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An attempt to statutorily mediate the operational creditor dues

By **Raghavan Ramabadran, Krithika Jaganathan and Shwetha Vasudevan**

The Insolvency and Bankruptcy Board of India has recently come up with a proposal for the parties involved in an operational creditor insolvency application dispute to explore mediation under the provisions of the Mediation Act, 2023. This is aimed as a precursor to the filing of an application under Section 9 of the Insolvency and Bankruptcy Code, 2016. The authors note that the proposal will reduce the burden on the Adjudicating Authority since the non-settlement report, in case of failure of mediation, would capture any admission or dispute of debts as claimed by the operational creditor. Discussing the pros and cons, the authors note that taking up voluntary mediation may be weighed on a case-to-case basis.

An attempt to statutorily mediate the operational creditor dues

By Raghavan Ramabadran, Krithika Jaganathan and Shwetha Vasudevan

The Insolvency and Bankruptcy Board of India ('**IBBI**') has recently come up with a proposal for the parties involved in an operational creditor application to explore mediation under the provisions of the Mediation Act, 2023. This is aimed as a precursor to the filing of an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('**Code**').

This is indeed a welcome move aligned with the scheme that governs commercial disputes, i.e., pre-suit mediation with just the difference being, mediation proposed under the Code is voluntary, whereas it is mandatory under Commercial Courts Act, 2015.

The proposal to mediate over operational debts was suggested by the Expert Committee on the 'Framework for Use of Mediation under the Insolvency and Bankruptcy Code, 2016' in the background of statistical data as of 30 April 2024 which demonstrated that out of 21,466 cases filed under Section 9 of the Code only 3818 cases were admitted. As per the draft regulations, the proposal to mediate is restricted to disputes of commercial nature. Therefore, any operational debts that are not of commercial vintage are not to be considered for such pre-institutional mediation.

One key consideration that moved the suggestion was that the operational creditor(s) were more interested to receive payments. Of course, a question arises as to whether this proposal goes contrary to the settled view that the Code cannot be used as a tool of recovery, rather, it contemplates a revival mechanism that resuscitates a corporate debtor. It is also proposed by the IBBI that in case of failure of mediation, the mediator will prepare a non-settlement report which shall be annexed with the application for initiation of insolvency resolution process under the Code. This proposal aims to reduce the burden on the Adjudicating Authority and thereby expediting admissions since the non-settlement report would also capture any admission or dispute of debts as claimed by the operational creditor.

The mediation process under the Mediation Act, 2023 offers strategic advantages as a mediated settlement agreement is binding on the parties and has the effect of a court decree and can be enforced. It is also necessary to be mindful of the fact that

the mediation process under the Mediation Act, 2023 is to be completed within a period of 120 days.

The ground reality remains that *de hors* the proposed amendment, efforts to settle disputes are explored even after the filing of operational creditor applications. Hence, making pre-institutional mediation a mandate could add to the overall costs.

However, considering that the proposed regulation as released intends for the process to be voluntary, rather than a compulsory pre-condition to the filing of an operational creditor application, taking up mediation is to be weighed on a case-to-case basis. It is expected that a positive outcome of the process could reduce the caseload, and result in an amicable resolution.

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Notifications & Circulars

- SEBI specifies Due Diligence Certificate format for unsecured debt securities
- Payments between member countries of the Asian Clearing Union – Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023 amended
- Compliance deadline for private companies under Companies (Prospectus and Allotment of Securities) Rules, 2014 extended
- Industry standards on approval of related party transactions notified by SEBI
- Investment norms for All India Financial Institutions amended
- Prudential norms for Urban Co-operative Banks revised

SEBI specifies Due Diligence Certificate format for unsecured debt securities

The Securities and Exchange Board of India ('**SEBI**') *vide* Notification No. SEBI/HO/DDHS/DDHS-PoD-3/P/CIR/2025/009 dated 28 January 2025, has amended the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 ('**NCS Regulations**') to prescribe the Due Diligence Certificate format for Debenture Trustees in both secured and unsecured debt securities. While the Master Circular for Debenture Trustees specifies the format for secured debt securities in alignment with the NCS Regulations, it does not outline the same for unsecured debt securities.

The notification states that for unsecured debt securities, issuers must submit a Due Diligence Certificate obtained from the Debenture Trustee, as per the format prescribed under the NCS Regulations. This certificate must be furnished at two stages: first, at the time of filing the draft offer document with stock exchanges (Annex-A of the Notification), and subsequently, at the time of filing the listing application (Annex-B of the Notification). These requirements ensure regulatory compliance and enhance investor protection by verifying the issuer's adherence to due diligence standards.

Payments between member countries of the Asian Clearing Union – Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023 amended

The Foreign Exchange Department of the Reserve Bank of India ('**RBI**') *vide* Notification No. FEMA 14(R)(1)/2025-RB dated 10 February 2025, has amended the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2023. The amendment modifies Regulation 3(ii) relating to payments between member countries of the Asian Clearing Union ('**ACU**'), other than Nepal and Bhutan. Payments from residents of one ACU participant country to another can now be made through the ACU mechanism or as per RBI directions to authorized dealers. For all other transactions, the amendment states that the receipt and payment will follow the manner specified under Regulation 3(iii).

Compliance deadline for private companies under Companies (Prospectus and Allotment of Securities) Rules, 2014 extended

The Ministry of Corporate Affairs ('**MCA**'), *vide* Notification No. G.S.R. 131(E), dated 12 February 2025, has amended the

Companies (Prospectus and Allotment of Securities) Rules, 2014. The amendment grants an extension to private companies, other than producer companies, which are not classified as small companies as of 31 March 2023. These companies are now allowed to comply with the provisions of Rule 9B(2) by 30 June 2025 for issuing securities in a dematerialized form.

Industry standards on approval of related party transactions notified by SEBI

The Securities and Exchange Board of India ('**SEBI**') *vide* Notification No. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2025/18 dated 14 February 2025, has outlined regulations requiring approval from the audit committee and shareholders for related party transactions ('**RPTs**') under Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR**'). The SEBI Master Circular dated 11 November 2024, provided guidelines on the information to be disclosed for RPTs.

To ensure uniform compliance, the Industry Standards Forum ('**ISF**') – consisting of ASSOCHAM, CII, FICCI, and SEBI – has developed industry standards specifying the minimum information needed for audit committee and shareholder review of RPTs.

Key updates to the Master Circular include:

- ***Audit Committee Approval (Part A)***: Listed entities must provide the audit committee with the specified information as per the industry standards when submitting an RPT for review and approval.
- ***Shareholder Approval (Part B)***: In addition to the requirements of the Companies Act, 2013, the explanatory statement in the notice sent to shareholders seeking approval for an RPT must include information as per the industry standards.

Investment norms for All India Financial Institutions amended

The Reserve Bank of India ('**RBI**') *vide* Notification No. RBI/2024-25/116, DOR.MRG.REC.60/00-00-017/2024-25 dated 17 February 2025, has amended the Reserve Bank of India (Prudential Regulations on Basel III Capital Framework, Exposure Norms, Significant Investments, Classification, Valuation and Operation of Investment Portfolio Norms and Resource Raising Norms for All India Financial Institutions) Directions, 2023. The amendment, effective immediately, allows investments made by All India Financial Institutions ('**AIFIs**') in long-term bonds and debentures (with a minimum residual

maturity of three years) issued by non-financial entities to be excluded from the 25% ceiling for investments under the Held to Maturity category.

This change aims to provide flexibility in the management of investments by AIFIs and this amendment shall only be applicable to AIFIs regulated by the RBI *viz.* the National Bank for Agriculture and Rural Development (NABARD), the National Bank for Financing Infrastructure and Development (NaBFID), the National Housing Bank (NHB) and the Small Industries Development Bank of India (SIDBI).

Prudential norms for Urban Co-operative Banks revised

The Reserve Bank of India *vide* Notification No. RBI/2024-25/117, FMRD.DIRD.16/14.03.042/2024-25 dated 21 February 2025, has reviewed and rationalized the prudential norms for Urban Co-operative Banks ('**UCBs**') to provide greater operational flexibility while maintaining regulatory objectives. The key revisions are as follows:

1. ***Small Value Loans*:** The definition of small value loans has been revised to loans of value not more than INR 25 lakh or 0.4% of Tier I capital, whichever is higher, with a ceiling of INR 3 crore per borrower (previously INR 1 crore). UCBs are required to have at least 50% of their aggregate loans and advances in small value loans by 31 March 2026.
2. ***Real Estate Exposure*:** Aggregate exposure to residential mortgages (excluding priority sector) is capped at 25% of total loans and advances. Exposure to the real estate sector, excluding housing loans, is capped at 5% of total loans and advances. The Individual housing loan limits are as follows: Tier 1: INR 60 lakh, Tier 2: INR 1.40 crore, Tier 3: INR 2 crore and Tier 4: INR 3 crore.
3. ***Provisioning for Security Receipts*:** The glide path for provisioning on Security Receipts has been extended for an additional two-year duration now until FY 2027-28.

Ratio Decidendi

- CCI Approval is mandatory before the CoC approves a resolution plan involving a combination – *Supreme Court*
- Mere constitution of a project management committee does not absolve the Corporate Debtor from its financial obligations – Section 7 Application is maintainable – *NCLAT, New Delhi*
- Arbitration – 30-day limitation period for filing objections under the Arbitration Act, 1940, begins from the date the party gains awareness of the award; Formal service of notice is not a statutory requirement for triggering limitation period – *Supreme Court*
- Arbitration – Limitation period for application to seek appointment of arbitrator begins only after a notice invoking arbitration is issued and opposite party has failed/refused to make an appointment as per agreed procedure – *Andhra Pradesh High Court*
- A single homebuyer cannot challenge the approval of a resolution plan when the majority has voted in its favor – *NCLAT*

CCI Approval is mandatory before the CoC approves a resolution plan involving a combination

The Supreme Court has held that prior approval from the Competition Commission of India ('**CCI**') is mandatory before the Committee of Creditors ('**CoC**') approves a Resolution Plan involving a combination. Proviso to Section 31(4) of the Insolvency and Bankruptcy Code ('**IBC**') mandates that anti-competitive combinations should not bypass the regulatory scrutiny that prevent monopolistic market structures, as an outcome of the Corporate Insolvency Resolution Process ('**CIRP**').

The dispute arose in the CIRP of Hindustan National Glass and Industries Ltd. ('**Corporate Debtor/CD**'), a leading glass packaging manufacturer in India. AGI Greenpac Ltd. ('**Successful Resolution Applicant/SRA**'), a competitor in the glass industry, submitted a Resolution Plan to acquire the CD, while Independent Sugar Corporation Ltd ('**INSCO**'), a Bermuda-based company, also submitted a competing Resolution Plan but was unsuccessful. Since SRA and Corporate Debtor were significant players in the Alco-Beverage (40-50%) and Food & Beverage (80-85%) sectors, their combination required prior approval from the CCI under the Competition Act, 2002. However, the CoC approved AGI Greenpac's Resolution Plan before obtaining CCI approval, which INSCO challenged as a violation of Section 31(4) of the IBC.

The NCLAT upheld the CoC's approval, ruling that CCI approval was necessary but could be obtained after CoC approval. The Supreme Court, however, overturned this decision, holding that the proviso to Section 31(4) explicitly mandates prior approval from the CCI before the CoC approves a Resolution Plan containing a combination. It was held that the Resolution Professional ('**RP**') allowed the Successful Resolution Applicant to bypass this legal requirement, violating due process and creating an unfair advantage. It was held that the word 'prior' in Section 31(4) is unambiguous and must be strictly followed, as courts must interpret statutes in accordance with the legislative intent. Supreme Court's decision in *Bhavnagar University* v. *Palitana Sugar Mill* [(2003) 2 SCC 111] was cited.

The Supreme Court affirmed that Section 31(4) is mandatory, not directory. Applying the Rule of Plain Meaning from *Nelson Motis* v. *Union of India* [(1992) 4 SCC 711], the Court held that when statutory language is clear and unambiguous, it must be given its natural and literal meaning. The word 'prior' in Section 31(4) must be interpreted as 'before' CoC approval. The Court also

relied on *Tamil Nadu State Electricity Board* v. *Central Electricity Regulatory Commission* [(2007) 7 SCC 636], emphasizing that statutory timelines cannot be used to justify procedural violations.

The Court further emphasized the necessity of CCI's approval to prevent anti-competitive practices. Ensuring regulatory clearance before CoC approval allows creditors to make informed decisions about the implications of the Resolution Plan.

Accordingly, the Supreme Court set aside the NCLAT order, ruling that the approval of AGI Greenpac's Resolution Plan was invalid due to non-compliance with Section 31(4) of the IBC. The CoC was directed to reconsider all Resolution Plans after obtaining the necessary regulatory approvals.

[*Independent Sugar Corporation Ltd.* v. *Girish Sriram Juneja & Ors.* – Judgement dated 29 January 2025, 2025 INSC 124, Supreme Court]

Mere constitution of a project management committee does not absolve the Corporate Debtor from its financial obligations – Section 7 Application is maintainable

The National Company Law Appellate Tribunal ('**NCLAT**') has held that the mere constitution of a Project Management Committee does not absolve the Corporate Debtor from its financial obligations. An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('**IBC**') is admissible if debt and default are established, irrespective of the operational control exercised by the Project Management Committee.

In the present case, an appeal was filed challenging the NCLT's decision to admit a Section 7 eapplication filed by IDBI Trusteeship Services Ltd. ('**Financial Creditor/FC'**) against Shree Vardhman Infraheights Pvt. Ltd. ('**Corporate Debtor/CD'**). The CD contended that the Project Management Committee, which controlled sales, marketing, and project-related decisions, functioned as a co-promoter and was equally accountable for the default.

The dispute originated from a Debenture Trust Deed ('**DTD**') executed on 19 April 2016 between the CD and Santur Infrastructures Pvt. Ltd. (a subsidiary), with IDBI acting as the trustee for listed, rated, secured non-convertible debentures worth INR 140 crore. The CD defaulted on repayments on 30 June 2019, leading to a repayment notice by IDBI and a Commercial Suit in the Delhi High Court. A Settlement Agreement was reached on 4 November 2019, which restructured the debt, fixing the outstanding principal at INR 125 crore with additional unpaid interest.

The Settlement Agreement also provided for the formation of a Project Management Committee comprising three FC-nominated members and two CD-nominated members to oversee project construction, marketing, and sales. Despite this restructuring, the CD defaulted again on 31 December 2021. Followed by a default notice issued on 30 September 2023, the FC had filed a Section 7 application on 16 December 2023, which was opposed by the CD. NCLT admitted the application, confirming the existence of debt and default.

NCLAT upheld the NCLT's decision, emphasizing that the formation of a Project Management Committee does not override the financial obligations of the CD. Supreme Court decisions in the cases of *E.S. Krishnamurthy & Ors.* v. *Bharath Hi-Tech Builders Pvt. Ltd.* [(2022) 3 SCC 161] and *Innoventive Industries Ltd.* v. *ICICI Bank* [(2018) 1 SCC 407] were relied upon. NCLAT reaffirmed that under Section 7 of the IBC, the Adjudicating Authority must admit an application if debt and default are established, unless the application is incomplete.

[*Sandeep Jain* v. *IDBI Trusteeship Ltd. & Anr.* – Decision dated 8 February 2025 in C.P. (IB) No.751(PB)/2023, National Company Law Appellate Tribunal, New Delhi]

1. Arbitration – 30-day limitation period for filing objections under the Arbitration Act, 1940, begins from the date the party gains awareness of the award

2. Formal service of notice is not a statutory requirement for triggering limitation period

The Supreme Court has held that under the Arbitration Act, 1940, the 30-day period for filing objections begins when the objector becomes aware of the award, not upon receiving formal notice. The appeal arose from the Delhi High Court's decision, which upheld the trial court's ruling that the Appellant's application for making the award was premature since it was filed before the commencement of the limitation period for objections.

In the present case, the arbitral award was issued on 31 May 2022. The Respondent, however, became informally aware of its issuance on 21 September 2022 through an order passed by the District Judge, Sonitpur, directing the Respondent to clear the dues as awarded in the arbitration award. The order also stated that a copy of the award would be furnished to both parties upon payment. Formal notice of the award's issuance was subsequently sent on 18 November 2022. Meanwhile, on 10

November 2022, the Appellant filed an application under Section 17 of the 1940 Act, seeking judgment in terms of the award. The Respondent opposed the application, contending that the limitation period for filing objections commenced only upon receiving formal notice and that their right to object was unfairly curtailed. The trial court and High Court accepted this argument.

The Supreme Court, however, rejected the Respondent's contention, holding that formal service of notice is not required to trigger the limitation period. Instead, mere awareness of the award's issuance is sufficient for the 30-day limitation period to commence. Relying on *Bharat Coking Coal Ltd.* v. *C.K. Ahuja* [(1995) 3 JT 132 (SC)], it was held that the date of receiving a copy of the award is not the requirement of Section 14(2), but merely awareness that it is available to the parties. This signifies that the parties have to take steps to scrutinise the award themselves as soon as it becomes accessible, and they are aware of its accessibility.

Since the Respondent was sufficiently aware of the award's issuance on 21 September 2022, the limitation period for filing objections expired on 20 October 2022. Therefore, the Appellant's application under Section 17 on 10 November 2022 was valid and well beyond the period for filing objections. The Supreme Court found that both the District Court and the High Court erred in holding that the limitation period was still running at the time of the Appellant's application. It ruled that allowing the Respondent's argument would amount to permitting them to take advantage of their own inaction.

Accordingly, the appeal was allowed, reinforcing that the law does not require a formal notice of the award to compute limitation; mere knowledge/notice of the award is sufficient to trigger the limitation period for objections.

[*Krishna Devi @ Sabitri Devi (Rani)* v. *Union of India & Ors.* – Judgement dated 3 January 2025, 2025 INSC 24, Supreme Court]

Arbitration – Limitation period for application to seek appointment of arbitrator begins only after a notice invoking arbitration is issued and opposite party has failed/refused to make an appointment as per agreed procedure

The Andhra Pradesh High Court held that the limitation period for filing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator, begins only after a notice invoking arbitration has been issued and the opposite party has either failed or refused to make an appointment as per the agreed procedure.

In the present case, Alliance Enterprises ('**Applicant**') entered into a contract with Andhra Pradesh State Fiber Net Limited ('**Respondent**') on 5 August 2016 for commissioning and maintaining last-mile optical fiber connectivity in government offices. The Respondent terminated the contract *vide* its order, dated 2 January 2019, which was communicated to the Applicant on 9 January 2019. Due to non-payment of dues amounting to INR 12,26,63,520/-, the Applicant invoked arbitration through a notice dated 17 October 2022. As the Respondent failed to appoint a sole arbitrator despite the notice, the Applicant approached the Court, seeking the appointment of an independent arbitrator.

The Respondent objected, contending that the application was barred by limitation, arguing that the cause of action arose in 2019, when the contract was terminated. The Respondent asserted that as per Article 137 of the Limitation Act, 1963, the application should have been filed within three years from 2019, and filing the present application in 2023 was barred by limitation.

The Court rejected the Respondent's argument, clarifying that the limitation period for filing an application under Section 11(6) must not be conflated with the limitation period for raising substantive claims before an arbitral tribunal. Citing *Arif Azim Co. Ltd.* v. *Aptech Ltd.* [2024 INSC 155], the Court reaffirmed that the three-year limitation period begins only from the date the opposite party fails or refuses to appoint an arbitrator after being served with a notice invoking arbitration.

Since the notice invoking arbitration clause was issued on 17 October 2022, the limitation period commenced from that date. As the application was filed on 31 October 2023, it was well within the prescribed three-year period.

[*Alliance Enterprises* v. *Andhra Pradesh State Fiber Net Limited (APSFL)* – Decision dated 20 February 2025 in Arbitration Application No. 48 of 2023, Andhra Pradesh High Court]

A single homebuyer cannot challenge the approval of a resolution plan when the majority has voted in its favor

The National Company Law Appellate Tribunal ('**NCLAT**') has held that a single homebuyer cannot challenge the approval of a Resolution Plan if the majority of homebuyers have voted in its favor. Once the Committee of Creditors ('**CoC**') has approved the RP by the required voting percentage, an individual dissenting homebuyer must abide by the majority decision.

The appeal arose from the National Company Law Tribunal ('**NCLT**')'s order dated 20 September 2024, approving the

Resolution Plan for the corporate debtor. Appeals were filed by the promoter, and by a single homebuyer, both challenging the approval of the Resolution Plan.

The promoter argued that the Resolution Plan was impractical to implement within nine months, as it depended on obtaining an occupancy certificate. The homebuyer relied on similar grounds, citing Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The NCLAT rejected these arguments, holding that objections regarding the feasibility of implementing the Resolution Plan can only be raised after the expiration of the specified period in the plan. The Tribunal reaffirmed that it is within the commercial wisdom of the CoC to determine the viability of a resolution plan. Since the Resolution Plan had been approved with majority voting by the CoC, the Tribunal held that neither the NCLT nor the NCLAT could interfere in the business decision of the CoC, unless the Resolution Plan violated the provisions of the Insolvency and Bankruptcy Code ('**IBC**') or its regulations.

Relying on *Essar Steel India Ltd.* v. *Satish Kumar* [(2020) 8 SCC 531], the Tribunal reiterated that adjudicating authorities cannot question the commercial decisions of the CoC once due process has been followed. Furthermore, the Tribunal cited *Jaypee Kensington Boulevard Apartments Welfare Association & Ors.* v. *NBCC (India) Ltd. & Ors.* [(2022) 1 SCC 401], affirming that a single homebuyer cannot challenge the approval of a resolution plan if the majority of homebuyers support it. The dissenting homebuyer must accept the collective decision and cannot individually derail the resolution process.

Since the Resolution Plan was approved with majority voting share, the NCLAT dismissed the appeals, upholding the NCLT's decision to approve the Resolution Plan.

[*Jai Prakash Keswani* v. *MB Malls Ltd. & Ors.* – Decision dated 8 February 2025 in Company Appeal (AT) (Insolvency) No. 94 of 2025 & I.A No. 289, 383 of 2025, National Company Law Appellate Tribunal]

News Nuggets

- Flipkart zeroes-in on AI startups for its third accelerator program
- CCI invites comments on the determination of cost of production for regulations on predatory pricing
- PE Funds are likely to be under CCI lens for their minority investments too
- DPIIT partners with Korean Institute for enhanced cooperation in logistics
- SEBI proposes stricter compliance norms for listed entities' corporate governance

Flipkart zeroes in on AI startups for its third accelerator program

Flipkart Ventures ('**Flipkart**'), the investment arm of Flipkart Private Limited has picked startups namely, *Xportel, Factors.ai, Expertia.ai, Bharat Krushi Seva, and Visa2Fly* from the Artificial Intelligence ('**AI**') sector for the third edition of Flipkart Leap Ahead ('**FLA**'). The third edition of the FLA will be providing the early-stage startups with equity investments of up to USD 500,000 and a mentorship programme designed by a global consulting firm with the participants also gaining strategic mentorship and industry expertise from Flipkart leaders in business, product, technology and finance.

[*Source*: Business Standard, published on 20 February 2025]

CCI invites comments on determination of cost of production for regulations on predatory price

The Competition Commission of India (**CCI**) has recently released the draft Competition Commission of India (Determination of Cost of Production) Regulations, 2025 ('**Regulations**') on determination of cost of production, seeking to update its framework for assessing predatory pricing under the competition norms. As per the Regulations, predatory pricing is prohibited for being an abusive conduct by a dominant enterprise in India and the anti-trust laws define 'predatory price' as the sale of goods or provision of services at a price below the cost which shall be as determined by the regulations of CCI. Notably, in a consultation paper floated, the CCI stated that the cost will generally be taken as the average variable cost, serving as a proxy for marginal cost in predatory pricing assessments, however, in specific cases, average total cost, average avoidable cost, or long-run average incremental cost may also be considered. Now, the CCI has invited stakeholder comments on the Regulations until 19 March 2025.

[*Source*: Business Standard, published on 18 February 2025]

PE Funds are likely to be under CCI lens for their minority investments too

Following the CCIs recent order against Goldman Sachs Alterative Investment Fund ('**Goldman Sachs**'), it is reported that the alternative asset investors *viz.* Private Equity Funds ('**PE Funds**') are most likely going to be facing higher scrutiny by the CCI for the minority investments made by them. Notably, Goldman Sachs had entered into a Shareholder's Agreement with Biocon Biologics whereunder Goldman Sachs was to

subscribe to optionally convertible debentures amounting to a 3.8% stake in Biocon Biologics alongside Goldman Sachs being provided with some special information rights such as access to the minutes of the board meetings. Goldman Sachs failed to notify such purchase to the CCI believing it to be a non-strategic purchase occurred in its ordinary course of business. However, the ruling against Goldman Sachs has now alerted that investors need to carefully assess the nature of their rights and obligations set out in the transaction documents when engaging in minority transactions, and whether the same allow them to exercise any form of control or influence (even if minor or subtle) that goes beyond a passive investment.

[*Source*: Money Control, published on 17 February 2025]

DPIIT partners with Korean Institute for enhanced cooperation in logistics

The Department for Promotion of Industry and Internal Trade ('**DPIIT**') has signed a Memorandum of Understanding ('**MoU**') with the Korea Transport Institute to benefit from the enhanced cooperation in logistics and infrastructure development by leveraging the institute's expertise to support India's ambitious infrastructure initiatives. Under the MoU, the parties have agreed to establish a mechanism for knowledge exchange and institutional cooperation between each other.

[*Source*: Zee Business, published on 10 February 2025]

SEBI proposes stricter compliance norms for listed entities' corporate governance

The Securities and Exchange Board of India, in its recent consultation paper has called for stricter compliance of corporate governance by listed companies. Accordingly, the SEBI has proposed for revising the format of the Annual Secretarial Compliance Report and making it mandatory to be included as a part of the Annual Report of a listed company. Further, SEBI has suggested incorporating provisions from the Companies (Audit and Auditors) Rules, 2014, into the Listing Obligations and Disclosure Requirements (LODR) Regulations to ensure that statutory auditors have the necessary qualifications and experience suited to a company's size and complexity. Additionally, it has recommended that key details about the selection or re-appointment of statutory and secretarial auditors should be disclosed to the audit committee, board of directors, and shareholders. Moreover, SEBI has proposed two different monetary limits for Related Party Transactions conducted by

subsidiaries of listed companies and accordingly, for subsidiaries with a financial track record, the approval threshold will be the lower of either 10 per cent of turnover or a monetary limit of INR 1,000 crore for main-board companies and INR 50 crore for Small and Medium Enterprises. And, for subsidiaries without a financial track record, the threshold will be based on 10 per cent of the subsidiary's net worth or the aforementioned monetary limits.

[*Source*: CNBC TV18, published on 9 February 2025]

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