



This Newsletter covers key Regulatory & Policy Updates, Government Notifications and Judicial Pronouncements.

## REGULATORY & POLICY UPDATES

### **SEBI issued circular on establishment and operation of Online Resolution of Disputes (ODR) Portal for the Indian Securities Market.<sup>1</sup>**

The Securities and Exchange Board of India (“SEBI”) by its circular dated 31.07.2023 (“ODR Circular”) has announced the establishment of a common Online Dispute Resolution Portal (“ODR Portal”) for streamlining the existing dispute resolution mechanism in the Indian Securities Market (“ISM”) under the aegis of Stock Exchanges and Depositories (collectively referred to as Market Infrastructure Institutions (“MIIs”)) to harness online conciliation and online arbitration

for resolution of disputes arising in the ISM in furtherance of the SEBI (Alternate Dispute Resolution Mechanism) (Amendment) Regulations 2023.

ODR Portal is aimed at resolving disputes arising between investors/ clients and listed companies (including their registrar or share transfer agents) or any of the specified intermediaries/ regulated entities in the securities market from the latter’s activities in the securities market. The ODR Circular provides that MIIs in consultation with their empaneled ODR Institutions shall be responsible for establishing and operating a common ODR Portal.

Disputes between institutional or corporate clients and specified intermediaries/regulated entities in securities market

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<sup>1</sup> [SEBI- Online Resolution of Disputes in the Indian Securities Market](#)

as specified can be resolved, at the option of the institutional or corporate clients: (a) in accordance with this Circular; or (b) by any independent institutional mediation, conciliation and/or online arbitration institution in India. Such an option should be exercised within 6 months from the date of the ODR Circular, for existing and continuing contractual arrangements, failing which option (a) above will be deemed to have been exercised. For all new contractual arrangements, such choice should be exercised at the time of entering into such arrangements.

Further, all contractual disputes between MIIs and its constituents shall be included in the framework at a future date as may be specified, while expressly excluding disputes/appeals/reviews/challenges pertaining to regulatory, enforcement role and roles of similar nature played by MIIs.

The ODR Circular further provides detailed guidelines regarding the procedure for initiation of the dispute resolution process on the ODR Portal. An investor/client shall attempt to resolve the dispute directly with the concerned Market Participant. If the grievance is not redressed satisfactorily, the investor/client may escalate the same in accordance with SCORES guidelines through SCORES Portal in accordance with the process applicable. After exhausting these options for resolution of the grievance, if the investor/client is still not satisfied with the outcome, he/she/they can initiate dispute resolution through the ODR Portal.

The ODR Circular further provides for allocation of disputes through the ODR Portal to ODR Institutions and provides guidelines for disputes to be resolved through conciliation and/or arbitration including the procedure to be followed and the schedule of fees.

### [Amendments to the ODR Circular dated 31.07.2023](#)

SEBI by a circular dated 04.08.2023 has issued corrigendum cum amendments to the ODR Circular (“Amending Circular”)<sup>2</sup>. The key changes introduced by the Amending Circular are:

**Deemed Registration of Market Participants:** All listed companies / specified intermediaries / regulated entities in the securities market (“Market Participant(s)”) are required to enrol themselves on the ODR Portal, and they shall be deemed to have been registered at the end of the specified timeline, being 15.08.2023 in the ODR Circular. The enrolment process shall also include execution of electronic terms/agreements with MIIs and ODR Institutions as per the timelines provided under the ODR Circular.

<sup>2</sup> SEBI: Amendments to the ODR Circular

<sup>3</sup> DGFT Notification: Import Restrictions on Laptops, Tablets and Computers

The Amending Circular has expressly provided that the ODR mechanism cannot be initiated when moratorium under the Insolvency and Bankruptcy Code, 2016 (“IBC”) is in operation due to the insolvency process or if liquidation or winding up process has been commenced against the Market Participant.

The Market Participants will now be required to submit 100% (as opposed to 75%, mentioned in the previous version of the Operational Circular) of the admissible claim value at the time of initiating a complaint/ dispute under the conciliation and/or the arbitration proceedings.

## GOVERNMENT NOTIFICATIONS

### **Restrictions imposed on Import of Laptops, Tablets and Computers<sup>3</sup> by Directorate General of Foreign Trade.**

The Directorate General of Foreign Trade (“DGFT”) by a notification dated 03.08.2023 has imposed restrictions on the import of laptops, tablets, all-in-one personal computers and ultra small form factor computers and servers falling under HSN code 8471 and their imports would be allowed only against a valid license for restricted imports, with certain exceptions and clarifications.

Further, by a notification dated 04.08.2023<sup>4</sup>, DGFT notified that these restrictions shall be effective from 01.11.2023 and all the import consignments till 31.10.2023 can be cleared without obtaining a license for restricted imports.

The notification dated 03.08.2023 provides that the import of the said electronics under Baggage Rules shall remain unaffected. This would mean that travellers can still bring in these devices for personal use without the need for a separate import license. Furthermore, for individual purchases, importers are exempt from the licensing requirement for a single unit of laptop, tablet, all-in-one personal computers, or ultra small form factor computer, even if it is purchased from e-commerce portals, through post or courier. However, such imports shall be subject to payment of applicable duty.

Additionally, importers can bring in limited quantities of these items without obtaining an import license. Specifically, up to 20 pieces of each of these electronics per consignment can be imported without a license, provided they are used for research and development, testing, benchmarking and evaluation, repair and re-export, product development

<sup>4</sup> Amendment Notification to the DGFT Notification dated 03.08.2023

purposes. Moreover, the notification also specifies that the requirement for import licensing is waived for repair and return of the said imports and the specified electronics when they serve as an essential part of a capital good.

Importantly, the notification clarifies that laptops, tablets, all-in-one personal computers and ultra small form factor computers and servers which are essential part of a capital good will be exempt from the import licensing requirement.

### Monsoon Session of the Parliament

The Monsoon Session, 2023 of Parliament commenced on 20.07.2023 and ended on 11.08.2023. The session had 17 sittings. During the session, 23 bills were passed by both Houses of Parliament.

Some of the major Bills passed by both Houses includes, the Forest (Conservation) Amendment Bill, 2023, the Digital Personal Data Protection Bill, 2023, the Government of National Capital Territory of Delhi (Amendment) Bill, 2023, the Cinematograph (Amendment) Bill, 2023, the Mines and Minerals (Development and Regulation) Amendment Bill, 2023, the Mediation Bill, 2023, and the Biodiversity (Amendment) Bill, 2023.

*We will be releasing a special edition of the newsletter covering the major bills that were passed by both the Houses during the Monsoon Session of the Parliament.*

### The Digital Personal Data Protection Act, 2023 has been published

The Digital Personal Data Protection Bill, 2023 was passed by Lok Sabha and Rajya Sabha on 07.08.2023 and 09.08.2023 respectively and received Presidential Assent on 11.08.2023. It is India's first legislation that specifically addresses the safeguarding of a citizen's personal data.

The Digital Personal Data Protection Act, 2023 ("DPDP Act") has been published in the Official Gazette. However, it will come into force on such date(s) as specified by the Central Government in this regard. Various aspects relating to the implementation of the DPDP Act will be prescribed in the rules and regulations to be framed thereunder.

The DPDP Act introduces a new framework for protection of digital personal data. The DPDP Act applies to personal data that is collected in digital form or in non-digital form but is digitized subsequently. The DPDP Act introduced in the present form does not apply to: (a) non-digital data; (b) data processed for personal or domestic purposes; and (c) data

made publicly available by data principal or any other person under a legal obligation. However, applicability of the DPDP Act shall extend to personal data outside India only if the processing is in connection with offering of goods and services to data principals within India.

The DPDP Act permits processing of personal data only for a lawful purpose for which a data principal has given consent or for certain specified legitimate uses. The DPDP Act affirms the requirement for clear, unambiguous and affirmative consent for processing of personal data for lawful and specified purposes by data fiduciaries. The data fiduciaries will be obligated to maintain the accuracy of data, keep data secure, and delete data once its purpose has been met. The DPDP Act also provides that individuals shall have the right to correction, completion, updating and erasure of their personal data of which they have previously given consent.

### MoP notified Guidelines for Tariff Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects<sup>5</sup>.

The Ministry of Power ("MoP") by its notification dated 28.07.2023 has notified Guidelines for Tariff-Based Competitive Bidding Process for Procurement of Power from Grid Connected Solar PV Power Projects ("Solar Power Bidding Guidelines") to promote competitive procurement of electricity from Solar PV Power Plants, fulfilment of Renewable Purchase Obligation ("RPO") requirement of distribution companies ("DISCOMs") and provide a transparent, fair, standardized procurement framework for inter-state/intra-state sale-purchase of power generated from solar energy.

Solar Power Bidding Guidelines have been issued for long term procurement of solar power from solar PV projects with or without energy storage through competitive bidding. With notification of Solar Power Bidding Guidelines, erstwhile guidelines issued on 03.08.2017 by MoP are no longer applicable for any tender issued after the issuance of Solar Power Bidding Guidelines. However, projects already awarded/under implementation/ commissioned under erstwhile guidelines will continue to be governed by those guidelines.

### Central Electricity Regulatory Commission notifies the Indian Electricity Grid Code Regulations, 2023.

The Central Electricity Regulatory Commission ("CERC") on 03.08.2023 notified the Central Electricity Regulatory

<sup>5</sup> Guidelines for competitive bidding of solar projects.

Commission (Indian Electricity Grid Code) Regulations, 2023 (“IEGC Regulations”)<sup>6</sup> to be effective from 01.10.2023.

The IEGC Regulations contain provisions regarding the roles, functions and responsibilities of the concerned statutory bodies, generating companies, licensees, and any other person connected with the operation of power systems within the statutory framework envisaged in the Electricity Act, 2003 and the rules and notifications issued by the Central Government.

Further, IEGC Regulations also provide the framework for (a) technical and design criteria for connectivity to the grid including integration of new elements, trial operation and declaration of commercial operation of generating stations and inter-State transmission systems; (b) performance monitoring of the protection systems including protection audit; (c) operational requirements and technical capabilities for secure and reliable grid operation including load generation balance, outage planning and system operation; (d) unit commitment, scheduling and dispatch criteria for physical delivery of electricity; (e) integration of renewables; (f) ancillary services and reserves; and (g) cyber security etc.

### **Central Electricity Regulatory Commission notifies provisions of CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022.**

The CERC on 03.08.2023 notified the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 (“GNA Regulations”) along with the remaining provisions of the Central Electricity Regulatory Commission (Connectivity and General Network Access to the inter-State Transmission System) (First Amendment) Regulations, 2023<sup>7</sup>.

Further, CERC has clarified that scheduling and dispatch of electricity with effect from 01.10.2023 shall be in accordance with provision of CERC (India Electricity Grid Code) Regulations, 2023.

### **The CERC notifies the CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023.**

The CERC on 03.08.2023 notified the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023

(“First Amendment Regulations”) effective from 01.10.2023.<sup>8</sup> The First Amendment Regulations were first published by CERC on 07.02.2023.

The primary objective of the First Amendment Regulations is to promote development of a robust and efficient interstate transmission network while ensuring that the costs associated with it, are borne by all stakeholders in equal proportion. It has been introduced to deal with the key issues that were identified in the implementation of the Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 (“Principal Regulations”).

The First Amendment Regulations have *inter alia* introduced Late Payment Fee on Designated Interstate Transmission System Customers (“DICs”) who fail to pay their bills on time, for cost due under the Principal Regulations. Moreover, it waives the Inter-State Transmission Charges (“ISTS”) charges for renewable energy generating station, renewable hybrid stations and pumped hydroelectric stations that have commenced operation by June 30, 2023. It also provides a comprehensive explanation of the methodology for calculating transmission deviation charges for various entities and outlines the calculation process for a state of designated ISTS customers.

## **JUDICIAL PRONOUNCEMENTS**

### **Supreme Court held that doctrine of res judicata is applicable only on determination which are fundamental and not incidental or collateral.**

The Supreme Court of India in its judgement dated 01.08.2023 in *Yadaiah and Anr. v. State of Telangana & Ors.*<sup>9</sup> has held that only determinations which are fundamental to the dispute would result in the application of the doctrine of res judicata. The issues which are just incidental and collateral and not fundamental would not be covered under the purview of res judicata.

Further, the Supreme Court laid down the test to distinguish between a ‘fundamental issue/ determination’ and ‘collateral issue/ determination’ for the purpose of applying the rule of res judicata. The test is to determine whether the concerned determination was so vital to the decision without which the decision itself cannot stand independently.

<sup>6</sup> CERC (India Electricity Grid Code) Regulations, 2023

<sup>7</sup> GNA Regulations

<sup>8</sup> Notification Notifying CERC (Sharing of Inter-State Transmission Charges and Losses) (First Amendment) Regulations, 2023.

<sup>9</sup> Civil Appeal No. 4835 of 2023.

## High Court of Calcutta sets aside arbitral award as arbitrator appeared as counsel for ‘affiliate company’ of the claimant.

The High Court of Calcutta in its judgement dated 27.07.2023 in *Gopaldas Bagri v. C&E Ltd.*<sup>10</sup> set aside the arbitration award in violation of Section 12 of Arbitration and Conciliation Act, 1996 (“A&C Act”) as the arbitrator had appeared in court for an ‘affiliate company’ of the claimant during the pendency of arbitration proceedings without disclosing such engagement to the other party.

In the instant matter, certain disputes arose between the parties which were referred to arbitration, and parties by consent appointed Mr. X as the arbitrator. However, the arbitrator failed to disclose that he appeared for one of the affiliate companies of the claimant before the court during the pendency of the arbitration.

The Court observed that Section 12(2) of the A&C Act casts a continuous duty on the arbitrator to remain neutral and continue to disclose to the parties any acts or omissions that are likely to fall foul of the mandate under Section 12 of A&C Act, in the course of the arbitration.

## High Court of Allahabad held that the review of matter can be done only on error apparent on the face of it.

The High Court of Allahabad in its judgment dated 31.07.2023 in *M/s Vaid Organics and Chemical Industries Ltd v. State of UP Thru Secy. Deptt. Of Industries*<sup>11</sup> has held that the scope of review application is limited. The court may correct an error apparent on the face of the record, but it cannot correct an erroneous decision.

In the instant case, review application was filed praying for the review of judgement and order dated 22.02.2023 on the grounds that UP Small Industries Development Corporation was not a statutory authority at the time of passing of the order dated 22.02.2023 and the court has wrongly relied on the judgment of the Supreme Court in *ITC Ltd. v State of UP*<sup>12</sup> relating to statutory authority.

The Court held that if an order has been passed by erroneously placing reliance on a judicial precedence, the same can only be corrected by an appellate jurisdiction and not under the review jurisdiction, as the same does not constitute error apparent on the face of record.

<sup>10</sup> Arb. Petition No. 364 of 2020

<sup>11</sup> Civil Misc Review Application No. 41 of 2023

<sup>12</sup> 2011 (7) SCC 493

## NCLT permits Go Air to operate the leased aircrafts

The National Company Law Tribunal (“NCLT”), New Delhi Bench by its order dated 26.07.2023<sup>13</sup> has held that the aircrafts leased to the Go Airlines (“Corporate Debtor”) by lessors come within the definition of ‘Property’ under Section 3(27) of IBC and thus moratorium can be imposed over such leased aircrafts. It also permitted Go Airlines to operate the leased aircrafts to maintain the company’s status as a going concern.

Go Airlines had filed a petition for voluntarily initiation of Corporate Insolvency Resolution Process (“CIRP”) under Section 10 of IBC. The NCLT admitted the petition and initiated CIRP against the Company by an order dated 10.05.2023. Further, petitions were filed by the lessors and owners who had leased their aircrafts contending that the Directorate-General of Civil Aviation (“DGCA”) had not deregistered their aircrafts. Furthermore, interlocutory applications were also filed by the lessors under Section 60(5) of IBC before the NCLT seeking a relief to direct the Company to refrain from operating or flying the aircrafts for commercial use, deputation of an agency or an inspector to conduct inspection of the engines and directing the Resolution Professional (“RP”) of Go Airlines to protect and maintain the aircrafts.

NCLT has held that Section 14 of IBC states that post commencement of CIRP, NCLT is empowered to declare moratorium. Section 14(1)(d) of IBC empowers the NCLT to prohibit recovery of any ‘property’ by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor. The NCLT observed that the DGCA has not deregistered the aircrafts and therefore, it was open for Go Airlines to resume flight operations. Lastly, the NCLT rejected the prayers of the lessors and granted interim relief only to the extent of protection and maintenance of subject aircraft/engines by the RP.

## High Court of Allahabad held that merely because an arbitrator is not eligible for appointment under Section 12 of A&C Act, the entire arbitration agreement will not be invalidated.

The High Court of Allahabad in its judgment dated 04.08.2023 in *M/s Bansal Construction Office v. Yamuna Expressway Industrial Development Authority & Others*<sup>14</sup> has held that the mere ineligibility of the person named in the arbitration agreement by the parties to act as an arbitrator

<sup>13</sup> Company Petition No. (IB) – 264/(PB)/2023

<sup>14</sup> A&C Appl. U/S11(4) No. - 142 of 2019.

pursuant to Section 12 of A&C Act would not invalidate the entire arbitration agreement.

In the instant case, certain disputes arose between the parties and a petition was filed under Section 11(6) of the A&C Act for the appointment of an arbitrator. However, the arbitration agreement stipulated that all disputes would be resolved through arbitration, with the chief executive officer of Yamuna Expressway as the arbitrator, and in case the chief executive officer or its nominee cannot act as arbitrator, parties cannot refer dispute to arbitration.

The Court held that it would not be justified in interpreting the arbitration agreement in a manner which keeps the power of adjudication or party autonomy with one party (Yamuna Expressway) at the cost of abandoning the arbitration. Since the intention of the parties was to refer the dispute to arbitration, the arbitration agreement should be interpreted in such a manner that respects both neutrality and party autonomy.

## **Chhattisgarh State Electricity Regulatory Commission held that public authorities should not take the plea of limitation to deny legitimate claims.**

Chhattisgarh State Electricity Regulatory Commission (“CSERC”) in its judgment dated 07.08.2023 in *M/s Maruti Clean Coal & Power Limited v. Chhattisgarh State Power Distribution Company Limited*<sup>15</sup> has held that legitimate claims cannot be denied by public authorities on technical grounds such as limitation.

In the instant case, M/s Maruti Clean Coal was entitled to reimbursement of electricity duty from Chhattisgarh State Power Distribution Company Limited (“CSPDCL”) as per the terms of Power Purchase Agreement entered between the parties. M/s Maruti Clean Coal wrote to CSPDCL claiming electricity duty from September 2015 till December 2021. However, CSPDCL denied the claim on the ground that the claim of M/s Maruti Clean Coal was barred by limitation.

CSERC held that the Limitation Act, 1963 (“Limitation Act”) is applicable only to the proceedings of the courts and not to the business practices. The Limitation Act does not bar M/s Maruti Clean Coal from raising its claim since the cause of action (which is the time from which limitation period is to be counted) arose only when CSPDCL denied M/s Maruti Clean Coal reimbursement of electricity duty in 2022, not before when no claim had been made.

<sup>15</sup> P. No. 17/2023

<sup>16</sup> OP No. 26/2019.

## **Karnataka State Electricity Regulatory Commission held that a power plant must fulfil the Ownership Criteria and Consumption Criteria to qualify as captive generating plant.**

The Karnataka State Electricity Regulatory Commission (“KEREC”) in its judgement dated 01.08.2023 in *ReNew Wind Energy (AP) Private Limited v. Hubli Electricity Supply Company Limited & Ors.*<sup>16</sup> has held that, for a plant to qualify as captive generating plant (“CGP”), it must fulfill the ‘Ownership Criteria’ i.e., not less than 26% of the shareholding of the company owning the generating plant is held by the captive user(s), and the ‘Consumption Criteria’ i.e., not less than 51% of the aggregate electricity generated in such plant should be consumed by the captive user(s).

In the instant case, the captive status of ReNew Wind Energy (AP) Private Limited (“RWEPL”) was disputed by the DISCOMs for the period FY 2013-14 to FY 2017-18 and several demand notices were issued to it for non-compliance with requirements under Rule 3 of Electricity Rules, 2005.

The KEREC held that the 51% of total generation only has to satisfy the rule of proportionality in consumption and ownership. The rest 49% of the generation could be sold to anyone including grid, DISCOMs and the CGP owners themselves. Therefore, the methodology adopted by the DISCOMs for computing the proportionality by considering the entire energy wheeled to Group Captive Consumers and not on 51% of the total energy generated is not correct. Further, the KEREC held that RWEPL was not a CGP for FY 2013-14 and FY 2015-16 since it did not fulfill the Ownership Criteria and the Consumption Criteria and directed the DISCOMs to recompute the charges for FY 2013-14 and FY 2015-16.

## **NCLAT held that NCLT has the jurisdiction to initiate insolvency proceedings against a personal guarantor even if no insolvency proceedings are pending against the corporate debtor.**

The National Company Law Appellate Tribunal (“NCLAT”) in its judgement dated 01.08.2023 in *Mahendra Kumar Agarwal v. PTC India Financial Services Ltd. & Anr.*<sup>17</sup> has held that insolvency proceedings against a personal guarantor can be initiated before NCLT even when no CIRP is pending against the corporate debtor.

In the instant case, the personal guarantor contended that on conjoint reading of Section 60 and Section 179 of IBC, NCLT has the jurisdiction to initiate insolvency against the corporate

<sup>17</sup> Company Appeal (AT) (CH) (INS) No.8 of 2023.

debtor and not against the personal guarantor however, where insolvency relates to 'personal guarantor/ individual / partnership firm' only the Debt Recovery Tribunal has the jurisdiction. Therefore, NCLT cannot initiate insolvency proceedings against the personal guarantor.

NCLT observed that it is quite clear, that for insolvency resolution and liquidation of personal guarantors, the tribunal has to have the territorial jurisdiction over the place where the registered office of the personal guarantor is located and therefore, the instant case is within the ambit of territorial jurisdiction of the Tribunal.

Further, NCLAT relying on the judgement of Hon'ble Supreme Court in *Lalit Kumar Jain v. Union of India & Ors*,<sup>18</sup> wherein it was held that personal guarantor though forming part of the larger group of individuals, were to be, in view of their intrinsic connection with corporate debtor, dealt with differently, through the same adjudicatory process and by the same forum, held that Tribunal has the jurisdiction to entertain the insolvency proceedings of the personal guarantors even when no CIRP is pending against the corporate debtor and in any event, the CIRP proceeding, is pending, and continued to be pending, against the corporate debtor.

### High Court of Orissa sets aside the arbitral award due to failure on part of Facilitation Council to follow the procedure prescribed under Section 18 of MSMED Act.

The High Court of Orissa in its judgement dated 01.08.2023 in *M/s National Aluminium Company Limited, Bhubaneswar v. M/s Orissa Coal Chem Pvt. Ltd, Cuttack and Ors*.<sup>19</sup> set aside the arbitral award on the grounds of failure on part of the Micro and Small Enterprises Facilitation Council ("MSEFC") to refer the parties to the conciliation despite statutory mandate provided under Section 18(2) of the Micro Small Medium Enterprises Development Act, 2006 ("MSMED Act") and to adjudicate on the application of Section 16 of A&C Act.

In the instant matter, MSEFC without referring the matter for conciliation as required under Section 18(2) of MSMED Act, had passed the final award under Section 18(3) of MSMED Act in favour of one party.

The Court further held that the award passed in pursuance of the arbitration under Section 18(3) of the MSMED Act, can be set aside under Sections 34 and 37 of the A&C Act, if the award is found to be contrary to, (a) fundamental policy of

Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. Therefore, MSEFC committed a grave error in not complying with Section 18(2) of MSMED Act by not referring the dispute for conciliation.

### NCLT held that a stock broking company providing financial services cannot initiate Corporate Insolvency Resolution Process against itself.

The NCLT, New Delhi Bench, ("NCLT") in its judgment dated 02.08.2023 in the matter of *M/s Bezel Stockbrokers Private Limited v Security Exchange Board of India & Anr*.<sup>20</sup> has held that a stock broking company being a 'financial service provider' cannot initiate CIRP against itself under IBC.

In the instant case, Bezel Stockbrokers filed an application under Section 10 of the IBC seeking to initiate CIRP against itself. SEBI opposed the application stating that the applicant is a 'Financial Service Provider' and therefore cannot seek initiation of CIRP as 'Corporate Person' under Section 10 of the IBC.

NCLT noted that as per Sections 7, 9 and 10 of IBC, CIRP can only be initiated against a corporate debtor. Section 3(8) of IBC defines a 'Corporate Debtor' as "a corporate person who owes a debt to any person". Further, the definition of 'Corporate Person' provided under Section 3(7) of IBC excludes 'any financial service provider'. The Bench noted that Bezel Stockbrokers, being a registered stockbroker, was dealing in the activities of buying, selling, or dealing in securities, which in terms of Section 3(15) of IBC are 'Financial Products' belonging to another person. Accordingly, in terms of Section 3(16) of IBC, as the company was providing 'Financial Service' by dealing in 'Financial Products' such as securities, it was a 'Financial Service Provider'. Therefore, as a financial service provider, it would not fall within the purview of "corporate debtor" in terms of Section 3(8) of the IBC, and hence could not initiate CIRP under Section 10 of IBC.

### NCLAT held that petition under Section 9 of the IBC is not maintainable against claim for compensation penalty under a contract.

The Delhi bench of NCLAT, in its judgement dated 07.08.2023 in *Chandrashekhhar Exports Pvt. Ltd. V. Babanraoji Shinde Sugar & Allied Industries Ltd*.<sup>21</sup> held that a petition under Section 9 of IBC is not maintainable against a claim for compensation penalty under a contract. The Bench further held that whether a claim for compensation

<sup>18</sup> (2021) 9 SCC 321

<sup>19</sup> ArbA Nos. 8 and 13 of 2020.

<sup>20</sup> CP(IB) No.251/ND/2021.

<sup>21</sup> Company Appeal (AT) (Ins.) No. 1032 of 2023

penalty has crystallized or not is to be adjudicated by a competent Court and not the Adjudicating Authority.

In the instant case, a petition was filed under Section 9 of the IBC for the unpaid compensation penalty payable by Babanraoji Shinde to Chandrashekar Exports under the terms of the contract between the parties. However, NCLT had dismissed the petition observing that a petition based on a compensation claim under a contract cannot be accepted under Section 9 of the IBC. NCLT had also held that an Operational Debt should be clearly crystallised, uncontested and should not be something which requires adjudication by Adjudicating Authority.

On appeal, NCLAT dismissed the appeal and held that a competent Court would adjudicate on the issue of whether compensation penalty has crystallized or not and NCLT had rightly rejected the petition.

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