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Semi-Annual Finance and Insolvency Laws Compendium 2024

July – December 2024

Introduction

This compendium consolidates the key developments pertaining to the finance and insolvency laws in India which were circulated as a part of the JSA Prisms and Newsletters during the calendar period from July 2024 till December 2024.

Please *click here* to access the Semi-Annual Finance and Insolvency Compendium – January 2024 to June 2024.

Regulatory Updates

Foreign Exchange Management Act, 1999

Release of foreign exchange for miscellaneous remittances

The Reserve Bank of India ("**RBI**") circular dated July 3, 2024, addresses changes in the release of foreign exchange for miscellaneous remittances by authorised dealers in foreign exchange. The circular rescinds previous guidelines that permitted the release of foreign exchange for current account transactions up to USD 25,000 (US Dollars twenty-five thousand) or its equivalent based on a simple letter without requiring Form A2 or other documentation. Instead, authorised dealers are now required to obtain Form A2 in either physical or digital format for all cross-border remittances, irrespective of the transaction amount and there will not be any limit on the amount being remitted on the basis of 'online' Form A2.

This change aims to streamline regulatory compliance and operational procedures. Authorised dealers must ensure compliance with the Foreign Exchange Management Act, 1999 ("**FEMA**"), specifically Section 10(5) of FEMA, to verify that transactions adhere to FEMA provisions.

Remittances to International Financial Services Centres under the Liberalised Remittance Scheme

RBI, *vide* circular dated July 10, 2024, further liberalised remittances under the Liberalised Remittance Scheme ("**LRS**") via International Financial Services Centres ("**IFSCs**") by allowing remittances for:

1. availing financial services/financial products as per the IFSCA Act, 2019 within IFSCs; and
2. all current/capital account transactions, in any other foreign jurisdiction (other than IFSCs) through a Foreign Currency Account ("**FCA**") held in IFSCs.

Discontinuation of submission of liberalised remittance scheme monthly return

RBI, *vide* circular dated September 6, 2024, discontinued the requirement for submission of Liberalised Remittance Scheme ("**LRS**") monthly return by AD Category-I banks. Accordingly, from the reporting month of September 2024, AD Category-I banks will not submit the LRS monthly return.

AD Category-I banks will henceforth be required to upload only transaction-wise information under the LRS daily return at the close of business of the next working day on the Centralised Information Management System (CIMS) portal. In case no data is to be furnished, AD Category-I banks will upload a 'NIL' report.

Central Government notifies key amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019

The Department of Economic Affairs of the Ministry of Finance, *vide* notification dated August 16, 2024 ("**Notification**") introduced key amendments to the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("**NDI Rules**"). The amendments follow from the union budget announcement to simplify rules and regulations governing Foreign Direct Investment ("**FDI**") and Overseas Direct Investment ("**ODI**").

Key amendments under the Notification

1. **Cross-Border Share Swaps**: The Notification introduced a set of 2 (two) amendments with the aim of simplifying cross-border share swaps and providing for the transfer or issue of equity instruments of an Indian company in exchange for foreign company equity instruments. The accompanying press release notes that these amendments will facilitate the global expansion of Indian companies through mergers, acquisitions, and other strategic initiatives, enabling them to reach new markets and grow their presence worldwide:

    a) Swaps involving transfer of equity instruments of Indian company: A new rule i.e. Rule 9A has been introduced in the NDI Rules which deals with a swap involving the transfer of equity instruments of an Indian company between a resident and non-resident. The Notification states that such transfer may be effected by way of any of the following 2 (two) swaps a swap of equity instruments of another Indian company, and a swap of equity capital of a foreign company in compliance with the Overseas Investments Rules ("**OI Rules**").

    b) Swaps involving issuance of equity instruments of Indian company: Previously, Schedule I to the NDI Rules (sub-paragraph (d) of Paragraph 1) allowed for a limited swap structure – i.e. where an Indian company issued equity instruments to a non-resident against swap of equity instruments of another Indian company. The Notification now explicitly permits such issuance to also be effected against swap of equity capital of a foreign company in compliance with the OI Rules.

    The Notification also clarifies that if government approval is applicable for the aforesaid transfer or issuance, then such approval is still required to be obtained.

2. **Downstream investments by Overseas Citizen of India ("OCI") owned entities**: Previously, the Department for Promotion of Industry and Internal Trade ("**DPIIT**") had, by way of Press Note 1 of 2021 issued in March 2021 ("**PN-1**"), clarified that any downstream investments into an Indian investee entity by an Indian entity owned and controlled by Non-resident Indians ("**NRIs**") on a non-repatriation basis, would not be considered as indirect foreign investment. Such investments into the investee were therefore treated as if they were investments by a resident, thereby removing the applicability of conditions such as entry route, sectoral caps, pricing guidelines, etc.

    The Notification has incorporated the aforesaid exemption contained in PN-1 into the NDI Rules. Further, it extends the aforesaid treatment to investments by Indian entities owned and controlled by OCIs.

3. **Transfer of equity instruments of an Indian company between non-residents**: Rule 9(1) of the NDI Rules deal with transfer of equity instruments of an Indian company by way of sale or gift by a non-resident (not being an NRI, OCI or overseas corporate body) to another non-resident, subject to certain conditions. Prior to the Notification, it was stipulated by way of a proviso that prior government approval will be obtained for any such transfer in case the Indian company is engaged in a sector that requires government

approval ("**sector-specific approval**"). The Notification amended this proviso to state that Government approval will be obtained in all cases where Government approval is applicable. Therefore, the amendment appears to clarify the need not only for any sector-specific approvals but also for Government approvals pursuant to Press Note 3 of 2020 (i.e. where transferee is an entity in a country which shares a land border with India ("**Neighbouring Countries**") or has a beneficial owner which is situated in or is a citizen of such Neighbouring Countries).

4. **FDI in white-label ATMs**: The table in Schedule I to the NDI Rules which details entry routes, sectoral caps, and other conditions for investments in various sectors has also undergone change. Previously, the table in the NDI Rules contained no specific entry for foreign investment in White Label ATMs ("**WLAs**") even though the Consolidated FDI Policy of 2020 ("**FDI Policy**") permitted up to 100% FDI under the automatic route subject to compliance with certain conditions. The Notification has now introduced a specific entry for WLAs in the NDI Rules which brings it in line with the FDI Policy. Further, the Notification has included an additional condition for foreign investment in WLAs – i.e. FDI in WLAs would be subject to specific criteria and guidelines issued by the RBI under the Payment and Settlement Systems Act, 2007.

5. **Government approvals for investments by Foreign Portfolio Investor ("FPI")**: Previously, Schedule I of the NDI Rules incorporated a 'lower of' construct to determine if government approvals were required for FPI investments in Indian companies. Prior to the Notification, it stated that Government approval or compliance with the sectoral conditions was not required if the aggregate FPI investments in such company was up to 49% of its paid-up capital or the stipulated sectoral or statutory cap for investments, whichever is lower, if such investment does not result in transfer of ownership or control from residents or to non-residents. With the Notification, the 'lower of' construct has been removed. Accordingly, Government approvals and compliance with sector-specific conditions are no longer needed for investments up to the sectoral or statutory cap, if such investment in the Indian company does not result in transfer of ownership or control from residents or to non-residents.

6. **Definitions of 'Control' and 'Startup Company'**: The Notification has brought about changes in certain definitions, thereby ensuring alignment with other laws. Pursuant to the Notification, the term 'control' will have the meaning assigned to it under the Companies Act, 2013, thereby ensuring alignment between the Companies Act, 2013 and the NDI Rules. Further, 'control' with respect to a Limited Liability Partnership ("**LLP**") means a right to appoint majority of the designated partners, where such designated partners, with specific exclusion to others, have control over all the policies of an LLP. Further, the definition of a 'startup company' has now been updated to refer to private companies incorporated under the Companies Act, 2013 and identified under the DPIIT notification number G.S.R. 127 (E) issued on February 19, 2019.

The amendments introduced pursuant to the Notification signify a welcome and much-awaited initiative. They not only remove certain limitations that previously existed under the cross-border investment framework but also bring regulatory clarity to the rules governing FDI and ODI. Particularly, the amendments relating to cross-border share swaps are expected to provide an important push for non-cash strategic transactions undertaken by Indian companies.

Cross border guarantees

RBI has identified instances where guarantees have been issued by persons residing outside India in favour of persons residing in India, which are not permitted under FEMA and its related regulations. Consequently, RBI, *vide* circular dated October 4, 2024, issued directions to Authorised Dealer Category-I banks ("**AD**

Bank") to ensure that guarantee contracts advised by them to, or on behalf of, their resident constituents are in accordance with FEMA and the extant regulations.

Reporting of foreign exchange transactions to Trade Repository

RBI, *vide* circular dated November 8, 2024, issued a clarification regarding reporting of foreign exchange transactions to the Trade Repository ("**TR**").

To ensure completeness of transaction data in the TR for all foreign exchange instruments, the reporting requirement will now include foreign exchange spot (including value cash and value tom) deals in a phased manner. Accordingly, transactions in the following foreign exchange contracts involving Indian Rupees or otherwise ("**FX Contracts**"), must now be reported to the TR:

1. foreign exchange cash;
2. foreign exchange tom; and
3. foreign exchange spot.

The following FX Contracts executed with clients must be mandatorily reported as per the following timelines:

1. FX Contracts with the value equal to or exceeding the threshold limit of USD 1,000,000 (US Dollars one million) and equivalent thereof in other currencies with effect from May 12, 2025;
2. FX Contracts with the value equal to or exceeding the threshold limit of USD 50,000 (US Dollars fifty thousand) and equivalent thereof in other currencies with effect from November 10, 2025; and
3. FX Contracts executed with clients should be reported before 12:00 noon of the following business day.

Non-Banking Financial Companies

Framework for fraud risk management in Non-Banking Financial Companies

RBI, *vide* notification dated July 15, 2024, issued the RBI (Fraud Risk Management in NBFCs) Directions, 2024, which aims to provide a framework for all Non-Banking Financial Companies ("**NBFCs**") (including Housing Finance Companies ("**HFCs**")) in the upper layer, middle layer and in the base layer, with asset size of INR 500,00,00,000 (Indian Rupees five hundred crore) and above. These directions are issued with a view to providing a framework to NBFCs for prevention, early detection and timely reporting of incidents of fraud to law enforcement agencies, RBI and the National Housing Bank ("**NHB**"). The key directions are as follows:

1. there must be a board approved policy on fraud risk management delineating roles and responsibilities of board/board committees and senior management of the NBFC. Special committee of the board to be formed for monitoring and follow-up of cases of frauds;
2. NBFCs must identify appropriate early warning indicators for monitoring credit facilities/loan accounts and other financial transactions; and
3. all RBI regulated entities will not provide any credit assistance to an entity whose account has been declared fraud for a period of 5 (five) years from satisfaction of all dues.

Review of regulatory framework for HFCs and harmonisation of NBFCs

Following the transfer of regulatory authority of HFCs from NHB to RBI with effect from August 9, 2019, various regulations have been issued treating HFCs as a category of NBFCs. RBI, vide circular dated August 12, 2024, outlined the revised regulatory frameworks for HFCs and NBFCs in order to harmonise the regulations applicable to HFCs and NBFCs.

The revised regulatory frameworks have introduced changes affecting several key areas, which are as follows:

1. **Public deposit acceptance and associated requirements**: HFCs must adhere to the same rules as deposit-taking NBFCs regarding public deposits. This includes maintaining higher liquid

assets, aligning safe custody practices with that applicable to NBFCs, ensuring full asset coverage for public deposits and adherence to prudential norms and minimum investment grade credit rating requirements as specified under these regulations. HFCs exceeding revised deposit limits must stop accepting or renewing deposits until they comply with the limits. They are required to notify NHB if asset coverage falls short of the liability on account of public deposits.

2. **Restrictions on investments and risk management**: New regulations impose limits on investments in unquoted shares and enhance the risk management framework for HFCs, covering currency derivatives, interest rates futures, and credit default swaps. The updated framework also allows HFCs to issue co-branded credit cards.
3. **Branch operations and appointment of agents**: HFCs must now follow regulations pertaining to opening of branches and agent appointments for deposit collection, similar to those for NBFCs, aiming to standardise practices across sectors.

These revised regulations are applicable from January 1, 2025.

Review of risk weights for HFCs

RBI, on August 12, 2024, notified certain modifications to the to the Master Direction – NBFC – HFC (Reserve Bank) Directions, 2021:

1. **Risk weighted assets for undisbursed amount of housing loans/other loans**: The risk weighted assets computed for undisbursed amount of housing loans/other loans as per step 1 and step 2 of paragraph 6.3.1 of the afore-said Master Direction (which deals with calculation of risk weights for off-balance sheet credit exposures), are now capped at the risk weighted asset computed on a notional basis for equivalent amount of disbursed loan.
2. **Risk weight for Commercial Real Estate – Residential Building**: The risk weight of fund-based and non-fund based exposures to 'commercial real estate-residential building', which are classified as standard, will be 75%. Further, for exposures under this category, which are not classified as standard, the risk weight will be as per the category 'Other Assets (Others)' (*which presently is at 100%*).

Directions regarding various aspects of functioning of NBFC - peer to peer lending platforms

RBI, *vide* circular dated August 16, 2024, amended and modified the Directions for Peer-to-Peer ("**P2P**") Lending Platforms ("**Directions**") contained in the Master Direction – NBFC – P2P Lending Platform (Reserve Bank) Directions, 2017.

These Directions have been formulated after observing certain irregular practices in the industry that violated earlier regulations. The Directions focus on several critical aspects of P2P lending, including:

1. **Credit risks and funds deployment**: NBFC-P2P lending platforms are not responsible for credit risks; lenders must bear any loss of principal or interest. These platforms must disclose that lenders assume all credit risks and must ensure funds are deployed strictly as per the Directions. No NBFC-P2P must cross-sell products except for certain loan specific insurance products.
2. **Pricing policies**: NBFC-P2P platforms must adopt clear and objective pricing, disclose fees at lending time, and ensure fees remain fixed regardless of borrower repayment ability. Platforms are also restricted from sourcing borrowers and lenders through affiliates or closed groups to ensure transparency.
3. **Lender's aggregate exposure cap**: A lender's total exposure to INR 50,00,000 (Indian Rupees fifty lakh) across all platforms provided that the amount lent by the lenders on P2P platforms is consistent with their net-worth. If a lender's exposure exceeds INR 10,00,000 (Indian Rupees

ten lakh) across P2P platforms, they must provide a chartered accountant's certificate proving a minimum net worth of INR 50,00,000 (Indian Rupees fifty lakh).

4. **Fund transfer through escrow account**: Funds managed via escrow accounts on NBFC-P2P platforms must be transferred within one business day (T+1) of receipt, improving efficiency and ensuring faster access to funds for both lenders and borrowers.
5. **No guarantees**: NBFC-P2P platforms are barred from guaranteeing loan recovery or marketing P2P lending as an investment product with tenure linked assured minimum returns or liquidity options, following RBI inspections that uncovered rule violations and misleading practices.
6. **Disclosures**: NBFC-P2P platforms are required to publicly disclose in its website all losses borne by the lenders on principal or interest or both. NBFC-P2P platforms are also required to disclose to the lenders details about the borrower(s), including identity (with his/her consent), interest rates, and credit scores.

Directions for treatment of wilful and large defaulters

RBI, *vide* notifications dated July 30, 2024, issued the RBI (Treatment of Wilful Defaulters and Large Defaulters) Directions, 2024 ("**Wilful Defaulter Directions**"). The Wilful Defaulter Directions aim to provide for a non-discriminatory and transparent procedure for classifying a borrower as a 'wilful defaulter', and to disseminate credit information about wilful defaulters for cautioning the lenders. Some of the key provisions under the Wilful Defaulter Directions are as follows:

1. the provisions regarding wilful defaulters and large defaulters are applicable to all RBI regulated entities irrespective of whether they fall within the definition of 'lender' as provided in the Wilful Defaulter Directions or not;
2. the Wilful Defaulter Directions provide for a mechanism for identification and classification of defaulters: (i) wilful defaulters: where the total outstanding is above INR 25,00,000 (Indian Rupees twenty-five lakh); and (ii) large defaulters: where the outstanding is above INR 1,00,00,000 (Indian Rupees one crore), or as notified by the RBI;
3. wilful defaulters are to be classified based on their track-record and not on the basis of isolated transactions/incidents;
4. an elaborate 2 (two) stage procedure for classification of a wilful defaulter has been provided under the Wilful Defaulter Directions. This 2 (two) stage procedure includes identification of the default and the wilful defaulter by the 'identification committee'. In this regard the duties of the identification committee have also been provided under the Wilful Defaulter Directions; and identification committee thereafter applies before the 'review committee', who will entertain written applications by the associates of the willful defaulter, prior to reaching a decision, in interest of natural justice;
5. the Wilful Defaulter Directions provide for specific measures to be taken against wilful defaulters, including initiation of criminal proceedings, publication of photographs, and bar on providing any additional credit facility to the wilful defaulter and to any entity such willful defaulter is associated with; and
6. the Wilful Defaulter Directions provide for removal of names of wilful defaulters and large defaulters through credit information companies pursuant to voluntary settlement or involuntary resolution of the debt wherever the outstanding amount gets below the required threshold.

Payment and Settlement Systems Act, 2007

Directions on cyber resilience and payment security controls for payment system operators

RBI, *vide* circular dated July 30, 2024, issued the Master Directions on Cyber Resilience and Digital Payment

Security Controls for non-bank Payment System Operators ("**PSOs**"). They apply to all authorised non-bank PSOs and aim to improve the safety and security of the payment systems operated by PSOs by providing a framework for overall information security preparedness with an emphasis on cyber resilience. These directions cover areas including information security policies, cyber crisis management plans, risk assessment, network security, application security, vendor risk management, data security, incident response, and business continuity planning.

The existing instructions on security and risk mitigation measures for payments done using cards, prepaid payment instruments and mobile banking continue to be applicable as hitherto.

The directions will be implemented in the following phased manner:

1. for large non-bank PSOs: April 1, 2025;
2. for medium non-bank PSOs: April 1, 2026; and
3. for small non-bank PSOs: April 1, 2028.

RBI (Access Criteria for NDS-OM) Directions, 2024

RBI, *vide* circular dated October 18, 2024, issued the RBI (Access Criteria for NDS-OM) Directions, 2024 ("**Directions**") revising the access criteria for the Negotiated Dealing System-Order Matching ("**NDS-OM**") platform. Direct access to NDS-OM has been extended to a broader set of regulated entities such as banks, standalone primary dealers, non-banking financial companies including housing finance companies, provident funds, pension fund and insurance companies. Further, the process for seeking direct access to NDS-OM under the Directions or through the procedure stipulated under the Master Directions on Access Criteria for Payment Systems dated January 17, 2017, has been streamlined. Entities can now either gain direct access, allowing them to execute transactions on the NDS-OM platform, or opt for indirect access by partnering with an entity that holds direct access. Entities seeking direct access to NDS-OM must meet specific criteria laid out by RBI. The prerequisites include maintaining a subsidiary general ledger account with RBI, holding a current account with either RBI or a designated settlement bank, and being a member of the Clearing Corporation of India Limited's securities settlement segment.

Amendment to framework for facilitating small value digital payments in offline mode

RBI, *vide* circular dated December 4, 2024, updated the Framework for Facilitating Small Value Digital Payments in offline mode in order to increase the limit for Unified Payments Interface ("**UPI**") Lite to INR 1,000 (Indian Rupees one thousand) per transaction (from the earlier limit of INR 500 (Indian Rupees five hundred) per transaction), with INR 5,000 (Indian Rupees five thousand) being the total limit (from the earlier limit of INR 2,000 (Indian Rupees two thousand)) at any point in time.

UPI access for Prepaid Payment Instruments through third-party applications

RBI, *vide* circular dated December 27, 2024, enabled UPI payments from full Know Your Customer ("**KYC**"); and to full KYC, Prepaid Payment Instruments ("**PPIs**") through third-party UPI applications to provide more flexibility to the customers of full-KYC PPIs. This will enable full-KYC PPI holders to make and receive UPI payments through the mobile application of third-party UPI applications. This move enables interoperability for full-KYC PPIs.

Sovereign Green Bonds

Amendments to the Foreign Exchange Management (Debt Instruments) Regulations, 2019 permitting purchase of sovereign green bonds

By way of gazette notification dated August 7, 2024, the Foreign Exchange Management (Debt Instruments) (Third Amendment) Regulations, 2024, have been

notified amending the Foreign Exchange Management (Debt Instruments) Regulations, 2019. Pursuant to the amendment, persons resident outside India maintaining a securities account with a depository in IFSCs are permitted to purchase sovereign green bonds in IFSCs in India. The amount of consideration for purchase of sovereign green bonds issued by the Government must be paid out of inward remittance from abroad through banking channels or out of funds held in a FCA maintained in accordance with the regulations issued by RBI and/or the International Financial Services Centres Authority ("**IFSCA**"). The sale/maturity proceeds, net of taxes, as applicable, of instruments held by persons resident outside India may be remitted outside India.

Pursuant to the amendment, on August 29, 2024, RBI issued the scheme for trading and settlement of sovereign green bonds in IFSCs in India ("**Scheme**").

The details of the Scheme are as follows:

1. the Scheme will apply to investments in sovereign green bonds issued by the Government by eligible investors in IFSCs in India;
2. the following persons will be eligible to participate in the Scheme:
    a) persons resident outside India as defined in Section 2(w) of the Foreign Exchange Management Act, 1999, that are eligible to invest in the IFSC, as specified by IFSCA, and are not incorporated in high-risk jurisdictions subject to a Call for Action as identified by the Financial Action Task Force ("**FATF**");
    b) an IFSC Banking Unit ("**IBU**") of a foreign bank which does not have a branch or subsidiary licensed to undertake banking business in India; and
    c) persons resident outside India as treated under Foreign Exchange Management (IFSCs) Regulations, 2015, that are eligible to invest in the IFSC, as specified by IFSCA, and are not incorporated in high-risk jurisdictions subject to a Call for Action as identified by FATF provided that such persons are not a branch, joint venture, subsidiary or trust of an entity incorporated in India. However, funds/schemes, including the ones setup by entities incorporated in India, regulated by IFSCA under the IFSCA (Fund Management) Regulations, 2022 are considered as eligible investors;
3. investors can participate in the primary auctions of securities undertaken by RBI and transact in the secondary market for securities in the IFSC, as per the terms and conditions defined in the Scheme;
4. eligible IBUs are not permitted to participate in the primary auctions under the Scheme. Eligible IBUs can undertake transaction in the secondary market as per the terms and conditions defined in the Scheme; and
5. the Scheme mandates adherence to strict 'know your customer' and 'anti-money laundering' standards, as well as comprehensive reporting and data management requirements to ensure transparency and regulatory compliance.

Further, IFSCA, *vide* circular September 24, 2024, detailed the investors eligible to participate in the Scheme and the process of participation through the primary and secondary market.

Sovereign green bonds included as specified securities under the Fully Accessible Route

RBI, *vide* various circulars, has specified categories of government securities that are eligible for investment under the Fully Accessible Route ("**FAR**"). Further to this, RBI, *vide* circular dated November 7, 2024, has designated sovereign green bonds of 10 (ten) year tenor issued by the Government of India in the second half of the fiscal year 2024-25 as 'specified securities' under the FAR.

Credit Information Companies

Frequency of reporting of credit information by credit institutions to Credit Information Companies

RBI, *vide* notification dated August 8, 2024, changed the frequency for updating and processing of credit information by Credit Information Companies (**"CICs**") and Credit Institutions (**"CIs**"). Accordingly:

1. CICs and CIs are now required to keep the credit information collected/maintained by them updated regularly on a fortnightly basis (i.e., as on 15th and last day of the respective month) or at such shorter intervals as mutually agreed upon between the CI and the CIC;
2. the fortnightly submission of credit information by CIs to CICs must be ensured within 7 (seven) calendar days of the relevant reporting fortnight;
3. CICs are required to ingest credit information data received from the CIs, as per their data acceptance rules, within 5 (five) calendar days of its receipt (*earlier this was 7 (seven) calendar days*); and
4. CICs are required to report non-compliant CIs to RBI at half yearly intervals (as on March 31 and September 30 each year).

These instructions have come into effect from January 1, 2025.

Asset Reconstruction Companies required to submit information to CICs

RBI, *vide* circular dated October 10, 2024, updated the applicable guidelines with a view to maintain a track of borrowers' credit history after transfer of loans by banks and non-banking financial companies to Asset Reconstruction Companies ("**ARCs**"). Some of the key features of the guidelines are as follows:

1. ARCs must become members of all CICs and submit the requisite data to CICs as per the uniform credit reporting format prescribed by RBI;
2. ARCs need to adopt best practices for managing CIC-related activities and have a Standard Operating Procedure ("**SOP**") in place for handling credit information. The SOP should cover essential procedures such as ensuring that all relevant customer and loan information is submitted to CICs, regularly updating records, and reporting repayments without delays;
3. ARCs are required to centralise the issuance of no-objection certificates to avoid issues related to non-updation of repayment data; and
4. ARCs must ensure compliance with these guidelines latest by January 1, 2025.

Inoperative accounts/unclaimed deposits in banks

RBI, *vide* circular dated December 2, 2024, advised banks to urgently take necessary measures to bring down the number of inoperative/frozen accounts and make the process of activation of such accounts smoother and hassle free. For this purpose, banks may take several steps such as completion of KYC through mobile/internet banking and non-home branches, video customer identification process, organising special campaigns, etc.

To ensure that this is being adequately followed, RBI also advised banks to report reduction in inoperative/frozen accounts on a quarterly basis to the respective senior supervisory manager through DAKSH portal, starting from the quarter ending December 31, 2024.

Reporting platform for transactions undertaken to hedge price risk of gold

RBI, *vide* circular dated December 27, 2024, mandated the reporting of gold derivative transactions by AD Banks to the Clearing Corporation of India Ltd. ("**CCIL**") trade repository, to enhance transparency, regulatory oversight, and data completeness. This circular applies to transactions undertaken by banks and their

customers/constituents under the frameworks of RBI regulations on forward contracts, the gold monetisation scheme, risk management, and hedging of commodity price risks. Some of the key provisions are as follows:

1. all over-the-counter transactions in gold derivatives conducted by banks and their eligible customers in domestic markets, IFSC, or outside India must be reported to the trade repository of CCIL, starting from February 1, 2025. Such reporting must be made on a daily basis, by 12:00 noon of the following business day;
2. all matured and outstanding over-the-counter transactions in gold derivatives undertaken by the bank and their eligible customers in domestic markets, IFSC and outside India (from April 15, 2024), must be reported to the trade repository by February 28, 2025;
3. quarterly reports on gold derivatives traded in IFSC and overseas exchanges must be provided by the banks within 10 (ten) days of the succeeding quarter, commencing from the quarter ending December 31, 2024; and
4. all reporting formats will be determined by CCIL with RBI's approval.

Market Infrastructure Institutions

Charges levied by Market Infrastructure Institutions

The Securities and Exchange Board of India ("**SEBI**"), *vide* circular dated July 1, 2024, directed the Market Infrastructure Institutions ("**MIIs**") to comply with the following additional principles while designing the processes for charges levied on their members (which are to be recovered from the end clients):

1. MII charges that are to be recovered from the end client should be 'True to Label' i.e. if a certain MII charge is levied on the end client by members (i.e. stock brokers, depository participants, clearing members), it should be ensured by MIIs that the same amount is received by them;
2. the charge structure of the MII should be uniform and equal for all its members instead of slab-wise charge which is dependent on volume/activity of its members; and
3. the new charge structure designed by MIIs must give due consideration to the existing per unit charges realised by MIIs so that the end clients are benefitted with the reduction of charges.

In line with this circular, SEBI directed the MIIs to redesign the existing charge structure and associated processes to comply with the provisions of the circular and take necessary steps to put in place the requisite infrastructure and systems for implementation of the circular. Further, SEBI also directed the MIIs to communicate the status of implementation of the provisions of the said circular to SEBI.

Parameters for performance evaluation of MIIs

SEBI, *vide* circular dated September 24, 2024, provided the parameters for performance evaluation of MIIs (i.e., every recognised stock exchange, recognised clearing corporation and depository) by independent external agencies.

The minimum criteria for the independent external evaluation of performance of MIIs and their weightages are resilience in technology and processes of MIIs, in delivery of its core functions (40%); investor education and protection (17%); efficient discharge of regulatory role by MII (15%); compliance with regulatory norms (10%); evaluation of governance practices (8%); adequacy of resources (5%); and fair access and treatment to all stakeholders and information disclosure (5%).

SEBI also introduced a rating framework to ensure consistency and transparency in assessments across MIIs. Additionally, SEBI introduced certain principles for appointment of Independent External Agencies ("**IEA**"), timelines for external evaluation and performance evaluation metrics. Independent externals evaluations must be conducted at least once

in3 (three) years. In selecting an IEA, MIIs must adhere to certain principles, such as obtaining a no objection certificate from SEBI, appointment on such terms and conditions, including fees and timelines, as approved by the governing board of the MII and ensuring there is no conflict of interest in the appointment of the IEA.

SOP for payment of financial disincentives by MIIs

SEBI, *vide* circular dated October 14, 2024, issued a corrigendum clarifying references to its September 20, 2024, circular regarding the payment of financial disincentives by MIIs as a result of technical glitch. The amendments did not explicitly give reference to relevant sections of the Master Circular for Commodity Derivatives Segment dated August 4, 2023 ("**Master Circular**"). Accordingly, SEBI made references to the relevant sections of the Master Circular which are to be read with the relevant sections of the circular dated September 20, 2024. Further, the following is inserted in the Master Circular:

1. SEBI, on identification of a technical glitch resulting into financial disincentive to the MIIs, or upon receipt of the information of any such instance, must provide an opportunity to the concerned MIIs to make their submissions;
2. MIIs must carry out internal examination pertaining to occurrence of technical glitches to ascertain individual accountability and take appropriate action including suitable recording and reckoning in the performance appraisal of those individuals; and
3. SEBI would retain the right to initiate enforcement action against the individuals at the MII, if there is sufficient ground to do so.

Monitoring shareholding of MIIs

SEBI, *vide* circular dated October 14, 2024, introduced a framework to monitor the shareholding of MIIs. The framework includes the following measures:

1. each MII must appoint a Designated Depository ("**Depository**") to monitor compliance with shareholding limits. The Depository must be independent of the MII;
2. the prescribed framework for monitoring and ensuring compliance with shareholding norms currently applicable to listed stock exchanges and listed depositories will be applicable to all MIIs (i.e. both listed and unlisted);
3. stock exchanges must ensure that trading members, their associates, and agents do not collectively own more than 49% of an MII's equity. Any acquisitions that increase total ownership to 45% require prior approval;
4. stock exchanges must own at least 51% of clearing corporations. No exchange can own more than 15% of a single clearing corporation;
5. MIIs must ensure that shareholders with 2% or more of their equity shares or voting rights meet the fit and proper criteria. MIIs must report non-compliance to SEBI quarterly;
6. if a shareholding or fit and proper criteria breach occurs, SEBI will take action. This may include freezing voting rights, corporate benefits, and transferring dividends to the investor protection fund or settlement guarantee fund; and
7. listed MIIs can divest excess shareholding through a special window provided by the stock exchange. Unlisted MIIs must follow SEBI's directions on a case-by-case basis.

The provisions of the circular come into force 90 (ninety) days from its date of issuance.

Non-convertible securities

Reduction in denomination of debt securities and non-convertible redeemable preference shares

SEBI, *vide* circular dated July 3, 2024, amended Chapter V (Denomination of issuance and trading of non-convertible securities) of the SEBI Master Circular for

Issue and Listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated May 22, 2024. It is applicable to all issues of debt securities and non-convertible redeemable preference shares on private placement basis that are proposed to be listed from July 3, 2024. These amendments are made to lower the ticket size of debt securities that may encourage more non-institutional investors to participate in the corporate bond market which in turn may also enhance liquidity.

A new Clause 1.3 is inserted permitting issuers to issue debt securities or non-convertible redeemable preference shares on a private placement basis at a face value of INR 10,000 (Indian Rupees ten thousand) subject to the certain conditions, such as:

1. the issuer must appoint at least 1 (one) merchant banker;
2. the debt security or non-convertible redeemable preference share must be interest/dividend bearing security paying coupon/dividend at regular intervals with a fixed maturity without any structured obligations;
3. credit enhancements, such as guaranteed bonds, partially guaranteed bonds, standby letter of credit backed securities, will be permitted;
4. regarding the credit enhancements mentioned above, credit rating agencies must verify the documentation related to the specified support considerations to ensure that the support is unconditional, legally enforceable and has a lower probability of default on a continuous basis till the time such instruments are outstanding;
5. the issuer may raise funds through tranche placement memorandum or key information document at a face value at INR 10,000 (Indian Rupees ten thousand), for shelf placement memorandum or general information documents, provided at least 1 (one) merchant banker is appointed to carry out due diligence in respect of such issuances; and
6. clause 2.3 pertaining to trading of non-convertible securities is modified to state that all trading lot of listed debt security issued on private placement basis and non-convertible redeemable preference share issued on private placement basis, which are traded on a stock exchange or over-the-counter will always be equal to the face value.

Usage of UPI by individual investors in public issue of securities through intermediaries

SEBI, *vide* circular dated September 24, 2024, prescribed that for all individual investors applying in public issues of debt securities, non-convertible redeemable preference shares, municipal debt securities and securitised debt instruments through intermediaries (*viz.* syndicate members, registered stock brokers, registrar to an issue and transfer agent and depository participants), where the application amount is up to INR 5,00,000 (Indian Rupees five lakh), must only use UPI for the purpose of blocking of funds. Further, individual investors will continue to have the choice of availing other modes (*viz.* through self-certified syndicate banks and stock exchange platform) for making an application in the public issue.

This circular will be applicable for public issue of debt securities, non-convertible redeemable preference shares, municipal debt securities and securities debt instruments opening on or after November 1, 2024.

SEBI introduces Environmental, Social and Governance Debt Securities by amending the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

SEBI, *vide* notification dated December 11, 2024, notified the SEBI (Issue and Listing of Non-Convertible Securities) (Third Amendment) Regulations, 2024 ("**NCS Amendment Regulations**"), for amending the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ("**NCS Regulations**"). Pursuant to the NCS Amendment Regulations, SEBI has introduced the concept of 'Environmental, Social and Governance ("**ESG**") Debt Securities' under Regulation 2(1)(oa) of the NCS Regulations, which will include securities such

as social bonds, sustainable bonds and sustainability linked bonds, and green debt securities. To avoid an overlap, the NCS Amendment Regulations also omits Regulation 26 of the NCS Regulations (which related to issuance of green debt securities).

SEBI is also expected to introduce certain conditions which will govern the framework for issuance and listing of ESG Debt Securities.

Revisiting the amendments carried out in calendar year 2024 by SEBI to issuance and listing of non-convertible securities

With only one more page left to be turned in this year's calendar, it felt worthwhile to touch upon the various amendments that SEBI has brought about to one of the most relevant pieces of regulation for debt market participants i.e., the NCS Regulations

Since the inception of the NCS Regulations, SEBI has implemented several amendments, either as a response to concerns flagged by market participants, or to smoothen operations. The amendments brought about in 2024 are along the same lines and deal with principally streamlining the various disclosures and timelines for various operational processes. In Part A, we have provided a concise mark-up showing the changes to the NCS Regulations along with brief remarks in relation thereto.

Further, SEBI had also issued various circulars in relation to specific operational processes including for which the NCS Regulations provided the basic framework. As these were also amended and supplemented by additional circulars of SEBI from time to time, in May 2024, SEBI came up with the Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper ("**NCS Master Circular**") which repealed all the previous circulars issued in connection with the NCS Regulations. The NCS Master Circular was also amended in 2024 to further streamline certain operational changes. In Part B, we have provided a concise mark-up showing the changes to the NCS Master Circular along with brief remarks in relation thereto.

Part A: NCS Regulations

SEBI, *vide* circulars dated July 8, 2024 (with effect from July 10, 2024), and September 17, 2024 (with effect from September 18, 2024), SEBI made the following amendments:

For efficacy of reference, we have set out the changes to the NCS Regulations in the form of a table, whereby deletions are highlighted in 'red', and '~~strikethrough~~' and insertions are highlighted in blue:

Sr. No	Provision	Remarks	Amended provisions	Effective date
1.	Regulation 23(7) (Obligations of the Issuer)	A new obligation for the issuer to pay interest, dividend, etc within a specified date.	"(a) The issuer shall fix a record date for the purposes of payment of interest, dividend and payment of redemption or repayment amount or for such other purposes as specified by the Board. (b) Such record date shall be fixed at fifteen days prior to the due date of payment interest or dividend, repayment of principal or any other corporate actions."	July 10, 2024
2.	Regulation 27(2) (Filing of draft offer document) -	The duration of the listing of draft offer document on the issuer's website been reduced to 5 days.	"The draft offer document filed with the stock exchange(s) shall be made public by posting the same on the website of the stock exchange(s) for seeking public comments for a period of ~~seven working~~ five days from the date of filing the draft offer document with stock exchange(s) […]" Provided that issuers whose specified securities are listed on a recognised stock exchange having nationwide trading terminals shall post the draft offer document filed with stock exchange(s) for one day immediately after the date of filing the draft offer document with stock exchange(s)"	September 18, 2024
3.	Regulation 30(1) (Advertisements for Public issues)	Electronic modes have been added as mediums for making public issue.	"The issuer shall make an advertisement through electronic modes such as online newspapers or website of the issuer or the stock exchange, or in an English national daily and regional daily with wide circulation at the place where the registered office of the issuer is situated […]. Provided that issuers opting to advertise the public issue through electronic modes shall publish a notice, in an English national daily and regional daily newspaper with wide circulation at the place where the registered office of the issuer is situated, exhibiting a QR Code and link to the complete advertisement".	September 18, 2024
4.	Regulation 33A(1) and 33A(2) (Period of subscription)	The minimum issue period for a public issue of debt securities or NCRPS has been reduced to 2 working days.	"(1) A public issue of debt securities or, non-convertible redeemable preference shares (NCRPS) shall be kept open for a minimum of ~~three~~ two working days and a maximum of ten working days. (2) In case of a revision in the price band or yield, the issuer shall extend the bidding (issue) period disclosed in the offer document for a minimum period of ~~three working days~~ one working day:	September 18, 2024

Sr. No	Provision	Remarks	Amended provisions	Effective date
		The minimum extension of issue period in case of revision in price band has been reduced to 1 working day.	Provided that the overall bidding (issue) period shall not exceed the maximum number of days, as provided in sub-regulation (1)."	
5.	Regulation 40 (Due Diligence by Debenture trustee)	Additional disclosures to the stock exchange with respect to offer document and debenture trustee's due diligence certificates.	"(1) The debenture trustee shall, at the time of filing the draft offer document with the stock exchange(s) and prior to the opening of the public issue of debt securities, furnish to the Board and to the stock exchange(s), a due diligence certificate: (a) in case of secured debt securities, in the format as specified in Part A of Schedule IV of these regulations; and (b) in case of unsecured debt securities, in the format as specified in Part A of Schedule IVA of these regulations. (2) The debenture trustee shall at the time of filing of the listing application by the issuer, furnish to the Board and to the stock exchange(s), a due diligence certificate: (a) in case of secured debt securities, in the format as specified in Part B of Schedule IV of these regulations; and (b) in case of unsecured debt securities, in the format as specified in Part B of Schedule IVA of these regulations. (3) The stock exchange shall disclose the offer document and due diligence certificates provided by the debenture trustee on its website."	July 8, 2024
6.	Regulation 44 (Listing Application)	Additional disclosure of placement memorandum on stock exchange's website.	"….(3) The debenture trustee shall submit a due diligence certificate to the stock exchange: (a) in case of secured debt securities, in the format as specified in Part B of Schedule IV of these regulations; and (b) in case of unsecured debt securities, in the format as specified in Part B of Schedule IVA of these regulations.	July 10, 2024

Sr. No	Provision	Remarks	Amended provisions	Effective date
			(3A) The stock exchange shall disclose the placement memorandum and the due diligence certificates provided by the debenture trustee on its website.	
Schedule I (Disclosures for Issue of Securities)				
7.	Paragraph 3.3.2(a)	Certain details of the promoters will not be required to be disclosed in the placement memorandum. Instead, disclosing the same to the stock exchange would suffice the requirement.	"A complete profile of all the promoters, including their name, date of birth, age, ~~personal addresses~~, educational qualifications, experience in the business or employment, positions/posts held in the past, directorships held, other ventures of each promoter, special achievements, their business and financial activities, photograph, ~~permanent accountant number.~~"	September 18, 2024
8.	Paragraph 3.3.2(b)		"A declaration confirming that the permanent account number, Aadhaar number, driving license number, bank account number(s), ~~and~~ passport number and personal addresses of the promoters and permanent account number of directors have been submitted to the stock exchanges on which the non-convertible securities are proposed to be listed, at the time of filing the draft issue document."	September 18, 2024
9.	Paragraph 3.3.8(d)	Disclosure requirements regarding the business branches/units of the issuer have been expanded.	~~Details of branches or units where the issuer carries on its business activities, if any~~ Details of branches or units where the issuer carries on its business activities, if any may be provided in the form of a static Quick Response (QR) code and web link. If the issuer provides the details of branches or units in the form of a static QR code and web link, the details of the said branches or units shall be provided to the debenture trustee as well and kept available for inspection as specified in clause (g) of paragraph 3.3.41 of this Schedule. A checklist item in the 'Security and Covenant Monitoring System' shall also be included for providing information about branches or units of the issuer to the debenture trustee and confirmation of the same by the debenture trustee.	September 18, 2024
10.	Paragraph 3.3.8(e)	The disclosure requirements with respect to use of issue proceeds have been further broken down to more granular	"~~(e) Project cost and means of financing, in case of funding of new projects.~~ (e) Use of proceeds (in the order of priority for which the said proceeds will be utilized): (i) purpose of the placement; (ii) break-up of the cost of the project for which the money is being raised; (iii) means of financing for the project; (iv) proposed deployment status of the proceeds at each stage of the project."	September 18, 2024

Sr. No	Provision	Remarks	Amended provisions	Effective date
		requirements and also expanded.		
11.	Paragraph 3.3.10(e)	sub-paragraph (e) has been further expanded thereby providing clarity to the scope and nature of information that are required to be disclosed in the issue document.	"3.3.10. Financial information: a) The audited financial statements […] b) Listed issuers […] c) Issuers other than REITs/ InvITs […] d) The above financial statements shall be accompanied with the auditor's report along with the requisite schedules, footnotes, summary etc. e) Key operational and financial parameters on consolidated and standalone basis in respect of the financial information provided under clauses (a) to (c) above."	September 18, 2024
12.	Proviso to Paragraph 3.3.10(a)	Paragraph 3.3, as mentioned above sets out the disclosures to be contained in the issue document. Paragraph 3.3.10(a) specifically provides for the disclosure of audited financial statements like profit and loss, balance sheet, cash flow, etc. The proviso allowed the issuers of non-convertible securities to disclose audited financial statements only by way of web-link and a static QR code.	"3.3.10. Financial Information: (a) The audited financial statements (i.e. profit and loss statement, balance sheet and cash flow statement) both on a standalone and consolidated basis for a period of three completed years, which shall not be more than six months old from the date of the issue document or issue opening date, as applicable. Such financial statements should be audited and certified by the statutory auditor(s) who holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India ("ICAI"). […] Provided that, issuers whose non-convertible securities are listed as on the date of filing of the offer document or placement memorandum, may provide only a web-link and a static quick response code of the audited financial statements in the offer document or placement memorandum subject to the following conditions: (i) Such listed issuers shall disclose a comparative key operational and financial parameter on a standalone and consolidated basis, certified by the statutory auditor(s) who holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India, for the last three completed years in the offer document.	September 18, 2024

Sr. No	Provision	Remarks	Amended provisions	Effective date
			(ii) The scanning of such static quick response code or clicking on the web-link, shall display the audited financial statements for last three financial years of such issuer on the website of the stock exchange where such data is hosted."	
13.	3.3.37	Any person authorised by the issuer, and not just the director, can attest to the representations.	"3.3.37. ~~The directors in case of a body corporate and such authorized persons in case the issuer is not a body corporate shall attest that:~~ The persons authorised by the issuer shall attest that: (a) the issuer is in compliance with the provisions of Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992), Companies Act, 2013 (18 of 2013) and the rules and regulations made thereunder; [...] (f) The contents of the document have been perused by the Board of Directors, and the final and ultimate responsibility of the contents mentioned herein shall also lie with the Board of Directors. The following shall be the authorised persons in case the issuer is a body corporate: i. executive Chairperson and compliance officer; or ii. Managing Director or Chief Executive Officer and compliance officer; or iii. Chief Financial Officer and compliance officer; or iv. whole-time director and compliance officer; or v. any two key managerial personnel. (g) they are duly authorised to attest as per this clause by the board of directors or the governing body, as the case may be, by a resolution, a copy of which is also disclosed in the offer document."	September 18, 2024
14.	Proviso to Paragraph 3.3.41(b)	The disclosures with respect to the top 5 (five) vendors have been made into a separate category. For the remaining vendors, the option to	"3.3.41. The issue document shall include the following other matters and reports, namely: (a) If the proceeds, or any part of the proceeds [...] (b) In purchase or acquisition of any immoveable property including indirect acquisition of immoveable property for which advances have been paid to third parties, disclosures regarding: (i) the names, addresses, descriptions and occupations of the vendors; (ii) the amount paid [...];	September 18, 2024

Sr. No	Provision	Remarks	Amended provisions	Effective date
		provide disclosures by way of a static QR code.	(iii)the nature of the title [...]; and (iv) the particulars of every transaction relating to the property completed [...]: ~~Provided that if the number of vendors is more than five, then the disclosures as required above shall be on an aggregated basis, specifying the immoveable property being acquired on a contiguous basis with mention of the location/total area and the number of vendors from whom it is being acquired and the aggregate value being paid. Details of minimum amount, the maximum amount and the average amount paid/ payable should also be disclosed for each immovable property.~~ Provided that the disclosures specified in sub-clauses (i) to (iv) above shall be provided for the top five vendors on the basis of value viz. sale consideration payable to the vendors. Provided further that for the remaining vendors, such details may be provided on an aggregated basis in the offer document, specifying number of vendors from whom it is being acquired and the aggregate value being paid; and the detailed disclosures as specified in sub-clauses (i) to (iv) above may be provided by way of static QR code and web link. If the issuer provides the said details in the form of a static QR code and web link, the same shall be provided to the debenture trustee as well and kept available for inspection as specified in clause (g) of paragraph 3.3.41 of this Schedule. A checklist item in the 'Security and Covenant Monitoring System' shall also be included for providing the detailed disclosures, as specified in sub-clauses (i) to (iv) above, to the debenture trustee and confirmation of the same by the debenture trustee.	
Schedule IV (Format of Due Diligence Certificate to be given by the Debenture Trustee (Secured Debt Securities))				
15.	Schedule IV	The Schedule has been expanded to include filing of listing application	Format of due diligence certificate to be given by the debenture trustee **Part A** Format of due diligence certificate to be given by the debenture trustee at the time of filing of draft offer document and before opening of the issue **Part B** Format of due diligence certificate to be given by the debenture trustee at the time of filing of listing application by issuer	July 10, 2024
Schedule IV-A (Format of Due Diligence Certificate to be given by the Debenture Trustee (Unsecured Debt Securities))				

Sr. No	Provision	Remarks	Amended provisions	Effective date
16.	Schedule IV-A	The Schedule has been expanded to include filing of listing application	Format of due diligence certificate to be given by the debenture trustee **Part A** Format of due diligence certificate to be given by the debenture trustee at the time of filing of draft offer document and before opening of the issue **Part B** Format of due diligence certificate to be given by the debenture trustee at the time of filing of listing application by issuer	July 10, 2024

Part B: NCS Master Circular

SEBI, *vide* circulars dated July 3, 2024, and September 26, 2024, made the following amendments:

It is to be noted that while the amendments proposed under the circular dated July 3, 2024 has been made effective from the same date, the amendment proposed under September 26, 2024 stipulated that the issuers can undertake the listing on a voluntary basis for public issues of debt securities and NCRPS opening on or after November 1, 2024; and on a mandatory basis for public issues of debt securities and NCRPS opening on or after November 1, 2025.

For efficacy of reference, we have set out the changes to the NCS Master Circular in the form of a table, whereby deletions are highlighted in 'red', and '~~strikethrough~~' and insertions are highlighted in blue:

Sr. No	Provision	Remarks	Amended Clauses	Effective date
1.	Chapter V, Clause 1 (Issuance of non-convertible securities)	Reduction in denomination of issuance to INR 10,000 subject to certain conditions.	*"1.1 The face value of each debt security or non-convertible redeemable preference share issued on private placement basis shall be Rs. One lakh except as provided in Clause 1.3 below.* *[...]* *1.3. The Issuer may issue debt security or non-convertible redeemable preference share on private placement basis at a face value of Rs. Ten Thousand,* *(i) Subject to the following conditions:* *(a) The issuer shall appoint at least one Merchant Banker.* *Provided that the role, responsibilities and obligations of the Merchant Banker(s) shall be same as they would be in case of public issue of debt security or non-convertible redeemable preference share.*	July 3, 2024

Sr. No	Provision	Remarks	Amended Clauses	Effective date
			(b) Such debt security or non-convertible redeemable preference share shall be interest/ dividend bearing security paying coupon/ dividend at regular intervals with a fixed maturity without any structured obligations. *(ii) The following credit enhancements shall be permitted in the aforesaid securities:* *(a) Guaranteed bonds;* *(b) Partially guaranteed bonds;* *(c) Standby Letter of credit (SBLC) backed securities;* *(d) Debt backed by pledge of shares or other assets;* *(e) Guaranteed Pooled bond issuance (PBI), not through a trust;* *(f) Obligor/ Co-obligor structures or cross default guarantee structures; and* *(g) Debt backed by Payment Waterfall /Escrow, or DSRA etc., but with Full Guarantee or DSRA Replenishment Guarantee from a third party* *(iii) In respect of the credit enhancements specified above, Credit Rating Agencies (CRAs) shall verify the documentation related to the specified support considerations to ensure the following:* *(a) The support is unconditional, irrevocable, and legally enforceable till all the obligations of the security has been paid to the investors.* *(b) The support provider has a lower probability of default on a continuous basis, compared with the issuer, till the time such instruments are outstanding.* *(iv) With respect to a shelf placement memorandum or General Information Document (GID) which is valid as on the 'effective date of the circular', the issuer may raise funds through tranche placement memorandum or Key Information Document at a face value at Rs. Ten Thousand provided at least one Merchant Banker is appointed to carry out due diligence in respect of such issuances. Necessary addendum shall be issued by such issuer to the shelf placement memorandum or General Information Document, as applicable."*	
2.	Chapter V, Clause 2 (Trading of non-convertible securities)	Trading of non-convertible securities to be only on face value basis.	*"~~2.1. The face value of a listed debt security or non-convertible redeemable preference share issued on private placement basis traded on a stock exchange or OTC basis shall be Rs. One lakh.~~* *~~2.2. The face value of a listed security mentioned under Chapter V of SEBI NCS Regulations, 2021 and Chapter 13 of this operational circular traded on a stock exchange or OTC basis shall be Rs. One crore.~~* *2.3. ~~The trading lot shall always be equal to face value.~~ Trading lot of listed debt security issued on private placement basis, non-convertible redeemable preference share issued on private*	July 3, 2024

<table>
<tr><th>Sr. No</th><th>Provision</th><th>Remarks</th><th>Amended Clauses</th><th>Effective date</th></tr>
<tr><td></td><td></td><td></td><td>placement basis, listed security mentioned under Chapter V of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and Chapter XIII of the Master circular dated May 22, 2024, traded on a Stock Exchange or OTC basis shall always be equal to face value.”</td><td></td></tr>
<tr><td>3.</td><td>Chapter I, Paragraph 12 (Application process in case of public issues of securities and timelines for listing)</td><td>Reduction in the timeline for listing to T+3 working days from existing T + 6 working days.</td><td>The SCSBs, stock exchanges, depositories, intermediaries, NPCI and Sponsor Bank shall co-ordinate to ensure completion of listing (through public issue) and commencement of trading of non-convertible securities, municipal debt securities and securitised debt instrument, within ~~T+6~~ T+3 working days from the date of closure of issue as under:</td><td>September 26, 2024</td></tr>
<tr><td>4.</td><td colspan="3">Table 2: Timelines from issue closure till listing[1]
<table>
<tr><th>Sr. No.</th><th>Details of activities</th><th>Due date (working day)</th></tr>
<tr><td>1.</td><td>Issue closes</td><td>T (Issue closing date)</td></tr>
<tr><td>2.</td><td>a) Stock exchange(s) shall allow modification of selected fields (till 01:00 PM) in the bid details already uploaded.
b) Registrar to get the electronic bid details from the stock exchanges by end of the day.
c) SCSBs to continue blocking of funds.
d) Designated branches of SCSBs may not accept schedule and applications after T+1 day.</td><td>T+1</td></tr>
</table></td><td>Indicative timeline of activities for listing of debt securities and NCRPS through public issues on T+3 working day
<table>
<tr><th>Sr. No.</th><th>Details of activities</th><th>Due date (working day)</th></tr>
<tr><td>1.</td><td>BID Modification - Stock exchange(s) shall allow modification of selected fields in the bid details already uploaded</td><td>From issue opening date to up to 5 pm on T day</td></tr>
<tr><td>2.</td><td>a) Registrar to get the electronic bid details from the stock exchanges by end of the day
b) Registrar to give bid file received from stock exchanges containing the application number and amount to all the SCSBs who may use this file for validation/ reconciliation at their end</td><td>On a daily basis</td></tr>
<tr><td>3.</td><td>Issue closure</td><td>5 pm on T day</td></tr>
</table></td></tr>
</table>

[1] Both the timelines are being presented side by side for ease of reference and better appreciation of the granular changes set forth post the amendment dated September 26, 2024. This amendment will be effective on a (a) voluntary basis for public issues opening on or after November 1, 2024; and (b) mandatory basis for public issues opening on or after November 1, 2025.

Sr. No	Provision		Remarks	Amended Clauses		Effective date
		e) Registrar to give bid file received from stock exchanges containing the application number and amount to all the SCSBs who may use this file for validation/ reconciliation at their end.				
	3.	a) Issuer, merchant banker and registrar to submit relevant documents to the stock exchange(s) except listing application, allotment details and demat credit and refund details for the purpose of listing permission. b) SCSBs to send confirmation of funds blocked (final certificate) to the registrar by end of the day. c) Registrar shall reconcile the compiled data received from the stock exchange(s) and all SCSBs (hereinafter referred to as the "reconciled data"). d) Registrar to undertake "Technical Rejection" test based on electronic bid details and prepare list of technical rejection cases.	T+2			
	4.	a) Finalization of technical rejection and minutes of the meeting between issuer, lead manager, registrar. b) The allotment in the public issue of securities should be made on the basis of date of upload of each application into the electronic book of the stock exchange. However, on the date of	T+3	4.	SCSBs to send confirmation of funds blocked (final certificate) to the registrar	a) Before 7:30 PM on T day for Direct ASBA and Syndicate ASBA b) Before 9:30 pm on T day for UPI ASBA
				5.	a) SCSBs to credit the funds in public issue account of the issuer and confirm the same. b) Issuer shall make the allotment. c) Registrar/ issuer to initiate corporate action for credit of debt securities, NCRPS, municipal debt securities and SDIs to successful allottees. d) Issuer and registrar to file allotment details with designated stock exchange(s) and confirm all formalities are complete except demat credit. e) Registrar to send bank-wise data of allottees, amount due on debt securities, municipal debt securities, NCRPS and SDIs allotted, if any, and balance amount to be unblocked to SCSBs.	Before 6 pm on T+1 day
				6.	a) Registrar to receive confirmation of demat credit from depositories. Issuer and registrar to file confirmation of demat credit and issuance of instructions to unblock ASBA funds, as applicable, with stock exchange(s). b) The lead manager(s) shall ensure that the allotment, credit of dematerialised debt securities, municipal debt securities,	Before 9 pm on T+1 day

Sr. No	Provision	Remarks	Amended Clauses		Effective date
		oversubscription and thereafter, the allotments should be made to the applicants on proportionate basis. *c) Registrar shall finalise the basis of allotment and submit it to the designated stock exchange for approval.* *d) Designated stock exchange to approve the basis of allotment.* *e) Registrar to prepare funds transfer schedule based on approved basis of allotment.* *f) Registrar and merchant banker to issue funds transfer instructions to SCSBs.*			
	5.	*a) SCSBs to credit the funds in public issue account of the issuer and confirm the same.* *b) Issuer shall make the allotment.* *c) Registrar/ issuer to initiate corporate action for credit of debt securities, NCRPS, municipal debt securities and SDIs to successful allottees.* *d) Issuer and registrar to file allotment details with designated stock exchange(s) and confirm all formalities are complete except demat credit.* *e) Registrar to send bank-wise data of allottees, amount due on debt securities, municipal debt securities, NCRPS and SDIs*	*T+4*		
				NCRPS, SDIs and refund or unblocking of application monies, as may be applicable, are done electronically. *c) Issuer to make a listing application to stock exchange(s) and stock exchange(s) to give listing and trading permission.* *d) Stock exchange(s) to issue commencement of trading notice.*	
				7. Trading commences	*a) Initiation not later than 9:30 am on T+2 day* *b) Completion before 2 pm on T+2 day for fund transfer*
				8. Issuer and registrar to file allotment details with designated stock exchange(s) and confirm all formalities are complete except demat credit	*Completion before 2:45 pm on T+2 day*
				9. a) Registrar/ issuer to initiate corporate action for credit of debt securities and NCRPS to successful allottees. *b) Registrar to receive confirmation of demat credit from depositories.* *c) Issuer and registrar to file confirmation of demat credit and issuance of instructions to unblock ASBA funds, as applicable, with stock exchange(s).* *d) The lead manager(s) shall ensure that the allotment, credit of dematerialised debt securities and NCRPS and refund or*	*Completion before 6 pm on T+2 day*

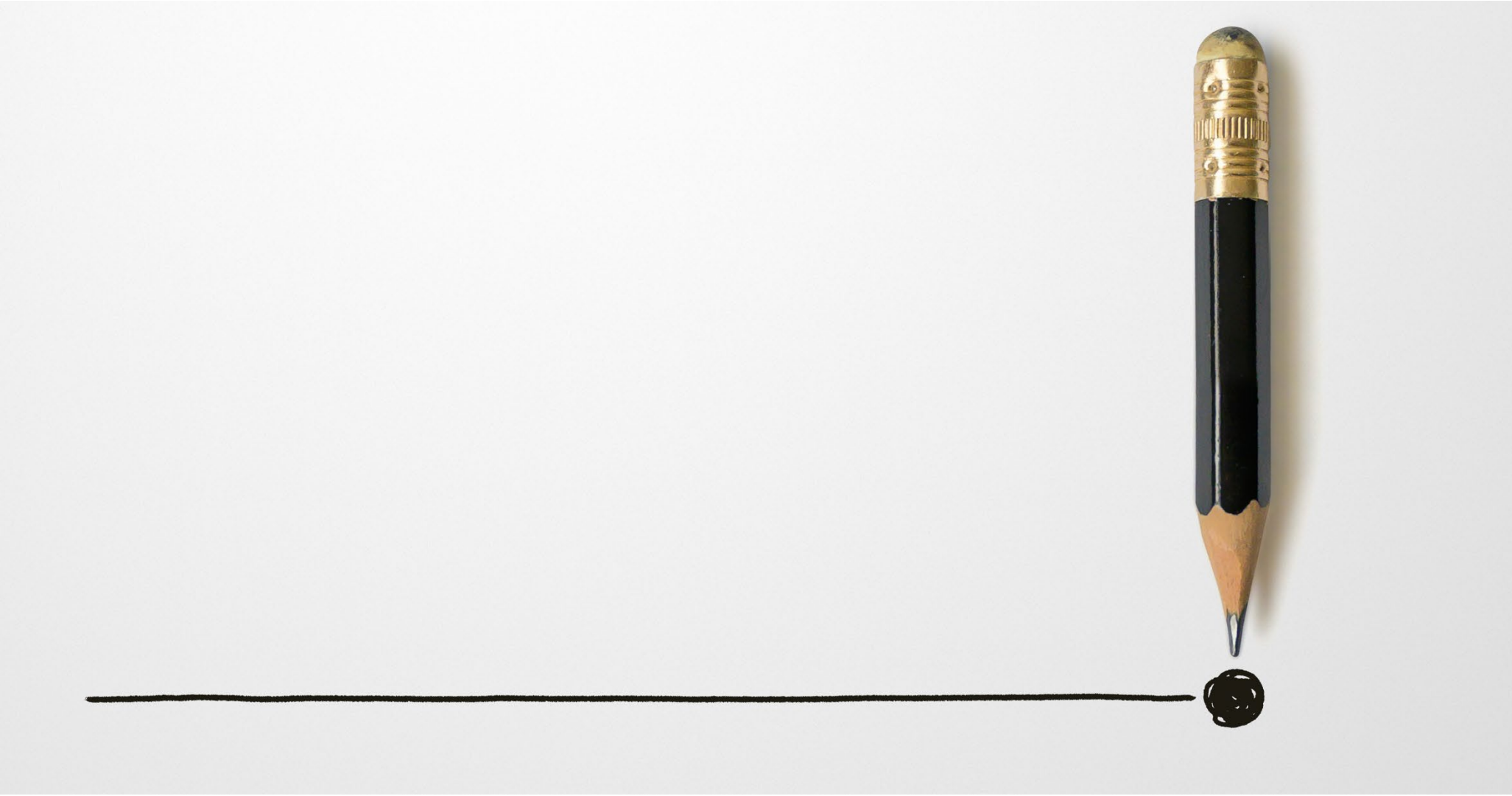
Sr. No	Provision	Remarks	Amended Clauses	Effective date
		allotted, if any, and balance amount to be unblocked to SCSBs.		
	6.	*a) Registrar to receive confirmation of demat credit from depositories. Issuer and registrar to file confirmation of demat credit and issuance of instructions to unblock ASBA funds, as applicable, with stock exchange(s).* *b) The lead manager(s) shall ensure that the allotment, credit of dematerialised debt securities, municipal debt securities, NCRPS, SDIs and refund or unblocking of application monies, as may be applicable, are done electronically.* *c) Issuer to make a listing application to stock exchange(s) and stock exchange(s) to give listing and trading permission.* *d) Stock exchange(s) to issue commencement of trading notice.*	*T+5*	
	7.	*Trading commences*	*T+6*	
		unblocking of application monies, as may be applicable, are done electronically.		
	10.	*a) Issuer to make a listing application to stock exchange(s) and stock exchange(s) to give listing and trading permission.* *b) Stock exchange(s) to issue commencement of trading notice.*	*Before 7:30 PM on T+2 day*	
	11.	*Trading commences*	*T+3 day*	

Closing remarks and way forward

The NCS Regulations and the NCS Master Circular are designed to enhance market efficiency, investor protection and ease of doing business. This is part of the regulator's long-standing efforts to bring about a systemic change in the debt capital markets ecosystem of the country. These changes, brought about pursuant to consultations with market participants, are to improve the procedural aspects of listing of debt securities and provide operational ease to the participants.

It remains to be seen what all changes the regulators bring about in the year 2025 regarding various other aspects of listed debt instruments. It appears to be an eventful year ahead, as SEBI released several consultation papers in the last few months, notably consultation paper on 'Measures for Reforms to Debenture Trustees Regulations including towards Ease of Doing Business (November 4, 2024)', consultation paper on review of the 'SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts)

Regulations, 2008 (November 1, 2024)', consultation paper on 'Measures towards 'Ease of Doing Business' and streamlining compliance requirements for con-convertible securities – review of LODR Regulations (August 16, 2024)', etc. These consultation papers propose to bring about amendments in regulations such as LODR Regulations, SEBI (Debenture Trustee) Regulations, 1993 and the SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 respectively.



Credit Rating Agencies

Revised timelines and disclosures by Credit Rating Agencies

SEBI, *vide* circular dated July 4, 2024, revised the timelines to be followed by Credit Rating Agencies ("**CRAs**") as specified under the Master Circular dated May 16, 2024. The revised timelines are as follows:

1. for communication of rating to the issuer – 1 (one) working day of the rating committee meeting;
2. for request for review/appeal of rating by the issuer – 3 (three) working days of the rating committee meeting; and
3. for dissemination of press release on CRA's website and intimation of the same to stock exchange/debenture trustee – 7 (seven) working days of the rating committee meeting.

Further, CRAs must maintain an archive of all disclosures on their website, for at least 10 (ten) years.

Amendment to the term 'liquid asset' under the SEBI (CRAs) Regulations, 1999

SEBI, *vide* notification dated July 8, 2024, issued the SEBI (CRAs) (Amendment) Regulations, 2024 amending the term 'liquid asset' to include units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, and repo on corporate bonds. Pursuant to this, the term 'liquid asset' means a low risk asset such as cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds that may be easily converted into cash in a short period of time.

Eligible CRAs for capital adequacy purposes under Basel III Capital Regulations

RBI, *vide* notification dated July 10, 2024, permitted banks to use the ratings of CRA i.e. Brickwork Ratings India Private Limited ("**Permitted CRA**") for risk weighting their claims for capital adequacy purposes, subject to the following:

1. in respect of fresh rating mandates, rating may be obtained from the Permitted CRA for bank loans not exceeding INR 250,00,00,000 (Indian Rupees two hundred and fifty crore); and
2. in respect of existing ratings, the Permitted CRA may undertake rating surveillance irrespective of the rated amount, till the residual tenure of such loans.
3. Provided that in case of existing ratings assigned to working capital facilities exceeding INR 250,00,00,000 (Indian Rupees two hundred and fifty crore), the Permitted CRA must undertake rating surveillance only till the next renewal of such facility by the banks.

CRAs at IFSCs

SEBI, *vide* circular dated July 19, 2024, added the IFSCA to the list of financial sector regulators/authorities as provided under Annexure 19 of the Master Circular for CRAs dated May 16, 2024, enabling CRAs registered with SEBI to undertake rating activities at IFSCs and further clarified that any issues arising from the activities of CRAs under the guidelines of IFSCA will be dealt by IFSCA including but not limited to complaints, enforcement actions and furnishing of information to the third parties.

IFSCA, on July 25, 2024, also issued a circular in this regard providing that credit rating agencies registered with SEBI are now permitted to undertake credit rating activities in the IFSC.

Permission granted to CRAs to undertake Environmental Social and Governance rating activities under the IFSCs

IFSCA, *vide* circular dated July 31, 2024, permitted CRAs to provide services relating to ESG ratings and ESG data products, as follows:

1. **ESG ratings**: ESG ratings will include the broad spectrum of rating products relating to sustainable finance and include ESG scorings, ESG rankings, sector ESG ratings, and thematic scores.
2. **ESG data products**: ESG data products will include products and services relating to ESG-related information.

CRAs may provide ESG ratings and ESG data products services for any financial product or security or to an issuer (including a sovereign or a multilateral institution) or a financial institution in IFSC or any foreign jurisdiction. CRAs must adhere to the prescribed code of conduct relating to ESG ratings and ESG data products.

Master Circular for CRAs amended

SEBI, *vide* circular dated November 18, 2024, amended Para 15.3 of the Master Circular for CRAs dated May 16, 2024. Pursuant to COVID-19, a provision on post-default curing period was introduced which mandated CRAs to frame a policy in respect of upgrade of default rating to investment grade rating. The policy could include scenarios like technical defaults, change in management and acquisition by another firm which fundamentally alter the credit risk profile of the defaulting firm. The term 'technical defaults' now stands deleted. Further, in the scenario of non-payment of debt due to reasons beyond the control of the issuer, namely, failure to remit payment due to absence of correct information or due to incorrect or dormant investor account furnished by the investor(s) or due to notice/instruction received from a government authority to freeze the account of investor(s), the CRA must confirm and verify the availability of adequate funds with the issuer and confirm and verify details relating to any failure to repay the debt.

Alternative Investment Funds

Information to be filed by schemes of Alternative Investment Funds

SEBI, *vide* circular dated July 9, 2024, issued a clarification regarding the information to be filed by schemes of Alternative Investment Funds ("**AIFs**") availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs. The clarification states that:

1. any scheme of an AIF entering dissolution period must file an information memorandum along with a due diligence certificate with SEBI through a merchant banker in the manner specified by SEBI (the formats for which are provided in the circular). The information memorandum must be submitted before the expiry of the liquidation period or additional liquidation period of the scheme, as the case may be;
2. schemes of AIFs that have expired or is expiring on or before July 24, 2024, may be granted an additional/fresh liquidation period, on submitting information to SEBI in the prescribed format; and
3. in specie distribution of investments of a scheme of an AIF must be carried out after obtaining approval of at least 75% of the investors by value of their investment in the scheme of the AIF.

Streamlining operational practices for AIFs

By way of notification dated August 6, 2024, the SEBI (AIFs) (Fourth Amendment) Regulations, 2024 has been notified. Some of the key amendments carried out to the SEBI (AIF) Regulations, 2012 ("**AIF Regulations**") are as follows:

1. a Large Value Fund ("**LVF**") for accredited investors is permitted to extend its tenure up to 5 (five) years (*earlier this was 2 (two) years*) subject to the approval of two-thirds of the unit holders by value of their investment in the LVF for accredited investors. Further, the extension in tenure of any existing scheme of a LVF for accredited investors will be subject to such conditions specified by SEBI from time to time; and
2. Category I/Category II AIFs may create encumbrance on equity of investee company, which is in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the 'Harmonised Master List of Infrastructure' issued by the Central Government, only for the purpose of borrowing by such investee company and subject to such conditions specified by SEBI from time to time.

Further, *vide* circular dated August 19, 2024, SEBI issued guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs for accredited investors.

Category I and Category II AIFs (subject to the prescribed conditions) are allowed to borrow for the purpose of meeting temporary shortfall in amount called from investors for making investments in investee companies. They must maintain 30 (thirty) days cooling off period between 2 (two) periods of borrowing permitted as per the SEBI (AIF) Regulations, 2012, which must be calculated from the date of repayment of previous borrowing.

An LVF may extend its tenure up to 5 (five) years subject to the approval of two-thirds of the unit holders by value of their investment in the LVF and subject to the prescribed conditions, such as:

1. existing LVF schemes who have not disclosed definite period of extension in their tenure in the private placement memorandum or whose period of extension in tenure is beyond the permissible 5 (five) years, must align the period of extension in tenure with the requirement above, within 3 (three) months from the date of this circular, i.e., on or before November 18, 2024; and
2. while realigning the period of extension in tenure, LVF schemes must have the flexibility to revise their original tenure subject to the consent of all the investors of the scheme.

Modification in framework for valuation of investment portfolio of AIFs

SEBI, *vide* circular dated September 19, 2024, issued modifications to the valuation framework for AIFs contained in the Master Circular for AIFs dated May 7, 2024 (which consolidates various circulars issued by SEBI under the AIF Regulations.

Some of the key amendments are as follows:

1. valuation of securities, other than unlisted securities and listed securities which are non-traded and thinly traded, for which valuation norms have been prescribed under SEBI (Mutual Funds) Regulations, 1996 ("**MF Regulations**"), must be carried out as per the norms prescribed under the MF Regulations;
2. change in valuation methodology/approach to comply with the provisions of the 'standardised approach to valuation of investment portfolio of AIFs' will not be construed as a 'Material Change'. Further, change in methodology/approach within the valuation guidelines/valuation norms prescribed for AIFs, will also not be construed as a 'Material Change'. However, upon such change, the valuation of the investment carried out based on valuation methodologies/approaches, both old and new, must be disclosed to the investors to ensure transparency;
3. the eligibility criteria for an independent valuer for a partnership entity or company has been included as follows such entity or company must be a 'Registered Valuer Entity' registered with the Insolvency and Bankruptcy Board of India ("**IBBI**"); and the deputed/authorised person(s) of such 'Registered Valuer Entity', who undertake(s) the valuation of the investment portfolio of AIFs, must have a membership of ICAI, ICSI, ICMAI or a CFA Charter from the CFA Institute; and
4. the timeline for AIFs to report valuation based on audited data of investee companies as on March 31 to performance benchmarking agencies has been increased from 6 (six) to 7 (seven) months.

Specific due diligence requirements for AIFs

SEBI, *vide* notification dated October 8, 2024, outlined specific due diligence requirements for AIFs, their managers, and key management personnel with respect to investors and investments of the AIF. Some of the key points are as follows:

1. carrying out due diligence for investments from countries sharing land borders with India, in line with the NDI Rules. For every scheme of AIFs where 50% or more of the corpus of the scheme is contributed by the prescribed investors, necessary due diligence as per the implementation standards formulated by the Standard Setting Forum for AIFs must be carried out prior to the investment;
2. carrying out due diligence prior to Qualified Institutional Buyers ("**QIBs**") (under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018) availing benefits designed for QIBs and Qualified Buyers ("**QBs**") (under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI**")) availing benefits designed for QBs, for every scheme of AIFs having an investor or investors belonging to the same group, who contribute(s) 50% or more to the corpus of the scheme. AIFs must ensure that investors who are not eligible for QIB or QB status do not avail of the benefits through the AIF;
3. if an investor of the scheme is an AIF or a fund set up outside India or in IFSCs in India, then the criteria check for investor(s) will be regulated by RBI; and
4. reporting of any existing investments that fail the due diligence checks or confirm compliance by April 7, 2025.

Rights of investors of a scheme of an AIF

SEBI, *vide* notification dated November 18, 2024, notified the SEBI (AIFs) (Fifth Amendment) Regulations, 2024 amending the AIF Regulations. Regulations 20(21) and 20(22) have been inserted which deals with the rights of investors of a scheme of an AIF. Some of the key amendments are as follows:

1. the investors of a scheme of an AIF must have rights, pro-rata to their commitment to the scheme, in each investment of the scheme and in the distribution of proceeds of such investment, except as may be specified by SEBI. The rights of investors of schemes of an AIF issued prior to this amendment, which are not pro-rata to their commitment to the scheme and not exempted by SEBI, must be dealt with in the manner specified by SEBI; and
2. the rights of investors of a scheme of an AIF, other than that specified above, must be *pari passu* in all aspects However, differential rights may be offered to select investors of a scheme of an AIF, in the manner as may be specified by SEBI, without affecting the interest of other investors of the scheme. This requirement will not apply to LVF for accredited investors. Further, any differential right already issued by an AIF to select investors of a scheme of an AIF, prior to this amendment must be dealt with in the manner as specified by SEBI.

Investors in an AIF scheme must have rights proportional to their commitment in each investment of the scheme

SEBI, *vide* circular dated December 13, 2024, introduced significant changes under the AIF Regulations, to amend the *pro-rata* and *pari-passu* rights of investors of AIFs, so as to protect the interests of investors within AIFs. This amendment aims to enhance transparency and fairness in the treatment of investors. Some of the key provisions are as follows:

1. **Pro-rata rights:**
    a) Investors in a scheme of an AIF have rights proportional to their commitment in each investment and distribution of proceeds.
    b) The above rule excludes investors excused or excluded from an investment or those who default on their contribution.
    c) Further, flexibility has been provided for the following entities to accept returns lesser or share losses more than their pro-rata rights:
        i) manager or sponsor of the AIF;
        ii) multilateral or bilateral development financial institutions;
        iii) State Industrial Development Corporations; and

iv) entities established or owned or controlled by the Central Government or a State Government or the Government of a foreign country, including Central Banks and Sovereign Wealth Funds.

2. **Pari-passu rights:**

a) Investors' rights in a scheme of an AIF are equal in all aspects, with certain exceptions for differential rights offered to select investors.

b) Differential rights in a scheme of an AIF must not affect other investors' rights and must be transparently disclosed in the Private Placement Memorandum ("**PPM**"). The AIFs, managers of AIFs and their key management personnel must ensure the following while issuing differential rights to select investors:

i) differential rights must be provided only in accordance with the implementation standards formulated by standard setting forum.

ii) following must be disclosed in the PPM:

a. eligibility criteria for an investor to avail each differential right; and

b. any investor meeting the specified eligibility criteria for a differential right may opt to avail such right.

3. **Applicability on existing AIFs:**

a) Existing AIFs with priority distribution models must comply with new regulations and cannot accept fresh commitments or make new investments unless exempted.

b) LVFs for accredited investors, whose PPM is filed with SEBI for launch of scheme before December 13, 2024, may avail exemption from the requirement of maintaining *pari-passu* rights, subject to certain disclosures and waivers as mentioned in the circular.

Real Estate Investment Trusts and Infrastructure Investment Trusts

Framework for unit-based employee benefit scheme introduced for Real Estate Investment Trusts and Infrastructure Investment Trusts

SEBI, *vide* notifications dated July 11, 2024, and July 12, 2024, issued the SEBI (Infrastructure Investment Trusts) ("**InvITs**") (Second Amendment) Regulations, 2024 and the SEBI (Real Estate Investment Trusts) ("**REITs**") (Second Amendment) Regulations, 2024 respectively. The amendments aim to provide a structured approach to offering unit-based benefits, promoting employee participation and safeguarding the interests of all stakeholders involved in REITs/InvITs. Some of the key provisions are as follows:

1. the term 'employee unit option scheme' is inserted to mean a scheme under which the investment manager grants unit options to its employees through an employee benefit trust;

2. the term 'liquid asset' is inserted to mean cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds;

3. the manager/investment manager may, at its discretion, offer unit-based employee benefit scheme for its employees based on the units of the REIT/InvIT, subject to compliance with the provisions of Chapter IVA of the SEBI (REITs) Regulations, 2014 ("**REIT Regulations**")/Chapter IVB of the SEBI (InvITs) Regulations, 2014 ("**InvIT Regulations**");

4. Chapter IVA/Chapter IVB (*Framework for Unit Based Employee Benefit Scheme*) is inserted in the REIT Regulations and InvIT Regulations; and

5. a new schedule is inserted in the InvIT Regulations and REIT Regulations, pertaining to minimum provisions in trust deed, such as details of the trust, powers and duties of trustee, mode and manner of dissolution of the trust.

Board nomination rights to unitholders of REITs and InvITs

SEBI, *vide* circulars dated August 6, 2024, amended the Master Circulars for REITs and InvITs ,both dated May 15, 2024 ("**Master Circulars**"), in relation to the right to nominate a nominee director. The Master Circulars provided that eligible unitholder(s) are entitled to nominate 1 (one) unitholder nominee director, subject to the unitholding of such eligible unitholder(s) exceeding the specified threshold. If the right to nominate 1 (one) or more directors on the board of directors of the manager is available to any entity (or to an associate of such entity) in the capacity of shareholder of the manager or lender to the manager or the REIT/InvIT (or its holding company(ies) or special purpose vehicles), then such entity in its capacity as unitholder, is not entitled to nominate or participate in the nomination of a unitholder nominee director. Pursuant to the amendment, a proviso is inserted stating that the above restriction relating to the right to nominate a unitholder nominee director will not be applicable if the right to appoint a nominee director is available in terms of Regulation 15(1)e) of the SEBI (Debenture Trustees) Regulations, 1993.

On August 22, 2024, SEBI further amended the Master Circulars to promote ease of doing business by amending provisions related to the review of statement of investor complaints and timeline for disclosure of statement of deviation(s). Some of the key amendments are as follows:

1. all complaints including SEBI Complaints Redress System (SCORES) complaints received by the InvITs/REITs must be disclosed on the website of the InvIT/REITs and are also filed with the recognised stock exchange(s). The statement must be placed, on a quarterly basis (*earlier, this was to be reviewed before submission to the stock exchange*), before the board of directors/governing body of the investment manager/manager and the trustee for review; and
2. the statement of deviation or variation in the use of proceeds must be submitted to the stock exchange(s) along with the submission of the financial results *(earlier such submission was to be made within 21 (twenty-one) days from the end of each quarter).*

SEBI (InvITs) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, notified the SEBI (InvITs) (Third Amendment) Regulations, 2024 amending the InvIT Regulations. The amendments relate to the trading lot for trading units, timeline for making distributions, as well as voting thresholds.

Some of the key amendments are as follows:

1. with respect to listing of privately placed units, the trading lot for the purpose of trading of units on the designated stock exchange will be INR 25,00,000 (Indian Rupees twenty-five lakh) (earlier this was INR 1,00,00,000 (Indian Rupees one crore));
2. with respect to distributions to be made by the InvITs and the holding company and/or special purpose vehicle, such distributions in case of publicly offered InvITs, must be declared not less than once every 6 (six) months in every financial year; in case of privately placed InvITs must be declared not less than once every financial year; and must be made within 5 (five) working days from the record date (earlier this was 15 (fifteen) days from the date of the declaration*)*;
3. with respect to any matter requiring approval of the unit holders, the voting threshold specified under the InvIT Regulations, must be calculated on the basis of unit holders present and voting (and the unit holders voting through the electronic voting facility and postal ballot will be counted for determination of unit holders present and voting);
4. for all unit holder meetings, the investment manager must provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means and the option of remote electronic voting in the manner as may be specified by SEBI;
5. REITs are permitted to hold a meeting for unit holders after providing shorter notice (i.e., lesser than 21 (twenty-one) days), so long as consent is obtained in writing or electronically:
    a) in case of an annual meeting, by not less than 95% of the unit holders entitled to vote thereat; and
    b) in case of any other meeting, by majority of the unitholders of the scheme in number entitled to vote thereat and who represent not less than

95% of such part of the units by value as gives a right to vote at the meeting; and

6. the investment manager and the trustee must ensure that adequate backup systems, data storage capacity, system capacity for secure handling, data transfer and arrangements for alternative means of communication in case of internet link failure, are maintained for the records maintained electronically.

SEBI (REITs) (Third Amendment) Regulations, 2024

SEBI, *vide* notification dated September 26, 2024, notified the SEBI (REITs) (Third Amendment) regulations, 2024 amending the REIT Regulations. The amendments relate to the timeline for making distributions as well as voting thresholds.

Some of the key amendments are as follows:

1. with respect to distributions made by the REITs and the holding company and/or special purpose vehicle, such distributions must be declared at least once every 6 (six) months in every financial year and must be made within 5 (five) working days from the record date (*earlier this was 15 (fifteen) days from the date of the declaration;*);
2. with respect to distributions made by the scheme of small and medium REITs and special purpose vehicle, such distributions must be made within 5 (five) working days from the record date (*earlier this was 7 (seven) working days from the date of such declaration*);
3. with respect to any matter requiring approval of the unit holders, the voting threshold specified under the REIT Regulations must be calculated on the basis of unit holders present and voting (and the unit holders voting through the electronic voting facility and postal ballot will be counted for determination of unit holders present and voting); and
4. for all unit holder meetings, the investment manager must provide an option to the unit holders to attend the meeting through video conferencing or other audio-visual means and the option of remote electronic voting in the manner as may be specified by SEBI;
5. REITs are permitted to hold a meeting for unit holders of each scheme after providing shorter notice (i.e., lesser than 21 (twenty-one) clear days), so long as consent is obtained in writing or electronically:
   a) in case of an annual meeting, by not less than 95% of the unit holders of the scheme entitled to vote thereat; and
   b) in case of any other meeting, by majority of the unitholders of the scheme in number entitled to vote thereat and who represent not less than 95% of such part of the units by value as gives a right to vote at the meeting; and
6. the investment manager and the trustee must ensure that adequate backup systems, data storage capacity, system capacity for secure handling, data transfer and arrangements for alternative means of communication in case of internet link failure, are maintained for the records maintained electronically.

Relaxation from certain provisions for units allotted to an employee benefit trust by InvITs and REITs

SEBI, *vide* notifications dated November 13, 2024, made some relaxations and aligned distribution timelines for REITs and InvITs to promote ease of doing business. Some of the key changes are as follows:

1. the 1 (one) year lock-in on units allotted to persons other than the sponsor(s), the 6 (six) months lock-in on pre-preferential issue unitholding of the allottees, and allotment related restrictions on preferential issue of units will not apply to the units allotted to an employee benefit trust for the purpose of a unit-based employee benefit scheme in compliance with Chapter IVB of the InvIT Regulations; and

2. the manner of distribution of unclaimed or unpaid amounts has been prescribed. Where a distribution has been made by the investment manager within the timelines specified under respective InvIT/REITs regulations, but the payment to any unitholders remained unpaid or unclaimed, the investment manager must, within 7 (seven) working days from the date of expiry of the prescribed timelines, transfer such unclaimed amounts to an escrow account to be opened by it on behalf of the InvIT/REIT in any scheduled bank. Such account will be termed as the 'Unpaid Distribution Account'.

Venture Capital Funds

Registration of migrated Venture Capital Funds

SEBI, *vide* notification dated July 18, 2024, issued the SEBI (AIF) (Third Amendment) Regulations, 2024. The key amendments are as follows:

1. a Venture Capital Fund ("**VCF**") may seek registration as migrated VCFs in terms of Chapter III-D, within 12 (twelve) months from July 18, 2024;
2. SEBI may specify enhanced regulatory reporting and other measures for VCFs that do not seek registration as a migrated VCF; and
3. a new chapter (Chapter III-D), is inserted for migrated VCFs and schemes launched by such funds, providing:
   a) the procedure for grant of certificate;
   b) eligibility criteria;
   c) prohibition on inviting subscription from the public;
   d) issue of placement memorandum or subscription agreement; and
   e) conditions for investment by migrated venture capital fund.

Modalities for migration of VCFs

SEBI, vide notification dated August 19, 2024, issued modalities for migration of VCFs registered under the erstwhile SEBI (VCFs) Regulations, 1996 to the SEBI (AIFs) Regulations, 2012. To initiate the migration, VCFs must submit an application to SEBI, including the original certificate of registration and the prescribed information. The deadline for this application was July 19, 2025.

Conditions for migration includes:

1. schemes whose liquidation period has not expired can migrate provided they continue with either the same tenure upon migration (if such schemes has a definite tenure as disclosed under the private placement memorandum) or such period as may be determined prior to the application for migration with the approval of 75 % of investors by value of their investment in the schemes (if the definite tenure of the scheme was not disclosed under the private placement memorandum of such schemes);
2. VCFs having at least 1 (one) scheme which has not been wound up post expiry of its liquidation period can migrate only if they do not have any unresolved investor complaints with regard to non-receipt of funds/securities and get an additional year to liquidate; and
3. VCFs that do not opt for migration and whose liquidation period has not expired will be subject to enhanced regulatory reporting as may be prescribed by SEBI in line with the regulatory reporting applicable to AIFs under SEBI (AIFs) Regulations, 2012.

Foreign Portfolio Investors

Amendment to additional disclosures by FPIs

SEBI, *vide* circular dated August 1, 2024, amended the Master Circular for FPIs, Designated Depository Participants ("**DDPs**") and Eligible Foreign Investors' dated May 30, 2024, that included *inter alia* certain additional disclosures for FPIs pertaining to persons

having any ownership, economic interest, or control of an FPI. Pursuant to the amendment, university funds and university related endowments, registered or eligible to be registered as Category I FPI, are not required to make the additional disclosures as prescribed under the aforesaid master circular, subject to them fulfilling the following conditions:

1. Indian equity Assets Under Management ("**AUM**") being less than 25% of global AUM;
2. global AUM being more than INR 10,000 crore (Indian Rupees ten thousand crore) equivalent; and
3. appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax.

Common application form for registration of FPIs modified

SEBI, *vide* notification dated October 22, 2024, modified the annexure to the common application form to the Master Circular for FPIs, DDPs and Eligible Foreign Investors dated May 30, 2024. An option is added in relation to the entitlement in FPIs in case of applicants based in IFSCs in India. Further, it prescribes the information, documents and declaration required to be submitted by an FPI based in IFSC that have/intends to have up to 100% non-resident Indian/overseas citizens of India/resident Indians participation.

FPIs cannot issue offshore derivative instruments with derivatives as underlying

SEBI, *vide* circular dated December 17, 2024, issued measures to address regulatory arbitrage with respect to Offshore Derivative Instruments ("**OSDIs**") and FPIs, with segregated portfolios *vis-à-vis* FPIs. This circular introduces several key measures to enhance transparency, reduce risks, and strengthen the regulatory framework for OSDIs and FPIs. Some of the key highlights of this circular are as follows:

1. **Modification of FPI Master Circular**:
   a) FPIs are required to issue OSDIs only through a separate dedicated FPI registration with no proprietary investments, except for government securities;
   b) FPIs must not issue OSDIs with derivatives as reference/underlying; and
   c) FPIs are prohibited from hedging their OSDIs with derivative positions on stock exchanges in India, and OSDIs must be fully hedged with the same securities on a one-to-one basis.
2. **Additional disclosures requirements**:
   a) ODI subscribers meeting specific criteria must disclose granular details of ownership, economic interest, or control up to the level of natural person;
   b) Exemptions from disclosures *inter alia* include government-related investors, public retail funds, certain exchange-traded funds, and university funds; and
   c) Additionally, ODI subscribers with over 50% of their equity ODI positions tied to securities of a single Indian corporate group are exempt from additional disclosures, subject to the conditions prescribed in the circular.
3. **Operational Measures**:

   OSDIs with derivatives as underlying must be redeemed within a year. No renewals are permitted for the same.

   a) OSDIs with securities as underlying, hedged with derivatives, must be redeemed or hedged with the same securities within a year; and
   b) FPIs must obtain separate dedicated registration within a year if required.
4. **Compliance and Monitoring**:
   a) Depositories must implement systems to track OSDI positions and ensure compliance with the new regulations; and
   b) FPIs and depositories must monitor and disclose OSDI subscriber positions exceeding specified thresholds.

Review of eligibility criteria for entry/exit of stocks in derivatives segment

To ensure that only high quality stocks with sufficient market depth are allowed to trade in derivatives segment and considering the growth witnessed in market parameters since the last review conducted in 2018, SEBI, *vide* circular dated August 30, 2024, revised the eligibility criteria for entry/exit of stocks in derivatives segment. Key changes include raising the Median Quarter Sigma Order Size (over the previous six months, on a rolling basis) from INR 25,00,000 (Indian Rupee twenty-five lakh) to INR 75,00,000 (Indian Rupees seventy-five lakh) and increasing the Market Wide Position Limit (over the previous six months, on a rolling basis) from INR 500,00,00,000 (Indian Rupees five hundred crore) to INR 1,500,00,00,000 (Indian Rupees one thousand five hundred crore). Additionally, stocks must meet higher average daily delivery values benchmarks. Stocks failing to meet these criteria for 3 (three) consecutive months will be removed from the derivatives segment, with a 1 (one) year re-inclusion ban.

Foreign Venture Capital Investors

Amendments to the SEBI (Foreign Venture Capital Investors) Regulations, 2000 and operational guidelines for Foreign Venture Capital Investors

SEBI, *vide* notification dated September 4, 2024, notified the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2024 amending the SEBI (Foreign Venture Capital Investors) Regulations, 2000 ("**FVCI Regulations**"). The amendments have come into effect from January 1, 2025.

Some of the key amendments are as follows:

1. the term 'certificate' has been amended to mean a certificate of registration granted to a Foreign Venture Capital Investor ("**FVCI**") by the DDP on behalf of SEBI under the FVCI Regulations (earlier this certificate was issued by SEBI);
2. provisions pertaining to application for grant of a certificate as an FVCI have been amended. Among others, no person can buy, sell or otherwise deal in securities as a FVCI unless it has obtained a certificate granted by a DDP on behalf of SEBI;
3. the eligibility criteria of the applicant for grant of certificate of registration as a FVCI has been amended. Among other conditions, the applicant must be an entity incorporated or established outside India or in IFSC; the applicant must be a resident of a country whose securities market regulator is a signatory to the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to a bilateral memorandum of understanding with SEBI; and the applicant or its beneficial owners (identified as per the Prevention of Money Laundering (Maintenance of Records) Rules, 2005) should not be persons mentioned in any sanctions list notified by the UN security council and residents of a country identified in the public statement of the FATF as a jurisdiction having a strategic anti-money laundering/combating of financing of terrorism deficiencies to which counter measures apply or a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies; and
4. FVCI certificates of registration are permanent unless suspended or cancelled by SEBI or surrendered by the FCVI. However, renewal fees must be paid for every block of 5 (five) years.

SEBI, *vide* circular dated September 26, 2024, also issued operational guidelines for FVCIs and DDPs pursuant to the amendments. The operational guidelines have come into effect from January 1, 2025

Some of the key guidelines are as follows:

1. existing FVCIs must engage a DDP to avail its services for conducting due diligence with respect to continuance of registration as an FVCI, by March 31,2025. Any FVCI failing to do so, will not be permitted to make any further investments and will liquidate:
   a) investments in listed securities, by March 31, 2026; and
   b) other investments, by March 31, 2027;

   and remittance of the proceeds of such sale will be subject to compliance with applicable 'know your customer' requirements and requirements under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006;

2. post liquidation of investments within the said time-period as above, the FVCI must apply for surrender of its registration within 30 (thirty) days;
3. every DDP will submit monthly reports on the applications received from FVCI applicants to SEBI in the prescribed format; and
4. DDP engaged by an existing FVCI must carry out registration related due diligence and assess compliance of the FVCI with the eligibility criteria within 6 (six) months from the date of engagement.

Reporting by FVCIs

SEBI, *vide* circular dated September 13, 2024, revised the format for the quarterly report on venture capital activity to be submitted by an FVCI. From quarter ending March 31, 2025, FVCIs will have to submit quarterly reports in the revised format on the SEBI intermediary portal (SI Portal). The report must be submitted within 15 (fifteen) calendar days from the end of each quarter. FVCIs must submit the quarterly report irrespective of whether any investment has been made or not during such quarter.

Mutual Funds

Participation of Mutual Funds in credit default swaps

SEBI, *vide* circular dated September 20, 2024, decided to allow greater flexibility to Mutual Funds ("**MFs**") to both buy and sell Credit Default Swaps ("**CDS**") with adequate risk management. Such flexibility to participate in CDS will serve as an additional investment product for MFs and also aid in increasing liquidity in the corporate bond market. The following key changes have been introduced:

1. **Buying CDS**: MF schemes may buy CDS only for the purpose of hedging their credit risk on debt securities they hold in various schemes. The exposure of CDS should not exceed the respective debt security exposure and such exposure may not be added to the gross exposure of the scheme. If the protected debt security is sold, the corresponding CDS position must be closed within 15 (fifteen) days. Schemes must by CDS only from sellers that have instruments with lowest long-term rating of investment grade and above. Schemes may buy CDS for investment-grade and existing below investment grade debt securities in the portfolio, if any.
2. **Selling CDS**: MF schemes can now sell CDS only as part of the synthetic debt securities, i.e., covered with cash, government securities, or T-bills. Overnight and liquid schemes cannot sell CDS contracts. Requirements to ensure cover have been prescribed and the value of the cover kept must be reviewed daily.
3. **Limits and exposure**: The exposure from CDS (notional amount of both, CDS bought and sold) must not exceed 10% of a scheme's AUM and must comply with overall derivative limits set out in the scheme information document.
4. **Valuation and accounting**: The Association of MFs in India will issue guidelines in consultation with SEBI for the valuation and accounting of CDS transactions based on a waterfall approach (that may consist of level I – actual traded levels and level II – corporate bond credit spreads).

Introduction to Specialized Investment Fund and MF Lite

SEBI, *vide* notification dated December 16, 2024, issued the SEBI (MFs) (Third Amendment) Regulations, 2024, amending the SEBI (MFs) Regulations, 1996. New Chapter VI-C pertaining to Specialized Investment Fund ("**SIF**") and Chapter XI pertaining to MF Lite ("**MF Lite**") are inserted. Some of the key provisions are as follows:

1. **SIF**:
    a) from April 1, 2025, any registered MF may be granted an approval to establish a SIF subject to the eligibility criteria specified by SEBI;

b) a SIF must not accept from an investor (except for 'accredited investors') an investment amount less than INR 10,00,000 (Indian rupees ten lakh) across all investment strategies in the manner as may be specified by SEBI;

c) unless otherwise prescribed by SEBI, the launch of SIF investment strategies will follow the procedure prescribed for mutual funds;

d) an investment strategy under SIF cannot invest more than 20% of its Net Asset Value ("**NAV**") in debt instruments comprising money market instruments and non-money market instruments issued by a single issuer. This limit may be extended to 25% of the NAV of the investment strategy with prior approval of SEBI, trustees and board of directors of the Asset Management Company ("**AMC**") subject to certain conditions;

e) SIF should own more than 15% of any company's paid-up capital carrying voting rights under all its investment strategies, subject to certain conditions;

f) any investment strategy of a SIF must not invest more than 10% of its NAV in the equity shares and equity-related instruments of any company;

g) all investment strategies under SIF must not own more than 20% of units issued by a single issuer of REITs and InvITs, subject to certain conditions;

h) an investment strategy under SIF will not invest:

   i) more than 20% of its NAV in the units of REITs and InvITs; and

   ii) more than 10% of its NAV in the units of REIT and InvIT issued by a single issuer;

i) AMCs will ensure that there is clear differentiation between the offerings of the SIF and MFs, whereas, the trustee must ensure that the ensure that the AMC has the necessary expertise, internal control systems and risk management mechanism to invest in and manage investments; and

j) the offer documents of the SIF must contain disclosures which are adequate for investors to make informed investment decisions, in the manner as may be specified by SEBI.

2. **MF Lite**:

   a) the sponsor/applicant should have a 'sound track record' (as per the broad pointes prescribed therein) and general reputation of fairness in all business transactions to be eligible for the grant of certificate of registration as a MF Lite;

   b) an existing shareholder holding 10% or more shareholding/voting rights in an existing AMC of the MF may be allowed to hold 10% or more shareholding/voting rights in a MF Lite AMC belonging to a group entity of the same sponsor;

   c) the MF Lite AMC must have a net-worth of at least INR 35,00,00,000 (Indian Rupees thirty-five crore) deployed in assets specified by SEBI, which may be reduced to INR 25,00,00,000 (Indian Rupees twenty-five crore) if the MF Lite AMC has profits for 5 (five) consecutive years. Where the sponsor does not fulfil the requirements at the time of making application, the applicable net worth requirement for the MF Lite AMC will be INR 50,00,00,000 (Indian Rupees fifty crore);

   d) MF Lite AMCs are not permitted to undertake any business activity other than advisory services to pooled assets in respect of passive investments, unless approved by SEBI; and

   e) an existing MF that intends to only launch MF Lite schemes may surrender its existing registration and migrate as a MF Lite subject to the conditions and the manner specified by SEBI.

Subsequently, SEBI, *vide* circular dated December 31, 2024, has issued MF Lite framework to cater specifically to passively managed MF schemes, which intends to encourage more players in the market, reduce compliance requirements, foster investment diversification, and enhance market liquidity. Some of the key provisions are as follows:

1. under phase- 1 of implementation, the MF Lite framework will be applicable to a selected range of passive MF schemes, primarily those based on domestic equity indices, domestic

debt indices, gold and silver Exchange Traded Funds ("**ETFs**"), Fund of Funds ("**FoFs**") based on only gold or silver ETFs and certain specified overseas ETFs and FoFs;

2. among the pooled investment vehicles, only the private equity funds can sponsor an MF Lite, subject to certain conditions, such as:

   a) the applicant private equity (scheme/fund) is itself a body corporate or, a body corporate set up by a private equity. The applicant body corporate may be set up in India or abroad; and

   b) the applicant private equity or its manager have a minimum of 5 (five) years of experience in the capacity of fund/investment manager and experience of investing in the financial sector, where it should have managed committed and drawn-down capital of not less than INR 2,500 crore (Indian Rupees two thousand five hundred crore) as on the date of its application made to SEBI;

3. MF Lite AMC will abide by net worth requirements under Chapter IV (*Constitution and management of AMC and custodian*) of the SEBI (MF) Regulations, 1996, as and when the total AUM of the MF Lite AMC exceeds INR 1 lakh crore (Indian rupees one lakh crore). In such instances, the MF Lite AMC will not launch any new scheme or take further subscriptions to existing schemes, until it meets the net worth requirement; and

4. AMCs will deploy the minimum net worth required either in cash, money market instruments, Government securities, treasury bills, repo on Government securities, or in listed AAA rated debt securities without any modified obligations, credit enhancements or embedded options which can increase the liquidity risk of the instrument on a continuous basis and such investments must be unencumbered.

Offer document of MF schemes simplified

SEBI, *vide* circular dated December 20, 2024, stated that the Scheme Information Document ("**SID**"), on which observations are issued by SEBI, must be uploaded on the SEBI website for at least 8 (eight) working days for receiving public comments on the adequacy of disclosures made in the document. Thereafter, AMCs may file the final offer documents (SID and key information memorandum) in line with the provisions of Clause 1.1.3.3 of the SEBI Master Circular on MFs dated June 27, 2024.

SEBI buy-back regulations amended

SEBI, *vide* circular dated November 20, 2024, notified the SEBI (Buy-Back of Securities) (Second Amendment) Regulations, 2024 amending the SEBI (Buy-Back of Securities) Regulations, 2018. Some of the key amendments are as follows:

1. a buy-back offer must open not later than 4 (four) working days from the date of public announcement (*earlier this was the record date*);

2. in case any member of the promoter/promoter group has declared its intention to not participate in the buy-back, the shares held by such member of the promoter/promoter group will not be considered for computing the entitlement ratio;

3. the restriction on issuance of any shares or other specified securities including by way of bonus till the date of expiry of buyback period for the offer will not apply to any issuance in discharge of subsisting obligations through conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares; and

4. the cover page of the letter of offer should explicitly cover following details the entitlement ratio for small and general shareholders; and web-link to

website of the registrar and share transfer agent for shareholders to check their entitlement under the buyback.

SEBI introduces online repository for merchant bankers

SEBI, *vide* circular dated December 5, 2024, mandated merchant bankers to upload and maintain records and documents relied upon during due diligence for public issues on an online document repository platform set up by stock exchanges. These documents can be uploaded by merchant bankers on document repository system of any stock exchange and intimate the same to other stock exchange(s), where the concerned securities are proposed to be listed. Merchant bankers must adhere to the following timelines for uploading documents:

1. from January 1, 2025: Upload documents within 20 (twenty) days of either filing the draft offer document or from the listing on stock exchanges; and
2. from April 1, 2025: Upload documents within 10 (ten) days of either filing the draft offer document or from the listing on stock exchanges.

The provisions of this circular have been made applicable for the draft offer documents filed on or after January 1, 2025.

Amendment to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

SEBI, *vide* notification dated December 12, 2024, notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 ("**LODR Amendment Regulations**"), for significantly amending the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations**"). The LODR Amendment Regulations have been made effective from December 31, 2024, except for certain provisions relating to secretarial audit, which will be effective from April 1, 2025. Some of the key provisions of the LODR Amendment Regulations are as follows:

1. **Related Party Transactions ("RPTs")**:
   a) The term 'related party transaction' will not include the corporate actions by subsidiaries provided by the subsidiaries of the listed entity; acceptance of current account deposits and saving account deposits by banks in compliance with the directions issued by RBI or any other central bank in the relevant jurisdiction from time to time; and retail purchases from any listed entity or its subsidiary by its directors or its employees, without establishing a business relationship and at the terms which are uniformly applicable/offered to all employees and directors.
   b) Remuneration and sitting fees paid by listed companies or its subsidiaries to its director, key managerial personnel or senior management, except who is part of promoter or promoter group no longer require the approval of the audit committee (if the same are not material).
   c) The members of the audit committee, who are independent directors, may ratify RPTs within 3 (three) months from the date of the transaction or in the immediate next meeting of the audit committee (whichever is earlier), subject to the following conditions:
      i) the value of the RPT whether entered into individually or taken together, during a financial year must not exceed INR 1,00,00,000 (Indian Rupees one crore);
      ii) the transaction is not material;
      iii) rationale for inability to seek prior approval for the transaction must be placed before the audit committee at the time of seeking ratification; and
      iv) the details of ratification must be disclosed along with the RPT disclosures submitted with the stock exchanges.

d) The transactions in the nature of statutory dues, statutory fees or statutory charges entered into between an entity and the Central Government or any State Government or any combination thereof are exempted as an RPT. Further, transactions between a public sector company and the Central Government or any State Government or any combination thereof are also exempted.

2. **Compliance officers**:

a) Compliance officer of a listed entity must be in the whole-time employment of such listed entity. Further, the compliance officer must not be more than one level below the board of directors.

b) Compliance officer of the listed entity will be designated as key managerial personnel.

c) Any vacancy in the office of the compliance officer of a listed entity in respect of which a resolution plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") has been approved, must be filled within a period of 3 (three) months of such approval.

3. **Directors**:

a) A person can be appointed as the non-executive director of a listed entity until the age of 75.

b) In case a listed entity wants to appoint a person of more than 75 years as its non-executive director, the shareholders of such listed company will be required to pass a special resolution to that effect, in which case the explanatory statement annexed to the notice for such motion must indicate the justification for appointing such a person as the non-executive director.

c) In case there is a vacancy in the committees of the board of directors of a listed entity, such vacancy must be filled within 3 months or by the date of the vacancy's occurrence, whichever is earlier.

4. **Investor Grievance Redressal**: A listed entity must file with the recognised stock exchange(s), on a quarterly basis, a statement detailing the redressal of investor grievances in such form and within the timelines as may be specified by SEBI.

International Financial Services Centre Banking Units

Permission granted to IBUs to participate in the synthetic securitisation program of its parent bank

IFSCA, *vide* circular dated July 11, 2024, permitted IBUs to participate in the synthetic securitisation program of its parent bank subject to following conditions:

1. the home regulator of the IBU has adopted the Basel III framework and has not prohibited the banks under its jurisdiction from undertaking such transactions;
2. IBU must notify IFSCA before the exposures of the IBU are incorporated in the parent bank's program for synthetic securitisation;
3. IBU must comply with provisions of the IFSCA Banking Handbook and the Prudential Directions; and
4. the IFSCA may require IBU to submit a copy of the reports being submitted to its home regulator for such transactions to the extent such report pertains to the assets of the IBU included in the program on synthetic securitisation.

Operations of FCAs of Indian Resident Individuals under the LRS by IBUs

IFSCA, *vide* circular dated October 10, 2024, issued directions to IBUs for operations of FCAs of Indian

Resident Individuals ("**RIs**") opened under the LRS. IBUs must:

1. permit RIs to open FCA for receiving remittances under the LRS from onshore India; and from locations other than onshore India;
2. ensure that all the remittances into the FCA from onshore India under the LRS are routed through an Authorised Person ("**AP**");
3. obtain a copy of the return submitted by RI to AP (as prescribed by RBI) before opening of the FCA and at the time of any inward remittance to the FCA from onshore India thereafter;
4. obtain a declaration from the RI that such remittance represents funds duly remitted earlier under the LRS or income earned on the investments made from funds duly remitted earlier under the LRS;
5. ensure that received/realised/unspent/unused foreign exchange from onshore India or from locations other than onshore India in FCA, unless reinvested within a period of 180 (one hundred and eighty) days from the date of such receipt/realisation/purchase/acquisition or date of return to India is repatriated through an AP to the account of the RI in designated AD Bank; and
6. permit remittance of funds received in FCA for undertaking all permitted current or capital account transactions, in any foreign jurisdiction (other than IFSCs).

Fund Management

Valuation of assets of schemes at IFSCs

IFSCA, on July 25, 2024, issued a circular regarding the valuation of assets of schemes under IFSCA (Fund Management) Regulations, 2022 at IFSCs. A CRA which has obtained a certificate of registration from the IFSCA under the IFSCA (Capital Market Intermediaries) Regulations, 2021 may also undertake the valuation of assets of the schemes under IFSCA (Fund Management) Regulations, 2022.

Review of the IFSCA (Fund Management) Regulations, 2022

IFSCA in its meeting held on December 19, 2024, approved the proposal on review of IFSCA (Fund Management) Regulations, 2022 ("**FM Regulations**") and to notify the reviewed FM Regulations. The changes aim to enhance ease of doing business, provide clarity on the intent of regulatory provisions and introduce certain safeguards necessary to protect investors' interest. Some of the proposed changes are as follows:

1. **Non-retail schemes**:
   a) Minimum corpus is reduced from USD 5,000,000 (US Dollars five million) to USD 3,000,000 (US Dollars three million);
   b) The validity of a scheme's PPM is increased to 12 (twelve) months from IFSCA's communication regarding taking it on record;
   c) Open-ended schemes can commence investment activities upon achieving a corpus of USD 1,000,000 (US Dollars one million), with the minimum corpus of USD 3,000,000 (US Dollars three million) to be achieved within 12 (twelve) months;
   d) Contribution by Fund Management Entities ("**FMEs**") or their associates in a scheme is now permitted up to 100%, subject to conditions; and
   e) Restrictions on transactions with associates and major investors, requiring prior approval from 75% of investors by value.
2. **Manpower Requirements for FMEs**:
   a) The requirement of obtaining prior approval of IFSCA for appointment of key managerial personnels is dispensed with. Only an intimation will be required in this regard;

b) FMEs managing an AUM of USD 1,000,000,000 billion (US Dollars one billion), wherein the AUM of fund of funds scheme must not be considered, as at the close of a financial year will be required to appoint an additional key managerial personnel; and

c) For ensuring adequate competence, employees of FMEs will be required to undergo certifications from institutions specified by IFSCA.

3. **Registered FME (retail) and retail schemes**:

a) Minimum corpus is reduced from USD 5,000,000 (US Dollars five million) to USD 3,000,000 (US Dollars three million);The cap of investment in single company by a sectoral/thematic/index scheme is linked to the higher of the following:

i) the weightage of that company in the representative index (by an independent entity) that such scheme intends to benchmark with; or

ii) 15%;

b) The valuation of scheme's assets by an independent service provider is exempt for fund of funds scheme if the underlying fund(s) have been valued by an independent service provider; and

c) Listing of close-ended retail schemes on recognised stock exchanges is optional, if minimum amount of investment by each investor in the scheme is at least USD 10,000 (US Dollars ten thousand).

IFSCA notifies new listing regulations

By way of gazette notification dated August 20, 2024, the IFSCA (Listing) Regulations, 2024 ("**Listing Regulations**") has been notified. The Listing Regulations provide the regulatory framework for listing of specified securities, debt securities, depository receipts and other permitted financial products on the recognised stock exchanges in IFSCs in India.

The Listing Regulations will apply to:

1. an initial public offer of specified securities by an unlisted entity;
2. a follow-on public offer of specified securities by a listed entity;
3. an initial public offer of specified securities by a special purpose acquisition company;
4. a rights issue or a preferential issue or a qualified institutions placement of specified securities by a listed entity;
5. issuance and listing of depository receipts by an entity;
6. issue and listing of debt securities by an entity;
7. secondary listing of securities by an entity; and
8. listing of commercial paper or certificates of deposit or other financial products as permitted by IFSCA.

Subsequently, *vide* circular dated October 17, 2024, IFSCA provided the regulatory requirements for facilitating issuers to list commercial paper and certificates of deposit in an efficient and transparent manner ensuring that adequate material information is made available to the investors for making informed decisions. The circular, *inter alia*, specifies the conditions for issuance of commercial paper and certificates of deposit, eligible issuers, eligible investors, listing process, disclosures in the offer document, investor protection measures and continuous disclosures.

Single window information technology system

Pursuant to the announcement of the 'Implementation of a single window IT-enabled system for application processing of entities desirous of setting up operations in GIFT IFSC to improve the Ease of Doing Business)', in the Union Budget for FY 2023-24, the IFSCA has developed a Single Window Information Technology System ("**SWIT System**"). The details of the SWIT System were announced *vide* circular dated September 30, 2024. The SWIT System inter alia contains a common application form, created by merging several existing forms including business-specific annexure

forms. With the launch of SWIT System, applicants can now apply for license/registration from IFSCA, under the relevant IFSCA regulations and frameworks, through the SWIT System in addition to the Special Economic Zones ("**SEZ**") Act, 2005. Some of the other key features of the SWIT System are as under:

1. can be used for approvals from SEZ authorities and registration from goods and services tax network;
2. issuance of no objection certificate/requisite approval from appropriate regulators i.e. RBI, SEBI and Insurance Regulatory and Development Authority of India;
3. integrated payment gateway; and
4. integrated digital signature certificate module.

IFSCA directed that from October 1, 2024, all the applicants, except the prescribed exceptions, must submit/file their applications exclusively through SWIT System.

IFSCA (Payment and Settlement Systems) Regulations, 2024

IFSCA, *vide* notification dated October 14, 2024, issued the IFSCA (Payment and Settlement Systems) Regulations, 2024. These regulations lay down the process of authorisation and operations of payment systems in IFSCs. Some of the key provisions are as follows:

1. every system provider must comply with the Principles for Financial Market Infrastructure issued by the Committee on Payments and Market Infrastructures and International Organisation of Securities Commissions, and such other norms as may be specified by IFSCA;
2. every system provider must submit to IFSCA such returns, documents and other information in the specified form as may be required by IFSCA from time to time;
3. every system provider must furnish to IFSCA, within 3 (three) months from the date on which its annual accounts are closed, a copy of its audited balance sheet as on the last date of the relevant year along with a copy of the profit and loss account and also a copy of the auditor's report;
4. guidance on seeking exemptions from authorisations, relaxing enforcement, and handling procedural matters; and
5. upon commencement of the new regulations, the RBI Payment and Settlement Systems Regulations, 2008 will no longer apply in IFSCs, but any actions taken under the RBI regulations will remain valid.

Amendments to the IFSCA (MII) Regulations, 2021

IFSCA, on October 29, 2024, introduced the IFSCA (MII) (Amendment) Regulations, 2024, amending the IFSCA (MII) Regulations, 2021. Some of the key amendments include a redefined 'clearing corporation' to encompass entities involved in the settlement of securities and specified financial products, along with a broadened definition of 'key management personnel', individuals at various levels of responsibility, from managing directors and heads of core functions to key decision-makers, as outlined in the Companies Act, 2013. The other key amendments are as follows:

1. a new code of conduct is included for recognised MIIs with strict compliance oversight and the possibility of removal for misconduct;
2. a nomination and remuneration committee will oversee key managerial personnel compensation; and
3. a recognised clearing corporation will develop a framework for orderly winding down of its critical operations and services covering both voluntary and involuntary winding down.

Clarifications in relation to investment restrictions on retail schemes set up in IFSCs

IFSCA, *vide* circular dated October 29, 2024, clarified that in case of investment by retail schemes in unlisted securities issued by an investment fund which is open-ended in nature, regulated by the concerned regulatory authority in its home jurisdiction and permitted for offering to retail investors in its home jurisdiction, the following ceilings/limits will not apply:

1. the ceiling of 15% investment of the total AUM of the scheme in unlisted securities in the case of an open-ended scheme;
2. the minimum investment amount of USD 10,000 (US Dollars ten thousand) for close-ended schemes investing more than 15% of AUM in unlisted securities;
3. the ceiling of 50% investment of AUM in unlisted securities in case of a close-ended scheme; and
4. the ceiling of 25% investments of AUM in the associates.

Further, in case of a retail scheme which is in the nature of a fund-of-funds scheme, the FFME must disclose in the offer document the details of the underlying scheme(s) wherein the investments are intended to be made and the nature of association, if any, that the FME has with the manager of the underlying scheme(s).

Framework for ESG ratings and data products providers in the IFSC

IFSCA issued a circular dated October 30, 2024, outlining the framework for entities wishing to operate as ESG Ratings and Data Products Providers ("**ERDPP**") within the IFSC. Under the new framework, such entities must obtain registration with IFSCA. Such entities must be present in the IFSC by establishing a branch or forming a company or limited liability partnership or body corporate or any other form as permitted by IFSCA. Existing credit rating agencies already registered with IFSCA are permitted to offer ESG ratings without undergoing a separate registration process. Entities must maintain a minimum net worth of at least USD 25,000 (US Dollars twenty-five thousand), appoint a principal officer and compliance and adhere to a code of conduct focusing on governance, transparency and conflict management. Additionally, ERDPPs are mandated to publish their rating methodologies and undertake an annual audit to uphold service quality and credibility.

Certain entities exempted from the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022

IFSCA, *vide* circular dated November 18, 2024, exempted the following entities/activities from the applicability of the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022 ("**Guidelines**"):

1. 'Global-in-House Centre' registered under the IFSCA (Global In-House Centres) Regulations, 2020;
2. 'International Branch Campus' or an 'Offshore Educational Centre' of a foreign university or a foreign educational institution registered under the IFSCA (Setting up and Operation of International Branch Campuses and Offshore Education Centres) Regulations, 2022;
3. 'Financial Crime Compliance Services Provider' registered under the IFSCA (Book-keeping, Accounting, Taxation and Financial Crime Compliance Services) Regulations, 2024; and
4. a financial institution providing services only to the entities in its 'Financial Group' which are located in a country not identified in the public statement of financial action task force as 'High-risk jurisdictions subject to call for action'.

IFSCA, on November 22, 2024, further amended the Guidelines. Some of the key amendments are as follows:

1. the regulated entity must adhere to the countermeasures when called upon to do so by any

international or intergovernmental organisation of which India is a member and accepted by the Central Government; and

2. a regulated entity which is part of a financial group must ensure that it provides its group-wide compliance, audit and anti-money laundering/countering the financing of terrorism functions of customer, account, and transaction information from its branches and subsidiaries, including information and analysis of transactions or activities which appear unusual, if such analysis has been conducted, when necessary for the purposes of money laundering/terrorism financing risk management. Similarly, branches and subsidiaries should receive such information from these group-level functions when it is relevant and appropriate for effective risk management.

New regulations for registration of factors and the assignment of receivables within IFSCs

IFSCA, *vide* circular dated November 18, 2024, issued the IFSCA (Registration of Factors and Registration of Assignment of Receivables) Regulations, 2024. These regulations aim to provide for the manner of granting certificate of registration to factors and filing of particulars of transactions with the Central Registry by a Trade Receivable Discounting System ("**TReDS**") on behalf of the factors. Some of the key features of the regulations are as follows:

1. every factor, intending to commence factoring business in an IFSC must make an application to the IFSCA for grant of certificate of registration; a factor or entities other than factors, meeting such eligibility criteria as specified by the IFSCA, may undertake the factoring business with the assignor directly or through an International Trade Financing Services platform; and
2. the trade receivables financed through a TReDS must be filed with the Central Registry, by the concerned TReDS on behalf of the factor, within a period of 10 (ten) days, from the date of such assignment or satisfaction thereof, as the case may be.

IFSCA (Informal Guidance) Scheme, 2024

IFSCA, *vide* circular dated December 2, 2024, issued the IFSCA (Informal Guidance) Scheme, 2024 ("**IG Scheme**") for streamlining the process of obtaining regulatory clarity, thereby facilitating smoother operations and compliance for entities operating within the IFSC. Eligible entities under the IG Scheme include persons who are licensed, registered, recognised or authorised by IFSCA, persons intending to undertake a business transaction(s) in relation to financial product(s) or financial service(s) and persons desirous of setting up a unit in an IFSC.

The IG Scheme offers 2 (two) main types of informal guidance:

1. **No-action letters**: It indicates whether the Department of IFSCA ("**Department**") would recommend any action to IFSCA under applicable laws, if the proposed activity, business, or transaction described in the request is carried out.
2. **Interpretive letters**: The Department can provide an interpretation of specific provisions of the IFSCA Act, 2019, rules, regulations, guidelines, or circulars being administered by IFSCA, circulars, guidelines or directions issued by RBI, SEBI, Insurance Regulatory and Development Authority of India, and Home-Pension Fund Regulatory and Development Authority, or other legal provisions being administered by IFSCA, in the context of a proposed activity or transaction related to a financial product or service.

The IG Scheme also specifies certain requests which may not be entertained by the Department. The guidance provided under the IG Scheme is not binding on IFSCA and is not subject to appeal.

Circular on complaint handling and grievance redressal by regulated entities

IFSCA, *vide* circular dated December 2, 2024, introduced a regulatory framework for handling of complaints and redress of grievances by the regulated entities in an IFSC. This circular applies to all entities regulated by IFSCA, excluding foreign universities, foreign educational institutions, ancillary service providers, BATF service providers, finance companies/units engaged in aircraft or ship leasing, and global/regional corporate treasury centers.

One of the main objectives of the framework is to align the norms and procedures for complaint handling across the financial services in the IFSC to the extent possible. The circular has come into force on January 15, 2025.

Guidelines on setting up and operation of International Trade Finance Service Platform, 2024

IFSCA, *vide* circular dated December 23, 2024, revised the framework for establishing and operating an International Trade Finance Service ("**ITFS**") platform in an IFSC. Some of the key changes are as follows:

1. an entity desirous of setting up as an ITFS operator must be set up in the form of a newly incorporated company under the Companies Act, 2013. The process of registration can be done through an 'on-tap' basis, through the Single Window IT System;
2. the parent entity of the applicant must have experience of at least 3 (three) years in operating trading infrastructure in financial markets or operating a financial technology (fintech) platform;
3. the applicant must meet minimum owned fund requirement of USD 0.2 million (US Dollars zero point two million) at all times and must have sound technological infrastructure to support its operations;
4. the scope of the term 'financiers' has been expanded, as entities such as factors, finance companies/units and entities registered in IFSCA to carry our lending or factoring activities have also been included;
5. the applicant must ensure that the ITFS has a sound technological infrastructure to support its operations, which permits the ITFS to facilitate transactions related to factoring, reverse factoring, bill discounting, supply chain financing, pre-shipment credit, and forfaiting and can permit secondary market transactions of the aforesaid products;
6. the ITFS must start its operations within 6 months of receiving a certificate of registration from IFSCA, unless it has been granted an extension by IFSCA;
7. an ITFS operator must ensure compliance with the IFSCA (Anti Money Laundering, Counter-Terrorist Financing and Know Your Customer) Guidelines, 2022;
8. an ITFS operator intending to provide clearing and/or settlement of funds must, prior to offering such a service, seek authorisation from IFSCA as a payment system operator under the IFSCA (Payment and Settlement Systems) Regulations, 2024;
9. an ITFS operator is required to put in place a robust and comprehensive risk management framework and should ensure that the associated risks are identified properly and managed prudently; and
10. IFSCA has also prescribed certain guidelines related to outsourcing and corporate governance for an ITFS operator.

भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

Forms to monitor liquidation/voluntary liquidation processes under the IBC

To alleviate the compliance burden for insolvency professionals, in relation to voluntary liquidation process of a corporate person and for enhancing the efficiency of liquidation/voluntary liquidation processes under the IBC and the regulations thereunder, the IBBI, *vide* circulars dated June 28, 2024, introduced a set of forms on an electronic platform, designed to simplify reporting requirements for insolvency professionals handling liquidation/voluntary liquidations process under the IBC. The primary advantages of these forms include

boosting the efficiency and effectiveness of the liquidation/voluntary liquidation process; allowing liquidators to conveniently access and submit forms online, reducing delays and improving efficiency; and decreasing the chances of errors and omissions, ensuring more accurate and reliable information.

IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024

IBBI, *vide* notification dated September 24, 2024, notified the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2024, to further amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**IBBI IRP Regulations**").

Some of the key amendments are as follows:

1. the choice of an insolvency professional to act as an authorised representative by a financial creditor (in a class) in the Form CA will not be considered, if the Form CA is received after the time stipulated in the public announcement; and
2. till the application to the adjudicating authority for appointment of the authorised representative for a class of creditors is under consideration before the adjudicating authority, the insolvency professional will act as an interim representative for such class of creditors and will be entitled to attend the meetings of the Committee of Creditors ("**CoC**") and will have such rights and duties as that of an authorised representative.

Centralised electronic listing and auction platform for the sale of assets under liquidation process

IBBI, *vide* circular dated October 29, 2024, collaborated with the Indian Banks' Association ("**IBA**") to facilitate the auction of assets through the eBKray platform. eBKray is owned and managed by PSB Alliance Private Limited (a consortium of 12 (twelve) public sector banks) ("**PSB Alliance**"). PSB Alliance has developed a module within the platform which offers detailed information on corporate debtor assets, including photographs, videos and geographical coordinates. By enhancing transparency and efficiency through advanced technology, eBKray aims to increase bidder participation, streamline operations, and maximise returns for creditors while improving outcomes for bidders. It will be a single listing platform to host all assets being sold in liquidation cases.

Case Laws

Corporate Insolvency Resolution Process can be initiated separately and simultaneously against a corporate debtor and a corporate guarantor for the same debt and same default

In the case of ***BRS Ventures Investments Limited vs. SREI Infrastructure Finance Limited and Anr.,*** [2] the Hon'ble Supreme Court of India ("**Supreme Court**") held that simultaneous insolvency proceedings against a borrower and a corporate guarantor can be initiated for the same debt and default; and that assets of a subsidiary do not form part of the Corporate Insolvency Resolution Process ("**CIRP**") of its holding company.

Brief facts

1. SREI Infrastructure Finance Limited ("**SREI**") had granted Gujarat Hydrocarbon and Power SEZ Limited (**"GHPL"**), a loan of INR 100,00,00,000 (Indian Rupees one crore) ("**Loan**"). The Loan was guaranteed ("**Corporate Guarantee**") by GHPL's holding company, Assam Company India Limited (**"ACIL"**).
2. The Corporate Guarantee was invoked and subsequently, CIRP of ACIL was initiated under the

[2] Civil Appeal No.4565 of 2021. Judgement dated July 23, 2024

IBC. In the CIRP of ACIL, BRS Ventures Investments Limited, ("**BRS Ventures**") emerged as the successful resolution applicant. As a part of the approved resolution plan ("**Resolution Plan**"), BRS Ventures paid a sum of INR 38,87,00,000 (Indian Rupees thirty-eight crore eighty-seven lakh) to SREI as full and final payment of its dues.

3. SREI subsequently initiated CIRP against GHPL for the balance amount under the Loan which was opposed by BRS Ventures. BRS Ventures contended that upon payment to SREI in the CIRP of ACIL, the rights of SREI with regard to the Loan would stand subrogated in favour of BRS Ventures; simultaneous CIRP proceedings cannot lie against GHPL and ACIL when the entire debt has been discharged; and by way of initiation of CIRP against GHPL, the valuable assets of ACIL have been taken away.
4. The National Company Law Appellate Tribunal ("**NCLAT**") had dismissed the appeal by BRS Ventures.

Issues

1. Whether the liability of the principal borrower continues upon extinguishment of liability of the corporate guarantor by way of a resolution plan?
2. Whether CIRPs against a borrower and a guarantor can be initiated and/or can continue simultaneously for the same debt and default?
3. Do the assets of a subsidiary company form a part of CIRP of its holding company?

Analysis and findings

The Supreme Court observed the following:

1. **Co-extensive liabilities of the principal borrower and guarantor and consequence of involuntary discharge of the guarantor:**
   a) It is settled law that the liability of the surety and principal debtor is co-extensive and the creditor is entitled to proceed against both or either of them. If a creditor recovers a part of the guaranteed amount from the surety and agrees to not proceed against the surety for the remaining amount, the same does not extinguish the remaining debt payable by the principal debtor.
   b) As per the provisions of the Indian Contract Act, 1872 (the "**Contract Act**"), involuntary acts of the principal borrower or creditor do not result in the discharge of the surety. In this regard, the Supreme Court cited several judgments, including in the case of *Lalit Kumar Jain vs. Union of India and Ors.*[3] where it was held that discharge of a principal debtor by an involuntary process i.e. operation of law, or due to liquidation or insolvency proceedings, does not absolve a guarantor of its liability.
   c) As per Section 31 of the IBC, when the CIRP of the corporate guarantor ends in a resolution plan, it will bind the creditor of the corporate guarantor. Consequently, the corporate guarantor's liability may end in such a case by operation of law, but this does not affect the liability of the principal borrower to repay to the creditor the balance loan amount (that is, after deducting the amount recovered from the corporate guarantor or the amount paid by the resolution applicant on behalf of the corporate guarantor as per the resolution plan).
   d) Under Section 140 of the Contract Act, if the surety pays only a part of the amount payable to the creditor, the subrogation right the surety gets will be confined to the debt cleared. Accordingly, notwithstanding the subrogation to the extent of the amount paid on behalf of a guarantor, the right of the creditor to recover the balance debt payable by the corporate debtor is in no way extinguished.
2. **Simultaneous proceedings under the IBC against the corporate debtor and the guarantor**:
   a) Section 60(2) of the IBC contemplates separate or simultaneous insolvency proceedings against the corporate debtor and the guarantor. Accordingly, Section 60(3) provides that if CIRP in respect of the corporate guarantor and a borrower are pending before different adjudicating authorities, CIRP proceedings against the corporate guarantor must be transferred to the adjudicating authority before

[3] (2021) 9 SCC 321

whom CIRP in respect of the borrower is pending.

b) Thus, consistent with the basic principles of the Contract Act that the liability of the principal borrower and surety is co-extensive, the IBC permits separate or simultaneous proceedings to be initiated under Section 7 of the IBC by a financial creditor against the borrower and the corporate guarantor.

3. **Assets of the corporate debtor in the CIRP of the guarantor**:

The resolution plan only deals with the assets of ACIL and the investments of ACIL in its subsidiaries, not the assets of the subsidiaries.

a) Section 36 of the IBC specifically excludes assets of a subsidiary company from the liquidation estate of a corporate debtor. A similar exception is provided in Section 18, regarding the meaning of 'assets.' The court observed that perhaps the reason for including these 2 (two) provisions is that it is well-settled that a shareholder has no interest in the company's assets.

b) The court noted that in the case of *Vodafone International Holdings BV vs. Union of India and Anr.,*[4] the Supreme Court took the view that if a subsidiary company is wound up, its assets do not belong to the holding company but to the liquidator. Therefore, the assets of the subsidiary company of a corporate debtor cannot be part of the resolution plan of the corporate debtor.

c) Based on the above, the Supreme Court held that (i) the part payment by ACIL to SREI will extinguish the liability of GHPL only to the extent of the amount paid by ACIL and GHPL will be liable to pay the balance amount under the Loan; (ii) the assets of the subsidiary company cannot be included in the resolution plan of a holding company; and (iii) SREI is entitled to file separate and simultaneous applications under Section 7 of the IBC against GHPL and ACIL. Accordingly, the appeal was dismissed.

Conclusion

On January 8, 2019, the NCLAT had, in *Vishnu Kumar Agarwal vs. M/s Piramal Enterprises Limited*[5] (which is currently pending in appeal in the Supreme Court), observed that simultaneous applications for the same set of claims cannot be admitted against a corporate debtor and a guarantor. However, the NCLAT (on March 7, 2019) diverted from the view in *Piramal (supra)*, in the matter of *Edelweiss Asset Reconstruction Company Limited vs. Sachet Infrastructure Private Limited.*[6] Subsequently, the Insolvency Law Committee Report in 2020 also differed with the view in *Piramal (supra)* citing Section 60(1) to (3) of the IBC. On November 24, 2020, in *State Bank of India vs. Athena Energy Ventures Private Limited,*[7] relying on the same provisions, the NCLAT chose to interpret the law differently to the *Piramal (supra)* order.

The Supreme Court has clarified that CIRP can be initiated simultaneously against a corporate debtor as well as a corporate guarantor for the same debt and same default. Accordingly, creditors will not be required to wait for the payment under the CIRP of a borrower/guarantor before proceeding against the other entity.

Supreme Court orders for liquidation of Jet Airways (India) Limited and recommends reform in the IBC

On November 7, 2024, a 3 (three) judge bench of the Supreme Court delivered their judgment in the matter of ***State Bank of India and Ors. vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch and Anr.,***[8] *inter alia,* ordering liquidation of Jet Airways (India) Limited ("**Jet Airways**"). Interestingly, the Supreme Court also suggested various points for the Parliament to reform the IBC.

[4] (2012) 6 SCC 613
[5] Company Appeal (AT) (Ins.) No. 346 & 347 of 2018
[6] Company Appeal (AT) (Ins.) No. 377 of 2019
[7] Company Appeal (AT) (Ins.) No. 633 of 2020
[8] Civil Appeal Nos. 5023-5024 of 2024

Brief facts

This judgment arose out of an appeal against the order passed by NCLAT on March 12, 2024 ("**Impugned Order**"), which held that the Successful Resolution Application ("**SRA**") of Jet Airways had fulfilled all conditions precedent of the approved resolution plan. The Impugned Order, *inter alia*, allowed for adjustment of the Performance Bank Guarantee of INR 150,00,00,000 (Indian Rupees one hundred and fifty crore) ("**PBG**") towards the first tranche payment of INR 350,00,00,000 (Indian Rupees three hundred and fifty crore) that was due from SRA under the resolution plan.

Issues

1. Whether the PBG could be allowed to be adjusted against the first tranche payment under the resolution plan?
2. Whether the non-implementation of the resolution plan by SRA necessarily leads to liquidation?
3. Whether timely implementation of resolution plan is also one of the objectives of IBC?

Analysis and findings

Before analysing these issues, Supreme Court rejected the preliminary objection of non-existence of any 'question of law' under Section 62 of IBC. Even amidst the concurrent factual findings by National Company Law Tribunal ("**NCLT**"), Mumbai, and NCLAT, the Supreme Court held that an intervention was justified, because the Impugned Order was in violation of its earlier order dated January 18, 2024, which held against the adjustment of PBG. The Supreme Court was also of the view that NCLAT also drew wrong inferences from proved facts.

1. For Issue (1), the Supreme Court answered in negative with the following analysis:
    a) The Supreme Court analysed the provisions of the plan which mandated payment of the first tranche of INR 350,00,00,000 (Indian Rupees three hundred and fifty crore) by SRA within 180 (one hundred and eighty) days of the 'effective date' (which was originally the 90th day from the fulfilment of the conditions precedent ("**CPs**")).[9] After multiple extensions by NCLT and NCLAT, the 'effective date' was frozen at May 20, 2022, when SRA claimed to have complied with the conditions precedent;
    b) the Supreme Court observed that, at least, after the effective date of May 20, 2022, SRA should have fulfilled its obligations under the plan, and their undue delay reflected *mala fide* intention on their part; and
    c) the Supreme Court also analysed that the provisions of the resolution plan, read with the 'Request for Resolution Plan', did not allow for any adjustment of PBG, since the PBG was to be invoked only in specific conditions prescribed therein. Such adjustment also fell afoul of Regulation 36B(4A) of the IBBI IRP Regulations, which mandated forfeiture of performance security in case the resolution applicant failed to implement the resolution plan. The Supreme Court held that PBG had to be kept alive till the implementation of the plan and could not be set-off against any payment obligation. Thus, failure to infuse funds led to non-implementation of the resolution plan;
2. For Issue (2), Supreme Court answered positively with the following analysis:
    a) Supreme Court considered that the non-infusion of funds by SRA led to the default in payment of CIRP costs as well, which includes airport dues;
    b) Supreme Court also analysed the schedule of plan and concluded that the SRA should have paid the provident fund and gratuity dues in time;
    c) Supreme Court analysed Section 33(3) of IBC to conclude that consequence of non-implementation of plan must necessarily be liquidation and held that the creditors were entitled to invoke the PBG; and
    d) Supreme Court lamented on how more than 5 (five) years passed since the admission of CIRP, and the implementation of the plan still

[9] Supreme Court also analysed the 5 (five) conditions precedents mentioned in the plan, namely: (a) validation of air operator certificate, (b) approval of business plan, (c) slot allotment approval, (d) international traffic rights clearance; and (e) demerger of Airjet Ground Services Ltd.

seemed to be a '*dim light at the far end of a long tunnel*';

3. For Issue (3), the Supreme Court answered positively with the following analysis:

   a) Supreme Court analysed the preamble to IBC and the report of the Bankruptcy Law Reforms Committee, 2015, to note that 'time' and 'speed' were of essence for the working of IBC;

   b) Supreme Court reasoned that minimising delay was crucial to ensure that the assets of corporate debtor do not get frittered away due to a time lag;

   c) Supreme Court, hence, cautioned that the powers with NCLT and NCLAT to extend the timelines[10] cannot be exercised mechanically without any application of mind, and must be done by adequately weighing the consequences of such extension; and

   d) Supreme Court invoked its plenary powers under Article 142 of the Constitution of India ("**Constitution**") to order for liquidation of Jet Airways, in light of the *extraordinary circumstances* of inordinate delay in implementation of plan and dues of corporate debtor getting multiplied. Supreme Court observed that liquidation remained the *viable* last resort for corporate debtor and the creditors.

Recommendations by Supreme Court

Considering the present litigation to be an *eye-opener* on the working of IBC, the Supreme Court gave the following suggestions to improve the working of IBC:

1. the CoC exercises its commercial wisdom to approve or reject a plan after providing a rationale for the benefit of the adjudicating authorities;
2. the Central Government and IBBI have an oversight committee to independently ensure enforcement of the Guidelines for CoC dated August 6, 2024, issued by IBBI;
3. the SRA's role must not be merely transactional, rather of pivotal responsibility towards the distressed entity. Hence, SRA must make sustained efforts for corporate revival even when faced with operational impediments;
4. the creditors must not impede the implementation of plan through unnecessary demands, and hence, provide active support to SRA to revive the corporate debtor;
5. the NCLT while approving a plan should record the next steps to be taken, so that parties are *ad idem* and vigilant about the next round of their obligations; and
6. IBC may provide for a monitoring committee to ensure smooth handover of corporate debtor to SRA once the plan is approved, and the said committee can be constituted by the CoC.

Significantly, before closing the matter, Supreme Court also highlighted deficiencies in IBC and functioning of NCLTs and NCLAT, calling for immediate attention:

1. SRAs repeatedly approached NCLT or NCLAT for relaxation in strict compliance with the plan and the adjudicating authorities also acceded to such requests. The Supreme Court held that such intervention must be kept at a minimum at best, and NCLT and NCLAT must not aid the SRA in circumventing the mandate of law by acceding to their request for relaxation;
2. there was a serious lack of timely admission and disposal of applications by NCLT and NCLAT, no practice of sitting for full working hours, lack of capacity to manage growing number of cases, no effective system for urgent listings and the registry has 'wide power to list or not to list a particular matter'. Supreme Court observed that NCLTs and NCLAT must seriously rethink their approach towards admission and disposal of matters and must take their role seriously, with judicial propriety. It even warned that any contravention of Supreme Court's order will not be tolerated; and
3. there was an issue of vacancy of members in such tribunals and that appointment of new members must be prioritised.

Conclusion

Stressing upon timely and speedy resolution of a corporate debtor, Supreme Court went ahead to

[10] Rule 15 of the NCLT Rules, 2016; Rule 15 of NCLAT Rules, 2016

exercise its plenary power under Article 142 of the Constitution to order liquidation of Jet Airways. The Supreme Court set aside the Impugned Order of NCLAT, as perverse and unsustainable in law and directed that the infused funds of INR 200,00,00,000 (Indian Rupees two hundred crore) by SRA be forfeited. It also allowed the creditors to encash the PBG of INR 150,00,00,000 (Indian Rupees one hundred and fifty crore).

This judgment is significant as it not only emphasised time and speed to be the essence of IBC but also presented the poignant deficiencies in the functioning of NCLT and NCLAT and made recommendations to reform IBC. It is particularly important for the fact that it directed the liquidation of Jet Airways due to defaults of the SRA by observing that a delay in taking control of a company leads to liquidation as the only viable answer.

Interim moratorium under the IBC will impact the pending proceedings under the SARFAESI despite secured lender having possession of the asset

On July 2, 2024, the Hon'ble Delhi High Court ("**Delhi HC**"), in the case of ***Sanjay Dhingra vs. IDBI Bank Limited and Ors.,***[11] has held that the proceedings under the SARFAESI wherein the secured asset is in possession of the secured creditor even prior to commencement of interim moratorium under Section 96 of the IBC, cannot continue if the sale process has not been completed.

Brief Facts

1. IDBI Bank ("**IDBI**") had granted certain facilities to a company based in Dubai ("**Corporate Debtor**") through its Dubai Branch ("**IDBI Dubai**").
2. Sanjay Dhingra ("**Personal Guarantor**") had guaranteed the payments of the Corporate Debtor by mortgaging certain immovable properties ("**Secured Asset**") in favour of IDBI Dubai.
3. Owing to defaults being committed by the Corporate Debtor, IDBI (on behalf of IDBI Dubai) initiated proceedings under Section 13 of SARFAESI.
4. Thereafter, an application was filed by IDBI before CMM (West), Tis Hazari Court ("**CMM**") under Section 14 of the SARFAESI. By way of an order dated March 12, 2020, the CMM appointed a receiver ("**Court Receiver**") for taking physical possession of the Secured Asset. On March 19, 2020, and October 3, 2020, the Court Receiver issued possession notices and thereafter, IDBI (on behalf of IDBI Dubai) took physical possession of the Secured Asset.
5. Being aggrieved by the above, the Personal Guarantor filed a writ petition before the Delhi HC impugning the order appointing the Court Receiver and the consequential issuance of the possession notices. In the writ petition, the Personal Guarantor also highlighted that the facility was granted by IDBI Dubai, however, the steps under SARFAESI were undertaken by IDBI.
6. IDBI challenged the maintainability of the writ petition owing to an efficacious remedy being available under Section 17 of SARFAESI.
7. During the pendency of the writ petition, in December 2023, an application was filed by the Union Bank of India under Section 95(1) of IBC, to initiate insolvency process against the Personal Guarantor proposing Mr. Nitin Narang as the Resolution Professional ("**RP**"). As per the provisions of Section 96 of IBC, an interim moratorium was imposed upon filing of the said application.
8. Thereafter, on December 21, 2023, the NCLT passed an order appointing the RP. In the said order, the tribunal reiterated that the moratorium under

[11] 2024 SCC OnLine Del 4521

Section 96 of IBC was kicked in upon filing of the petition and continues to remain in force.

9. Seeking protection of interim moratorium under Section 96 of IBC, the Personal Guarantor approached the Delhi HC under the writ petition contending that in view of the interim moratorium sought to suspend the actions initiated by IDBI under SARFAESI.

Issues

1. Whether interim moratorium under Section 96 of IBC would apply to assets, possession of which has been taken by the secured creditor under Section 14 of SARFAESI?
2. Whether objections in relation to the maintainability of a proceeding under SARFAESI can be raised before a High Court in its extraordinary writ jurisdiction?

Analysis and findings

The Delhi HC after appreciating the submissions advanced by the parties and having regard to settled law, held as follows:

1. the Delhi HC observed that under Section 96 of IBC, usage of the words 'in relation to all the debts' implies that the interim moratorium will apply to all the debts of the Personal Guarantor, including the mortgage created over the Secured Asset, which is the subject matter of SARFAESI proceedings;
2. while placing reliance on the Supreme Court decision in *Dilip B. Jiwrajka vs. Union of India,*[12] the Delhi HC stated that the purpose of interim moratorium under Section 96 of IBC is to restrain both, the initiation as well as the continuation of legal action or proceedings against a debt;
3. the Delhi HC opined that even though IDBI had taken possession of the Secured Asset prior to the commencement of insolvency proceedings against the Personal Guarantor under IBC; the same would have no effect on the interim moratorium in terms of Section 96 of IBC;
4. since IDBI had not completed the sale process under SARFAESI, prior to the initiation of moratorium of the Personal Guarantor, the Secured Asset continued to remain an asset of the Personal Guarantor. Thus, the Delhi HC was not inclined to allow SARFAESI proceedings to continue, in light of the provisions of Section 96 of IBC;
5. in relation to the second issue, the Delhi HC relied on the Supreme Court's decision in *Celir LLP vs. Bafna Motors (Mumbai) Private Limited and Ors,*[13] wherein it held that considering there being an effective remedy available under Section 17 of SARFAESI, a High Court cannot entertain a petition under Article 226 of the Constitution concerning a SARFEASI dispute; and
6. while disposing off the writ petition the Delhi HC held that since the sale process under SARFAESI was not completed, mere possession was no ground to impede moratorium under Section 96 of IBC. Therefore, IDBI cannot continue with SARFAESI process until the operation of the interim moratorium is lifted.

Petition under Section 95 of the IBC cannot be numbered or is maintainable against a partnership firm or its partners

On March 6, 2024, the Hon'ble High Court of Karnataka ("**Karnataka HC**"), in the case of ***M/S Manyata Realty vs. The Registrar and Ors.,***[14] held that the NCLT does not have jurisdiction to entertain a petition filed under Section 95 of the IBC against a partnership firm or its partners. The Karnataka HC declared the filing of the petition as *non-est* and illegal.

[12] 2023 SCC OnLine SC 1530
[13] (2024) 2 SCC 1
[14] Writ Petition No. 26977 of 2023

Brief facts

1. M/s Manyata Reallty, a partnership firm ("**Firm**"), had entered into distinct joint development agreements with Buoyant Technology Constellation Private Limited ("**Company**" and together with the Firm referred to as the "**Parties**") between 2010 and 2015. Subsequently, a dispute arose between the Parties, leading to the Firm issuing a notice to terminate the joint development agreement; and claiming damages on account of breach of the agreement. In order to resolve the dispute between the Parties, arbitration proceedings were initiated in 2022.
2. Thereafter, the Company issued a legal notice, invoking Section 95 of the IBC, against the Firm and its partners, demanding the Firm to repay its dues. Even though the Firm denied the claim made by the Company, a petition was filed before the NCLT.
3. Aggrieved by the filing before NCLT, the Firm and its partners filed separate writ petitions, under Articles 226 and 227 of the Constitution of India, before the Karnataka HC ("**Writ Petitions**"), challenging the jurisdiction of NCLT to entertain/even number the Petition filed by the Company.
4. The Firm argued that the IBC does not cover insolvency resolution for individuals and partnership firms, and that jurisdiction should lie with the Debts Recovery Tribunal ("**DRT**") or Debts Recovery Appellate Tribunal. It contended that only personal guarantors to corporate debtors can be brought under Section 90 of the IBC, and since the firm and its partners are neither a personal guarantor nor a corporate debtor, the petition filed under Section 95 of the IBC is outside the NCLT's jurisdiction and should be dismissed, allowing arbitration proceedings to continue.

Issue

Whether a petition under Section 95 of the IBC can be numbered and maintainable against a partnership firm or its partners?

Analysis and findings

The Karnataka HC, after appreciating the submissions advanced by the Parties and having regard to settled law, held as follows:

1. the Karnataka HC after analysing the definitions of 'corporate person' and 'corporate debtor' under Section 3(7) and 3(8) of the IBC, held that IBC is applicable when a corporate person owes debt to any person; and except as provided in Part-III of IBC, partnership firm and/or its partners are not covered within the ambit of IBC. Further, the DRT is the adjudicating authority for the partnership firm and/or its partners;
2. the Karnataka HC observed that filing a petition under Sections 94 or 95 of the IBC triggers Section 96 of IBC immediately, leading to significant consequences. An interim moratorium is automatically imposed, freezing the corporate debtor's activities. This moratorium also affects all partners of a firm as of the application date. Additionally, a RP is appointed to handle the proceedings and must submit a report within 10 (ten) days. These consequences occur upon filing the application, not when the application is entertained by the NCLT. The DRT is the authority to entertain such applications under Part III of the IBC. Once a petition is registered under Section 95 of the IBC before the NCLT (even before it is entertained by NCLT), interim moratorium and appointment of a RP is axiomatic. Thus, the consequence of filing such petition is dire on the Corporate Debtor as there is no requirement under the IBC for NCLT to entertain the petition in order for other provisions under the IBC to come into effect;
3. NCLT cannot decide the issue of its jurisdiction to entertain the petition under Section 95 of the IBC since the filing of the Petition itself leads to dire consequences. Further, the petition is not eligible for submission before the NCLT and cannot be allowed to be proceeded up to the stage of determining whether such filings are entertainable; and
4. the Karnataka HC held that the maintainability of the petition before the DRT is crucial, as it pertains to the NCLT's jurisdiction to entertain the petition, which IBC does not permit. Even the acceptance of filing by the NCLT is contrary to law. As a result, the Writ Petitions were allowed by the Karnataka HC,

and the e-filing of petitions by the Company under Section 95 of the IBC, was declared illegal and non-est. All proceedings before the NCLT were quashed, and the Firm was entitled to all consequential benefits from the setting aside of these proceedings. The Karnataka HC also directed that any action taken on the registration of the proceedings also stood obliterated.

Conclusion

This judgment clarifies the jurisdictional scope of the NCLT under the IBC. It underscores the principle that the jurisdiction of a tribunal is determined by the statute that governs it. The decision is significant as it protects partnership firms and their partners from insolvency proceedings under Section 95 of the IBC before the NCLT. It also highlights the importance of correctly identifying the appropriate forum for legal proceedings.

Clean Slate Theory cannot be used to extinguish known claims when the promoter of a Micro, Small And Medium Enterprise is a SRA under the IBC

The Madras High Court ("**Madras HC**") in ***National Sewing Thread Co. Limited vs. Superintending Engineer TANGEDCO and Anr.,***[15] has held that the Clean Slate Theory ("**CST**") does not extinguish undisclosed claims under the resolution plan of the erstwhile promoters or management ("**Promoter Group**"). The Madras HC has further held that in relation to such claims, the Promoter Group is jointly and severally liable. This judgement of the Madras HC is significant since it carves out an exception for the CST, especially when the Promoter Group of Micro, Small and Medium Enterprises ("**MSMEs**") are the SRA; protects the creditors who did not submit claims during the CIRP for want of knowledge and whose claims were deliberately excluded by the Promoter Group in the resolution plan; and fastens personal liability on the Promoter Group for suppression of claims.

Brief facts

National Sewing Thread Co. Limited ("**NSTCL**"), an enterprise registered under the MSME Development Act, 2006, was subjected to CIRP under the IBC, by the NCLT, Chennai[16]. During the CIRP, the Promoter Group of NSTCL submitted a resolution plan to take over the company, which was approved by the CoC and the NCLT, Chennai[17]. The resolution plan provided for payment of 1% of the dues payable to identified operational creditors, which did not include the electricity department. The resolution plan provided for extinguishment for all prior claims of creditors including that of the electricity department. Later, the Tamil Nadu Generation and Distribution Corporation Limited ("**TANGEDCO**") issued a demand notice dated January 19, 2022 ("**Demand Notice**") to NSTCL claiming a payment of INR 32,86,061 (Indian Rupees thirty-two lakh eighty-six thousand and sixty one) which pertained to pre-CIRP period. NSTCL claimed that it is not liable for the claim since the same was not provided for under the resolution plan; and relied on the principle of CST to contend that such undisclosed claims will stand extinguished. NSTCL subsequently applied for electricity connection, which was rejected by TANGEDCO due to non-payment of arrears of due. Therefore, NSTCL filed a writ petition to quash the Demand Notice; and sought directions against TANGEDCO to provide the electricity connection.

NSTCL contended that the Demand Notice is against the principle of CST and the spirit of IBC. NSTCL contended that, since TANGEDCO did not submit its claim form during the CIRP and its claim having not been included in the plan, the claim of TANGEDCO will stand extinguished. NSTCL relied on the judgment of the Supreme Court in *Ghanashyam Mishra & Sons (P) Limited vs. Edelweiss Asset Reconstruction Co. Limited*[18], wherein it has been held that pre-CIRP claims which

[15] Judgement dated June 7, 2024, in W.P. No. 29845 of 2022
[16] Order dated August 28, 2019. in IBA/622/2019
[17] Order dated December 6, 2021, in IA/IBC/1032/CHE/2021 in IBA/622/2019
[18] (2021) 9 SCC 657

were not a part of resolution plan will stand extinguished upon its approval. Therefore, NSTCL contended that TANGEDCO's claim having been extinguished, the Demand Notice is invalid, and TANGEDCO is liable to provide the connection.

TANGEDCO contended that it is governed by the Electricity Act, 2003 and Tamil Nadu Electricity Supply Code, 2004, in terms of which all outstanding dues will have to be settled before effecting power connection; and that TANGEDCO's claim will not get extinguished due to CIRP proceedings or approval of a resolution plan under the IBC. TANGEDCO relied on the judgement of the Supreme Court in *State Tax officer vs. Rainbow Papers Limited*[19] and the judgement of the Madras HC in *Empee Distilleries Limited vs. The Superintending Engineer, Pudukottai and Ors*[20] and contended that the resolution plan having not provided for dues payable to government or its department, is invalid and contrary to IBC.

Findings and analysis

The Madras HC referring to the judgements of the Supreme Court[21] on commercial wisdom of CoC held that the CoC's commercial wisdom in approving a resolution plan is subject to all relevant information being placed before the CoC. On the principle of CST and extinguishment of all prior claims, the Madras HC held that the same is not an automatic consequence of approval of a resolution plan and is subject to availability of all relevant information before the CoC.

The Madras HC held that the term 'relevant information', includes all such information relating to assets/liabilities of the corporate debtor which are within the knowledge of the Promoter Group and which they are obligated to disclose; and which a RP can ascertain by exercising diligence through review of financial statements and claims received pursuant to public notice issued under IBC. The Madras HC has held that a RP cannot evade his obligation to ascertain the liabilities merely because the concerned creditor did not submit the claim form.

The Madras HC reiterated the role of the NCLTs in approving a resolution plan that the NCLT's cannot approve a resolution plan merely because it is approved by the CoC; and it must ensure that a resolution plan satisfies the above requirements.

The Madras HC held that, while the principle of CST may insulate a third-party resolution applicant from undisclosed claims, the same will not apply to the undisclosed claims which are not a part of the plans submitted by the Promoter Group and the Promoter Group cannot take advantage of their act of suppression of material facts. The Madras HC further held that, in such cases, the corporate veil will have to be lifted; and the Promoter Group will be personally liable for such undisclosed claims.

In view of the above legal principles and considering that the Promoter Group were, aware of the dues payable to TANGEDCO; had failed to disclose the same to the RP during the CIRP; and had deliberately excluded TANGEDCO's claim from the Plan for the reasons that no claim form was submitted, the High Court held that TANGEDCO's claim is not extinguished and that it is entitled to refuse effecting electricity connection to NSTCL, even though the order of the NCLT approving the resolution plan has attained finality. Consequently, the Madras HC dismissed the writ petition.

Conclusion

The judgement emphasises the obligations of the promoters to disclose the known liabilities to the RP, CoC and in their resolution plan; and enables imposition of personal liability on the promoters for suppression of claims even when the concerned creditor does not have lodged a claim form. The judgement reiterates the requirement for fairness and equitable treatment of claims in a resolution plan. The judgement also reaffirms the just, independent and diligent role to be played by the RPs in ascertaining the liabilities of the company and in conducting the CIRP; and the NCLTs during the approval of a resolution plan. The judgement has created an exception to the rule of 'clean slate theory' *vis-à-vis* the extinguishment of undisclosed claims in terms a resolution plan, in order to protect *bonafide* creditors who were not aware of the CIRP; did not lodge claim forms; and whose claims were deliberately excluded by the Promoter Group in their resolution plan. The judgement will act as a

[19] 2022 SCC OnLine SC 1162
[20] 2022 SCC OnLine Mad 5272
[21] *State Tax officer vs. Rainbow Papers Limited (*2022 SCC OnLine SC 1162*); M.K. Rajagopalan vs. Dr. Periasamy Palani Gounder (2024 1 SCC 42); and K. Sasihidhar vs. Indian Overseas Bank (2019 12 SCC 150)*

deterrent on the promoters of MSME companies, who intend to misuse the IBC and extinguish the past liabilities by suppression of claims during the CIRP.

NCLAT rejects delayed homebuyer's claim

The Principal Bench of the NCLAT, New Delhi in the case of ***Pooja Mehra vs. Nilesh Sharma (RP for Dream Procon Private Limited)***[22], while examining the validity of the appellant homebuyers' claim, dismissed an appeal for condonation of delay of 552 (five hundred and fifty-two) days in filing a claim against the corporate debtor.

The NCLAT, while dismissing the appeal, *inter alia*, emphasised that the objective of the IBC is to economically rehabilitate the corporate debtor. To fulfil this objective, it is crucial to adhere to the time frame laid down in IBC to prevent creditors from bringing up delayed claims against a successful resolution applicant.

Brief facts

The Appellant No. 1, Pooja Mehra ("**Homebuyer**"), allegedly booked a flat/unit in Victory Ace Social Welfare Society, a project of Dream Procon Private Limited ("**Corporate Debtor**"). The Corporate Debtor issued an allotment letter on May 15, 2016, allocating Unit No. D2-106 ("**Unit**") to the Homebuyer.

Simultaneously, the Homebuyer and the Corporate Debtor entered into a Buy Back Agreement ("**BBA**") also dated May 15, 2016. According to the terms of the BBA, the Corporate Debtor assured monthly monetary returns, against which post-dated cheques were issued to the Homebuyer. The BBA also stipulated that the Homebuyer would have the right to cancel the booking after expiry of 1 (one) year from the date of the agreement and the Homebuyer would be entitled to refund of the sale consideration.

However, the Corporate Debtor failed to deliver possession of the Unit within the stipulated timeframe and defaulted on the monthly assured returns. Additionally, the Corporate Debtor did not execute the buy-back of the Unit as per the Agreement.

On June 6, 2019, the Adjudicating Authority admitted an insolvency petition against the Corporate Debtor and an Interim Resolution Professional ("**IRP**") was appointed.

The IRP invited claims from all creditors through an advertisement in Form A, dated October 17, 2019, published on October 18, 2019. The deadline for claim submissions was October 29, 2019, with the 90 (ninety) day maximum period stipulated under IBC expiring on January 15, 2020.

Subsequently, on January 16, 2020, Mr. Nilesh Sharma was appointed as the RP.

The CoC approved the resolution plan of Respondent No. 2, the SRA, Victory Ace Social Welfare Society, on May 7, 2021.

On July 20, 2021, the Appellant submitted her claim to the RP, with a delay of 552 (five hundred and fifty-two) days. At this stage, although the resolution plan had been approved by the CoC, approval was pending from the Adjudicating Authority. The RP neither accepted nor rejected the claim of the homebuyers.

Thereafter, the appellants filed an application before the Adjudicating Authority under Section 60 (5) of IBC read with Rule 11 of the NCLT Rules, 2016, seeking condonation of delay in filing the claim and directions against the RP to include their claim in the list of homebuyers.

The Adjudicating Authority dismissed the application through an Order dated August 11, 2023 ("**Impugned Order**")**.** An appeal was filed against the said impugned Order before the NCLAT**.**

Issues

The primary issue to be decided by the NCLAT was validity of the Homebuyer's claims, submitted after the approval of the resolution plan by the CoC and pending approval from the Adjudicating Authority.

[22] Company Appeal (AT)(Insolvency) No. 1511 of 2023

Additionally, the NCLAT examined whether the evidence provided by the Homebuyer was sufficient to support the Homebuyer's claim.

Finding and analysis

On the first issue, taking note of the facts leading to filing of the appeal, the NCLAT noted that there was a delay of 552 (five hundred and fifty-two) days in filing the claim by the appellant. In this context, NCLAT examined the scheme of IBC in relation to settlement of delayed claims.

NCLAT rejected the appellant's contention in relation to condonation of delay. Firstly, it was observed that the order of the Supreme Court in In Re: *Cognizance for Extension of Limitation*[23], only provides protection in cases where limitation would have expired between March 15, 2020, and February 28, 2022 ("**Supreme Court Order**"). Noting that in the present case the time period available expired on January 13, 2020, it was observed that the Supreme Court Order would have no application. Further, relying on *Sagufa Ahmed vs. Upper Assam Plywood Products*[24], it was observed that the extension granted by the Supreme Court Order pertained to extension of limitation period and not duration for which delay could be condoned at the discretion conferred by the statute.

In relation to the appellant's contention that the extinguishment of claims will happen only when resolution plan has been approved by the Adjudicating Authority, following the decision in *M/s RPS Infrastructure Limited vs. V. Mukul & Anr*[25], it was held that the absence of approval from the Adjudicating Authority does not imply a perpetual oscillation of the plan, thus, safeguarding CIRP from becoming an interminable endeavour.

NCLAT, following the law laid down in *Essar Steel v Satish Gupta & Ors.*[26] and *Swiss Ribbons v Union of India & Ors.*[27] noted that the aim of IBC is to economically rehabilitate the corporate debtor and for that purpose, timelines prescribed protect the corporate debtor's asset from further dilution for which, it is necessary that creditors are barred from raising delayed claims against the SRA.

Reliance was also placed on the decisions in *Shyam Rathod vs. Gopalsamy Ganesh Babu*[28] and *Deputy Commissioner v. Kiran Shah*[29] wherein it has been recognised that the adherence to the strict timelines is mandatory and delayed claims were rejected.

In this background, NCLAT held that the delayed claim of the appellant could not have been accepted by the RP after approval of the resolution plan by the CoC and mere non-approval of the plan by the Adjudicating Authority cannot form a basis for consideration of the appellant's claim. Further, it was held that the Adjudicating Authority had no scope for substituting commercial terms of the approved resolution plan as per Section 31(1) of IBC. In the present case, Clause 6.6 of the approved resolution plan provided specific treatment of delayed claim and the same could not be substituted. It was further noted that permitting delayed claims at this juncture could disrupt financial forecasts and potentially impose undue burdens on legitimate homebuyers who adhered to the stipulated timeline for claim submission.

On the second issue, NCLAT, on examination of the documents submitted by the appellant in support of the transaction between the appellant and the Corporate Debtor, noted that the receipt of the transaction relied on by the appellant did not bear any serial number and was not accounted for in the books of the Corporate Debtor. Further, no proof of actual disbursement was found. Additionally, it was noted that the Unit in question was registered in the name of one Mr. Ashok Kumar Sharma, whose claim has been admitted as a homebuyer. Upon considering these aspects, it was held that the appellant could not be considered a genuine homebuyer. NCLAT in this regard relied on the decision in *Sanjay Jain vs. Nilesh Sharma*[30] wherein unauthenticated forged documents were rejected.

[23] *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10
[24] *Sagufa Ahmed vs. Upper Assam Plywood Products (P) Ltd.,* (2021) 2 SCC 317
[25] *RPS Infrastructure Ltd. vs. Mukul Kumar*, (2023) 10 SCC 718
[26] *Essar Steel vs. Satish Kumar Gupta & Ors,* (2019) SCC OnLine SC 1478
[27] *Swiss Ribbons vs. Union of India & Ors,* (2019) 4 SCC 17
[28] *Shyam Rathod vs. Gopalsamy Ganesh Babu*, 2023 SCC OnLine NCLAT 1701
[29] Company Appeal (AT) (Insolvency) No. 328 of 2021
[30] *Sanjay Jain vs. Nilesh Sharma*, 2021 SCC OnLine NCLAT 3492

Conclusion

NCLAT, in upholding the decision of the NCLT, has reaffirmed the time-bound nature of the CIRP process and the intent of IBC which aim to promote the economic rehabilitation of a corporate debtor. The decision also comes as relief to successful resolution applicants, who often face delays or disruptions due to delayed claims, which can hinder the implementation of an approved resolution plan.

NCLT, Hyderabad (upholding the interests of creditors) permits distribution of surplus funds generated by the corporate debtor during its ongoing CIRP, to its creditors

On August 5, 2024, the NCLT, Hyderabad Bench[31] in the CIRP of KSK Mahanadi Power Company Limited ("**Corporate Debtor**"), has allowed an application filed by the CoC seeking distribution of surplus funds generated by the Corporate Debtor to its creditors, in accordance with Section 53 of IBC[32].

Brief facts

The CoC of the Corporate Debtor sought for interim distribution of surplus funds amounting to INR 8,821 crore (Indian Rupees eight thousand eight hundred and twenty-one crore) (to the extent that these funds were not required for the smooth functioning of the Corporate Debtor as a going concern), placing reliance on Section 28 of the IBC[33] and a previous order of the NCLAT in the IL&FS case[34], wherein NCLAT had directed the interim distribution of funds amounting to INR 16,361 crore[35] on a *pro rata* basis, subject to board approval.

Notable findings

NCLT, while allowing the CoC's application has, *inter alia*, noted that:

1. the CIRP of the Corporate Debtor had extended for a period of nearly 5 (five) years, consequently the moratorium under Section 14 of IBC had also continued for an extended period;
2. for the entire period of the prolonged CIRP, the Corporate Debtor was functioning as a going concern, generating revenue in excess of what was required for its day-to-day functioning;
3. retaining surplus funds in the Corporate Debtor's bank accounts would be in contradiction with IBC's primary objective of promoting credit availability and balancing stakeholder interest;
4. the interim distribution of surplus funds, in terms of Section 53 of IBC, will enable productive utilisation of surplus funds, which are otherwise laying idle;
5. such distribution is contemplated in the Request for Resolution Plan ("**RFRP**") and therefore would not come in the way of resolution plans of Prospective Resolution Applicants ("**PRAs**"); and
6. resolution plans submitted by the PRAs, in compliance with the RFRP will account for cash balances accumulated in the Corporate Debtor's accounts. If these accumulated balances are not distributed in the interim, they would nonetheless be distributed under any resolution plan submitted.

Conclusion

Insolvency jurisprudence in India does not explicitly provide for interim distribution of surplus funds of a corporate debtor during the pendency of CIRP. NCLT's judgement serves as a step forward in upholding creditors' interests. Necessary reliefs for creditors, especially in cases where the CIRP has been prolonged,

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[31] *In the matter of M/s. KSK Mahanadi Power Company Limited; Power Finance Corporation Limited, on behalf of the committee of creditors, vs. Mr. Sumit Binani, Resolution Professional. IA No.1365 of 2024 in CP (IB) No.492/07/HDB/2019*

[32] *Section 53 of IBC - Distribution of Assets which, inter alia, provides for mechanism for distribution of proceeds from the sale of liquidation assets in order of priority specified in Section 53 (1) (a) – (h)*

[33] *Section 28 of IBC - Approval of Committee of Creditors for certain actions outlined in Section 28 (1) (a) – (m)*

[34] Order dated May 31, 2022, in *Union of India v Infrastructure Leasing and Financial Services Ltd. & Ors.* (I.A. No. 586 of 2022 in Company Appeal (AT) No. 346 of 2018

[35] Refer Para 19 of Order dated May 31, 2022 [Interim Distribution - INR 11,296 crore (Indian Rupees eleven thousand two hundred and ninety-six crore) in cash and INR 5,065 crore (Indian Rupees five thousand and sixty-five crore) of InvIT Units].

will consequently increase credit supply in the economy, promoting growth and furthering the objectives of IBC.

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