

SAGUS SPEAKS



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

REGULATORY & POLICY UPDATES

RBI notifies the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Third Amendment) Regulations, 2025.¹

The Reserve Bank of India (“RBI”) through its notification dated 14.01.2025 notified the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments)

(Third Amendment) Regulations, 2025 (“NDI Amendment Regulations”). The key highlights of the NDI Amendment Regulations are as follows:

- (i) The NDI Amendment Regulations in the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations 2019 has amended Schedule I (Purchase or sale of equity instruments of an Indian company by a person resident outside India), Schedule II (Investments by Foreign portfolio Investors),

¹ [FEMA \(Mode of Payment and Reporting of NDI\) \(Third Amendment\) Regulations 2025](#)

Schedule VI (Investment in a Limited Liability Partnership), Schedule VII (Investment by a Foreign Venture Capital Investor), Schedule VIII (Investment by a person resident outside India in an Investment Vehicle) and Schedule IX (Issue of Indian Depository Receipts) to streamline the mode of payment and remittances process of sale proceeds.

- (ii) A person resident outside India can now make inward remittances through authorised 'banking channels' or out of funds held in any repatriable foreign currency or rupee account maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016 ("Deposit Regulations") while making investments in: (i) equity instruments of Indian companies; (ii) limited liability partnerships; and (iii) investment vehicles. The same channels shall be applicable in case of proceeds from refunds/divestments/ sale (net of taxes), as the case maybe.
- (iii) Additionally, investment by foreign portfolio investors and foreign venture capital investors can be made through funds held in a foreign currency account and/or a special non-resident rupee account maintained in accordance with Deposit Regulations, only.
- (iv) The term 'banking channels' also includes any rupee vostro accounts, including special rupee vostro account, permitted to be held by a person resident outside India in accordance with Deposit Regulations.
- (v) Sixty (60) day timeline for companies to issue equity instruments to person resident outside India from the date of receipt of consideration from such person. Where such equity instruments are not issued within sixty days from the date of receipt of the consideration the same shall be refunded to the person concerned by outward remittance.
- (vi) Startups have been permitted to issue convertible notes to a person resident outside India with payment received through permitted banking channels.

RBI notifies amendment to Master Direction – Reserve Bank of India (Asset Reconstruction Companies) Directions, 2024.²

RBI through its notification dated 20.01.2025 ("Amended Directions on ARCs") has amended the provisions of paragraph 15 of the Master Direction – Reserve Bank of India (Asset Reconstruction Companies) Directions, 2024 ("Master Directions - ARCs") to prescribe the revised guidelines on settlement of dues of borrowers by Asset Reconstruction

Companies ("ARCs"). The key highlights of the Amended Directions on ARCs are as follows-

- (i) Every ARC shall frame a board-approved policy for settlement of dues payable by the borrowers, which shall include *inter alia* cut-off date for one-time settlement eligibility, permissible sacrifice for various categories of exposures while arriving at the settlement amount, methodology for arriving at the realizable value of the security.
- (ii) The settlement with the borrower shall be made only after all possible ways to recover the dues have been examined and settlement is considered the best option available.
- (iii) The Net Present Value ("NPV") of the settlement amount should generally be not less than the realizable value of securities. In case of any significant variation between valuation of the securities recorded at the time of acquisition and at the time of entering into settlement of financial assets, the rationale for such variation should be duly recorded.
- (iv) Settlement should ideally be paid in a lump sum. If not, the proposal should align with a feasible business plan, including the borrower's projected earnings and cash flow.
- (v) Introducing a simplified framework for settlement of loans with an outstanding amount of Rs.1 crore or less.
- (vi) The provision for settlement of dues payable by the borrowers classified as fraud or willful defaulters, irrespective of the amount involved provides that ARCs may undertake settlement of dues in respect of accounts categorized as willful defaulters or fraud without prejudice to the criminal proceedings underway against such borrowers.

RBI revises guidelines on private placement of Non-Convertible Debentures (NCDs) with a maturity period of more than one year by Housing Finance Companies.³

RBI through its notification dated 29.01.2025 ("Revised Guidelines on NCDs by HFCs") has revised its guidelines on private placement of Non-Convertible Debentures ("NCDs") with a maturity period of more than one year issued by Housing Finance Companies ("HFCs"). The RBI has decided that the guidelines on Private Placement of NCDs (with maturity of more than one year) issued by NBFCs, as contained in paragraph 58 of the Master Direction – Reserve Bank of India (Non-Banking Financial Company – Scale

² [RBI Amended Directions on ARCs](#)

³ [Revised Guidelines on NCDs by HFCs](#)

Based Regulation) Directions, 2023 (“NBFC Master Directions”) shall be applicable *mutatis-mutandis* to HFCs.

RBI notifies framework for imposing monetary penalty and compounding of offences under the Payment and Settlement Systems Act, 2007.⁴

RBI through its circular dated 30.01.2025 (“PSS Circular”)⁵ issued a framework for imposing monetary penalty and compounding of offences under the Payment and Settlement Systems Act, 2007 (“Act”). The PSS Circular came into effect on 30.01.2025 and supersedes the circular issued on 10.01.2020 on the ‘Framework for imposing monetary penalty on authorised payment system operators/ banks under the Payment and Settlement Systems Act, 2007’.

The key features of the PSS Circular are as follows:

- (i) Under Section 26 of the Act, a list of contraventions are as follows:
 - a. operation of a payment system without authorisation or failure to comply with the terms and conditions subject to which authorisation was issued.
 - b. wilfully providing a statement which is false or omits to make a material statement in any material particular application.
 - c. failure to produce any statement, information, returns or documents.
 - d. disclosure of information which is prohibited.
 - e. non-compliance of direction issued by RBI or failure to pay the penalty imposed by RBI within the stipulated period; and
 - f. contravention of any provision of the PSS Act or if any default is made in complying with any other requirements of the PSS Act, or any regulation, order or direction made or given or condition imposed thereunder.
- (ii) Under Section 30 of the Act, RBI is empowered to impose a penalty not exceeding INR 10 lakh or twice the amount involved in such contravention or default where such amount is quantifiable whichever is more, in case of contraventions/defaults of the nature mentioned in section 26 of Act.
- (iii) Section 31 of the Act, empowers RBI authorised officers to duly compound contraventions, not being an offence punishable with imprisonment only or with imprisonment and fine. The process for imposing monetary penalties has been prescribed in the PSS Circular.

(iv) For the entities on whom, such penalties have been imposed as per this PSS Circular, the following disclosures are required to be made as mentioned below:

- a. the details of the monetary penalty imposed in their Notes to Accounts that are part of Annual Financial Statements for the financial year in which the penalty is levied, as required under the applicable directions issued by the RBI.
- b. brief of the penalty action and compounding action (only after receipt of the compounding amount) shall be disclosed in the form of the press release on the website of RBI.

GOVERNMENT NOTIFICATIONS

MoEFCC notifies the Control of Air Pollution (Grant, Refusal or Cancellation of Consent) Guidelines, 2025.⁶

The Ministry of Environment, Forest and Climate Change (“MoEFCC”) through its notification G.S.R. 84(E) dated 29.01.2025 has notified the Control of Air Pollution (Grant, Refusal or Cancellation of Consent) Guidelines, 2025 (“Air Pollution Guidelines”). In order to establish or operate an industrial plant in an air pollution control area, a prior consent of the concerned State Board is required to be obtained in accordance with the provisions of Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (the “Act”). The Air Pollution Guidelines have been notified by MoEFCC in exercise of its power under Section 21A of the Act, which *inter alia* provides for the power to the government to issue guidelines on the matters relating to the grant, refusal or cancellation of consent by any State Board to establish or operate any industrial plant in an air pollution control area.

The salient features of the Air Pollution Guidelines are as follows:

- (i) **Applicability of Air Pollution Guidelines:** Any industrial or trade plant emitting air pollutants must obtain consent to establish (“CTE”) or operate (“CTO”) under Section 21 of the Air Act. The Air Pollution Guidelines classify industries into ‘Red’, ‘Orange’, ‘Green’, and ‘Blue’ categories based on the Range of Pollution Index (“PI”) prescribed by the Central Pollution Control Board (“CPCB”).
- (ii) **Criteria for Establishment of Industrial Plant:** The Air Pollution Guidelines provide for minimum distance from sensitive areas that shall be maintained while establishing an industrial plant. For instance, plants in the ‘Red’ category must locate beyond 500 m from surface water

⁴ [RBI PSS Circular 30.01.2025](#)

⁶ [MOEFCC Air Pollution Guidelines](#)

bodies and settlements, while ‘Orange’ and ‘Green’ categories have correspondingly shorter distances. The minimum distances required to be maintained are as mentioned below:

Location of Industrial Plant	Red	Orange	Green
From the nearest boundary of surface water body (flood Plain/ HFL/Red line) as per the revenue records.	Beyond 500 mts.	With effluent generation- Beyond 75 mts.	Beyond 30 mts.
		Without effluent generation- Beyond 30 mts.	
From the settlement, educational institute, worship place, archaeological monuments, national park, reserve forest, heritage site	Beyond 500 mts.	Beyond 200 mts.	Beyond 100 mts.

Further, the natural or storm drain passing through the industrial plant site must not be disturbed, and additional restrictions may be imposed on establishing an industrial plant taking into account the technological and scientific developments that have taken place in order to protect the sensitive areas such as national parks, sanctuaries, wetlands, and archaeological monuments

- (iii) **Application Procedure:** Applicants must submit consent requests in Form I (for establishment) or Form II (for operation) along with prescribed documents. The fee shall be levied as per Schedule II, with fees subject to a maximum two-yearly increase of up to 10%, and a 5% rebate applies for early renewal applications submitted four months before expiry of validity period. The State Board required to process the applications within set timeframes; for instance, CTE are required to be granted

or refused within 60 days for ‘Red’, 45 days for ‘Orange’, and 30 days for ‘Green’ plants; timelines vary similarly for CTO and renewals.

- (iv) **Validity Period:** The CTE shall remain valid for 5 years, with an option to extend for an additional 2 years subject to submission of application in this regard. The CTO shall remain valid for 5 years for ‘Red’, 10 years for ‘Orange’, 15 years for ‘Green’, and 17 years for ‘Blue’ category plants.
- (v) **Inspection and Compliance:** The State Board may inspect the premises with prior notice to verify application details. The State Board may grant the CTE if the plant’s pollution control equipment meets the Board’s specifications. Similarly, CTO may be granted post inspection if *inter alia* the plants’ control equipment has been installed, being operated and maintained as per the Boards’ specifications.
- (vi) **Renewal Requirements:** Application for renewal of the CTO needs to be made in Form II along with the relevant fees and prescribed details such as compliance report and environmental statements, annual returns as specified under the extant Environmental Laws.
- (vii) **Late fee for renewal:** Every consent renewal application under Section 21 of the Act shall be liable to pay late fees for delayed renewals, with the same increasing with each day of delay as specified.
- (viii) **Online Portal:** The CPCB is required to develop an online portal within 6 to 12 months from notification of these Air Pollution Guidelines. The portal shall act as a single point data repository with respect to management and implementation of the Air Pollution Guidelines.
- (ix) **Violations of the Air Pollution Guidelines:** In case of failure to comply with any of the provisions of Air Pollution Guidelines, the person in violation shall be liable to action under provisions of the Act.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that a writ petition is not maintainable against a Non-Banking Financial Company as it does not execute or engages in a ‘public functions’.

The Supreme Court by its judgement dated 24.01.2025 in *S Shobha v. Muthoot Finance Ltd.*⁷ held a writ petition is not maintainable against a Non-Banking Financial Company (“NBFC”) and whether it performs a public function or

⁷ SLP (C) Nos. 2625-2627 of 2025.

involves a public duty will be the key test for determining its amenability to writ jurisdiction.

The Supreme Court observed that although a NBFC is duty bound to follow and abide by the guidelines laid down by the RBI, however, just because a statute or a rule/ guideline having the force of a statute requires an NBFC or some other body to do a particular thing, it does not acquire the attribute of a statutory body. It held that the RBI merely issues regulatory measures to keep a check and has no participatory dominance or control over the affairs of the NBFC. Additionally, for writ to be maintainable against a legal entity, it needs to be an instrumentality or agency of a state or should be entrusted with such functions which are of public importance or fundamental to the life of its citizens.

Supreme Court held that the right to claim refund of stamp duty originates from the date of execution of cancellation deed.

The Supreme Court by its judgment dated 24.01.2025 in *Harshit Harish Jain & Anr. v. The State of Maharashtra & Ors.*⁸, held that right to claim refund of stamp duty on a registered cancellation deed under the Maharashtra Stamp Act, 1958 arises from the moment the cancellation deed is validly executed.

The Supreme Court held that the scheme of stamp duty refund provisions are designed to ensure fairness when the underlying transaction is rescinded for valid and bona fide reasons. It held that denial of refund solely on technical grounds is not sustainable and that a measure of discretion or consideration for good faith conduct is not alien to statutory processes that safeguard individuals from unjust enrichment by the state, particularly when an applicant seeking refund is not blameworthy.

It further held that in the absence of an express statutory provision to review or recall the earlier order sanctioning refund of the stamp duty, the competent authority could not have proceeded to reverse the sanction of refund and mere acquiescence to such review/ recall process cannot be a basis for sustaining a recall order. It held that jurisdiction is not conferred by either consent or waiver and accordingly directed refund of the stamp duty.

High Court of Kerala held that cash in the bank account of an assessee can be provisionally attached during assessment of income which has escaped assessment under Section 281B of the IT Act, 1961.

The High Court of Kerala by its judgment dated 27.01.2025 in the matter of *Assistant Commissioner of Income Tax v. Mohammed Salih*⁹ held that during the pendency of a

proceeding for the assessment or reassessment of any income which has escaped assessment, the cash in the bank account of the assessee can be provisionally attached under Section 281B of the Income Tax Act, 1961 (“IT Act, 1961”) to protect revenue.

The High Court held that the word ‘property’ has a very wide connotation and further noted that Section 281B (1) of the IT Act, 1961 provides for provisional attachment of ‘any property’. It held that the prefix ‘any’ to the word ‘property’ indicates that ‘property’ has to be understood in a wider, and not a restricted sense. It observed that the manner of attachment provided under the IT Act, 1961 only excludes property exempted from attachment under the Code of Civil Procedure, 1908. The mere fact that bank account has not been mentioned under Section 281B of the IT Act, 1961 unlike under the Goods and Services Tax Act, 2017, will not entail that bank account cannot be attached under the former. It thus held that money in the bank account of the assessee would be liable for provisional attachment.

The High Court further held that Section 281B (1) of the IT Act, 1961 stipulates that prior to issuance of a provisional attachment order, the assessing officer must be satisfied that the demand and penalty must possibly exceed Rupees Two Crores. It held that the attachment should be commensurate with the probable demand, including the penalty, to the extent sufficient to protect the interest of the revenue and blanket orders cannot be issued.

High Court of Delhi held that notwithstanding setting aside fraud classification, the FIR instituted on the basis thereof can survive.

The High Court of Delhi by its judgment dated 21.01.2025 in *Rangoli International Pvt Ltd & Ors. v. Central Bureau of Investigation & Ors.*¹⁰, held that a First Information Report (“FIR”) arising out of the classification of a bank account as fraud under the Master Directions on Frauds issued by the Reserve Bank of India (“RBI”) can survive despite the fraud classification being set aside by the High Court.

The High Court held that mere quashing of the fraud classification does not prevent the banks or lenders from approaching the concerned authorities seeking investigation into any fraudulent transactions or activities. It noted that the classification of fraud was set aside on technical grounds, in view of which there was no adjudication on merits of the case and refused to quash the FIR.

High Court of Delhi held that the copyright of a song would vest with the producer of the movie and not

⁸ SLP (C) No. 21778 of 2024

⁹ W.A. No. 1413 of 2024

¹⁰ CRL. M.C. 350 of 2025 etc.

the composer in the absence of an agreement to the contrary

The High Court of Delhi by its judgment dated 30.01.2025 in *Saregama India Limited v. Vels Film International Limited & Ors.*¹¹ held that while the author of a work is the first owner of the copyright, however, in terms of Section 17(b) of the Copyright Act, 1957 (“1957 Act”), the copyright of a soundtrack composed by a composer for consideration at the instance of the producer of a film will vest in the producer.

The High Court held that under the scheme of the 1957 Act, the copyright in a film vests with the producer of the film, which includes the soundtrack of the film and accordingly, he will be the first owner of the soundtrack, recording, musical works etc. It held that under law, the producer of a film can defeat the right of the composer of a soundtrack by engaging him unless there is an agreement to the contrary between the composer and the producer, whereby the copyright will continue to vest with the producer.

The High Court noted that since the soundtrack in question was prior to the year 2012 i.e., when the 1957 Act was amended and provided the rights of composers would not be affected if the soundtrack is part of the film, it cannot be made applicable retrospectively. The copyright post 2012 would continue to vest with the composer if used in a film unless an agreement is executed between the composer and producer for such transfer.

The High Court held that hence, Vels Film International Limited cannot use the soundtrack in question but noted that balance of convenience lies in its favour and significant expenses have been incurred by it on the film. It permitted release of the film with use of the soundtrack in question subject to payment of license fee to Saregama India Limited.

High Court of Bombay highlighted the significance of a special request, notice or reference to the other party under Section 21 of the Arbitration and Conciliation Act, 1996 prior to invoking Section 11 of the Arbitration and Conciliation Act, 1996.

The High Court of Bombay by its judgment dated 21.01.2025 in *Sri Sathe Infracon Private Limited v. Rudranee Infrastructure Ltd. & Anr.*¹² held that in the absence of any procedure between the parties, a request for reference of dispute has to be mandatorily issued to the other party in compliance of Section 21 of the Arbitration and Conciliation Act, 1996 (“A&C Act”) in the absence of which, the Courts cannot assume jurisdiction under Section 11 of the A&C Act.

The High Court held that no straitjacket formula can be adopted for ascertaining whether a communication or notice

issued is in compliance with Section 21 of the A&C Act, rather, it would depend on the facts and circumstances of each case. It observed that when a party had issued a conditional notice, seeking first an amicable settlement, on failure of which it would proceed to arbitration, such a notice would be in non-compliance of Section 21 of the A&C Act.

NCLAT held that the NCLT can recall orders obtained through fraud under Rule 11 of the NCLT Rules, 2016.

The National Company Law Appellate Tribunal (“NCLAT”) in its judgement dated 21.01.2025 in the matter of *Marvel Landmarks Pvt. Ltd. v. Jay Nihalani & Ors.*¹³ held that, in the cases wherein the Adjudicating Authority (“AA”) is made to rely on distorted facts and the AA was made aware of the same belatedly, the AA can always invoke its inherent powers under Rule 11 of National Company Law Tribunal, Rules 2016 (“NCLT Rules”) in order to protect itself and to prevent an abuse of process.

The NCLAT observed that financial creditors had complied with the second provision to section 7(1) IBC and a fraud has been played by the Corporate Debtor in obtaining the Order. Further, the NCLAT observed that the AA was correct in recalling the Order since the Corporate Debtor obtained it by suppressing material facts.

NCLT held that an agreement to sale will be in the nature of a financial lease if it envisages payment of instalments with eventual transfer of ownership.

The National Company Law Tribunal, Delhi (“NCLT”) by its judgment dated 22.01.2025 in *Jones Lang Lasalle Building Operations Pvt. Ltd. v. Celebration City Projects Pvt. Ltd.*¹⁴ held that an agreement to sale deed (“Deed”) envisaging the transfer of ownership to the Corporate Debtor at the end of the instalment tenure, along with the interest for default thereon, would be in the nature of financial lease and thus, the balance sale consideration along with interest will be a financial debt under Section 5(8)(d) of the IBC.

The NCLT held that in terms of the Deed, full ownership was envisaged to be transferred to the Corporate Debtor, initially to the extent of 25% at the time of execution of the Deed and balance 75% to be transferred corresponding to the premium paid by the Corporate Debtor, and accordingly, the Deed is in the nature of a financial lease with transfer of ownership. The time value of money as laid down under Section 5(8) was also present and thus, the claim submitted before the Resolution Professional by the applicant was directed to be admitted as a debt.

¹¹ CS(COMM) 38/2025

¹² Arbitration Application No. 9 of 2024

¹³ CA (AT) Ins. No. 2227 of 2024

¹⁴ CP (IB) 652(IB) of 2019

ABOUT SAGUS LEGAL

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