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MEITY Advisory: Dawn of AI Regulation in India or a false start

By **Paritosh Chauhan, Sameer Avasarala and Abhishek Singh**

The Ministry of Electronics and Information Technology has on 15 March 2024 issued an advisory on use and deployment of artificial intelligence tools. The advisory subsumes a previous advisory dated 1 March 2024 on this subject. As part of the now expanded diligence requirements as per new advisory, the article in this 150th issue of LKS Corporate Amicus elaborately discusses what the new advisory now requires the intermediaries to ensure. The article also lists the key differences between the two advisories and notes that it is important for intermediaries and developers of Artificial Intelligence systems to keep pace with such advisories. According to the authors, only time may reveal if the Information Technology Act (or the Digital India Act, in the future) is better suited to regulate AI or a separate dedicated legislation may better allay concerns emerging from AI.

MEITY Advisory: Dawn of AI Regulation in India or a false start

By Paritosh Chauhan, Sameer Avasarala and Abhishek Singh

The Ministry of Electronics and Information Technology ('**MEITY**') has recently issued an advisory dated 15 March 2024 ('**Advisory**'), on the subject of use and deployment of artificial intelligence tools. This advisory subsumes a previous advisory on this subject dated 1 March 2024 ('**Previous Advisory**').

In the Previous Advisory, to check rising instances of deep fakes and misinformation posing a threat to users and electoral integrity, MEITY directed intermediaries[1], who were failing to undertake due diligence obligations, to deploy technical interventions to label and monitor the presence of such forms of information on platforms.

The new Advisory has expanded the scope of the due diligence to be carried out by intermediaries to include compliance requirements associated with the use and deployment of artificial intelligence tools.

It may be noted that at this point these requirements have only been issued by way of an advisory and no amendments have been made to the IT Rules. It remains to be seen whether, eventually, the rules/IT Act/law will also be amended to ensure alignment of the guidelines / requirements set out in the Advisory.

As part of the expanded diligence requirements, the Advisory requires intermediaries to ensure the following:

(a) Users are not able to host, display, publish, or transmit any content that is restricted under the IT Rules[2] or which otherwise violates any provision of the IT Act, through the use of AI models, Generative AI, large language models, software, or algorithms (collectively 'AI Models').

[1] As per Section 2(w) of the Information Technology Act, an intermediary, with respect to any particular electronic records, means 'any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places, and cyber cafes. Based on the products and services offered by intermediaries or platforms owned or operated by such intermediaries, the intermediaries have been classified as – Social media intermediary, Online gaming intermediary, Significant social media intermediary (based on the userbase), and News aggregator.

[2] Rule 3(1)(b) Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

The Advisory states that the general rules applicable to content moderation under the IT Rules will apply/ should be applied to any content produced or generated through AI Models, which must also conform to the said standards.

Consequently, intermediaries (and AI developers in turn) must ensure that any content generated (especially in cases involving AI Models) complies with the content restrictions set out in the IT Rules.

(b) Computer resources by themselves or the use of AI Models do not permit bias or discrimination or threaten the integrity of the electoral process.

The Advisory states that intermediaries and AI developers should ensure that AI Models do not permeate bias or discrimination or threaten the integrity of the electoral process. This bears similarities with the OECD Principle on 'Human-Centered Values and Fairness'[3] which requires AI systems to be designed to avoid creating or reinforcing bias.

The Advisory, however, does not specify what may constitute 'threat to the integrity of the electoral process' or provide further guidance on thresholds of such requirements or the liability and responsibility of AI-developers in case of violations.

(c) Use and deployment of under-tested or unreliable AI Models to be done only after explicitly informing the user of possible inherent fallibility or unreliability of the output generated by such AI Models and availability of such AI Models to be made based on a consent pop-up or equivalent mechanism.

The Advisory has done away with the requirement of obtaining prior government permission (as prescribed under the Previous Advisory) and has only retained the need for explicit information and disclosure to users of possible fallibilities and unreliability of AI Models and their outputs. The removal of the requirement of obtaining prior governmental approval comes as a relief to developers of such AI

[3] OECD Artificial Intelligence Principles, available here

Models and presents a realistic regulatory approach based on transparency, accountability, and disclosure.

(d) Users are informed of the consequences of dealing with unlawful information on their respective platforms, leading to suspension or termination of access or usage rights of the user, and punishment under 'applicable law'.

Intermediaries and platforms are required to inform users through their Terms of Use and User Agreements about the consequences of dealing with unlawful information. The periodic user intimation requirement is present under the existing IT Rules and is being complied with by many intermediaries. Pursuant to the advisory, we can expect the intermediaries to inform their users of the legal consequences.

(e) A permanent unique metadata or identifiers must be deployed on all forms of information that may potentially be a deepfake or misinformation, further this permanent unique metadata or identifiers to be capable of pinpointing the originator of such information over the platforms. Further, in case of any changes or modifications of the information by the user, this unique metadata should be configured to enable the identification of such changes made by the user.

The requirement to embed any synthetic creation, generation, or modification of text, audio, visual, audio-visual, and other content stems from the need to identify and distinguish AI-generated content from user content, *albeit* both being subject to similar thresholds of content moderation.

The inclusion of such requirement associated with permanent metadata also intertwines with the first originator of information[4] provision which enables the Government to issue directions for identifying originators of information, which was earlier limited to significant social media intermediaries under the IT Rules. In contrast, the requirement now applies to intermediaries and platforms broadly under the Advisory. Such permanent 'labels' must result in the ability to identify that the content is 'synthetic', identify the user or computer resource through which information is generated, and identify the

[4] Rule 4(2) Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

intermediary through which software information is generated or the first originator of such information.

(f) Non-compliance with the IT Act and subsequent IT rules would attract penal consequences such as fines and criminal proceedings against the intermediary, platform, and its users.

While it is evident that non-compliance with the IT Rules (*and due diligence conditions*) may result in the exposure of 'intermediaries' to liability associated with third-party content, it is unclear as to how platforms (*which are not considered intermediaries*) and users would be liable or responsible for violation of the IT Rules, apart from actions that such intermediaries may take.

The Advisory requires all intermediaries to ensure compliance with the Advisory from immediate effect i.e. 15 March 2024, onwards, without any further requirements to submit or file any Action Taken Cum Status reports with the MEITY.

Key differences between the advisories

The Advisory retains most of the provisions of the Previous Advisory. However, there were some key/significant changes, which include the following:

Advisory dated – 1 March 2024	**Advisory dated – 15 March 2024**
Explicit prior approval from the government is necessary before deploying under-tested and unreliable AI Models to Indian users.	No explicit prior approval from the government is required before deploying under-tested and unreliable AI Models to Indian users.
Compliance recommendation to intermediaries or platforms to configure metadata to identify users/computers posting the information to pinpoint the originator of the original information.	Compliance recommendation to intermediaries and platforms to configure metadata in such a way that it enables identification of the user/computer involved in making changes or modifications to the original information.
Consequences of non-compliance to be faced by intermediaries or platforms or its users.	Consequences of non-compliance to be faced by all – intermediaries, platforms, and users.
Compliance with the advisory is to be ensured within 15 days of the advisory in the form of an Action Taken Cum Status	Compliance with the advisory is to be ensured with immediate effect and no requirement for an Action

Report to be submitted to the Ministry.	Taken Cum Status Report to be submitted to the Ministry.
Obligation on intermediaries or platforms to inform users of the consequences of dealing with unlawful information on their platform including *inter-alia* the removal of such non-compliant information, suspension or termination of access or usage rights of the user to their user account, and punishment under applicable law.	Obligation on intermediaries and platforms to inform users of the consequences of dealing with unlawful information including *inter-alia* the removal of such information entirely, suspension or termination of access or usage rights of the user to their user account, and punishment under applicable law.

Way forward

Regulation of AI warrants a balanced approach, which safeguards users and citizens from the existing and emerging harms associated with AI while also simultaneously protecting and strengthening innovation and growth. This may necessitate classifying AI systems based on risk of harm (*akin to the EU's AI Act*[5]), providing necessary obligations such as risk management, record-keeping, disclosures, human oversight, quality management, and other obligations on developers and designers of AI systems. In this context, it is unclear if the IT Act (*or the Digital India Act, in the future*) would be adequate as a regulatory tool to achieve this balance.

As we witness the evolution of information technology laws (such as the yet-to-be-enforced Digital Personal Data Protection Act, 2023, and Telecommunications Act, 2023), only time may reveal if the IT Act (*or the Digital India Act, in the future*) is better suited to regulate AI or a separate dedicated legislation may better allay concerns emerging from AI. In the meantime, it is important for intermediaries and developers of AI systems to keep pace with such advisories and also aim to actively contribute to discourse and deliberations on AI regulation in the future.

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[5] EU Artificial Intelligence Act, 2024, available here

Notifications & Circulars

- Companies (Registration Offices and Fees) Amendment Rules, 2024 notified
- SEBI repeals circulars outlining procedure to deal with cases where securities are issued prior to 1 April 2014, involving offer/allotment of securities to more than 49 but up to 200 investors in a financial year
- Master Direction on Credit Card and Debit Card - Issuance and Conduct Directions, 2022 amended
- Credit card issuers to provide cardholders the option to choose card network
- Reserve Bank of India (Bharat Bill Payment System) Directions, 2024 notified
- Interest Equalization Scheme on Pre- and Post-Shipment Rupee Export Credit extended
- Transparency in circulation of Progress Reports and preparation of Preliminary Reports by liquidators under the IBBI (Liquidation Process) Regulations, 2016

Companies (Registration Offices and Fees) Amendment Rules, 2024 notified

The Ministry of Corporate Affairs ('**MCA**') *vide* Notification No. G.S.R. 107(E) dated 14 February 2024, has amended the Companies (Registration Offices and Fees) Rules, 2014, and has notified the Companies (Registration Offices and Fees) Amendment Rules, 2024. The amendment has inserted Rule 10A to administer responsibilities over the Central Processing Center ('**CPC**'). The Registrar of the CPC shall be responsible for examining all applications, e-Forms, and documents required or authorized to be filed or delivered for approval, registration, or record-keeping by the Registrar.

Under sub-rule (2) of Rule 10A, the Registrar shall make decisions on the applications, e-forms, or documents within thirty days from the filing date, except for cases requiring approval from the Central Government, the Regional Director, or any other competent authorities. The examination process under Rule 10A shall be *mutatis mutandis* to the provision of sub-rule (2) to (5) of Rule 10 of Companies (Registration Offices and Fees) Rules, 2014. The Registrar has been provided jurisdiction across India for examining applications or e-Forms such as MGT-14, SH-7, INC-24, INC-6, INC-27, INC-20, DPT-3, MSC-1, MSC-4, SH-8, SH-9, and SH-11.

SEBI repeals circulars outlining procedure to deal with cases where securities are issued prior to 1 April 2014, involving offer/allotment of securities to more than 49 but up to 200 investors in a financial year

SEBI issued Circular No. CIR/CFD/DIL3/18/2015 dated 31 December 2015 and Circular No. CFD/DIL3/CIR/P/2016/53 dated 3 May 2016 ('**Old Circulars**'), providing a mechanism for cases under the Companies Act, 1956 in relation to the issuance of securities to more than 49 and up to 200 persons per financial year to avoid penal action. This mechanism allowed investors to surrender securities and receive a refund of the subscription money paid along with interest. This is issued keeping in view the higher cap for private placement provided in the Companies Act, 2013.

Further to protect the interest of the investor and regulate securities markets, SEBI *vide* Circular No. SEBI/HO/CFD/PoD-1/P/CIR/2024/ 016 dated 13 March 2024 has decided to repeal the Old Circulars. This repeal will take effect six months from

the issuance of the aforementioned circular, with no prejudice to actions taken under the Old Circulars. Companies wishing to avail themselves of the option provided in the circular must have completed the requisite procedure and submitted the certificate in relation to the Old Circulars within six months of the date of the issuance of the aforementioned Circular. Henceforth, cases involving the offering or allotment of securities beyond the permissible limit will be governed by existing applicable laws. Stock exchanges are instructed to inform the listed entities about the same and shall publish it on their websites.

Master Direction on Credit Card and Debit Card - Issuance and Conduct Directions, 2022 amended

Reserve Bank of India ('**RBI**') *vide* DOR.RAUG.AUT.REC.No.81/24.01.041/2023-24 dated 7 March 2024 ('**Master Direction**'), has amended the Master Direction on Credit Card and Debit Card – Issuance and Conduct Directions, 2022 thereby enhancing the regulatory framework for credit and debit card issuers. The instructions relating to credit cards shall apply to all credit card issuing Banks and Non-Banking Financial Companies ('**NBFCs'**) and those relating to debit cards shall apply to all Banks operating in India.

Key revisions encompass more stringent penalties for account closure delays, transparent communication regarding minimum payments, and guidelines for co-branded cards. The updates also extend to non-traditional card forms like wearables as well. New provisions are added in the Master direction such as: (a) Definition of 'Total Amount Due' has been added to mean the amount payable by the cardholder as per the credit card statement generated at the end of a billing cycle; (b) interest to be levied only on the outstanding amounts; (c) card issuers to provide a list of authorized payment modes and adhere to an RBI-prescribed authentication framework for any debits to the credit card and the card issuers shall implement an effective mechanism to monitor the end use of funds; (d) for business credit cards timeframe provided for the payment of dues and adjustment of refunds may be agreed between the card issuer and the principal account holder; and (e) standard procedure for blocking/deactivating/suspending the cards and such information shall be intimated to the cardholder along with reasons thereof through electronic means.

The Master Directions empower Banks and NBFCs to become co-branding partners with card issuers without prior approval subject to the satisfaction of specified conditions outlined in Para 22. These changes are targeted toward enhancing regulatory

oversight, fostering transparency, and consumer protection within the credit card industry.

Credit card issuers to provide cardholders the option to choose card network

RBI *vide* Circular No. CO.DPSS.POLC.No.S1133/02-14-003/2023-24 dated 6 March 2024 has mandated Credit Card issuers to provide the cardholders the option to choose a Card Network, thereby enhancing customer choice and flexibility by regulating the relationship between card issuers and networks. The Circular directs the card issuers (Bank/Non-Bank) to not enter into agreements/ arrangements with card networks that restrict them from availing the services of other card networks.

Further, Card Issuers shall now provide an option to their eligible customers to choose from multiple card networks at the time of card issuance and the same option shall be extended to existing cardholders at the time of next renewal. Card Issuers and Networks shall ensure adherence to these requirements in both existing and new agreements. However, the direction to provide an option to the existing/new cardholders shall not apply to credit card issuers with 10 lakh or fewer active credit cards issued by them. Additionally, Card Issuers who issue credit cards on their own authorized card network are exempt from the applicability of this Circular. To ensure a smooth transition, the directions outlined in Para 3(b) shall become effective 6 months from the date of this Circular.

Reserve Bank of India (Bharat Bill Payment System) Directions, 2024 notified

RBI issued a Master Direction *vide* CO.DPSS.POLC.No.S1114/02-27-020/2023-2024 dated 29 February 2024, Master Direction - Reserve Bank of India (Bharat Bill Payment System) Directions, 2024 ('**Directions**'). The existing Bharat Bill Payment System ('**BBPS**') Regulations provide for a tiered structure comprising NPCI Bharat Bill Pay Ltd. ('**NBBL**') as a Central Unit ('**BBPCU**'), Bharat Bill Payment Operations Units ('**BBPOUs**') and Agent Networks of BBPOUs. However, due to the significant developments in the payments landscape, these regulations effective from 1 April 2024, are reviewed and updated to streamline the bill payments processes, encourage greater participation, and enhance customer protection. These Directions supersede earlier BBPS-related guidelines and circulars.

These Directions apply to NBBL and all BBPOUs. NBBL is authorized as the Payment System Provider for BBPS and any entity other than a biller, operating a bill payment system

outside the BBPS scope is a 'Payment System' under the Payment and Settlement Systems Act, 2007 ('**Act**') and is required to obtain authorization as per Chapter III of the Act.

The directive outlines the roles and responsibilities of BBPCU, Biller Operating Unit ('**BOU**'), and Customer Operating Unit ('**COU**') which broadly include setting rules, regulations, and technical standards for participation in the system, ensuring compliance with due diligence requirements among others. It is now mandatory for non-bank BBPOUs to open an escrow account with a Scheduled Commercial Bank exclusively for BBPS transactions and the Direction has also outlined the eligible debits and credits in the escrow accounts for both BOUs and COUs. Furthermore, RBI mandates implementing a dispute resolution framework for centralized end-to-end complaint management, also integrating all participating COUs and BOUs. It also provides for a complaint management and grievance redressal system.

Interest Equalization Scheme on Pre- and Post-Shipment Rupee Export Credit extended

RBI *vide* Circular No. DOR.STR.REC.78/04.02.001/2023-24, dated 22 February 2024 has allowed an extension of the Interest Equalization Scheme on Pre- and Post-Shipment Rupee Export Credit ('**Scheme**') up to 30 June 2024. It has been notified that the rate of interest equalization shall be 2% for Manufacturers and Merchant Exporters exporting under specified 410 Harmonised System ('**HS**') lines and 3% to MSME Manufacturers exporting under any HS line.

The Government has advised further modifications to the scheme outlining the areas of 'average interest rate' and 'cap on subvention amount'. Effective from the fiscal year 2023-24, banks that have priced loans covered by this scheme at an average interest rate exceeding the Repo Rate + 4% prior to subvention will be subjected to restrictions outlined in the scheme. The Director General of Foreign Trade (DGFT) will identify banks found in violation of the mentioned provision for FY 2023-24 and will restrict such banks from participating in the scheme until they provide an undertaking to the DGFT. Any subsequent breaches as determined by the DGFT may result in their exclusion from the scheme. Furthermore, the annual net subvention limit per Importer-Exporter Code (IEC) has been capped at INR 10 crore in any given financial year. All disbursements from 1 April 2023 will be considered for this purpose.

Transparency in circulation of Progress Reports and preparation of Preliminary Reports by liquidators under the IBBI (Liquidation Process) Regulations, 2016

The Insolvency and Bankruptcy Board of India ('**IBBI**') *vide* Circular No. IBBI/LIQ/70/2024 dated 22 February 2023, addresses key gaps in the dissemination of Progress Reports and the preparation of Preliminary Reports by the Liquidator.

Regulation 15 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ('**Liquidation Regulations**') provides the liquidator to share the Progress reports with the Adjudicating Authority ('**AA**') and the IBBI within 15 days after the end of every quarter. The Circular now mandates the Liquidator to share the Progress Reports with the Stakeholders' Consultation Committee (SCC) upon receiving a confidential undertaking from them to mitigate information disparities among creditors. Regulation 13 of the Liquidation Regulations mandates the liquidator to submit a Preliminary Report outlining the liquidation plan to the AA, but the Liquidation Regulation lacks the involvement of SCC in the preparation of the Preliminary Report thereby posing a risk of oversight. The Circular now mandates liquidators to seek suggestions/observations from SCC members during the preparation of the Preliminary Report and the Preliminary Report shall be finalised after considering such suggestions/observations and shall be submitted to the AA, IBBI, and members of SCC.

Liquidators are instructed to submit Form H along with the final report to the AA in accordance with Regulation 45 of the Liquidation Regulations and the process closure/dissolution order to IBBI through a given email.

Ratio Decidendi

- Appeal to NCLAT under IBC – Limitation to be calculated from date of order, irrespective of whether the order was ex-parte – NCLAT
- Insolvency proceedings do not prevent Corporate Debtor from seeking an appointment of Arbitrator – Delhi High Court
- Adjudicating Authority under IBC is not the Appropriate Forum to decide on revocation of attachment made by Enforcement Directorate during CIRP – NCLT, Chennai
- Arbitral Tribunal is bound by agreement where parties agree that no interest shall be payable – Delhi High Court
- Arbitration by MSMED Facilitation Council cannot confer jurisdiction to particular Court in derogation of venue/seat chosen by parties – Calcutta High Court

Appeal to NCLAT under IBC – Limitation to be calculated from date of order, irrespective of whether the order was ex-parte

The NCLAT, New Delhi, has dismissed the application for condonation of delay filed by the Appellant on the ground that the appeal was filed with a delay of more than 15 (fifteen) days from the date of expiry of limitation.

The Appellant had contended that the order admitting the Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 was passed *ex-parte* on 22 November 2023, and the Appellant only became aware of the said proceedings when the IRP informed it about the impugned order *vide* an email dated 6 December 2023. Thus, the limitation period should commence from when the Appellant became aware of the order and not from when the order was passed. Additional delay was requested to be condoned on account of the ill health of the Appellant and bereavement in the family, in addition to the vacation of the Tribunal.

Referring to the judgment of *V. Nagarajan* v. *SKS Ispat and Power Ltd and Ors.* (Company Appeal (AT) (Insolvency) No. 561 of 2020), the NCLAT held that the limitation is not to be counted from the date of knowledge of the order but rather from the date of the order. To this, the Appellate Tribunal added that it is irrelevant whether the impugned order was issued *ex-parte* or in the presence of the parties. The basis of this position is that the aggrieved party is expected to exercise due diligence and apply for a certified copy upon pronouncement of the order.

The Appellate Tribunal observed that Section 61 of the IBC is to be interpreted whilst keeping in mind the overall purpose and object of the IBC, which includes timely resolution of CIRP. Further, the NCLAT was also of the view that accepting such a defence as taken by the Appellant in the present case will only induce an element of unpredictability and uncertainty in the resolution process, which cannot be countenanced as it is likely to turn the timely framework upside down.

[*Deepak Dahyalal* v. *Steel Resources and Anr.* – Company Appeal (AT)(Insolvency) No. 300 of 2024 and I.A. No. 1009 of 2024, Judgement dated 12 March 2024, NCLAT]

Insolvency proceedings do not prevent Corporate Debtor from seeking an appointment of Arbitrator

The Delhi High Court, whilst reiterating the legal position that the scope of inquiry under Section 11 of the Arbitration and Conciliation Act, 1996 is limited to examining the existence of an arbitration agreement, has held that the insolvency proceedings

will not prevent the Corporate Debtor **('CD')** from filing a Section 11 application since the proceedings are for the benefit of the CD.

The Petitioner had filed an Arbitration Petition under Section 11(6) of the Arbitration Act seeking the appointment of a Sole Arbitrator to adjudicate the dispute that arose because of termination and non-release of the payment to the Petitioner.

Per the Respondent, i.e., the Union of India, the Arbitration Petition was not maintainable due to pending insolvency proceedings against one of the member constituents of the petitioner J.V. Further, the Respondent contended that the arbitration clause provided, *inter alia,* that in the event of cancellation of the contract, the reference shall not take place until alternative arrangements have been finalized by the Government to get the work completed, and, hence, the appointment of arbitrator without finalizing such alternative arrangements will be contrary to the said stipulation.

The Court relied on the judgement of *New Delhi Municipal Council* v. *Minosha (India) Ltd.* [(2022) 8 SCC 384] and observed that even if it is assumed that the petitioner J.V. is under insolvency, the same won't prevent CD from filing a Section 11 application against another party since the invocation of the arbitration proceeding is for the benefit of the CD.

Further, with respect to alternative arrangements, the Court referred to the judgment of *IVRCL Ltd.* v. *Union of India* [2015 SCC OnLine Ker 13527] and observed that such conditions in the arbitration clause cannot fetter the right of the petitioner to seek remedies if there are claims towards breach of the terms of the contract.

[*Godavari Projects (J.V.)* v. *Union of India* – Arb.P.1342/2022, Judgement dated 4 March 2024, Delhi High Court]

Adjudicating Authority under IBC is not the Appropriate Forum to decide on revocation of attachment made by Enforcement Directorate during CIRP

The NCLT, Chennai, has held that the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 is not the right 'FORA' to deal with revocation of attachment orders by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002 ('**PMLA**').

The Corporate Debtor was subjected to the Corporate Insolvency Resolution Process ('**CIRP**'). Subsequently, the ED issued a provisional attachment order dated 31 July 2018. The ED passed the order when the Moratorium Period under Section 14 of IBC

was in force. The provisional attachment order revealed that funds of the Corporate Debtor were utilized to purchase assets in the name of its directors and related parties. Owing to the provisional attachment order, the Resolution Professional failed to bring about any resolution plan, and hence, the Corporate Debtor went into liquidation.

NCLT, despite noting that the attachment order was made during the moratorium period, continued to observe that it was made in accordance with Section 5(1) of the PMLA, which has a set of stipulated rules and regulations. Furthermore, NCLT observed that the attachment order was made in accordance with PMLA, and issues concerning the same can be dealt with under the said act only.

Considering the aforesaid, the NCLT held that the concept of 'Attachment' made as per Section 5(1) of the PMLA cannot be subjected to proceedings under Section 60(5) of IBC and, therefore, no remedy under PMLA can be claimed before the Adjudicating Authority under IBC.

[*Palaniappan Liquidator of Nathella Sampath Jewellery Pvt. Ltd.* v. *Joint Director, Directorate of Enforcement, Chennai Zonal Office-1* – MA/30(CHE)/2021 in CP/129(IB)/2018, Order dated 25 January 2024, NCLT, Chennai]

Arbitral Tribunal is bound by agreement where parties agree that no interest shall be payable

The Delhi High Court has ruled that if the parties in their agreement stipulate that no interest is to be paid in case of delay in payment, such a clause is binding on the Arbitral Tribunal and is not in violation of Section 28 of the Contract Act, 1872.

The Arbitrator awarded the outstanding amount payable to the claimant along with interest and other costs. The petitioner contended that clause 9 of the principal contract states explicitly that the contractor will not be entitled to any compensation, claims, or damages by way of interest, etc., in case of delayed payment. Additionally, clause 25, which provides for the dispute resolution clause, precludes interest payment in cases of arbitral award.

The Hon'ble Court *inter-alia* relied on the case of *Garg Builders* v. *BHEL* [(2022) 11 SCC 697], wherein the Apex Court, whilst noting the paramountcy of the contract, emphasized that arbitrator is barred from awarding pre-reference and *pendente lite* interest in contradiction to the parties' agreement.

Thereafter, the Court held that the clause in the principal contract is very clear and categorical in terms of barring interest,

and, further, that the said clause is not in violation of Section 28 of the Contract Act, 1872. As a result, the Hon'ble High Court found that the Arbitrator had overstepped its mandate by granting interest in this matter. Therefore, the High Court annulled the Arbitral Award related to the award of interest.

[*Rites Ltd.* v. *Ahuwalia Contract (India) Ltd. & Ors.* – O.M.P. (COMM) 56/2019 & I.A. 15760/2019, Judgement dated 7 March 2024, Delhi High Court]

Arbitration by MSMED Facilitation Council cannot confer jurisdiction to particular Court in derogation of venue/seat chosen by parties

The Calcutta High Court has held that there is nothing in the Micro, Small and Medium Enterprises Development ('**MSMED**') Act, 2006 to suggest that the arbitration conducted by the Facilitation Council would subsume the arbitration agreement between the parties or alter the seat / venue chosen by them.

According to the Court, the arbitration agreement is eclipsed during the adjudication by the Facilitation Council – only to rise again after the Council pronounces its decision. The Single Bench of the Court was thus of the view that hence the arbitration conducted by the Facilitation Council in the interregnum cannot confer jurisdiction on a particular High Court in derogation of the venue/seat chosen by the parties in their arbitration agreement.

The Calcutta High Court hence held that challenge to the award by West Bengal Facilitation Council could thus be filed before the Orissa High Court as the dispute resolution clause of the Design, Supply, Installation and Commissioning Agreement provided for arbitration to be conducted at Bhubaneswar. The High Court held that the chosen venue of Bhubaneswar was not un-settled by the West Bengal Facilitation Council taking over the arbitral proceedings in the interregnum.

[*Odisha Power Generation Corporation Limited* v. *Techniche Consulting Service* – Decision dated 19 March 2024 in A.P Com. 365 of 2024, Calcutta High Court]

News Nuggets

- Draft Digital Competition Bill released for public consultation
- Leniency plus regime under Competition Act, 2023 notified
- 100% FDI allowed in space sector by India
- MSME Act may be amended in order to ensure timely payments to small businesses
- Rule of timely payments to MSMEs enforceable from 1 April 2024
- MCA planning next round of clean-up of shell companies

Draft Digital Competition Bill released for public consultation

On 12 March, the Ministry of Corporate Affairs ('**MCA**') released the draft Digital Competition Bill ('**Bill'**), which is a proposed law aiming at tackling the anti-competitive practices happening at the big 'tech' firms. The Bill articulates bringing in regulations for the big tech companies on the basis of parameters such as turnover, gross merchandise value, global market capitalization, number of users, etc. The Bill comes as a part of the report of the Committee on Digital Competition Law.

[*Source:* *Money Control*, published on 12 March 2024]

Leniency plus regime under Competition Act, 2023 notified

The MCA recently notified the leniency plus regime under the Competition (Amendment) Act, 2023 whereunder companies already being investigated for one cartel shall be incentivized to disclose about another cartel provided certain conditions are met by the discloser. Under the newly introduced regime, a cartelist cooperating with the Competition Commission of India ('**CCI**') and disclosing the existence of another cartel in an unrelated market while undergoing his own proceedings shall be eligible for an additional reduction of penalty under the law. However, it shall be CCI's sole discretion to decide on the reduction of the penalty based on factors such as the quality of the information, the stage at which the applicant comes forward, etc.

[*Source:* *Business Standard*, published on 20 February 2024]

100% FDI allowed in space sector by India

As a part of the Indian Space Policy, 2023 which is a comprehensive framework to bolster India's participation in the space sector *via* private participation, the Union Cabinet recently approved an amendment to the Foreign Direct Investment ('**FDI**') Policy. As per the amendment, various sub-sectors/activities have been approved automatic entries up to 49 percent and 74 percent, with the manufacturing of components and systems/ sub-systems for satellites, ground segment, and user segment being approved for up to 100 percent under the automatic route.

[*Source:* *Economic Times*, published on 14 March 2024]

MSME Act may be amended in order to ensure timely payments to small businesses

The Ministry of Micro Small and Medium Enterprises ('**MSME**') has initiated looking into possible provisions that could streamline the procedures for and ensure faster payments to the

MSMEs. Currently, the MSME Development Act, 2006 provides that where a payment to an MSME is delayed beyond 45 days, there shall be a liability to repay the amount alongside a compound interest with the monthly interest going up to thrice the notified bank rate. Further, with the Mediation Act, 2023 having been passed recently, the Centre is also looking at the possibility of including mediation as a medium to resolve the disputes of MSMEs.

[*Source:* *Business Today*, published on 12 March 2024]

Rule of timely payments to MSMEs enforceable from 1 April 2024

The Finance Act, 2023 made it mandatory for companies to make their payments to the MSMEs within 45 days to claim deductions on it under the Income Tax Act, 1961. The said rule shall come into effect on 1 April 2024, despite of the efforts of the Confederation of All India Traders (**CAIT**) seeking postponement of the same. Contrary to the reports, the government clarified that it is not looking at postponement of the enforcement of the rule and any change to it can be brought about only in the next Union Budget, said the government officials.

[*Source:* *CNBC-TV18*, published on 5 March 2024]

MCA planning next round of clean-up of shell companies

The MCA is touted to be planning to go for another round of clampdown of non-functional companies. Sources close to the MCA have also informed that the Government has set up a separate center specifically for helping in the voluntary winding up of companies within a time period of 100 odd days. Notably, the MCA clean-up operations in recent times have resulted in about 5 lakh companies being struck off.

[*Source:* *Business Line*, published on 27 February 2024]

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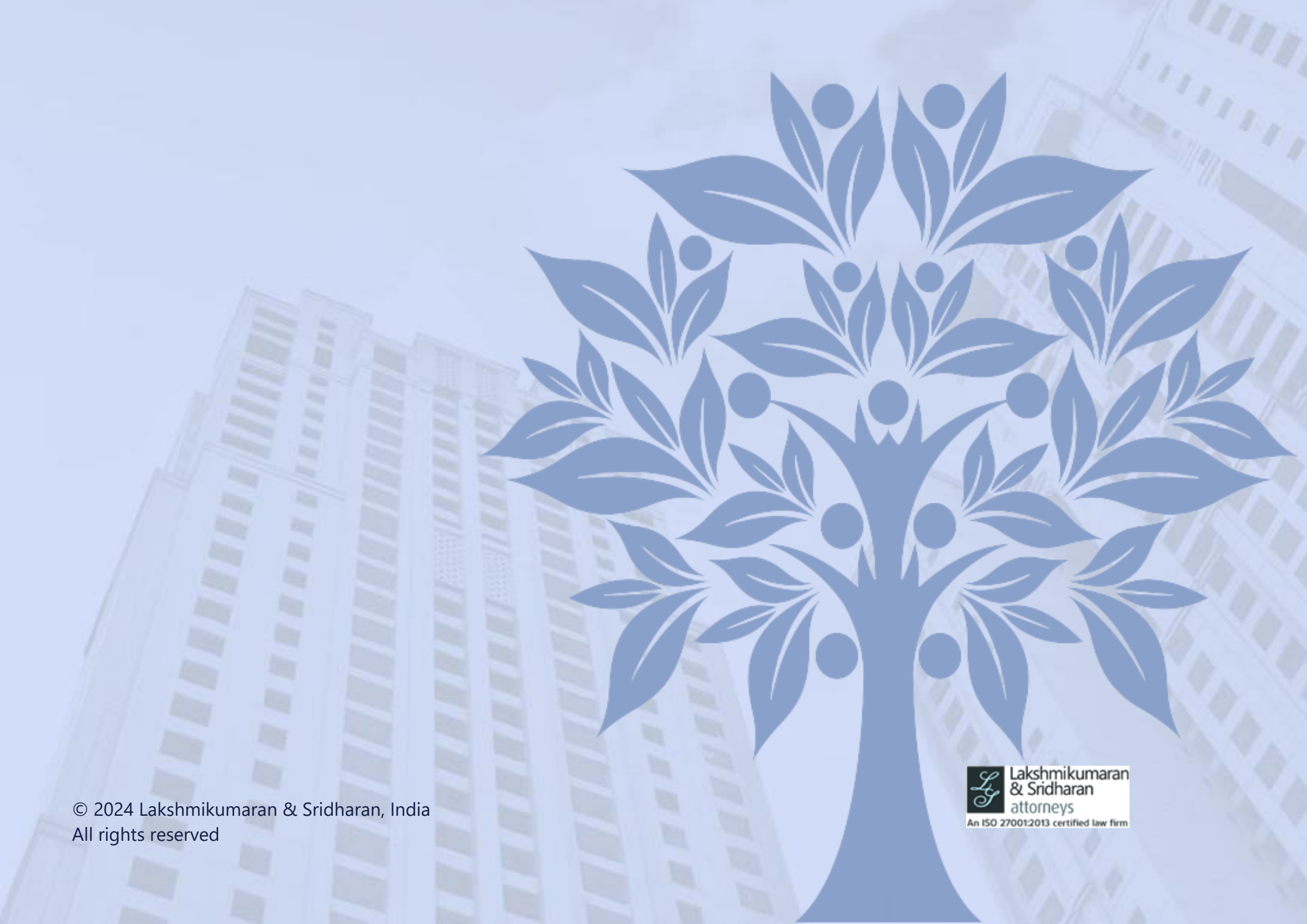

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