

Highlights:**Corporate Brief**

- Circular No. SEBI/HO/CFD/CMD1/CIR/P/2022/47 dated 08.04.2022 issued by Securities and Exchange Board of India in relation to related party transaction.
- Circular No. SEBI/HO/MIRSD/DoP/P/CIR/2022/44 dated 04.04.2022 issued by Securities and Exchange Board of India in relation to Execution of 'Demat debit and Pledge Instruction' for transfer of securities towards deliveries/settlement obligations and pledging/re-pledging of securities.
- Circular No. RBI/2022-23/28 dated 19.04.2022 issued by Reserve Bank of India in regards to limits for investment in debt and sale of Credit Default Swaps by Foreign Portfolio Investors (FPIs)
- Master Circular dated 01.04.2022 issued by Reserve Bank of India in regard to Asset Reconstruction Companies
- Master Circular dated 01.04.2022 issued by reserve Bank of India in regard to Guarantees, Co-Acceptances & Letter of Credit – UCBs
- Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/54 dated 28.04.2022 issued by SEBI in regard to the reduction of timelines for listing of units of Real Estate Investment Trust (REIT).
- Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/55 dated 28.04.2022 issued by SEBI in regard to the reduction of timelines for listing of units of Infrastructure Investment Trust (InvIT)
- Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2022/42 dated 29.04.2022 issued by SEBI in regard to modification in the Operational Guidelines for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors and SEBI to generate FPI registration number and both the Depositories to host the CAF.
- Master Circular dated 28.04.2022 issued by Securities Exchange Board of India in regard to Real Estate Investment Trust (REIT).

RERA Brief

- Rajasthan RERA provides for directions whereby a Power of Attorney may be accepted in lieu of a registered development agreement for the purpose of registration of a plotted development project.
- Kerala RERA provides confirmation of clarification as to the term 'ongoing project' with respect to Section 3 of the Act of 2016.
- MahaRERA provides for Standard Operating Procedure for filing cases arising from regulatory functions of MahaRERA.
- Public Notice dated 28.04.2022 issued under Section 33 read with Section 34 of the Real Estate (Regulation and Development) Act, 2016 ("Act") by the Real Estate Regulatory Authority for NCT of Delhi ("Delhi RERA").

NCLT Brief

- Case analysis: Pawan Putra securities Private Limited vs. Wearit Global Limited National Company Law Tribunal, Kolkata [i.a. (ib) no. 271/kb/2021 in c.p. (ib) no. 1039/kb/2019]

Litigation Brief

- A Writ Petition under Article 227 of the Constitution of India before the concerned High Court against the order passed by the National Commission in an appeal under Section 58(1) (a)(iii) of the 2019 Act is maintainable.
- Arbitration Law: Remission of the Award to the Arbitrator not obligatory under Section 34(4) of the Act

Corporate Brief

➤ **Circular No. SEBI/HO/CFD/CMD1/CIR/P/2022/47 dated 08.04.2022 issued by Securities and Exchange Board of India in relation to related party transaction.**

- Securities and Exchange Board of India vide its circular no. SEBI/HO/CFD/CMD1/CIR/P/2022/47 dated 08.04.2022 clarified upon applicability of Regulation 23(4) read with Regulation 23 (3)(e) of the SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015 in relation to related party transaction.

- The validity of omnibus approvals for material RPTs obtained from shareholders in General Meetings other than AGMs has been reaffirmed to exceed one year.

➤ **Circular No. SEBI/HO/MIRSD/DoP/P/CIR/2022/44 dated 04.04.2022 issued by Securities and Exchange Board of India in relation to Execution of 'Demat debit and Pledge Instruction' for transfer of securities towards deliveries/settlement obligations and pledging/re-pledging of securities.**

- SEBI issued guidelines regarding execution of Power of Attorney (PoA) by the client in favor of Stock Broker / Stock Broker and Depository Participant.
- Clients must expressly agree to allow the stock broker/stock broker and depository participant to access their BO account for the limited purpose of meeting pay-in obligations for settlement of trades conducted by them in order to make the process of executing PoA transparent and straightforward.
- The customer has the option of using the DDPI or completing the settlement by submitting a physical delivery instruction slip (DIS) or an electronic delivery instruction slip (eDIS).
- Prior to executing actual transfer of securities based on details provided by stock broker/stock broker and depository participant for each settlement deed, depositories must ensure matching and confirming the transfer of securities with client-wise net delivery obligation arising from the trade executed on the exchange, as provided by the Clearing Corporation to depositories for each settlement deed.

- Circular to be in effect from July 01, 2022.
- ↳ **Circular No. RBI/2022-23/28 dated 19.04.2022 issued by Reserve Bank of India in regards to limits for investment in debt and sale of Credit Default Swaps by Foreign Portfolio Investors (FPIs)**
- RBI vide its Circular No. RBI/2022-23/28 dated 19.04.2022 provided for limits for investment in debt and sale of credit default swaps by Foreign Portfolio Investors (FPIs).
 - For financial year 2022-23, the FPI investment limit in government securities, state development loans, and corporate bonds will continue at 6%, 2%, and 15%, respectively, of outstanding stocks of securities.
 - For financial year 2022-23, the 50:50 allocation of incremental adjustments in the G-sec limit (in absolute terms) between the two sub-categories – 'General' and 'Long-term' – will be maintained.
 - The aggregate notional amount of CDS sold by FPIs is limited to 5% of the outstanding corporate bond stock. As a result, a new maximum of 2,22,623 crore has been set for FY 2022-23.
- ↳ **Master Circular dated 01.04.2022 issued by Reserve Bank of India in regard to Asset Reconstruction Companies**
- RBI vide its circular dated 01.04.2022 provided for Asset Reconstruction Companies. Read more at following link: https://www.rbi.org.in/Scripts/BS_ViewMasterCirculars.aspx?Id=12267&Mode=0
- ↳ **Master Circular dated 01.04.2022 issued by reserve Bank of India in regard to Guarantees, Co-Acceptances & Letter of Credit - UCBs**
- RBI vide its circular dated 01.04.2022 provided for Guarantees, Co-Acceptances & Letter of Credit - UCBs. Read more at the following link: https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12272
- ↳ **Circular dated 28.04.2022 issued by SEBI in regard to the reduction of timelines for listing of units of Real Estate Investment Trust (REIT).**
- Vide circular dated April 28, 2022, SEBI resolved to shorten the period taken for allotment and listing after the close of an issue to six working days, rather than the current requirement of twelve working days. It detailed the timeframe from issue closure to listing.
- The SCSBs, stock exchanges, depositories, and intermediaries shall ensure that the listing (by public issue) and trading of REIT units are completed within six working days of the issue's closing date.
 - This circular's rules will apply to any public issue of REIT units under the SEBI (Real Estate Investment Trusts) Regulations, 2014 that begins on or after June 1, 2022.
- ↳ **Circular dated 28.04.2022 issued by SEBI in regard to the reduction of timelines for listing of units of Infrastructure Investment Trust (InvIT)**
- Vide circular dated April 28, 2022, SEBI resolved to shorten the period taken for allotment and listing after the close of an issue to six working days, rather than the current requirement of twelve working days. It detailed the timeframe from issue closure to listing.
 - This circular's provisions will apply to a public offering of InvIT units under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 that begins on or after June 1, 2022.
- ↳ **Circular dated 29.04.2022 issued by SEBI in regard to modification in the Operational Guidelines for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors and SEBI to generate FPI registration number and both the Depositories to host the CAF.**
- In order to operationalize the SEBI Foreign Portfolio Investors) (Amendment) Regulations, 2022 and Notification No. F. No. 4/1/2016-ECB, dated March 29, 2022, it has been decided to modify the Operational Guidelines for Foreign Portfolio Investors, Designated Depository Participants, and Eligible Foreign Investors issued vide SEBI Circular No. IMD/FPI&C/CIR/P/2019/124 dated November 05, 2019 as under:
 - Paragraph 6 of Part A of the Operational Guidelines, pertaining to the Certificate of Registration, shall be read as follows:

"The designated depository participant shall grant the registration, bearing registration number generated by SEBI"
 - Paragraph 10(iii) of Part A of the Operational Guidelines, pertaining to Name change shall be read as follows:

"Upon receipt of the request for name change, along with abovementioned documents the DDP shall effect the change is name in the certificate The DDP shall issue a letter and fresh registration certificate to such applicant acknowledging the change in name Respective Depositories shall make necessary arrangements for DDPS to provide fresh registration certificate as an acknowledgement from its database including a statement that the name change has been granted without prejudice to any tax liability implication in India"

- The terms of this circular will become effective on May 9, 2022. All other provisions of the Operational Guidelines will be unaffected.

➤ **Master Circular dated 28.04.2022 issued by Securities Exchange Board of India in regard to Real Estate Investment Trust (REIT).**

SEBI vide its master circular dated 28.04.2022 provided for a compilation of relevant circulars issued by SEBI up to March 31, 2022. Read more at the following link:

<https://www.sebi.gov.in/legal/master-circulars/apr-2022/master-circular-for-real-estate-investment-trusts-reits-58396.html>

Real Estate Brief

➤ **RAJASTHAN**

Vide Order dated 18.04.2022, Rajasthan Real Estate Regulatory Authority.

Vide this Authority's order dated 16.03.2022, it was directed that for the purpose of registration of a plotted development project, where the promoter is not the owner of the project land, the Authority will accept a Power of Attorney (POA), duly executed by such owner in favour of the promoter, in lieu of a registered development agreement, if and only if such POA is registered under the Indian Registration Act, 1908.

The Authority's order dated 18.04.2022, further directed that in the aforementioned cases, POA holder must be authorised to execute an agreement for sale with the allottees and get the same registered. It was clarified that it must be a POA with POA holder given the power to sell the plots in the project.

➤ **KERELA**

- Vide Public Notice dated 19.04.2022, Kerela Real Estate Regulatory Authority.

It was re-affirmed by the Kerela Real Estate Regulatory Authority that the real estate projects that commenced before 01.05.2017 and were not completed or had not received an occupancy certificate as on 01.05.2017 would be considered as 'ongoing projects' which will come under the purview of the Real Estate (Regulation & Development) Act 2016 ("Act") and would require to be registered under Section 3 of the Act.

It was also confirmed that this Public Notice will supersede all other public notices, orders and circulars issued earlier in clarification of the term 'ongoing project' with respect to section 3 of the Act.

➤ **MAHARASHTRA**

- Vide Order dated 25.04.2022. Maharashtra Real Estate Regulation Authority ("MahaRERA").

The MahaRERA vide order dated 25.04.2022 provided for the Standard Operating Procedure for filing cases arising from regulatory functions of MahaRERA.

The Hon'ble High Court, in Writ Petition (L) Nos. 8713 to 8717 of 2022 was of the view that in regulatory matters that take form of adversarial litigation, use of nomenclature "suo moto" is not appropriate. Therefore to alter the practice of giving the nomenclature "suo motu" to the regulatory matters that are adversarial in nature, the following directions have been issued by MahaRERA:

- Regulatory matters that take the form of adversarial litigation shall be filed in the manner as detailed in Annexure – A of the Order.
- The statement of facts contained in any filing shall be supported by a duly notarized affidavit as provided in Form I annexed to the Order.
- The letter notifying defects if any in the filing of the regulatory matters shall be in accordance with Form II annexed to the Order.
- Until a digital module is made available for the purpose of filing such regulatory matters, hard copies

in the manner as stated above shall be accepted by MahaRERA.

- The above-mentioned directions will not be applicable to complaints filed under section 31 of the Act.
- For regulatory matters which are not adversarial in nature, the practice of using the nomenclature "suo moto" shall continue.

The aforementioned directions are to come into force with immediate effect.

➔ DELHI

- Vide Public Notice dated 28.04.2022 issued under Section 33 read with Section 34 of the Real Estate (Regulation and Development) Act, 2016 ("Act"), Real Estate Regulatory Authority for NCT of Delhi ("Delhi RERA").

Delhi RERA vide Public Notice dated 28.04.2022 clarified the requirements for registration of all real estate projects with the Delhi RERA since various promoters including builders and developers have expressed doubt before it regarding whether they are required to register with the Authority if their plot area exceeds 500 sq. meter but the number of apartments proposed to be constructed remain below nine. As per the public notice, most of promoters, builders and developers appear to be under the impression that no registration is required with RERA if the plot size is either of 500 sq. meters or below or they are constructing less than nine units. According to the Delhi RERA, these impressions are not correct.

The Delhi RERA clarified that all Real Estate Projects being developed within Delhi Development Authority Master Plan 2021 area in NCT of Delhi and falling under following categories would require compulsory registration with RERA, NCT of Delhi:

- All Real Estate Projects, residential or commercial, being developed on the land area of more than 500 square meters in all phases. To illustrate even if six flats or two floors or four showrooms are being constructed as a Real Estate Project on a 501 square meter plot it would require registration with RERA, NCT of Delhi.
- All Real Estate Projects in which number of apartments whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name,

being developed exceed eight in all phases irrespective of the area of the plot. To illustrate if nine apartments are being constructed as a Real Estate Project on a 300 sq. meter plot it would require registration with RERA, NCT of Delhi.

- All Real Estate Projects where plotting is being done on the land area of more than 500 square meters in all phases.

Therefore, the Delhi RERA directed in the general public interest, all promoters including builders and developers to register their Real Estate Projects with Delhi RERA immediately if they fall under any one of the categories detailed above in order to avoid action under Section 59 of the Act.

The Delhi RERA also advised the general public not to make any investment by booking or purchasing any residential or commercial unit/space or plot in any Real Estate Project falling under any one of the categories mentioned above unless it is registered with the Delhi RERA.

NCLT Brief

➔ **CASE ANALYSIS: PAWAN PUTRA SECURITIES PRIVATE LIMITED VS. WEARIT GLOBAL LIMITED NATIONAL COMPANY LAW TRIBUNAL, KOLKATA [I.A. (IB) No. 271/KB/2021 in C.P. (IB) No. 1039/KB/2019]**

A. ISSUE : WHETHER AN APPLICATION FILED UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 THAT HAS BEEN WITHDRAWN ON ACCOUNT OF A SETTLEMENT AGREEMENT BE RESTORED?

B. BRIEF FACTUAL BACKGROUND OF THE CASE

CP (IB) No.1309/KB/2019 ("Company Petition") was filed by Pawan Putra Securities Private Limited ("Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") against Wearit Global Limited ("Corporate Debtor") for initiation of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor before National Company Law Tribunal, Kolkata ("NCLT").

Subsequent thereto, the Financial Creditor and the Corporate Debtor had entered into a settlement agreement on 31.01.2020 wherein the Corporate Debtor agreed to pay a sum of ₹1,25,00,000/- (Rupees One Crore Twenty-Five Lakh Only) to the Financial Creditor. On the basis of the settlement agreement, the Company Petition was dismissed vide Order dated 31.01.2020. However, no liberty was granted to the Financial Creditor to revive the Company Petition in case of default by the Corporate Debtor.

Thereafter, the Corporate Debtor defaulted in fulfilling its obligations under the settlement agreement as it was only able to undertake a payment of ₹30 lakh out of the promised amount of ₹1.25 Crore. On account of the said default, the Financial Creditor was constrained to move I.A. (IB) No. 271/KB/2021 ("IA") to revive the Company Petition which was dismissed on the basis of the settlement agreement.

C. FINDINGS OF THE HON'BLE NCLT:

The NCLT observed that the withdrawal had been allowed pursuant to a settlement agreement executed between the Financial Creditor and the Corporate Debtor and in terms of the settlement agreement and not a withdrawal simpliciter. It was further stated that allowing a contention that a petition cannot be revived if no liberty/leave of the Court has been sought would cause injustice to a creditor who has diligently exercised his rights and filed the Company Petition and thereafter this restoration application.

Reliance was placed on Jai Balaji Industries Limited v. BST Infratech Limited [C.P. (IB) No. 911/KB/2020 dated 03.11.2021] wherein the NCLT had restored a company petition which was withdrawn without leave to file again.

D. DECISION OF THE HON'BLE NCLT:

It was observed that the present I.A. was for restoration of the main Company Petition that was originally filed for

default in payment of inter corporate deposit and not for default in a settlement agreement; hence, the present I.A. was not filed to initiate CIRP proceedings against the Corporate Debtor but only to restore the Company Petition. Therefore, the NCLT directed the restoration of the Company Petition and allowed the I.A.

Litigation Brief

- ☞ **A Writ Petition under Article 227 of the Constitution of India before the concerned High Court against the order passed by the National Commission in an appeal under Section 58(1)(a)(iii) of the 2019 Act is maintainable.**

IN THE MATTER OF- Ibrat Faizan Vs. Omaxe Buildhome Pvt. Ltd.

[Civil Appeal No. 3072 of 2022] Decided by the Hon'ble Supreme Court on 13.05.2022

Main Issue-

Whether, against the order passed by the National Commission in an appeal under Section 58 (1)(a)(iii) of the 2019 Act, a writ petition before the concerned High Court under Article 227 of the Constitution of India would be maintainable?

Facts-

- The appellant/complainant booked a flat in the project floated by the respondent herein. According to the appellant/complainant, despite the payment of sale consideration, the possession of the flat was not handed over and therefore the appellant/complainant filed a consumer complaint before the Delhi State Consumer Redressal on 10.08.2013 on the grounds of deficiency of service and unfair trade practice.
- By order dated 16.10.2020, the State Commission allowed the said complaint directing the respondent herein to handover possession of the flat booked by the appellant subject to their meeting the requirements. The State Commission also directed the respondent herein to pay to the complainant - appellant herein compensation for the delayed period in the form of simple interest at the rate of 9% for the period from the date of possession of the flat was due to be delivered till the delivery of the possession.

- The appellant/complainant filed an execution and contempt petition before the State Commission. Vide order dated 12.03.2021, the State Commission directed the decree holder - appellant/complainant herein to place on record the details of the bank accounts or the properties of the respondent herein which are to be attached for not implementing the judgment and order dated 16.10.2020 passed by the State Commission.
- Thereafter, the respondent-builder preferred an appeal before the National Commission. Vide order dated 30.03.2021, the National Commission granted stay of the State Commission's order, subject to deposit of the entire cost of the flat along with 9% interest on the amount paid till date in the Registry of the State Commission or face the execution action by the State Commission.
- Feeling aggrieved and dissatisfied with the order dated 30.03.2021 passed by the National Commission, the respondent herein preferred writ petition before the High Court by way of Writ CM(M) No. 374/2021 under Article 227 of the Constitution of India contending, inter alia, that the National Commission ought not to have directed the builder to deposit the entire cost of the apartment along with the compensation awarded by the State Commission.
- The High Court, vide order dated 25.05.2021, stayed the operation of the order of National Commission dated 30.03.2021, subject to the builder depositing with the State Commission 50% of the amount directed to be deposited by way of interest towards compensation within four weeks. A further order came to be passed by the High Court on 17.08.2021 in Writ CM(M) No. 374/2021.
- Thereafter, the National Commission passed a final order in First Appeal No. 250/2021 vide order dated 09.12.2021 and confirmed the order passed by the State Commission dated 16.10.2020. 5.2 Feeling aggrieved and dissatisfied with the final order dated 09.12.2021 passed by the National Commission, confirming the order dated 16.10.2020 passed by the State Commission, the respondent builder again approached the High Court by way of present writ petition being CM(M) No. 1196/2021. By the impugned interim order

dated 22.12.2021, till the next date of hearing, the High Court has stayed the operation of final order dated 09.12.2021 passed by the National Commission in First Appeal No. 250/2021.

- Feeling aggrieved and dissatisfied with the impugned interim order passed by the High Court in Writ CM(M) No. 1196/2021, under Article 227 of the Constitution of India, the original complainant filed an Appeal before the Hon'ble Supreme Court.

Observations of the Hon'ble Supreme Court-

- Primarily the jurisdiction of the forum/commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as provided for in other statutes.
- It cannot be disputed that the remedy by way of an appeal by special leave under Article 136 of the Constitution of India may be too expensive and as observed, the said remedy can be said to be inaccessible for it to be real and effective. Therefore, when the remedy under Article 227 of the Constitution of India before the concerned High Court is provided, in that case, it would be in furtherance of the right of access to justice of the aggrieved party, may be a complainant, to approach the concerned High Court at a lower cost, rather than a Special Leave to Appeal under Article 136 of the Constitution.
- In the present case, the Hon'ble Supreme Court observed that the High Court has not committed any error in entertaining the writ petition under Article 227 of the Constitution of India against the order passed by the National Commission which has been passed in an appeal under Section 58(1)(a) (iii) of the 2019 Act. The Hon'ble Supreme Court expressed its complete agreement with the view taken by the High Court.
- While exercising the powers under Article 227 of the Constitution of India, the High Court subjects itself to the rigour of Article 227 of the Constitution and the High Court

has to exercise the jurisdiction under Article 227 within the parameters within which such jurisdiction is required to be exercised.

- While considering the grant of interim stay/relief in a writ petition under Article 227 of the Constitution of India, the High Court has to bear in mind the limited jurisdiction of superintendence under Article 227 of the Constitution. Therefore, while granting any interim stay/relief in a writ petition under Article 227 of the Constitution against an order passed by the National Commission, the same shall always be subject to the rigour of the powers to be exercised under Article 227 of the Constitution of India.

○ **Arbitration Law: Remission of the Award to the Arbitrator not obligatory under Section 34(4) of the Act**

IN THE MATTER OF: I-Pay Clearing Services Private Limited. Vs. ICICI Bank Limited (Decided by Hon'ble Supreme Court of India on 03.01.2022) – Civil Appeal No. 7 of 2022

Issue:

Whether the arbitral award can be remitted back to the Arbitrator, under Section 34(4) of the Arbitration and Conciliation Act, 1996 ("the Act"), if no finding(s) on the contentious issues are provided in the award?

Facts:

- I-Pay Clearing Services Private Limited ("the Appellant") entered into two Service Provider Agreement(s), dated 04.11.2002 and 04.02.2003, with ICICI Bank Limited ("the Respondent") to develop software application packages, provide technology and manage the operations, and, processing for card-based customer loyalty programmes for Hindustan Petroleum Corporation Limited.
- The Agreement, dated 04.11.2002, was terminated by the Respondent which led to the Appellant to suffer a loss of over INR 50 Crores, on account of loss of jobs of its

employees, losses on account of employee retrenchment compensation, etc.

- The dispute was referred to arbitration and Justice R.G. Sindhakar (Retd.) was appointed as the Ld. Sole Arbitrator by the Hon'ble High Court of Bombay. An award, dated 13.11.2017 ("the award"), was passed directing the Respondent to pay Rs. 50 Crores with an interest @18% as damages from the date of the award till realization.
- Aggrieved by the award, the Respondent filed an application under Section 34(1) of the Act for setting aside the award on the ground of patent illegality contending that there was no "finding" recorded in the award to show that Respondent illegally and abruptly terminated the agreement. It was argued that without addressing the issue of whether there was an illegal and abrupt termination of the contract or not (Issue 1 in the arbitration), the Arbitrator allowed the claim to the extent of Rs. 50 Crores. Instead, the Respondent claimed that "*there was accord and satisfaction between the parties and the contractual obligations between the parties was closed mutually and amicably*".
- During the pendency of Section 34 Petition, the Appellant filed a notice of motion under Section 34(4) of the Act for adjourning the proceedings for a period of three months by directing the Ld. Arbitrator to issue appropriate directions/instructions/additional reasons and/or to take such necessary and appropriate action. The notice of motion was rejected¹ by the Hon'ble Bombay High Court on the grounds that the arbitrator could not have proceeded to record findings on the claims made by the appellant until and unless a finding was recorded on Issue 1. The present appeal was filed challenging the said order.

Court's Observations and Ruling:

- The Hon'ble Supreme Court upheld the Order of the Hon'ble Bombay High Court stating that since no finding or reasoning was given on the issue of "whether the contract was

¹ ICICI Bank Ltd. vs I-Pay Clearing Services (P) Ltd., Comm. Arb. Petition No. 190 of 2018

terminated illegally and abruptly”, remission under Section 34(4) of the Act was not permissible.

- The Supreme Court noted that Section 34(4) of the Act can be used to record reasons on the findings of the Arbitral Tribunal or to fill up the gaps in the reasoning given in the award. The Court further noted the distinction between ‘finding’ and ‘reasons’ and held that a ‘finding’ is a decision on an issue and ‘reasons’ are the links between the materials on which certain conclusions are based and the actual conclusions.

The Court further observed that a harmonious reading of Section 31, 34(1), 34(2A) and 34(4) of the Act, makes it clear that in appropriate cases, on the request made by a party, the Court can give an opportunity to the Arbitrator to resume the arbitral proceedings for giving reasons or to fill the gaps in the reasoning in support of a finding, which is already rendered in the award. But the remission cannot be granted in cases where the findings on issues are completely amiss. The Supreme Court further observed that ‘merely because an application is filed under Section 34(4) of the Act by a party, it is not always obligatory on the part of the Court to remit the matter to Arbitral Tribunal.’

- For the above stated reasons, the Apex Court did not find any merit to interfere with the Order of the High Court. Accordingly, the Appeal was dismissed.

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