



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

## REGULATORY & POLICY UPDATES

### SEBI notifies SEBI (Depositories and Participants) (Third Amendment) Regulations 2024.<sup>1</sup>

The Securities Exchange Board of India (“SEBI”) notified the SEBI (Depositories and Participants) (Third Amendment) Regulations 2024 (“D&P Amendment Regulations”). The D&P Amendment Regulations were published in the official gazette and came into effect on 02.12.2024.

Chapter VII of the SEBI (Depositories and Participants) Regulations 2018 (“D&P Regulations”) deals with the rights and obligations of depositories, depositories participants and issuers. The newly introduced Regulation 60A to the D&P Regulations by the D&P Amendment Regulations mandates every depository participant to provide an option to the

beneficial owners (i.e.- owner of the securities) to appoint their nominees i.e. a person to whom the securities held by them shall vest in case of their death or conduct transactions on the behalf of such beneficial owner in the event of their incapacitation. Regulation 60A further stipulates that in case of joint beneficial ownership of securities, such joint owners of securities can collectively exercise the option to nominate one person as their nominee in the manner specified in the D&P Regulations read with the D&P Amendment Regulations, in the event of death of all the joint beneficial owners.

### RBI notifies amendments in the framework for UPI Lite<sup>2</sup>

Reserve Bank of India (“RBI”) through its circular dated 04.12.2024 (“Offline Framework Circular”) amended the

<sup>1</sup> [SEBI D&P Amendment Regulations 2024](#)

<sup>2</sup> [RBI Notification dated 04.12.2024](#)

framework for facilitating small value digital payments in offline mode (Offline Framework) for Unified Payment Interface Lite (“UPI Lite”). The Offline Framework Circular came into force on 04.12.2024.

The Offline Framework Circular has revised the transaction limits for UPI Lite as announced by RBI in the Statement on Developmental and Regulatory Policies dated 06.12.2024 (“Statement on Developmental and Regulatory Policies”) for small value digital payments in offline mode. RBI has increased the upper limit for offline digital payment transactions for UPI Lite from existing INR 500/- per transaction to INR 1000/- per transaction and the overall wallet limit for UPI Lite has been revised from INR 2000/- to INR 5000/- at any given point in time.

### **RBI notifies Reduction in Cash Reserve Ratio<sup>3</sup>**

RBI through its notification dated 06.12.2024 has reduced the minimum requirement of Cash Reserve Ratio (“CRR”) for all the banks as announced in the Statement on Developmental and Regulatory Policies.

RBI has notified that the CRR of all the banks will be reduced by 50 basis points in two equal tranches of 25 basis points each to 4.0 per cent of their Net Demand and Time Liabilities (“NDTL”) from the existing 4.5 per cent of their NDTL as previously stipulated by the RBI through its notification dated 04.05.2022. Accordingly, all the banks are required to maintain the CRR at 4.25 per cent of their NDTL effective from the reporting fortnight beginning 14.12.2024 and 4.00 per cent of their NDTL effective from fortnight beginning 28.12.2024.

## **JUDICIAL PRONOUNCEMENTS**

### **Supreme Court held that courts can set aside a sale transaction which was carried out in violation of its directions.**

The Supreme Court in judgement dated 13.12.2024 in *Celir LLP v. Mr. Sumati Prasad Bafna and Ors.*<sup>4</sup> held that the courts can set aside a sale transaction, which was carried out in violation of its directions, as void in the exercise of its contempt jurisdiction.

In the present matter, the petition under Section 2(B) of the Contempt of Court Act, 1971 was filed by the successful auction purchaser (“Celir LLP”) against the contemnors for wilful disobedience of the order of the Supreme Court which had directed Mr. Sumati Prasad Bafna and others in handing over the possession of the property etc.

The Supreme Court observed that the bar under Section 52 of the Transfer of Property Act, 1882 which provides for the doctrine of *lis pendens* shall not be applicable to sale transactions done in contempt of judicial directions.

### **High Court of Delhi held that parties by mutual consent cannot deviate from the basic structure of law of arbitration.**

The High Court of Delhi through its judgement dated 02.12.2024 in *Suresh Shah vs. Tata Consultancy Services Limited*<sup>5</sup> held that as per the principle of party autonomy, the parties have the freedom to derogate from certain provisions of law as is envisaged in certain sections of Arbitration and Conciliation Act, 1996 (“A&C Act”), while other sections are non-derogable and cannot be modified by the consent of the parties.

In the present case, Suresh Shah and Tata Consultancy Services Limited (“TCS”), were parties to an arbitration agreement. The arbitration proceedings were conducted in India, and the sole arbitrator was appointed by the High Court of Delhi under Section 11(6) of the A&C Act. During the arbitration proceedings, it was disclosed that Suresh Shah was a permanent resident of Nairobi, Kenya. Subsequently, TCS filed an application under Section 17 of the A&C Act seeking interim measures, stating that Suresh Shah was a non-resident Indian and had no assets in India.

TCS contended that by accepting the appointment of arbitrator by the High Court and not challenging the same before the arbitral tribunal under Section 16 of A&C Act, Suresh Shah has derogated from Section 2(1)(f) of the A&C Act to the effect that the resulting arbitration is not an international commercial arbitration.

High Court while relying on the judgment of the Supreme Court in *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JA)*<sup>6</sup> held that Section 2(1)(f) of the A&C Act being a definition provision is not derogable. It is meant to provide a structure for an effective and consistent application to the arbitration law in India and no amount of ‘party autonomy’ can be permitted to fiddle with the foundations of arbitration law. It can, thus be concluded that the parties cannot derogate from a definition.

### **High Court of Delhi held that error in order passed by court in arbitration proceeding can be corrected under Sections 152 and 153 of CPC**

The High Court of Delhi through its judgement dated 09.12.2024 in the matter titled as *ADO India Pvt. Ltd. vs. ATS Housing Private Limited*<sup>7</sup> held that errors in orders passed by

<sup>3</sup> RBI Notification on Reduction in Cash Reserve Ratio

<sup>4</sup> Contempt Petition (C) Nos. 158-159 of 2024

<sup>5</sup> O.M.P. 5/2017, I.A. 9676/2019.

<sup>6</sup> 2024 INSC 857

<sup>7</sup> I.A. 1612/2024 in ARB. P. 1432/2022

the court in arbitration proceedings can be corrected under Sections 152 and 153 of the Code of Civil Procedure (“CPC”).

In the present case, an interlocutory application was filed under Sections 152 and 153 of CPC read with Section 151 of the CPC before the High Court seeking rectification of a typographical error in the order dated 24.03.2023 passed by the High Court (“Impugned Order”) and the list of documents and the statement of claim filed by ADO India Pvt. Ltd (“ADO India”) in the arbitration proceedings, claiming that the work order number was incorrectly typed and this error became significant during arbitration proceedings when ATS Housing Private Limited, denied the validity of the work order document based on the incorrect number mentioned in the list of documents and statement of claim filed by ADO India. ADO India subsequently sought to amend the pleadings to correct this typographical error, the arbitrator directed the ADO India to approach the High Court for the rectification of the typographical error in the pleadings as the Impugned Order was passed on the basis of the typographical error.

High Court held that Sections 152 and 153 of CPC being a general law provides power to the court to rectify its own errors, which are arithmetic or clerical, and amend any proceedings at any stage, if it deems proper. On the other hand, under the A&C Act, the power to rectify the errors in an arbitral award is bestowed upon the arbitral tribunal under Section 33 of A&C Act. However, in the instant case, since the rectification is being sought in a previous order passed by the High Court, i.e. – the Impugned Order, wherein the order is neither an arbitral award nor was the High Court acting as an appellate tribunal in the said order, hence, Section 33 of the A&C Act cannot be made applicable in the present application. Since the A&C Act not provide any resolution to the rectification of the said order passed by the High Court, the general provisions of Section 152 and Section 153 of the CPC shall be applicable. High Court also observed that A&C Act and CPC are two separate and independent enactments and their governance over the respective cases is very well demarcated.

### **High Court of Bombay held validity of interlocutory order passed by the arbitrator can be examined under Article 226/227 of the Constitution**

The High Court of Bombay through its judgment dated 09.12.2024 in the matter *Shri Guru Gobind Singhji Institute of Engineering and Technology vs M/s. Kay Vee Enterprises*<sup>8</sup> held that the High Court under Article 226/227 of the Constitution of India can examine validity of interlocutory orders passed by arbitrator in arbitration proceedings instituted in accordance with the provisions of the A&C Act.

In the present case, Shri Guru Gobind Singhji Institute of Engineering and Technology (“Institute”), engaged M/s. Kay

Vee Enterprises (“KV Enterprises”) for the construction of a ladies' hostel and electrical buildings. Disputes arose amongst the parties regarding payment for the completed work, prompting KV Enterprises to invoke the arbitration clause in their agreement with the Institute. A sole arbitrator was appointed, and the Institute thereafter filed an application under Section 16(2) of the A&C Act seeking to frame a preliminary issue of limitation, which was subsequently rejected. Following this, the Institute filed Writ Petition No. 7278 of 2023, which was also dismissed, and the Supreme Court denied the Special Leave Petition (SLP) but permitted the petitioner to raise the plea of limitation.

High Court of Bombay noted that the orders challenged are interlocutory and fall under the purview of the A&C Act. However, the High Court of Bombay emphasized that the powers conferred by Articles 226 and 227 of the Constitution of India are integral to maintaining the rule of law and ensuring that justice is accessible. Therefore, while the A&C Act seeks to minimize interference during the arbitration process, it does not eliminate the High Court's ability under Article 226 and Article 227 of the Constitution of India to intervene in cases where there are substantial questions of law, issues of jurisdiction, or instances of serious procedural irregularities that may affect the fairness of the arbitration process.

### **High Court of Delhi held that the Court which appointed arbitrator has jurisdiction to substitute arbitrator or extend time under Section 29 of Arbitration and Conciliation Act 1996.**

The High Court of Delhi through its judgement dated 13.11.2024 in *Ovington Finance Pvt Ltd vs Bindiya Nagar*<sup>9</sup> held that the term ‘Court’ in Section 29A of the A&C Act has to be High Court in cases of domestic arbitration and the Supreme Court in cases of international arbitration.

In the present case, Ovington Finance Pvt. Ltd. (“Ovington”) filed a petition under Section 29A (5) of the A&C Act, seeking extension of the mandate of the arbitral tribunal. Bindiya Nagar opposed the Section 29A of A&C Act petition on the ground that an arbitration can be appointed only by High Court in case of domestic arbitration or by Supreme Court in case of international arbitration, but subsequent to the appointment of arbitrator all other applications can be dealt with by the court of competent jurisdiction under Section 2(1)(e) of A&C Act.

High Court held that if the argument of the Bindiya Nagar is accepted it would be in teeth of the A&C Act, as the power under Section 29A of A&C Act is exercised by a court subordinate to the High Court, then the arbitrator appointed by then High Court in case of domestic arbitration or the

<sup>8</sup> Writ Petition No. 9868 / 2024

<sup>9</sup> O.M.P. (MISC.) (COMM.) 695/2024

Supreme Court in case of international commercial arbitration will stand substituted by the court of civil jurisdiction which would go in the teeth of Section 11 of A&C Act which specifically gives the power of appointment of the arbitrator to the High Court in cases of domestic arbitration and to the Supreme Court in cases of international arbitration.

Further, the High Court observed that the term “Court” must mean only to be the court which has appointed the arbitrator and therefore the court to extend the time or substitute the arbitrator would only be the court which has appointed the arbitrator and no other court.

### High Court of Bombay held that SARFAESI proceedings and arbitration proceedings can proceed parallelly.

The High Court of Bombay through its judgment dated 19.11.2024 in matter of *Aditya Birla Finance Ltd vs Paul Packaging Pvt Ltd*<sup>10</sup> held that proceedings under Securitisation and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 (“SARFAESI”) and A&C Act can proceed parallelly.

In the present case, an application was filed under Section 11(6) of the A&C Act seeking the appointment of a sole arbitrator to resolve disputes arising from a loan agreement dated 13.09.2018 executed between Aditya Birla Finance Ltd (“ABFL”) and Paul Packaging Pvt Ltd (“PPPL”). ABFL claimed that PPPL defaulted on loan repayments, leading to the loan account being declared a non-performing asset and the issuance of a statutory demand notice under the SARFAESI Act. Subsequently, ABFL invoked the arbitration clause in the loan agreement. PPPL, however, contested the arbitration application, arguing that there were pending proceedings before the debt recovery tribunal related to the same loan, which they claimed should preclude arbitration.

The High Court of Bombay while relying on the judgment of Supreme Court in *M.D. Frozen Food Exports Pvt. Ltd. & Ors. v Hero Fincorp Limited*<sup>11</sup> held that SARFAESI proceedings are in the nature of enforcement proceedings, while the arbitration proceedings is in the context of an adjudicatory proceedings. Thus, proceedings under SARFAESI Act and A&C Act can proceed parallelly.

### NCLAT held that NCLT is empowered to amend date of default in CIRP Proceedings provided such amendments are made before the final order of the NCLT.[Nilesh to see]

The National Company Law Appellate Tribunal (“NCLAT”) in the matter titled as *Puneet P. Bhatia vs ASREC (India) Ltd*<sup>12</sup> through its judgement dated 09.12.24 held that the National

Company Law Tribunal (“NCLT”) is empowered to permit amendments to pleadings, including changing the date of default in applications filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) provided such amendments are made before the final order and do not manipulate the limitation period. It further held that the protection under Section 10A of the IBC requires evidence of a direct nexus between the default and the COVID-19 pandemic.

In the present case Barracks Retail India Pvt. Ltd (“Barracks India”) obtained loans from Bharat Co-operative Bank which was later assigned to ASREC (India) Ltd (“ASERC”). The loan account was declared Non-Performing Asset (“NPA”) on 01.11.2019, with the default retrospectively calculated as 02.08.2019 (90 days prior). ASREC filed an application under Section 7 of the IBC for initiating Corporate Insolvency Resolution Process (“CIRP”) citing a default date of 31.10.2020, which was later amended to 02.08.2019 to preclude the Section 10A moratorium. The CD contested the amendment, arguing that the restructuring of its loans in March 2020 and subsequent defaults occurred within the Section 10A period. However, the NCLT admitted the CIRP petition, relying on financial records and RBI findings that classified the account as NPA prior to the pandemic.

The NCLAT relying on *Dena Bank v. C. Shivakumar Reddy* reaffirmed that NCLT can permit amendments to Section 7 of IBC applications are permissible to rectify defects or update pleadings, provided they comply with procedural fairness.

### APTEL held that statutory tribunals must function within the four corners of the statute.

The Appellate Tribunal for Electricity (“APTEL”), through its judgment dated 05.12.2024, in the matter of *PTC India Limited v. Punjab State Electricity Regulatory Commission & Ors.*<sup>13</sup>, held that statutory tribunals must function within the four corners of the statute in terms of which they have been created and not beyond.

In the present case, PTC India had invoked the jurisdiction of the Punjab State Electricity Regulatory Commission (“PSERC”) praying for fixing their trading margin. However, midway through the proceedings, PTC took a U-turn and challenged the very jurisdiction of PSERC to adjudicate their claim for fixing trading margin payable to them. PTC India contended that PSERC does not have jurisdiction to determine the trading margin, for inter-state trading transaction which exclusively falls within the ambit of the Central Electricity Regulatory Commission (CERC) under Section 79(1)(j) of the Electricity Act, 2003 (“Electricity Act”). PSERC rejected the

<sup>10</sup> Commercial Arbitration Application (L) No. 25050 of 2023.

<sup>11</sup> 2017 SCC OnLine SC 1211

<sup>12</sup> Company Appeal (AT) (Ins.) No. 139 of 2024

<sup>13</sup> Appeal No. 267 of 2019.

claim of PTC India on grounds of jurisdiction stating that PTC India could not approbate and reprobate (“PSERC Order”). PTC India approached APTEL in appeal against the PSERC Order.

APTEL held that under Section 79(1)(j) of the Electricity Act, the power to fix trading margin for inter-state trading in electricity, can only be exercised by the CERC and not the state commission. The mere fact that CERC chooses to not exercise the jurisdiction vested in it under Section 79(1)(j) of

the Electricity Act, would not result in conferment of jurisdiction on the state commission to fix the trading margin in inter-state trading of electricity. Further, the APTEL held that conferment of jurisdiction is the legislative function and the jurisdiction can neither be conferred on a court or tribunal with the consent of parties or by a superior court or tribunal.

## ABOUT SAGUS LEGAL

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