

*Newsletter*  
*August 2020*

**DMD**<sup>®</sup>  
ADVOCATES

It gives us immense pleasure to circulate this edition of DMD Advocates' newsletter focusing on recent legal developments in the areas of corporate and allied laws.

In this edition, we have covered some of the key notifications, advisories, orders and notices issued by the Government and other authorities such as, SEBI and RBI.

We hope you enjoy reading this edition and find it useful in your area of work.



### *PIB Releases*

#### **Cabinet approves Central Sector Scheme of financing facility under 'Agriculture Infrastructure Fund'**

On July 08, 2020, the Union Cabinet approved a new pan-India Central Sector Scheme-Agriculture Infrastructure Fund. The scheme will provide a medium to long term debt financing facility for investment in viable projects for post-harvest management infrastructure and community farming assets through interest subvention and financial support.

Under the scheme, INR one lakh crore will be provided by banks and financial institutions as loans to Primary Agricultural Credit Societies (PACS), Marketing Cooperative Societies, Farmer Producers Organizations (FPOs), Self Help Group (SHG), Farmers, Joint Liability Groups (JLG), Multipurpose Cooperative Societies, Agri-entrepreneurs, Start-ups, Aggregation Infrastructure Providers and Central/ State agency or Local Body sponsored Public Private Partnership Project. To access a copy of the PIB release, click [here](#).

#### **CBIC & CBDT sign MoU to facilitate smoother bilateral exchange of data**

On July 21, 2020, a Memorandum of Understanding (MoU) was signed between the Central Board of Direct Taxes (CBDT) and the Central Board of Indirect Taxes and Customs (CBIC), for data exchange between the two organisations. This MoU supersedes the MoU signed between CBDT and the erstwhile Central Board of Excise and Customs (CBEC) in the year 2015. Significant developments have taken place since the signing of earlier MoU in 2015 including introduction of GST, incorporation of GSTN and change in the nomenclature of Central Board of Excise and Customs (CBEC) to Central Board of Indirect Taxes and Customs (CBIC). Changed circumstances, including advancements in technology, are duly incorporated in the signed MoU.

This MoU will facilitate the sharing of data and information between CBDT and CBIC on an automatic and regular basis. In addition to regular exchange of data, CBDT and CBIC will also exchange with each other, on request and spontaneous basis, any information available in their respective databases which may have utility for the other organisation.

The MoU comes into force from the date of signing and is an ongoing initiative of CBDT and CBIC, who are already collaborating through various existing mechanisms. A Data Exchange Steering Group has also been constituted for the initiative, which will meet periodically to review the data exchange status and take steps to further improve the effectiveness of the data sharing mechanism. The MoU marks the beginning of a new era of cooperation and synergy between CBDT and CBIC. To access the PIB release, click [here](#).

### *RBI Notification*



#### **Fair Practices Code for Asset Reconstruction Companies**

On July 16, 2020, Reserve Bank of India (RBI) issued a notification advising Asset Reconstruction Companies (ARCs) registered with RBI to adopt 'Fair Practices Code' (FPC) to ensure transparency and fairness in their operation and in this regard provided guidelines thereof. The guidelines set forth the minimum regulatory expectation from the ARCs, while the ARC's Board is free to enhance the scope of and coverage of the FPC adopted by them.

The FPC must be followed with a sincere intent and the ARC's Board must, at all times involve itself in evolution and proper implementation of the FPC adopted by them. The FPC shall be placed in public domain for information of all stakeholders. To access the RBI Notification, click [here](#).

### *Official Gazette*

#### **Consumer Protection Act, 2019 notified**

The Consumer Protection Act, 2019 (CPA 2019) received Presidential assent on August 09, 2019, providing for the protection of the



interests of consumers by establishing authorities for timely and effective administration and settlement of consumers' disputes. With the coming of this new Act, the existing Consumer Protection Act of 1986, stood repealed. The

Central Government has now notified all the provisions of CPA 2019 which have come into force from either July 20, 2020 or July 24, 2020. To access the gazette copy of the notification appointing July 20, 2020 as the date on which certain provisions of CPA 2019 come into force, click [here](#). To access the gazette copy of the notification appointing July 24, 2020 as the date on which remaining provisions of CPA 2019 come into force, click and [here](#). To access the gazette copy of CPA 2019, click [here](#).

#### **The Consumer Protection (E-Commerce) Rules, 2020**

On July 23, 2020, the Ministry of Consumer Affairs, Food and Public Distribution released the gazette copy of the Consumer Protection (E-Commerce) Rules, 2020, which have come into force from the date of their publication in the Official Gazette, i.e. July 23, 2020. The new rules are aimed at making online retailers more accountable and their businesses more transparent. These will apply to all online retailers offering goods and services to Indian consumers, whether registered in India or overseas. E-commerce entities that do not comply with the aforementioned rules will face penal action in tandem with CPA 2019. To access a copy of the Consumer Protection (E-Commerce) Rules, 2020, click [here](#).

### *SEBI Circulars and Notifications*



#### **Relaxations relating to procedural matters – Issues and Listing**

In view of the impact of the COVID -19 pandemic and the lockdown measures undertaken by Central and State Governments, on May 06, 2020, Securities and Exchange Board of India (SEBI) issued a circular granting one time relaxations from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, per-

taining to Rights Issue opening up to July 31, 2020.

Based on the representations received from the market participants, validity of relaxations, as provided by the circular dated May 06, 2020 mentioned above, was further extended and will be applicable for Rights Issues opening up to December 31, 2020. To access the SEBI circular dated July 24, 2020, click [here](#).

**Extension of time for submission of financial results for the quarter/half year/ financial year ended June 30, 2020**

SEBI, vide circular dated June 24, 2020 had extended the timeline for submission of financial results by listed entities for the quarter/half-year/financial year ended March 31, 2020 to July 31, 2020 due to the impact of the CoVID-19 pandemic.

Regulation 33 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) requires a listed entity to submit its quarterly /half year/ annual financial results within forty-five days or sixty days, as applicable, from the end of each quarter/half year/financial year. Accordingly, listed entities were required to submit the financial results for the quarter/half year ended June 30, 2020, on or before August 14, 2020.

SEBI has received representations requesting extension of time for submission of financial results for the quarter/half year ended June 30, 2020, particularly due to the shortened time gap between the extended deadline for submission of financial results for the period ended March 31, 2020 which was July 31, 2020 and the quarter/half year ended June 30, 2020 which was August 14, 2020.

SEBI vide circular dated July 29, 2020 has

decided to extend the timeline for submission of financial results under Regulation 33 of the LODR Regulations, for the quarter/half year/ financial year ended June 30, 2020 to September 15, 2020. To access the SEBI circular, click [here](#).

**Use of digital signature certifications for authentication / certification of filings / submissions made to Stock Exchanges**

SEBI, vide a circular dated April 17, 2020, had permitted use of digital signature certifications for authentication/ certification of filings/ submissions made under the LODR Regulations, to the stock exchanges, till June 30, 2020. SEBI received a representation from the Institute of Company Secretaries of India (ICSI) stating that due to the COVID -19 pandemic and precautionary measures for its curtailment, Company Secretaries continue to face operational challenges in carrying out certification and authentication of documents in physical form. Accordingly, SEBI decided that authentication / certification of any filing / submission made to stock exchanges under the LODR Regulations may be done using digital signature certifications till December 31, 2020. To access the SEBI circular, click [here](#).

**Clarification on applicability of regulation 40(1) of SEBI (LODR) Regulations, 2015 to open offers, buy backs and delisting of securities of listed entities**

The proviso to Regulation 40(1) of the LODR Regulations states that “..except in case of transmission or transposition of securities, requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialized form with a depository.” SEBI received representations from investors expressing concerns that they have not been able to participate in open offers, buy backs and delisting of securities of listed entities, since the securities held by



them were not in dematerialized form. In this context, SEBI, vide circular dated July 31, 2020 clarified that shareholders holding securities in physical form are allowed to tender shares in open offers, buy-backs through tender offer route and exit offers in case of voluntary or compulsory delisting. However, such tendering shall be as per the provisions of respective regulations. To access the SEBI circular, click [here](#).

**SEBI Consultation Paper: Recalibration of threshold for Minimum Public Shareholding (MPS) norms, enhanced disclosures in Corporate Insolvency Resolution Process (CIRP) cases**

SEBI released a consultation paper to seek comments/ views from the public and market intermediaries on recalibration of threshold for MPS norms in companies which undergo Corporate Insolvency Resolution Process (CIRP) and seek relisting of its shares pursuant to implementation of the approved resolution plan. SEBI is seeking public comments on the following:

**A. Options**

Option 1: Post-CIRP companies may be mandated to achieve at least 10% public shareholding within six months and 25% within three years from the date of breach of MPS norm. It is proposed herein that 18 months as mandated under Rule 19A(5) of Securities Contracts (Regulation) Rules, 1957 (SCRR) may be brought down to 6 months.

Option 2: Post-CIRP companies may be mandated to have at least 5% public shareholding at the time of relisting. Further, such companies may be provided 12 months to achieve public shareholding of 10% and further 24 months to achieve public shareholding of 25%.

Option 3: Post-CIRP companies may be mandated to have at least 10% public sharehold-

ing at the time of relisting. Further, such companies may be provided three years to achieve minimum public shareholding of 25%.

B. Lock-in requirements: Typically, in view of preferential issuance of shares to the incoming investor /promoter under the resolution plan, such shares would be under lock-in for at least one year in terms of SEBI (Issuer of Capital and Disclosure) Requirements, 2018 (ICDR Regulations). Thus, achieving MPS compliance through means involving off-loading of shares by the incoming investor/promoter within one year is not possible. Therefore, it may be permitted to free such shares from lock-in so as to help achieve MPS (only to the extent to enable MPS compliance).

C. Whether there is a need to introduce a standardized reporting framework pursuant to approval of resolution plan? If so, what details may be mandated?

Some of the disclosure requirements could be as follows:

- 1) Pre and Post net-worth of the company
- 2) Detailed pre and post shareholding pattern assuming 100% conversion
- 3) Details of funds infused, creditors paid-off.
- 4) Additional liability on the incoming investors due to the transaction/source of funding etc.
- 5) Impact on the investor – revised P/E, RONW ratios etc.
- 6) Names of the new promoters, key managerial persons(s), if any. Past experience in the business or employment. In case where promoter are companies, history of such company and names of natural persons in control.
- 7) Brief description of business strategy
- 8) Resolution plan (excluding confidential information, commercial secrets etc.)

Comments to be provided to SEBI by September 18, 2020 in the format provided in the consultation paper. To view the consultation paper, click [here](#).

**Webinars and Articles**

**Webinar on the implications of recent amendments under section 9A of Income Tax Act**

DMD Advocates along with USISPF and KPMG conducted a webinar on July 14, 2020 to discuss the scope of Section 9A of the Income tax Act, 1961 dealing with taxation of offshore funds in the context of the presence of their fund managers in India and recent amendments to the said provision. The webinar covered the following aspects: background and need for Section 9A, statutory

framework for payment of remuneration to fund managers, issues relating to calculation of remuneration, lacuna in law which could cause litigation in future and potential solutions. Our taxation partner, Sachit Jolly shared valuable insights from litigation perspective and causes for litigation that may arise due to lacunae in law.

**Oxford Style Debate Webinar on "Third Party Funding of Dispute Resolution - Is India Ready Today?" on July 25, 2020**

Our Founder and Managing Partner of Mumbai office, Fereshte Sethna spoke for the motion in an Oxford Style Debate Webinar on "Third Party Funding of Dispute Resolution - Is India Ready Today?" organized by Maharashtra National Law University Mumbai.

**Webinar on "Deal Making in India in times of Covid19: Commercial, Legal and Tax View" on August 18, 2020**

DMD Advocates organized a webinar jointly with ASA & Associates on "Deal Making in India in times of Covid19: Commercial, Legal and Tax View". A very insightful discussion highlighted a number of commercial, legal and tax issues that are affecting deal dynamics and how to navigate these issues. The session was moderated by our Senior Partner & Head of Corporate, Rashi Dhir. On the panel was our Corporate Partner, Sumit Sinha and Taxation Partner, Sachit Jolly along with ASA's Co-Practice Head - Mumbai & Partner - Taxation, Sunil Arora and Partner - Transaction Advisory Services, Nitin Arora. To access a recording of the webinar, click [here](#).

**Partner, Vivek Agarwal shared his views on the sudden fascination of big tech companies for Indian telcos - June 29, 2020**

Our competition law partner, Vivek Agarwal, in an article published in with the Business Standard, shared his views on the sudden fascination of big tech companies for Indian telcos and analysed the opportunities and threats associated with such tech-telco collaborations. To access a copy of the article, click [here](#).



**Partner, Lynn Pereira shared his views on "Procedural Order No.1 and Institutional arbitration" - June 19, 2020**

In this article, our partner, Lynn Pereira discusses the importance of the initial procedural order of the arbitral tribunal. To view the article, click [here](#).

**Article on 'Equalization Levy' by Partner, Tushar Jarwal published by ITR (International Tax Review)**

In this article, our taxation partner, Tushar Jarwal explains why the recently introduced 'equalization levy' is unconstitutional and on what grounds affected foreign e-commerce companies could challenge it in court. To access a copy of the article, click [here](#).

**Article on 'Equalization Levy' by Partner, Sachit Jolly**

Our taxation partner, Sachit Jolly shared his opinions on the recently introduced 'equalization levy' in this article published in the Financial Express. To access a copy of the article, click [here](#).

**Article on Benami Law**

Our Principal Associate, Rohit Garg in an article published in Taxmann and reported as [2020] 117 [taxmann.com](#) 170 (Article), titled "Benami Law - Evolving Jurisprudence" traces the history of the Benami Law in India and the way forward on certain practical issues being faced currently.

**DMD News**

**Partner, Vivek Agarwal featured as a “Recommended” Global Leader in the Competition 2020 rankings**

Our competition law partner, Vivek Agarwal featured as a “Recommended” Global Leader in the Competition 2020 rankings, published by Who’s Who Legal (WWL), London. WWL along with Global Competition Review (GCR) conducted a global research by taking feedback from clients and other lawyers to identify top competition lawyers worldwide. Vivek is one of the 14 competition lawyers who made it to the list from India.

**WWL**

**Vivek Agarwal**

DMD Advocates  
Global Leader - Competition 2020

WWL says: Vivek Agarwal impresses with “his commitment and quality of work”, as well as “his domain knowledge and ability to deal with complex issues”. He is “a subject-matter expert and is able to offer practical solutions”.



**Partner, Sachit Jolly successfully represented Vodafone Idea in a tax matter at the Supreme Court**



In a significant win at the Supreme Court, our Partner Sachit Jolly successfully represented

Vodafone Idea. The court dismissed a special leave petition filed by the Income Tax Department, directing the Department to refund a sum of INR 833 crores immediately to our client Vodafone Idea. To view related news articles on this development, click [here](#).

**Significant win at ITAT for Genpact; ITAT quashes assessment proceedings**

In a significant win at ITAT, the tribunal quashed assessment proceedings in the name of Genpact India for AY 2014-15 and held that the Assessment proceedings as well as the Assessment order are void ab initio. Consequently, ITAT deleted INR 2600 crores share buy-back addition u/s.115QA. Genpact India was represented by our taxation partner, Sachit Jolly.

**Kuber Dewan has joined DMD Advocates as Counsel in dispute resolution practice**

Kuber Dewan has joined DMD Advocates as Counsel in dispute resolution practice. Kuber has over 12 years of experience in providing legal and strategic advice to clients including companies, PSUs and HNIs across various forums, including the Supreme Court of India, the High Courts of Delhi, Bombay, Madras, Karnataka, Madhya Pradesh, Rajasthan, Andhra Pradesh and Punjab & Haryana.



Prior to DMD, Kuber was working with Shardul Amarchand Mangaldas as a Principal Associate and worked with DMD in the past from 2008-2017. He is a law graduate from Symbiosis Law School, Symbiosis International University, Pune, India. He is enrolled with the Bar Council of Delhi and is a member of the Bar Associations of the Supreme Court of India and the Delhi High Court. To view Kuber’s profile, click [here](#).



## Partners & Directors

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Founder & Senior Partner, Delhi  
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