SAGUS SPEAKS

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

REGULATORY AND POLICY UPDATES

SEBI notifies standardized format for System and Network audit report of Market Infrastructure Institutions (MIIs)[1]

The Securities Exchange Board of India ("SEBI") by Circular No. SEBI/HO/MRD/TPD/CIR/P/2025/50 dated 04.04.2025 ("Circular") has prescribed the standardized format for System and Network audit report of Market Infrastructure Institutions ("MIIs"). MIIs consists of Stock Exchange, Clearing Corporations and Depositories.

Presently, all MIIs are required to conduct system and network audit in accordance with the prescribed framework. However, each MII has adopted different template for such audit report. Through this Circular, SEBI, in consultation with its Technology Advisory Committee and MIIs, has introduced a uniform format for the system and network audit report, replacing the diverse templates previously used by MIIs.

The Circular provides for standardized format for System and Network audit report which would help to increase the data quality, capturing of relevant information in a streamlined and standardized manner as well as monitoring compliance requirements. This would become applicable for audit period FY 2024-25 or second half of FY 2024-25 as per the frequency of system and network audit required to be conducted by the MIIs.

[1] Standardized format for System and Network audit report of Market Infrastructure Institutions(MIIs).pdf

SEBI notifies amendments to InvIT Regulations strengthening trustee oversight and governance norms[2]

The SEBI has notified the Securities and Exchange Board of India (Infrastructure Investment Trusts) ("InvITs Amendment") Regulations, 2025 on 01.04.2025, further enhancing the regulatory framework governing InvITs.

The salient features of the InvITs Amendment are as follows:

(i) *Flexibility in filling Independent Director vacancies:* SEBI has introduced a structured timeline for filling vacancies of independent directors on the board of the investment manager. If such vacancy causes non-compliance, then the investment manager must fill it either by the term's end or within three months, depending on the reason for the vacancy.

(ii) *Enhanced trustee responsibilities and governance (Effective from 180 days post notification):* A new regulation 9(23) and 9(24) along with Schedule X has been added which outlines core principles and provides an illustrative list of roles and responsibilities for trustees. The responsibilities include ensuring transparency, impartiality, and unitholder protection, and regular physical inspections of assets.

(iii) *Sponsor unit transfer flexibility under Lock-in (regulation 12):* SEBI has allowed inter-se transfers of locked-in units among sponsors and their own sponsor group entities, provided the original lock-in continues with the transferee. In cases of a change in sponsor or conversion to a self-sponsored investment manager, locked-in units can be transferred to the incoming sponsor or self-sponsored manager subject to compliance with minimum unitholding requirements.

(iv) *Expanded investment universe (regulation 18):* SEBI has broadened permissible investments for InvITs to include unlisted equity shares of companies providing exclusive project management services to the InvIT and its subsidiaries, units of liquid mutual funds falling under Class A-I in SEBI's potential risk class matrix, and interest rate derivatives (futures, swaps, forward rate agreements) strictly for hedging interest rate risk, with disclosures, valuation norms, and compliance with Reserve Bank of India guidelines. Additionally, cash flows from all InvIT assets will now be considered for financial and regulatory reporting purposes.

(v) *Streamlined distribution computation:* For computing six continuous distributions, one distribution per quarter will be considered, and such distributions must be consistent with the policy disclosed to unitholders.

(vi) *Strengthened board composition requirements (regulation 26H):* SEBI has mirrored the earlier independent director vacancy provision to apply to non-independent directors as well, specifying timelines to maintain compliance.

These amendments shall come into force upon publication in the official gazette, with specific provisions applicable from future dates as specified.

SEBI issued clarifications on the position of Compliance Officer under LODR Regulations[3]

The SEBI has issued clarification on the position of Compliance Officer in terms of regulation 6 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 on 01.04.2025. The Compliance Officer of a listed entity must be in whole-time employment, designated as Key Managerial Personnel, and positioned not more than one level below the Board, i.e., below the Managing Director (MD)/Whole-time Director (WTD). If there's no MD or WTD, the officer must be one level below the Chief Executive Officer or Manager or any other person heading the day-to-day affairs of the listed entity.

MCA invites public comments for proposed expansion of the scope of Fast Track Mergers[4]

The Ministry of Corporate Affairs ("MCA") has issued a public notice (File no. 2/31/CAA/2013CL-VPART) dated 04.04.2025 inviting comments on the proposed amendment to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (CAA Rules) ("Proposed Amendment to CAA Rules").

MCA has proposed the addition of the following classes of companies within the scope of Section 233 by further enumeration under Rule 25(1A) of the Proposed Amendment to CAA Rules:

(i) *Unlisted Companies:* One or more unlisted company with one or more unlisted company, where neither of them falls under Section 8 of the Companies Act, 2013. The auditors of the companies shall be required to certify that the unlisted companies have a reasonable debt exposure from

[2] Securities and Exchange Board of India (Infrastructure Investment Trusts) (Amendment) Regulations, 2025.pdf
[3] Clarification on the position of Compliance Officer in terms of regulation 6.pdf
[4] Public-Notice inviting comments for draft Companies (Compromises, Arrangements and Amalgmation) Amendment Rules, 2025.pdf

banks, financial institutions or any other body corporate, for less than INR 50 crores, and that they have no defaults in the repayment of such borrowings. The unlisted companies intending to avail the route of Fast Track Merger under Section 233 shall be required to fulfill the above-mentioned criteria of reasonable indebtedness and no defaults in repayments at least 30 days before issuance of notices under Section 233(1)(a).

(ii) *Holding company and its one or more unlisted subsidiary company or companies*: This provision intends to expand the scope of Fast Track Mergers of holding companies from the erstwhile prescription of only wholly owned subsidiaries to all the unlisted subsidiaries irrespective of whether they are wholly owned or not.

(iii) *Merger of unlisted fellow subsidiary companies belonging to the same group*: It has been proposed to include these mergers under the scope of Section 233 based on the reason that they are similar to the mergers between a holding company and an unlisted subsidiary company.

(iv) *Merger of a transferor foreign holding company incorporated outside India with its wholly owned subsidiary incorporated in India as transferee:* It is also proposed that this type of merger provided under Rule 25A (5) of the CAA Rules may be included in Rule 25 to make it self-contained.

The comments/suggestions on these draft rules, along with brief justifications may be submitted through the e-Consultation Module of the MCA website by 05.05.2025.

MHA prescribes validity periods for receipt and utilization of foreign contributions under the Foreign Contribution (Regulation) Act, 2010[5]

The Ministry of Home Affairs ("MHA") has issued a public notice dated 07.04.2025 ("Public Notice") for approval by MHA of proposals regarding the processing of prior permission applications for acceptance of foreign contribution ("Application") by persons not registered with the Central Government under Section 11(1) of the Foreign Contribution (Regulation) Act, 2010 ("FCRA 2010").

The Public Notice prescribes that the validity period for receiving the foreign contribution through such Application shall be 3 years from the date of approval of the Application by the MHA, and the validity period for utilization of the said foreign contribution shall be 4 years from the date of approval of the Application by the MHA. Any receipt or utilization of the foreign contribution beyond the prescribed validity periods shall be a violation of FCRA 2010, and shall be liable for necessary punitive action.

Further, in case the MHA has previously approved a prior permission application where the remaining period of the activity/project is longer than 3 years, then the above limits with respect to validity periods shall be calculated with reference to the date of issue of this Public Notice instead of the initial date of approval of the Application.

The competent authorities designated by the MHA may allow an extension in the above-mentioned validity periods for an association/organization on a case-by-case basis, based on merits.

JUDICIAL PRONOUNCEMENTS

Supreme Court held that High Courts exercising writ jurisdiction can *suo moto* strike down subordinate legislation in exceptional cases.

The Supreme Court by its judgment dated 02.04.2025 in *Bihar Rajya Dafadar Chaukidar Panchayat (Magadh Division) v. State of Bihar and Ors.*[6] held that High Courts while exercising writ jurisdiction can *suo moto* invalidate a subordinate legislation contrary to Part III of the Constitution of India, 1950 ("**Constitution**") and binding precedents of the Supreme Court, despite there being no challenge to it in the writ petition.

The Supreme Court also held that writ courts should exercise such power only in rare and very exceptional cases upon grant of opportunity to the State to defend the subordinate legislation and after hearing grant a declaration as to unconstitutionality and/or invalidity of the subordinate legislation.

Further, the Supreme Court observed that it has deliberately kept primary legislation out of such power due to (a) deference to legislative actions, which are presumed to be constitutional and (b) position it holds in hierarchy of laws. However, when the challenge to subordinate legislation is examined, it is open to court to apply a more nuanced approach. The level of presumption of constitutionality of subordinate legislation may vary depending on (a) the nature of subordinate legislation, (b) extent it is found in derogation either of the Constitution or the parent legislation which is its source, (c) the exigencies and the manner in which the subordinate legislation is brought in force and (d) potential impact on individual rights as well as public interest.

[5] Public Notice for approval of prior permission applications under FCRA, 2010

[6] SLP (C) No. 18983 of 2023

Supreme Court held that SERCs can regulate intra-state aspects of open access transactions even when the electricity is sourced from another state.

The Supreme Court by its judgment dated 01.04.2025 in *Ramayana Ispat Pvt. Ltd. v. State of Rajasthan & Ors.*[7] held that the State Electricity Regulatory Commission ("SERC") can regulate aspects of open access transactions within its state for power procured from another state.

The Supreme Court held that when energy is wheeled from outside the state to be distributed within the state, regulations can be framed by a SERC governing it, since electricity is a subject matter of Entry 38, List III of the Seventh Schedule of the Constitution. It held that Section 181 of the Electricity Act, 2003 ("Electricity Act") grants power to SERCs to regulate conditions for open access, its charges and ensuring fair access to intra-state transmission and distribution systems.

The Supreme Court further held that penalties imposed on consumers of open access for deviation in drawal from contracted demand is a deterrent mechanism and prevents strategic gaming of the system and to ensure that all stakeholders adhere to scheduling norms. The role of the SERC is to balance the rights of market participants with the broader objective of ensuring an efficient, reliable supply of power to all consumers within the state.

The Supreme Court noted that the principle of non-discrimination under the Electricity Act does not require identical treatment for all entities but only requires a rational basis for differentiation.

Supreme Court held that an application under Section 66 of the IBC is distinct from the avoidance applications under Sections 43, 45 and 50 of the IBC.

The Supreme Court by its judgment dated 01.04.2025 in *Piramal Capital and Housing Finance Limited v. 63 Moons Technologies Ltd. & Ors.*[8] held that there is a clear distinction between the avoidance application that may be filed by a Resolution Professional ("RP") under Section 25(2)(j) for avoidance of transactions in accordance with Chapter III of the Insolvency and Bankruptcy Code, 2016 ("IBC"), and the application that may be filed by the RP in respect of the fraudulent trading or wrongful trading under Section 66 of IBC. Both the avoidance applications and application in respect of fraudulent trading or wrongful trading operate in different situations.

The Supreme Court further held that an application filed in respect of 'fraudulent and wrongful trading' carried out by corporate debtor could not be termed as 'avoidance applications' filed under Sections 43, 45 and 50 of the IBC to avoid or set aside the preferential, undervalued or extortionate transactions, as the case may be. There is a clear demarcation of power of the adjudicating authority to pass orders in the avoidance applications filed by the RP under Sections 43, 45 and 50 falling under Chapter III and the applications filed by RP in respect of the fraudulent and wrongful trading of the corporate debtor under Section 66 of IBC.

The Supreme Court reiterated that if there is any non-compliance of the mandatory requirements stated in Section 30(2) of IBC, the adjudicating authority is empowered to reject the plan as envisaged under Section 31(2) of IBC. However, if the plan approved by the Committee of Creditors ("CoC") meets the requirements of Section 30, the adjudicating authority has to approve such a plan under Section 31 of IBC, which will be binding on all the stakeholders.

The Supreme Court also reiterated that if the resolution plan is approved by the CoC with requisite number of votes as required under Section 30 of IBC after exercising commercial wisdom, then the scope of the judicial review by the adjudicating authority under Section 31 will be limited only to the extent of satisfying itself about the compliance of the requirements of Section 30(2) of IBC.

Supreme Court held that registering officer under the Registration Act, 1908 cannot refuse registration of a document on the ground of lack of title or ownership of the vendor.

The Supreme Court by its judgment dated 07.04.2025 in *K. Gopi v. Sub-Registrar & Ors.*[9] held that under the scheme of the Registration Act, 1908 it is not the function of the sub-registrar or registering authority to ascertain whether the vendor has the title to the property which he is seeking to transfer.

The Supreme Court further held that registering officer is not concerned with the title held by the executant. He has no adjudicatory power to decide whether the executant has any title. Even if the executant executes the sale deed or a lease in respect of a land to which he has no title, the registering officer cannot refuse to register the document if all the procedural compliances are made and necessary stamp duty as well as registration has been paid.

[7] C.A. No. 7964 of 2019
[8] C.A. No. 1632-1634 of 2022
[9] C.A. No. 3954 of 2025

In view of the above, the Supreme Court held that Rule 55A(i) of the Registration Rules framed by Government of Tamil Nadu is *ultra vires* the constitution as it empowers the sub-registrar to refuse the registration of the sale deed on the ground of failure of the vendor to establish his title or ownership.

High Court of Calcutta held that once mediation fails between the parties before the Micro and Small Enterprises Facilitation Council, it shall itself take up the dispute in arbitration or refer it to an institutional centre.

The High Court of Calcutta by its judgement dated 03.04.2025 in *UMC Technologies P. Ltd. v. Asst. Director of Postal Services, (Recruitment)*[10] held that once mediation fails between the parties, the Micro and Small Enterprises Facilitation Council ("MSEFC") shall either itself take up the dispute in arbitration or refer the same to some institutional centre, providing alternate dispute resolution services.

The High Court observed that once the dispute is referred to arbitration, then proceedings will continue under Arbitration and Conciliation Act, 1996 ("A&C Act"). The MSEFC at this stage ought to allow the parties to lead evidence in support of their claim as the proceedings would thereafter be governed by the A&C Act.

High Court of Calcutta held that a clause providing settlement of disputes by the representatives of parties cannot be construed as an arbitration clause.

The High Court of Calcutta by its order dated 02.04.2025 in *Balasore Alloys Limited v. Flynt Mining LLP*[11] held that decision of two private entities to refer the dispute to their representatives who executed the contract cannot be held to be a clear intention of the parties to bind themselves to an arbitration as contemplated under the A&C Act. At best, it can be an in-house mechanism for resolution of the dispute in case the parties could not resolve the dispute amicably.

The High Court further held that arbitration clause which provides that representatives of parties will act as the arbitrator is opposed to the fundamental principle of the arbitrator's impartiality and independence under the A&C Act.

NCLAT held that debt of a partner converted into a loan to an LLP cannot be termed as a financial debt under the IBC.

The National Company Law Appellate Tribunal ("NCLAT"), by its judgment dated 08.04.2025 in *Gogia Leasing Ltd. v. Sunanda Polymers LLP*[12] held that conversion of a partner's dues into a loan to the Limited Liability Partnership ("LLP") does not qualify as a financial debt under Section 5(8) of the IBC.

In the present matter, Gogia Leasing Ltd ("GLL") claimed to be a assigner from two individuals who were earlier the partners of a firm which got registered as an LLP. Subsequently, the partners of the firm converted their dues as a loan to the LLP which loan was subsequently assigned to GLL. The question before the NCLAT was whether such a debt is a financial debt or not.

The NCLAT held that at the time when the debt arose i.e., the loan against the partnership firm was not a financial debt within the meaning of Section 5(8) of IBC. The mere fact that the debt was assigned at the time when LLP was constituted will not make it a financial debt within the meaning of Section 5(8) of IBC.

[10] AP/COM/39/2024
[11] AP-COM/896/2024
[12] C.A. AT Ins. No. 405 of 2025

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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