Newsletter

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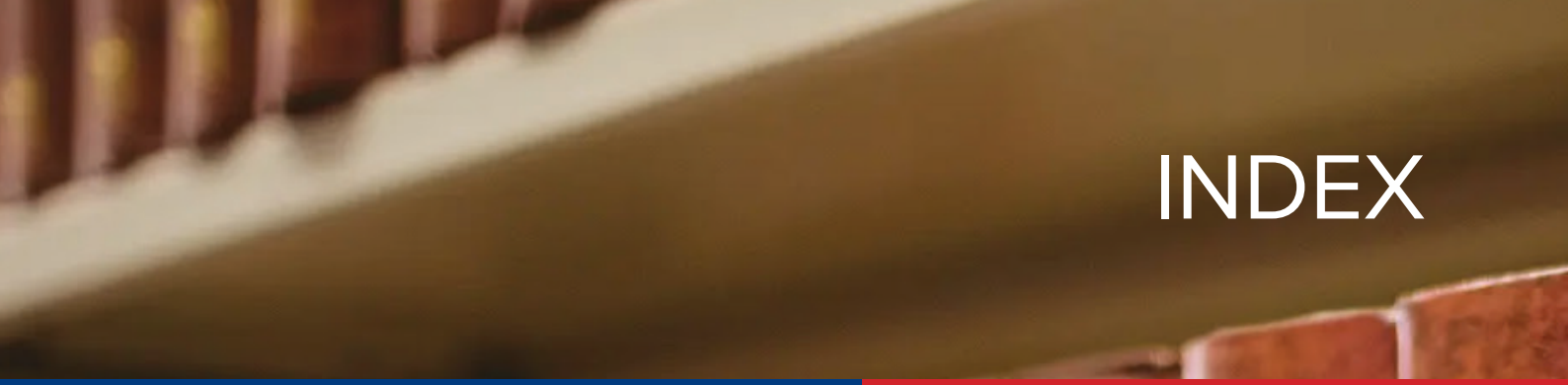

INDEX

INDEX

Editor's note

Dear Readers,

I am pleased to share with you our newsletter for the month of March, 2024, which covers significant legal and regulatory developments.

The recent rulings by various high courts across India bring crucial insights into the realm of arbitration, highlighting the significance of legal precision, procedural adherence, and fairness in dispute resolution. Each case underscores nuanced aspects of arbitration law, shedding light on essential principles that govern arbitration proceedings.

Two significant judgments from the NCLAT, New Delhi, and the Calcutta High Court shed light on important nuances concerning the rights and proceedings under the Insolvency and Bankruptcy Code (IBC)

The Reserve Bank of India (RBI) has recently introduced several significant amendments and directives. The RBI's directive to card issuers regarding arrangements with card networks reflects its commitment to promoting consumer choice and competition in the payment system. Further, the recent amendments introduced to the Master Direction on Credit Card and Debit Card Issuance and Conduct, along with accompanying FAQs aim to strengthen consumer rights, promote transparency, and ensure responsible practices by card issuers. By enhancing operational norms and limiting issuer activities without explicit customer consent, the RBI seeks to simplify cardholder rights and obligations, fostering a more balanced relationship between consumers and issuers in the card space.

The RBI's initiative to introduce an omnibus framework for recognizing Self-Regulatory Organizations (SROs), introducing guidelines on investments in Alternative Investment Funds (AIFs) and the amendments to the Foreign Exchange Management (Non-debt Instruments) Rules underscore the RBI's proactive approach to regulatory oversight and its commitment to fostering a resilient, inclusive, and dynamic financial ecosystem.

SEBI has recently made significant strides in adapting market regulations to evolving market conditions while maintaining a robust framework for investor protection. SEBI's introduction of a Beta version of T+0 rolling settlement cycle alongside the existing T+1 cycle demonstrates a commitment to enhancing market efficiency and risk management. Moreover, SEBI's amendments to disclosure requirements for Foreign Portfolio Investors (FPIs) aim to streamline reporting obligations, ensuring transparency while exempting FPIs within corporate groups meeting specified criteria.

By adapting regulations to evolving market dynamics and implementing robust frameworks, SEBI continues to reinforce India's position as an attractive investment destination while safeguarding investor interests.

Under the Rent Control Act, landlords and tenants have specific rights and obligations. Explore how these are applied in the context of building redevelopment in an article titled, 'Re-development of Tenanted Property – Landlords Prerogative' authored by our Partner, Sadhav Mishra and Associate Partner, Samreen Paloba which is a part of this edition.

I hope you will find this edition useful.

Best wishes,

Rajesh Narain Gupta

Founder & Chairman,
SNG & Partners

A. ARBITRATION & CONCILIATION ACT, 1996:

1. **Andhra Pradesh High Court Opines: Writ Petition before High Court under Article 226 of Constitution of India not a remedy for execution of Arbitration Award**

The division judge bench of the Andhra Pradesh High Court held that the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India for purposes of execution of the arbitration award.

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2. **Calcutta High Court: Arbitration cannot be inferred from party's conduct alone**

The High Court of Calcutta in a petition filed under Section 8 of the Arbitration and Conciliation Act, 1996 held that while the tenancy may be established by conduct, arbitration cannot be inferred from the parties' conduct alone.

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3. **Allahabad High Court Expounds: Compliance with Section 21 by sending a notice invoking arbitration is mandatory**

The Allahabad High Court held that compliance with Section 21 of the Arbitration and Conciliation Act, 1996 is mandatory and in the present case, there is non-fulfilment of the requirements of service of notice to the petitioners as required under Section 21 before the commencement of arbitration proceedings.

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4. **Calcutta High Court: Clause mandating the appointment of gazetted Railway Officers for arbitration violative of Section 12(5)**

The Calcutta High Court held that clause 64(3)(a)(ii) of the GCC mandated an agreement to arbitration under three gazetted railway officers, subject to a specified rank. The High Court noted that Section 12(5) of the Arbitration Act, in conjunction with the Fifth and Seventh Schedules, guards against the appointment of arbitrators with potential conflicts of interest.

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5. **Allahabad High Court: Period of limitation for challenging the award u/S. 34 commences when the party making the application receives a signed copy of the award**

The Allahabad High Court, while setting aside an arbitration order reiterated that the period of limitation for challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996 commences from the date on which the party making the application has received a signed copy of the arbitral award.

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6. **Delhi High Court : A finding based on no evidence at all or an award that ignores vital evidence is perverse and liable to be set aside on the grounds of patent illegality**

The Delhi High Court dismissed an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 13 of the Commercial Courts Act, 2015, against an Order, vide which the challenge to an Award under Section 34 of the Act,1996, was allowed and the Arbitral Award was set aside. The Court observed that the scope of a challenge under Section 34 and Section 37 of the Arbitration & Conciliation Act, 1996 is limited to the grounds stipulated in Section 34.

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B. INSOLVENCY AND BANKRUPTCY CODE (IBC)

1. NCLAT, New Delhi: Allottee cannot as a right claim execution of the conveyance deed

In a recent ruling by the Principal Bench of NCLAT, New Delhi, it was expounded that it is the Resolution Professional's primary duty to manage the corporate debtor's affairs and assets. However, the allottee cannot as a right claim execution of the conveyance deed. The Resolution Professional, who is running the business of the Corporate Debtor is the best person to take a decision as to what part of the business of the Corporate Debtor can be carried out.

The Bench further opined that what part of the contract has to be carried out and what part of contract cannot be carried out is in the domain of Resolution Professional (RP) and there must be reasons for issuing direction akin to order for allowing specific performance of contract.

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2. Calcutta High court: The pendency of a proceeding u/S. 95, IBC does not automatically entail a moratorium u/S. 96 on a wilful defaulter proceeding

The High Court of Calcutta, while disposing of a petition filed by the petitioner, challenging a Show-cause Notice dated March 1, 2024, issued by the respondent-Authorities for declaring the petitioners as wilful defaulters in terms of the Master Circular on Wilful Defaulters issued by the Reserve Bank of India (RBI), held that the yardsticks of declaration of a wilful defaulter under the Master Circular are different from a recovery proceeding or a relatable proceeding; such declaration is merely to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions.

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C. RESERVE BANK OF INDIA (RBI)

1. Review of Guidelines - Withdrawal of Circulars

Upon review of Circulars issued by the Reserve Bank from time to time, it has been decided to withdraw Circulars listed in the Annex in the said notification with immediate effect. Some of the circulars withdrawn are:

(i) Banking Regulation Act, 1949 (As Applicable to Co-operative Societies) - Section 31 - Submission of Balance Sheet, Profit & Loss Account and Auditor's Report (April 19, 1966)

(ii) Guidelines for Consolidated Accounting and other Quantitative Methods to Facilitate Consolidated Supervision - Audit of Consolidated Financial Statements (July 08, 2003)

(iii) Terms and Conditions of Appointment of Statutory/ Concurrent/ Internal Auditors - Implementation of the Recommendations of the Committee on Legal Aspects of Bank Frauds and the Recommendations of the High Level Group Set up by the Central Vigilance Commission (CVC) (August 27, 2004)

(iv) Inspection under Section 35 of the Banking Regulation Act, 1949 (As Applicable to Co-op. Societies) - Comment on Quality of Audit (January 25, 2003)

(v) Remuneration Payable to Statutory Central and Branch Auditors of Nationalised Banks (March 21, 1989)

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2. Money Transfer Service Scheme - Submission of Statement on CIMS

All Authorised Persons who are Indian Agents under the Money Transfer Service Scheme (MTSS) were required to submit a quarterly statement (within 15 days from the close of the quarter to which it relates) on the quantum of remittances received through MTSS using the eXtensible Business Reporting Language (XBRL) platform.

Now, it has been decided that the reporting of the aforesaid statement will be done on the Centralised Information Management System (CIMS) portal with effect from the quarter-ending March 2024.

The statement has been assigned return code - 'R130' on CIMS. In case no remittance was received during a quarter, a 'NIL' report shall be submitted.

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3. Arrangements with Card Networks for issue of Credit Cards

It was noticed that some arrangements existing between card networks and card issuers are not conducive to the availability of choice for customers. Therefore, in the interest of payment system and public interest, it is directed:

(i) Card issuers shall not enter into any arrangement or agreement with card networks that restrain them from availing the services of other card networks.

(ii) Card issuers shall provide an option to their eligible customers to choose from multiple card networks at the time of issue. For existing cardholders, this option may be provided at the time of the next renewal.

Point (ii) is not applicable to credit card issuers with number of active cards issued by them being 10 lakh or less in number.

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4. Amendment to the Master Direction - Credit Card and Debit Card – Issuance and Conduct Directions, 2022

The recent amendments introduced by the Reserve Bank of India (RBI) on March 7, 2024, to the Master Direction on Credit Card and Debit Card Issuance and Conduct, along with accompanying FAQs, mark significant steps toward enhancing consumer protection and transparency in the card industry. In case of credit cards, the instructions apply to all credit card issuing Banks and Non-Banking Financial Companies (NBFCs). For debit cards, instructions apply to every bank operating in India.

Some of the key amendments are:

1. Amendment allows card-issuers to provide business credit cards to both business entities and individuals for business-related expenses. These business credit cards can take various forms such as charge cards or corporate cards. Moreover, they can be linked to an overdraft or cash credit facility specifically provided for business purposes, subject to the same terms and conditions applicable to such credit facilities. In order to ensure responsible usage, the amendments direct card-issuers to implement an effective mechanism to monitor the end use of funds associated with these business credit cards. This requirement aims to promote accountability and prevent misuse of funds, thereby facilitating sound financial management for businesses and individuals utilizing these credit facilities.

2. Clear procedures are outlined for activation, deactivation, and closure of cards, ensuring prompt response to customer requests and timely closure of accounts, with penalties for delays.
3. Card-issuers are mandated to adhere strictly to the guidelines outlined in the Master Direction on "Outsourcing of Information Technology Services" and the guidelines on "Managing Risks and Code of Conduct in Outsourcing of Financial Services," which are subject to periodic amendments. Additionally, card issuers are prohibited from sharing card data, including transaction data, of cardholders with outsourcing partners unless explicit consent is obtained from the cardholder. Furthermore, card-issuers must ensure that they retain ownership and control over the storage of card data to maintain data security and confidentiality.
4. Cardholders gain flexibility in choosing the starting or closing day of their billing cycle, enhancing convenience and customization.
5. Guidelines ensure secure handling of customer data in co-branded card arrangements, with encryption and strict access controls to protect customer information.
6. Interest charges and penalties are to be applied only on outstanding amounts after the payment due date, promoting transparency and preventing excessive charges.
7. Customers receiving unsolicited credit cards are advised not to activate them. Card issuers must close the account if no consent for activation is received, promoting customer protection. Failure on the part of the card-issuers to complete the process of closure within seven working days shall result in a penalty of 500 per calendar day of delay payable to the cardholder, till the closure of the account provided there is no outstanding in the account.
8. Clear timelines and procedures are defined for resolving customer complaints, with provisions for escalation to the RBI Ombudsman if grievances are not adequately addressed.
9. Card-issuers have the authority to issue alternative form factors like wearables instead of, or alongside, traditional plastic debit/credit cards. However, this can

only be done after obtaining explicit consent from the customer. Unlike previous requirements, card-issuers are no longer obligated to submit a detailed report to the RBI before issuing any form factor.

10. Before reporting default status of a credit cardholder to a Credit Information Company (CIC), the card-issuers shall ensure that they adhere to the procedure, approved by their Board, and intimate the cardholder prior to reporting of the status. In the event the customer settles his/her dues after having been reported as defaulter, the card-issuer shall update the status with CIC within 30 days from the date of settlement. Card-issuers shall be particularly careful in the case of cards where there are pending disputes. The disclosure/release of information, particularly about the default, shall be made only after the dispute is settled. In all cases, a well laid down procedure shall be transparently followed and be made a part of MITC.

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5. Reporting and Accounting of Central Government transactions for March 2024

It has been decided that the date of closure of residual transactions for the month of March 2024 be fixed as April 10, 2024.

It has been advised that beginning from April 1, 2024, the Nodal/Focal Point branches should segregate on a daily basis all scrolls/challans pertaining to March 2024 received from the receiving branches concerned and prepare separate main scrolls for -

(i) transactions of March 2024 or earlier period (i.e. effected during the previous financial year 2023-24) and

(ii) scrolls pertaining to current transactions (i.e. those effected from April 1, 2024 onwards).

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6. Cut-off time for uploading of GST, ICEGATE and TIN 2.0 luggage files

Several agency banks have been requesting RBI for extension of time for uploading of luggage files pertaining to GST, ICEGATE and TIN 2.0 receipts beyond the cut-off time of 1800 hours prescribed by O/o Principal Chief Controller of Accounts, Central Board of Indirect Taxes & Customs and O/o Principal Chief Controller of Accounts, Central Board of Direct Taxes.

In this respect, the modified para 10 of the 'Reporting of transactions by agency banks to RBI' of 'Master Circular on Conduct of Government Business by Agency Banks - Payment of Agency Commission' dated April 1, 2023 is:

"10. Reporting of transactions by agency banks to RBI: After the operationalisation of NEFT 24X7 and RTGS 24X7, agency banks authorised to collect Goods and Service Tax (GST), Custom and Central Excise Duties (ICEGATE) and Direct Taxes under TIN 2.0 channel shall upload their luggage files in RBI's QPX/e-Kuber on all days except the Global holidays, which are January 26, August 15, October 2, all non-working Saturdays, all Sundays and any other day declared holiday by RBI for Government Transactions due to exigencies. It is to be ensured that these luggage files are uploaded in RBI's QPX/e-Kuber on or before 1800 hours prescribed by O/o Principal Chief Controller of Accounts, Central Board of Indirect Taxes & Customs and O/o Principal Chief Controller of Accounts, Central Board of Direct Taxes. No extension in cut-off time will be allowed to agency banks by RBI beyond 1800 hours for uploading of these luggage files in QPX/e-Kuber".

It has been further advised that no extension will be granted by RBI beyond the cut-off time for submission of luggage files as per extant guidelines issued in this regard.

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7. Omnibus Framework for recognising Self-Regulatory Organisations (SROs) for Regulated Entities (REs) of the Reserve Bank of India

It has been decided to issue an omnibus framework for recognizing SROs for the REs of the Reserve Bank.

In order to fulfil this objective, the omnibus SRO framework prescribes the broad objectives, functions, eligibility criteria and governance standards, which will be common for all SROs, irrespective of the sector. The framework also lays down the broad membership criteria and other terms and conditions to be followed by the SROs for grant of recognition by the Reserve Bank.

It may be noted that guidelines contained in the framework are the minimum requirement and the recognised SROs will be encouraged to develop their best practices. Reserve Bank may prescribe sector-specific additional conditionalities, if warranted, at the time of calling for applications for recognising SROs for a category/ class of REs, within the broad contours of this framework.

Some of the key provisions of the framework are:

(i) An SRO is expected to operate with credibility, objectivity and responsibility under the oversight of the regulator, to improve regulatory compliance for healthy and sustainable development of the sector to which it caters.

(ii) In particular, an SRO is expected to achieve the following objectives:

- Promote a culture of compliance among its members by encouraging progressive practices and conventions. Special attention must be given on extending guidance and support, particularly to smaller entities within the sector, and sharing best practices aligned with statutory and regulatory policies. For this purpose, the SRO should frame and implement a comprehensive code of conduct for its members.
- Act as the collective voice of its members in engagements with the Reserve Bank, government authorities or other regulatory and statutory bodies, in India. It should aim to represent and address broader industry concerns and play a pivotal role in the functioning of the financial system. It is expected that the SRO functions above the self-interests and addresses larger concerns of the industry and financial system as a whole. While

acting as the industry representative, the SRO is expected to ensure equitable and transparent treatment for all its members.

(iii) The primary responsibility of the SRO towards its members would be to promote best business practices. The SRO shall establish minimum benchmarks and conventions for professional market conduct amongst its members. In the interest of its members, the SRO should aim to protect interests of the customers/ depositors, participants and other stakeholders in the ecosystem.

(iv) The SRO is expected to operate with transparency, professionalism and independence, in order to foster greater confidence in the integrity of the sector. Compliance with the highest standards of governance is a pre-requisite for an effective SRO.

(v) It is necessary that the SRO operates as a true representative of the sector and its members. Therefore, the SRO should have a good mix of members at all levels to represent the sector holistically. Accordingly, membership criteria of the SRO shall be as prescribed by the Reserve Bank at the time of inviting the application for each category/ class of REs. In particular, the SRO shall also adhere to the following criteria:

- The minimum membership that may be prescribed by the Reserve Bank shall be attained ideally at the time of making an application or within such a timeline as prescribed by the Reserve Bank but not exceeding two years, from the date of grant of recognition. Failure to achieve specified membership within the timeline could result in revocation of the recognition granted.
- The membership of SRO shall be voluntary for the members.

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8. Investments in Alternative Investment Funds (AIFs)

To ensure uniformity, it has been advised with repsect to circular DOR.STR.REC.58/21.04.048/2023-24 dated December 19, 2023

(i) Downstream investments referred to in paragraph 2 (i) of the Circular shall exclude investments in equity shares of the debtor company of the RE, but shall include all other investments, including investment in hybrid instruments.

(ii) Provisioning in terms of paragraph 2(iii) of the Circular shall be required only to the extent of investment by the RE in the AIF scheme which is further invested by the AIF in the debtor company, and not on the entire investment of the RE in the AIF scheme.

(iii) Paragraph 3 of the Circular shall only be applicable in cases where the AIF does not have any downstream investment in a debtor company of the RE. If the RE has investment in subordinated units of an AIF scheme, which also has downstream exposure to the debtor company, then the RE shall be required to comply with paragraph 2 of the Circular.

(iv) Further with regard to paragraph 3 of the Circular:

- proposed deduction from capital shall take place equally from both Tier-1 and Tier-2 capital.
- reference to investment in subordinated units of AIF Scheme includes all forms of subordinated exposures, including investment in the nature of sponsor units.

(v) Investments by REs in AIFs through intermediaries such as fund of funds or mutual funds are not included in the scope of the Circular.

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9. Foreign Exchange Management (Non- debt Instruments) Amendment Rules, 2024

(i) Rule 2(aaa), the following clause is inserted-

International Exchange" shall mean permitted stock exchange in permissible jurisdictions which are listed at Schedule XI annexed to these rules

(ii) Rule 2 (ag), the following is substituted-

listed Indian company" means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and on an International Exchange and the expression "unlisted Indian company" shall be construed accordingly

(iii) Insertion of Chapter X titled as Investment by 'Permissible Holder in Equity Shares of Public Companies incorporated in India and Listed on International Exchanges'

- Investment by permissible holder -

(1) A permissible holder may purchase or sell equity shares of a public Indian company which is listed or to be listed on an International Exchange under Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme as specified in Schedule XI.

(2) The mode of payment and other attendant conditions for remittance of proceeds of issue shall be as specified by the Reserve Bank.

(iv) Insertion of Schedule XI titled as 'Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme'.

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D. SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

1. Informal Guidance request received from Bank of Baroda with respect to the recent amendment made in the proviso to Regulation 17(1C) of SEBI (LODR) Regulations, 2015

A guidance was sought from SEBI in relation to an amendment made in the proviso to Regulation 17(1C) of SEBI (LODR) Regulations, 2015.

There were 3 queries proposed:

(i) Bank's governing Act i.e., Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 provides for election of -upto 3- Directors on the Board of the Bank by shareholders, other than the Central Government. Other Directors are being directly appointed / nominated by GOI. Will the above referred amendment in SEBI (LODR) Regulations prevail over Bank's governing Act?

(ii) GOI notifies the terms of Directors while appointing / nominating directors on Board of Bank. Hypothetically, in case of agenda item for appointment or re-appointment of a person on the Board of Directors, is disapproved by shareholders, what will be the status of Directors?

(iii) Whether Government of India will be voting in the said resolution?

The Guidance with respect to issue (i) stated that there is overriding of enactments only in the case of inconsistency or repugnant in said enactment vis-à-vis any other law.

The LODR regulations specify that if specified securities are listed on a recognized stock exchanges by listing entities then compliance with provisions of LODR Regulations becomes mandatory. The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 on the other hand is silent on matter concerning approval of shareholders for appointment or re-appointment of directors. Hence, Regulation 17(IC) will have to be complied with by the Bank to the extent there is no irreconcilable inconsistency between the two enactments.

Coming to next query at (ii); it was stated that since approval of shareholders for appointment or re-appointment of a person on the Board of Director or as a manager is mandatory; if such resolution is not approved by shareholders, the person would cease to be a director of the Bank.

SEBI in relation to query (iii) stated that there is no restriction on voting by the Government of India on a resolution that is for the shareholders to approve appointment or re-appointment of directors.

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2. Introduction of Beta version of T+0 rolling settlement cycle on optional basis in addition to the existing T+1 settlement cycle in Equity Cash Markets

With effect from January 27, 2023; all stock exchanges, clearing corporations and depositories (collectively referred to as "Market Infrastructure Institutions (MIIs)") fully implemented the shift to T+1 settlement cycle.

It was observed that a shortened settlement cycle will bring cost and time efficiency, transparency in charges to investors and strengthen risk management at clearing corporations and the overall securities market ecosystem.

A proposal was put forward to introduce optional T+0 settlement and subsequent optional Instant Settlement, in addition to the existing T+1 settlement cycle.

SEBI has accordingly decided to put in place a framework for introduction of the Beta version of T+0 settlement cycle on optional basis in addition to the existing T+1 settlement cycle in equity cash market, for a limited set of 25 scrips and with a limited number of brokers.

In this respect, operation guidelines have been provided:

(i) All investors are eligible if they meet timelines, process and risk requirements.
(ii) same surveillance measure as applicable to T +1 applies to T+0.
(iii) One continuous trading session from 09:15 AM to 1:30 PM.
(iv) There shall be no netting in pay-in and pay-out obligations between T+1 and T+0 settlement cycle.

The provisions of this circular shall come into force with effect from March 28, 2024.

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3. Amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria

SEBI in its circular dated August 24, 2023, mandated certain disclosures for Foreign Portfolio Investors (FPIs). FPIs satisfying any of the criteria listed under Para 8 of the said Circular were exempted from the additional disclosure requirements, subject to conditions specified in the said Circular.

It has now been decided that if FPI has more than 50% of its Indian equity AUM in a corporate group shall not be required to make the additional disclosures as specified in Para 7 of the said Circular, subject to compliance with all of the following conditions:

(i) The apex company of such corporate group has no identified promoter. For this purpose, the list of corporate groups based on the corporate repository published by the Stock Exchanges and their respective apex companies having no identified promoters shall be made public by Depositories.

(ii) The FPI holds not more than 50% of its Indian equity AUM in the corporate group, after disregarding its holding in the apex company (with no identified promoter).

(iii) The composite holdings of all such FPIs (that meet the 50% concentration criteria excluding FPIs which are either exempted or have disclosed) in the apex company is less than 3% of the total equity share capital of the apex company.

The provisions of the circular shall come into force with immediate effect.

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4. Safeguards to address the concerns of the investors on transfer of securities in dematerialized mode

SEBI's master circular dated October 06, 2023, in its Para 1.12 prescribes guidelines to address concerns arising out of transfer of securities from the Beneficial Owner (BO) Accounts without proper authorization by the concerned investor.

Now it has been decided to amend Para 1.12 to strengthen the measures to prevent fraud/ misappropriation for inoperative demat accounts.

Some of the safeguards put in place to address the concerns of investors are:

(i) The depositories shall give more emphasis on investor education particularly with regard to careful preservation of Delivery Instruction Slip (DIS) by the BOs. The Depositories may advise the BOs not to leave "blank or signed" DIS with the Depository Participants (DPs) or any other person/entity.

(ii) The DPs shall not issue more than 10 loose DIS to one account holder in a financial year (April to March). The loose DIS can be issued only if the BO(s) come in person and sign the loose DIS in the presence of an authorised DP official.

(iii) The DPs shall put in place appropriate checks and balances with regard to the verification of signatures of the BOs while processing the DIS.

(iv) The DPs shall cross check with the Bos under exceptional circumstances before acting upon the DIS.

The provisions of the circular shall come into force with effect from April 01, 2024.

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5. Repeal of circular(s) outlining procedure to deal with cases where securities are issued prior to April 01, 2014, involving offer / allotment of securities to more than 49 but up to 200 investors in a financial year

SEBI had issued circulars in respect of cases under the Companies Act, 1956, involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and receive the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to the investors.

This opportunity to avoid penal action was provided to the issuer companies considering the higher cap for private placement provided in the Companies Act, 2013.

It has not been decided to repeal these circulars and the same shall stand rescinded with effect from 6 months from the date of issue of this circular, without prejudice to the operation of anything done or any action taken under the said circulars.

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6. Simplification and streamlining of Offer Documents of Mutual Fund Schemes - Extension of timelines

It has been decided to revise the date of applicability of provision given at Para 4 of the circular dated November 01, 2023 which prescribed simplified format of Scheme Information Document.

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7. Measures to instill trust in securities market – Expanding the framework of Qualified Stock Brokers (QSBs) to more stock brokers

In order to strengthen the interests of the investors and their trust in the securities market; it has been decided to add 3 more parameters for designating a stock broker as a QSB. Following are the parameters now:

(i) the total number of active clients of the stock broker;

(ii) the available total assets of clients with the stock broker;

(iii) the trading volumes of the stock broker (excluding the proprietary trading volume of the stock broker);

(iv) the end of day margin obligations of all clients of a stock broker (excluding the proprietary margin obligation of the stock broker in all segments)

(v) the proprietary trading volumes of the stock broker;

(vi) compliance score of the stock broker; and

(vii) grievance redressal score of the stock broker

Further, the procedure to identify a stock broker as a QSB is also listed out and following has been prescribed:

(i) Stock brokers with a total sum of individual % of the parameters mentioned at para 4.1.1 to 4.1.5, greater than or equal to six point two five (6.25) shall be identified as QSBs.

(ii) In case of the parameter mentioned at para 4.1.6, i.e., compliance score of the stock broker, all stock brokers (subject to maximum of 5) shall be considered as QSBs, if their individual compliance score is equal to or more than 2%.

(iii) In case of the parameter mentioned at para 4.1.7, i.e., grievance redressal score of the stock broker, all stock brokers (subject to maximum of 5) shall be considered as QSBs, if their individual grievance redressal score is equal to or more than 5%.

SEBI has also decided to facilitate stockbrokers to voluntarily get designated as QSBs, who otherwise would not have

qualified to become QSBs by virtue of the parameters enumerated above.

The provisions of this circular shall come into force in a risk-based, staggered manner to ensure smooth adoption and effective implementation for all the QSBs by providing enough time for them, based on their size, for making necessary changes.

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8. Securities and Exchange Board of India (Index Providers) Regulations, 2024

SEBI has introduced the Securities and Exchange Board of India (Index Providers) Regulations, 2024.

The Regulations provide for:

(i) Application for grant of certificate of registration

(ii) Eligibility criteria

(iii) Criteria for fit and proper person

(iv) Procedure when certificate is not granted.

(vi) Code of conduct for Index Provider and their responsibilities

Inter alia, the regulations provide for index quality and methodology, accountability and disclosures, action in case of default .

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E. RE-DEVELOPMENT OF TENANTED PROPERTY – LANDLORDS PREROGATIVE

The Rent Control Act oversees the leasing of residences, customized uniquely by each State. Its primary aim is to safeguard the rights of both landlords and tenants from potential exploitation. Whether for residential or commercial use, leasing must adhere to the specific regulations outlined by individual states. Generally, rent control laws exhibit substantial uniformity across states, characterized by minor differences. Earlier, the leasing and renting of properties in Mumbai was overlooked by Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("1947 Act"). Rising criticism of the 1947 Act led to the promulgation of the Maharashtra Rent Control Act, 1999 ("1999 Act"). The 1999 Act has undergone various revisions to the 1947 Act and is currently in force across the entire state.

The rights and relationship between the owners/landlords and tenants is governed by the 1999 Act. The definitions of a tenant is laid down under Section 7 (15) of the 1999 Act:

"tenant means any person by whom or on whose account rent is payable for any premises and includes,—

(a) such person,—

(i) who is a tenant, or

(ii) who is a deemed tenant, or

(iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or

(iv) who has derived title under a tenant, or

(v) *to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts;*

(b) a person who is deemed to be a tenant under section 25;

(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;

(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,—

(i) *where they are let for residence, is residing, or*

(ii) *where they are let for education, business, trade or storage, is using the premises for any such purpose, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement by, the court.*

Explanation.—The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant."

During the redevelopment of a building, the owner can enter into a Development Agreement subject to the tenancies existing in his building. Normally, the developer being assigned, has to either provide accommodation to the tenants in the redeveloped building as and by way of a Permanent Alternate Agreement or can buy out the tenancy by way of a Transfer of Tenancy Agreement.

In a noteworthy decision concerning the contentious matter of building redevelopment, the Bombay High Court sided with the landowner seeking complete reconstruction of the structure, despite tenants arguing that repairs shall suffice. Furthermore, the court emphasized that even if a building is in excellent condition, the owner's desire to redevelop cannot be thwarted solely because some tenants believe repair is sufficient.

During the hearing of a petition filed by Anandrao G Pawar ("Petitioner"), the owner of the Sheth Govindrao Smruti building in Worli, a division bench comprising of Justices Gautam Patel and Kamal Khata delivered significant remarks.

Facts of the case:

In the ongoing case, the Petitioner, a landlord of a fixed property, stood against the respondents, who were tenants occupying the building. After reviewing photographs demonstrating severe damage to the building, which was constructed around the 1960s, the Court considered the tenants' claim that they could repair the structure using their own funds without seeking reimbursement from the landlord i.e. the Petitioner. Despite the Petitioner occupying at least 6 (six) units in the building and having no prior proposal for redevelopment, the tenants requested permission to carry out repairs at their expense.

At the outset of the legal proceedings, the Court had requested a structural evaluation

report from the Technical Advisory Committee. The report classified the building as C-2A, indicating the need for repairs without evacuation. The court permitted some tenants to seek approval from MCGM for structural repairs, instructing the Petitioner to cooperate. Thereafter, a No Objection Certificate was issued by the Municipal Corporation of Greater Mumbai for the purpose of carrying out structural repairs to the building.

However, the Petitioner argued that the structure should be classified as C-1, signifying that the building is in a dilapidated and uninhabitable state, necessitating demolition. The focus was on the building's repairability rather than its demolition and redevelopment. However, the writ petition was filed, and the previous order was contingent upon its outcome.

Contentions of the Parties:

The Petitioner argued that he had proposed the building's redevelopment as per Regulation 33(19) of the DCPR 2034 and ought to undertake redevelopment specifically as per the Rules 33(7)(A), namely, a residential redevelopment. Upon completion, the Petitioner intended to re-accommodate all tenants in the rebuilt structure, free of charge and with ownership rights. Conversely, the Respondents asserted that the owner-developer's rights should yield to the repair and reconstruction entitlements of the tenants.

Regarding the classification of the building as C-2A, the Petitioner contested the designation, highlighting that the C-2A classification implies that if repairs aren't executed within a specified timeframe, the building automatically becomes a C-1 structure deemed dilapidated and unsuitable for habitation.

However, the Respondent countered, stating that as long as the building isn't classified as C-1, the law doesn't permit the landowner to initiate redevelopment.

Issue involved:

As per the bench's interpretation, the legal matter pertained to Section 499 of the Mumbai Municipal Corporation Act, 1888 ("MMC Act"). The primary concern under the bench's scrutiny was whether a tenant of a building could entirely overshadow the significant development rights inherent in property ownership, solely based on a structural assessment.

Tenant's rights in redevelopment:

At this juncture, the bench emphasized that owning an immovable property entails various rights, including the entitlement to fully benefit from the property's development. The bench highlighted that a tenant's reliance solely on a structural assessment cannot completely overshadow the significant redevelopment rights held by the property owner.

The Court emphasized the established principle that owning a movable property includes various rights, notably the right to fully benefit from its development. It

emphasized that any limitation on these rights must align with the law and should not involve expropriation.

Referring to Chandralok People Welfare Assn. v/s State of Maharashtra, the Court clarified its focus on Municipal Law. It highlighted that the Municipal Corporation, governed by the Maharashtra Regional Town Planning Act, 1966, also operated as a local authority under the MMC Act, bound by a specified statute.

Regarding the prayer framed under Section 499 of the MMC Act, the Court delineated its placement within Chapter XIX of the MMC Act, addressing procedure, particularly the subsection related to the Commissioner and General Manager's expense recovery, in conjunction with Sections 489 and 354.

The Court distinguished the present case from Chandralok, noting the contrasting scenarios. In here the Petitioner demonstrated willingness and outlined terms for redevelopment, pledging to convert tenancies into ownership. The Court dismissed the contention that owner-developer rights should be secondary to tenants' repair and reconstruction rights, deeming it contradictory to both the Rent Act and MMC Act. Elevating tenant rights over a landowner willing to redevelop for accommodating tenants was deemed untenable.

Regarding the tenants' alternate argument limiting redevelopment to repairs, the Court interpreted this as a potential curtailment of the property owner's rights to enjoy the full benefits of property development. It highlighted the absence of legal support for such a restrictive proposition. While acknowledging the tenants' limited recourse for building repair or reconstruction when an owner remains inactive, the Court underlined that this right cannot eclipse the comprehensive rights of a property owner willing to undertake redevelopment.

Conclusion by the Court:

The Court granted the writ in terms of the specified directives and invalidated any permissoin issued by MCGM to the tenants. The Court explicitly stated that in the event of the landlord's failure to submit a development proposal to MCGM, the tenants would have the right to submit their own proposal for reconstruction. Additionally, the Court dismissed the tenants' request for a stay on the present order by stating "What the tenants really seek is not just a right to dictate the terms of that tenancy beyond anything the law contemplates, but to impermissibly expand tenancy rights to the prejudice of the property owner — without taking the slightest steps to acquire those ownership rights".

Analysis & Implication:

The ruling in the aforementioned case strongly emphasizes the unjust and arbitrary nature of a specific opposing tenant's insistence on pursuing a proposed residential redevelopment under Rules 33(7)(A), rather than complying with Regulation 33(19) of the DCPR 2034. This insistence, if entertained, could set a precedent for similar demands from other tenants, potentially rendering the entire redevelopment project unfeasible and derailing the process.

It's imperative to recognize that landlords make redevelopment decisions based on various factors like feasibility, land potential, planning limitations, and site conditions. The court's ruling underscores the landlord's absolute discretion in choosing the type of redevelopment, affirming that such decisions should not be subject to questioning as they naturally differ based on individual circumstances.

Tenant rights should be limited to receiving alternative accommodation equivalent to their pre-demolition occupied area. Their rights shouldn't extend to influence or take over the redevelopment course, an aspect falling within the landowner's domain. Allowing such control to tenants would infringe upon the landowner's legal right to determine the redevelopment plan.

The ruling emphasizes granting the landowner the authority to decide the redevelopment type for their property. Nevertheless, it's crucial that the landowner conducts the redevelopment in good faith, ensuring it doesn't significantly harm the tenants who have consented to the proposed redevelopment.

This judgment will assist landowners in accelerating the redevelopment of deteriorating, aged buildings according to their needs. The court's firm stance asserts that neither the minority nor the majority of tenants possess the authority to dictate the specifics of redevelopment to the landowner. This ruling opens up avenues for willing landowners to proceed with the re-development of the land or repairs and renovation and monetize their asset as they see fit.

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