RRG & ASSOCIATES
LAW OFFICES

COMPANY LAW

1. POLICY

The Securities Exchange Board of India on ***August 3, 2021***, notified the following ***Amendments*** to the following ***Regulations***:

SEBI has issued ***Third Amendment to SEBI (Alternative Investment Funds) Regulations, 2012 No. SEBI/LAD-NRO/GN/2021/33*** and the ***key amendments*** are as follows:

(i) It introduces criteria for certain investors in an Alternative Investment Fund ("AIF") to be identified as Accredited Investors.

(ii) It provides a deemed status of Accredited Investors to the Central Government and the State Governments, developmental agencies and funds set up under the aegis of the Central Government or the State Governments.

SEBI has issued ***Third Amendment to SEBI (Portfolio Managers) Regulations, 2020 No. SEBI/LAD-NRO/GN/2021/31*** and the key amendments to the SEBI (Portfolio Managers) Regulations, 2020 are as follows:

1. Addition of the definitions of "accreditation agency", "accredited investor", and "large value accredited investor".

2. The portfolio managers are now allowed to offer discretionary or nondiscretionary or advisory services for investment up to 100% percent of the assets under management of the large value accredited investors in unlisted securities.

Amendment to SEBI (Foreign Portfolio Investors) Regulations, 2019 No. SEBI.LAD-NRO/GN/2021/32.

Regulation 4(c) of the SEBI (Foreign Portfolio Investors) Regulations, 2019 is now substituted with the following:

"Non-resident Indians or overseas citizens of India or resident Indian individuals may be constituents of the applicant provided they meet the conditions as specified by the Board. Provided that resident Indian other than individuals may also be constituents of the applicant subject to:

(I) Such resident Indian, other than individuals, is an eligible fund manager of the applicant, as provided under sub-section (4) of Section 9A of the Income Tax Act, 1961; and

(II) The applicant is an eligible investment fund as provided under sub-section 3 of Section 9A of the Income Tax Act, 1961 which has been granted approval under the Income Tax Rules, 1962."

The SEBI has issued ***SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2015*** on **7th September, 2021** in ***No. SEBI/LAD-NRO/GN/2021/47*** and the key amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 are as follows:

1. The existing clause (v) in Regulation 16(1) (b) is substituted, it is provided that neither the ID nor any of his relatives shall hold any securities or interest in the listed company, its

holding, subsidiary company during the 3 immediately preceding financial years or during the current financial year of a face value which is in excess of INR 50, 00,000 or 2% of the paid up share capital of the company or its associated companies.

2. Insertion of Regulation 17(1C) where SEBI has appointed any person as a director, it shall be ensured that approval of the shareholders is obtained at the next general meeting or within a period of 3 months from the date of appointment whichever is earlier.

3. The increase in requirement of ID to two thirds representation under Regulation 19.

4. A proviso has been inserted which stipulate that all related party transactions shall now be approved only by IDs.

Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

SEBI has introduced ***Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021*** in ***No. SEBI/LAD-NRO/GN/2021/40***. The said regulations are effective from **August 13, 2021**. The provisions of these Regulations shall apply to the following:

(i) Employee Stock Option Schemes;

(ii) Employee Stock Purchase Schemes;
(iii) Stock Appreciation Rights Schemes;
(iv) General Employee Benefits Schemes;
(v) Retirement Benefit Schemes; and
(vi) Sweat Equity Shares.

Introduction of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 in No. SEBI/LAD-NRO/GN/2021/39

The SEBI (Issuance and Listing of Non-Convertible Securities) Regulations, 2021 (the "NCS Regulations") have to get into effect on ***August 16, 2021***. The NCS Regulations aim to harmonise provisions of the Companies Act, 2013, its rules, and_SEBI regulations, align various SEBI circulars and guidelines, identify policy changes in line with current market practices for ease of doing business, and merge all existing circulars into a single operational circular. The SEBI (Issue and Listing of Debt Securities) Regulations of 2008 and the SEBI (Non-Convertible Redeemable Preference Shares) Regulations of 2013 are proposed to be repealed by the NCS Regulations. The NCS Regulations apply to the issuance and listing of debt securities and nonconvertible redeemable preference shares by an issuer in a public offering; the issuance and listing of non-convertible securities by an issuer that are proposed to be listed in a private placement; and the listing of commercial paper issued by an issuer in accordance with RBI guidelines.

2. NOTICE/CIRCULARS

EXTENSION OF THE LAST DATE OF FILING COST AUDIT REPORT TO THE BOARD OF DIRECTORS: MCA

The MCA, in a circular dated September 27, 2021, has extended the deadline for cost auditors to submit their reports to the company's board of directors. The cost auditor is obliged to create the cost audit report and present it to the firm within 180 days of the financial year's end, according to Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014. According to the Circular, the MCA has ruled that if the cost auditor delivers the cost audit report for the financial year 2020-21 to the board of directors of the firms before October 31, 2021, the cost audit report will not be deemed a violation of Rule 6(5) of the CRA Rules. As a result, the firm must file the cost audit report for the financial year 2020-21 with the Central Government in E-Form CRA-4 within 30 days after receiving a copy of the cost audit report. However, the Circular clarifies that if a company has received or has granted an extension of time to hold an Annual General Meeting under sub-section (1) of Section 96 of the Companies Act, 2013, E-Form CRA-4 may be filed within the resulting extended period of time for filing financial statements under Section 137 (Copy of Financial Statement to be filed with Registrar) of the Companies Act.

EXTENSION OF THE LAST DATE FOR HOLDING ANNUAL GENERAL MEETING FOR THE FINANCIAL YEAR 2020-21: MCA

In light of the difficulties faced by companies, industry bodies, and professional institutes as a result of the Covid-19 pandemic, the

jurisdictional Registrars of Companies, MCA, have extended the due date for holding annual general meetings (AGMs) by two months, to 30th November 2021, via circulars dated September 23, 2021.

3. JUDGMENTS

MANDATORY ACCEPTANCE OF SUBMITTED RESOLUTION PLAN AFTER ITS APPROVAL BY COC

Ebix Singapore Pte Ltd. v. Committee of Creditors of Educomp Solutions Ltd. & Ors., 13th September 2021.

The Committee of Creditors accepted the Resolution Plan provided by Ebix Singapore Pte Ltd. for Educomp Solution Ltd. in the matter. While an application for final approval of the Resolution Plan was pending before the NCLT, Ebix requested permission from the NCLT to withdraw the Resolution Plan, citing delays in receiving final approval from the NCLT, financial mismanagement of Educomp by the previous management, and so on. The NCLT granted Ebix's request, and the Resolution Plan was withdrawn. The NCLAT overturned this decision on appeal.

The Hon'ble Supreme Court in the matter held that the NCLT's residuary powers under Section 60(5) (c) of the IBC cannot be used to construct procedural remedies that have substantive outcomes on the insolvency process. Only Section 12A of the IBC and Regulation 30A of the CIRP Regulations allow Adjudicating Authority to allow withdrawals from the CIRP under the current system.

The Hon'ble court further held that Had the legislature intended to recognize the concept of withdrawals or modifications to a Resolution Plan after it has been submitted to the Adjudicating Authority, it must have specifically provided for the same.

The existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved Resolution Plans, at the behest of the Successful Resolution Applicant, once the plan has been submitted to the Adjudicating Authority. A submitted Resolution Plan is binding and irrevocable as between the CoC and the successful Resolution Applicant in terms of the provisions of the IBC and the CIRP Regulation.

NCLAT HAS NO JURISDICTION TO CONDONE DELAY EXCEEDING THE PRESCRIBED LIMITATION PERIOD MENTIONED UNDER THE CODE.

In the case of National Spot Exchange Ltd. v. Mr. Anil Kohli, Resolution Professional for Dunar Foods Ltd. 14th September, 2021.

An order of the NCLT must be appealed to the NCLAT within 30 days, according to the Code.

The NCLAT, on the other hand, has the authority to excuse a delay of 15 days over and beyond the 30 day timeframe. In this case, National Spot Exchange Limited (NSEL) was aggrieved by the NCLAT's refusal to excuse a 74-day delay in filing an appeal against the NCLT's ruling. The NCLAT's order was challenged by NSEL in the Supreme Court, with the main question being whether the NCLAT could have condoned the delay beyond the statutory limitation period of 30 days plus 15 days, or whether, in the alternative, the SC could use its inherent powers under the Indian Constitution to condone such delay.

The Supreme Court held that where the law expressly states that a court or tribunal cannot condone delay for more than a certain period of time or limits the power to condone delay to a specific number of days, the same would fall under the purview of legislation and would not be excused even under the Constitution's provisions.

If the Code meant to provide for the forgiveness of delays in any way, there would be no opposing rules limiting the number of days for which the delay might be forgiven. The SC further observed that if the wording of the act is sufficiently clear, the court must give effect to it, and therefore found that the NCLAT lacks authority to excuse a delay of more than 15 days from the term of 30 days as envisioned by the Code, and the appeal was rejected.

SUCCESS FEES FOR RESOLUTION PROFESSIONAL CANNOT BE PART OF THE CODE.

In the case of Mr. Jayesh N. Sanghrajka, Erstwhile R.P. of Ariisto Developers Pvt. Ltd v. The Monitoring Agency nominated by the Committee of Creditors of Ariisto Developers Pvt. Ltd., 20th September 2021.

In the present case, the issue before the Principal Bench of the NCLAT was whether the Resolution Professional could charge success fee for CIRP. The NCLT, Mumbai Bench, while approving the resolution plan of the successful resolution applicant, disallowed the success fee of Indian Rupees Thirty Million to the Resolution Professional and directed redistribution of this amount. This order of the NCLT was appealed before the NCLAT by the Resolution Professional contending that the approval of success fee was a commercial decision of the CoC and the NCLT could not have interfered with the same while approving the resolution plan.

The NCLAT appointed Amicus Curiae to assist the tribunal on whether 'success fees' could be charged. The Amicus Curiae submitted that the Code and related regulations contain no express provision for grant of success fees and that the Resolution Professional could charge remuneration only in a transparent manner and the same should be a reasonable reflection of the work and should not be inconsistent with the regulations. Also, there had to be a prior consultation of minds at initial stages of CIRP to see as to what a reasonable fee would be to be incurred on the Resolution Professional.

NCLAT opined that where the 'success fees' is more in the nature of contingency and speculative, it cannot be said to be a part of the provisions of the Code and the same is not chargeable. The NCLAT further found that the manner in which the 'success fees' was pushed for approval in the present case at the last minute when the CoC was approving the resolution plan, as well as quantum of the 'success fees' as improper, and upheld the decision of the NCLT rejecting the payment of *'success fees'* to the Resolution Professional.

IBC

1. POLICIES-

IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) (THIRD AMENDMENT) REGULATIONS, 2021

The Insolvency and Bankruptcy Board of India has introduced Amendment to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (**Principal Regulations)** on 30TH Sept., 2021 in No. ***IBBI/PR/2021/23***. The **Key Features of the Regulation:**

1. Under Regulation 17 of Principal Regulations, 1A has been inserted which states CIRP functions shall be discharged under the Code and Principal Regulations in accordance with the Board's guidelines.

2. Under Regulation 36A, changes to the invitation for Expression of Interest (EOI) can only be made once, and in the same manner as the initial invitation for EOI.

3. Any modification in the RFRP issued as per the Principal Regulations shall not be made more than once.

4. Under Regulation 39(1A and 1B), the Resolution Professional can allow modification of the resolution plan received under sub-regulation (1), but only once or use a challenge mechanism to encourage resolution applicants to improve their plans.

5. The committee shall not consider any resolution plan (i) received after the time specified by the committee (ii) or received from a person who does not appear on the final list of prospective resolution applicants (iii) or received from a person who does not comply with the provisions of Section 30 sub-section (2) and sub-regulation 36B.

IBBI (LIQUIDATION PROCESS) (SECOND AMENDMENT) REGULATIONS, 2021

The Insolvency and Bankruptcy Board of India has introduced Amendment to the IBBI

(Liquidation Process) Regulations, 2016 **(Principal Liquidation Regulation)** on 30th September 2021 in ***No. IBBI/PR/2021/24.***

The **Salient Features of the Amended Regulation:**

1. Under the definition of 'liquidation cost', '*the amount repayable to contributories under sub-regulation (3) of regulation 2A*'is now omitted and replaced by '*the amount repayable under sub-regulation (3) of regulation 2A*'. (Regulation 2(1) (ea) (vii)).

2. The Stakeholder Consultation Committee (SCC) shall advise the liquidator on (a) professional appointment and remuneration, and (b) sale under Regulation 32.

3. Liquidator shall place before the SCC's first meeting, his decisions made prior to the SCC's constitution.

4. If a class of stakeholders does not nominate a representative to the SCC, the representative will be chosen by a majority vote of the class's present and voting stakeholders.

5. Reasons for failing to adopt SCC's advice must be stated in the next progress report.

6. Participation in an auction does not require a non-refundable deposit. The amount of the earnest money deposit must not exceed 10% of the reserve price.

7. If the liquidator rejects the highest bidder's bid, the liquidation must provide reasons. The following reasons should be included in the next progress report.

8. Regardless of pending application of avoidance transaction under Part II of the IBC, the liquidator is required to liquidate corporate debtor within a year from liquidation commencement date.

9. The timeframe for submitting a list of stakeholders is 45 days from the final date of claim receipt and 75 days from the Liquidation Commencement Date.

AMENDMENT IN PLEADINGS OR FILING OF ADDITIONAL DOCUMENTS U/S 7 IBC IS NOT PROHIBITED NOW

The Supreme Court has ruled that a statement of accounts, balance sheet, or financial statements, as well as an offer of a one-time settlement of a claim filed within the limitation period, constituted acknowledgement of debt under Section 18 of the Limitation Act, 1963. According to the Supreme Court, the issuance of a certificate of recovery in favour of the financial creditor or a judgement and/or decree for money in favour of the financial creditor by the Debt Recovery Tribunal or any other tribunal or court would give rise to a new cause of action for the financial creditor to initiate proceedings under Section 7 of the Code.

The Supreme Court further said that modifying pleadings in a Section 7 of the Code application or filing additional documents with a Section 7 of the Code application is not forbidden. The adjudicating

authority may refuse an applicant's request to file more pleadings and/or papers if there has been an unreasonable delay, and proceed to make a final judgment.

EXISTENCE OF DISPUTE IN TERMS OF SECTION 8(2) (A) OF THE IBC

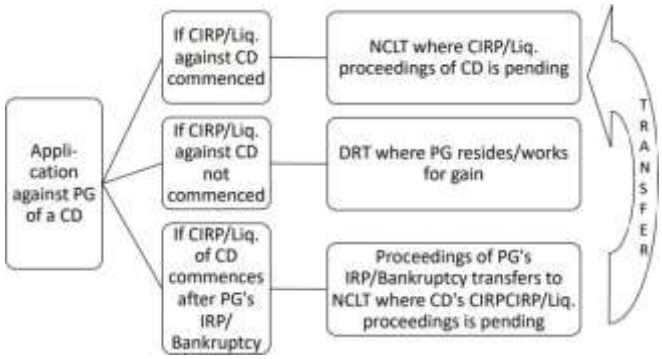
The Supreme Court held that, in order to determine the 'existence of a dispute' between the Corporate Debtor and the Operational Creditor under Section 8(2)(a) of the Code, the Adjudicating Authority must examine whether there is a plausible contention that requires further investigation, and that the dispute is not a patently feeble legal argument or an unsupported assertion of fact. The Adjudicating Authority, on the other hand, is not necessary to be convinced that the defence is likely to succeed. The Supreme Court further held that the Adjudicating Authority has no choice but to reject the application under Section 9(5) (ii) (d) of the Code if a disagreement actually exists in fact and is not false, fictitious, or illusory.

NO EQUITY-BASED JURISDICTION WITH THE ADJUDICATING AUTHORITY UNDER THE PROVISIONS OF THE CODE.

The Supreme Court ruled that the Adjudicating Authority's jurisdiction under Section 31(1) of the Code is limited to determining whether the Resolution Plan approved by the Committee of Creditors meet the Section 30(2) requirements, and that the Adjudicating Authority has no equity-based jurisdiction under the Code's provisions. The Supreme Court observed that the legislature appears to have made a conscious choice under the Indian bankruptcy system not to allow the Adjudicating Body any independent equity-based authority beyond the statutory constraints set out in Section 30(2) of the Code.

As a consequence, the Supreme Court dismissed the claim that Operational Creditors were not treated fairly and equally, holding that as long as the payment under the Resolution Plan was fair and equitable among Operational Creditors as a class, it fulfilled Section 30(2) (b) of the Code.

INITIATION OF THE CIRP OF THE CORPORATE DEBTOR IS NOT A PREREQUISITE FOR MAINTAINABILITY OF AN



APPLICATION UNDER SECTION 95 OF THE IBC, 2016

In the matter of PNB Housing Finance Ltd. V. Mr. Mohit Arora, 29th September, 2021, it is held by SC that Under Section 60(1), the Adjudicating Authority, in relation to the insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the NCLT having territorial jurisdiction over the place where the registered office of a corporate person is located.

"From the plain reading of Section 179(1) of IBC, 2016, it is amply clear that the

provision is subject to Section 60 of the IBC, 2016, which implies that whenever Section 60 is attracted, the provision of Section 179(1) of IBC, 2016 shall not be applicable and the jurisdiction shall vest with NCLT."

Hence, in the case, there comes a situation where various IB applications for initiation of CIR process against the Corporate Debtor are pending. The moment the IB application **in relation to** Insolvency resolution of the Corporate Debtor is pending before this Adjudicating Authority, the provisions of Section 60(1) get attracted and the jurisdiction to entertain insolvency process against the personal guarantor would, therefore, lie with the NCLT.

NON-COMPLETION OF RESOLUTION PROCESS WITHIN TIMEFRAME WILL RESULT IN LIQUIDATION

In the event that a Resolution Plan is not accepted by the CoC within the stipulated time period for a resolution procedure under the Code, the NCLAT in New Delhi held that all attempts should be taken to resolve the corporate debtor while keeping in mind the Code's fundamental aim. The CoC had not followed the Adjudicating Authority's timeframe for approving the Resolution Plan in this matter. However, the NCLAT in New Delhi dismissed the appellant's argument that, under Section 33 of the Code, the sole consequence of failure to complete the settlement procedure within such a short time frame is liquidation. The NCLAT in New Delhi supported the Adjudicating Authority's exercise of discretion in refusing to issue a liquidation order due to the CoC's examination of the settlement plan.

A REGISTERED SOCIETY IS NOT A CORPORATE PERSON UNDER THE CODE

The NCLAT in New Delhi declared that a society formed under the Andhra Pradesh Society Registration Act, 2001 (AP Act) cannot be subjected to the insolvency resolution procedure for corporate entities under Part II of the Code. The Appellant asserted that a society registered under the AP Act was given the status of a body corporate under Section 18 of the AP Act and therefore was subject to the jurisdiction of the Adjudicating Authority under the Code, based on Section 3(7) of the Code's definition of a corporate person.

Section 2 of the Code, which stipulates which entities are covered by the Code, should be interpreted in connection with Section 3(7) of the Code. The NCLAT in New Delhi dismissed the appeal, stating that a society that is not an incorporated business under the AP Act, as specified by Section 2 of the Code, is not a "*Corporate Person*" as defined by Section 3(7) of the Code.

FINANCIAL CREDITOR CANNOT INITIATE THE INSOLVENCY RESOLUTION PROCEEDINGS AGAINST THE PERSONAL GUARANTOR IN THE ABSENCE OF ANY CIRP OR LIQUIDATION PROCESS AGAINST THE CORPORATE DEBTOR

S.K. Products, a corporate debtor, had applied to the Financial Creditor for a loan. Disbursement against a bill of exchange was introduced by S.K. Products LLP. The

financial creditor had advanced a check dated 11.10.2018 and completed a demand Bill of Exchange along with the discount letter, and S.K. Products LLP had issued post-dated checks to Financial Creditor that were dishonoured on presentation. Under Rule 7(1) of the *Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019*, the Financial Creditor issued a loan recall notice to the guarantor and sent a demand notice.

In the absence of any CIRP or liquidation action against the corporate debtor, the NCLT in Mumbai concluded that a financial creditor cannot begin insolvency resolution proceedings against the personal guarantor. The NCLT in Mumbai pointed out that Section 60(2) of the Code contains a non-obstante clause that states that an application initiating the insolvency resolution process against a corporate debtor's personal guarantor must be filed before the adjudicating authority only if a CIRP or liquidation process of the corporate debtor is pending before the adjudicating authority.

While a financial creditor can file an application under Section 7 of the Code against the corporate debtor and the corporate guarantor, an application under Section 95 of the Code can only be filed by the financial creditor against the personal guarantor of a corporate debtor that is undergoing the CIRP or is in liquidation, according to the NCLT, Mumbai.

A MORATORIUM DECLARED UNDER SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 APPLIES ONLY TO PROCEEDINGS IN RESPECT OF THE CORPORATE DEBTOR AND NOT ITS DIRECTORS OR MANAGEMENT.

Anjali Rathi & Ors. v. Today Homes & Infrastructure Pvt. Ltd. and Ors., 8th September, 2021.

The Hon'ble Supreme Court concluded, from the beginning, that the NCLT must still adopt the Resolution Plan under Section 31(1) of the IBC. As a result, issuing a direction permitting the promoters' personal possessions to be attached at this time, when the settlement plan is awaiting approval, would be inappropriate. As a result, the NCLT was ordered to rule on the application's approval within six weeks of receiving a certified copy of the current order. Furthermore, the Hon'ble Supreme Court concluded that since the Corporate Debtor was placed under a moratorium under Section 14 of the IBC, no new actions could be initiated or existing ones could be pursued against the corporate debtor. Even though a moratorium had been issued under Section 14 of the IBC, the Apex Court ruled that the petitioners had the right to sue the corporate debtor's promoters.

The Hon'ble Supreme Court cited the decision in *P. Mohanraj v. Shah Bros. Ispat (Pvt.) Ltd.*, which concluded that the moratorium imposed under Section 14 of the IBC only applied to the corporate debtor and not to its directors and management, against whom proceedings might proceed. The Apex Court, however, could not issue such a directive based on the settlement

plan because it is still pending before the NCLT, as previously stated. After the NCLT's ruling on the application's acceptance under Section 31(1), the petitioners were given the freedom to pursue any legal remedies open to them, subject to the consequences.

OPERATIONAL CREDITOR'S APPLICATION UNDER SECTION 9 OF THE IBC FOR INITIATION OF INSOLVENCY PROCEEDINGS CAN BE REJECTED IF A DISPUTE BETWEEN THE OPERATIONAL CREDITOR AND THE CORPORATE DEBTOR EXISTS IN FACT SUPPORTED BY EVIDENCE AND IS NOT SPURIOUS OR ILLUSIONARY IN NATURE.

In the case of Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd., 10th August, 2021.

The Hon'ble Supreme Court reaffirmed the law established in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. that one of the purposes of the IBC qua operational debts was to ensure that the amount of such debts, which are typically smaller than financial debts, did not enable operational creditors to place the corporate debtor into the insolvency resolution process prematurely or for arbitrary reasons. The Supreme Court stated that the adjudicating body must determine if there is a reasonable contention that demands additional examination at the time the petition is admitted.

LIMITATION PERIOD AGAINST NCLT's JUDGMENT BEGINS ON THE DAY OF PRONOUNCEMENT, NOT ON THE DATE WHEN ORDER IS POSTED

V. Nagarajan V. Sks Ispat And Power Ltd, 22nd October, 2021.

The Supreme Court concluded that if a party because of its delay fails to seek for a certified copy of the order after it is pronounced, the party is denied the right to extend the limitation period. The certified order must be obtained within 30 days, according to Section 61(2) of the Insolvency and Bankruptcy Code (IBC). As a result, the Court declared that the order against the National Company Law Tribunal's judgment begins on the day of the tribunal's pronouncement, not on the date of the order's uploading. The party must apply for the certified order from the day that it was pronounced, not from the date that it was posted. If the party fails to file the application, the thirty-day term will not be extended. The Bench, which included Justices DY Chandrachud, Vikram Nath, and BV Nagarathna, stated that completing out the application is not only a technical necessity, but also a test of the aggrieved party's efforts in filing it on time.

ARBITRATION AND CONCILIATION ACT, 1986

IMPOSITION OF COSTS NOT A REFLECTION ON COUNSEL; COSTS MUST FOLLOW CAUSE IN COMMERCIAL MATTERS INCLUDING WRIT PETITIONS: SUPREME COURT

In the case of UFLEX Ltd. v. Govt. of Tamil Nadu, 17th September, 2021, the Supreme Court observed that costs must follow the cause in commercial matters including Writ Petitions. The court went on to say that assuming that the imposition of costs is a reflection on the counsel is incorrect. The bench of Justices Sanjay Kishan Kaul and Hrishikesh Roy stated that tender jurisdiction was established to examine commercial matters, and that where parties repeatedly seek to challenge tender awards, we believe that the successful party should be awarded costs and the losing party should be required to pay costs.

SECTION 138 NI ACT - IF SIGNATURE ON CHEQUE IS ADMITTED, PRESUMPTION UNDER SECTION 139 WILL BE RAISED: SUPREME COURT

In the case of Triyambak S. Hegde v. Sripad, 23rd September, 2021, The Supreme Court has stated that if the signature on the cheque is acknowledged, the presumption that the cheque was issued in discharge of a legally enforceable obligation will be raised under Section 139 of the Negotiable Instruments Act. When such a presumption is raised, it is the responsibility of the accused to refute it. The Court ruled that because the signature on the cheque was acknowledged, a presumption that the cheque was issued in payment of debt or liability should be created under Section 139.

FOREIGN AWARD CAN BE BINDING ON NON-SIGNATORIES TO ARBITRATION AGREEMENT: SUPREME COURT

In the case of Gemini Bay Transcription Pvt. Ltd. v. Integrated Sales Service Ltd. 11th August, 2021. The Supreme Court has ruled that a foreign award can bind and be enforced against non-signatories to an arbitration agreement.

The Court cited Section 46 of the Arbitration and Conciliation Act in this respect, which deals with the conditions in which a foreign award is enforceable. The term refers to "persons as between, whom it was made," not parties to the agreement, according to the Court. Non-signatories to the agreement might be considered "persons."

EMERGENCY ARBITRATION AWARD ENFORCEABLE IN INDIAN LAW: SUPREME COURT

In the case of Amazon.com NV Investment Holdings LLC v. Future Retail Limited, 18th March, 2021, in its fight with Future Retail Limited (FRL) over the latter's merger plan with Reliance Group, the Supreme Court decided in favour of e-commerce behemoth Amazon. The top court said that a Singapore arbitrator's Emergency Award halting the FRL-Reliance merger is enforceable in Indian law.

The Court found that an emergency arbitrator's award/order is covered by Section 17 of the Arbitration and Conciliation Act, and that it can be enforced under Section 17's provisions (2). It further concluded that an order of execution of an Emergency Arbitrator's order made under Section 17(2) of the Act is not subject to an appeal under Section 37 of the Arbitration Act.

JUDGMENT DEBTOR CAN'T RAISE OBJECTIONS IN INSTALMENTS; RES JUDICATA APPLICABLE TO EXECUTION PROCEEDINGS: SUPREME COURT

In the case of Dipali Biswas & Ors. v. Nirmalendu Mukherjee, 5th October, 2021, According to the Supreme Court, the idea of res judicata will also apply to execution cases. A judgment debtor cannot object to executions in installments, according to the Court. While rejecting a new objection lodged by a judgment-debtor against the auction-sale procedures in the fifth round, a bench comprised of Justices Hemant Gupta and V Ramasburmanian made this statement.

"*A judgment--debtor cannot be allowed to raise objections as to the method of execution in instalments. After having failed to raise the issue in four earlier rounds of litigation, the appellants cannot be permitted to raise it now*", the judgment authored by Justice Ramasubramanian observed.

The judgment explained the principle of res judicata will apply to Execution Proceedings as well.

RETIREMENT WILL NOT TERMINATE MANDATE OF DEPT OFFICER APPOINTED AS SOLE ARBITRATOR: SUPREME COURT RESTORES 1998 AWARD

In the case of M/s Laxmi Continental Construction Co v. State of UP 20th September 2021, The Supreme Court has ruled that a department official who was nominated as an arbitrator can continue to preside over the arbitration proceedings even after his retirement, in a case arising out of the Arbitration Act 1940. Referring to the terms of the Arbitration Act 1940 and the Arbitration Agreement, a bench of Justices MR Shah and AS Bopanna decided that the arbitrator continuing the arbitration after his retirement was illegal.

CONCILIATION PROCEDURE MAY NOT BE A BAR OVER ARBITRATION: DELHI HC

FACTS

M/s Sanjay Iron and Steel Ltd. and the Steel Authority of India Limited entered into an agreement to operate as a distributor of Thermo Mechanically Treated steel (TMT) in the State of Haryana. During the execution of the Agreement, disagreements emerged between the Petitioner and the Respondent

over some orders from small customers and dealers weighing less than 50 tonnes of TMT, prompting the Respondent to issue a termination notice to the Petitioner. Following the termination, the Petitioner used the Agreement's dispute resolution section (Impugned Clause), which was a tiered dispute resolution clause, stipulating that the Parties must first attempt to conciliate and then resort to arbitration.

Post invocation of the Impugned Clause, the Petitioner realised that the conciliation process required submission of fee, which it refused to pay for being exorbitant. Instead of conciliating, the Petitioner invoked sub-clause 2 of the Impugned Clause and preferred a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of Sole Arbitrator before the High Court of Delhi. The Respondent objected to the Petition on the grounds that: (i) it violated Section 11(2) of the Act which affirms party autonomy and Section 76 read with Section 79(3) of the Act that mandates termination of conciliation proceedings in the absence of payment of fees of conciliator; and also it is not maintainable since the Petitioner had not exhausted its remedy before the required institution.

ISSUE

Whether the prayer of the Petitioner seeking appointment of Arbitrator under Section 11 of the Act is maintainable in view of the Impugned Clause?

JUDGMENT

The Court dismissed the petition and upheld mandatory compliance with the Impugned Clause, stating that the primary goal of a conciliation clause in any agreement is to reduce the time it takes to resolve a disagreement. The Court dismissed the petition and confirmed mandatory compliance with the Impugned Clause, holding that the primary aim of a conciliation clause in any agreement is to shorten the route for dispute settlement, regardless of the expenditures spent by the Parties.

According to the Impugned Clause's mandatory language, the Parties must first examine the possibility of settling problems through conciliation, regardless of the costs spent by the Parties.

The Hon'ble Supreme Court distinguished the current case on facts from the Hon'ble Supreme Court's decisions in *Visa International Limited v. Continental Resources (USA) Ltd* and *Demerara Distilleries Private Limited v. Demerara Distillers Limited*, citing adequate correspondences between the parties in the aforementioned judgments, demonstrating no scope for conciliation.

In this case, however, the Court stated that the parties did not have any such correspondences. Despite calling conciliation, the Court found that the parties had made no endeavor to reach an agreement. In view of this, the Court ordered the Parties to exhaust the scope of conciliation within 30 days of the beginning of conciliation proceedings, as required by sub-clause 1 of the Impugned Clause, and then to resort to arbitration if necessary.

RBI RELEASED MASTER DIRECTION ON -TRANSFER OF LOAN EXPOSURES DIRECTIONS, 2021

RBI issued a ***Comprehensive Draft Framework*** for the Securitization of Standard Assets and sale of loan exposures on 8th June 2020 and invited for comments and feedback from the stakeholders and based on it issued this Master Direction on ***24th September 2021*** in circular ***RBI/DOR/2021-22/86 DOR.STR.REC.51/21.04.048/2021-22.***

Key Highlights:

- The Purchased loans can now be securitized; acquired loans must be held for a period of time before being securitized.
- For residential mortgage-backed transactions, the risk retention threshold has been decreased to 5%.
- Minimum holding period will be 6 months maximum while with tenure of upto 2 years, it will hold upto to 3 months.
- The new framework for STC securitizations will qualify for lower capital requirements.
- The electronic platforms for selling loans to allow individual investors in the loan market, is halted by outlining who all might be authorized transferees of loans.

INCOME TAX ACT - DATE OF RECEIPT OF ORDER IRRELEVANT FOR COMPUTING LIMITATION UNDER SECTION 263(2): SUPREME COURT

In the case of Commissioner of Income Tax, Chennai v. Mohammed Meeran Shahul Hameed 7th October 2021, the date of receipt of the assessment order has no bearing on the limitation time for a Revision by the Principal Commissioner under Section 263 of the Income Tax Act, according to the Supreme Court.

The Court decided that under S.263 (2) of the Act, no revision order can be issued after two years had passed from the end of the financial year in which the order to be amended was passed. The Bench holds that the receipt of the order has no bearing on the determination of limitation since S.263 uses the word made rather than received.

NGT CONSTITUTES FIVE-MEMBER COMMITTEE TO ASCERTAIN WATER QUALITY ANALYSIS OF JHELUM

The National Green Tribunal's Principal Bench in New Delhi has taken notice of the pollution issue in Jammu and Kashmir's Doodh Ganga and Mamath Kull, both tributaries of the River Jhelum. After looking into the petitioner's complaints, the NGT came to the conclusion that there are prima facie breaches of the Water (Prevention and Control of Pollution) Act, 1974 in relation to these two bodies of water.

A Joint Committee comprised of the Central and State Pollution Control Boards (CPCB),

Deputy Commissioners of Srinagar and Budgam, and the Director, Urban Local Bodies, J&K was also established by the bench led by NGT Chairperson Justice Adarsh Kumar Goel.

"*The Committee may look into the water quality in terms of Fecal coliform, quantity of sewage being discharged, solid waste being dumped on the banks and the action plan prepared by the River Rejuvenation Committee (RRC) for Jammu and Kashmir constituted as per orders of the Tribunal in OA 673/18. Further action be planned and executed accordingly*".

NOTICES/CIRCULARS

BATTERY OPERATED VEHICLES EXEMPTED FROM PAYMENT OF FEES: MORTH

Exemption from fees for battery-operated vehicles; August 2, 2021: The Central Motor Vehicles (Sixteenth Amendment) Rules, 2021 were notified by the Ministry of Road Transport and Highways ("MoRTH") on August 2, 2021. Battery-operated vehicles have been excused from paying fees for the issuance or renewal of a registration certificate, as well as the assignment of a new registration mark, under these Rules.

ENVIRONMENT (PROTECTION) SECOND AMENDMENT RULES, 2021 NOTIFIED, 6 AUGUST 2021

The Environment (Protection) Second Amendment Rules, 2021, were notified by the Ministry of Environment, Forests and Climate Change on August 6, 2021. The Entry no. 73 in Schedule 1 of the Environment (Protection) Rules, 1986 has been replaced by these Rules. As a result, the Bulk Drug and Formulation (Pharmaceutical) business has been mandated to meet stricter effluent and emission regulations. After one year from the date of publication of this notification in the Official Gazette, these Rules will take effect.

TIMILY FILING OF APPEALS IN TAX MATTERS NEEDED; SC CALLS FOR E-SYSTEM TO TRACK REVENUE LITIGATION

The Supreme Court in this matter asked for a method to track revenue litigation, lamenting the Union's '500 or 600-day' wait in submitting appeals, even in good tax cases. The bench of Justices D. Y. Chandrachud and M. R. Shah advised the Centre to implement a system similar to the Judiciary's 'Case Information System' for monitoring revenue proceedings and litigation in revenue issues to which the Union of India is a party at all levels.

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