SAGUS SPEAKS

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

REGULATORY AND POLICY UPDATES

RBI notifies Draft Foreign Exchange Management (Borrowing and Lending) (Fourth Amendment) Regulations, 2025.

The Reserve Bank of India ("RBI"), by way of notification dated 03.10.2025, issued the draft Foreign Exchange Management (Borrowing and Lending) (Fourth Amendment) Regulations, 2025 ("Draft FEM Amendment Regulations")[1] to the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 ("Principal Regulations"). The Draft FEM Amendment Regulations are available on the RBI website for inviting comments and suggestions from stakeholders until 24.10.2025.

The Draft FEM Amendment Regulations proposes to bring the following changes:

(i) Eligible Borrowers and Lenders: The Draft FEM Amendment Regulations proposes to expand the scope of eligible borrowers to include entities registered in India (excluding individuals) and allow even companies in insolvency or restructuring to raise External Commercial Borrowings ("ECBs") if their resolution plan explicitly provides for the same. It also proposes to expand the recognized lender pool to include overseas entities, Indian banks' foreign branches, and International Financial Services Centre entities regulated by RBI. Currently, only certain entities such as Indian companies and limited liability partnerships (LLPs) could access ECBs.

[1] Draft Foreign Exchange Management (Borrowing and Lending) (Fourth Amendment) Regulations, 2025.

(ii) Restriction on End-Use of Borrowed Funds: The Draft FEM Amendment Regulations proposes to insert a specific provision Regulation 3A, which now expands restrictions by also prohibiting on-lending except by regulated entities and corporates lending to their group entities. Additionally, it bars transactions in listed or unlisted securities except as specifically permitted under the Overseas Investment framework, corporate transactions in compliance with the Companies Act, 2013, SEBI (SAST) Regulations, 2011, the Insolvency and Bankruptcy Code, 2016, and investment in primary market instruments by non-financial entities solely for on-lending purposes. Currently, ECB end-use restrictions specified that borrowed funds could not be used for activities such as engaging in the business of chit fund or Nidhi Company, investment in capital markets including margin trading and derivatives, agricultural or plantation activities, real estate activity or construction of farmhouses, and trading in Transferrable Development Rights ("TDR")

(iii) Borrowing Limits and Link to Net Worth: The Draft Amendments proposes that an eligible borrower may raise ECB to the higher of: (a) outstanding ECB up to USD 1 billion; or (b) total outstanding borrowing (including both external and domestic borrowing) up to 300 per cent of net worth as per the last audited balance sheet. Regulated financial sector entities are exempt from this revised cap. Currently, eligible borrowers or eligible categories of borrowers could raise ECBs up to USD 750 million or equivalent per financial year, while Startups were limited to USD 3 million or equivalent per financial year.

(iv) Minimum Average Maturity Period ("MAMP"): The Draft FEM Amendment Regulations proposes to allow manufacturers to borrow for 1 (one) year, up to USD 50 million, while maintaining the usual 3 (three) years minimum period for other sectors. Currently, a standard MAMP (usually three years or more) is mandatory for all ECBs.

SEBI revises the Block Deal Framework for stock exchanges.

The Securities and Exchange Board of India ("SEBI") by way of Circular No. SEBI/HO/MRD/POD-III/CIR/P/2025/134 dated 08.10.2025 ("Block Deal Circular")[2], has revised the Block Deal Framework for stock exchanges.

SEBI has revised the Block Deal Framework, establishing two distinct trading windows with specific operational parameters, namely, the 'Morning Block Deal Window' which will operate between 08:45 AM to 09:00 AM, with trades executed at the previous day's closing price as the reference price; and the 'Afternoon Block Deal Window' which will operate between 02:05 PM to 02:20 PM, with the reference price being the volume weighted average market price ("VWAP") calculated from trades executed between 01:45 PM to 02:00 PM in the cash segment.

The orders must be placed within +3% of the applicable reference price in respective windows, subject to surveillance measures and price bands. The minimum order size has been set at INR 25 crores (Indian Rupees Twenty-Five Crores) for execution of trades in block deal windows. All trades executed in block deal windows must result in delivery and cannot be squared off or reversed. The stock exchanges are required to disseminate information on block deals (including scrip name, client name, quantity, and traded price) to the public on the same day after market hours. These provisions will also apply to the block deal window under the optional T+0 settlement cycle.

The Block Deal Circular will be applicable from the 60th day of issuance, i.e., from 07.12.2025.

SEBI introduces relaxations in the minimum information requirements for Related Party Transactions.

SEBI, by way of Circular No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/135 dated 13.10.2025 ("RPT Circular")[3], has introduced relaxations in the minimum information requirements for Related Party Transactions ("RPTs") to facilitate ease of doing business for listed entities. The Circular comes into effect immediately, i.e., from 13.10.2025.

SEBI has introduced relaxations for RPT disclosures, whereby listed entities which were required to provide detailed information as per the circular on "Minimum information to be provided to the Audit Committee and Shareholders for approval of Related Party Transactions" ("RPT Industry Standards") formulated by Industry Standards Forum ("ISF"), will now be required to comply with the guidelines only for material transactions above the threshold. As per the RPT Circular, RPTs not exceeding 1% of annual consolidated turnover or INR 10 crores (Indian Rupees Ten Crores), (whichever is lower) may comply with simplified disclosure requirements under Annexure-13A of the Circular, and transactions below INR 1 crore (Indian Rupees One Crore) are exempt from these minimum information requirements altogether. These

[2] SEBI Circular on Review Block Deal Framework.

[3] SEBI Circular relaxes minimum information requirements for related party transactions

relaxations apply to both Audit Committee approvals and shareholder approvals.

GOVERNMENT NOTIFICATIONS

MOP issues Draft Electricity (Amendment) Bill, 2025.

The Ministry of Power ("MoP") by its notification dated 09.10.2025 has issued the Draft Electricity (Amendment) Bill, 2025 ("Draft Amendment")[4], proposing amendments to the Electricity Act, 2003 ("Principal Act"), seeking comments from stakeholders within 30 (thirty) days from issuance of the Draft Amendment.

The salient features of the Draft Amendment are as follows:

(i) Insertion of new definitions: Definitions for "Energy Storage System" and "Manufacturing Enterprise" have been added. Also, a new authority, namely the "Electric Line Authority" has been proposed, providing that it shall mean a person authorized by the Appropriate Government and include any officer empowered by it to perform all or any of the functions of the Electrical Line Authority under the Act. In addition, clause (50) of Section 2 of the Principal Act is proposed to be amended to include "Energy Storage System" within the scope of the "power system."

(ii) Eligibility criteria for captive generating plants: A proviso is inserted under Section 9(1) of the Principal Act providing that the eligibility criteria for captive generating plants and its users shall be as may be prescribed by the appropriate government.

(iii) Procedural clarity regarding approval and implementation of transmission systems: Section 25 of the Principal Act is proposed to be amended by insertion of a proviso empowering the Appropriate Government to prescribe the manner for approval and implementation of inter-state and intra-state transmission systems.

(iv) Shared distribution networks: The proposed amendment to Section 42(1) of the Principal Act, allowing shared use of distribution networks among multiple licensees.

(v) Exemption from service obligation: Section 43 of the Principal Act is proposed to be amended to insert sub-section (4), empowering the state commission, in consultation with the state government, to exempt a distribution licensee from the obligation to supply electricity to consumers requiring supply exceeding one megawatt. The proviso further mandates that a distribution licensee shall be designated to supply electricity to such consumers in case their existing arrangement fails.

(vi) Prescription of minimum standards of performance: Section 58 of the Principal Act is amended by insertion of a proviso prescribing that standards specified by the appropriate commission shall not be inferior to the minimum standards as may be prescribed by the central government.

(vii) Cost-reflective tariff and reduction of cross-subsidies: Section 61(g) of the Principal Act is substituted to mandate that the tariff shall reflect the cost of electricity supply and progressively reduce cross-subsidies in the manner specified by the appropriate commission. The proviso further stipulates that cross-subsidies relating to railways, metro railways, and manufacturing enterprises shall be fully eliminated within five years from the commencement of the Amendment Act.

(viii) Timely determination of tariff: Section 64(1) of the Principal Act is substituted to require generating companies or licensees to file tariff applications within the prescribed timeframe, failing which the appropriate commission shall determine the tariff *suo moto* so that the new tariff takes effect from the beginning of the next financial year.

(ix) Cybersecurity for power systems: Section 73 of the Principal Act is amended to insert clause (ca), to specify cybersecurity requirements for the power system, excluding systems not forming part of the integrated operation of the power system.

(x) Time-bound disposal of proceedings by Appropriate Commission: Section 92 of the Principal Act is amended to insert sub-section (6), providing that every proceeding before the appropriate commission shall be decided within one hundred and twenty days, and in the event of delay, reasons for such delay shall be recorded in writing. Moreover, the Draft Amendment proposes expansion of grounds for removal of members of the commission under Section 90(2) of the Principal Act which includes *"wilful violation"* or *"gross negligence"*.

(xi) Increased strength of Appellate Tribunal: Section 112(1) of the Principal Act is proposed to be amended to substitute the words *"three"* with *"not more than seven"*, thereby increasing the permissible strength of the Appellate Tribunal from a Chairperson and three Members to a Chairperson and up to seven Members.

[4] Draft Electricity (Amendment) Bill, 2025.

(xii) Rationalisation of assessment period for unauthorised use of electricity: Section 126(5) of the Principal Act is proposed to be substituted to remove the earlier distinction between ascertainable and unascertainable periods of unauthorised use, providing instead that the assessment shall cover the entire period of such unauthorised use, limited in all cases to twelve months immediately preceding the date of inspection.

(xiii) Empowerment regarding placing of electric lines: Section 164 of the Principal Act is proposed to be substituted, empowering the Appropriate Government, through notification, to confer upon any public officer, licensee, or person engaged in the business of supplying electricity, the powers of the Electric Line Authority for placing the electric lines necessary for the transmission of electricity.

(xiv) Establishment of the Electricity Council: A new sub-section (1A) is inserted in Section 166 of the Principal Act providing for the constitution of an Electricity Council, chaired by the Union Minister for Power with State Ministers in charge of electricity as members and the Secretary (Power) as convenor. The Electricity Council shall advise the central and state governments on policy measure and facilitate consensus on reforms.

(xv) Rule-making powers of State Commissions: Section 181(2) of the Principal Act is proposed to be amended to empower state commissions to frame rules on the framework for operation of multiple distribution licensees in the same area under the sixth proviso to Section 14 of the Principal Act.

(xvi) Empowerment of Central Government to remove implementation difficulties: Section 183 of the Principal Act is amended to insert sub-section (1A), empowering the Central Government to issue necessary orders, not inconsistent with the Principal Act, for removing any difficulty arising in giving effect to the provisions of the Electricity (Amendment) Act, 2025, within two years from its commencement.

CERC issues draft CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) (First Amendment) Regulations, 2025.

The Central Electricity Regulatory Commission ("CERC") by its notification dated 22.09.2025 issued the draft CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) (First Amendment) Regulations, 2025 ("Draft REC Amendment Regulations")[5] amending the CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022 ("Principal REC Regulations"). Comments/suggestions on the Draft REC Amendment Regulations may be submitted on or before 23.10.2025.

The key highlights of the Draft REC Amendment Regulations are as follows:

(i) Eligibility for Renewable Energy Certificate ("REC"): Regulation 4(3) is proposed to be amended to expand criteria of entities eligible for issuance of REC by including renewable energy generating plants not fulfilling the conditions of captive generating plant under the Electricity Rules, 2005 but having self-consumption.

(ii) Application for issuance of REC: The timeline for application by an eligible entity being a distribution licensee or open access consumer, is proposed to be revised by amending Regulation 10, which requires eligible entities to apply within 3 (three) months from the date of certification by the concerned State Commission, instead of from the end of the financial year as stipulated under the current Principal REC Regulations.

(iii) Certificate Multiplier (Amendment to Regulation 12):
  (a) Technology-specific multipliers have been introduced for different renewable energy sources.
  (b) Projects commissioned after 05.12.2022 and before REC Amendment Regulations will be entitled to certificate multipliers such as: On-shore Wind and Solar – 1; Hydro – 1.5; Municipal Solid Waste ("MSW")/non-fossil co-generation – 2, Biomass/Biofuel – 2.5.
  (c) For projects commissioned after the issuance of REC Amendment Regulations, multipliers will be assigned as per Appendix-1 of the REC Amendment Regulations.
  (d) The multiplier, once assigned, shall remain valid for 15 (fifteen) years from commissioning and 1 REC shall be issued per 1 MWh.

(iv) RECs under VPPAs (Insertion of Regulation 14A):
  (a) RECs issued to generating stations under a VPPA shall stand transferred to the consumer or designated consumer, who shall use these RECs to meet their renewable purchase obligation

[5] CERC (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) (First Amendment) Regulations, 2025.

("RPO") or renewable consumption obligation ("RCO").

(b) The RECs once transferred to the consumer or designated consumer shall stand extinguished.

(v) Principles for REC Multiplier (Appendix-1): Certificate multipliers will be determined based on tariff range, technology maturity, and capacity credit/peak support.

MEITY issues Draft Promotion and Regulation of Online Gaming Rules, 2025.

The Ministry of Electronics and Information Technology ("MeitY") has released the Draft Promotion and Regulation of Online Gaming Rules, 2025 ("Draft PROG Rules")[6] on 02.10.2025. The Draft Rules have been issued under Section 19 of the Promotion and Regulation of Online Gaming Act, 2025 ("PROG Act"). The Draft PROG Rules are divided into eight parts, establishing a comprehensive framework for the regulation and promotion of online gaming in India. They will come into force from the date notified by the Central Government in the Official Gazette.

The key highlights of the Draft Rules are as follows:

(i) Promotion of E-Sports and Online Social Games: The responsibility for promoting e-sports lies with the Ministry of Youth Affairs and Sports, while the Ministry of Information and Broadcasting ("MIB") oversees the promotion of online social games. MIB is empowered to issue guidelines for categorising online social games to ensure age-appropriate content and to distinguish between recreational, educational, and skill-development purposes. Registration of both e-sports and online social games will be managed by the Online Gaming Authority of India ("Online Gaming Authority"). Registration of online social games is voluntary; they can be offered without registration, but registration is required to obtain recognition and promotional benefits.

(ii) Establishment of the Online Gaming Authority: The Draft PROG Rules establish the Online Gaming Authority as a statutory body with powers similar to a civil court to conduct inquiries and summon individuals. The Online Gaming Authority may function as a digital office and will consist of a Chairperson and five ex officio members from key ministries. Its functions include determining whether an online game qualifies as an online money game, granting registration, issuing directions, and imposing penalties. Decisions of the Online Gaming Authority can be appealed to the Appellate Authority being the Secretary to the Government of India in the MeitY, within 30 (thirty) days.

(iii) Determination, Recognition, Categorisation, and Registration for any Online Game: Applications for registration must be submitted digitally to the Online Gaming Authority, providing details such as the game's description, target age group, and revenue model. For an e-sport to be registered, it must first be recognised under the National Sports Governance Act, 2025. The Online Gaming Authority is required to take a decision on registration applications within 90 (ninety) days.

(iv) Certificate of Registration: The Online Gaming Authority will issue a Certificate of Registration, valid for up to five years unless suspended or cancelled. Online gaming service providers must notify the Online Gaming Authority of any material change that alters the game's nature, including changes to the revenue model that could classify the game as an online money game. Certificates may be suspended or cancelled following due process if the game becomes an online money game, if there are repeated violations, or if false statements were made during registration. Service providers may also voluntarily surrender their certificates.

(v) Imposition of Penalties: Under Section 12 of the PROG Act, the Online Gaming Authority may impose penalties for non-compliance either *suo motu* or based on complaints. Penalties may include fines, suspension or cancellation of registration, or prohibition of the game. In determining penalties, the Online Gaming Authority will consider factors such as the gains from non-compliance, loss caused to users, and whether the violation is repeated.

(vi) Grievance Redressal Mechanism: The Draft PROG Rules prescribe a three-tier grievance redressal mechanism. First, complaints are addressed through the internal grievance mechanism of the registered service provider. If unresolved, appeals can be made to the Grievance Appellate Committee established under rule 3A of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. A further appeal lies with the Online Gaming Authority, whose decision will be final.

(vii) Miscellaneous Provisions: The Draft PROG Rules include transitional provisions permitting repayment of user funds relating to online games, which became due before the PROG Act came into force and are held by banks, financial institutions, or payment facilitators. Such refunds will not be treated as

[6] Draft Promotion and Regulation of Online Gaming Rules, 2025.

facilitating online money gaming. This provision is temporary and will lapse 180 (one hundred and eighty) days after the PROG Act comes into effect. The Online Gaming Authority must also submit an Annual Report of its activities to the Central Government within 180 (one hundred and eighty) days of the end of each financial year.

MCA issues the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2025.

The Ministry of Corporate Affairs ("MCA"), by way of Notification No. G.S.R. 733(E) dated 01.10.2025, has issued the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2025 ("IEPF Amendment Rules")[7] to amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 ("Principal Rules"). They shall come into force with effect from 06.10.2025.

A key change introduced through the IEPF Amendment Rules is the substitution of Form No. IEPF-5, which is the application made to the Investor Education and Protection Fund ("IEPF") Authority for claiming unpaid dividends and shares out of the IEPF. Under Section 125(2)(c) of the Companies Act, 2013 ("Companies Act"), the company is required to transfer the amounts in its unpaid dividend account to the IEPF. The shareholders of the company need to file e-Form IEPF-5 under Section 125(3)(a) of the Companies Act and Rule 7(1) of the Principal Rules, along with other requisite documents, as may be specified from time to time, to claim their unpaid dividend amount transferred to the IEPF.

The revised Form No. IEPF-5 introduces several structural and procedural changes compared to the earlier version. The new form begins with two fresh requirements, disclosure of whether an entitlement letter has been issued by the company or bank, and an option for filing through an authorised representative, supported by a signed authority letter. The question relating to Rule 7(8) and 7(9) of the Principal Rules has been clarified to cover both transfer and transmission cases, and the claim type options now specifically list "Shares," "Amount," or "Amount and Shares." The new form introduces a dedicated section for Depository details, requiring the name of the depository (NSDL or CDSL) and a demat account with both DPID and Client ID. Refund account details are now auto filled and include an additional MICR code field. Attachment requirements have been updated: "Proof of entitlement" has been replaced with "Securities Certificate." The declaration section has been expanded to include separate undertakings by authorised representatives, detailing their authorisation number, date, and professional credentials, while the claimant's declaration remains largely unchanged. The list of documents to be physically submitted to the company's Nodal Officer now includes a signed authority letter if filed through an authorised representative.

JUDICIAL PRONOUNCEMENTS

Supreme Court affirms validity of arbitration clause despite ineligibility of named arbitrator as per 2015 amendment of the A&C Act.

The Supreme Court of India, through its judgment dated 07.10.2025 in *Offshore Infrastructures Limited v. M/s Bharat Petroleum Corporation Limited*[8], held that an arbitration clause remains valid even if subsequent statutory amendments render the original appointment mechanism of the arbitrator inoperative or ineligible under the Arbitration and Conciliation Act, 1996 ("A&C Act").

The Supreme Court clarified that the mere inoperability or statutory invalidation of the original procedure for appointing an arbitrator does not make the arbitration agreement itself void or inoperative. The essential issue identified was whether a court retains power to appoint an arbitrator where the contractually agreed nomination process has become "bad in law" due to legislative changes. The Supreme Court affirmed that legislative intent behind the 2015 amendment to the A&C Act (Section 12(5) and Seventh Schedule of the A&C Act) is to secure arbitrator neutrality and impartiality, not to defeat the arbitration agreement. Relying on earlier judgments such as *Perkins Eastman Architects DPC v. HSCC (India) Limited*[9] and *Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Limited*[10], the Supreme Court held that the power to appoint an arbitrator, rests with the court, and a purposive interpretation ensures parties are not denied contractual dispute resolution simply due to statutory disqualification of the named authority.

The Supreme Court allowed the appeal and set aside both the High Court's dismissal of the Section 11 application and its subsequent refusal in review. The matter was directed to the Delhi International Arbitration Centre (DIAC) for appointment of an arbitrator in accordance with law.

High Court of Bombay affirms that allegations of fraud or criminality cannot defeat arbitration agreement between the parties.

[7] Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2025.
[8] 2025 INSC 1196.
[9] (2020) 20 SCC 760.
[10] (2017) 4 SCC 665.

The High Court of Bombay, through its judgment dated 01.10.2025, in *Mangal Credit and Fincorp Limited v. Ulka Chandrshekhar Nair*[11], held that disputes between parties are arbitrable under the A&C Act, notwithstanding allegations of fraud, forgery, and pendency of a criminal complaint. Further, the Court affirmed that merely attacking the mortgage deeds containing the arbitration clause on the ground of criminality, forgery, or fraud cannot disown or discard the contractual obligations flowing therefrom. Furthermore, the Court noted that the pendency of Debt Recovery Tribunal ("DRT") proceedings was also held not to *ipso facto* bar reference to arbitration. Accordingly, the Court by applying the competence–competence principle duly appointed the sole arbitrator under Section 11 of the A&C Act.

That in the present matter, Mangal Credit and Fincorp Limited ("MCFL"), a non-banking financial company sanctioned loans aggregating INR 3.44 Crores (Indian Rupees Three Crores Forty-Four Lakhs) to Ulka Chandrshekhar Nair ("Ulka") against mortgage of property through execution of mortgage deeds dated 28.12.2020 and 16.02.2022, both containing an arbitration clause. Pursuant to the same and upon default, the MCFL invoked arbitration by notice dated 07.01.2023. Ulka denied executing the mortgage deeds, alleged forgery supported by a handwriting expert's report, and relied on an FIR dated 26.10.2023 filed against Mr. Meghraj Jain, director of MCFL and a DRT order of 20.02.2024 directing status quo over the mortgaged property. Accordingly, Ulka emphasized that the dispute was not a fit case for reference to arbitration.

The High Court observed that no charge-sheet had been filed, and criminal proceedings had not commenced, hence, it would be speculative to bar arbitration merely because an FIR exists, particularly when it was lodged against a director of MCFL and not the MCFL itself. Allegations of forgery and fraud appeared *prima facie* unconvincing and fell within the realm of arbitrability. The Court emphasized that under Section 11 of the A&C Act, the court's jurisdiction is limited to examining the existence of an arbitration agreement and that disputed facts must be adjudicated by the arbitral tribunal, consistent with the rulings in *A. Ayyasamy v. A. Paramasivam and Ors.*[12] and *MD Frozen Foods Exports Pvt. Ltd. & Ors. v. Hero Fincorp Ltd.*[13] Accordingly, the application was allowed, and reference to arbitration was directed.

High Court of Bombay affirms that prior initiation of insolvency proceedings does not bar prosecution of directors under Section 138 of the NI Act, 1881.

The High Court of Bombay, through its judgment dated 01.10.2025 in *Ortho Relief Hospital and Research Centre v. M/s. Anand Distilleries and Ors*[14], held that the initiation of proceedings under the Insolvency and Bankruptcy Code, 2016 ("IBC") does not preclude prosecution of directors or signatories for dishonour of cheques under Section 138 of the Negotiable Instruments Act, 1881 ("NI Act"). The High Court set aside a trial court order discharging directors from Section 138 of the NI Act proceedings, emphasizing that directors remain personally liable despite insolvency proceedings against the company.

In the present matter, Ortho Relief Hospital and Research Centre ("ORHRC"), had extended a short-term loan of INR 15,00,000/- (Indian Rupees Fifteen Lakhs) to M/s Anand Distilleries. A post-dated cheque issued by the director of M/s Anand Distilleries in October 2015 was presented for encashment on his assurance but was dishonoured in December 2018 for "*insufficient funds.*" Pursuant to the same, ORHRC thereafter issued statutory notice and filed a complaint under Section 138 of NI Act. Meanwhile, insolvency proceedings against the company were admitted by the National Company Law Tribunal ("NCLT") on 14.02.2018 and a liquidator was appointed. The Trial Court, however, dismissed the complaint as non-maintainable in view of the pending insolvency, discharging the directors.

The High Court of Bombay, while allowing the writ petition, examined the interplay between Section 14 and Section 32A of IBC and Section 138 of the NI Act and held that Section 32A of IBC protects only the corporate debtor from prosecution for offences committed prior to commencement of insolvency proceedings, whereas natural persons remain prosecutable. Further, the Court affirmed that Section 138 NI Act proceedings are penal in nature and distinct from recovery actions under IBC and clarified that it makes no difference whether such proceedings are initiated before or after initiation of insolvency proceedings, as criminal liability of directors or signatories continues unaffected.

Accordingly, the High Court set aside the order and duly restored the complaint, affirming that natural persons remain personally liable for offences under Section 138 of NI Act, notwithstanding pendency or culmination of proceedings under IBC.

High Court of Bombay affirms directors' accountability in fraud classification under RBI's 2024 Master Directions framework.

[11] Arbitration Application (L) No. 29984 of 2023.
[12] (2016) 10 SCC 386.
[13] (2017) SCC OnLine SC 1211.
[14] Criminal Writ Petition No. 251 of 2025.

The High Court of Bombay, through its judgement dated 07.10.2025 in *Anil D. Ambani v. State Bank of India & Anr.*[15], dismissed a writ petition challenging the classification of Reliance Communications Limited's ("Reliance") loan account as "fraud" by State Bank of India ("SBI"). The Court upheld SBI's classification under Clause 4.4 of the Reserve Bank of India's Master Directions on Fraud Risk Management in Commercial Banks and All India Financial Institutions, 2024 dated 15.07.2024 ("2024 Master Directions"), emphasizing that once a company's account is designated as fraud, the promoters and directors in control of the company become automatically liable to penal actions, including being reported as fraud and barred from further credit facilities. The Court clarified that show-cause notices need not contain separate allegations against such individuals.

The present matter arose from the classification of Reliance's loan account as "fraud" by SBI. Mr. Anil D. Ambani, who was Reliance's Chairman and Promoter, challenged the show-cause notice dated 20.12.2023 and the final order dated 13.06.2025, contending non-compliance with principles of natural justice, absence of personal hearing, and invalidity of the notice issued under the earlier Master Directions on Fraud – Classification & reporting by Commercial Banks & Select Financial Institutions ("2016 Master Directions") which stood superseded by the 2024 Master Directions. The Court noted that Reliance's account was declared non-performing in 2016, a forensic audit by BDO India LLP was conducted in 2020, and a fresh show-cause notice was issued following the Supreme Court's ruling in *SBI v. Rajesh Agarwal & Ors.*[16] Despite being provided with the complete forensic audit report and opportunities to respond, Mr. Anil D. Ambani did not make any substantive representation. Thus, in view of the same the Court rejected his contention that the proceedings were vitiated for want of personal hearing or supersession of the 2016 Master Directions.

The High Court of Bombay held that the 2024 Master Directions are clarificatory in nature and issued to bring the earlier framework in conformity with *Rajesh Agarwal* (*supra*), hence, they operate retrospectively. Moreover, the Court held that the doctrine of *audi alteram partem* requires an opportunity of representation, not necessarily a personal hearing, unless expressly mandated by statute. The principles of natural justice, it said, cannot be applied in a straitjacket formula and depend on the facts of each case. The Court concluded that Mr. Anil D. Ambani, as the promoter and person in control of Reliance, was liable under Clause 4.4 of the 2024 Master Directions, whereas the non-executive directors who were exonerated stood on a different footing. Finding no infirmity in SBI's reasoned order, the High Court dismissed the petition, affirming that procedural fairness had been duly complied with.

High Court of Bombay affirms pendency of Section 37 of the A&C Act appeal does not bar appointment of Arbitrator under Section 11 of the A&C Act

The High Court of Bombay, through its judgment dated 10.10.2025 *in Rajuram Sawaji Purohit, Sole Proprietor of M/s. Mactec Realtors & Developers vs. The Shandar Interior Private Limited*[17] allowed a Section 11 application under the A&C Act and appointed a sole arbitrator to adjudicate the dispute between the parties. The High Court held that the pendency of Section 37 A&C Act appeals against an earlier arbitral award does not preclude initiation of a fresh arbitration once the award has been set aside under Section 34 of the A&C Act and reaffirmed that its jurisdiction under Section 11 is confined to examining the existence of a valid arbitration agreement.

The High Court of Bombay noted that the dispute had arisen from an Agreement dated 29.11.2011, under which Rajuram Sawaji Purohit had deposited INR 51.38 Lakhs (Indian Rupees Fifty-One Lakh Thirty-Eight Thousand) with The Shandar Interior Private Limited towards the purchase of salvage material. After several rounds of litigation including a winding-up petition, a commercial summary suit, and a first arbitration where the claim was dismissed as time-barred, the award was subsequently set aside under Section 34 on 07.02.2024. The High Court held that a *de novo* arbitration would be necessary as modification of the award was impermissible under the A&C Act. While Section 37 A&C Act appeals remained pending, the High Court clarified that a second arbitration was legally permissible. In reaching its conclusion, the High Court relied on *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*[18], as well as earlier High Court of Bombay decisions in *Wadhwa Group Holdings Pvt. Ltd. v. Homi Pheroze Ghandy*[19] and *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd.*[20], emphasizing that the referral court's role under Section 11 A&C Act remains strictly limited to verifying the existence of a valid arbitration agreement, with issues such as limitation, res judicata, or multiplicity of proceedings falling exclusively within the jurisdiction of the Arbitral Tribunal.

Consequently, being satisfied of the existence of an arbitration clause, the High Court of Bombay appointed a sole arbitrator in accordance with Section 11 A&C Act,

[15] Writ Petition No. 3037 of 2025.
[16] (2023) 6 SCC 1.
[17] Commercial Arbitration Application (Lodging) No.25035 of 2024.
[18] 2025 SCC OnLine SC 986.
[19] Commercial Arbitration Application No.414 of 2019.
[20] 2023 SCC OnLine SC 1208.

keeping all issues open for adjudication by the arbitral tribunal.

CERC grants in-principle approval for creation of security interest by Bikaner–Khetri Transmission Limited.

CERC, through its order dated 03.10.2025, in *Bikaner-Khetri Transmission Limited v. Central Transmission Utility of India Limited & Ors.*[21], granted in-principle approval under Sections 17(3) and 17(4) of the Electricity Act, 2003 ("EA 2003") for the creation of security interest by Bikaner–Khetri Transmission Limited ("BKTL") over its project assets in favour of Axis Trustee Services Limited, acting as Security Trustee on behalf of Axis Bank Limited.

The CERC held that creation of security interest over project assets to secure loan repayment is a standard financing practice for capital-intensive transmission projects. Observing that REC Limited had been substituted by Axis Bank Limited as the lender and Axis Trustee Services Limited as the Security Trustee, the CERC granted an in-principle approval for creation of security interest, subject to submission of the executed Indenture of Mortgage. The CERC further clarified that the transmission licence cannot be assigned in favour of the Security Trustee or any nominee of the lender without prior approval, and that any substitution of the licensee shall be governed by Regulation 8 of the CERC (Transmission Licence) Regulations, 2024.

NCLAT, New Delhi holds that benefit of Section 14 of the Limitation Act cannot be extended to proceedings before DRT.

The National Company Law Appellate Tribunal ("NCLAT"), New Delhi Bench, through its judgment dated 07.10.2025 in *United Bank of India (Now Punjab National Bank) v. Concast Morena Road Projects Pvt. Ltd.*[22], held that the benefit of Section 14 of the Limitation Act, 1963 ("Limitation Act") cannot be extended to a creditor who had initiated recovery proceedings before the DRT under the Recovery of Debt and Bankruptcy Act, 1993 ("RDBA Act"). NCLAT observed that the benefit under Section 14 of the Limitation Act can be given only when the forum before which the proceedings were initiated lacked jurisdiction or suffered from a defect of similar nature, and not where proceedings were filed before a competent forum for the purpose of recovery.

In the present case, the United Bank of India ("United Bank") claimed to have disbursed an amount of INR 46.16 Crores (Indian Rupees Forty-Six Crores Sixteen Lakhs) to Concast Morena Road Projects Private Limited in 2013, with the date of default being 19.09.2015. The proceedings were initiated before the DRT under Section 19 of the RDBA Act, followed by the filing of an application under Section 7 of IBC before NCLT, Kolkata on 10.12.2019.

NCLAT held that the United Bank had established proof of disbursement through the NeSL Certificate and bank statements, and that NCLT erred in returning a contrary finding. However, since the date of default was 19.09.2015 and the Section 7 application of IBC was filed on 10.12.2019, the same was beyond the three-year limitation period. The deposits made on 25.11.2016 and 17.12.2016 could not aid the United Bank, as the former was beyond the three-year window, and the latter being a cash deposit could not constitute acknowledgment of debt. NCLAT further observed that the proceedings before the DRT were instituted for recovery and not before a forum lacking jurisdiction, and therefore, the benefit of Section 14 of the Limitation Act could not be extended.

NCLT Kolkata grants extension and waives penal interest on balance sale consideration.

The Kolkata Bench of the NCLT, through its order dated 07.10.2025, in *Indiabulls Consumer Finance Limited v. Aawrun Furnishings Man-Tra Private Limited*[23], granted an extension of time for the deposit of the balance sale consideration in respect of a property subjected to a successful bid at an e-auction, without enforcement of penal interest.

NCLT observed that the delay in payment was occasioned by circumstances beyond the control of M/s Madona Creations Private Limited ("Applicant"), specifically the objections raised by the West Bengal Industrial Development Corporation ("WBIDC") relating to the leasehold land transfer, which inhibited timely compliance. NCLT directed the Applicant to deposit the balance sale consideration along with the applicable transfer fees payable to WBIDC within 15 (fifteen) days from the date of the Order. NCLT expressly waived any interest on the balance payment for the period during which the dispute with WBIDC remained unresolved, clarifying that no fault, negligence, or delay was attributable to the Applicant. The Tribunal relied on settled legal principles and judicial precedent, notably the decision in *Om Prakash Agrawal, Liquidator of S. Kumars Nationwide Ltd. v. UPL Ltd.*[24], wherein it was held that a successful bidder cannot be subjected to penal interest obligations when delay arises due to external factors beyond their control while acting *bonafide*. Consequently, the application for extension and waiver of penal interest was allowed.

[21] Petition No. 671/MP/2025.
[22] Company Appeal (AT) (Insolvency) No. 805 of 2025.
[23] I.A (IB) No. 756/KB/2025 in C.P (IB) No. 644/KB/2019.
[24] Company Appeal (AT) Insolvency No. 310 of 2021.

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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