the revised format. Also, the issuer company has to disclose about indicative timelines for opening and closing of the issue, initiation of refunds, credit of equity shares to demat accounts of allottees and commencement of trading of equity shares among others.

⇒ Vide Circular No. "SEBI/HO/IMD-II/DOF8/P/CIR/2022/12" dated 04.02.2022, of Securities and Exchange Board of India, ('SEBI'):

In a circular addressed to all mutual funds, asset management companies, trustee companies, and Association of Mutual Fund in India, SEBI has issued new accounting guidelines to ensure Indian Accounting Standards and the provision shall come into effect from 01st April, 2023.

⇒ Vide Notification no. "F. No. 1/19/2013-CL-V-Part III" dated 11.02.2022, of Ministry of Corporate Affairs, ('MCA'):

MCA through a gazette notification has updated the Company (Accounts) Rules, 2014. The said notification inserts a rule 12(1B), which provides for a new requirement from financial year (FY) 2020-21 and onwards, in the case of every company, covered under Section 135(1), to furnish its Annual Corporate Social Responsibility (CSR) Report in Form CSR-2 to the ROC, as an addendum to Form AOC-4 and the last date for filing of CSR-2 for FY 2020-21 is 31/03/2022.

⇒ Vide notification No. "F. No. 01/03/2021-CL.V-Part III" dated 11.02.2022, of Ministry of Corporate Affairs, ('MCA'):

The Ministry of Corporate Affairs introduced an amendment to the LLP Rules, 2009 vide a gazette notification. The said amendment introduces new rules regarding allotment of new name to an existing LLP and adjudication of penalties, appeal against order of the adjudicating officer and disposal of such appeal by the Regional Director among others. The new rules will come into effect from 1 April 2022.

⇒ Vide Press Release "2021-2022/1693" dated 10.02.2022, of Reserve Bank of India, ('RBI'):

Reserve Bank of India, vide a press release, has issued the Monetary Policy Statement. The RBI, on the basis of the assessment of the macroeconomic conditions of the country, has decided to:

- Retain the policy repo rate under liquidity adjustment facility (LAF) at 4.0%
- Retain the reverse repo rate under LAF at 3.35%
- The bank rate and the marginal standing facility (MSF) shall be 4.25%

⇒ Vide Master Direction No. "RBI/2021-22/88" dated 10.02.2022, of Reserve Bank of India, ('RBI'):

RBI, vide a press release had announced the draft directions for credit derivative operations. Based on the feedback from the stakeholders and eligible participants, RBI has finalised the Master Direction Reserve Bank of India (Credit Derivatives) Directions, 2022, published

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vide a notification. The new master directions shall apply to all credit derivative transactions undertaken in OTC (over the counter) markets and on all recognized stock exchanges in India. The directions are set to come into force from 09th May, 2022.

➤ **Vide Circular No. “RBI/2021-22/155” dated 10.02.2022, of Reserve Bank of India, (‘RBI’):**

RBI published the Operational Instructions for transactions in credit default swap by foreign investors. Vide this notification, foreign portfolio investors (“FPI”) shall be eligible to be deemed as non-retail users and are allowed to trade (buy and sell) CDS protection under the Credit Derivatives Directions. The sale of CDS by FPIs shall also be limited to 5% of outstanding stocks of corporate bonds, the rates of which shall be revised by the RBI from time to time. Once the limit is utilised, the FPIs shall not sell any CDS and the same shall be released upon the exit of the CDS position by the FPIs.

Further, any debt instrument received and bought by FPIs in the form of deliverable obligation in physical settlement of CDS contracts shall be deemed under the investment limits for corporate bonds.

➤ **Vide Circular “RBI/2021-22/156” dated 10.02.2022, of Reserve Bank of India, (‘RBI’)**

The RBI has introduced voluntary retention route (VRR) for foreign portfolio investors where the VRR limit is increased to INR 2,50,000 crore from INR 1,50,000 crore.

➤ **Vide Notification No. “RBI/2021-22/175” dated 23.02.2022, of Reserve Bank of India, (‘RBI’):**

RBI has mandated that non-banking financial companies (NBFCs), middle and upper layer, having ten (10) and more ‘Fixed point service delivery units’ as on October 1, 2022 will have to implement Core Financial Services Solution (CFSS), akin to the Core Banking Solution (CBS) adopted by banks, by September 30, 2025. In the case of NBFC Base Layer and NBFC middle and upper ‘layers with fewer than 10 ‘Fixed point service delivery units’, implementation of CFSS is not mandatory. However, they may consider implementation of a CFSS for their own benefit.

Further, a quarterly progress report on implementation of CFSS, along with various milestones shall be furnished by the NBFCs concerned to RBI starting from the quarter ending March 31, 2023.

Real Estate Brief

➤ **Order issued by Kerala RERA regarding extension of registration of projects:**

Kerala RERA, vide its order dated 04.02.2022 has resolved the following:

- RERA Act 2016 provides for the extension of registration of project for a period of 1 (one) year on the grounds of *force majeure*.
- The projects which are not completed even after availing such above-mentioned extension of 1 (one) year, may apply for further extension. The Authority shall have the discretion to either grant further extension of registration beyond 1 (one) year in deserving cases or oust the promoter and find alternative arrangements to complete the development work in such projects.
- The following directions are issued for processing extension of registration beyond such 1 (one) year extension due to *force majeure*:
 - Promoter shall apply for extension clearly stating the exceptional reasons due to which the project could not be completed within the extended period of 1 (one) year of *force majeure*.
 - The application shall be accompanied with a demand draft for an amount equal to half the registration fee along with a note stating all the reasons for non-completion and the need for extension of period for registration.
 - The application should be submitted before the expiry of extended period of 1 (one) year. In case the period has elapsed then the application can be made within 3 (three) months of issue of order in this regard. In case of delay in submission of application beyond abovementioned deadlines, extension fee with penalty shall be imposed by the authority.
 - No promoter will be entitled to an extension beyond 1 (one) year, as a matter of right.
 - Decision will be taken on a case-to-case basis based on the facts of the case and no decision would act as a precedent for another.
 - The extension granted shall always be without prejudice to the rights of the allottees and it shall not exonerate the promoter from his obligations to the allottees under RERA.
 - Whenever an extension is rejected or not applied for, the project remaining incomplete at the end of the original extension period shall be treated as elapsed and further action would be taken as per RERA Act.

➤ **Notice issued by Bihar RERA regarding inspection of areas:**

Bihar RERA, vide its notice dated 07.02.2022, notified that Bihar RERA has not authorized any person or institution to carry out inspection of places. Inspection of places can only be authorized by the presiding officer of that area on a request or complaint.

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👉 Notification issued by Karnataka RERA regarding National Lok Adalat:

Karnataka RERA, vide its notification dated 10.02.2022 stated that it is holding a national Lok Adalat on 12.03.2022 to settle all the complaints relating to refund, compensation, permissible execution proceedings in disposed of cases or litigation filed under RERA.

👉 Notice issued by Bihar RERA regarding documents filed without case number:

Bihar RERA, vide its notice dated 18.02.2022, notified that all advocates appearing before RERA are directed to mention the concerned case number, date and name of the concerned party, as well as the opposite party, on the documents to be filed before the authority, while filing a petition/reply. Documents without case number and beyond office hours would not be entertained.

👉 Notification issued by Karnataka RERA regarding national Lok Adalat:

- Karnataka RERA, vide its notification dated 10.02.2022 stated that it is holding a national Lok Adalat on 12.03.2022 to settle all the complaints relating to refund, compensation, permissible execution proceedings or litigation filed under RERA.
- Advantages of Lok Adalat:-
 - Quick settlement of cases;
 - Parties can approach Lok Adalat through their advocates;
 - Cases can be settled by the parties if satisfied by the suggestions of judicial conciliator & advocate conciliator;
 - If the case is settled, both parties have to file a memo signed by them and then the members of Lok Adalat will counter sign it, pursuant to which award shall be passed;
 - The order of Lok Adalat is final and non-appealable.
- Arrangements are made for pre-conciliation sittings in the Karnataka RERA to facilitate the parties to appear in the conciliation process, both, physically, and virtually through skype.

👉 Public Notice issued by Kerala RERA regarding registration of projects:

Kerala RERA, vide its public notice dated 22.02.2022 stated the requirement for uploading valid supporting documents for registration, to be published on the website:

- Most of the applications for registration that are received by the authorities are not in conformity with RERA Act and RERA Rules, and the details to be uploaded on the website are not uploaded, which has caused delay in granting registration.
- Hence, all the promoters are directed to upload and submit the documents in conformity with provisions of RERA Act and RERA Rules to make the process of registration smooth and without

any delay. In case the project land belongs to some other person(s), the promoter shall upload the duly registered joint venture /collaboration / joint development agreement executed with the said landowner(s).

NCL Brief

👉 Telha Sureshwal Vs. Parsoli Motors Works Pvt. Ltd & Ors. [Company Appeal (AT) (Ins) No. 1115 of 2020].

BRIEF FACTUAL BACKGROUND OF THE CASE

The appeal was filed before the Hon'ble National Company Law Appellate Tribunal ("**Hon'ble Appellate Tribunal**") by Talha Yunus Sureshwal ("**Appellant**") under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") against the Impugned Order dated 04.06.2020 passed by the National Company Law Tribunal, Ahmedabad Bench ("**Adjudicating Authority**") in I.A. No.300 of 2018, which was filed under Section 65 of the Code in C.P. (IB) No.161/2017 ("**Petition**"). The Appellant had contended that BMW India Financial Services Private Limited ("**Respondent No. 3**") had fraudulently filed the Petition before the Adjudicating Authority and initiated the Corporate Insolvency Resolution Process ("**CIRP**") of Parsoli Motors Works Private Limited ("**Corporate Debtor**").

ISSUE BEFORE THE HON'BLE APPELLATE TRIBUNAL:

Whether the Impugned Order dated 04.06.2020 passed by the Adjudicating Authority was violative of Section 65 of the Code?

Observations and Decision by the Hon'ble Appellate Tribunal:

The Hon'ble Appellate Tribunal held that the Adjudicating Authority had not gone into the reasons put forth by the counsels in I.A. No. 300 of 2018 and had simply stated that BMW India Private Limited ("**Respondent No. 2**") was not a party in the Petition.

The Hon'ble Appellate Tribunal observed that the Appellant had elaborately given the reasons for invoking Section 65 of the Code and had elaborately explained how the territory infringement had been committed by Respondent No. 2, a group company of Respondent No. 3, leading to a financial mess and putting the Corporate Debtor into an adverse situation leading to lodging of a claim of Rs.110 Crore.

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The Hon'ble Appellate Tribunal held that there were several issues which were raised by the Appellant on Respondent No.2 which also, discreetly, covered the Respondent No.3. As some collusion was apparent, it was held that the Impugned Order dated 04.06.2020 had not dealt with the I.A. No. 300 of 2018 of the Appellant and had wrongly dismissed it on the ground that the Respondent No. 2 was not a party in the Petition.

It was observed that the Adjudicating Authority has the inherent power to restrict the perpetuation of applications motivated by fraud or malice under section 65 of the Code. In this regard, the following cases were referred by the Hon'ble Appellate Tribunal –

- a. **Amit Katyal Vs. Meera Ahuja [Company Appeal (AT)(Ins) No. 1380 of 2019]** - Section 65 of the Code explicitly states that if any person initiates the CIRP proceedings or liquidation proceedings fraudulently or with malicious intends for any purpose other than for resolution of insolvency or liquidation, as the case may be, the Adjudicating Authority may impose the penalty.
- b. **Hystone Merchants Private Limited Vs. Satabadi Investment Consultants Pvt. Ltd [Company Appeal (AT) (Insolvency) No. 258 of 2021]** – It was held that the Adjudicating Authority can refuse to admit an application that is otherwise complete in all respects under Section 7 of the Code if there are visible science of fraud, collusion or malicious intents under Section 65 of the Code.
- c. **Embassy Property Development Private Limited Vs. State of Karnataka [2019 (17) Scale 37]** - The Hon'ble Supreme Court had observed that if the CIRP proceedings had been initiated by one and the same person taking different avatars not for the genuine purpose of insolvency resolution or liquidation but for the collateral purpose of cornering the mine and mining lease then the same would fall squarely within the mischief by Section 65(1) of the Code. It was further observed that the Adjudicating Authority has jurisdiction to enquire into the allegation of fraud and so also with this Appellate Tribunal.
- d. **Beacon Trusteeship Limited Vs. Earthcon Infracon Private Limited & Anr. [Civil Appeal No. 7641 of 2019]** - The

Hon'ble Supreme Court had held that “whether the proceedings have been initiated in a collusive manner will be looked into in accordance with law and appropriate orders have to passed considering the facts and circumstances of the case”.

It was further observed that if large business houses with multiple business arms were allowed to disrupt on its whims & fancies then the Code would not be able to promote entrepreneurship which is one of its objectives. Hence, it was in the interest of justice to remand the matter back in respect of I.A. No. 300 of 2018 to the Adjudicating Authority to go into the details of the allegations & decide either way by giving reasonable & proper opportunity to all the parties involved.

It was further stated that as far as Section 7 of the Code is concerned, the protection mechanism was provided not in the said section but under Section 65 of the Code, if there is fraudulent or malicious initiation of CIRP proceedings. The objective of the Code is to ensure revival and continuation of the Corporate Debtor by protecting the Corporate Debtor from its death. It was further observed that the Court /Tribunal has to ensure that the Code is not being used by perverted human ingenuity and to protect against distortion and abuses.

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