# SAGUS SPEAKS

Sagus Legal
Advisors & Advocates

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

## REGULATORY & POLICY UPDATES

### RBI issued directives regarding arrangements with card networks for issuance of Credit Cards.[1]

The Reserve Bank of India ("RBI"), through its circular dated 06.03.2024, has issued directives to authorized payment system providers/ participants (banks and non-banks) regarding arrangements with card networks for issuance of Credit Cards ("RBI Circular").

RBI has now restricted card issuers (bank/non-bank) from entering into exclusive arrangements with authorised card networks while observing that some arrangements existing between card networks and card issuers are not conducive to the availability of choice for customers. Accordingly, RBI issued the following directives:

i. Card issuers shall not enter into any arrangement or agreement with card networks that restrain them from availing the services of other card networks.
ii. Card issuers are required to provide an option to their eligible customers to choose from multiple card networks at the time of issuance of credit cards. For existing cardholders, this option may be provided at the time of the next renewal. The card issuers are required to comply with this obligation six months from the date of this RBI Circular and shall not apply to credit card issuers having less than 10 lakh active cards.
iii. The authorised card networks for the purpose of this RBI Circular are American Express Banking Corp, Diners Club International Ltd., MasterCard Asia/ Pacific Pte. Ltd., National Payments Corporation of India–Rupay and Visa Worldwide Pte. Ltd.

[1] RBI-Arrangements with Card Networks for issue of Credit Card

iv. Card issuers are required to ensure adherence with the above-mentioned requirement in (a) existing agreements at the time of renewal or amendment thereof; and (b) all fresh agreements executed.
v. This RBI Circular shall not apply to card issuers that issue credit cards on their own authorised card networks.

### RBI amends the Master Direction - Credit Card and Debit Card – Issuance and Conduct Directions, 2022.[2]

RBI, through its circular dated 07.03.2024, has amended the Master Direction on Credit Card and Debit Card – Issuance and Conduct Directions, 2022 ("Amendment Circular"). The provisions contained in the Amendment Circular shall come into effect from 07.03.2024. The key highlights of the Amendment Circular are:

i. Business credit cards may be issued to both business entities and individuals for business expenses. However, card issuers are required to put in place appropriate systems to keep track of the end use of funds, with respect to business credit cards.
ii. All credit card holders shall be provided with an option by the card issuers to modify the billing cycle of the credit card at least once.
iii. Banks and NBFCs are not required to take prior approval of the RBI to become a co-branding partner of card issuers.
iv. Card issuers shall be required to provide a list of authorized payment modes for credit card bill payment, on their website and billing statements.
v. Card issuers are required to follow standard operating procedures as approved by their board while deciding to block/deactivate/suspend a debit or credit card. Additionally, they are to ensure that any such event is immediately intimated to the cardholder along with reasons thereof through electronic means and other available modes.

## GOVERNMENT NOTIFICATIONS

### MCA revises the thresholds for notifying and availing exemptions based on assets and turnover of the target company and threshold limits for the purposes of combination filings under Competition Act, 2002.

Ministry of Corporate Affairs ("MCA"), through two separate notifications dated 07.03.2024, has increased (i) the threshold limits for a transaction being notified as a 'combination'; and (ii) the threshold to avail the exemption based on the assets and turnover of the target company ("De Minimis Target Exemption").

According to Section 5 of the Competition Act, 2002 ("Competition Act"), all the transactions that exceed the specified threshold of assets and turnover are considered combinations and the relevant parties to such combinations are required to obtain prior approval from the Competition Commission of India ("**CCI**"). MCA through ***Notification No. S.O. 1130(E)***[3]***,*** increased the existing threshold limits under Section 5 of the Competition Act by 150% (One hundred and fifty percent), on the basis of the wholesale price index and exchange rate. The notification is effective from the date of its publication in the Official Gazette i.e., 07.03.2024. A tabular representation of the amendment is given in the table attached to the present newsletter as Annexure 'A'.

MCA through ***Notification No. S.O. 1131(E)***[4] increased the threshold for De Minimis Target Exemption. The exemption shall now be available to enterprises being parties to combinations under Section 5 of the Competition Act, in cases where the value of the assets being acquired or being taken control of or being merged or amalgamated, of the target enterprise forming a part of a combination are less than INR 450 crores in India, or turnover of the target enterprise forming a part of a combination is less than INR 1250 crores. The existing thresholds were INR 350 crores and INR 1000 crores respectively. The following revised thresholds under the said notification shall be applicable for a period of 2 years from the date of its publication in the Official Gazette i.e., until 07.03.2026. A tabular representation of the revised threshold is given in the table attached to the present newsletter as Annexure 'B'.

### MOP issued Electricity (Late Payment Surcharge and Related Matters) Amendment Rules, 2024.[5]

The Ministry of Power ("MOP") through its notification dated 28.02.2024 issued the Electricity (Late Payment Surcharge and Related Matters) Amendment Rules, 2024 ("LPS Amendment Rules") amending the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 ("LPS Rules"). The highlights of the LPS Amendment Rules are:

i. LPS Amendment Rules now require the distribution licensee to notify its power requisition schedule to the generating companies at least 2 hours before the deadline for proposal or bids in the day ahead market. Generating company can offer the un-requisitioned surplus power to power exchanges.
ii. LPS Amendment Rules provides that if surplus power offered by the generating company is not sold

[2] RBI Amendment to the Master Direction - Credit Card and Debit Card
[3] MCA Notification No. S.O. 1130(E)
[4] MCA Notification No. S.O. 1131(E)
[5] Electricity (Late Payment Surcharge and Related Matters) Amendment Rules, 2024.

in the day-ahead market, it can be offered elsewhere, including the Real Time Market where the price should not exceed 120% of its energy charge as adopted by the Appropriate Commission. The failure on part of generating company to offer surplus power to power exchange will disentitle the generating company to claim capacity or fixed charges on such surplus power.

iii. LPS Amendment Rules provides for regulation of access, for sale and purchase of electricity through short-term electricity contracts or through power exchanges. The National Load Despatch Center in exceptional circumstances of grid security can temporarily review the regulations of access under LPS Rules.

iv. LPS Amendment Rules provides that reduction or withdrawal of access for sale and purchase of electricity through the contracts other than the short-term contracts shall be in such a manner that the quantum of reduction in drawl or injection schedule increases progressively by 10% for each month of default.

v. LPS Amendment Rules further stipulates that on payment of outstanding dues, the regulation of access under the LPS Rules will be lifted within 1 day after the day of payment.

## JUDICIAL PRONOUNCEMENTS

### Supreme Court held that there cannot be an automatic vacation of stay granted by High Courts.

The Supreme Court through its judgment dated 29.02.2024 in the matter of *High Court Bar Association, Allahabad vs State of U.P. v. Ors*[6] overruled its judgement in matter of *Asian Resurfacing of Road Agency Private Limited & Anr. v Central Bureau of Investigation*[7] ("Asian Resurfacing Judgement") where it was held that in cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on the expiry of 6 months from passing of order unless such stay is extended by speaking order of Court which granted the stay.

The Supreme Court while overruling Asian Resurfacing Judgement observed that interim orders of stay come to an end by disposal of the main case by the relevant High Court either upon merits or other reasons or by a judicial order vacating the interim relief passed after hearing the parties. Further, without application of mind, an order of interim stay cannot be vacated only on grounds of lapse of time when the litigant is not responsible for the delay. Moreover, after hearing all the concerned parties when a High Court concludes that a case was made out for grant of stay of proceedings of civil or criminal case, the order of stay cannot stand automatically set aside on expiry of period of 6 months only on ground that the relevant High Court could not hear the main case. Such an approach will be contrary to the principle of fairness.

The Supreme Court further held that directions issued in Asian Resurfacing Judgement were passed in exercise of jurisdiction of Supreme Court under Article 142 of the Constitution of India. However, the jurisdiction of the Supreme Court under Article 142 of the Constitution of India can only be invoked to deal with extraordinary situations for doing complete justice. The jurisdiction under Article 142 of the Constitution of India cannot be invoked to pass blanket orders setting aside the interim orders that have lawfully been passed without even listening to the contesting parties.

### Supreme Court held that parliamentary privileges do not extend to taking bribe for vote/speech in legislature.

The Supreme Court in its judgement dated 04.03.2024 in the matter of *Sita Soren v. Union of India*[8] overruled its judgement dated 23.09.2014 passed in the matter of *PV Narsimha Rao v. State (CBI/SPE)*[9] ("PV Narsimha Rao Judgement").

The Supreme Court in the PV Narsimha Rao Judgement had held that a Member of the Parliament and a Member of a Legislative Assembly enjoys immunity from criminal prosecution for bribery in connection with their speech and votes made in parliament and legislative assemblies under Articles 105 and 194 of Constitution of India.

While overruling PV Narimha Rao Judgement, the Supreme Court has laid down 2 tests that a member of the legislature must fulfil in order to claim immunity under Articles 105 and 194 of Constitution of India, i.e., (1) the privilege claimed has to be tethered to the collective functioning of the house; and (2) its necessity must bear a functional relationship to discharge of essential duties of legislator.

The Supreme Court held that bribery is not immune under Article 105(2) of the Constitution of India, as a member engaging in bribery commits a crime which is unrelated to their ability to vote or make a decision on their vote. This action may bring indignity to the parliament or legislature and may attract prosecution. What it does not attract is the immunity given to Member of Parliament and Member of Legislative Assembly to perform its essential and necessary functions as a member of parliament or legislature.

### Himachal Pradesh High Court declares water cess levied on hydropower generation as unconstitutional.

[6] Criminal Appeal No. 3589 of 2023
[7] (2018) 16 SCC 299
[8] Criminal Appeal No. 451 of 2019
[9] (1998) 4 SCC 626

The High Court of Himachal Pradesh through its order dated 05.03.2024 in the matter of *N.H.P.C. Ltd v. State of H.P and Ors*[10] held that the Himachal Pradesh Water Cess levied under the Hydropower Electricity Generation Act, 2023 ("Hydropower Act") and Hydropower Electricity Generation Rules, 2023 ("Hydropower Rules") is *ultra vires* as the state government is not competent to levy water cess on hydropower generation under the guise of water usage in terms of Articles 246 and 265 of the Constitution of India.

The High Court held that from the preamble and various provisions of the Hydropower Act, it is evident that levy has not been imposed on 'water' but on single inextricable event that is 'water drawn for hydropower generation'. Thus, the cess is sought to be imposed on the 'generation of electricity' as against 'water' and, therefore, it is a misnomer that tax is levied on 'water' and not 'generation of electricity', and, therefore, the levy is not a water tax.

The High Court also observed that since the cess sought to be imposed by the Hydropower Act is not on the 'water drawn' but on the 'generation of electricity', then it is the central government alone which could levy tax on generation of electricity. Thus, the state government does not have legislative competence under Article 246 read with List II in Seventh Schedule of the Constitution of India to enact the Hydropower Act.

Further, the High Court held that under Hydropower Act, the power of fixation of rates of water cess has been delegated to the Government of Himachal Pradesh, i.e., to the executive without any guidance. However, Hydropower Act does not prescribe the value based on which such rates will be applied, nor preamble of the Hydropower Act provides any guidance to the Government of Himachal Pradesh for fixation of rates. Therefore, Hydropower Act by delegating the power to fix levy on Government of Himachal Pradesh without any legislative policy or guidance is unconstitutional.

## Delhi High Court held that a petition under Section 29 of the A&C Act is maintainable only before the passing of the award by arbitral tribunal.

The Delhi High Court through its judgement dated 29.02.2024 in the matter of *National Skill Development Corporation v. Best First Step Education Private Limited*[11] held that a petition filed for extending the mandate of the arbitral tribunal under Section 29A of the Arbitration and Conciliation Act, 1996 ("A&C Act") after passing of the award is not maintainable.

The High Court observed that a petition under Section 29A of A&C Act is maintainable if filed before the award is delivered, even if it is after the expiration of the arbitrator's mandate. However, such a petition becomes non-maintainable if filed after the award is delivered and proceedings for setting aside the award have been instituted. This distinction is essential as a party cannot choose whether or not to seek extension of the mandate after becoming aware of its fate in the arbitration proceedings and facing a challenge to the award on this ground.

## High Court of Bombay held that the NCLT empowered to direct ED to release the attached properties of corporate debtor under Section 32A of the Insolvency and Bankruptcy Code, 2016

The High Court of Bombay in its judgement dated 01.03.2024 in the matter of *Shiv Charan v. Adjudicating Authority*[12] held that pursuant to approval of a resolution plan, the adjudicating authority, i.e., the National Company Law Tribunal ("NCLT") under Section 32A of the Insolvency and Bankruptcy Code, 2016 ("IBC") has the power to direct the Enforcement Directorate ("ED") to release the attached properties of a corporate debtor.

Pursuant to an Enforcement Case Information Report ("ECIR"), ED filed an original complaint which led to attachment proceedings, against the assets of the corporate debtor. Subsequently, corporate insolvency resolution process under the provisions of the IBC was initiated against the corporate debtor and a resolution plan was approved under Section 31 of the IBC. Consequently, NCLT directed ED to release the attached properties of the corporate debtor under Section 32A of the IBC. However, ED refused to release the attached properties of the corporate debtor to the successful resolution applicants.

The High Court held that NCLT had the jurisdiction to direct the ED to release the properties attached, under Section 32A of the IBC. Further, the Court emphasized that Section 32A of the IBC is a non-obstante provision, with the legislative intent being to give primacy to the IBC, 2016 in respect of corporate debtors who qualify for the immunity under Section 32A of the IBC.

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[10] CWP No. 2916/2023
[11] O.M.P. (MISC.) (COMM.) 608/2023
[12] Writ Petition (L) 9943 of 2023

## ANNEXURE A

### THE VALUE OF ASSETS AND TURNOVER AFTER REVISION IS AS UNDER:

| | | Old Threshold | | | Revised Threshold*[13] | | |
|---|---|---|---|---|---|---|---|
| | | **Assets** | | **Turnover** | **Assets** | | **Turnover** |
| **Enterprise Level** | India | INR 2000 crore | OR | INR 6000 crore | INR 2500 crore | OR | INR 7500 crore |
| | In India or Outside India | INR 1000 crore | | INR 3000 crore | INR 1250 crore | | INR 3750 crore |
| **Group Level** | India | INR 8000 crore | | INR 24000 crore | INR 10000 crore | | INR 30000 crore |
| | In India or Outside India | INR 1000 crore | | INR 3000 crore | INR 1250 crore | | INR 3750 crore |

## ANNEXURE B

### DE-MINIMIS EXEMPTION THRESHOLDS:

| **Thresholds** | **Old Threshold** | **Revised Threshold** | | **Old Threshold** | **Revised Threshold** |
|---|---|---|---|---|---|
| | Assets (in India) | Assets (in India) | **OR** | Turnover (in India) | Turnover (in India) |
| **Target** | INR 350 crore | INR 450 crore | | INR 1000 crore | INR 1250 crore |

[13] As per the revised threshold, the increase in value is 150% over the original value under Section 5 of the Competition Act, 2002.

## ABOUT SAGUS LEGAL

Sagus Legal is a full-service law firm that provides comprehensive legal advisory and advocacy services across multiple practice areas. We are skilled in assisting businesses spanning from start-ups to large business conglomerates including Navratna PSUs, in successfully navigating the complex legal and regulatory landscape of India. Our corporate and M&A, dispute resolution, energy, infrastructure, banking & finance, and insolvency & restructuring practices are ranked by several domestic and international publications. We also have an emerging privacy and technology law practice.

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