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Centre for Corporate Law

MONTHLY CORPORATE LAW UPDATES (JANUARY, 2022)

-INSOLVENCY AND RESTRUCTURING LAW

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TABLE OF ABBREVIATIONS

ABBREVIATIONS	FULL-FORM
AA	Adjudicating Authority
A&C Act	The Arbitration and Conciliation Act, 1996
AFS	Available for Sale
BoD	Board of Directors
CA 2013	Companies Act, 2013
CA 2002	Competition Act, 2002
CCI	Competition Commission of India
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
DNPA	Digital News Publishers Association

TABLE OF ABBREVIATIONS

ABBREVIATIONS	FULL-FORM
EGR	Electronic Gold Receipts
FVTPL	Fair Value through Profit & Loss Account
GCP	General Corporate Purposes
GOI	Government of India
HC	High Court
HTM	Held to Maturity
IA	Investing Authority
IBBI	Insolvency and Bankruptcy Board of India
IBC	Insolvency and Bankruptcy Code 2016
ICDR	Issue of Capital and Disclosure Requirements
IPO	Initial Public Offering
LODR	Listing Obligations and Disclosure Requirements

TABLE OF ABBREVIATIONS

ABBREVIATIONS	FULL-FORM
MCA	Ministry of Corporate Affairs
MSME	Micro, Small and Medium Enterprises
NBFC	Non-Banking Financial Company
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
PFUTP	Prohibition of Fraudulent and Unfair Trade Practices
RBI	Reserve Bank of India
SC	Supreme Court
SEBI	Securities and Exchange Board of India
TReDS	Trade Receivable Discounting System
Tribunal	Arbitral Tribunal
w.e.f	With effect from

INSOLVENCY AND RESTRUCTURING LAW

JUDGEMENTS

1 SC excludes the period of 15.03.2020 till 28.02.2022 from limitation in lieu of new variant of COVID-19 [Cognizance for Extension of Limitation, suo motu writ petition]

The Apex Court took into consideration the prevailing surge of COVID-19 cases across the country and recognized that the rise in cases would make it difficult for litigants to adhere to the time-bound process of insolvency.

In this regard, the SC has ordered that the time period between 15.03.2020 and 28.02.2022 be excluded from the period of limitation as provided for in any general or special laws from all judicial and quasi-judicial proceedings. Any balance period of limitation shall come into effect from 01.03.2022. In cases where the limitation period would have expired between 15.03.2020 and 28.02.2022, all persons would get an additional 90 days of limitation period from 01.03.2022. If the balance period is longer than 90 days, that longer balance period will apply effectively from 01.03.2022.

(Order available here.)

2 SC gives a new interpretation to S. 29A (h) of the IBC [Bank of Baroda & Anr. vs. MBL Infrastructures Limited & Ors]

S. 29A(h) of the IBC prohibits certain types of persons from submitting a resolution plan such as a guarantor for a creditor on behalf of the CD, given that the said guarantee has been invoked and remains unpaid. The question before the apex court was relating to the interpretation of which type of creditors are referred to in S. 29A(h).

The SC while interpreting the provision, stated that once an application for insolvency has been admitted on behalf of 'a creditor' then the process would become one of rem. Therefore, it held that all similarly placed creditors would have rights at par with each other.

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The word "such creditor" was interpreted to mean all such creditors who are similarly placed. Therefore, the disqualification under S. 29A(h) also applies from the mere existence of a personal guarantee invoked by a single creditor, irrespective of which creditor has filed the application for insolvency, as long as they are similarly placed.

(Order available here.)

3 A ship/vessel is a separate juristic entity, and a suit/legal proceeding can be instituted against the ship in accordance with S. 33(5) of the IBC [Angre Port Private Ltd vs. TAG 15 & Anr.]

S. 33(5) of the IBC states that no suit or legal proceeding can be instituted by or against a CD when a liquidation order has been passed against the said CD. The question before this Court in this case was whether the bar contemplated by S. 33(5) applies to a vessel/ship owned by the CD?

The Bombay HC opined that a vessel/ship is defined as a separate juristic entity under the Admiralty Act 2017 which can be sued without joining the owner of the vessel to the proceeding since the action against the Vessel is an action in rem. The Court further stated that for an action in rem under the Admiralty Act, the ship/vessel has a separate juridical personality like a corporate personality. The fundamental nature of this action in rem is that is a separate action, and it is not against the owner of the vessel, i.e., the CD.

(Order available here.)

4 Resolution Plan after no longer remains a confidential document after approval by AA [Association of aggrieved Workmen of Jet Airways (India) Limited v. Jet Airways (India) Limited and Ors.]

The IBC and the IBBI Regulations provide for confidentiality of information relating to the resolution plan during the CIRP. Further, only members who have a right to be a part of

the CoC during CIRP are entitled to receive a copy of all relevant documents including the resolution plan. In this regard, the question before the court was whether the resolution plan remains confidential after the AA approves it and the CIRP is over.

The NCLAT Delhi stated that once the resolution plan has been approved by the AA, it no longer remains completely confidential for a claimant who may be an aggrieved party. The Court interpreted various provisions of the IBC and the IBBI Regulations and stated that the right to access the resolution plan cannot be denied to a claimant with a genuine interest. Neither the IBC nor the Regulations provide for complete confidentiality of the resolution plan after the CIRP. Additionally, the Court recognized that while the resolution plan is not confidential after approval of the AA, it cannot be disclosed to anyone and everyone who has no genuine claim or interest.

(Order available here.)

5 CoCs approval not mandatory for seeking an exclusion of lockdown period from limitation [Indiabulls Housing Finance Limited v. Sandeep Chandna]

The IBC lays down a timeline of 180 days to complete the CIRP. This timeline may be extended by an application made to the AA by the RP only if it is approved by a 66% majority of the CoC. Additionally, in light of the pandemic COVID-19, the GOI vide notification dated 20.04.2020 inserted Regulation 40C in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which excluded the period of lockdown from the 180 days' timeline.

In this case, the question that was posed before the NCLAT was whether the approval of 66% of CoC was mandatory for seeking an exclusion of time albeit on the grounds of the pandemic/lockdown.

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The NCLAT Delhi stated that keeping the CD a going concern is the primary purpose of the IBC and in this regard, it is not mandatory to seek the CoC's approval for an extension of time. The Court differentiated between the meanings of 'exclusion' and 'extension' of time and said that the COVID-19 pandemic has necessitated an exclusion of time for ensuring that the CD remain a going concern.

(Order available here.)

6 Superseded Directors' under the RBI Act are not entitled to get the details of the CoC's meetings [Dheeraj Wadhawan v. The Administrator, Dewan Housing Finance Corporation Limited]

This case dealt with the question of whether 'superseded directors' as per the RBI Act, 1934 are entitled to participate and get details of the CoC's meetings.

The RBI Act empowers the RBI to supersede the BoD of an NBFC if the NBFC acts in a manner detrimental to the creditors or to secure the NBFC's financial stability. Once the RBI exercises this power, the BoD must vacate their office.

The NCLAT in this case differentiated the meaning of 'superseded directors' under the RBI Act and 'suspended directors' under the IBC by stating that the RBI Act's provision for superseding the directors has finality attached to it. The 'superseded directors' are no longer a part of the company, and they have to vacate the office. It opined that 'superseded directors' cannot be equated with the meaning of 'suspended directors' under the IBC as a 'superseded director' having vacated office cannot take part in the company's affairs at all, whereas a 'suspended director' always remains on the BoD. In this regard, the NCLAT held that the superseded directors are not entitled to receive the details of the CoC's meetings.

(Order available here.)

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7 AA can ask CoC to reconsider and review its own decisions regarding the Resolution Plan when settlement of dues is in contravention of Section 30(2) of IBC [Bank of Maharashtra Stressed Asset Management Branch vs. Videocon Industries Pvt. Ltd. & Others]

The NCLAT observed that most creditors wished to reconsider their decision of approving the resolution plan in light of the unprecedented haircut of 95% to the creditors. Accordingly, it held that if the CoC has the power to approve the plan, it has also the power to reconsider and review its own decisions on the Resolution Plan. It further held that the power to approve, no doubt, carries with it, the power to reconsider. It used the analogy of the BoD of Companies who approve a proposal and at a later date review and even reconsider the approval in the course of the implementation.

Further, the NCLAT reiterated the supremacy of the decision of the CoC in commercial matters. In accordance with the well-settled jurisprudence, it held that the judicial wisdom is to be distinguished from the commercial wisdom, and hence, the sole authority to modify the resolution plan is with the CoC.

(Order available here.)

8 Creditors can proceed against the guarantor to a CD when the CD is not undergoing CIRP [State Bank of India, Stressed Asset Management Branch v. Mahendra Kumar Jajodia]

S. 60(2) of the IBC states that where a CIRP or liquidation proceeding of a CD is pending before 'an NCLT', an application relating to the insolvency resolution, liquidation or bankruptcy of a corporate/personal guarantor shall be filed before 'such NCLT'. The NCLT, Kolkata Bench, rejected an application against the guarantor since no CIRP or liquidation process was pending against the CD before the said NCLT. This order of the NCLT was under review by the NCLAT.

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The NCLAT clarified that the purpose behind this provision is to ensure that applications pertaining to a CD and guarantor can be entertained by one and the same NCLT. However, in a case where CIRP is not pending against the CD, the AA can still be approached to file a case against the guarantor. The court clarified that no such bar exists in the IBC to prevent the creditors from separately proceeding against guarantors when proceedings against the CD are not pending.

(Order available here.)

SECURITIES LAW

REGULATIONS

1 Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2022

The securities market is often subjected to various scams that dent investor confidence. This is done by employing fraudulent trade practices such as indulging in manipulative means of selling, buying or dealing securities. As technology constantly evolves, the market is not only more susceptible to unfair trade practices but also finds itself in a grey area as the laws strive to keep up. In this regard, the Securities Exchange Board of India (SEBI) has brought certain amendments to the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations (PFUTP). These amendments seek to bolster the existing framework by a two-fold manner as follows:

- **Widening the ambit of unfair trade practices**

A trend on rise is social media influencers recommending stocks. Of course, without being registered investment advisors with SEBI. They use platforms such as Telegram, WhatsApp, etc. in order to artificially inflate the value of particular stocks. Even a single tweet from influential people such as Elon Musk can cause stock price fluctuations. This creates volatility in the market. In this regard, SEBI has widened the definition of unfair trade practices under its PFUTP.

Earlier, SEBI penalized the dissemination of advice through any media which the disseminator knows to be false or misleading or likely to influence investors dealing in securities. However, the disseminators routinely took up the defense that they did not know the information was false. Therefore, to curb such instances, SEBI has through this amendment has widened the scope of unfair trade practice by inclusion of the term “in a reckless or careless manner”. The amendment would penalize any false stock market related advice given out through social media “in a reckless or careless manner.”

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- **Broadening the powers of the Investigating Authority**

The Investing Authority (IA) investigates the affairs of a case and reports back to the SEBI. Earlier, an IA had to seek prior approval of the SEBI Chairman or Members to exercise certain powers. These powers included the making an application to the Judicial Magistrate of first class, keeping in custody the documents seized under the regulations, etc. However, the amendment does away with the requirement of approval in turn broadening the powers of the IA.

Therefore, the widening of the definition of unfair trade practice and broadening the powers of the Investigating Authority would amplify the scope of regulatory oversight in matters of fraudulent and unfair trade practices.

(Regulation available here.)

2 SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022

SEBI amends the SEBI (Listing Obligations and Disclosure Requirements) Regulations (LODR) from time to time to ease the compliance burden on listed companies, improve business responsibility and bring transparency through disclosure. This is done to foster a sense of greater accountability in companies. In its recent amendment, the key changes made are as follows:

- **Shareholder Approval on Appointment and Reappointment**

Conventionally, in listed entities, shareholder approval is required for the appointment of a person on the Board of Directors. This can be done at the next general meeting or within three months from the date of appointment, whichever is earlier.

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However, now the provisions provide greater clarity. The amendment states that the appointment or re-appointment of a person (including Managing Director, Whole Time Director or a manager) who was earlier rejected by the shareholders at a general meeting requires prior shareholder approval. In addition, a detailed explanation and justification by the Nomination and Remuneration Committee (NRC) and the Board for recommending such a person for appointment or re-appointment is mandated.

- **Monitoring Report before Audit Committee**

Proceeds from an issue of shares are often at the risk of misappropriation. Earlier, a listed entity had to appoint a monitoring agency to monitor the utilization of proceeds of a public or rights issue. Moreover, the monitoring report of that agency was to be placed before the audit committee on an annual basis. However, with this amendment, now the monitoring report shall be placed before the audit committee on a quarterly basis instead of the earlier annual basis. The frequent review of monitoring report would enable the audit committee to take stock of how the proceeds of a public or rights issue are used.

Therefore, amendment's mandates of disclosure of the rationale for appointment and reappointments in a company along with the increase in the frequency of review of monitoring report is aimed at improving corporate governance in India.

(Regulation available here.)

3 Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022

2021 was a milestone year for the Indian capital market. India witnessed the raising of a total of USD 15.4 billion capital through Initial Public Offerings (IPO). From start-ups such Paytm, Policybazaar to Zomato and Nykaa, raised funds through IPOs.

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Notably, even 2022 is lined up with IPOs of giants such as LIC, Byjus, Mobikwik, etc. In this regard, SEBI amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 to ensure investor protection in such IPOs. The key amendments are as follows:

- **Conditions for the object of the issue**

Prior to the amendment, issuer companies were permitted to specify up to 25% of the fresh issue size to General Corporate Purpose. However, lately, some of the issuer companies are proposing to raise new funds for 'Funding of Inorganic Growth Initiatives' during the filling of offer documents. Inorganic Growth Initiative includes future acquisitions, investing in new business initiatives, and strategic partnerships by the company without identifying the target acquisition or specific investments proposed to be deployed out of issue proceeds.

In that context, raising fund for unidentified acquisitions leads to uncertainty in the IPO objects. Furthermore, the uncertainty about the object of the issue increases when major portion of the fresh issue portion is designated for such unidentified acquisition. In order to avoid such instances, it was settled that issuer companies cannot raise an amount exceeding 35% of the total amount raised for Future 'Inorganic Growth Initiatives' and general corporate purposes. However, such limit shall not be applicable if proposed acquisition or investment has been identified or disclosed at the time of the filling of offer document.

- **Monitoring of IPO Proceeds**

Previously, issuer companies had to appoint a monitoring agency to monitor and report on utilization of issue proceeds. However, the monitoring requirement extended up to 95% of the proceeds.

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Whereas, given the large size of IPOs, there was a need to provide adequate information about the utilization and monitoring of such large portion of issue proceeds for general corporate purposes.

In this regard, the amendment pushes SEBI registered credit rating agencies to act as monitoring agencies of the funds raised by the issuer companies for the entire proceeds. Additionally, utilization of funds raised for general corporate purposes must be monitored and disclosed in the monitor report.

- **Lock-in for anchor investors**

Anchor Investors are institutional investors who are allotted shares before the IPO opens. The concept of anchor investor was brought in to inspire confidence in the investors to take up the share. Previously, the anchor investors were bound by a lock-in period of 30 days. However, SEBI felt the need to strengthen the investor confidence. Therefore, while bolstering investor confidence as well as retaining flexibility to Anchor Investors, the lock-in period has been extended to 90 days for 50% of the portion allocated to the Anchor Investor.

In light of this amendment, SEBI aims for growth and development of the Indian capital markets as well as balance the interest of the investors and issuer companies.

(Regulation available here.)

CIRCULAR

1 Framework for operationalizing the Gold Exchange in India

Gold is one of the most popular asset classes in India. Gold's high liquidity and inflation-beating capacity are its strong selling points. This makes India the second largest gold importer globally. Hence, Indian gold rates are dependent on international gold prices with no proper mechanism for true price discovery of gold.

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In this regard, SEBI introduced a framework to bring more flexibility to gold exchange by introducing Electronic Gold Receipts (EGR). The EGR refers to an electronic receipt issued in exchange for the deposit of prevailing physical gold. These EGRs will have clearing, trading and settlement processes like any other security in a depository. The exchange would be a national platform for buying and selling EGRs with underlying standardised gold in India.

The introduction of EGRs would ensure that Indians fixing gold rates in the country rather than depending on international markets. SEBI has brought the new framework which provides a structured division for transaction in the gold exchange. The transaction has been divided into three tranches—First, the conversion of physical gold into EGR, second, trading of EGR on a stock exchange, and third, the conversion of EGR into physical gold.

- **Conversion of physical gold into EGR**

The first tranche makes the Vault Managers responsible for the conversion of physical gold into EGR. The EGR is created at the behest of the depositor (or the owner of the gold) intending to convert physical gold into EGR. The vault manager must ensure that no EGR is created without corresponding physical gold in its vaults. The EGR thus created would reflect in the beneficial owner's dematerialized account that is maintained with the depository participant.

- **Trading of EGR**

Once EGRs are created, the stock exchanges shall allow continuous trading of EGRs under the second tranche. The continuous trading would be backed by continuous information sharing by the depositories concerning the creation of EGRs. Post this, the clearing corporation is entrusted with the settlement of trades executed on the stock exchange by transferring the EGRs and cash to the buyer and seller of EGR, respectively.

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- **Conversion of EGR into physical gold**

Under the third division, which relates to the conversion of EGR into physical gold, SEBI has stated that beneficial owners of EGR who wish to receive physical gold in exchange for their EGR will make a request to the depository. In turn, the depository would forward such a request to the vault manager. After delivering the gold to the beneficial owner and simultaneously extinguishing such EGR, the vault manager will share the required data with the depository for reconciliation.

The new framework would ensure a better price discovery for gold in turn bolstering robust retail participation.

(Circular available here.)

COMPANY LAW

NOTIFICATION

1 The Ministry of Corporate Affairs (MCA) notifies Companies (Registration Offices and Fees) Amendment Rules, 2022

The Companies Act, 2013 (CA 2013) mandates that any form of documentation or any information which is required to be registered under it, has to be filed within the time specified under the relevant provision. It is further prescribed that if there is any failure to provide such documentation before the lapse of said time period, an additional fee is levied. The additional fee differs for different classes of companies. The Companies (Registration Offices and Fees) Amendment Rules, 2014 provides the fees to be paid by different classes of companies.

Recently, the MCA has amended The Companies (Registration Offices and Fees) Rules, 2014. The amendment deals with additional fee and higher additional fee (in certain cases) which are applicable for delay in filing of certain forms. The amendment shall come into force w.e.f. July 1, 2022.

(Notification available here.)

ARBITRATION LAW

JUDGEMENTS

1 Where there is no finding on the contentious issue, the court cannot remit the matter back to the arbitral tribunal: SC [I-Pay Clearing Services Private Limited vs ICICI Bank Limited]

After the passing of an arbitral award, if a party is aggrieved by the same, it can avail recourse under the Arbitration and Conciliation Act, 1996 (A&C act). Any party aggrieved by the award can request the court to remit the matter back to the arbitral tribunal to revise the award. If the court finds it appropriate, it can remit the matter back to the tribunal to allow the tribunal to resume the arbitral proceedings or to revise the grounds on which the award is passed.

In the present dispute, the parties entered into a contract. The respondent party terminated the agreement which allegedly paralyzed the operations undertaken by another party resulting in monetary losses. The matter was referred to arbitration. The arbitrator directed the respondent party to pay a monetary sum along with the interest amount. Aggrieved by the award, the respondent party contested in the court that the claim awarded was not based on any findings thus the same is patently illegal. Meanwhile, the appellant approached the court asking to refer the matter back to the arbitrator to issue appropriate directions or to take any necessary actions. Two questions unfurled before the Supreme Court (SC) in the present matter. First, whether it is obligatory for the courts to remit the matter back to the tribunal if an application is filed requesting the same. Second, whether an award can be remitted to the tribunal in absence of findings on the contentious issue.

Regarding the first question, the apex court maintained that the discretion to remit the matter to the tribunal is completely vested with the courts. Therefore, while addressing the first question, the SC held that there is no obligation on the part of the courts to remit the matter back to the tribunal.

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Regarding the second question, the SC observed that in an event where there is a gap in the reasoning of the award passed, the matter can be remitted back to the tribunal to fill up such gaps and to provide additional reasons. The court observed that no matter can be remitted back to the tribunal where there are no findings on the contentious issue in the award. The rationale behind such an observation was that when there is no finding on the contentious issue, revision on the grounds of reasoning cannot cure the defect in the award. Consequently, the same becomes a ground for setting aside the award as it is patently illegal. In the present case, there was no finding at all on the issue of termination of the contract, therefore the matter could not be remitted back to the tribunal. Hence, it was held that when there is no finding on the contentious issue, the matter cannot be remitted back to the tribunal.

(Judgement available here.)

2 Arbitral Tribunal is empowered to grant compound interest: SC [UHL Power Co. Ltd. vs State of Himachal Pradesh]

Interest is the amount charged on the money lent, at a particular rate. Compound interest means the principal sum plus previously accumulated interest. In the absence of any agreement regarding payment of interest, the arbitral tribunal can grant interest when the arbitral award is concerning the payment of money.

In the present matter, after a dispute arose between the parties, the matter was referred to arbitration. The arbitrator granted the principal sum along with other amounts to one of the parties. Further, compound interest was also awarded at a certain rate till the date of claim. Dissatisfied with the award, the other party approached the High Court (HC) of Himachal Pradesh. The HC denied compound interest to the party. The question before the SC was whether the arbitral tribunal is empowered to grant compound interest.

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While deciding the matter, the SC quashed HC's reasoning where the HC said that compound interest can only be granted if there is a specific contract or any authority under a statute that allows for compounding of interest. The SC relied on a previous judgment where it was held that in the absence of any provision of granting of compound interest in the contract, the tribunal may award a sum inclusive of interest as compound interest. Therefore, the SC held that the Arbitral Tribunal is empowered to grant compound interest.

(Judgement available here.)

MISCELLANEOUS

CCI ORDER

1 CCI orders an investigation against Google over abuse of dominant position [Digital News Publishers Association v. Alphabet Inc. And Ors.]

Over the past few years, the revenue generation through digital advertising has increased manifold. The Covid-19 pandemic has also contributed exponentially to the reliance of users on digital media. While having a monopoly or a dominant position might not be considered in the competition market as bad per se, but its abuse is prohibited under the CA. Technology companies like Google have a massive outreach when it comes to rendering specialized internet services including online advertising to the users across the globe. The lack of transparency in online digital advertising makes it difficult for publishers to verify their ad revenue.

In the present case, CCI ordered an investigation into the tech giant Alphabet Inc's Google. The informants, Digital News Publishers Association (DNPA) raised various allegations against Google pertaining to news aggregation. The pivotal contention raised by the informant was that the revenue generated by Google through news dissemination was kept under wraps. Though the content is published by the news media companies but, online search engines like Google end up with a significant portion of the revenue, while the publisher receives only 51% of the advertisement revenue by the advertisers. Another allegation was that Google was abusing the dominant position that it holds in the relevant market. It imposed unfair conditions on the news publishers, who mainly relied on Google for majority traffic.

In this regard, the fair-trade regulator noted that Google being at a monopolistic position, imposed arbitrary and unfair conditions on the publishers which left them with no option but to accept its conditions. CCI in its prima facie view held Google liable under the provisions of CA.

(Order available here.)

MISCELLANEOUS

RBI NOTIFICATION

1 RBI releases the new guidelines on Registration of Factors (Reserve Bank) Regulations, 2022

Factoring is a financing method in which a company sells its receivables to another entity, in order to meet immediate cash flow needs that may be delayed by payment delays. It contributes in the improvement of cash flow and the protection of the company's credit risk. Banks and non-banking financial institutions (NBFCs) can both undertake the factoring business. While banks can undertake factoring business without the prior approval of Reserve Bank of India (RBI), NBFCs need to obtain a prior approval.

In this regard, the RBI released the Registration of Factors (Reserve Bank) Regulations, 2022. These regulations provide with a procedure for issuing a Certificate of Registration to the companies seeking to undertake factoring business. The regulations prescribe the framework to the factors for the manner of filing the transactions with the Central Ministry by a Trade Receivable Discounting System (TReDS).

TReDS, is an institutional mechanism that helps in facilitating the Micro, Small and Medium Enterprises to access adequate finance. On behalf of the Factor, TReDS is required to register the particulars of the assignment or satisfaction in prescribed forms with Central Registry within 10 days of the date of such assignment or satisfaction. After obtaining the Certificate of Registration from RBI, the NBFCs can undertake factoring services, according to the Registration Regulations. These guidelines would further contribute in bolstering the TReDS platforms and will also help in facilitating the functioning of the MSMEs. It would facilitate the factoring business on a global scale. The Regulation is a step toward easing the timely reporting of transactions.

(Notification available here.)

MISCELLANEOUS

RBI DISCUSSION PAPER

1 RBI releases discussion paper on Prudential Norms for Classification, Valuation and Operation of Investment Portfolio of Commercial Banks

The outstanding investment portfolio of commercial banks was at Rs 45.84 trillion as of November last year. The current norms for investment portfolios of commercial banks are largely based on a framework introduced in October 2000, which relied upon the then prevailing global standards and best practices. Global financial markets have witnessed an ocean of changes surrounding the classification, valuation and measurement of investments. In this regard, RBI released a discussion paper on Prudential Norms for Classification, Valuation and Operations of Investment Portfolio of Commercial Banks. The discussion paper aims at aligning the classification, measurement and valuation of investments of commercial banks in line with the global standards and practices to in turn minimize the risks that banks take.

The main proposal of the discussion paper is categorizing the investment portfolio of banks under three categories. Held to Maturity, Available for Sale and Fair Value through Profit & Loss Account.

- **Held to Maturity**

Securities acquired by the banks with the intention to hold up to maturity would be classified under HTM. In the previous regime, only government bonds under the ambit of HTM. The paper proposes the inclusion of corporate bonds as well. The rationale behind such a move is to increase the corporations in raising cash at higher yields.

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- **Available for Sale**

When a bank's intention with respect to assets eligible for HTM is flexible, i.e., when it intends to hold to maturity as well as sell, such securities are classed under AFS.

- **Fair Value through Profit & Loss Account**

This tranche would include investments that do not meet the criteria of HTM or AFS. Further, even debt securities purchased by banks with the intent of selling them within a short period of time would come under the umbrella of Fair Value through Profit & Loss Account. This category may include investments like mutual funds, equity shares etc.

Through this proposal, India's central bank aims to facilitate symmetric treatment of gains and losses in cash and derivatives portfolios. It is expected to encourage banks to broaden their investment portfolios and manage the underlying risks.

(Discussion Paper available here.)

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