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Budget 2025: Rationalising Fast Track Mergers

By **Navyashree R and Krishna Chandak**

Considering the intent of the announcement made in the Union Budget, the Ministry of Corporate Affairs has proposed to widen the scope of companies under Section 233 of the Companies Act read with Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 vide public notice dated 4 April 2025. The first article in this issue of Corporate Amicus extended category of companies allowed under the Fast Track Merger. Elaborately analysing all the four categories with diagrams, the authors note that the amendment seeks to cover more categories of companies under the FTM process. They in this regard also list the specified cases of mergers and amalgamations which are not allowed under the Fast Track Merger process.

Budget 2025: Rationalising Fast Track Mergers

By Navyashree R and Krishna Chandak

Recently in the Union Budget for the financial year 2025-26 the Hon'ble Finance Minister emphasized the government's commitment towards improving the ease of doing business in India. The Minister announced that the requirements and procedures for speedy approval of company mergers will be rationalised. Additionally, the scope for fast-track mergers will also be widened and the process made simpler. This initiative aims to provide a more transparent, quicker, and hassle-free framework for corporate restructuring.

The Ministry of Corporate Affairs ('**MCA**'), with the objective of promoting ease of doing business in India, had introduced the concept of fast track merger or amalgamation ('**FTM**') in 2016 under Section 233 of the Companies Act, 2013 ('**Act**') read with Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ('**CAA Rules**'), effective from 15 December 2016, empowering the Regional Directors to approve or reject the scheme of FTM.

FTM is an alternate process to the traditional process of scheme of merger or amalgamation provided under Sections 230 to 232 of the Act. Unlike the procedure under Sections 230 to 232 of the Act, FTM involves less legal requirements, and is simpler, less time consuming and cost efficient. The major advantage under the FTM process is that intervention of the National Company Law Tribunal ('**NCLT**') is not required here.

Section 233 of the Act read with CAA Rules allows scheme of FTM between: (i) two or more small companies; (ii) a holding company and its wholly owned subsidiary ('**WOS**'); (iii) two or more start-up companies; and (iv) between one or more start-up companies with one or more small companies.

Considering the intent of the announcement made in the Union Budget, the MCA has proposed to widen the scope of companies under Section 233 of the Act read with Rule 25 of CAA Rules *vide* Companies (Compromises, Arrangements and Amalgamation) Amendment Rules, 2025 ('**Amendment**'), *vide* public notice dated 4 April 2025. The extended category of companies allowed under FTM are as follows:

Category I: Unlisted companies (except Section 8 company) merging with one or more unlisted companies (except Section 8 company) subject to certain conditions that the companies involved in the scheme of FTM should not have: (i) a borrowing of INR 50 crores or more from banks or financial institutions or any other body corporate; and (ii) defaulted in repayment of such borrowings, at least 30 days before issuing the notice of merger to the ROC and OL inviting their objections, if any, under Section 233(1)(a) of the Act.

Our analysis:

1. Under this category, all unlisted companies, including private and public, are permitted to apply for FTM subject to the two conditions that both the transferor and the transferee companies should not have:

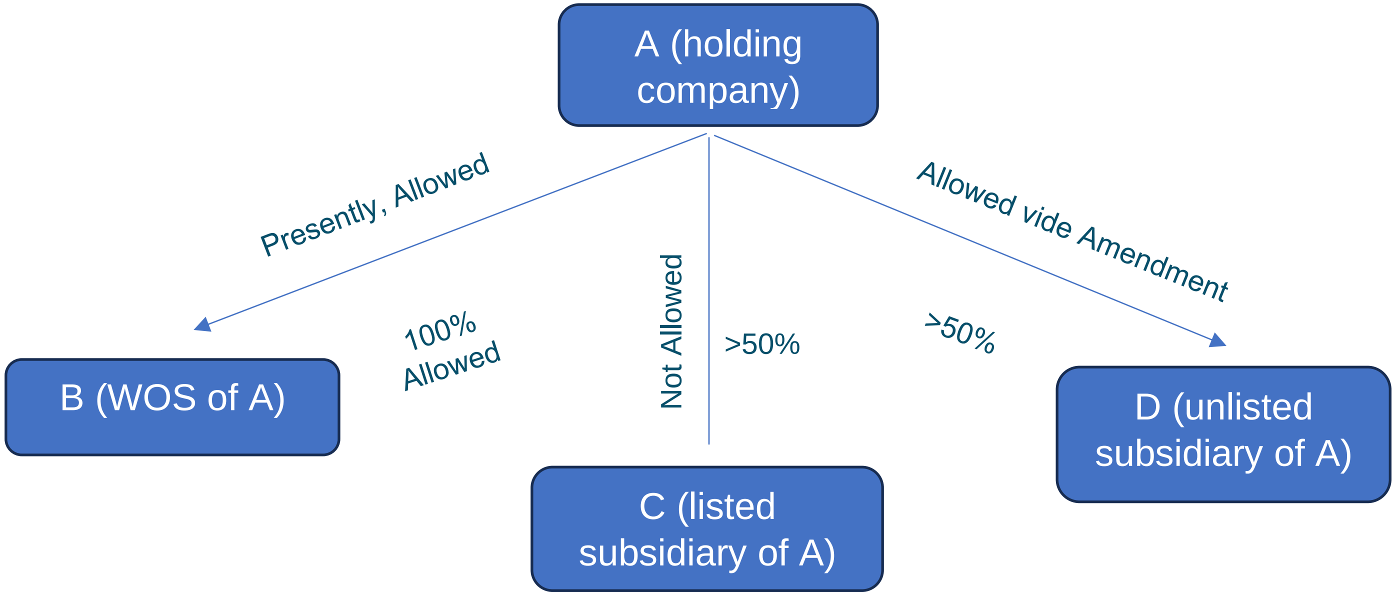
   (i) borrowings (borrowed from any person) of INR 50 crores or more; AND

   (ii) no track of default in repayment of such borrowings, at least 30 days before issuing the notice of merger to the ROC and OL inviting their objections, if any, under Section 233(1)(a) of the Act.

2. The companies proposing to undertake FTM under this category are required to furnish a certificate obtained from their auditor certifying that the company meets the borrowing requirements prescribed therein.

3. Exclusion of Section 8 companies under this category would be a drawback of this Amendment which disallow FTM of Section 8 company with a company which is neither its holding company nor a subsidiary company.

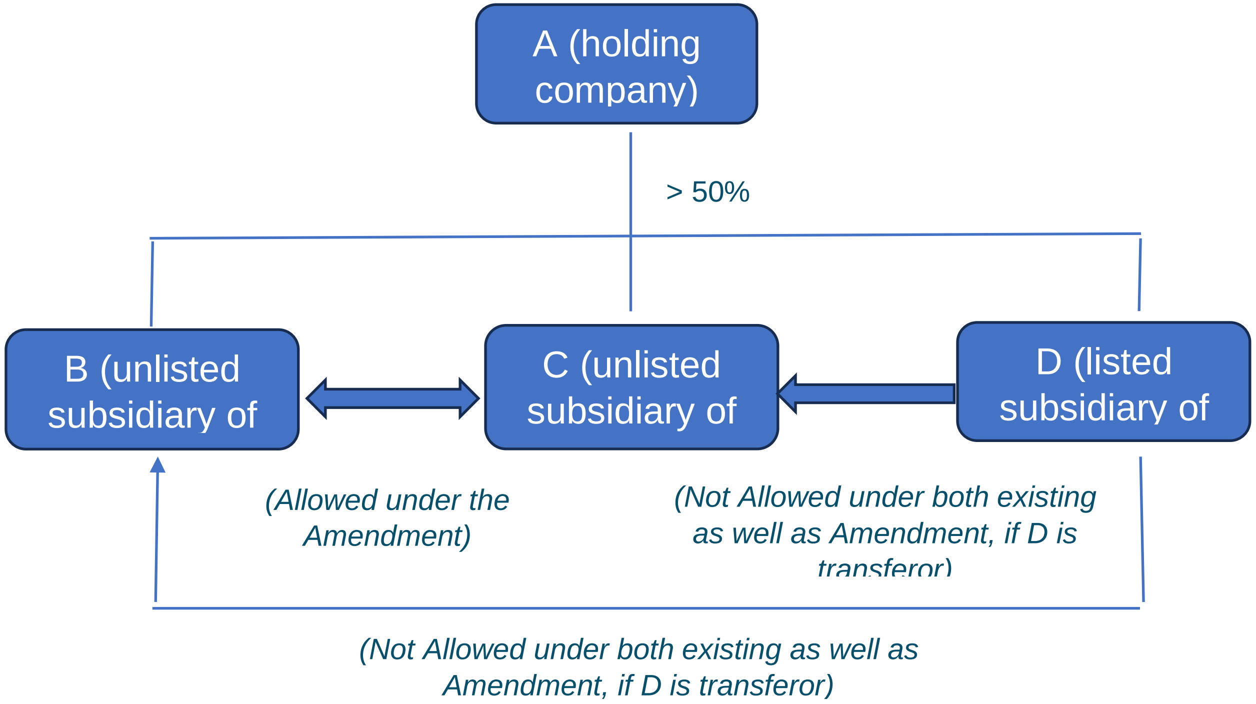
Category II: A holding company (listed or unlisted) merging with its one or more unlisted subsidiary company or companies;



Our analysis:

1. Presently, under the Act and CAA Rules, a FTM between a WOS with its holding company is allowed.
2. In the proposed Amendment, the ambit of Section 233 of the Act has been extended to cover FTM of one or more subsidiary company or companies with its holding company, wherein the holding company under FTM can be listed or unlisted however, the subsidiaries should be unlisted company.
3. Even under the Amendment, if under a scheme of FTM, the subsidiary is the transferor and listed on a stock exchange, such schemes are not permitted under the ambit of Section 233 of the Act.

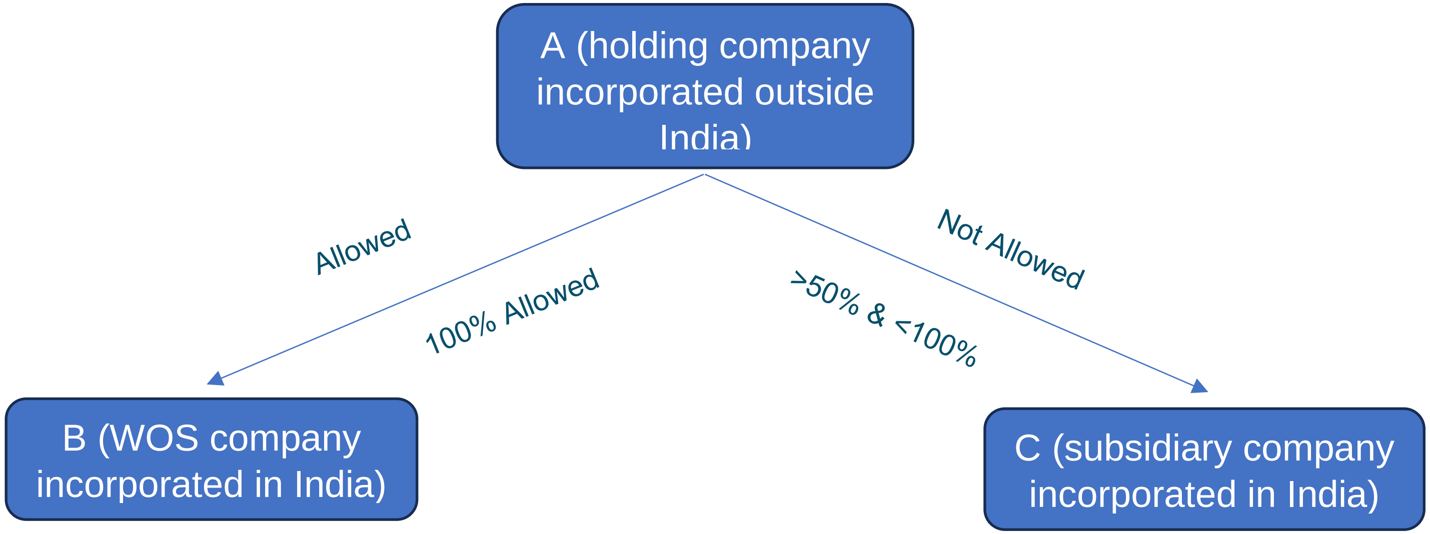
Category III: One or more subsidiary company of a holding company with one or more other subsidiary company of the same holding company where the transferor company or companies are not listed.



Our analysis:

1. Presently, a FTM between holding company and WOS are permitted. Also, as noted in Category II above, a FTM between holding company and its unlisted subsidiaries are proposed to be permitted.
2. Further, under this category, it has been proposed to allow FTM among one or more subsidiaries of the same holding company, subject to a condition that the transferor company should not be listed on any stock exchange.
3. In above diagram, a FTM between B and C are allowed however, a FTM between B and D or C, and D are not allowed, if D is a transferor company and listed on any stock exchange under the scheme.

Category IV: Merger of the transferor foreign company incorporated outside India being a holding company with the Indian transferee company being the wholly owned subsidiary of the foreign company as referred to in sub-rule (5) of Rule 25A of CAA Rules.



Our analysis:

1. Under this category, FTM of a holding company incorporated outside India with its WOS incorporated in India is allowed.

2. At present, the MCA, by its notification dated 9 September 2024 (effective from 17 September 2024), has allowed reverse merger or amalgamation under Section 233 of the Act read with Rule 25A of CAA Rules vide Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024 (‘**2024 Amendment**’) providing reference to Section 233 of the Act prescribing the Indian transferee company to obtain approvals in accordance with FTM process. The proposed Amendment is to bridge a gap among Section 233 of the Act, Rules 25 and 25A of the CAA Rules.

Our views:

The Amendment seeks to cover more categories of companies under FTM process, however, the following mergers and amalgamations under the FTM process are not allowed:

(i) Section 8 company is not allowed to undergo FTM, unless Section 8 company is undergoing FTM with its holding company or WOS or subsidiary company.

(ii) Under each category discussed above, if the subsidiary company is a transferor and listed on a stock exchange under a scheme of FTM, such scheme of FTMs are not permitted.

(iii) The provisions of the Act and the Amendment permits reverse mergers i.e., a foreign holding company undergoing FTM with its Indian WOS. However, FTM of Indian WOS with its foreign holding company is not permitted under Section 233 of the Act read with CAA Rules and the Amendment.

(iv) Under Category IV discussed above, the Indian transferee company should be a WOS. However, if the Indian transferee company is only a subsidiary of the foreign holding company, FTM is not allowed.

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Articles

Gross negligence and wilful misconduct in investment transactions

By **Dikshita Damodaran and Jeevesh Jain**

The second article in this issue of Corporate Amicus discusses the concepts of 'gross negligence' and 'wilful misconduct' in investment transactions. The article for this purpose also takes help from various Court decisions and infers that gross negligence and wilful misconduct, while related, are distinct legal concepts. Further, pointing out various recommendations to the investors to safeguard against the risks posed by gross negligence and wilful misconduct, the authors note that it is imperative for investors to carefully negotiate and finalize transaction documents that include wilful misconduct and gross negligence as defined 'cause' events.

Gross negligence and wilful misconduct in investment transactions

By Dikshita Damodaran and Jeevesh Jain

Introduction

A promoter plays a pivotal role in driving a company's growth and significantly contributes to its overall success. They are instrumental in shaping the company's vision, setting its culture, and defining long-term goals. Any deviation from lawful and ethical conduct by a promoter can negatively impact stakeholders, particularly investors of a company.

In recent years, however, there have been multiple instances where promoters have engaged in actions or omissions that amount to wilful misconduct or gross negligence. These developments have led parties to investment agreements to more carefully define the term 'cause', often including such wilful misconduct and gross negligence as grounds for material breach or events of default.

While Indian law draws on common law principles in addressing the meaning of gross negligence and wilful misconduct, these concepts have been further refined through landmark judicial decisions. This article explores the legal interpretation and distinction between 'gross negligence' and 'wilful misconduct' as established by Indian courts.

Concept of 'Gross Negligence' and 'Wilful Misconduct'

Gross negligence refers to a party's failure — whether through action or omission — to exercise reasonable care and skill in performing an obligation, demonstrating a clear disregard or serious neglect for a foreseeable risk that a reasonably prudent person would have anticipated. However, to delve further, it is important to distinguish between negligence and gross negligence. 'Negligence' refers to the failure to exercise the standard of care that a reasonably prudent person would apply in a given situation. 'Gross negligence', on the other hand, involves a more serious lapse and is a failure, whether by action or omission, to exercise reasonable care and competence in fulfilling an obligation, coupled with a disregard for an obvious and foreseeable risk.

This distinction was highlighted by the Hon'ble Supreme Court in *State of U.P. through Secretary (Excise) and Ors.* v.

McDowell and Company Limited[1], where the Apex Court examined various forms of negligence. It was held that while negligence is a breach of the standard care expected of a prudent person, gross negligence reflects a level of carelessness that even ordinarily inattentive individuals would typically avoid to prevent harm to themselves or their property.

Similarly, in *The Institute of Chartered Accountants of India* v. *Mukesh Gang*[2], the High Court of Andhra Pradesh clarified that for negligence to escalate to gross negligence, it must involve a reckless disregard for legal duty and the potential consequences to others, or it must amount to a wilful, voluntary, or wanton omission.

'Wilful misconduct' on the other hand refers to an intentional act or failure to act that deviates from expected behavior, where the individual is either aware or reckless regarding the fact that their actions or omissions are contrary to, or exceed, the standard conduct that should be expected from them.

In *N.M. Roshan Umar Karim and Co.* v. *The Madras and Southern Maharatta Railway, Co., Ltd.*[3], the High Court of Madras distinguished 'wilful misconduct' from an accident, noting that it is akin to gross or culpable negligence. Also, the Patna High Court, in *Jamunadas* v. *E.I. Ry. Co.*[4], had also clarified that misconduct arises from the mere omission of a duty, but if that failure is aimed at intentionally causing harm or loss, it qualifies as 'wilful misconduct'.

In a recent judgement, the High Court of Kerala in *Indian Airlines* v. *Kurian Abraham*[5] explained that 'wilful misconduct' refers to a deliberate disregard of a known duty, or one that should have been known, crucial for safety. The court also referenced *Stroud's Judicial Dictionary of Words and Phrases, Volume 3*, which defines 'wilful misconduct' as conduct where the will plays an active role, differentiating it from accident or negligence. The Hon'ble Court further emphasized that misconduct, while intended, must not be attributed to honest forgetfulness or genuine mistake to be considered 'wilful misconduct'.

Distinction between 'Gross Negligence' and 'Wilful Misconduct'

While differentiating between 'gross negligence' and 'wilful misconduct', it is pertinent to recognize that 'misconduct' and 'negligence' are distinct concepts. Such a distinction was affirmed

1 (2022) 6 SCC 223
2 2016 (6) ALT 606
3 AIR 1936 Mad 508
4 (1933) A.I.R. Pat. 630
5 AIR 2010 Ker 85

by the High Court of Bombay in *Ramkrishna Ramnath Shop* v. *Union of India*[6], where the Court stated, "*'misconduct' and 'negligence' are different notions. Some kinds of negligence may amount to 'misconduct', while some kinds of negligence may not amount to 'misconduct'.*" Similarly, the Calcutta High Court, in *Bengal Nagpur Railway Co. Ltd.* v. *Dhanjishah Pestonji*[7], observed that "*gross negligence and wilful misconduct are not convertible terms, the latter may include the former and that there are many cases in which wilful misconduct and gross negligence correspond.*"

Based on the precedents discussed above, it can be inferred that gross negligence and wilful misconduct, while related, are distinct legal concepts. These two terms are not interchangeable; instead, they represent different degrees of wrongful behaviour. Therefore, while the two concepts may overlap in some instances, they represent different degrees of culpability in the eyes of the law.

Inclusion of such terms in the investment agreements

Since the promoters of a company, often serving as the public face of a company, hold substantial influence over its reputation and long-term success, when a promoter engages in misconduct or neglects to perform his/her duties, the repercussions on the company's standing, internal operations, and future performance can be profound. Therefore, in the light of increasing instances of misconduct and negligence within companies, which have led to investor-initiated investigations, it is essential for investors to clearly define 'gross negligence' and 'wilful misconduct' as grounds for material breach under their investment agreements. Establishing detailed provisions for these events will provide the necessary safeguards for the investor.

To safeguard against the risks posed by gross negligence and wilful misconduct, investors should consider the following recommendations:

a) ***Inclusion of indemnity provisions***: Investment agreements should include clear indemnity provisions, holding the promoters liable for compensating investors for any losses resulting from a breach caused by gross negligence or wilful misconduct. This would ensure that investors are financially protected in the event of such breaches.

b) ***Excluding limitation of liability in such instances***: The investment agreements should also explicitly exclude any limitations of liability in cases of gross negligence or

6 AIR 1960 Bom 344

7 AIR 1930 Cal 298

wilful misconduct. This provision ensures that investors are not unfairly restricted in seeking full compensation for the harm caused by such actions.

c) ***Robust definition of 'Cause' and related provisions***: The inclusion of a comprehensive definition of 'cause' along with detailed exit provisions, material breach terms, and linkage of the same to the event of default clauses can serve as a strong tool for investor protection. These provisions will help prevent promoters from engaging in acts of misconduct, knowing that there are clear, enforceable consequences that protect the investors' interests upon occurrence of such contingency.

In the light of these considerations, it is imperative for investors to carefully negotiate and finalize transaction documents that include wilful misconduct and gross negligence as defined 'cause' events. The implementation of such measures will equip investors with the requisite safeguards to mitigate the risks associated with a promoter's failure to fulfil their duties responsibly, thereby safeguarding their investment and reducing the likelihood of substantial losses.

[The authors are Principal Associate and Associate, respectively, in Corporate and M&A practice at Lakshmikumaran & Sridharan Attorneys, New Delhi]

Notifications & Circulars

- IRDAI Advisory on cyber incident preparedness and forensic readiness
- Compliance Officer's position under LODR Regulations clarified
- FPI investment limits in debt instruments and CDS exposure for FY 2025–26 announced
- Threshold for additional disclosures by FPIs amended
- Trading window closure extended to immediate relatives of designated persons
- Exports through warehouses in 'Bharat Mart', UAE, relaxed
- FEMA contraventions – Compounding amount capped for select contraventions

IRDAI Advisory on cyber incident preparedness and forensic readiness

The Insurance Regulatory and Development Authority of India ('**IRDAI**'), *vide* Circular Ref No. IRDAI/GA&HR/CIR/MISC/49/03/2025 dated 24 March 2025, has reiterated the need for robust cyber incident response and preparedness mechanisms, in line with the IRDAI Information and Cyber Security Guidelines, 2023.

Given the growing risks of cyber incidents, Regulated Entities ('**REs**'), including insurance intermediaries, are directed to strictly comply with the following provisions:

1. ***Incident Reporting***: As per Para 3.5 under Policy 2.10 and Circular IRDAI/GA&HR/CIR/MISC/128/06/2023 dated 13 June 2023, REs must report any cyber incident to IRDAI within 6 hours of detection or notification.
2. ***Monitoring & Time Synchronization***: Under Para 3.3 of Policy 2.16:
   - ICT infrastructure and application logs must be maintained and monitored for a rolling period of 180 days.
   - All relevant systems must synchronize clocks with Network Time Protocol servers of National Informatics Centre, National Physical Laboratory, or those traceable to them.
3. ***Cyber Crisis Management Plan (CCMP)***: As per Para 3.3 of Policy 2.18, REs must have a defined CCMP as part of their cyber-attack response framework.
4. ***Cyber Resilience & Forensics***: Para 3.4 of Policy 2.20 mandates forensic investigations for severe incidents. Chief Information Security Officers are authorized to engage certified external forensic experts when required.
5. ***CERT-In Compliance***: As per Para 1.10 of the General Guidelines, REs must adhere to CERT-In directions, including its circular dated 28 April 2022 on cyber incident reporting and practices.

Further, REs have been directed to empanel forensic auditors in advance to enable immediate engagement for investigation and root cause analysis and ensure independence by not appointing vendors involved in Security Operation Centre (SOC) operations, red teaming, attack surface monitoring, or cyber audits as forensic auditors to avoid conflict of interest.

Compliance Officer's position under LODR Regulations clarified

The Securities and Exchange Board of India, *vide* Circular No. SEBI/HO/CFD/PoD2/CIR/P/2025/47 dated 1 April 2025, has issued a clarification on the organizational level of the Compliance Officer under Regulation 6(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations**').

As per the proviso to Regulation 6(1), inserted through the SEBI (LODR) (Third Amendment) Regulations, 2024 dated 12 December 2024, the Compliance Officer must be in whole-time employment, not more than one level below the board of directors, and designated as a Key Managerial Personnel (KMP).

SEBI has now clarified that 'one-level below the board' refers to a position directly reporting to the Managing Director or Whole-time Director(s) who are on the board. Where a listed entity does not have such directors, the Compliance Officer must be one level below the Chief Executive Officer, Manager, or the person managing day-to-day affairs, in line with Regulation 2(1)(o) of the LODR Regulations and Section 2(51) of the Companies Act, 2013.

FPI investment limits in debt instruments and CDS exposure for FY 2025–26 announced

The Reserve Bank of India (**'RBI'**), *vide* A.P. (DIR Series) Circular No. 01 [RBI/2025-26/20], dated 3 April 2025, has notified the Foreign Portfolio Investor (**'FPI'**) investment limits in debt instruments for the financial year 2025–26. The limits for investment in Government Securities (**'G-Secs'**), State Government Securities (**'SGSs'**), and corporate bonds remain unchanged at 6%, 2%, and 15% respectively, of their outstanding stocks. Investments in specified securities will continue under the Fully Accessible Route (FAR) as per the Master Direction dated 7 January 2025.

For G-Secs, the incremental increase in limits has been evenly split between the 'General' and 'Long-term' sub-categories, while the increase for SGSs has been fully allocated to the 'General' sub-category. The total FPI debt investment limits have been revised to INR 13,82,989 crore for April–September 2025 and INR 14,70,654 crore for October 2025–March 2026.

Additionally, in line with the earlier guidelines, the aggregate notional amount of Credit Default Swaps ('**CDS**') that may be sold by FPIs has been capped at 5% of the outstanding stock of corporate bonds, setting the CDS limit at INR 2,93,612 crore for FY 2025–26.

Threshold for additional disclosures by FPIs amended

The Securities and Exchange Board of India, *vide* Notification No. SEBI/HO/AFD/AFD-POD-3/P/CIR/2025/52 dated 9 April 2025, has revised the threshold for mandatory additional disclosures by Foreign Portfolio Investors ('**FPIs**') under the 'Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors' (SEBI/HO/AFD/AFD-PoD-2/P/CIR/P/2024/70 dated 30 May 2024), as amended from time to time (**'FPI Master Circular'**).

Under the existing framework, FPIs—either individually or along with their investor group (as per Regulation 22(3) of the SEBI (FPI) Regulations)—were required to provide additional disclosures if their equity Assets Under Management (AUM) in Indian markets exceeded INR 25,000 crore. This 'size criteria' threshold has now been increased to INR 50,000 crore, thereby modifying the scope of FPIs subject to enhanced reporting.

Accordingly, the following sub-paragraphs of the FPI Master Circular have been amended to reflect the revised threshold:

- ***Sub-para (xiii)(b), (xv), and (xx)(b) of Para 1 of Part C*** – relating to disclosure obligations and timelines for FPIs based on equity AUM thresholds.
- ***Sub-para (i)(b), (iv), and (ix)(b) of Para 4 of Part D*** – relating to ODI subscribers and disclosures applicable under the revised size criteria.

This revision is also consistent with the disclosure requirements previously introduced for Offshore Derivative Instruments (ODIs) subscribers vide SEBI circular dated 17 December 2024.

Trading window closure extended to immediate relatives of designated persons

The Securities and Exchange Board of India, *vide* Circular No. SEBI/HO/ISD/ISD-PoD-2/P/CIR/2025/55, dated 21 April 2025 ('**Circular**'), has extended the automated trading window closure mechanism under Clause 4 of Schedule B read with Regulation 9 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ('**PIT Regulations**') to immediate relatives of designated persons (**'DPs'**) of listed companies. This move aims to curb inadvertent insider trading by freezing PANs at the security level during restricted periods, especially around financial result announcements.

Originally mandated for DPs under SEBI's Master Circular dated 23 September 2024, the framework now includes their immediate relatives and will be implemented in phases:

- ***Phase 1*:** Top 500 listed companies (by BSE market cap as of March 31, 2025) – Effective from 1 July 2025
- ***Phase 2*:** All other listed companies and new listings – Effective from 1 October 2025

Annexure-A of the Circular outlines the implementation process, Annexure-B provides the flowchart, and Annexure-C specifies the quarterly reporting format for depositories. This Circular along with the aforementioned annexures can be accessed here.

Exports through warehouses in 'Bharat Mart', UAE, relaxed

The Reserve Bank of India, *vide* Circular No. A.P. (DIR Series) Circular No. 03 [RBI/2025-26/30], dated 23 April 2025, has introduced regulatory relaxations to facilitate exports through warehouses located in 'Bharat Mart', a multimodal logistics and marketplace facility being developed in the UAE. Bharat Mart is expected to enhance global market access for Indian traders, exporters, and manufacturers.

To support this initiative, RBI has permitted AD Category-I banks to allow Indian exporters to realise and repatriate the full export value of goods exported to Bharat Mart within nine months from the date of sale of goods from the warehouse, instead of from the date of shipment. Further, AD banks may also permit, without pre-conditions and subject to verification of reasonableness, the opening or hiring of warehouses in Bharat Mart by Indian exporters with a valid Importer Exporter Code and allow remittances towards both initial and recurring expenses for setting up and operating business offices in the facility.

FEMA contraventions – Compounding amount capped for select contraventions

The Reserve Bank of India, *vide* Circular A.P. (DIR Series) Circular No. 04/2025-26 [RBI/FED/2025-26/32], dated 24 April 2025, has amended the Master Direction – Compounding of Contraventions under FEMA, 2016 dated 22 April 2025 to provide flexibility in the determination of compounding amounts in specific cases. The amendment allows the compounding authority to exercise discretion in capping the penalty amount under exceptional circumstances.

A new clause has been inserted as Paragraph 5.4.II.vi of the aforementioned Master Directions. As per the new provision, subject to the satisfaction of the compounding authority, based on the nature of contravention, the presence of exceptional circumstances or facts, and the broader public interest, the maximum compounding amount may be capped at INR 2,00,000/- for each regulation or rule, as applied in a compounding application, in relation to contraventions covered under row 5 of the computation matrix.

This amendment aims to provide relief in appropriate cases where strict application of the standard compounding framework may not be warranted.

Ratio Decidendi

- Arbitral Tribunal can include parties in proceedings without Section 21 notice or Section 11 application – *Supreme Court*
- Insolvency – IBC Section 12A application is unnecessary when no other creditors are present, and settlement is achieved – *NCLAT New Delhi*
- Arbitration – Writ Petition is admissible when an order under Section 9 neither grants nor denies relief – *Kerala High Court*
- Arbitral Tribunal's discretion under Section 31(7)(b) is limited to determining the rate of post-award interest and not entitlement of interest – *Delhi High Court*
- Settlement agreement defaults are not classified as Operational Debts under IBC – *NCLT, New Delhi*

Arbitral Tribunal can include parties in proceedings without Section 21 notice or Section 11 application

The Supreme Court has recently held that not being served with a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act ('**Arbitration Act**') and not being made a party in Section 11 application for the appointment of an arbitrator, are not sufficient grounds to exclude a person from arbitral proceedings. The Court emphasized that while a Section 21 notice is mandatory, its absence does not strip the arbitral tribunal of its jurisdiction to include parties during the proceedings.

In the present case, the appellant entered into an agreement with respondent No.1 to form an LLP, wherein respondent No.3 who is the director of respondent No.1 was designated as CEO of the LLP. Disputes arose, prompting the appellant to issue a Section 21 notice only to respondent No.1 and seek appointment of an arbitrator under Section 11 of Arbitration Act. However, respondent Nos.2 and 3 were later added to the arbitral proceedings through the statement of claim, which was challenged on the grounds of non-compliance of Section 21 notice and non-inclusion in the Section 11 application.

The arbitral tribunal and subsequently the High Court ruled in favor of excluding respondent Nos.2 and 3. On appeal, the Supreme Court reversed this, holding that the arbitral tribunal derives jurisdiction from the arbitration agreement itself. It emphasized that a Section 21 notice under Arbitration Act is relevant for commencement of proceedings but not a prerequisite for inclusion if the party is otherwise bound. Similarly, the Section 11 process is only for constitution of the tribunal and does not limit the jurisdiction of arbitral tribunal.

Applying the kompetenz-kompetenz principle and relying on the precedent in *State of Goa* v. *Praveen Enterprises*, the Court concluded that respondent Nos.2 and 3, though non-signatories, were effectively parties to the arbitration agreement based on their conduct and roles under the LLP arrangement.

[*Adavya Projects Pvt. Ltd.* v. *Vishal Structurals Pvt. Ltd. & Ors.* – Judgement dated 17 April 2025 in Civil Appeal No. 5297 of 2025 arising out of SLP (C) No. 25746 of 2024, Supreme Court]

Insolvency – IBC Section 12A application is unnecessary when no other creditors are present, and settlement is achieved

The National Company Law Appellate Tribunal ('**NCLAT**'), Principal Bench, New Delhi, has ruled that if no other claims are received during the Corporate Insolvency Resolution Process ('**CIRP**') and a complete settlement is achieved between the parties, filing a Section 12A application under the Insolvency and Bankruptcy Code ('**IBC**') is not obligatory. The Tribunal exercised its inherent power to terminate the CIRP proceedings.

In the present matter, the appeal was filed against the order of the Adjudicating Authority admitting a Section 7 application initiated by the financial creditor. The corporate debtor contended that the admission was made without affording an adequate opportunity to be heard and that a modification application was still pending before the Adjudicating Authority. Subsequent to the admission of the application, the Resolution Professional had issued a public notice inviting claims; however, no claims were received except from the initiating financial creditor.

The appellant submitted that since no other stakeholders were involved and the financial creditor had already settled the matter with the corporate debtor, filing a Section 12A application for withdrawal of CIRP would serve no material purpose and would be a redundant formality. Relying on the Supreme Court's judgment in *GLAS Trust Company LLC* v. *BYJU Raveendran & Ors.* [2024 INSC 811], wherein it was affirmed that the Tribunal possesses inherent powers to close insolvency proceedings in appropriate circumstances, the Tribunal invoked its inherent power to close the proceedings. NCLAT noted that since no other claims were received apart from the financial creditor, and a full settlement was reached, filing a Section 12A application under the IBC, 2016 was unnecessary.

The Tribunal concluded that, given the settlement between the parties, the insolvency proceedings against the Corporate Debtor should be terminated. It also directed that the expenses of the Interim Resolution Professional ('**IRP**') be shared jointly by the financial creditor and the corporate debtor.

[*Sachin Malde* v. *Hemant Nanji Chheda* – Judgement dated 2 April 2025 in Company Appeal (AT) (Insolvency) No. 123 of 2024, NCLAT, Principal Bench, New Delhi]

Arbitration – Writ Petition is admissible when an order under Section 9 neither grants nor denies relief

The Kerala High Court has held that a writ petition under Articles 226 and 227 of the Constitution of India is maintainable against an order passed under Section 9 of the Arbitration and Conciliation Act, 1996 (‘**Arbitration Act**’), where such an order neither grants nor refuses relief, and is therefore not appealable under Section 37 of the Arbitration Act.

In the present case, the petitioner approached the Commercial Court under Section 9 seeking interim protection against the invocation of bank guarantees. The Commercial Court granted temporary relief for 90 days, but later ‘closed’ the proceedings without either granting or refusing the substantive relief sought, on the ground that arbitration had commenced. The High Court found that this act of merely closing the matter did not amount to a judicial refusal of relief within the meaning of Section 37(1)(b) of the Arbitration Act, which limits appellate jurisdiction to orders that expressly grant or deny interim measures.

The Court clarified that a procedural closure or administrative disposal of a Section 9 petition, absent any adjudication on merits, falls outside the scope of appealable orders under the Arbitration Act. Accordingly, such orders do not bar constitutional remedies, and a writ petition is maintainable in such situations to prevent a party from being left without recourse.

Further, in addressing the respondent’s conduct in invoking the bank guarantees after interim protection had lapsed, the Court held that the invocation was unjust in the light of pending proceedings and the appointment of a new sole arbitrator. Citing *ABL International Ltd.* v. *ECGC* [(2004) 3 SCC 553] and *Asian Resurfacing of Road Agency Pvt. Ltd.* v. *CBI* [(2018) 16 SCC 299], the Court emphasized that State instrumentalities are bound by standards of fairness under Article 14, and that interim protection cannot be defeated by procedural delays where the litigant is not at fault.

Accordingly, the Court directed the respondent authority to retain the encashed amounts in an interest-bearing fixed deposit pending final adjudication of the arbitral dispute.

[*Flemingo (DFS) Private Limited* v. *Airports Authority of India* – Judgement dated 11 April 2025, 2025 SCC OnLine Ker 2368]

Arbitral Tribunal's discretion under Section 31(7)(b) is limited to determining the rate of post-award interest and not entitlement of interest

The Delhi High Court has ruled that the grant of post-award interest under Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 ('**Arbitration Act**') is mandatory, and the discretion of the arbitral tribunal is confined solely to determine the rate of such interest. Where the Tribunal does not stipulate a specific rate, the statutory rate of 18% per annum as prescribed under the provision shall apply by default.

In the present case, Northern Railway awarded a contract to the respondent, who later invoked the arbitration clause due to disputes. The High Court appointed a sole arbitrator on 16 November 2012. The Arbitrator ruled in favor of the respondent and awarded INR 61,48,277/- with interest. The petitioner challenged the award under Section 34 of the Arbitration Act, however the District Judge dismissed the objections raised under Section 34. The petitioner then appealed to the High Court. Meanwhile, the respondent initiated execution proceedings, and the executing court granted post-award interest at 18% p.a. on the unpaid portion, directing additional payment of INR 77,18,000/-.

The petitioner contended that the Tribunal's silence on post-award interest implied an exercise of discretion to deny such interest and submitted that the executing court erred in granting it. The central legal question was whether the expression 'unless the award otherwise directs' in Section 31(7)(b) allows the arbitral tribunal to deny post-award interest entirely or whether it pertains only to the rate of such interest.

The Delhi High Court undertook a detailed interpretation of Section 31(7) of Arbitration Act, distinguishing between sub-clauses (a) and (b), and emphasized that while Clause (a) governs pre-award interest, Clause (b) addresses post-award interest and operates as a statutory mandate. The Court clarified that unless the arbitral tribunal expressly excludes post-award interest in its award, the creditor is entitled to it by default. Merely omitting to mention post-award interest cannot be construed as an intention to deny it.

In reaching its conclusion, the Court relied on the Supreme Court's decision in *Hyder Consulting (UK) Ltd.* v. *Governor, State of Orissa* [2015 (2) SCC 189], which affirmed that post-award interest is a matter of right under the statute, and any discretion lies solely in fixing a rate different from the default.

Accordingly, the Court upheld the executing court's award of post-award interest at 18% p.a., reiterating that the arbitrator's silence does not nullify the statutory entitlement under Section 31(7)(b) of Arbitration Act. The petition was dismissed, and the order granting post-award interest was sustained.

[*Union of India & Anr.* v. *Sudhir Tyagi* – Judgement dated 17 April 2025, 2025 SCC OnLine Del 2392]

Settlement agreement defaults are not classified as Operational Debts under IBC

The National Company Law Tribunal (‘**NCLT**’), New Delhi Bench, has dismissed a Section 9 petition filed by the operational creditor under the Insolvency & Bankruptcy Code, 2016 (‘**Code**’), ruling that defaults arising from settlement agreements do not constitute ‘operational debts’ under Section 5(21) of the Code.

In the present case, M/s. Harji Engineering Works Pvt. Ltd. (‘**Operational Creditor**’) provided engineering construction services, while M/s. Enerture Technologies Private Limited (‘**Corporate Debtor**’) offers services related to solar installations. The two parties entered into a Memorandum of Understanding (‘**MOU**’) on 23 January 2024, to establish a 100-megawatt solar power generation facility across India, including its operation and maintenance for three years. Disputes arose during the project, leading to a second MOU on 1 June 2024, to settle these disputes.

According to the second MOU, the Corporate Debtor agreed to pay INR 5,00,00,000 to the Operational Creditor within four months. However, the post-dated cheques issued by the Corporate Debtor were dishonoured twice. Consequently, the Operational Creditor issued a legal notice under Section 138 of the Negotiable Instruments Act, 1881 and a demand notice under Section 8 of the Code on 23 November 2024. When the Corporate Debtor failed to respond, the Operational Creditor filed a Section 9 petition to initiate insolvency proceedings under the Code.

NCLT emphasized that for an insolvency petition under Section 9 of the Code to be valid, there must be an operational debt. Section 5(21) of the Code defines operational debt as a claim related to the provision of goods or services, including employment, or a debt arising under any statute payable to the government or local authority. NCLT noted that the claim by the Operational Creditor did not meet these criteria and thus could not be classified as operational debt.

Citing the NCLT Indore's decision in *Permali Wallace Pvt. Ltd.* v. *Narbada Forest Industries Pvt. Ltd*, NCLT reiterated that amounts arising from settlement agreements do not qualify as operational debts under Section 5(21) of the IBC, 2016. Therefore, defaults from such agreements cannot be admitted as operational debts.

Furthermore, NCLT observed that there were pre-existing disputes between the parties, particularly concerning profit-sharing and scope of work under the original MOU, which preceded the Section 9 filing. In this regard, NCLT found merit in the principles laid down by the NCLAT in *M/s. Sumilon Polyester Private Limited* v. *M/s. Parikh Packaging Private Limited*, wherein it was held that the existence of prior disputes, as evidenced by legal notices and correspondences, could be a valid ground for rejecting an insolvency application under Section 9. Accordingly, since the claim did not qualify as an operational debt and the record demonstrated the existence of pre-litigation disputes, the Section 9 application filed by the Operational Creditor was dismissed.

[*Harji Engineering Works Pvt. Ltd.* v. *Enerture Technlogies Pvt. Ltd.* – Judgement dated 17 April 2025 in CP (IB) No. 63 (ND)/ 2025, NCLT, Delhi]

News Nuggets

- SEBI alters framework governing ESG rating providers
- NABARD acquires 10 per cent stake in agri-fintech startup
- CCI approves Bharat Forge- AAM Manufacturing deal subject to voluntary modifications
- CCI okays Kandhari Beverages' proposal of acquiring Coco-Cola's bottling arm
- After SEBI, MCA to take action against Gensol
- Aster-Quality Care deal receives CCI nod
- CCI approves PIOF and Partners' stake acquisition in Akasa Air

SEBI alters framework governing ESG rating providers

The Securities and Exchange Board of India has amended the framework governing ESG Rating Providers (‘**ERP**’), particularly for those using a subscriber-pays model, requiring such agencies to henceforth share the Environmental, Social, Governance (‘**ESG**’) rating reports with the subscribers as well as the rated entity parallelly. Further, the rated entity will be provided a period of two working days to provide its comments on such rating and all comments or clarifications received from the rated entity within the specified timeline will be included in the addendum to the ESG rating report by the ERP.

[*Source:* Hindu Business line, published on 24 April 2025]

NABARD acquires 10 per cent stake in agri-fintech startup

The National Bank for Agriculture and Rural Development (‘**NABARD**’) has acquired 10 per cent equity in agri-fintech venture 24×7 Moneyworks consulting making it NABARD’s first-ever investment in a boot-strapped start-up. Notably, the agri-fintech’s flagship program includes a platform eKisanCredit (eKCC), a digital loan disbursal system designed specifically for cooperative banks, primary agricultural credit societies and Regional Rural Banks and it integrates farmer’s land records, Aadhaar, eKYC, core banking systems and primary agricultural credit societies.

[*Source:* Financial Express, published on 24 April 2025]

CCI approves Bharat Forge- AAM Manufacturing deal subject to voluntary modifications

After previously flagging concerns that the deal may adversely impact competition in the market, the Competition Commission of India (‘**CCI**’) has cleared the acquisition of AAM India Manufacturing Corporation Private Limited (‘**AAM Manufacturing**’) by Bharat Forge Limited, subject to certain voluntary modification proposed by the companies. Notably, Bharat Forge is a leading provider of forged components and solutions to various industries and AAM Manufacturing is engaged in the business of manufacturing and sale of axles for commercial vehicles.

[*Source:* ET Legal World, published on 23 April 2025]

CCI okays Kandhari Beverages’ proposal of acquiring Coco-Cola’s bottling arm

The Competition Commission of India has approved the proposed acquisition of Hindustan Coco-Cola Beverages Private Limited (‘**Coco-Cola**’) bottling business in Northern Gujarat and Union

Territory of Diu by Kandhari Global Beverages Private Limited ('**Kandhari Beverages**'). Notably, Kandhari Beverages is already an authorised bottler of Coca-Cola and is engaged in the business of supplying and distribution of non-alcoholic beverages in the state of Rajasthan. The deal is said to be a push to Coco-Cola's asset-light business model wherein it is divesting assets globally by franchising regional operations to the local partners.

[*Source:* ET Legal World, published on 23 April 2025]

After SEBI, MCA to take action against Gensol

The Ministry of Corporate Affairs has in its statement, said that it will be taking necessary actions against Gensol Engineering Limited ('**Gensol**') after thoroughly examining the SEBI order on the listed entity. Notably, SEBI in its order has barred Gensol's promoters Anmol Singh Jaggi and Puneet Singh Jaggi from accessing the securities markets for violations including siphoning off loan funds from the listed company for their personal use, concerns of corporate governance in the listed entity and financial misconduct.

[*Source:* Times of India, published on 22 April 2025]

Aster-Quality Care deal receives CCI nod

The Competition Commission of India has approved the merger between Aster DM Healthcare and Blackstone and TPG-owned Quality Care India, allowing for creation of one of India's top three hospital chains. The merged entity Aster DM Quality Care will be jointly controlled by Aster Promoters and Blackstone and will have a combined portfolio of four brands — Aster DM, CARE Hospitals, KIMSHEALTH and Evercare.

[*Source:* Fortune India, published on 18 April 2025]

CCI approves PIOF and Partners' stake acquisition in Akasa Air

The Competition Commission of India has approved the acquisition of shareholding in SNV Aviation Pvt Ltd ('**Akasa Air**') by a group of investors, including PI Opportunities Fund-I Scheme-II ('**PIOF**'), a SEBI-registered Alternative Investment Fund ('**AIF**') offering long-term equity investments with risk-adjusted returns; Claypond Capital Partners, an affiliate of the Pai Family Group and 360 ONE Private Equity Fund, a Category II AIF with a broad investment mandate across sectors in India and abroad. Notably, Akasa Air operates domestic and international passenger services, along with cargo and allied offerings such as in-flight sales.

[*Source:* CCI Press Release, published on 15 April 2025]

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