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## SEBI

### Review of Framework for Stocks in Derivatives Segment

1. Securities and Exchange Board of India (“SEBI”) vide its *Circular dated April 11, 2018* has provided for review of framework for stocks in derivatives segment. The circular provides guidelines about the physical settlement of stock derivatives. In regard with the functioning of the Securities Lending and Borrowing mechanism (“SLBM”), it has been decided that physical settlement of stock derivatives shall be made mandatory in a phased/calibrated manner.
2. This circular provides for enhanced eligibility criteria for introduction of stocks in Derivatives Segment wherein a stock, on which option and future contracts are proposed to be introduced, will have to conform to the following eligibility criteria: -
  - i. The stock shall be chosen from amongst the top 500 stocks in terms of average daily market capitalization and average daily traded value in the previous six (6) months on a rolling basis;
  - ii. The stock’s median quarter-sigma order size over the last six (6) months, on a rolling basis, shall not be less than Rs.25,00,000 (Rupees Twenty Five Lakhs);
  - iii. The market wide position limit in the stock shall not be less than Rs.500 crore (Rupees Five Hundred Crores) on a rolling basis, and



- iv. Average daily delivery value in the cash market shall not be less than Rs. 10 crore (Rupees Ten Crores) in the previous six (6) months on a rolling basis. The abovementioned criteria are to be met for a continuous period of six (6) months.
3. A period of one (1) year has been granted for fulfilment of the above and other criteria mentioned in the circular for the stocks to be eligible to be listed as derivatives.

The detailed guidelines of this circulars can be found in the link provided below:

*[Review of Framework for Stocks in Derivatives Segment](#)*



## Monitoring of Foreign Investment limits in listed Indian companies

1. SEBI vide its *Circular dated April 27, 2018* had provided amendment to the SEBI circular No. IMD/FPIC/CIR/P/2018/61 dated April 5, 2018 on Monitoring of Foreign Investment limits in listed Indian companies.
2. The SEBI Circular dated April 5, 2018 ("**April 05 Circular**") had set in place a new system for monitoring the foreign investment limits. The onus of compliance with the various foreign investment limits rests on the Indian company.
3. The companies were needed to fill the required details of Annexure A provided in the April 05 Circular which were to be submitted latest by April 30, 2018. The Annexure A i.e Architecture of the System for Monitoring Foreign Investment Limits in listed Indian companies is provided in *this link*.
4. The current circular has now extended the time for compliance by the companies with the requirements of the April 05 Circular from April 30, 2018 to May 15, 2018. Whereas the new systems for monitoring the foreign investments shall be in place from May 18, 2018.



## MahaRERA

### Sea Princes Realty Vs Manoj Votavat and Ars

1. The Maharashtra Real Estate Appellate Tribunal (“**Tribunal**”) under Real Estate (Regulation and Development) Act, 2016 (“**Act**”) in its *Order dated April 06, 2018* (“**Order**”) has asked the Secretary of Maharashtra Real Estate Regulatory Authority (**MahaRERA**) to initiate action against an architect for issuing factually incorrect Certificate which contributed in acquiring the Occupancy Certificate (“**OC**”) for the building developed by Sea Princess Realty (“**Developer**”).
2. The case pertains to delay in possession by the Developer for the project in Borivali. Seven (7) Appeals were filed by the Developer and seven (7) Appeals were filed by the flat members (“**Allotees**”). The Appeal challenged the Order of payment of interest to the Allotees for the total consideration paid by them to the Developer.
3. The Order stipulates that the date of possession as prescribed in the Agreement between the Developer and the Allotees will not be superseded if an extended date is stipulated while registering a project.
4. Further the Tribunal has placed reliance on the Judgment of Neelkamal Realtors Suburban Pvt. Ltd. and Ors Vs. Union of india [ (2018) 1 AIR Bom R 558] which states as follows:

*“Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4.*”



*The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter. The promoter would tender an application for registration with the necessary preparations and requirements in law. While the proposal is submitted the promoter is supposed to be conscious of the consequences of getting the project registered under RERA. Having sufficient experience in the open market, the promoter is expected to have a fair assessment of the time required for completing the project. After completing all the formalities, the promoter submits an application for registration and prescribes a date of completion of project. It was submitted that interest be made payable from the date of registration of the project under RERA and not from the time-line consequent to execution of private agreement for sale entered between a promoter and a allottee. It was submitted that retrospective effect of law, having adverse effect on the contractual rights of the parties, in unwarranted illegal and highly arbitrary in nature.”*

5. Section 18 of the Act states that in case a promoter is unable to give possession of a building in accordance with the terms of agreement as in the immediate case, then the builder shall be liable to pay the amounts paid by Allottees with the interest amount. The relevant part is reproduced below for ready reference: -

*“(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building—*

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*



*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act...”*

6. The Tribunal took a note of the fact that the Learned Chairperson before passing the Impugned Order has afford several opportunities to the Developer to explain under a chart as to the reasons for delay in the project which the Developer chose to flout.
  
7. The Tribunal thereby concluded that reasons attributed to the delay were general in nature and Allottees cannot be lured on the basis merely by handing over the OC, if the building itself is uninhabitable.



## Supreme Court

### Civil Appeal 14697 of 2015

Hon'ble Supreme Court has pronounced its Order dated April 12, 2018 in the matter of State of Gujarat & Ors versus Utility Users' Welfare and Association & Ors.

#### **1. Background**

- a. The Hon'ble Supreme Court was confronted with a conflict of judgments passed by the Madras High Court and Gujarat High Court. The Conflict was pertaining to Section 84 (2) of the Electricity Act 2003 ("EA 2003") which states that the state government "may" appoint "any person as the chairperson from amongst the persons, who is, or has been, a Judge of the High Court".
- b. The Hon'ble Madras High Court on February 7, 2014, held that there was no such mandatory requirement to appoint a High Court Judge as the Chairperson of Tamil Nadu Electricity Regulatory Commission.
- c. On the contrary, the Hon'ble Gujarat High Court, in a similar case, on October 8, 2015, held that it was mandatory to appoint a High Court Judge as the Chairperson of Gujarat Electricity Regulatory Commission.
- d. Due to such conflicting opinions, the petitioners approached the Hon'ble Supreme Court for issuing directions.

#### **2. Supreme Court Ruling**

- a. The Hon'ble Supreme Court ruled that Section 84(2) of the EA 2003 only



gives a “discretionary option” to the State to appoint a Judge as the Chairperson of the State Electricity Regulatory Commission (“**SERC**”) and therefore it is not mandatory.

- b. The Hon’ble Supreme Court further noted that it is mandatory for SERCs member to have legal expertise if the panel is adjudicating a dispute.
- c. In view thereof, the Hon’ble Supreme Court clarified that the member appointed should also possess professional qualifications with substantial experience in the practice of law and should have the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.





## High Court of Judicature at Bombay, Bench at Aurangabad

### Hemant Kapadia and others vs The State of Maharashtra

1. The *Order dated April 20, 2018* was passed in the Public Interest Litigation No. 99 of 2014 with Civil Application No. 2946 of 2018 (“**PIL**”) filed before the Hon’ble High Court, Aurangabad Bench (“**Hon’ble Court**”) wherein Mr. Hemant Kapadia and others (“**Petitioners**”) had sought directions regarding the appointment of judicial member as the chairperson of the Maharashtra Electricity Regulatory Commission (“**MERC**”) against the State of Maharashtra (“**Respondent**”) pursuant to the law laid down by the Hon’ble Supreme Court of India (“**Hon’ble Supreme Court**”) in the matter of *State of Gujarat and Others Versus Utility Users' Welfare Association and Others in Civil Appeal No. 14697 of 2015* along with other connected matters.
2. A PIL was filed before the Hon’ble Court seeking direction against the Respondent to forthwith comply with the law laid down by the Hon’ble Supreme Court with regard to appointment of Judicial member as per section 84 and 85 of the Electricity Act, 2003 (“**EA, 2003**”).
3. The Hon’ble Supreme Court decided the matter on April 12, 2018 wherein it was concluded that it is mandatory to have a person of law as a member of the State Commission in accordance with sections 84 and 85 of the EA, 2003, the relevant portion of the Judgement passed by Supreme Court is mentioned below for ready reference.

*“i. Section 84(2) of the said Act is only an enabling provision to appoint a High Court Judge as a Chairperson of the State Commission of the said Act and it is not mandatory to do so.*

*ii. It is mandatory that there should be a person of law as a Member of the Commission, which requires a person, who is, or has been holding a judicial office or is a*



*person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.*

*iii. That, in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench...*

*v. Our judgment will apply prospectively and would not affect the orders already passed by the Commission from time to time.*

*vi. In case there is no member from law as a member of the Commission as required aforesaid in para 2 of our conclusion, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of clause (ii) above."*

4. The Hon'ble Bombay High Court on the basis of aforesaid judgement of Hon'ble Supreme Court held as follows:

*"4. The issues raised and prayer made in the present Public Interest Litigation, namely, to direct the Respondent to forthwith make appointment of Judicial Member to the post of Chairperson of the Maharashtra Electricity Regulatory Commission strictly in accordance with Sections 84 and 85 of the Electricity Act, 2003 by following the law laid down by the Hon'ble Apex Court, is completely answered by the aforesaid exposition of law by the Supreme Court. The aforesaid exposition of law by the Supreme Court would govern the appointments of the post of Chairperson and also the Member of the Maharashtra Electricity Regulatory Commission.*

*5. For the reasons aforesaid, present Public Interest Litigation stands disposed of."*

5. Hence, it was held that it is mandatory to have a legal person as a member of MERC.



## MCA

### The Companies (Share Capital and Debentures) Amendment Rules, 2018

The Ministry of Corporate Affairs (“**MCA**”) vide a *Notification dated April 10, 2018* had provided amendments to the Companies (Share Capital and Debentures) Rules, 2014 (“**2014 Rules**”). These rules would be called the Companies (Share Capital and Debentures) Amendment Rules, 2018.

Rule 5, sub-rule 3 has now been amended and substituted as

“5(3) Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary:

Provided that in case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate.”

The 2014 Rules didn’t provide for the share certificate to mention the shares to which it relates and the amount paid thereon, which is now a requirement.

The detailed guidelines of this notification can be found in the link provided below:

*The Companies (Share Capital and Debentures) Amendment Rules, 2018*

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