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MONTHLY CORPORATE LAW UPDATES

JULY, 2024

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1. Supreme Court ("SC") clarifies creditor's right to pursue remaining debt from Corporate Debtor ("CD") despite guarantor's insolvency resolution [*BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. & Anr*]. [Link]

The SC ruled that resolving a corporate guarantor's insolvency does not prevent creditors from pursuing the CD for any remaining debt. In this case, after the CD defaulted on a Rs.100 crore loan, the CD's parent company, Assam Company India Ltd, settled part of the debt as its corporate guarantor.

The SC confirmed that, in such a case, the creditor could still seek the unpaid balance from the CD by initiating a separate insolvency process against the CD. The Court also stated that the guarantor can recover the amount it paid from the CD as per Section 140 of the Indian Contract Act, 1872. However, such recovery shall be limited to the amount paid to the creditor.

2. National Company Law Appellate Tribunal ("NCLAT") Delhi rules against substituting non-participating resolution applicant ("RA") in the CIRP Process [*Swan Energy Ltd. v. Chandan Prakash Jain & Ors*]. [Link]

The NCLAT ruled that an RA who did not participate in the corporate insolvency resolution process from the beginning cannot be substituted as an RA to implement a plan after the process has progressed. In this case, Invent Assets sought to replace itself with Westend Investment as the RA, but the NCLAT found this impermissible since Westend was not part of the original applicants or resolution plan.

3. NCLAT rules Resolution Professional ("RP") is not personally liable for lump sum payments to Jet Airways' asset preservation team [*Jet Aircraft Maintenance Engineers Welfare Association v. Mr. Ashish Chhawchharia*]. [Link]

The NCLAT ruled that the RP for Jet Airways is not personally liable for lump sum payments made to 103 employees of the asset preservation team. The Committee of Creditors ("**CoC**") approved the payments as necessary for managing the airline's operations during its insolvency process. The Jet Aircraft Maintenance Engineers Welfare Association's appeal, which sought to include all employees in the payment and hold the RP liable, was thus dismissed.

4. NCLT Mumbai affirms eligibility of Insolvency Professional Entities ("IPEs") as RP [*Piramal Capital and Housing Finance Limited v. Notion Real Estate Pvt. Ltd*]. [Link]

The NCLT affirmed that IPEs are eligible to be appointed as RPs under the IBC. In the case of Notion Real Estate Private Limited, the NCLT was asked to approve the replacement of the interim resolution professional with an IPE.

The NCLT confirmed that while the IBC does not explicitly mention IPEs, the Insolvency and Bankruptcy Board of India ("**IBBI**") has the authority to regulate and recognize them. Further. the IBBI's regulations and practices support the appointment of IPEs as RPs. Thus, the NCLT validated the appointment of the IPE as RP.

5. NCLT Delhi rules it cannot review settlement proposals post-resolution plan approval [*Sanjeev Mahajan v. Indian Bank (Erstwhile Allahabad Bank) & Anr*]. [Link]

The NCLT ruled that it cannot consider a settlement proposal once a resolution plan has been approved by the CoC. In the case involving Nimitaya Hotel & Resorts Pvt. Ltd., the promoter submitted a higher-value one-time settlement proposal after the CoC had approved a resolution plan. However, the CoC, which was represented solely by the Indian Bank, rejected the settlement proposal without negotiation or explanation.

The NCLT Delhi dismissed the application challenging the CoC's decision, stating that the Tribunal's role is not to review or reassess settlement proposals after approval of the resolution plan by the CoC. The NCLT emphasized that the decision to accept or reject a proposal falls within the commercial wisdom of the CoC, which had already considered and rejected the applicant's proposals.

1. The Securities and Exchange Board of India ("SEBI") mandates uniform charges for all Market Infrastructure Institutions ("MIIs"). [Link]

In order to ensure transparency, fairness, and equal access among market participants, SEBI has issued a directive to MIIs to implement a uniform fee structure for all stock brokers, regardless of their size. This directive aims to eliminate the current slab-wise fee structure.

Furthermore, to comply with this directive, MIIs are required to redesign their charge structures and associated fees. They must also put in place the necessary infrastructure and systems, including amendments to relevant bye-laws, rules, and regulations.

Additionally, MIIs are instructed to notify their members and disseminate this information on their websites.

2. SEBI revises norms for passive mutual fund schemes. [Link]

In order to streamline investments by passively managed mutual fund schemes in the group companies of their sponsors, SEBI has revised its norms. The new rules mandate that no mutual fund scheme should invest more than 25% of its net assets in the listed securities of group companies of the sponsor. This limit excludes investments by equity-oriented exchange-traded funds ("**ETFs**") and index funds.

Equity-oriented ETFs and index funds based on widely tracked and non-bespoke indices can invest according to the weightage of the constituents of the underlying index. However, these investments are subject to an overall cap of 35% of the scheme's net asset value in the group companies of the sponsor.

Furthermore, if the portfolios of such schemes are not rebalanced within 30 (thirty) business days, a justification in writing, including details of efforts taken, must be presented to the investment committee of the asset management company. The Investment Committee may extend the rebalancing period up to an additional 30 (thirty) business days if necessary.

3. SEBI recognizes BSE Limited as Research Analyst Administration and Supervisory Body ("RAASB") and Investment Adviser Administration and Supervisory Body ("IAASB"). [Link]

In order to protect investors' interests and promote the development and regulation of the securities market, SEBI has designated BSE Limited as the supervisory body for research analysts and investment advisers. This recognition is granted for five years.
As part of its new role, BSE will establish bye-laws, standard operating procedures, and frequently asked questions to guide RAASBs and IAASBs in adopting the new frameworks.

Furthermore, SEBI has also revised the registration fees for RAASB.

4. SEBI amends the Alternative Investment Funds ("AIF") Regulations, 2012 to introduce migration options for Venture Capital Funds ("VCFs"). [Link]

SEBI amended the AIF Regulations, 2012 through the SEBI (AIF) (Third Amendment) Regulations, 2024. This amendment specifically focuses on providing flexibility to VCFs that were originally registered under the SEBI (VCF) Regulations, 1996.
This amendment introduces a new category known as the 'Migrated Venture Capital Fund' ("**MVCF**'). Under this new provision, VCFs that wish to migrate must meet certain criteria. First and foremost, they must hold a valid certificate of registration as a VCF under the SEBI (VCF) Regulations, 1996.

These MVCFs must comply with all applicable provisions of the SEBI (AIF) Regulations, 2012 upon migration. Additionally, the funds opting for migration are required to surrender their existing registration certificate under the SEBI (VCF) Regulations, 1996 as part of the process.

Furthermore, the amendment provides detailed guidelines for the registration, operation, and reporting requirements for MVCFs. Key changes include new definitions, eligibility criteria, restrictions on private placements, and specific investment conditions. Additionally, the amendment prohibits the public listing of any units of MVCFs, ensuring compliance with private placement norms.

5. SEBI proposes a new asset class bridging between Mutual Funds and Portfolio Management Services (“PMS”). [Link]

SEBI released a consultation paper introducing a new asset class designed to provide investors with a regulated investment product featuring higher risk-taking capabilities and larger investment sizes. This proposal aims to curb the spread of unregistered and unauthorized investment products.

To facilitate higher risk-taking than traditional mutual funds, SEBI proposed a regulatory framework with appropriate safeguards and risk mitigation measures. The minimum investment for this new asset class is set at Rs.10 lakh per investor.
Furthermore, asset management companies offering this new asset class must have been in operation for at least three years, with an average asset under management of Rs.10,000 crore in the preceding three years. The new asset class will be distinctly branded and advertised differently from traditional mutual funds to highlight its unique features.

Additionally, SEBI clarified that this asset class would allow exposure to derivatives for purposes beyond hedging and portfolio rebalancing. The gross exposure to investable instruments should not exceed 100% of the net assets of the investment strategy. For exchange-traded derivative instruments, the limit is set at 50% of the net assets, and for single-stock derivatives, it is limited to 10% of the net assets of the investment strategy.

1. In an arbitration, non-signatories can be included beyond company ties: Delhi High Court ("HC") [*RBCL Piletech Infra v. Bholasingh Jaiprakash Construction Limited & Ors*]. [Link]

The Delhi HC ruled that the inclusion of a non-party to an arbitration agreement is not contingent solely upon the non-party's affiliation with the same corporate group as a signatory.

The court further clarified that a non-signatory may be brought into the arbitration proceedings if a contractual nexus exists whereby the non-signatory shares, either wholly or partially, responsibility for obligations owed to the claimants.

2. SC interpretation of 3 months as 90 days under Section 34(3) Arbitration and Conciliation Act, 1996 ("A&C Act") is obiter dicta, not ratio decidendi: Calcutta HC [*Future Market Networks Ltd v. Laxmi Pat Surana & Anr*]. [Link]

The Calcutta HC ruled that the SC's previous observations equating 3 months to 90 days under Section 34(3) of the A&C Act were incidental observations rather than binding legal principles.

The Court has clarified that the limitation period of three months for challenging an arbitral award should be calculated based on calendar months, excluding the date of award receipt.

3. Award compensation for breach when a contract is not capable of specific performance can be granted by arbitral tribunal: Delhi HC [*The Deputy Commissioner of Police v. Score Information Technologies Ltd*]. [Link]

The Delhi HC ruled that arbitrators possess the authority to grant compensation for contract breaches when specific performance is unattainable. The HC further emphasized that contract interpretation is the exclusive domain of arbitrators. It clarified that judicial interference in such matters is limited to instances of blatant legal errors that fundamentally impact the case.

4. The term 'subsequent shareholders' does not qualify as 'association or body of individuals' under the A&C Act: Delhi HC [*M/S KTC India Pvt Ltd v. Randhir Brar & Ors*]. [Link]

The Delhi HC ruled that individual shareholders, holding specific shares and possessing rights to exit the company under defined terms, do not constitute an 'association or body of individuals' as per Section 2(1)(f)(iii) of the A&C Act.

The Court further, classified the dispute as an international commercial arbitration due to the involvement of a shareholder residing outside India.

5. The presence of criminal elements in a predominantly civil dispute does not automatically oust the jurisdiction of an arbitral tribunal: Jammu & Kashmir ("J&K") HC [*M/s Tata Power Solar v. UT of J&K & Ors*]. [Link]

The J&K HC ruled that disputes primarily of a civil nature but with some criminal aspects are not automatically barred from arbitration. The court observed that, in the absence of specific allegations suggesting a criminal conspiracy between the parties, there should be no general ban on referring such disputes to arbitration.

1. No demand notice allowed when faceless assessment unit accepts nil income: Calcutta HC [*Nazirpur Large Sized Multipurpose Co-op Society Ltd. v. Union of India*]. [Link]

The HC of Calcutta ruled that a demand notice under Section 156 of the Income Tax Act, 1961 could not be issued when the reassessment concluded with the assessee's return being assessed at zero. The faceless assessment unit had determined that no adverse inference could be drawn from the assessee's financial transactions, thus accepting the nil income. Consequently, the court quashed the demand notice issued, stating it was contrary to the assessment order and issued without proper consideration of the facts.

2. New 'Domestic Money Transfer' ("DMT") guidelines require remitting banks to maintain beneficiary records for cash withdrawals: Reserve Bank of India ("RBI") [Link]

The RBI has revised the regulatory framework for DMT services, effective November 1, 2024. Key changes include stricter Know Your Customer ("**KYC**") requirements, and mandating remitting banks to maintain beneficiary records and validate transactions with an additional factor of authentication. The new guidelines also require remitters to provide a verified phone number and an officially valid document for registration. These updates aim to enhance security and compliance in the evolving digital payment landscape.

3. Government tightens anti-money laundering rules, mandates stringent KYC updates by reporting entities [*Link*]

The government has revised the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 to enforce more stringent KYC requirements for reporting entities. Key changes include allowing entities to retrieve KYC records online using the KYC identifier from the central KYC records registry, except in specific cases. They also require entities to update client KYC records within 7 days upon receiving an update notification from the registry along with allowing entities to file, retrieve, and utilize KYC records as per regulator guidelines.

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