



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

## REGULATORY & POLICY UPDATES

### **SEBI notified circular granting relaxations to the participants of the securities market for facilitating ease of doing investments.**

Securities and Exchange Board of India (“SEBI”) through its circular dated 10.06.2024<sup>1</sup> (“Circular”) granted certain relaxations to the participants of the securities market for facilitating ease of doing investments. The key highlights of the Circular are as follows:

(i) Non-submission of ‘choice of nomination’ by existing investors/ unitholders will not result in the freezing of their existing demat accounts and mutual fund folios.

Previously, SEBI had mandated existing investors/ unitholders of demat accounts and mutual fund folios to submit ‘choice of nomination’ by 30.06.2024, failing which such demat accounts and mutual fund folios were to be frozen for debit.

(ii) Securities holders’ holding securities in physical form will be eligible to (a) receive any payments including dividend, interest or redemption payment; (b) lodge grievances or avail any service requests from the Registrar to an issue and Share Transfer Agents’ (“RTAs”). Further, the listed companies/ RTAs shall process payments including dividend, interest or redemption payment that are currently withheld by them due to non-submission of ‘choice of nomination’. However, the requirement for all new investors/

<sup>1</sup> SEBI Circular for Ease of Doing Investments

unitholders to provide the 'Choice of Nomination' for demat accounts/ mutual fund folios (except for jointly held demat accounts and mutual fund folios) will continue.

- (iii) The depository and depository participants while logging into the demat account and the Asset Management Companies ("AMCs") (including mutual fund, RTAs, and other platforms providing online execution services) shall provide pop-up reminders on their web/ mobile application/ platform encouraging existing securities holders to provide 'choice of nomination' in the prescribed format and the above entities are required to comply with the said requirement w.e.f. 01.10.2024.

## SEBI notified SEBI Foreign Portfolio Investors (Amendment) Regulations, 2024.

SEBI through its notification dated 31.05.2024 notified the SEBI Foreign Portfolio Investors (Amendment) Regulations, 2024<sup>2</sup> ("FPI Amendment Regulations") amending the SEBI Foreign Portfolio Investors Regulations, 2019 ("Principal FPI Regulations"). The FPI Amendment Regulations came into force on the date of their publication in the Official Gazette, i.e. 03.06.2024. The key highlights of the FPI Amendment Regulations are as follows:

- (i) A new Regulation 7(6) has been introduced which deals with payment of registration fees by the Foreign Portfolio Investors ("FPIs") as prescribed under the Principal FPI Regulations for every block of 3 three years and such payment of registration fees has to be made before the beginning of each block. The proviso further provides the FPI with an additional 30 (thirty) days period from the expiry of the above timeline for payment of registration fees along with payment of late fees as prescribed under Part A of the Second Schedule of the Principal FPI Regulations pursuant to which FPIs shall be considered to have paid such registration fees. Further, on failure of the FPIs to pay the registration fee as per the prescribed timelines above, FPIs will be required to sell their securities or derivatives in India within 360 days from the expiry of the above timeline.
- (ii) Regulation 7(8) has been inserted to provide that FPIs shall deemed to have written off the securities in the manner as provided by SEBI on its failure to pay registration fees and not selling off its securities in the prescribed manner.

## SEBI issued framework for providing flexibility to FPIs in dealing with their securities post expiry of their registration.

SEBI has notified circular dated 05.06.2024<sup>3</sup> ("FPI Circular 1") for amending the provisions of the Master Circular for Foreign Portfolio Investors, Designated Depository Participants and eligible Foreign Portfolio Investors dated 30.05.2024 ("FPI Master Circular") and for providing a framework to FPIs in dealing with their securities post the expiration of their registration, pursuant to the amendments to the Principal FPI Regulations through the FPI Amendment Regulations. The key highlights of the FPI Circular 1 are as follows:

- (i) FPIs shall be required to dispose of the securities held in their account within 180 days from the expiry of the 30-days period for reactivation of registration. It is further clarified that until the expiry of the above 180 days period, the monetary/ non-monetary corporate benefits/ voting rights with respect to the securities held by such FPIs shall continue to accrue to such FPIs.
- (ii) If FPIs continue to hold securities post the expiry of 180 days, such FPIs shall be allowed to dispose of their securities within an additional time period of 180 days subject to a financial disincentive of 5% of the sale proceeds from the disposed off securities, which shall be deducted by the custodian of the FPI. The custodian of the FPI is required to remit such amounts deducted as financial disincentive to the Investor Protection and Education Fund created by SEBI within 30 days from the date of deduction of the same. Furthermore, securities that remain unsold post the expiry of the additional 180 days period shall be deemed to have been compulsorily written off by such FPI and the FPI shall lose all beneficial interest including voting rights or any benefits arising from any corporate action, in such securities.
- (iii) The FPI Circular 1 further provides the procedure for dealing with such written off securities.

## SEBI notified circular for disclosure of material changes and other obligations for FPIs.

SEBI through its circular dated 05.06.2024<sup>4</sup> ("FPI Circular 2") has modified certain provisions of the FPI Master Circular pertaining to timelines for disclosure of certain material changes/ events by the FPIs pursuant to the amendments to the Principal FPI Regulations through the FPI Amendment Regulations.

The FPI Circular 2 has categorized any change in material information previously furnished by the FPI into two groups, i.e.

<sup>2</sup> SEBI Foreign Portfolio Investors (Amendment) Regulations, 2024

<sup>3</sup> Foreign Portfolio Investor Circular 1

<sup>4</sup> Foreign Portfolio Investor Circular 2

– Type I and Type II. The first group includes critical material changes that render the FPI ineligible for registration or requires the FPI to seek fresh registration or renders the FPI ineligible to make fresh purchase of securities or impacts any privileges of the FPI available or granted to it or impacts any exemptions available or granted to the FPI. For such critical changes in material information, the relevant FPIs are required to notify the changes within 7 working days and provide supporting documents within 30 days of such change. For group two matters that are not as critical as the first group, FPIs are required to notify SEBI within 30 days of such change along with the supporting documents.

## RBI allows overseas investment in instruments issued by investment funds.

The Reserve Bank of India (“RBI”) through its notification dated 07.06.2024 (“OI Amendment Notification”) amended the Foreign Exchange Management (Overseas Investment) Directions, 2022<sup>5</sup> (“OI Directions”). The key highlights of OI Amendment Notification are as follows:

- (i) Para 1(ix)(e) of the OI Directions has been amended. Prior to the amendment, Para 1 (ix) (e) of OI Directions provided that an Overseas Portfolio Investment (“OPI”) could only be made in units of any investment fund overseas regulated by the regulator in the financial sector of the host jurisdiction. The OI Directions pursuant to the OI Amendment Notification now permits investment by listed companies and resident individuals in jurisdictions other than International Financial Services Centre (“IFSC”) and can be made in any other instrument issued by an investment fund overseas. Further, pursuant to the OI Amendment Notification, unlisted entities are permitted to make investments in units, or any other instruments issued by an investment fund or vehicle in IFSC jurisdictions only.
- (ii) Para 24 of the OI Directions has been amended to provide that investment (including sponsor contribution) in units or any other instrument (by whatever name called) issued by an investment fund or vehicle set up in an IFSC by a person resident in India, being an Indian entity or a resident individual shall be categorized as OPI. Accordingly, unlisted entities are now permitted to make investments in units, or any other instruments issued by an investment fund or vehicle in IFSC jurisdictions only.

<sup>5</sup> Overseas Investment Directions

<sup>6</sup> MNRE Office Memorandum on exemption from RLMM

## GOVERNMENT NOTIFICATIONS

### **MNRE granted exemption to renewable energy plants located inside SEZ or EOU from Revised List of Models and Manufactures for wind turbine models.**

Ministry of New and Renewable Energy (“MNRE”) through office memorandum dated 27.05.2024<sup>6</sup> granted exemption to renewable energy plants located inside a Special Economic Zone (“SEZ”) or Export Oriented Unit (“EOU”) and supplying power exclusively for production plants of green hydrogen (or its derivatives), which are located inside an SEZ or set up as an EOU (either same or different SEZ/ EOU) from the purview of Revised List of Models and Manufactures for Wind Turbine Models. Notably, the exemption will be applicable on all renewable energy plants that satisfy the above criteria and are commissioned by 31.12.2030.

### **MNRE constituted Mission Directorate for implementation of PM Surya Ghar: Muft Bijli Yojana.**

MNRE by its office memorandum dated 29.05.2024 (“MBY OM”) constituted Mission Directorate for implementation of PM Surya Ghar: Muft Bijli Yojana<sup>7</sup> (“MBY Scheme”) with an aim to install rooftop solar plants in one crore households with a total budget of Rs. 75,021 crores. The terms of reference and role of mission directorate *inter alia* includes:

- (i) The Mission Directorate will oversee day-to-day operations and work towards the implementation of the MBY Scheme.
- (ii) The Mission Directorate will be headed by a Mission Director who will be a Joint Secretary to the Government of India and will be in-charge of the Rooftop Solar Division.
- (iii) The Rooftop Solar Division will operate as per the directions of the Mission Directorate and assist the Mission Director in implementation of the MBY Scheme.
- (iv) The National Programme Implementation Agency (“NPIA”) constituted for the MBY Scheme will operate as per the directions of the Mission Directorate.
- (v) The Mission Directorate will be responsible for issuance of various schemes & guidelines, coordination with stakeholders including the state implementing agencies, issuance of directions, advisories, recommendations to NPIA, issuance of detailed process documents, sanction orders, etc.

<sup>7</sup> MNRE Office Memorandum on constitution of Mission Directorate

## JUDICIAL PRONOUNCEMENTS

### **High Court of Madhya Pradesh held that HFCs can recover loan amount under SARFAESI Act, 2002 irrespective of the loan borrowings falling below the threshold of Rupees Twenty Lakhs.**

The High Court of Madhya Pradesh, Indore Bench by its order dated 22.05.2024 in the matter of *Virendra Rathore v. Tehsildar Distt. Mandsaur*<sup>8</sup> held that Housing Finance Company (“HFCs”) can recover loan amount under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”) even if the threshold limit is less than Rs. 20 lakhs.

The Court dismissed the petition and observed that HFCs are regulated separately under the National Housing Bank Act, 1987 (“NHB Act”) and notifications under NHB Act take precedence over general provisions for Non-Banking Financial Companies (“NBFCs”) under the Reserve Bank of India Act, 1934 (“RBI Act”). Further, the Court stated that while HFCs may perform similar functions to that of NBFCs, however, their regulatory framework under the NHB Act remains distinct and specialized. Thus, HFCs do not automatically fall under the general provisions of the RBI Act applicable to NBFCs, without explicit provision in this regard. The Court concluded that the classification and regulation of HFCs must adhere to the NHB Act, with central government notifications determining their applicability under SARFAESI Act. The notifications meant for NBFCs automatically do not apply to HFCs.

### **High Court of Delhi held that banks cannot use lookout circular as an arm-twisting tactic to recover unpaid debt from a defaulter.**

The High Court of Delhi by its judgement dated 28.05.2024 in the matter of *Rajesh Kumar Mehta v. Union of India & Ors.*<sup>9</sup>, held that banks cannot issue Lookout Circular (“LOC”) as a debt recovery tactic to recover unpaid debt from a defaulter who is unable repay, particularly when there are no allegations of fraud, misappropriation, or misuse of loan funds.

The Court examined whether the LOC issued against default in payment should be sustained or quashed and observed that the right to travel abroad, guaranteed under Article 21 of the Constitution of India cannot be arbitrarily and illegally restricted. The Court referred to the office memorandums issued by the Ministry of Finance and the Ministry of Home Affairs and observed that LOC can be issued at the request of heads of

public sector bank in exceptional cases, if deemed necessary for the country’s economic interests.

The Court held that after exhausting remedies under the Recovery of Debts and Bankruptcy Act, 1993 (“RDB Act”), SARFAESI Act, and Insolvency and Bankruptcy Code, 2016 (“IBC”), banks cannot use LOC to coerce repayment of debt from a person who is unable to repay, especially without allegations of fraud or misappropriation.

### **NCLAT, Chennai held that compulsory convertible debentures that do not contemplate repayment of the principal amount and compulsorily lead to conversion into equity shares are an equity instrument and do not qualify as ‘financial debt’.**

The National Company Law Appellate Tribunal, Chennai (“NCLAT”) by its judgment dated 22.05.2024 in the matter of *Shubham Corporation Private Limited v. Mr. Kotoju Vasudeva Rao (IRP) and Ors.*<sup>10</sup> held that compulsory convertible debentures which do not entail a repayment obligation and are compulsorily converted into equity shares constitute an equity instrument and cannot be regarded as ‘financial debt’.

NCLAT observed that a convertible debenture can be classified as ‘debt’ or ‘equity’ depending on its repayment obligations. If the terms stipulate repayment of the principal amount, it qualifies as a debt instrument. However, if convertible debentures mandates conversion into equity shares without repayment, it is considered an equity instrument.

NCLAT further observed that since there is neither any obligation on the corporate debtor for repayment of debt nor there is any clause providing an option other than conversion of debentures into shares, the compulsorily convertible debentures are in the nature of equity instruments, and therefore cannot be considered as a financial debt.

### **APTEL held that a party is entitled to liquidated damages when a PPA is terminated due to failure to comply with the ‘conditions subsequent’.**

The Appellate Tribunal for Electricity (“APTEL”) by its judgement dated 30.05.2024 in the matter of *Maharashtra State Electricity Distribution Co. Ltd. v. Maharashtra Electricity Regulatory Commission & Anr.*<sup>11</sup> set aside the order passed by Maharashtra Electricity Regulatory Commission (“MERC”) on the grounds that the order did not align with the contractual and legal framework provided under the Power Purchase Agreement (“PPA”).

<sup>8</sup> W.P. No. 3745 of 2024

<sup>9</sup> W.P. (C) No. 11707 of 2022

<sup>10</sup> CA(AT)(Ins.) No. 163 of 2023

<sup>11</sup> Appeal No. 161 of 2018

APTEL allowed the appeal entitling the Maharashtra State Electricity Distribution Co. Ltd. (“MSEDCL”) to claim liquidated damages from Lanco Vidarbha Thermal Power Limited (“LVTPL”) to the extent the same was not covered under the bank guarantee amount.

APTEL noted that the PPA provided for termination in the event of failure to meet the condition subsequent and that the deferment of Schedule Commercial Operation Date (“SCOD”) was not due to any event of default by MSEDCL.

Further, APTEL observed that in terms of the PPA, LVTPL could have avoided liquidated damages by sourcing contracted capacity from other providers. However, the lack of effort by LVTPL highlighted its failure to mitigate the consequences of delay, thus entitling MSEDCL to liquidated damages in terms of the PPA.

## CERC passed *suo-moto* directions to the power exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2021.

The Central Electricity Regulatory Commission (“CERC”) by its order dated 23.05.2024 issued *suo-moto* directions<sup>12</sup> to the

power exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (“Power Market Regulations, 2021”). CERC observed that the capacity of bid size should be reflective of the existing power sector scenario. CERC noted that considering the growth in generation, technology and increased participation in power exchanges, there is a need to review the bid size.

CERC has thus issued the following directions under the Power Market Regulations, 2021:

- (i) All power exchanges shall allow a maximum block-bid size of 400 MW in the Day-Ahead Market (“DAM”) for thermal generators.
- (ii) The maximum block-bid size for sellers other than thermal generators and all buyers shall be 100 MW.
- (iii) The maximum number of block bids that a market participant can enter shall be restricted to 50 block bids.
- (iv) The maximum quantum of 400 MW shall be applicable for all variants of block bids, i.e., linked bid (parent & child bids combined as 400 MW), minimum quantity bid, and profile bid.

## ABOUT SAGUS LEGAL

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<sup>12</sup> Petition No. 3/SM/2024