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Prevention of misleading advertisements – Analysis of guidelines issued by Central Consumer Protection Authority

By **Manan Chhabra**

The Consumer Protection Act, 2019 ('**Act**'), which came into force on 20 July 2020, defines 'misleading advertisement' in relation to any product or service as an advertisement which:

(i) falsely describes such product or service;

(ii) gives a false guarantee to, or is likely to mislead consumers as to the nature, substance, quantity or quality of such product or service;

(iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or

(iv) deliberately conceals vital information;

Said Act also provides for establishment of Central Consumer Protection Authority ('**CCPA**') by the Central Government, to promote, protect and enforce the rights of consumers and regulate matters relating to false or misleading advertisements. CCPA, on 9 June 2022, notified the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 ('**Guidelines**') to ensure that consumers are not deceived by exaggerated promises, misinformation, and false claims pertaining to any product or service, and that the rights of consumers are adequately protected.

These Guidelines aim to restrict companies from releasing misleading advertisements in any form, format or medium, and are applicable to manufacturers, service providers or traders whose products or services are subject of advertisements, and advertising agencies or endorsers whose services are availed for advertisements of products and services.

A voluntary self-regulatory body called 'The Advertising Standards Council of India' (**ASCI**), in its Code for Self-Regulation of Advertising Content in India ("**Code**"), also provides for advertisements to be an honest and truthful representation of products and services, and holds that advertisements should not mislead the general public in any manner detrimental to their well-being. The latest Guidelines contain provisions which conform to the position taken under the Code with respect to misleading advertisements, disclaimers, and advertisements targeting children, along with regulating bait advertisements, surrogate advertisements, and free claims advertisements.

The Guidelines define 'bait advertisements' as those advertisements in which goods, products or services are offered for sale at a low price to attract consumers. There is no specific prohibition on bait advertisements under these Guidelines, provided such an advertisement fulfils the conditions as laid down in the Guidelines such as:

(i) there is no enticement of consumers to purchase goods or services without a

reasonable prospect of selling them at the offered price.

(ii) there is adequate supply of goods or services to meet foreseeable demand generated by such advertisement.

(iii) there is no misleading of consumers about the market conditions with respect to the goods or services.

(iv) there is not misleading of consumers by not stating geographic or age-limit restrictions on the availability of goods or services; and

(v) appropriate disclaimers regarding the limited stock, or if such goods or services are offered to assess potential demand, are made.

'Surrogate Advertisement', as defined under the Guidelines, means an advertisement of such goods or services whose advertisement is otherwise prohibited by law, and is done by circumventing such prohibition by portraying it to be advertisements of other permitted goods or services. For example, alcohol manufacturing companies have been using this type of advertisement strategy to advertise their products in surrogate advertisements for soda water, music etc.

As per the Guidelines, any 'free claims advertisement' is permitted provided it does not describe any goods or services as 'free', 'without charge' or similar terms if the consumer will be required to pay any charges (such as packaging charges, handling, or administration charges) in addition the avoided charges. The Guidelines also prohibits the use of term 'free trial' to describe a 'satisfaction or your money back' offer, or an offer for which a non-refundable purchase is required.

Bearing in mind the adverse impact advertisements may cause on children, the Guidelines provide a set of conditions that must be adhered to in the event an advertisement addresses or targets or uses children.

In line with the Code, the Guidelines also provide directions for usage of disclaimers in advertisements. Certain conditions pertaining to disclaimers under the Guidelines include, without limitation, that:

(i) a disclaimer shall not attempt to correct a misleading claim made in an advertisement.

(ii) a disclaimer shall not attempt to hide material information, omission of which may make such advertisement misleading.

(iii) a disclaimer shall be in the same language as that of the advertisement claim; and

(iv) a disclaimer shall be clear and prominently placed.

Section 12 of the Guidelines mandates manufacturers, service providers, advertisers, and advertising agencies to comply with certain conditions when advertisements portray obvious untruths and exaggerations which are intended to amuse or catch the eye of consumers.

Another key inclusion in these Guidelines is due diligence to be conducted by endorsers of goods or services to ensure that genuine and reasonably current opinion of the endorser is represented in an advertisement, which must be based on adequate information about, or experience with, such goods or services advertised.

For violation of these Guidelines, CCPA under Section 21(2) of the Act may impose a penalty of INR 10 lakh for a first offense, and up to INR 50 lakh for subsequent contraventions.

Conclusion:

Advertisements have played a pivotal role in enticing customers for sale of goods and services. Before, these Guidelines were notified, misleading advertisements were governed solely by the ASCI's Code. The ASCI is not a statutory body and, thus, it does not have a binding effect. In 2019, when the new Consumer Protection Act was notified, the Central Government identified the importance of true and honest advertisements and introduced the concept of 'misleading advertisements'. Especially with the impact that digital marketing, influencer advertisements and celebrity endorsements are causing in the Indian market, it is essential that there is a legally binding framework which mandates a company to take responsibility for the advertisements. Such binding effect is now created with these Guidelines.

Further, with e-commerce being the go-to mode for consumers to purchase goods and services, the Guidelines also address the bait and free claims advertisements, which was being exploited by companies on e-commerce platforms especially during flash sales.

The wide coverage of these Guidelines i.e., covering advertisements in any format and medium, and the stringent penalties which can be imposed by the CCPA under the Act, will reform the way advertisements are being made and perceived by consumers. The Guidelines will now allow the consumers to opt for genuine goods and services based on clear, true and honest advertisements.

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Notifications and Circulars

SEBI – UPI mechanism introduced for investors of REITs and InvITs: The Securities and Exchange Board of India (SEBI) has decided to provide an additional option to individual investors to apply in public issues of units of Real Estate Investment Trusts (REITs) and units of Infrastructure Investment Trust (InvITs), with a facility to block funds through the Unified Payments Interface (UPI) mechanism for applications of value up to INR Five Lakh. SEBI *vide* Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/085 and 86, both dated 24 June 2022, has directed Stock Exchanges, Depositories, NPCI, Sponsor Banks, and Self Certified Syndicate Banks, to make the required changes to implement the same from 1 August 2022. The provisions of these Circulars shall be applicable to a public issue of units of REITs and InvITs under the SEBI (Real estate Investment Trusts) Regulations, 2014 and the SEBI (Infrastructure Investment Trusts) Regulations, 2014, respectively, which open on or after 1 August 2022.

Punishment in case of non-compliance of National Financial Reporting Authority Rules – Provision substituted: The Ministry of Corporate Affairs, *vide* Notification G.S.R.456(E), dated 17 June 2022, has notified the National Financial Reporting Authority (Amendment) Rules, 2022 to further amend the National Financial Reporting Authority Rules, 2018. According to the newly substituted Rule 13, which deals with punishment in case of non-compliance, the non-compliance shall be punishable with a fine not exceeding five thousand rupees. The new Rule also states that, where the contravention is a continuing one, a further fine not exceeding five hundred rupees for every day after the first during which the contravention continues, will be imposed.

SEBI – Reduction of timelines for the listing of units of privately placed InvITs: The Securities and Exchange Board of India (SEBI) has reduced the timelines for listing of units of privately placed Infrastructure Investment Trust (InvITs) to six working days, as against the present requirement of listing within thirty working days. Circular No. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2022/087, dated 24 June 2022, issued for the purpose advises stock exchanges to inform the listing approval details to the depositories, whenever listing permission is given to InvIT units issued on a private placement basis, within the timelines prescribed in the Circular. The provisions of this Circular shall be applicable to the listing of units of privately placed InvIT under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 which open on or after 1 August 2022.

Ratio Decidendi

NCLT has discretion to not admit financial creditor's CIRP application even if corporate debtor is in default

The Supreme Court, in an appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**'), has overruled the National Company Law Tribunal ('**NCLT**')'s and National Company Law Appellate Tribunal ('**NCLAT**')'s judgment wherein the Tribunal had held, with respect to Section 7(5) of the IBC, that once the adjudicating authority is satisfied that the application for insolvency under Section 7(1) is complete and there are no disciplinary proceedings pending against the proposed resolution professional, the adjudicating authority is bound to admit such application. The Supreme Court, herein, held that it is upon the discretion of the adjudicating authority to accept such application, even if there is an existence of financial debt and default on the part of the corporate debtor in payment of debt. However, such discretionary power cannot be exercised arbitrarily or capriciously.

Brief facts:

Appellant was in dispute with the Maharashtra Electricity Regulatory Commission ('**MERC**') for recovery of fuel costs and the same was decided

in favour of the Appellant by an award passed by the Appellate Tribunal for Electricity ('**APTEL**'). However, the implementation of the award i.e., payment of claims worth INR 1,730 crore was pending before MERC. Meanwhile, the Respondent-Financial Creditor filed an application under Section 7 of the IBC for initiation of CIRP against the Appellant. Pursuant to the same, the Appellant filed an application seeking for stay of such proceedings.

The NCLT refused to stay the proceedings of CIRP initiated against the Appellant on the grounds that whatsoever may be the reason for the Appellant-Corporate Debtor to fall in dispute with any other party i.e. MERC, such reasons would be extraneous to the matters involved under the application for insolvency. The adjudicating authority only considered satisfaction of the two triggers i.e., (a) existence of debt; and (b) Corporate Debtor's default in making the payments towards such debt and admitted the application.

On appeal, the NCLAT dismissed the appeal on the grounds that there were no legal infirmities in the observation of NCLT and held that the flow of legal process cannot be thwarted on considerations which are anterior to the mandate of Section 7(4) and (5) of the IBC. Aggrieved by said Order, the present appeal was filed in the Apex Court.

Submission by the Appellant:

- It was submitted that the usage of the word 'may' under Section 7(5)(a) of the IBC must be interpreted in the manner that it shall not be mandatory for the NCLT to admit an application in every case where there is a debt.
- It was submitted that as per Rule 11 of the NCLT Rules 2016 ('**Rules**'), nothing in the Rules shall limit or affect the inherent powers to the Tribunal to make such orders to meet the ends of justice. Therefore, a conjoint reading of Section 7(5)(a) and Rule 11 clarifies that the Tribunal has the discretion to admit or not admit an application for initiation of CIRP.

Submission by the Respondent:

- It was submitted that the Appellant had admittedly defaulted in payment of dues to the Respondent and there is no dispute on this point. Reliance was placed on *Swiss Ribbons Private Limited and Anr.* v. *Union of India and Ors.*, (2019) 4 SCC 17 to emphasize on the point that legislative policy has shifted from the concept of 'inability to pay debts' to 'determination of default'. Therefore, once it has been determined that there is existence of default, the adjudicating authority is obliged to admit the application.
- It was submitted, by placing reliance on *Innoventive Industries Ltd.* v. *ICICI Bank and Another*, (2018) 1 SCC 407, that referred to the Bankruptcy Law Reforms Committee, 2015, that the object of the IBC was effective resolution of insolvency and bankruptcy in an expeditious and time bound manner to preserve the economic value of an enterprise and thereby extraneous matters which are not relevant to the CIRP shall not be entertained by the Tribunal.

Decision:

The Supreme Court observed that both the NCLT and the NCLAT did not consider that Section 7(5)(a) of the IBC warrants any other interpretation apart from ones argued by the Respondent i.e., (a) existence of debt; and (b) Corporate Debtor defaulted in making the payments. The Court, in that respect, held that the viability and overall financial health of the Corporate Debtor are not extraneous matters and

added room for interpretation. The Court observed that the feasibility of initiation of CIRP, the order of APTEL and the sum of INR 1,730 crore due to the Appellant-Corporate Debtor, which exceeds the claim of the Respondent, are matters of viability and overall financial health of the Corporate Debtor and therefore cannot be considered as extraneous.

The Supreme Court held that the word 'may' has been used under Section 7(5)(a) in case of initiation of CIRP by Financial Creditor and the word 'shall' has been used under Section 9(5)(a) in case of initiation of CIRP by an Operational Creditor, which clarifies the intention of the Legislature to provide discretionary powers to the adjudicating authority in admitting the application of a Financial Creditor. The Apex Court added that such discretionary powers cannot be exercised arbitrarily or capriciously and there must be good reasons to not admit the petition.

[*Vidarbha Industries Power Ltd.* v. *Axis Bank Ltd.* – Judgment dated 12 July 2022 in Civil Appeal No. 4633 of 2021, Supreme Court]

Lease rentals when qualify as 'operational debt' under IBC – Court notes payment of GST for provision of service

NCLAT, New Delhi Bench has held that the claim of a licensor for payment of license fee/rent for use of the demised premises for business purposes is an 'operational debt' within the meaning of Section 5(21) of the IBC. The NCLAT observed that the license fee paid by the licensee for running an educational establishment in the licensed premises fell under the provision of 'service' as per Schedule II of the Central Goods and Services Tax Act, 2017 ('**CGST Act**'), in the present case, and thereby is covered within the ambit of Section 5(21) of the IBC as an 'operational debt'.

Brief facts:

The Appellant-Operational Creditor entered into a license agreement ('**Agreement**') with the Respondent-Corporate Debtor, for licensing premises for the purpose of running an educational establishment for an initial period of five years. The payment towards license fees was made through cheque, which was returned unpaid due to insufficiency of funds twice. Pursuant to the same, a demand notice was sent under Section 8 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**') by the Appellant, which was not replied to. Meanwhile, the Corporate Debtor initiated civil proceedings before Sanganer Court, Jaipur for reliefs under the Agreement under the applicable civil laws.

Subsequently, an application for initiation of CIRP by the Appellant was filed before the adjudicating authority under Section 9 of the IBC. The NCLT dismissed such application on the ground that the claim arising out of grant of license for use of immovable property does not fall in the category of goods and services, and thus the amount claimed in the application is not an unpaid operational debt. Aggrieved by said order, the present appeal was filed in this Tribunal.

Submissions by the Appellant:

- It was submitted that the Appellant is a service provider and the provision for license/premises rented out to the Respondent to run an educational institution falls within the provision of 'service' under Section 5(21) of the IBC, and thus, any debt towards the same qualifies as an 'operational debt'.

Submission by the Respondent:

- It was submitted that alleged dues of rent/license fee from the Respondent is purely a subject matter of the civil suit between the parties and any payments

under the Agreement does not fall under the ambit of 'operational debt'.

- It was submitted that there was already a pre-existing dispute between the parties, therefore, the application under Section 9 of the IBC was not maintainable.

Decision:

The NCLAT held that the claim of the Appellant-Licensor for payment of license fee/rent for use of premises for business purpose is an operational debt within the meaning of Section 5(21) of the IBC, because clause 4(b) of the Agreement provided the provision for payment of GST by the Respondent-licensee. It was held that this clarified the nature of the Agreement as service based. Reliance was placed on *Mobilox Innovations (P) Ltd.* v. *Kirusa Software (P) Ltd.,* (2018) 1 SCC 353 and para 5.2.1 of the Bankruptcy Law Reforms Committee Report, 2015 which provided that a lessor is an operational creditor to those entities to whom a monthly rent is owed and explicitly provided that a lessor can be treated as an operational creditor. Further, reliance was placed on *Anup Sushil Dubey* v. *National Agriculture Co-operative Marketing Federation of India Ltd. and Anr.,* (2020) SCC OnLine NCLAT 674., wherein the premises was leased out for 'commercial purposes' and the Court observed that the ambit of goods and services, as referred under Regulation 32 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 read with Section 14(2) of the IBC, is not the same as which falls within the ambit of Section 5(21), since the former is limited to essential services only. Thereunder, it was held that the lease rentals arising out of the use and occupation of cold storage is an 'operational debt' under Section 5(21) of the IBC, because it falls under the category of essential services. However, a differentiation was created.

A difference was drawn between the case of *Promila Taneja* v. *Surendri Designe Pt. Ltd.* – Company Appeal (AT) (Ins.) No. 459 of 2020, whereunder the NCLAT had held that the definition of 'service' under Consumer Protection Act, 2019 and CGST Act were not covered within the ambit of Section 3(37) of the IBC, with the present case, where the Agreement itself provided for the payment of GST. Since the provision of 'service' under Schedule II of the CGST Act includes leasing or letting out of the building including a commercial, industrial or residential complex for the purpose of business as a supply of services, the licensee fee for use and occupation of the immovable premise for commercial purpose was held to be covered under the ambit of 'operational debt' under Section 5(21) of the IBC.

[*Jaipur Trade Expocentre Private Limited* v. *Metro Jet Airways Training Private Limited* – Judgment dated 5 July 2022 in Company Appeal (AT) (Insolvency) No. 423 of 2021, NCLAT Principal Bench]

Amended Scheme of Compromise cannot enforce invocation of arbitration under any existing agreement in the absence of an arbitration clause in such agreement and the scheme

The Bombay High Court, in an Arbitration Application filed before it, has held that since there is no existing arbitration agreement between the Applicant and the Respondent, and no subsequent reference to arbitration made in the amended scheme of compromise, invocation of arbitration clause for the appointment of arbitrator for settlement of dispute between the parties under Section 11 of the Arbitration and Conciliation Act, 1996 ('**Act**') *via* the amended scheme, was not the mandate of law under Section 7 of the Act.

Brief facts:

Consequent to a Scheme of Compromise executed by the Applicant with its creditors, shareholders etc., the Applicant had appointed the Respondent Bank as a Debenture Trustee vide a Debenture Trust Deed ('**Deed**'). In 2006, an Amended Scheme of Compromise ('**ASC**') was executed between the Applicant and the other creditors and shareholders without contemplating the Respondent Bank to be continued as a Trustee. However, the Respondent Bank had been indicted to the ASC as a sundry creditor. Thereafter, the Respondent Bank raised a demand/claim of INR 1,22,46,357 towards its fees for providing services in the capacity of a Trustee under the Deed. In response, the Appellant invoked clause 5 of the ASC for appointment of sole arbitrator under Section 11 of the Act and called upon the Respondent Bank to pay a sum of INR 2,75,00,000, being the alleged loss suffered by the Appellant due to retention of certain original title deeds by the Respondent Bank, in its capacity as a sundry creditor.

Submission by Appellants:

- It was submitted that the ASC is binding, and an arbitrator should be appointed, since once a scheme of compromise is sanctioned by the Tribunal under section 391 of the Companies Act, 1956 ('**COA**'), the scheme is binding on the Respondent Bank, and it overrides all other agreements.

Submission by Respondents:

- It was submitted that there was no arbitration agreement or any arbitration clause in the Deed, and hence the application for appointment of arbitrator is not maintainable for any relief under the Deed, and thereby the ASC is not binding on the Respondent Bank.

Decision:

The High Court of Judicature at Bombay held that the ASC does not allow for invocation of arbitration, since the Scheme makes no reference to the executed Debenture Trust Deed and/or any services rendered by the Trustee and was intended to bind the creditors and shareholders for the subject matter thereunder. Further, the annexures under ASC do not mention the name of Respondent along with other financial institutions, as an entity, to whom any debt is owed. Therefore, it was held that the obligations under the Deed are an independent obligation of the Appellant. It was held that, since there is no arbitration agreement in the Deed, therefore the same cannot be imposed by the virtue of the ASC to cover the Respondent Bank under the same, in its position as a sundry creditor.

[*HMG Industries Limited* v. *Canara Bank* – Judgment dated 13 June 2022 in Arbitration Application No. 258 of 2018, Bombay High Court]

News Nuggets

Insolvency – Action before DRT does not curtail rights under IBC

The Kolkata Bench of the NCLT has held that taking action under one legislation, being theRecovery of Debts Due to Banks and Financial Institutions, 1993, ("**RDDBFI Act**"), cannot curtail the Financial Creditor's right under the Insolvency and Bankruptcy Code 2016 ("**IBC**"). The Court in the case *UCO Bank* v. *GIT Textiles Manufacturing Limited* [Order dated 22 June 2022] noted that the purpose of proceedings under the RDDBFI Act is debt recovery and an action under the IBC aims at resolution of the insolvency of the Corporate Debtor. Contention of the Corporate Debtor that the Financial Creditor was guilty of forum shopping, was thus rejected.

'Commercial disputes' – Scope clarified

The Gujarat High Court has reiterated that a dispute arising out of agreements relating to property, used exclusively in trade and commerce, would constitute a 'commercial dispute' within the meaning of Section 2(1)(c) of the Commercial Court's Act, 2015. The Court in *Kushal Limited* v. *Tirumala Technocast Private Limited* [Judgment dated 10 June 2022] noted that prior to and on the date of institution of the suit, the suit property was exclusively used as warehouse, and hence, the test that the property is actually used for trade or commerce and for business purpose was satisfied in the present case. Accordingly, the High Court noted that the test in Section 2(1)(c)(vii) of said Act was satisfied from the various averments in the plaint itself.

Arbitration – Proceedings under Section 9 of the Act are not meant for enforcement of conditions of contract

The Division Bench of the Gujarat High Court has held that proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, which are for interim measures prior to commencement of arbitral proceedings, cannot be converted into proceedings where a party may seek indirectly the final relief against another. The Court in *Kanhai Foods Ltd.* v. *A and HP Bakes* [Judgment dated 10 June 2022] was of the view that proceedings under Section 9 of the Act are not meant for enforcement of conditions of the contract, as such act can be done only when the rights of the parties are finally adjudged or crystallised by the duly appointed arbitral tribunal. The High Court also stated that while dealing with the application under said section 9, whereby the appellant has prayed for interim measures, issues which are essentially to be decided by the Arbitrator are not to be weighed for their merits by the Court.

Insolvency – Inter-creditor agreement between consortium members does not bar admission of application under Section 7 of the IBC

The NCLT Bench at Kolkata has held that inter-creditor agreement between consortium members is not a bar to an application being admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016. The inter-creditor Agreement, in said case, was to set out an overall framework for revival and rehabilitation of the Corporate Debtor and effectuating the implementation of a resolution plan. Relying

upon *Amitabh Kumar Jha* v. *Bank of India & Ors* [Company Appeal (AT) Insolvency No. 1392 of 2019], the NCLT in *HDFC Bank Ltd.* v. *Tamra Dhatu Udyog Pvt. Ltd.* [Decision dated 25 May 2022] was of the view that an inter-creditor agreement does not in any manner curtail or limit the rights of a financial creditor in its individual capacity to enforce its rights against the corporate debtor with regard to the financial debt which is payable in law. The NCLT also noted that there is no provision in the RBI prudential framework for restraining any lender from instituting proceedings for recovering its dues.

Insurance company cannot be held guilty of deficiency of service solely for the delay in processing/repudiating claims

A Division Bench of Supreme Court has observed that an insurer cannot be held guilty of deficiency in service in case the only reason for such deficiency is delay in processing and repudiation of the claim. The question posed before the bench was '*whether the inordinate delay on the part of the insurance company in securing the Final Survey Report, and the further delay in issuing the letter of repudiation, has violated Regulation 9 of the Insurance Regulatory and Development Authority (Protection of Policyholders*' Interests) Regulations, 2000'. The Court in the case of *New India Assurance Company Ltd.* v. *Shashikala J Ayachi* [Judgment dated 13 July 2022], while deciding on this issue dealing with Regulation 9, which deals with 'claim procedure in respect of a general insurance policy', held that the delay in processing the claim and delay in repudiation could be one of the several factors for holding an insurer guilty of deficiency in service, but it cannot be the only factor, and consequently, the insurer cannot be held guilty only for the same.

Independent, Non-Executive Director shall not be liable for the acts of company if they are not involved in the daily business

The Bombay High Court, while dealing with Section 138 of the Negotiable Instruments Act, 1881 ('NI Act') regarding dishonour of cheques in case of insufficiency of funds, has re-iterated that independent, non-executive directors cannot be held liable for the acts of the company if they are not at the helm of affairs of the company or actively participating in the daily business. The Court in *Satvinder Sodhi & Anr*. v. *State of Maharashtra* [Judgment dated 1 July 2022], opined that vicarious liability cannot be extended to each and every member of a company, unless a specific act is attributed to the member, and only those persons who are in-charge and responsible for the conduct of the business of the company at the time of commission of offence, can be held liable for criminal action. Therefore, only in such cases, Section 141 of the NI Act can be invoked to deem the person(s), at the time of the commission of offence, as guilty.

Packaging of insecticides – Specific provision under Insecticides Act will prevail over Legal Metrology Act and Rules

The Bombay High Court has held that specific provisions pertaining to insecticides under the Insecticides Act, 1968 will prevail over the general requirements specified in the Legal Metrology Act, 2009 ("**LMA 2009**") and the Legal Metrology (Packaged Commodities) Rules, 2011. The Court in *Dhanuka Agritech Ltd.* v. *Government of Maharashtra* [Judgment dated 7 June 2022], though noted Section 3 of the LMA 2009 which sought to give overriding effect to the provisions of that Act over any other inconsistent provision contained in any other enactment or in any instrument having

effect by virtue of such other enactment, observed that if a matter has been specifically dealt with by the Insecticides Act, or its Rules in the context of packaging and labelling of insecticides, those provisions would prevail over the general provisions under the LMA 2009 or the Rules of 2011. According to the Court, this must be done by applying the principles of harmonious construction and the maxim - *Generalia specialibus non derogant*.

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