



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

REGULATORY & POLICY UPDATES

SEBI issued the SEBI (Stock Brokers) (Amendment) Regulations, 2024.

The Securities and Exchange Board of India (“SEBI”) on 27.06.2024 issued the SEBI (Stock Brokers) (Amendment) Regulations, 2024¹ (“Stock Brokers Amended Regulations 2024”) to add a new ‘Chapter IVA - Institutional Mechanism for Prevention and Detection of Fraud or Market Abuse’ to the SEBI (Stock Brokers) Regulations, 1992, with a view to put in place systems for detection and prevention of fraud or market abuse. The Stock Brokers Amended Regulations 2024 will come into force from the date of its notification in the official gazette, i.e. – 27.06.2024.

The highlights of the Stock Brokers Amended Regulations 2024 are as follows:

- i. The key managerial personnel and senior management of the stock broker are required to set up adequate systems for surveillance of trading activities and internal control systems to ensure compliance with the regulatory requirements as may be specified by the SEBI/ stock exchanges for detection, prevention and reporting of potential fraud or market abuse by the stock broker’s clients, employees or authorised persons.
- ii. The obligations of the stock broker under the said Chapter IVA include establishing KYC surveillance systems and adequate surveillance system for monitoring the orders and

¹ [SEBI \(Stock Brokers\) \(Amendment\) Regulations, 2024](#)

trades based on the nature of the business and operation size of the stock brokers.

- iii. Policies and procedures relating to establishing the surveillance systems and internal controls should be clearly documented by the stock brokers. The aforesaid systems, processes and control procedures shall be reviewed and updated periodically and, in any case, not less than once in a calendar year by the board of directors or persons of other equivalent or analogous rank of the stock broker.
- iv. On detection of any suspicious activity, the stock broker shall inform the same to the stock exchanges, as soon as possible, but not later than forty-eight (48) hours from such detection.
- v. Stock brokers are also required to submit to the stock exchanges a summary analysis and action taken report on all instances of suspicious activity, fraud and market abuse or a nil report, on a half-yearly basis to the stock exchanges.
- vi. To facilitate the employees and other stakeholders to raise concerns about suspected fraudulent, unfair or unethical practices, stock brokers are required to formulate whistle blower policy to provide for a confidential channel for such employees and such other stakeholders.

SEBI issued a circular on reduction in denomination of debt securities and non-convertible redeemable preference shares.

SEBI issued circular dated 03.07.2024² (“Security and Debt Circular”) to modify and amend Chapter V of the Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper dated 22.05.2024 (“Security and Debt Master Circular”) to permit reduction in the denomination of debt securities and non-convertible redeemable preference shares to be issued on private placement basis from INR 1,00,000/- to INR 10,000/- subject to compliance with conditions as provided under this Security and Debt Circular.

The highlights of the Security and Debt Circular are as follows:

- i. The Security and Debt Circular provides for the insertion of a new Clause 1.3 under Chapter V of the Security and Debt Master Circular whereunder an issuer can issue debt security or non-convertible redeemable preference share on a private placement basis at a face value of INR 10,000/- subject to the following conditions: (a) issuer shall appoint at least one merchant banker; and (b) debt security or non-convertible redeemable preference share be interest/ dividend bearing

² [SEBI circular on reduction in denomination of debt securities and non-convertible redeemable preference shares](#)

security paying coupon / dividend at regular intervals with a fixed maturity without any structured obligations.

- ii. The Security and Debt Circular 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 the date of issuance of the Security and Debt Circular, i.e., 03.07.2024.
- iii. Issuer is permitted to raise funds through tranche placement memorandum or key information document at a face value of INR 10,000/- under a shelf placement memorandum or general information document which is valid as on the date of issuance of the Security and Debt Circular, i.e., 03.07.2024.

SEBI notified information to be filed by schemes of AIFs availing dissolution period/ additional liquidation period.

SEBI through its circular dated 09.07.2024³ (“AIF Circular”) has issued guidelines with respect to information that needs to be filed by schemes of Alternative Investment Funds (“AIFs”) seeking to avail dissolution period/ additional liquidation period and conditions for in-specie distribution of assets of AIFs.

Regulation 29B(2) of SEBI (Alternative Investment Funds) Regulations, 2012 (“AIF Regulations”) requires scheme of an AIF entering into a dissolution period to file an information memorandum with SEBI through a merchant banker in the manner as may be specified by SEBI and this AIF Circular has been issued to provide for the same. Generally, schemes of AIF enter into a dissolution period to deal with their unliquidated investments that are not sold due to lack of liquidity.

The highlights of the AIF Circular are as follows:

- i. The information memorandum required to be submitted for AIFs entering into the dissolution period in accordance with Regulation 29B(2) of the AIF Regulations needs to be submitted to SEBI prior to the expiry of the liquidation period or additional liquidation period of the scheme and such information memorandum should be in the format as provided under the AIF Circular.
- ii. A due diligence certificate by a merchant banker in the format provided under the AIF Circular also needs to be submitted along with the above-mentioned information memorandum.
- iii. Schemes of AIFs for whom the liquidation period has expired or is about to expire within three months from the date of

³ [SEBI | Information to be filed by schemes of AIFs availing dissolution period/additional liquidation period and conditions for in-specie distribution of assets of AIFs](#)

notification of the Securities and Exchange Board of India (Alternative Investment Funds) (Second Amendment) Regulations, 2024, i.e. on or before 24.07.2024, such schemes of AIF's may avail additional liquidation period subject to compliance with the conditions of Para 4 (*One-time flexibility to schemes of AIFs whose Liquidation Period has expired, to deal with unliquidated investments*) of SEBI circular no. SEBI/HO/AFD/PoD1/CIR/2024/026 dated 26.04.2024. The AIF Circular stipulates that such schemes of AIFs that intend to avail additional liquidation period need to submit information to SEBI in the format as provided under Annexure II of the AIF Circular.

- iv. Regulation 29 (9) of the AIF Circular specifies conditions and modalities for carrying out in specie distribution of unliquidated investments of a scheme of an AIF during the liquidation period. AIF Circular clarifies that in specie distribution (other than mandatory specie distribution) shall be carried out after obtaining approval of atleast 75% of the investors by value of their investment in the scheme of the AIF.

MahaRERA issued directions for Maintenance and Operation of separate bank account for MahaRERA registered projects, 2024.

The Maharashtra Real Estate Regulatory Authority ("MahaRERA") on 27.06.2024 issued directions for the Maintenance and Operation of separate bank account for MahaRERA registered projects, 2024⁴ ("MahaRERA Directions").

The MahaRERA Directions have been formulated with the objective to establish a mechanism for opening and maintenance of a separate bank account for MahaRERA registered projects for securing one of the key objectives of the Real Estate (Regulation and Development) Act, 2016 ("RERA") i.e., safeguarding consumer interests, promoting accountability and transparency. The MahaRERA Directions have come into force from 01.07.2024 and are applicable on projects registered after 01.07.2024.

The compliances provided under the MahaRERA Directions are mandatory for the promoters failing which promoters are liable for punishment under Sections 60 and 63 of the RERA.

⁴ [MahaRERA directions for Maintenance and Operation of separate bank account for MahaRERA registered projects, 2024](#)

⁵ [The Bharatiya Sakshya Adhiniyam, 2023.](#)

⁶ [The Bharatiya Nyaya Sanhita, 2023.](#)

GOVERNMENT NOTIFICATIONS

The Bharatiya Sakshya Adhiniyam, 2023, Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023 have been enforced with effect from 01.07.2024.

The provisions of the Bharatiya Sakshya Adhiniyam, 2023⁵ ("BSA"), the Bharatiya Nyaya Sanhita, 2023⁶ ("BNS"), and the Bharatiya Nagrik Suraksha Sanhita, 2023⁷ ("BNSS") have been brought into effect from 01.07.2024 except as specified, repealing and replacing the Indian Evidence Act, 1872 ("Evidence Act"), Indian Penal Code, 1860 ("IPC") and the Code of Criminal Procedure, 1973 ("CrPC"), respectively which were notified by the Ministry of Home Affairs through its notifications dated 23.02.2024⁸ respectively (collectively "MHA Notifications").

The MHA Notifications specifically excluded: (a) Section 106 (2) of BNS which provides for causing death by negligence; and (b) the entry with respect to Section 106 (2) of BNS provided under Schedule I (Offences under the BNS) of BNSS, from coming into force.

As per Section 358 of the BNS, the enforcement of BNS will not affect any investigation or proceedings under IPC. Similarly, as per Section 170 of BSA, any application, trial, inquiry, investigation, proceeding or appeal pending under the Evidence Act initiated prior to enforcement of BSA shall not be affected. Section 531 of BNSS provides that where any appeal, application, trial, inquiry or investigation is pending, prior to the enforcement of BNSS the same shall be disposed of, continued, held or made as per the provisions of CrPC.

MNRE issued Scheme Guidelines for funding of testing facilities, infrastructure, and institutional support for development of standards and regulatory framework under the National Green Hydrogen Mission.

The Ministry of New and Renewable Energy ("MNRE") on 04.07.2024 issued Scheme Guidelines for funding of testing facilities, infrastructure, and institutional support for development of standards and regulatory framework under the National Green Hydrogen Mission⁹ ("NGHM Scheme Guidelines"). The National Green Hydrogen Mission ("NGHM") was launched on 04.01.2023, with an outlay of INR 19,744 Crores with the aim to make India a global hub for production, usage and export of green hydrogen and its derivatives. NGHM Scheme Guidelines have been issued for

⁷ [The Bharatiya Nagrik Suraksha Sanhita, 2023.](#)

⁸ [BSA, BNS and BNSS](#)

⁹ [MNRE Scheme Guidelines under National Green Hydrogen Mission.](#)

implementation of NGHM for the period between 2024 to 2026 at a total cost of INR 200 Crores.

The objectives of the NGHM Scheme Guidelines *inter alia* include creating new facilities/ infrastructure, upgrading existing facilities and encouraging private participation for establishment of world class testing facilities in India. The National Institute of Solar Energy (“NISE”) will be the scheme implementation agency.

Further, NGHM Scheme Guidelines provide a detailed implementation methodology as well as methodology for funding of the capital cost for equipment, installation and commissioning of the equipment and disbursement of central financial assistance by MNRE for the same. MNRE will fund up to 100% of capital costs for equipment, installation, and commissioning for government entities and 70% of capital costs for non-government entities. Central Financial Assistance will be disbursed in three stages.

As per Clause 8 of the NGHM Scheme Guidelines, new testing and certification facilities shall be set up within 18 months from the date of sanction by MNRE and the upgradation of existing testing and certification facilities shall be completed within 12 months. NISE may grant an extension of six months for completion of the facilities, without any penalty. Further extension shall be granted only with the approval of the Minister of MNRE, with suitable penalties.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that revocation of agency takes place only upon communication to the agent and knowledge to the third party dealing with the agent.

The Supreme Court of India through its judgment dated 09.07.2014 in the matter of *Thankamma George v. Lilly Thomas & Anr.*¹⁰ held that in the absence of a particular mode suggested for revocation of the authority of an agent, the manner adopted by the principal to revoke the authority of the agent must be one which clearly and unequivocally communicates to the parties i.e., the parties to be affected by such revocation, that the agent’s authority has been withdrawn.

Supreme Court interpreted Section 208 of the Indian Contract Act, 1972 (“**Contract Act**”) and held that Section 208 of Contract Act infers and gives effect to revocation upon the twin conditions being satisfied, (i) communication to the agent and (ii) knowledge to a third party i.e., one who deals with or is likely to deal with such agent.

¹⁰ Civil Appeal No. 6495 of 2023

¹¹ Company Appeal (AT) (Insolvency) No.690 of 2023

NCLAT held that the proceedings under Section 7 of the Code shall not be barred by any proceeding initiated under Section 19 of the RDB Act.

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, Delhi through its judgment dated 02.07.2024 in the matter of *State Bank of India v. Abhijeet Ferrotech Limited*¹¹ held that the proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) shall not be barred by any proceeding initiated under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (“RDB Act”).

In the instant case, the State Bank of India filed an application under Section 19 of the RDB Act as well as under Section 7 of the IBC against Abhijeet Ferrotech Limited. The application under Section 19 of the RDB Act was dismissed by the Debts Recovery Tribunal, however, was allowed by the Debts Recovery Appellate Tribunal (“DRAT”), in appeal. Appeal against the DRAT order was pending before the High Court of Kolkata. National Company Law Tribunal (“NCLT”) dismissed the application under Section 7 of IBC referring to Section 10 of the Code of Civil Procedure, 1908 (“CPC”) holding that the matter before the NCLT and DRAT is directly and substantially same and continuation of both proceedings simultaneously may lead to an inconsistent result

NCLAT, upon appeal, held that proceedings under the RDB Act and proceedings under Section 7 of the IBC, are entirely different proceedings with different purposes and objects. An application under Section 19 of the RDB Act is filed for the purpose of recovery of dues, whereas an application under Section 7 of IBC is filed for insolvency resolution of a corporate debtor. NCLAT noted that Section 238 of IBC gives an overriding effect to the proceedings initiated under Section 7 of IBC. Thus, despite the provision of Section 10 of CPC, the proceedings under Section 7 of IBC can be initiated.

High Court of Allahabad held that lack of reasons and non-consideration of claims in an arbitral award amount to patent illegality and concluded arbitrations cannot be re-opened based on new judicial rulings.

The High Court of Allahabad in its judgment dated 05.07.2024 in the matter of *Smt. Savitri Devi v. Union of India and Ors.*¹² held that failure of the arbitral tribunal to provide reasons for rejecting the claims of a party and non-consideration of arguments advanced by a party amounts to patent illegality.

The High Court noted that when an arbitral tribunal fails to consider an issue raised by the parties and provides no reason for such omission, it creates a situation where the affected party is

¹² Appeal under Section 37 of Arbitration and Conciliation Act 1996 No. – 210 of 2023

left without a clear understanding of why their argument was disregarded.

Additionally, the High Court rejected the applicability of the judgment of *Union of India v. Tarsem Singh and Ors.*¹³ on the claim pertaining to solatium and interest to be applied to acquisitions made under the National Highways Act, 1956 since the arbitration in the instant case concluded on 11.12.2008 and the aforesaid judgment was delivered after the arbitral award was passed. Further, it was observed that if the parties were allowed to reopen concluded arbitrations based on new judicial rulings, the same would lead to a flood of claims seeking to modify or overturn arbitral awards and the retroactive application of judicial decisions would create legal and procedural chaos.

APTEL held that DISCOMs raising supplementary bill upon Generating Companies is contrary to the State Regulations and the Tariff Order.

Appellate Tribunal for Electricity (“APTEL”) through its judgement dated 09.07.2024 in the matter of *M/s. Orange Bercha Wind Power Pvt. Ltd. v. Madhya Pradesh Electricity Regulatory Commission & Ors.*¹⁴ rejected the contention of the distribution companies (“DISCOMs”) that the bills were raised due to inadvertence only as per HV-7 tariff irrespective of the fact whether the Wind Energy Generators (“WEG”) was drawing power for two hours or for the period beyond two hours. Accordingly supplementary bills were raised for adopting correct methodology of billing. The issue pertained to two types of billing methodology for power drawn for synchronisation purposes and “other-than synchronization” purposes. The DISCOMs were facing difficulty in implementing the said billing methodology. APTEL agreed that the difficulties arose in billing due to the inability to identify the purpose of power draw by WEG and further observed that the two-hour synchronization limitation is impractical and incorrect, leading to billing based on assumptions rather than actual service provided.

With respect to supplementary bills, however, APTEL held that the DISCOMs were aware of the provision contained in the MPERC (Cogeneration and Generation of Electricity from RE Sources of Energy (Revision-I) Regulations, 2010 and the tariff order i.e., the condition of the two-hour restriction, however, the DISCOMs failed to bill accordingly. Therefore, APTEL rejected the claims of DISCOMs of inadvertent error in original bills and set aside the supplementary bills raised by DISCOMs.

NCLT Mumbai held that mere dispatch of notice addressed to the Corporate Debtor recalling the facility does not tantamount to demand upon the guarantor made by the bank.

The NCLT, Mumbai through its judgment dated 25.06.2024 in the matter of *State Bank of India v. Navjeevan Tyres Private Limited*¹⁵ held that a notice to corporate debtor recalling loan facility doesn’t constitute demand on corporate guarantor.

NCLT dismissed the application under Section 7 of IBC filed by the bank against the corporate debtor as NCLT since the bank had failed to discharge the onus of proving that a demand has been raised on the corporate debtor/ guarantor by invoking the guarantee. NCLT noted that the bank had not made any demand upon the corporate guarantor and a mere dispatch of notice addressed to the corporate debtor recalling the facility cannot tantamount to demand upon the guarantor. As such it could not be established that the guarantor had committed default in discharge of its liability in terms of the guarantee agreement.

Further, NCLT held that the liability of a corporate debtor would arise only when a demand is made by a financial creditor. The bank having failed to establish a default on part of the corporate debtor did not fulfil the pre-requisite for triggering Corporate Insolvency Resolution Process under Section 7 of the IBC.

ABOUT SAGUS LEGAL

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¹³ (2019) 9 SCC 304

¹⁴ Appeal No. 55 of 2021 & Batch

¹⁵ CP (IB) No.1282/MB/2022

Delhi Office:

Ground Floor, B-7/8
Safdarjung Enclave, Delhi-110029

Gurugram Office:

I-46, Emaar Emerald Hills,
Sector 65, Gurugram – 122001

Satellite Office:

Bhubaneswar, Odisha
Email: info@saguslegal.com
Phone No.: +91 1146552925
Website: <https://www.saguslegal.com/>

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