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

REGULATORY & POLICY UPDATES

SEBI grants relaxations to certain FPIs from additional disclosure requirements[1].

Securities Exchange Board of India ("SEBI") through its circular dated 20.03.2024 ("FPI Amendment Circular") has made certain amendments to Circular No. SEBI/HO/AFD/-PoD-2/CIR/P/2023/148 dated 24.08.2023 ("FPI Circular"). The FPI Circular mandated certain additional disclosures for Foreign Portfolio Investors ("FPIs") that qualified the objective criteria listed thereunder. This FPI Amendment Circular has come into effect from 20.03.2024.

SEBI through the FPI Amendment Circular, has decided that in addition to the FPI's exempted under Para 8 of the FPI Circular from making additional disclosures as required under Para 7 of the FPI Circular, an FPI having more than 50% of its Indian equity AUM (assets under management) in a corporate group shall not be required to make additional disclosures as provided under Para 7 of the FPI Circular, subject to compliances with the conditions provided below:

i. The apex company of such a corporate group has no identified promoter. For this purpose, the depositories shall make the list of corporate groups based on the corporate repository published by the stock exchanges and their respective apex companies having no identified promoters public.

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

iii. The composite holding of all such FPIs (that meet the above-mentioned 50% concentration exemption

[1] SEBI FPI Amendment Circular 20.03.2024.

criteria excluding the FPIs that are either exempted or have been disclosed) in the apex company is less than 3% of the total equity share capital of the apex company.

iv. The depositories and custodians shall be responsible for tracking the utilisation of the above-mentioned 3% limit for the apex companies at the end of each day. Upon breach of the said limit, the depositories shall be required to make the information public before the start of trading the next day.

Consequently, any prospective investments in the apex company by the FPIs (that meet the above-mentioned 50% concentration criteria in the corporate group) shall be required to either re-align their investments below the 50% threshold within 10 trading days or make the relevant additional disclosures as required under the FPI Circular, provided further that no such requirement for additional disclosures shall be applicable to FPIs unless the 3% cumulative limit for the apex company continues to be met through the said period of 10 trading days.

RBI issues an omnibus framework for recognizing SROs for REs[2].

The Reserve Bank of India ("RBI") on 21.03.2024 issued an omnibus framework for recognising the Self-Regulatory Organisations ("SROs") for the Regulated Entities ("REs") of RBI ("SRO Framework").

The overview of the SRO Framework broadly is as follows:

i. Characteristics: SROs are expected to operate with credibility, objectivity and responsibility under the oversight of the regulators to improve regulatory compliance for healthy and sustainable development of the relevant sector said SROs are catering to. SROs should have derived sufficient authority from their membership agreements to set ethical, professional and governance standards and to enforce these standards on its members (i.e. REs that accept the membership of the SROs) and develop standards for improving compliances and adherence by members to the rules and regulations framed by RBI.

ii. Objectives of SRO: SROs are expected to adhere to a set of overarching objectives for the betterment of the sector they represent, foster advancement and address critical industry concerns within the broader financial system for steering the sector towards professionalism, compliance, innovation and ethical conduct. Further, they shall act as the collective voice of their members while engaging with RBI, government authorities or other regulatory and statutory bodies. SROs shall be required to share relevant sector-specific information to the RBI to aid in policymaking.

iii. Responsibilities of the SROs: The primary responsibility of the SROs towards its members shall be to promote best business practices. SROs shall aim to protect the interests of the customers/ depositors in the best interests of their members.

iv. Eligibility criteria: The entities intending to function as an SRO should fulfil the eligibility criteria including but not limited to the following in order to ensure the independence and integrity of the SROs and to ensure that the SRO delivers on its objectives and responsibilities: (a) applicant should be set up as not-for-profit companies registered under Section 8 of the Companies Act, 2013; (b) applicant must have the adequate net worth to fulfil responsibilities of SRO; (c) applicant shall have the specified membership or shall have the roadmap for attaining the specified membership and (d) applicant shall have sufficiently diversified shareholding with no entity holding more than 10% of its paid-up share capital, either singly or acting in concert. Further, the applicants should have directors having the relevant professional competence and a reputation of fairness and integrity to be established to the satisfaction of the RBI.

v. Governance: SROs shall operate with transparency, professionalism, confidence and in compliance with the highest standards of governance. Accordingly, SROs are required to be professionally managed and suitable provisions in their articles of association / bye-laws should be incorporated to ensure this. The directors of the SRO should fulfil the 'fit and proper' criteria as framed by the board of the SRO on an ongoing basis and have relevant expertise/ experience and should be persons of the highest integrity.

RBI relaxes AIF investment norms for lenders[3].

The RBI through its notification dated 27.03.2024 ("AIF Amendment Notification") has provided certain relaxations to lenders investing in alternative investment funds ("AIFs").

RBI through its circular dated 19.12.2023 had tightened the norms with respect to investments by REs in AIFs ("AIF Circular"). RBI has issued the following clarifications and revisions with respect to the AIF Circular to address the concerns raised by the stakeholders and with a view to ensure uniformity in the implementation of the AIF Circular amongst the REs:

i. The AIF Circular barred REs from making investments in any AIF scheme that has 'downstream investments' either directly or indirectly in a debtor company of the

[2] RBI SRO Framework 21.03.2024.

[3] RBI AIF Amendment Notification 27.03.2024.

RE. RBI through the AIF Amendment Notification has clarified that such 'downstream investments' shall exclude investments in equity shares of the debtor company of the RE and shall include all other investments, including investment in hybrid instruments.

ii. The AIF Circular required the REs to make 100 percent provisioning for investments which the REs were not able to liquidate within the prescribed timeline under the AIF Circular. The AIF Amendment Notification clarifies that such provisioning norm shall be required only to the extent of investment by the RE in the AIF scheme which is further invested by the AIF in the debtor company and not on the entire investment of the RE in the AIF scheme.

iii. Under paragraph 3 of the AIF Circular, REs investing in the subordinated units of any AIF with a priority distribution model were subject to full deduction from REs capital funds. The AIF Amendment Notification clarifies that paragraph 3 of the AIF Circular shall only be applicable in cases where the AIF does not have any downstream investment in the debtor company of the RE. In case the RE has an investment in subordinated units of an AIF, which also has a downstream investment in the debtor company, then such RE shall be required to comply with the directions provided under paragraph 2 of the AIF Circular.

iv. Investments by REs in AIFs through intermediaries such as fund of funds or mutual funds, are not within the scope of this AIF Circular.

GOVERNMENT NOTIFICATIONS

MOP issued the Electricity (Third Amendment) Rules, 2024[4].

The Ministry of Power ("MOP") through its notification dated 12.03.2024 issued Electricity (Third Amendment) Rules, 2024 ("Amendment Rules") for amendment of Rule 19(1)(a) of the Electricity Rules, 2005 ("Electricity Rules").

The erstwhile, Rule 19(1)(a) of the Electricity Rules provided that there shall be a different central pool for each of the sectors of the renewable energy sources for a duration of five years. Upon expiry of said five years, a new central pool was to be created.

The amended Rule 19(1)(a) of the Rules now provides that the Central Government may, by order, form distinct central pools for different categories of renewable energy sources for a period of three years from the date provided in such order.

MHI has notified the Electric Mobility Promotion Scheme 2024[5].

The Ministry of Heavy Industries ("MHI") through notification S.O. 1334(E) dated 13.03.2024 has notified the Electric Mobility Promotion Scheme 2024 ("EMP Scheme").

The EMP Scheme has an outlay of INR 500 Crores and shall be implemented over a period of 4 months with effect from 01.04.2024 till 31.07.2024 for faster adoption of electric two-wheeler ("e-2W") and electric three-wheeler ("e-3W") to provide further impetus to the green mobility and development of electric vehicle (EV) manufacturing eco-system in the country. The salient features of the EMP Scheme are as follows:

i. Components of the Scheme: The EMP Scheme shall be implemented through the following components: (i) subsidies by providing demand incentives for e-2W and e-3W; and (ii) administration of the EMP Scheme including IEC (information, education and communication) activities and fee for Project Management Agency ("PMA"). MHI shall be the relevant nodal Ministry for the purposes of planning, implementing and reviewing the EMP Scheme including addressing issues related to the EMP Scheme and removal of difficulties in the implementation of the EMP Scheme.

ii. The break-up of the fund allocation and maximum number of vehicles to be supported sub-component-wise, during the EMP Scheme's duration shall be as provided in Annexure A hereunder.

iii. Constitution of an inter-ministerial empowered committee viz. Project Management and Sanctioning Committee to be headed by the secretary of MHI for overall monitoring, sanctioning and implementation of the EMP Scheme as well as to remove any obstacles/ difficulties arising in the implementation of the EMP Scheme and shall have the authority for changing *inter-se* allocation among e-2W/e-3W.

iv. Eligibility: All vehicles that are registered as 'Motor Vehicle' as per the Central Motor Vehicle Rules, 1989 shall be eligible to the incentives provided under this EMP Scheme. Further, only vehicles with ex-factory price lesser than a particular threshold value, as more particularly provided under Annexure IV of the EMP Scheme shall be able to claim the incentives, for restricting very high-end vehicles from availing the incentives.

v. Demand Incentive: Original equipment manufacturers ("OEMs") shall be reimbursed by the

[4] Electricity (Third Amendment) Rules, 2024.
5 MHI EMP Scheme 13.03.2024.

Government of India for the demand incentives made available to consumers in the form of an upfront reduced purchase price of the vehicles which will be based on battery capacity (i.e. energy content measured in kWh) used in such vehicles. The categories of vehicles eligible for the demand incentives are e-2W and e-3W including registered e-rickshaws and e-carts.

vi. OEMs are required to be registered with MHI to avail the demand incentives and each of their EV models shall be required to be approved by MHI post such registration. Such approval of EVs shall be based upon criteria' as more particularly elaborated under the EMP Scheme.

MEITY notifies the PIB's Fact Check Unit under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[6].

The Ministry of Electronics and Information Technology ("MEITY") through its notification S.O.1491(E) dated 20.03.2024 has notified the Fact Check Unit ("FCU") under the Press Information Bureau ("PIB") of the Ministry of Information and Broadcasting ("MIB") as the fact check unit of the central government ("FCU Notification") for the purposes of the said sub-clause, in respect of any business of the central government.

The FCU Notification has been made under sub-clause (v) of clause (b) of sub-rule (1) of Rule 3 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules"). The FCU was established under PIB in November 2019 with the objective of acting as a deterrent to creators and disseminators of fake news and misinformation.

The Hon'ble Supreme Court through its order dated 21.03.2024 in the matter of *Kunal Kamra v. Union of India* [7]and batch matters, has stayed the FCU Notification till the Bombay High Court decides upon the constitutional validity of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that a company falls within the definition of 'person' under the Consumer Protection Act, 1986.

The Supreme Court through its judgement dated 20.03.2024 in the matter of *M/s. Kozyflex Mattresses Private Limited v. SBI General Insurance Company Limited and Anr*.[8] held that a company falls within the definition of 'person' under the Consumer Protection Act, 1986 ("CPA 1986").

The Supreme Court observed that the definition of 'person' under the CPA 1986 is inclusive and not exhaustive. CPA 1986 is a beneficial legislation therefore a liberal interpretation has to be given to the statute. Further, under the Consumer Protection Act, 2019, a body corporate is brought within the definition of 'person' indicating that the legislature realized the incongruity in the unamended provision of CPA 1986 and has rectified it by including the word company under the definition of person.

Supreme Court held that merely because a person is director of a company, it is not necessary that he is aware of the day-to-day functioning of company.

The Hon'ble Supreme Court through its judgment dated 15.03.2024 in the matter of *Susela Padmavathy Amma v. Bharti Airtel Ltd.*,[9] held that merely because a person is a director of a company, it is not necessary that he is aware of the day-to-day functioning of the company.

The Supreme Court held that there is no universal rule that a director of a company is in charge of its everyday affairs. Therefore, it is necessary to aver as to how the director of the company was in charge of the day-to-day affairs of the company.

Furthermore, the Supreme Court also clarified that the position of managing director or a joint managing director in a company may be different as the designation of their office suggests, they are in charge of a company and are responsible for the conduct of the business of the company. To escape liability, they will have to prove that when the offence was committed, they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence.

High Court of Delhi held that while the forensic audit report may serve as corroborative evidence for determining an individual as a 'wilful defaulter', it cannot be the sole basis for it.

The High Court of Delhi through its judgement dated 29.02.2024 in the matter of *Ratul Puri v. Punjab National Bank*[10] held that findings in a forensic audit report cannot be the sole premise to declare an event of wilful default of the borrower by the lender banks.

In the present case, the High Court held that declaring a person as a 'wilful defaulter' only on the basis of a forensic report without there being an independent application of mind is not

[6] MEITY FCU Notification 20.03.2024.
[7] SLP(Civil) No. 6871-6873 of 2024.
[8] Civil Appeal No(s). 7966 of 2022.
[9] Special Leave Petition (Criminal) No. 12390-12391 of 2022.
[10] WP (C) No. 9491 of 2023 & CM APPL. 36246/2023.

in consonance with the provisions of Master Circular on Wilful Defaulter ("Master Circular").

Further, the High Court held that the identification of a 'wilful defaulter' has to be made while keeping in view the track record of the borrower and not on the basis of isolated transactions or incidents. As per the Master Circular, to categorize an individual as a 'wilful defaulter', banks must autonomously ascertain that the act of 'wilful default' is "intentional, deliberate, and calculated," and such determination must be grounded in objective facts and circumstances of the case. While the forensic audit report may serve as corroborative evidence for this determination, it cannot be the sole basis for it.

High Court of Delhi held that requirement of membership of an arbitral institution cannot be a pre-condition to invoke arbitration.

The High Court of Delhi through its judgement dated 22.03.2024 in the matter of *Rani Constructions Pvt. Ltd v. Union of India*[11] held that an arbitration agreement under which the parties agree to conduct arbitration as per the rules of a particular arbitral institution, cannot be subsumed within it, an additional obligation to become members of that arbitral institution.

In the present case, the dispute resolution clause of the contract executed between the parties required arbitration to be settled as per the arbitration rules of the Society for Affordable Redressal of Disputes ("SAROD") and Rule 4.4 of SAROD Arbitration Rules required the parties to be a member of SAROD to invoke arbitration. Upon disputes arising between the parties, Rani Constructions Pvt. Ltd. ("Rani Constructions") proposed the adjudication of the disputes as per the Arbitration and Conciliation Act, 1986 ("A&C Act") it could not invoke the arbitration under SAROD as it was not a primary member of SAROD.

The High Court held that becoming a member of an arbitral institution, carries with it additional obligations which has nothing to do with the agreement between the parties to arbitrate. Such an obligation cannot be insisted on as a pre-requisite for taking recourse to arbitration.

Further, the High Court also observed that insistence on the part of SAROD that the parties must take membership of SAROD as a pre-condition for taking necessary steps to constitute an arbitral tribunal as per its rules impinges on the validity of the appointment procedure, amounts to failure to perform the function entrusted to the concerned institute under the procedure agreed by the parties, and as a consequence High Court can exercise powers provided under Section 11(6)(C) of A&C Act.

NCLAT held that there can be no substitution of the resolution applicant after the approval of the resolution plan.

The National Company Law Appellate Tribunal, Principal Bench, New Delhi ("NCLAT") through its judgement dated 01.03.2024 in the matter of *UV Asset Reconstruction Company Ltd. & Anr. v. Aircel Ltd. through its Monitoring Committee*[12], held that a new resolution applicant cannot be brought in nor can be substituted with another resolution applicant after approval of resolution plan.

In the present case, the Committee of Creditors of Aircel Ltd. and NCLT approved the resolution plan submitted by UV Asset Reconstruction Company Ltd ("Successful Resolution Applicant"). However, after the approval of resolution plan, RBI issued a circular that provided that an asset reconstruction company cannot be a resolution applicant unless it achieves a certain net worth. As the Successful Resolution Applicant failed to meet these requirements it sought to be substituted with another entity. The NCLT rejected the application of the Successful Resolution Applicant, leading to an appeal before the NCLAT.

NCLAT held that once the resolution plan has been approved by the Committee of Creditors and NCLT, a new resolution applicant cannot be brought in nor can it be substituted with another resolution applicant.

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[11] ARB.P. 1011/2023.

[12] Company Appeal (AT) (Insolvency) No. 333 of 2023.

ANNEXURE A

S.No.	Component/Category of Vehicle	Maximum number of EVs to be supported	Total Outlay (INR Crore)
1.	e-2W	3,33,387	333.39
2.	e-3W: e-Rickshaw/e-cart	13,590	33.97
3.	e-3w: L5	25,238	126.19
4.	Administrative Expenses	-	6.45
	Total for above	**3,72,215**	**500.00**

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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