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RBI : Timelines for Stressed Assets Resolution 1

RBI : NEFT system – Settlement at half-hourly intervals 3

RBI : Rationalisation of Branch Authorisation Policy- Revision of Guidelines regarding 'Banking Outlets' 4

SC : Order of the Hon'ble Supreme Court in Case No.4842 of 2017 5

SC : Order of Hon'ble Supreme Court determining 'Relevant Turnover' under Competition Act, 2002 11

SEBI : Amendment of Permissible investments by Portfolio Managers, Alternate Investment Funds and Mutual Funds operating in IFSC 14

MERC : Comments invited for applicability of PV Metering Regulations, 2015 to other RE generation systems 16

RERA : MahaRERA- Co-Promoter defined 17

RERA : MahaRERA- Local address of promoters/real-estate 18

IBBI : Clarification in IBBI (Voluntary Liquidation Process) Regulations, 2017 19

NCLAT: In the matter of Kirsau Software Pvt. Ltd. Vs Mobilox Kirusa Innovations Pvt. Ltd. 20

Reserve Bank of India

Timelines for Stressed Assets Resolution

Reserve Bank of India ("**RBI**") vide its *Circular dated February 26, 2014* had issued Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum ("**JLF**") and Corrective Action Plan ("**CAP**") ("**Framework**"). The Framework aimed at early identification of stressed assets and timely implementation of a CAP to preserve the economic value of stressed assets.

Pursuant to the above Framework, RBI vide *Circular dated May 05, 2017* issued timelines for stressed assets resolution. In order to ensure that the CAP is finalised and formulated in an expeditious manner, the Framework specifies various timelines within which lenders have to decide and implement the CAP. The Framework also contains disincentives, in the form of asset classification and accelerated provisioning where lenders fail to adhere to the provisions of the Framework.

Therefore in order to facilitate timely decision making, the decisions agreed upon by a minimum of 60 percent (60%) of creditors by value and 50 percent (50%) of creditors by number in the JLF would be considered as the basis for deciding the CAP, and will be binding on all lenders, subject to the exit (by substitution) option available in the Framework. Lenders shall ensure that their representatives in the JLF are equipped with appropriate mandates, and that decisions taken at the JLF are implemented by the lenders within the timelines.

It has been clarified that the CAP can also include resolution by way of Flexible Structuring of Project Loans, Change in Ownership under Strategic Debt Restructuring, Scheme for

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Sustainable Structuring of Stressed Assets (S4A), etc.

The Circular further provides as follows:

i. the participating banks vote on the final proposal before the JLF shall be unambiguous and unconditional;

ii. the bank which does not support the majority decision on the CAP may exit subject to substitution within the stipulated time line, failing which it shall abide the decision of the JLF;

iii. the bank shall implement the JLF decision without any additional conditionalities; and

iv. the Boards shall empower their executives to implement the JLF decision without requiring further approval from the Board.

v. Any non-adherence to these instructions and timelines specified under the Framework shall attract monetary penalties on the concerned banks under the provisions of the Banking Regulation Act 1949.

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National Electronic Funds Transfer ("NEFT") system – Settlement at half-hourly intervals

RBI vide its *Circular dated May 08, 2017* has decided to introduce new batches for settlement of payments through the NEFT from July 10, 2017. RBI vide a Press Release dated April 06, 2017 sets out measures for refining the liquidity management framework; strengthening the banking regulation and supervision; broadening and deepening financial markets; and extending the reach of financial services by enhancing the efficacy of the payment and settlement systems.

Since NEFT is a widely-used online payment system regulated by the RBI that allows inter-bank transfer of funds, the said additional settlements in the NEFT system at half-hour intervals are being introduced to enhance the efficiency of the system and add to customer convenience. Accordingly, it is decided to introduce 11 additional settlement batches during the day (at 8.30 am, 9.30 am, 10.30 am ……… 5.30 pm and 6.30 pm), taking the total number of half hourly settlement batches during the day to 23.

The NEFT system presently settles the fund transfer requests of the participating banks on net basis at hourly intervals from 8:00 am to 7:00 pm on all working days. The half hourly settlements would speed up the funds transfer process and provide faster credit to the destination accounts.

The RBI asked all the participating banks to carry out the required changes in their CBS (core banking solution) system to initiate the NEFT transactions for half hourly settlement and also to accept and credit the inward NEFT transactions on half hourly basis.

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Rationalisation of Branch Authorisation Policy- Revision of Guidelines regarding 'Banking Outlets'

RBI vide its *Circular dated May 18, 2017* has provided for revised guidelines for 'Banking Outlets' i.e. opening of new place of business and transfer of existing places of business under Section 23 of the Banking Regulation Act, 1949. These guidelines are applicable to all Domestic Scheduled Commercial Banks (excluding Regional Rural Banks), Small Finance Banks, Payment Banks and Local Area Banks.

A 'Banking Outlet' has been defined as for a Domestic Scheduled Commercial Bank (DSCB), a Small Finance Bank (SFB) and a Payment Bank (PB) is a fixed point service delivery unit, manned by either bank's staff or its Business Correspondent where services of acceptance of deposits, encashment of cheques/ cash withdrawal or lending of money are provided for a minimum of four (4) hours per day for at least five (5) days a week. The detailed guidelines have been provided in the Annex of link provided below-

Opening of new place of business and transfer of existing places of business (Section 23 of the Banking Regulation Act, 1949).

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Supreme Court of India

Order of the Hon'ble Supreme Court in Case No.4842 of 2017

1. Essar Steel Limited, the Appellant No.1 had set up its gas based steel plant at Hazira in the year 1990 for production of HBI. It had also set up 20 MW Open Cycle Power Plant ("**OCPP**") for Captive Consumption of power its HBI plant. On the application made by the Appellant No. 1, the state government granted exemption from the payment of electricity duty for a period of ten (10) years commencing from July 21, 1990 to the said OCPP. Subsequently the Appellant No.1 converted the said OCPP of 20MW into 30MW Combined Cycle Mode ("**CCM**") Power Plant by adding steam turbine after such conversion, pursuant to which the Appellant No. 1 was granted by the Government of Gujarat ("**GOG**") exemption from payment of electricity duty for a period of fifteen (15) years commencing from July 21, 1990. Therefore in or about the year 1991-1992, the Appellant No. 1 thought of setting up another Captive Power Plant ("**CPP**") of 300 MW. The GOG and the Gujarat Electricity Board ("**GEB**") granted in principle approval to the Appellant No. 1 for setting up the Captive Power Plant of 300 MW.

2. Thereafter there was a change in the Power Policy of Government of India ("**GOI**"), in the year 1991--1992, which allowed the participation of private sector in power generation. GOG with a view to give effect to that policy, issued a Notification dated February 02, 1992 under Section 3 of the Bombay Electricity Duty Act, 1958 ("**Duty Act**"). Appellant No. 1 therefore, abandoned its plan to set up the said CPP of 300 MW in CMM and in place instead thereof, promoted and incorporated separate generating company under the name and style of Essar Power Limited that is Appellant No. 2.

3. The GOG issued an order dated June 16, 1995 in respect to the demand of Appellant No. 2 to set up 510 MW generating station at Hazaria. The Appellant No. 1 started production of electricity from August 08, 1995 and held equity shares of 42% of Appellant No. 2. Out of 515 MW, 310 MW capacity was allocated to GEB which constitute 58% of the installed capacity, remaining capacity of 215 which constituted 42% to the ESSAR Group of Company as per the stipulation contained in the Power Purchase Agreement ("PPA") dated May 30, 1996.

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4. The Appellant No. 1 thereafter in 2001 had filed applications for seeking exemption from electricity duty for a period of fifteen (15) years. The State of Gujarat vide its Order dated December 23, 2002 rejected the request for exemption. Further the Order was challenged in the Hon'ble High Court of Gujarat ("**HC**"). The Hon'ble HC then vide its Order dated March 17, 2003 left upon GOG to take a fresh decision. GOG again rejected the application of Appellant No.1 for exemption of electricity duty for 215 MW power generations which is equivalent to 42% of the total generation.

5. The writ petition was filed challenging the Order dated January 23, 2006 in which the Hon'ble HC set aside the Order dated January 23, 2006 and directed the GOG to pass a fresh order. The GOG passed a detailed order on December 24, 2009 rejecting the claim of Appellant No.1 for exemption of payment of electricity duty under notification dates February 02, 1992 as well as under section 3(2)(vii)(a)(i) of the Duty Act.

6. Thereafter recovery notice on October 06, 2009 was issued for payment of electricity duty amounting to Rs. 562,00,00,000/- (Rupees Five Hundred and Sixty Two Crores Only) together with interest totaling Rs. 1038,27,00,00,000/- (Rupees One Thousand Three Hundred and Thirty Eight Crores Twenty Seven Paisa Only) for the period of April 2000 to August 2009. The above Order of GOG was challenged by the Appellants before the Hon'ble HC by means of Special Leave Application, which was dismissed by the Single Judge on February 25, 2010. Aggrieved by which Letters Patent Appeal ("LPA") was filed by the applicants an interim order was granted on the following conditions:

   > "i) The appellant shall pay a sum of Rs.50 Crores against the outstanding dues of electricity by 30.04.2010 in two instalments of Rs.20 Corers each.
   > ii) The appellant no.1 shall further pay from 01.05.2010 a sum of Rs.15 Crores every month against the outstanding dues of electricity…"

7. The LPA ultimately came to be dismissed by Division Bench on September 07, 2016 against which judgment this appeal was been filed.

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8. The learned Counsel for the parties had placed their submissions and reliance on various Hon'ble Supreme Court judgements on the basis of which the Hon'ble Supreme Court considered the following:

   a. The exemption from payment of duty as claimed by the appellants is in two parts. Firstly, under Section 3(2)(vii)(a)(i) of the Duty Act and secondly, under the Notification dated February 27, 1992.

Claim under Section 3(2)(vii)(a)(i)

   b. Section 3 of the Duty Act deals with "duty on units of energy consumed". Sub Section (2) enumerates various circumstances under which duty shall not be leviable on the units of energy consumed. Sections 3(2)(vii)(a)(i) and 3(3) of the Duty Act is quoted below for your ready reference:

> "3. Duty on units of energy consumed... ... ...
> (2) Electricity duty shall not be leviable on the units of energy consumed.........
> (vii) for motive power and lighting in respect of premises used by an industrial undertaking for industrial purpose, until the expiry of the following period, that is to say:-
> a) In the case of an industrial undertaking which generates energy either singly or jointly with any other industrial undertaking for its own use or as the case may be, for the use of industrial undertakings which are jointly generating the energy.
> (i) Fifteen years from the date of commencement of the Bombay Electricity Duty (Gujarat Amendment) Act, 1983(hereinafter in this subsection and subsections (2A) and (2AA) referred to as "the commencement date") or the date of starting the generation of such energy whichever is later in such generation of energy is by back pressure turbine or if such generation of energy is obtained by cogeneration.
> (3) The State Government may, by notification in the Official Gazette, and subject to such terms and conditions as may be specified therein, reduce the rate of duty or remit the duty in respect of......"

   c. The Hon'ble Supreme Court noted that PPA allocated the energy to the GEB to the extent of 58% and 42% power supply was to be given to sisters concern i.e. ESSAR Gujarat, ESSAR Steel and ESSAR Oil as a special case.

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It is well settled that taxing statute are to be strictly construed specifically the exemption notification. It has been held that the statutory provisions providing for exemption has to be interpreted in the light of words employed in it and there cannot be any addition or subtraction from the statutory provision.

d. The Hon'ble Supreme Court cited various landmark Judgement and further noted that the statutory provisions of Section 3(2)vii(a) of the Duty Act thus have to be strictly construed and in event the condition of generating energy jointly with any other industrial undertaking is not fulfilled, the claim has to be rejected.

e. Learned Counsel for the appellants submitted that appellants are claiming exemption from excise duty only to the extent of its shareholdings i.e. 42%. The object for grant of exemption to the industrial undertaking which generates energy either singly or jointly is for the use of industrial undertaking which are jointly generating the energy. In the present case, 58% of the energy generated was allocated to GEB with whom Appellant No. 2 is not jointly generating the energy, the statutory provisions has to be strictly construed and when energy being generated is used by industrial undertaking which is not jointly generating the energy the claim is not covered under Section 3(2)(vii)(a) of the Duty Act.

f. The claim raised by the Appellants under the above said notification was specifically dealt by the Hon'ble HC and the GoG. The condition which was found lacking for applicability of the notification was that generating sets were not purchased or installed or commissioned during the period from January 01, 1991 to December 31, 1992. The Hon'ble HC had recorded categorical finding that the generating sets was commissioned in the month of August 1995. The judgment of Division Bench was as follows:

> "Now, so far as the alternative claim of the appellants to grant the exemption for a period of 10 years under the Notification dated 27.02.1992 is concerned, on considering

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> Notification dated 27.02.1992, it appears that the conditions precedent laid down in the said notification cannot be said to have been compiled by the appellants more particularly appellant No.1 – ESL. For claiming the benefit of notification dated 27.02.1992 it is to be established that the generating set or sets have been purchased/installed or commissioned during the period beginning from 01.01.1991 and ending on 31.12.1992. From the record it appears that the generating sets have been commissioned in the month of August 1995, the appellants have failed to establish that the generating sets were even purchased during the aforesaid period. It cannot be disputed that in a taxing statute more particularly with respect to the exemption from payment of duty, all the conditions which can be said to be statutory are required to be fulfilled and unless and until all the conditions stipulated in the exemption notification are satisfied and/or compiled with, there shall not be any exemption under the notification. In the present case, admittedly, the generating sets in question have been commissioned in the month of August 1995. The appellants have failed to establish that they even purchased the generating sets during the period beginning from 01.01.1991 to 31.12.1992. Mere placement of order for purchase cannot amount to actual purchase of the generating sets."

g. Another reason given by the Hon'ble HC was that no application was made within 180 days of application of the notification dated February 27, 1992 or even from the date of installation of generating sets i.e. August 1995. Even if the second reason given by the Hon'ble HC is ignored, non-fulfilment of condition of notification dated February 27, 1992 clearly entailed rejection of claim under notification dated February 27, 1992. There is no foundation or basis laid down even in this appeal to condemn the finding recorded by the Hon'ble HC that generating set was not purchased from January 01, 1991 to December 31, 1992.

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h. The Hon'ble Supreme Court could not find any error in rejection of claim of appellants under the said notification.

i. The Hon'ble Supreme Court upheld the judgement of the Hon'ble HC and held that the Hon'ble HC has rightly negatived the claim of the Appellants under Section 3(2) of the Duty Act as well as under the notification February 27, 1992.

The appeal was dismissed.

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Order of Hon'ble Supreme Court in the matter of Excel Corp Care Limited Vs Competition Commission of India for determination of 'Relevant Turnover'

1. The Food Corporation of India ("**FCI**") complained to the Competition Commission of India ("**CCI**") of an anti-competitive agreement purportedly arrived at between M/s. Excel Crop Care Limited, M/s. United Phosphorous Limited ('UPL'), M/s. Sandhya Organics Chemicals Private Limited and Agrosynth Chemicals Limited (collectively referred as the "**Companies**") in relation to tenders issued by the FCI for the public procurement of Aluminium Phosphide Tablets ("**APT**").

2. CCI found the Companies guilty of entering in anti-competitive agreements which was a contravention of Section 3(3) of the Competition Act, 2002 ("**Act**") and imposed a penalty of 9% of the average total turnover of the Companies for last three (3) years.

3. The Companies appealed against the above order of CCI before Competition Appellate Tribunal ("**COMPAT**"). COMPAT in its order upheld the order of CCI finding the Companies guilty of contravening the provisions of Section 3(3) of the Act. However the penalty imposed was reduced as COMPAT observed that the penalty under Section 27(b) of the Act was to be imposed on the 'relevant turnover' and not the 'total turnover'. Relevant turnover here means the turnover of the product in question.

4. An appeal against the said order reducing the penalty was filed before the Hon'ble Supreme Court by CCI.

5. Hon'ble Supreme Court's ruling and interpretation:

   a. Hon'ble Supreme Court in this matter held that the meaning of turnover according to Section 27(b) of the Act should be the 'relevant turnover'. The Hon'ble Supreme Court stated that it was not just and equitable to charge a penalty on the total turnover and stressed upon the principle of equality and rationality in determining

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determining penalties as it was a protected right conferred by the Articles 14 and 21 of the Constitution. Relying on various judgments, the Court made the following observation:

> "Interpretation which brings out such inequitable or absurd results has to be eschewed. This fundamental principle of interpretation has been repeatedly made use of to avoid inequitable outcomes."

b. Hon'ble Supreme Court emphasized that the penalty shouldn't be such that would not lead to the 'death of the entity itself'. The Hon'ble Supreme Court also held that the interpretation of the penalty should not be made in a strict sense and stated as follows:

> "In such a situation even if two interpretations are possible, one that leans in favour of infringer has to be adopted, on the principle of strict interpretation that needs to be given to such statutes."

6. A judgment by Hon'ble Justice N .V. Ramana laid down a two-step calculation to be followed while imposing the penalty under Section 27 of the Act-

a. Step 1: Determination Of Relevant Turnover

Relevant turnover would be the entity's turnover pertaining to products and services that have been affected by any contravention. The aforesaid definition would not be exhaustive. The authority should have regard to the entity's audited financial statements. Where audited financial statements are not available, the Commission may consider any other reliable records reflecting the entity's relevant turnover or estimate the relevant turnover based on available information.

b. Step 2: Determination of Appropriate Percentage of Penalty Based on Aggravating and Mitigating Circumstances

After such initial determination of relevant turnover, commission may consider appropriate percentage, as the case may be, by taking into consideration nature,

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gravity, extent of the contravention, role played by the infringer (ringleader, follower), the duration of participation, the intensity of participation, loss or damage suffered as a result of such contravention, market circumstances in which the contravention took place, nature of the product, market share of the entity, barriers to entry in the market, nature of involvement of the company, bona fides of the company, profit derived from the contravention, etc. This percentage of penalty under Section 27(b) of the Act would be restricted to 10% of the entity's relevant turnover.

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SEBI

Amendment of Permissible investments by Portfolio Managers, Alternate Investment Funds and Mutual Funds operating in IFSC

Securities and Exchange Board of India ("**SEBI**") vide its *Circular dated May 23, 2017* has provided for amendments to the *Securities and Exchange Board of India (International Financial Service Centres) Guidelines, 2015* - Permissible investments by Portfolio Managers, Alternate Investment Funds and Mutual Funds operating in International Financial Service Centres ("**IFSC Guidelines 2015**"). The amendments are as follows:

1. Clause 9(4) and Clause 22 (3) of IFSC Guidelines 2015 specify the securities in which portfolio managers and alternative investment fund or mutual fund respectively, operating in International Financial Service Centres ("**IFSC**") are permitted to invest in. This clause has now been amended and shall read as follows:

   "A. Clause 9 (4) of SEBI (IFSC) Guidelines, 2015 is amended to read as follows:

   A portfolio manager operating in IFSC shall be permitted to invest in the following:

   a) Securities which are listed in IFSC;
   b) Securities issued by companies incorporated in IFSC;
   c) Securities issued by companies incorporated in India or companies belonging to foreign jurisdiction. subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and Government of India from time to time".

2. Clause 22(3) of SEBI (IFSC) Guidelines, 2015 is amended to read as follows:

   "Any alternative investment fund or mutual fund operating in IFSC shall be permitted to invest in the following:

   a) Securities which are listed in IFSC;
   b) Securities issued by companies incorporated in IFSC;
   c) Securities issued by companies incorporated in India or companies belonging to foreign jurisdiction.

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subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and Government of India from time to time".

3. Such portfolio manager, alternative investment fund or mutual fund shall invest in India through the foreign portfolio investor route.

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MERC

Comments invited for applicability of PV Metering Regulations, 2015 to other RE generation systems

Maharashtra Electricity Regulatory Commission ("**MERC**") has through a *Public Notice dated May 25, 2017* invited comments on proposed amendment of the Maharashtra Electricity Regulatory Commission (Net Metering for Roof–top Solar Photo Voltaic Systems) Regulations, 2015 ("PV Net Metering Regulations"). The *Explanatory Memorandum dated May 25, 2017* has invited comments for applicability of PV Net Metering Regulations to other Renewable Energy ("**RE**") generating systems also, including Hybrid RE systems. The link of the PV Net Metering Regulations has been provided below:

Maharashtra Electricity Regulatory Commission- Net Metering for Roof-top Solar Photo Voltaic Systems - Regulations - 2015 dated September 10, 2015.

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Real Estate Regulatory Act

Maharashtra Real Estate Regulatory Authority

Co-Promoter defined

The Maharashtra Real Estate Regulatory Authority ("**MahaRERA**") vide its *Office Order dated May 11, 2017* has notified the following definition of a 'Co-Promoter' and other rules as follows:

1. Co-Promoter means and includes any person(s) or organization(s) who under any agreement or arrangement with the promoter of a Real Estate Project is allotted or entitled to a total revenue generated from sale of apartments or share of the total area developed in the Real Estate Project.

2. The liabilities of such Co-Promoters shall be as per the agreement or arrangement with the Promoters, however for withdrawal from designated Bank Account, they shall be at par with the Promoter of the Real Estate Project.

3. The agreement or arrangement of Co-Promoter(s) with the Promoter should clearly detail the share of Co-Promoter(s) and the copy of the said agreement or arrangement should be uploaded on the MahaRERA portal, at the time of registration along with other details of the Co-Promoter(s).

4. Such Co-Promoter/Individual/Organisation should submit a declaration in Form B of Maha RERA (Regulation and Development) (Registration of Real Estate Project, Registartion of Real Estate Agents, Rate of Interest and Disclosures on Website) Rules, 2017. Each of the Co-Promoter/Individual/Organisation entitled to share of the total are developed, should open a separate bank account for deposit of 70% of the sale proceeds realized from the allottees.

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Local address of promoters/real-estate agents based outside Maharashtra

MahaRERA vide its MahaRERA *Order No. 2 dated May 25, 2017* has provided for the following rules for promoters/real-estate agents based outside Maharashtra-

1. For registering projects/agents in Maharashtra, for administrative convenience and in case of emergencies for urgent correspondence, promoters/real-estate agents should have a local address in Maharashtra even though they are headquartered outside Maharashtra or outside India.

2. The promoter/real estate agent should enter his local address in Maharashtra while registering in the online application.

3. Also if the Director/Authorized Signatory or other functionaries of the Promoter's enterprise are based out of Maharashtra, a local address within Maharashtra needs to be entered. All correspondences of MahaRERA would be sent to the enterprise/ individual at the said local address in Maharashtra, as mentioned while registering in the online application.

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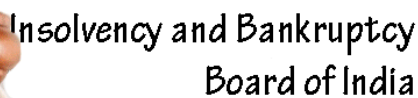
Insolvency and Bankruptcy Board of India

Clarification in Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

The Insolvency and Bankruptcy Board of India (“**IBBI**”) vide a *Clarification dated May 5, 2017* has provide for clarification in the *Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017* notified as on March 31, 2017 wherein the term ‘corporate debtor’ in Regulation 10(2)(r) will deem to mean as ‘corporate person’. Regulation 10(2)(r) is reproduced below for ready reference

> “such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate debtor”.



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NCLAT

In the matter of Kirsau Software Pvt. Ltd. Vs Mobilox Kirusa Innovations Private Limited

1. Kirsua Software Private Limited ("**Kirsua**") issued a demand notice for payment of certain dues under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") on Mobilox Innovations Private Limited ("**Mobilox**") as an operational creditor. Mobilox issued a reply to the demand notice intestating that there exists a dispute between the parties and Kirusa had breached the terms of NDA between the parties, divulged Mobilox's confidential information and approached Mobilox's clients.

2. Kirsua under Section 9 of the Code made an application for the initiation of Corporate Insolvency Resolution Process ("**CIRP**") to the Adjudicating Authority at Mumbai ("**NCLT**") which rejected the same stating that no CIRP can be initiated on issuance of notice of dispute by Mobilox. Kirsua then approached the National Company Law Appellate Tribunal, Delhi ("**NCLAT**") against the order of NCLT.

3. Tribunal's Ruling and Analysis:

   a. **Examination by the Adjudicating Authority**

   NCLAT in its ruling gave an interpretation of the terms 'dispute' and 'existence of dispute' under Section 9 of the Code. NCLAT held that though the words 'prima facie' are missing in Sections 8 and 9 of the Code, yet the Adjudicating Authority would examine whether notice of dispute in fact raises the dispute and that too within the parameters of two definitions - 'debt' and 'default' and then it has to reject the application if it apparently finds that the notice of dispute does really raise a dispute and no other factual ascertainment is required.

   b. **'Dispute' not limited to definition as per Section 5(6) of the Code**

   NCLAT also held that the definition of word 'Dispute' under Section 5(6) of the Code is 'inclusive' and not 'exhaustive' and should cover all 'Disputes' not limited to pending suits and arbitration as specifically stated in Section 5 of the Code.

THE BANKRUPTCY CODE

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Disputes would include 'Disputes' such as a notice under Section 59 of the Sales of Goods Act, 1930 if issued by one of the party, a labourer/employee who may claim to be operation creditor for the purpose of Section 9 of the Code, any dispute with the State Government, a pending dispute in a Labour Court about existence of amount of debt, Also cases where one of the parties has moved before the High Court under Section 433 of the Companies Act, 1956 would be a 'Dispute'.

c. Specifications for determining a 'Dispute'

NCLAT held that the 'Dispute' can be for a suit or arbitration proceedings related to the amount of debt or quality of goods and services or breach of representation/warranty.

d. Genuine 'Dispute'

It was held that there should be proper examination by the Adjudicating Authority and stated as follows:

> *"Merely a dispute giving a colour of genuine dispute or illusory, raised for the first time while replying to the notice under Section 8 cannot be a tool to reject an application under Section 9 if the operational creditor otherwise satisfies the adjudicating authority that there is a debt and there is a default on the part of the corporate debtor."*

4. Thus it was ruled that Mobilox's reply did not establish an existence of Dispute under Section 8 of the Code and thus NCLAT directed the adjudicating authority for consideration of the application of Kirsau for admission as if the application is otherwise complete.

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Warm Regards,

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