Newsletter

Volume 37, Feb 2025

SNG & PARTNERS
Advocates & Solicitors
ESTD 1962

INDEX

INDEX

Editor's note

Dear Readers,

I am pleased to share our February 2025 newsletter, covering key legal and regulatory developments across arbitration, IBC, RBI, and SEBI.

In arbitration, the Supreme Court affirmed that an oral contract undertaking joint liability falls within an arbitration clause, extending its applicability to non-signatories. The Delhi High Court clarified that non-filing of an arbitral award renders a Section 34 challenge non-est, reinforcing procedural compliance.

Under the IBC, the NCLAT ruled that financial creditors are not liable for defaults despite their oversight in project committees. The Supreme Court restricted High Court intervention in insolvency matters, emphasizing statutory tribunal jurisdiction. Additionally, the Kerala High Court reinforced that the IBC moratorium bars NI Act proceedings against corporate debtors but not individuals.

The RBI introduced key regulatory updates, including revised FEMA regulations on payment mechanisms for ACU member countries and new prudential norms for UCBs expanding lending limits. Microfinance loan risk weights have been lowered, and updates to the UNSC sanctions list under UAPA require compliance by regulated entities.

SEBI has strengthened investor protection with stricter safeguards for retail investors in Algorithmic Trading and revised timelines for Consolidated Account Statements (CAS). It has also introduced industry standards for RPT disclosures and LODR compliance while outlining guidelines for Specialized Investment Funds (SIFs) and new fund offer (NFO) deployment.

In this issue, we have included a thought paper on the Reverse Corporate Insolvency Resolution Process (Reverse CIRP) under the Insolvency and Bankruptcy Code (IBC). Designed to safeguard homebuyers' interests, Reverse CIRP enables promoters to complete stalled real estate projects without third-party intervention while ensuring that financial creditors and allottees retain their rights. The authors, Navneet Gupta (Partner) and Pankaj Bajpai (Senior Associate), highlight key judicial interpretations and emphasize the need for formal regulatory recognition of this mechanism to enhance transparency and uniformity in insolvency proceedings.

I hope you find this edition insightful.

Best wishes,

Rajesh Narain Gupta

Founder & Chairman,
SNG & Partners

A. ARBITRATION AND CONCILIATION ACT, 1996

1. Where renewal of contract is based on 'criteria of performance', said contract is deemed to have to been extended if the criteria is met: Jammu & Kashmir High Court (Zaffar Abbas Din vs Nasir Hamid Khan).

The Jammu & Kashmir High Court recently clarified that the contract which is renewable based on 'criteria of performance' is deemed renewed unilaterally after the criteria is met, and cannot be terminated. In this case, the Arbitrator was to determine legality of breach of agreement by interpreting the agreement-clause which said that "the agreement between the parties was compulsorily renewable after the expiry of first five years, if the sales remained satisfactory.

Read More

2. Supreme Court affirms an arbitral award against a husband, finding him jointly liable for the award due to a debit balance in a joint demat account registered in his wife's name – (AC Choksi Share Broker vs Jatin Pratap Desai).

The Supreme Court held that an oral contract undertaking joint and several liability falls within the scope of an arbitration clause. While rejecting the contention that the husband's liability constituted a "private transaction" beyond the scope of arbitration, the Apex Court observed that the arbitration clause, applicable to non-signatories, in conjunction with the husband's active participation in transactions within his wife's account, gave rise to an implied oral agreement establishing joint and several liabilities for both parties.

Read More

3. Plea of not receiving a signed copy of award cannot be raised for the first time in appeal under Section 37 of the Arbitration and Conciliation Act, 1996

Recently, the Gujarat High Court, while hearing a batch of appeals filed by the National Highways Authority of India (NHAI) against the dismissal of its applications under Section 34 of the Arbitration and Conciliation Act, 1996, held that a plea regarding non-receipt of a signed copy of the arbitral award cannot be raised for the first time in an appeal under Section 37 and such a contention should have been presented before the Civil Court during the original proceedings under Section 34.

Read More

4. Non-filing of arbitral award renders Section 34 application non-est – Delhi HC on procedural defects in arbitration challenges

"Arbitration, being an alternate dispute resolution mechanism, must ensure expeditious disposal; filings that do not meet basic requirements should not be permitted to stall the period of limitation from running." With this guiding principle, the Delhi High Court's Full Bench addressed a significant legal conflict regarding procedural defects in petitions filed under **Section 34** of the Arbitration and Conciliation Act, 1996., and observed that the Arbitrator is a creature of the contract and has to function within four corners of contract. If a particular mechanism is contemplated for his appointment, the same must be followed in its true letter, spirit and intent, failing which the Arbitrator is without jurisdiction and the appointment is non-est and invalid. The matter arose from a reference made by a Single Judge to resolve contradictory rulings by different Division Benches on whether defects like the absence of a Statement of Truth or non-filing of the arbitral award could render a Section 34 petition non-est in the eyes of the law.

Read More

B. INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

1. Financial creditor not responsible for default – NCLAT dismisses appeal in ₹263 crore debt case

Recently, the NCLAT addressed a significant contention in the challenge against the admission of a Section 7 application by IDBI Trusteeship Services Limited. The case, arising from defaults on non-convertible debentures and the role of the Project Monitoring Committee (PMC) in the debtor's financial distress. The appellant, a suspended director, argued that the financial creditor, through PMC, exercised dominant control over the project, making it equally responsible for repayment failures. However, the Court while rejecting the contention held that the PMC was constituted to assist and improve the operations and construction of the project which in no manner diminish the obligation of the corporate debtor to fulfil its payment obligation. The default in repayment of the obligation by obligors cannot in any manner be put on the financial creditor nor constitution of PMC in any manner affect.

Read More

2. IBC and utility services: NCLAT clarifies "essential supply" protections for corporate debtors

"Electricity is included as essential supply with rider to the extent these are not a direct input to the output produced or supplied by the corporate debtor." With this remark, the NCLAT examined whether electricity supply to a corporate debtor under insolvency could be disconnected due to non-payment during the moratorium period.

Section 14(2) prohibits the supplier of essential goods from terminating/discontinuing the supply during moratorium period even when the payment is not made which amount shall form part of the CIRP costs. In the present case Resolution Professional has not relied on Section 14(2A) rather has placed reliance on Section 14(2). If Resolution Professional relies on Section 14(2A) for continuation of essential supplies, the payment of essential supplies is necessary even during CIRP.

Read More

3. Statutory Tribunals, not High Courts, must decide existence of debt– SC on IBC jurisdiction

Recently, the Supreme Court addressed the scope of judicial review in insolvency proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC). The case revolved around the initiation of personal insolvency proceedings against Respondent No. 1, a promoter and director of Associate Décor Limited, following a default on a substantial loan. While the Adjudicating Authority appointed a resolution professional to assess the matter, the High Court intervened, halting the proceedings. The Supreme Court held that the Adjudicating Authority does not adjudicate any point at this stage and need not decide jurisdictional questions/obejctions. The existence of the debt will first be examined by the resolution professional in his report, and will then be judicially examined by the Adjudicating Authority when it decides whether to admit or reject the application under Section 100. The High Court incorrectly exercised its writ jurisdiction as: first, it precluded the statutory mechanism and procedure under the IBC from taking its course, and second, to do so, the High Court arrived at a finding regarding the existence of the debt, which is a mixed question of law and fact that is within the domain of the Adjudicating Authority under Section 100 of the IBC. The Supreme Court's ruling thus not only clarified the procedural framework under **Sections 95 to 100** of the **IBC** but also highlighted the limits of High Court interference in ongoing insolvency matters.

Read More

4. Lifting the corporate veil can only take us to the accused – HC exposes fraud in Noida Sports City

Recently, the Allahabad High Court exposed serious irregularities in the development of the Sports City project in Noida. The case involved M/s Arena Superstructures Pvt. Ltd., which was allotted land under the ambitious scheme but failed to meet its obligations, leading to insolvency proceedings. However, the court went beyond the surface, scrutinizing the actions of both the developers and the Noida Authority, uncovering potential fraud, mismanagement of homebuyers' funds, and deliberate inaction by authorities. Therefore, while directing CBI inquiry against officials of New Okhla Development Authority and various allottees/ builder involved in development of the Sporty City project in Noida, the Allahabad High Court laid down guidelines regarding the rights of other members of consortium, when one member goes into insolvency as the same is not provided in the Insolvency and Bankruptcy Code, 2016.

Read More

5. Moratorium under Section 14 of the IBC prohibits continuation or initiation of Section 138/141 proceedings against the corporate debtor: Kerala HC

In a recent ruling, the Kerala High Court addressed the correlation between insolvency proceedings and criminal liability under the Negotiable Instruments Act, 1881 **(NI Act)**. The case stemmed from a complaint against a private limited company involved in entertainment activities, facing proceedings under Section 138 of the NI Act for alleged dishonor of cheques. While the company was undergoing Corporate Insolvency Resolution Process (CIRP) following an order by the NCLT, the Judicial Magistrate declined to stay the criminal proceedings, prompting the petitioner to approach the High Court.

The judgment examined the application of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 **(IBC)**, and its effect on ongoing criminal cases, particularly those under the **NI Act**, while also distinguishing the liability of corporate entities and natural persons

Read More

6. The bar against claims outside the resolution plan applies only to the corporate debtor– HC clarifies legal position

"The bar against any claim outside the resolution plan would apply only to a claim vis-a-vis the Corporate Debtor and not to a person like the petitioner who claims that he is in agreement (being a joint venture) with the Corporate Debtor and the Respondent bank cannot be restrained from continuing the proceedings under the SARFAESI Act." With these remarks, the Keala High Court addressed the petitioner's challenge against recovery proceedings initiated by the respondent bank under the SARFAESI Act. The case involved a complex link between insolvency proceedings, a resolution plan, and the enforcement of security interests, raising significant legal questions regarding the rights of secured creditors.

Read More

7. **Section 14 of the Payment of Gratuity Act has an overriding effect over Insolvency and Bankruptcy Code, 2016, ensuring that employees' statutory rights are upheld even in insolvency proceedings, clarifies Calcutta High Court (Stesalit Limited Vs Union of India)**

The Calcutta High Court observed that gratuity dues are statutorily protected under the Payment of Gratuity Act, 1972, and do not form part of the liquidation estate of the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016. Additionally, the Court clarified that gratuity payments are outside the waterfall mechanism under Section 53 of the IBC and must be paid in full, irrespective of the resolution plan.

Read More

C. MISCELLANEOUS

1. **An agreement of sale does not confer any title or interest – SC on validity of equitable mortgages**

"A contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property." With this fundamental principle at the forefront, the Supreme Court examined the legal validity of mortgages created under unregistered sale agreements. The present appeal arose from a long-standing dispute between two banks over the first charge on a mortgaged property. While the Bombay High Court upheld the mortgage rights of Central Bank of India, the appellant bank challenged the ruling, arguing that an unregistered sale agreement could not constitute a valid mortgage. The case probed into relevant provisions of the Transfer of Property Act, 1882, and landmark judicial precedents to determine the enforceability of such mortgages.

Read More

D. RESERVE BANK OF INDIA (RBI)

1. Foreign Exchange Management (Manner of Receipt and Payment) (Amendment) Regulations, 2025

The RBI has amended the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023, under FEMA, 1999. Effective upon publication, the amendment modifies Regulation 3 to specify that payments between ACU member countries (excluding Nepal and Bhutan) shall be made through the ACU mechanism or as directed by the RBI. Other transactions will follow the prescribed rules.

Read More

2. Export-Import Bank of India's GOI-supported Line of Credit of USD 180 mn to the Government of the Socialist Republic of Vietnam for procurement of 4 Offshore Patrol Vessels (OPV) in the Borrower's Country

The RBI has issued a circular on Exim Bank's USD 180 million LoC to Vietnam for procuring four Offshore Patrol Vessels. Signed on July 31, 2024, and effective from January 20, 2025, the LoC allows exports from India per the Foreign Trade Policy. Disbursement is permitted up to 60 months after project completion. Shipments must comply with RBI declaration requirements. No agency commission is payable, but exporters may use their own resources for such payments in free foreign exchange. AD Category-I banks must inform exporters and direct them to Exim Bank for details. This circular is issued under FEMA, 1999.

Read More

3. Export-Import Bank of India's GOI-supported Line of Credit of USD 120 mn to the Government of the Socialist Republic of Vietnam (GO-VNM) for procurement of High-Speed Guard Boats in the Borrower's Country

Exim Bank has extended a USD 120 million Government of India-supported Line of Credit (LoC) to Vietnam for procuring High-Speed Guard Boats. Effective from January 20, 2025, disbursement is allowed up to 60 months after project completion. Exports under this LoC must comply with India's Foreign Trade Policy and be declared per RBI norms. No agency commission is payable, but exporters may use their own funds for commission payments. AD Category-I banks must inform exporters and direct them to Exim Bank for details. Issued under FEMA, 1999, this circular does not override other legal requirements.

Read More

4. Government securities transactions between a Primary Member (PM) of NDS-OM and its own Gilt Account Holder (GAH) or between two GAHs of the same PM

The RBI now permits Government securities transactions between a Primary Member (PM) and its own Gilt Account Holder (GAH) or between two GAHs of the same PM to be matched on the NDS-OM platform and settled through CCIL. Bilaterally negotiated transactions reported to NDS-OM may also opt for CCIL settlement. Settlement failures will be treated as 'SGL bouncing' and subject to penalties under the Government Securities Act, 2006. CCIL will issue operational guidelines, and these directions are issued under Section 45W of the RBI Act, 1934.

Read More

5. Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023 – Amendment

The RBI has amended its prudential regulations for AIFIs, effective April 1, 2025. Long-term bonds and debentures (minimum three-year maturity) issued by non-financial entities and acquired under statutory mandates will be excluded from the 25% HTM ceiling. This applies to EXIM Bank, NABARD, NaBFID, NHB, and SIDBI. The amendment is issued under Section 45L of the RBI Act, 1934.

Read More

6. Reserve Bank of India (Forward Contracts in Government Securities) Directions, 2025

The RBI has issued the Forward Contracts in Government Securities Directions, 2025, finalizing draft regulations based on market feedback. Amendments to the 2020 Gazette Notification have been notified, and updates have been made to the Master Directions on OTC Derivatives and Margining for Non-Centrally Cleared OTC Derivatives. These directions are issued under Section 45W and 45U of the RBI Act, 1934.

Read More

7. Review and rationalization of prudential norms – UCBs

The RBI has revised prudential norms for Urban Co-operative Banks (UCBs) to enhance financial resilience while providing flexibility. Key changes include expanding small value loan limits, revising real estate exposure caps, and increasing individual housing loan limits based on UCB tier. Additionally, the provisioning glide path for Security Receipts (SRs) has been extended by two years till FY 2027-28. These changes take immediate effect, replacing previous regulations.

Read More

8. Review of Risk Weights on Microfinance Loans

The RBI has revised risk weights on microfinance loans. Microfinance loans classified as consumer credit will now attract a 100% risk weight instead of the earlier 125%. Loans meeting RRP criteria may still qualify for a 75% risk weight if banks ensure compliance. For RRBs and LABs, all microfinance loans will carry a 100% risk weight. These changes are effective immediately under Sections 21 and 35A of the *Banking Regulation Act, 1949*.

Read More

9. Exposures of Scheduled Commercial Banks (SCBs) to Non-Banking Financial Companies (NBFCs) – Review of Risk Weights

RBI has restored the risk weights for SCBs' exposures to NBFCs to align with their external ratings, reversing the 25-percentage-point increase imposed in November 2023. This change, effective from April 1, 2025, follows the Basel III Capital Regulations, while all other provisions remain unchanged.

Read More

10. Implementation of Section 51A of UAPA, 1967: Updates to UNSC's 1267/1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 01 Entry

The RBI has issued an update on Section 51A of UAPA, 1967, regarding changes to the UNSC 1267/1989 ISIL (Da'esh) & Al-Qaida Sanctions List. The MEA has informed that the UNSC has removed Lionel Dumont (QDi.095) from the list, lifting all sanctions against him. Regulated entities (REs) must ensure compliance with Paragraph 51 of the RBI's KYC Master Direction and the UAPA Order. Any de-listing requests should be forwarded to the MHA, and REs must stay updated with UNSC amendments for strict compliance.

Read More

E. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. Safer participation of retail investors in Algorithmic trading

SEBI has issued a circular to enhance the safety of retail investors in Algorithmic Trading (Algo Trading). SEBI's updated framework ensures brokers act as principals, with algo providers as agents, while enforcing strict authentication, traceability, and grievance handling. Exchanges will oversee algo registration, surveillance, and risk management. Algos will be classified as "White Box" (transparent logic) or "Black Box" (undisclosed logic), with stricter regulations for the latter. Implementation standards will be set by April 1, 2025, and the provisions will take effect from August 1, 2025, to safeguard investor interests and market integrity.

Read More

2. Facilitation to SEBI registered Stock Brokers to access Negotiated Dealing System-Order Matching (NDS-OM) for trading in Government Securities-Separate Business Units (SBU)

SEBI has issued a circular allowing SEBI-registered stock brokers to trade in Government Securities (G-Secs) on the NDS-OM platform through a Separate Business Unit (SBU) within their entity, following RBI's notification dated February 7, 2025. The SBU's activities must be segregated from regular securities market operations, maintaining an arm's-length relationship with separate accounts and net worth. As the SBU falls under a different regulatory authority, SEBI's investor protection mechanisms, including SCORES and the Investor Protection Fund (IPF), will not apply. This circular, issued under SEBI's regulatory powers, is available on SEBI's website under "Legal Circulars."

Read More

3. Service platform for investors to trace inactive and unclaimed Mutual Fund folios-MITRA (Mutual Fund Investment Tracing and Retrieval Assistant)

SEBI has introduced the MITRA platform to help investors trace inactive and unclaimed Mutual Fund folios. Developed by CAMS and KFIN Technologies, MITRA provides a searchable database for investors to identify forgotten investments and update KYC. A folio is deemed inactive if no transactions occur for 10 years while maintaining a unit balance. The platform, accessible via SEBI, AMCs, and AMFI websites, ensures cybersecurity compliance and fraud risk mitigation. AMCs must promote awareness, and UHPCs will review inactive folios. MITRA will be operational within 15 days, with a two-month beta phase, enhancing transparency and investor protection.

Read More

4. **Relaxation in timelines for holding AIFs' investments in dematerialised form**

SEBI has relaxed timelines for AIFs to hold investments in dematerialised form. From July 1, 2025, all new AIF investments must be in dematerialised form, while prior investments are generally exempt, except in specific cases requiring dematerialisation by October 31, 2025. Certain AIF schemes ending by October 31, 2025, or already in extended tenure as of February 14, 2025, are exempt. Trustees/ sponsors must ensure compliance in the 'Compliance Test Report.' The circular takes immediate effect and is available on SEBI's website.

Read More

5. **Revised timelines for issuance of Consolidated Account Statement (CAS) by Depositories**

SEBI has revised the timelines for issuing Consolidated Account Statements (CAS) to improve compliance efficiency. AMCs and MF-RTAs must now provide common PAN data to depositories by the 5th of each month. Depositories will dispatch e-CAS by the 12th and physical CAS by the 15th. For half-yearly CAS, data submission is required by the 8th of April and October, with e-CAS sent by the 18th and physical CAS by the 21st. These changes take effect from May 14, 2025. Depositories must update regulations, implement system changes, and report compliance to SEBI. The full circular is available on SEBI's website.

Read More

6. **Industry Standards on "Minimum information to be provided for review of the audit committee and shareholders for approval of a related party transaction"**

SEBI has issued a circular mandating industry standards for the minimum information required for audit committee and shareholder approval of related party transactions (RPTs). Developed by the Industry Standards Forum (ISF) in consultation with SEBI, these standards ensure uniform compliance with Regulation 23 of the LODR Regulations and the SEBI Master Circular. Listed entities must adhere to these standards, effective April 1, 2025. Stock exchanges must notify entities and ensure compliance. The circular is available on SEBI's website under "Legal Circulars."

Read More

7. Most Important Terms and Conditions (MITC) for Investment Advisers

SEBI has mandated the inclusion of standardized Most Important Terms and Conditions (MITC) in investment advisory agreements to enhance transparency and investor protection. Investment Advisers (IAs) must inform existing clients of the MITC by June 30, 2025, and incorporate them into new agreements with explicit client consent. The MITC prohibits IAs from accepting client funds, guaranteeing returns, or offering assured return schemes. It also defines fee structures, disclosure requirements, risk profiling, and grievance redressal mechanisms. Effective immediately, this circular aims to strengthen regulatory compliance and investor confidence in the investment advisory sector.

Read More

8. Most Important Terms and Conditions (MITC) for Research Analysts

SEBI has mandated Research Analysts (RAs) to disclose standardized Most Important Terms and Conditions (MITC) to clients under Regulation 24(6) of the SEBI (Research Analysts) Regulations, 2014. The MITC, developed by the Industry Standards Forum (ISF) in consultation with RAASB and SEBI, includes key provisions such as restrictions on RAs executing trades, a fee cap for individual and HUF clients, disclosure of conflicts of interest, and a ban on assured return schemes. Existing clients must be informed by June 30, 2025. The circular also outlines grievance redressal mechanisms and prohibits RAs from requesting sensitive client credentials. Effective immediately, these measures aim to enhance transparency and investor protection.

Read More

9. Clarification regarding Investor Education and Awareness Initiatives

SEBI has clarified that Investor Education and Awareness Initiatives under Mutual Fund regulations include financial inclusion programs approved by SEBI. AMCs must allocate at least 2 basis points of daily net assets within the total expense ratio for such initiatives. This clarification, issued under SEBI's regulatory powers, aims to protect investors and regulate the securities market. The circular is available on SEBI's website under "Legal – Circulars."

Read More

10. Investor Charter for Stock Brokers

SEBI has revised the Investor Charter for Stock Brokers to enhance investor protection, financial literacy, and dispute resolution mechanisms, incorporating developments like the ODR platform and SCORES 2.0. Stock Exchanges must ensure brokers disclose the charter to clients via websites, offices, and account opening kits. Brokers must also publish complaint data monthly for transparency. This circular takes immediate effect, rescinding the previous SEBI circular and amending Clause 75 of the Master Circular. Issued under the SEBI Act, 1992, it is available on SEBI's website under 'Legal Circulars.'

Read More

11. Opening of Demat Account in the name of Association of Persons

SEBI now allows Associations of Persons (AoPs) to open demat accounts in their own name for holding mutual fund units, corporate bonds, and government securities. AoPs must comply with statutory restrictions, provide PAN details, and cannot hold equity shares. The Principal Officer will act as the legal representative in disputes, with all members jointly liable. Depositories must implement necessary changes and inform market participants. This circular takes effect from June 2, 2025.

Read More

12. Industry Standards on Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI, in consultation with the Industry Standards Forum (ISF), has introduced industry standards for effective compliance with Regulation 30 of the LODR Regulations, 2015. These standards, developed by ASSOCHAM, CII, and FICCI under the aegis of Stock Exchanges, will be published on their websites. Listed entities must follow these standards, and stock exchanges must ensure compliance. The circular is issued under SEBI's regulatory powers and is available on SEBI's website under 'Legal Circulars.'

Read More

13. Timelines for deployment of funds collected by Asset Management Companies (AMCs) in New Fund Offer (NFO) as per asset allocation of the scheme

SEBI has mandated timelines for the deployment of funds collected in New Fund Offers (NFOs) by Asset Management Companies (AMCs) to ensure efficient utilization and prevent mis-selling. Effective April 1, 2025, AMCs must deploy funds within 30 business days, with a possible extension of another 30 days under strict review. Non-compliance will result in restrictions on fresh inflows, removal of exit loads after 60 days, and investor notifications. To curb mis-selling, distribution commissions on switch transactions into NFOs must be the lower of the two schemes involved. This circular, issued under the SEBI Act, 1992, is available on SEBI's website.

Read More

14. Regulatory framework for Specialized Investment Funds ('SIF')

SEBI has introduced a regulatory framework for Specialized Investment Funds (SIF) to bridge the gap between Mutual Funds (MFs) and Portfolio Management Services (PMS). Effective April 1, 2025, SIFs will offer greater portfolio flexibility while maintaining regulatory safeguards. Eligible mutual funds can establish SIFs under specified criteria, with distinct branding and a separate website. Investment strategies span equity, debt, and hybrid categories, with defined risk limits and redemption frequencies. Derivative exposure is capped at 25% for unhedged positions. SEBI mandates compliance from market participants, while AMFI must issue guidelines by March 31, 2025.

Read More

F. REVERSE INSOLVENCY - BOON TO HOME BUYERS?

Brief Outline:

The Insolvency and Bankruptcy Code (IBC) of India introduced in the year 2016, is a transformative legal framework for managing distressed entities. While the Corporate Insolvency Resolution Process (CIRP) is typically associated with creditors initiating insolvency proceedings against a defaulting corporate debtor, Section 12 of the IBC introduces a distinctive provision known as the Reverse Corporate Insolvency Resolution Process (Reverse CIRP). The basic hypothesis behind this reverse mechanism was that the traditional CIRP came under several criticisms when it came to safeguarding the rights of homebuyers. The need for ensuring the rights of homebuyers forced the courts to venture out new grounds and devise a concept like Reverse CIRP, which is specifically intended for utilization in cases of Real Estate Company.

Keeping in view the aforesaid difficulties, the Hon'ble NCLAT in the matter of Flat Buyers Association Winter Hils-77, Gurgaon Vs Umang Realtech Pvt Ltd., Appeal (AT) (Insl.) No. 926/2019 held as under:

i) The CIRP against a real estate company is limited to a project of which the applicant are allottees, and no other projects.

ii) Allottees, financial creditors, Banks or operational creditors of other projects cannot file their claims.

iii) A secured creditor cannot be provided with the flats / apartments in preference over the allottees.

iv) An allottee may agree to opt for another flat / apartment in the same project so that the allottees who are on rent or paying interest to the Banks / FIs, may get earlier possession of their flats.

v) A request of the allottee to refund their money will not be entertained during this process and the allottee may request IRP or the promoter to find out a third party to purchase his / her apartment or it may enter into an agreement with the promoters for refund of the amount.

Further, the Supreme Court in Vishal Chelani & Ors. v. Debashis Nanda (2023 INSC 913) provides a significant extension to the deeming fiction principle established in Pioneer Urban Land judgment regarding Section 5(8)(f) of IBC. While Pioneer Urban established that "deeming fiction that is used by the explanation is to put beyond doubt the fact that allottees are to be regarded as financial creditors," Vishal Chelani decision extends this interpretation by addressing a critical question: whether seeking RERA remedies affects this deeming fiction.

The Court unequivocally held that the status of financial creditor, established through the deeming fiction, cannot be diluted or distinguished based on whether allottees have obtained RERA decrees. This is evidenced in the judgment's key finding: "It is thus evident that with the introduction of the explanation home buyers and allottees of real estate projects were included in the class of 'financial creditors' - because financial debt is owed to them. On a plain reading of Section 5(8)(f) no distinction is per se made out between different classes of financial creditors for the purposes of drawing a resolution plan."

The Court rejected any attempt to create sub-classifications among allottees as “hyper-classification” violating Article 14, thereby reinforcing that the deeming fiction under Section 5(8)(f) creates a uniform, indivisible class of financial creditors. This interpretation ensures that the protective intent behind the deeming fiction cannot be circumvented through artificial distinctions based on pursuit of parallel remedies under RERA.

Mechanism to be adopted in the reverse CIRP:

i) An agreement would have to be executed between the promoters and the allottees wherein the promoters take the responsibility to lend funds and compete the project but would remain outside CIRP and ensure that the allottees get possession of their respective units within the timeframe committed by them before the Adjudicating Authority.

ii) The amount lent by the promoters is to be used for the specific project only and can be withdrawn only with the consent of the IRP / RP.

iii) The allottees will have to pay their dues within the fixed timeframe, and the Resolution Cost which includes the fee payable to the IRP / RP is to be borne by the promoters.

iv) The unsold inventory in the project can be claimed by the promoters only after getting completion certificate from RP and the Adjudicating Authority.

v) RP shall be authorized to sell during CIRP any unsold inventory and the funds would be used exclusively for completion of the project only.

vi) If the promoters fail to infuse necessary funds for completion of the project, the reverse insolvency will then be converted into a normal CIRP.

Reverse CIRP vis-à-vis advantageous position:

One of the significant advantages of the Reverse Corporate Insolvency Resolution Process (CIRP) under Section 12 of the Insolvency and Bankruptcy Code (IBC) is the empowerment it provides to corporate debtors. In traditional insolvency scenarios, creditors typically take the lead, leaving the corporate debtor in a passive role. Reverse CIRP places a strong emphasis on collaboration and negotiation between the corporate debtor and its creditors. Unlike conventional insolvency proceedings that can turn adversarial, Reverse CIRP encourages consensual resolutions. By involving the debtor in the process, there is a higher likelihood of reaching mutually agreeable solutions. This cooperative approach contributes to a more efficient and harmonious resolution, aligning the interests of the debtor and the creditors.

A distinctive feature and a significant advantage of Reverse CIRP is its commitment to preserving the corporate entity. In traditional insolvency processes, liquidation or asset sales may take precedence as a means to settle outstanding debts. In contrast, Reverse CIRP promotes the creation of resolution plans that not only address financial obligations but also aim to sustain the ongoing operations of the corporate debtor. This preservation-centric approach aligns with broader economic goals, preventing unnecessary disruptions and preserving jobs. Reverse CIRP facilitates a holistic approach to addressing financial distress by allowing the corporate debtor to propose comprehensive resolution plans. These plans can encompass a range of strategies, including debt restructuring, operational improvements, and other tailored measures specific to the needs of the distressed entity. By putting the corporate debtor in control of the restructuring process, Reverse CIRP allows for a nuanced and context-specific approach to resolving financial difficulties, acknowledging the unique aspects of each business and industry.

While Reverse CIRP empowers corporate debtors, it also benefits creditors by providing a structured mechanism for the orderly resolution of debts. The consensual nature of the process enhances the probability of creditors recovering their dues promptly. As the resolution plan is collaboratively developed, creditors are more likely to receive a sustainable repayment structure that considers the financial capacity of the corporate debtor. However, the interests of the corporate debtor and its creditors may not always align, leading to potential conflicts that could hinder the negotiation process. Ensuring transparency during such negotiations is crucial for the success of Reverse CIRP; hence, balancing the need for confidentiality with the requirement for a fair and transparent process poses a challenge.

Critique:

So, while in any CIRP, a promoter is not allowed to bid in a project except in the case of micro, small and medium enterprise, in the reverse CIRP, the promoters can submit their bids to grant funds and undertake construction of the project without intervention of third parties. Since the promoters continues to have their skin in the project, chances of frivolous litigation are minimised. A promoter of the CD is well conversant with all aspects of the project and would not take much time to complete the project. Last but not the least, in a normal CIRP, the possibility of price escalation in the project is always there. This difficulty may get overcome in the reverse CIRP as the promoters would agree to construct the project without any price escalation.

The concept of reverse CIRP is otherwise alien to the Code and has come into play only on account of beneficial interpretation of the IBC to protect the interest of all While reverse insolvency is a welcome step, it is high time that the IBC is amended and separate rules and regulations are put in place to ensure transparency and uniformity for all.

Authors: Navneet Gupta, Partner
Pankaj Bajpai, Senior Associate

EXCLUSIVE ALLIANCE PARTNERS - R&P PARTNERS and A.R. GUPTA & ASSSOCIATES, AHMEDABAD

CHENNAI | COIMBATORE | HYDERABAD | MADURAI | KOCHI | TRIVANDRUM

www.sngpartners.in

DELHI

One, Bazar Lane,
Bengali Market,
New Delhi 110001

+91 11 43582000

13, Babar Road,
Bengali Market
New Delhi 110001

+91 11 43011624/25/26

R – 26, Ground Floor,
South Extension Part II,
New Delhi 110049

+91 11 46175500

I-6, Jungpura-B,
New Delhi – 110014

+91 11 46175500

BENGALURU

2nd Floor, 15/7, Saraf Towers,
Primrose Road,Off M G Road,
Ashoka Nagar,
Bengaluru 560001

+91 80 46675151

MUMBAI

9th Floor, Nehru Centre,
Dr. Annie Besant Road,
Worli, Mumbai - 400 018

+91 22 69215151

1011-1015 Raheja Chambers,
10th Floor, Nariman Point,
Free Press Journal Marg,
Mumbai 400021

+91 22 6825 5151

13th Floor, Earnest House
NCPA Marg,
Nariman Point
Mumbai-400021

+91 22 6983 5151

This newsletter has been developed by **SNG & PARTNERS** in exclusive collaboration with Latest Laws.com Helping Good People Do Good Things