



**Vedanta** *Law Chambers*

Monthly Newsletter

# MONTHLY NEWSLETTER

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📍 Jaipur, New Delhi, Ahmedabad & Jodhpur

📍 1st Floor, SSK House B-62, Sahkar Marg, Lal Kothi, Jaipur - 302015

☎ 0141-2740911, 4014091

@ vedantalawchambers@gmail.com

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## The Information Technology Rules 2021: Another Hammer With The Government

The MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY in exercise of the powers conferred by sub-section (1), clauses (z) and (zg) of sub-section (2) of section 87 of the Information Technology Act, 2000 (21 of 2000), and in supersession of the Information Technology (Intermediaries Guidelines) Rules, 2011 has vide Notification dated 25.02.2021 issued these rules for the controlling of online curated content on the digital media and to set up a access control and grievance mechanism.

### Purpose:

- To provide a robust complaint mechanism for the users of social media and over-the-top (OTT) platforms to address their grievances.
- Protection of women and children from sexual offences on social media.
- To provide that online content publishers and **social media intermediaries** should follow the Constitution of the country and subject themselves to domestic laws.
- To provide the provisions for digital media regulation and provides a comprehensive mechanism for the protection of digital media consumers.



**Adv Rachit Sharma,**  
Senior Associate

### Concept of Intermediaries:

1. **Social Media Intermediaries:** Means an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services;
2. **Significant Social Media Intermediaries:** Means an intermediary having large number of registered users in India above such threshold as notified by the Central Government;

**NOTE:** The above classification is based on the user size which is subjected for determination and once it has been defined through the notification of the Government.

### Intermediaries to ensure compliance of the following:

1. **Due Diligence by Intermediaries:** An intermediary, including social media intermediary and significant social media intermediary, shall observe the due diligence while discharging its duties as provided under Rule 3 including the determination and publishing of Rules and regulations,



Privacy Policy and User Agreement for access or usage of its computer resource by any person.

**2. Set up of Grievance redressal mechanism of intermediary:**

(a) The intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the name of the Grievance Officer and his contact details as well as mechanism by which a user or a victim may make complaint against violation of the provisions of this rule or any other matters pertaining to the computer resources made available by it, and the Grievance Officer shall –

a. acknowledge the complaint within twenty four hours and dispose off such complaint within a period of fifteen days from the date of its receipt;

b. receive and acknowledge any order, notice or direction issued by the Appropriate Government, any competent authority or a court of competent jurisdiction and in case if the content involves any kind of nudity the Intermediary shall take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it.

**3. Additional due diligence for significant social media intermediaries:**

In addition to the due diligence observed under rule 3, a significant social media intermediary shall, within three months from the date of notification of the threshold

shall observe the additional due diligence including but not limited to appointment of Chief Compliance Officer for ensuring compliance, nodal contact person for 24x7 coordination with law enforcement agencies and officers to ensure compliance, Resident Grievance Officer, to publish periodic compliance report every month mentioning the details of complaints received and action taken etc.

**Failure to compliance with the Rules:**

Where an intermediary fails to observe these rules, he shall be liable for the third party information, data, or communication link made available or hosted by him as per the provisions of sub-section (1) of section 79 of the Information Technology Act, 2000 and also liable for punishment provided under any law for the time being in force and the Indian Penal Code.

Therefore to ensure the immunity from the civil as well as the criminal liability under the provisions laws as may be applicable upon the Intermediaries shall require to ensure the compliance provided under the said rules.

**Directions For Ott Platforms, News Publishers & Digital Media:**

**‘Publishers of online curated content’ / Over-the-top (OTT) Platforms**

- The publisher shall not transmit or publish or exhibit any content which is



- prohibited under any law for the time being in force or has been prohibited by any court of competent jurisdiction and shall also take into consideration India's multi - racial and multi - religious context.
- Classification of content on the nature and type of content into five categories based on age:
  - U (Universal)
  - U/A 7+
  - U/A 13+
  - U/A 16+
  - A (Adult)
- OTT platforms would be required to provide parental lock systems for content classified U/A 13+ or higher, and have age verification mechanism for content classified as 'Adult'. In case the content is classified as 'A' category a reliable age verification mechanism for viewership of such content.
- Every publisher of online curated content shall display the rating of any online curated content and an explanation of the relevant content descriptors, prominently to its users at an appropriate place, as the case may be, in a manner that ensures that such users are aware of this information before accessing such content.

### **News Publishers**

- Publishers of news on digital media should comply with the Norms of Journalistic Conduct of the Press Council of India and the Programme Code under the Cable Television

Networks Regulation Act 1995, Programme Code under section 5 of the Cable Television Networks Regulation) Act, 1995 and the Content which is prohibited under any law for the time being in force shall not be published or transmitted.

### **Grievance Redressal Mechanism:**

- A three-level grievance redressal mechanism has been mandated with different levels of self-regulation. They are:
  - **Level - I: Self-regulating mechanism by the publishers**
    - Publisher should appoint a Grievance Redressal Officer who shall be the resident of India.
    - This Grievance Redressal Officer should take his/her decision on complaints within 15 days.
  - **Level-II: Self-regulation by the self-regulating bodies of the publishers** (*There may be one or more self-regulatory bodies of publishers, being an independent body constituted by publishers or their associations.*)
    - The self-regulating bodies of the publishers should register themselves with the Ministry of Information & Broadcasting.
    - One publisher can have more than one self-regulating bodies who ensure the adherence of the Code of Ethics.



- Such bodies shall be headed by a retired judge of the Supreme Court, a High Court, or an eminent independent person and shall not have more than six members being experts from the field of media, broadcasting, entertainment, child rights, human rights and such other relevant fields.
- The body will also address grievances that are not resolved within 15 days by the publisher.
- **Level-III: Oversight mechanism**
  - An oversight mechanism will be framed by the Ministry of Information and Broadcasting.
  - It shall publish a charter for self-regulating bodies, including Codes of Practices.
  - It shall also establish an Inter-Departmental Committee for hearing grievances.
  - It shall issue appropriate guidance and advisories to the publishers.
- The Hon'ble Supreme Court in suo-moto writ petition (Prajawala case) vide order dated 11.12.2018 had observed that the GOI may frame necessary guidelines to eliminate child pornography, rape and gangrape imageries, videos and sites in content hosting platforms and other applications.
- The Hon'ble Supreme Court vide order dated 24.09.2019 had directed the Ministry of Electronics and Information Technology to apprise the timeline in respect of completing the process of notifying the new rules.
- There was a Calling Attention Motion on the misuse of social media and spread of fake news in the Rajya Sabha and the Minister had conveyed to the house on 26.07.2018, the resolve of the Government to strengthen the legal framework and make the social media platforms accountable under the law.
- The Ad-hoc committee of the Rajya Sabha laid its report on 03.02.2020 after studying the alarming issue of pornography on social media and its effect on children and society as a whole and recommended for enabling identification of the first originator of such contents.

### **Rationale and Justification for New Guidelines:**

These Rules substantially empower the ordinary users of digital platforms to seek redressal for their grievances and command accountability in case of infringement of their rights. In this direction, the following developments are noteworthy:

### **Digital Media Ethics Code Relating to Digital Media and OTT Platforms to Be Administered by Ministry of Information and Broadcasting:**

There have been widespread concerns





about issues relating to digital contents both on digital media and OTT platforms. Civil Society, film makers, political leaders including Chief Minister, trade organizations and associations have all voiced their concerns and highlighted the imperative need for an appropriate institutional mechanism. The Government also received many complaints from civil society and parents requesting interventions. There were many court proceedings in the Hon'ble Supreme Court and Hon'ble High Courts, where courts also urged the Government to take suitable measures.

Since the matter relates to digital platforms, therefore, a conscious decision has been taken that issues relating to digital media and OTT and other creative programmes on Internet shall be administered by the Ministry of Information and Broadcasting but the overall architecture shall be under the Information Technology Act, which governs digital platforms.

### **Conclusion:**

The new Rules for intermediaries have been brought into force at a time when anyone expressing dissent or an opinion contrary to the government is being prosecuted for sedition or being slapped with charges under the Unlawful Activities (Prevention) Act (UAPA). FIRs are being lodged left, right and centre, in what is an attempt to stifle free speech and expression.

These Rules are another tool in the hands of the government whomsoever in power to use law enforcement agencies and other means to go after individuals who express opinions which run contrary to its ideas and interests.

Prior to these Rules, the Information Technology (Procedure and Safeguards for the Interception, Monitoring, and Decryption of Information) Rules, 2009 did not require intermediaries to comply with impossibilities, but only provide technically feasible assistance. With these Rules, that is set to change, as currently, it is ostensibly impossible to trace the originator of a message which the Government these days directing the Intermediaries to trace out the originator under the garb of these rules. It was also impossible to police what kind of content users can post and determine what is conclusively offensive and what is not offensive. These Rules will assist law enforcement agencies in going after something that has been shared which is deemed as offensive by the government. They may also seek to actively prevent anything which goes against the interests of the government.

Now in the coming period of time there need to watch the Data Protection Bill, which is pending before a Joint Parliamentary Committee, and to finally determine the conflict between the two.



## Legal Updates

### Arbitration And Conciliation Act, 1996

The Central Government has notified the 'The Arbitration and Conciliation (Amendment) Act, 2021' on 11th March 2021 which is effective from 4th November, 2020. The Amendment Act seeks to repeal The Arbitration and Conciliation (Amendment) Ordinance, 2020 and amend the Arbitration and Conciliation Act, 1996 ("Act") in the following manner:

**Automatic Stay:** Section 36 of the Act has been extended to include that the court shall stay the award unconditionally, in cases, where, it is prima facie made out that the (a) the arbitration agreement or contract which is the basis of the award; or (b) the making of the award, was induced or effected by fraud or corruption. This is deemed effective from 23rd October, 2015.

**Qualifications of arbitrators:** The Act specified certain qualifications, experience, and accreditation norms for arbitrators in Schedule VIII. The requirements under the schedule include that the arbitrator must be: (i) an advocate under the Advocates Act, 1961 with 10 years of experience, or (ii) an officer of the Indian Legal Service, among others. Now Schedule VIII has been omitted and Section 43J of the Act has been substituted and the new section states that the qualifications, experience and norms for



Adv Sakshi Jain,  
Associate

accreditation of arbitrators shall be specified by the regulations.







## **Insolvency And Bankruptcy Laws**

### **IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016**

The Insolvency and Bankruptcy Board of India (IBBI) vide Circular No. IBBI/-CIRP/41/2021 dated 18th March 2021 has tightened norms for reporting status of on-going Corporate Insolvency Resolution Process (CIRP) by introducing timelines and reporting mechanics for delays. The IRP has to file Form CIRP - 7 within three days of due date of completion of any activity is delayed and continue to file Form CIRP -7 every 30 days, until the said activity remains incomplete.]

### **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**

The Insolvency and Bankruptcy Board of India (IBBI) has vide Circular No. IBBI/LIQ/40/2021 dated 4th March 2021 has made available an electronic platform at [www.ibbi.gov.in](http://www.ibbi.gov.in) for filing of list of stakeholders as well as updating it thereof by liquidator as per the IBBI (Liquidation Process) norms. The platform permits multiple filings by the liquidator as and when the list of stakeholders is updated by him. Further, the liquidators have to file the list of stakeholders with the Adjudicating Authority and even after the modifications.



## **Companies Law**

### **Companies (Management and Administration) Amendment Rules, 2021**

The Ministry of Corporate Affairs (MCA) vide Notification No. G.S.R. 159(E) dated March 05, 2021 has notified that every company shall file its annual return in Form No.MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A.

### **Companies (Specification of definitions details) Second Amendment Rules, 2021**

The Ministry of Corporate Affairs (MCA) on February 19, 2021 has issued the Companies (Specification of definitions details) Second Amendment Rules, 2021 to bring in a new rule 2A which liberalize the definition of listed companies under the Companies Act to give compliance relief to public limited companies and private limited companies having listed debt securities. The amendment has notified the proviso to clause (52) of section 2 of the Companies Act, 2013 to exclude the following classes of companies as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have





listed their non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or on non-convertible redeemable preference shares issued on private placement

(b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.

### **Amendment to Schedule V of the Companies Act., 2013**

The MCA vide notification dated March 18, 2021 has amended Schedule V of the Companies Act, 2013 by inserting the provisions w.r.t. the maximum limit of remuneration payable by companies to other directors (non-executive director or an independent director). Earlier the limit was only for managerial person.

The annual limit of remuneration for a non executive director or an independent director has been linked to the effective capital of the firm. In the case of firms with an effective capital that is either 'negative' or less than ₹5 crore, the maximum annual remuneration has been pegged at ₹12 lakh per non executive director; for firms with an effective capital of ₹5-100 crore, the limit has been set at ₹17 lakh; for companies with ₹100-250 crore, the limit is ₹24 lakh and for companies with effective capital

higher than ₹250 crore and above, the limit will be ₹24 lakh plus 0.01 per cent of the effective capital in excess of ₹250 crore.

MCA has now set out these remuneration limits in Schedule V of the Companies Act 2013 in continuation of the legislative change made in September 2020



## Fema Laws

### **Master Direction - Non-Banking Financial Company - Housing Finance Company (Reserve Bank) Directions, 2021**

The RBI vide its notification dated February 17, 2021 bearing reference number RBI/2020-21/73DOR.-FIN.HFC.CC.No.120/03.10.136/2020-21 has notified NonBanking Financial Company-Housing Finance Company (Reserve Bank) Directions, 2021 (“Master Directions HFCs”) as applicable to housing finance companies (“HFCs”) in order to enable the RBI to regulate the financial system and the operation of HFCs.

The Master Directions lay down various guidelines applicable to HFCs, including guidelines on liquidity risk management framework, guidelines on liquidity coverage ratio, loans against security of shares, guidelines on securitisation transactions, etc. HFCs are also required to begin implementation of Indian Accounting Standards issued the RBI on March 13, 2020 and July 24, 2020. Additionally, pursuant to the Master Directions HFCs, certain circulars and guidelines specifically issued to HFCs, in relation to fair practice code, disbursement of housing loan to individuals and issuance of non-convertible debentures on private placement basis have been repealed.

### **Investment by Foreign Portfolio Investors (FPI) in Defaulted Bonds -**

## Relaxation

The RBI vide its notification dated February 26, 2021 bearing reference number A.P.(DIR Series) Circular No. 12 (“FPI Circular”), has permitted FPIs to invest in non-convertible debentures/bonds which are under default, either fully or partly in the repayment of principal on maturity or principal instalment in the case of amortising bonds. The FPI Circular has been issued in light of para 12 of the RBI’s Statement on Developmental and Regulatory Policies dated February 05, 2021, wherein the RBI announced that FPI investment in defaulted corporate bonds would be exempted from short-term limits and minimum residual maturity requirements under marginal standing facilities.





## Tax Laws

### **Amendment of Rule 114E of the Income tax Rules, 1962**

The Central Board of Direct Taxes (CBDT) on March 12, 2021 has issued the Income-tax (4th Amendment) Rules, 2021 to further amend the Income-tax Rules, 1962.

The amendment brings in new rule 114E (5A) which deals with pre-filing the return of income a statement of financial transaction under subsection (1) of section 285BA of the Act containing information relating to capital gains on transfer of listed securities or units of Mutual Funds, dividend income, and interest income shall be furnished by the recognized stock exchanges, companies, non-banking company, etc. in such form at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax (Systems) or the Director-General of Income Tax (Systems), as the case may be, with the approval of the Board.







## Social Security Code 2020

With a view to reform the archaic labour laws and to facilitate the ease of doing business in India, the Government of India had decided to consolidate twenty nine (29) central labour laws into four (4) labour codes, namely,

- i. The Code on Wages, 2019 (the “**Code on Wages**”);
- ii. The Code on Social Security, 2020 (the “**SS Code**”);
- iii. The Occupational Safety, Health and Working Conditions Code, 2020 (the “**OSH Code**”); and
- iv. The Industrial Relations Code, 2020 (the “**IR Code**”).

The Code on Wages was passed by the Parliament and received the President's assent in August 2019 and the draft rules thereof have been circulated by the Ministry of Labour and Employment for feedback. The Code on Wages legislates on wages and bonus and aspects relating thereto and consolidates and subsumes four (4) existing central labour laws, namely the Equal Remuneration Act, 1976, the Minimum Wages Act, 1948, the Payment of Wages Act, 1936 and the Payment of Bonus Act, 1965.

Recently, the three (3) remaining labour codes i.e. the SS Code, the



**CA Priyanshi Roongta,**  
Senior Associate

OSH Code and the IR Code were passed by the Parliament on September 23, 2020 and thereafter received the President's assent on September 28, 2020.

### **Benefits to Gig Workers and Platform Workers**

The SS Code provides the right to the Central Government and State Government to notify schemes for Gig and Platform workers related to life and disability cover, health and maternity, provident fund, employment injury benefit, housing etc. The SS Code mandates that the schemes may be funded through a combination of contributions from the central government, state governments, and Aggregators (a digital intermediary or a market place for a buyer or user of a service to connect with the seller or the service provider). The Central and State Government along with such schemes shall also prescribe the records that are required to be maintained in relation to such Gig Workers and Platform Workers.

The SS Code also mandates that every Unorganised Worker, Gig Worker or Platform Worker is required to be



registered, subject to the fulfilment of the following conditions:

- (a) he has completed sixteen (16) years of age or any other prescribed age; and
- (b) he has submitted a self-declaration containing information prescribed by the Central Government.

Every eligible Unorganised Worker, Gig Worker or Platform Worker is to make an application for registration along with prescribed documents including Aadhaar number and such worker shall be assigned a distinguishable number to his application. Whether such schemes would be applicable to all Unorganised Workers, Gig Workers and Platform Workers irrespective of the quantum of salary earned by them, will depend on the final form of the schemes introduced by the State or Central Government.

### **Employees' Provident Fund**

The SS Code has altered the applicability of the Employees' Provident Fund Scheme which now will be applicable to every establishment in which twenty (20) or more employees are employed. The Central Government may, establish a provident fund where the contributions paid by the employer to the fund shall be ten per cent (10%) of the wages for the time being payable to each of the employees (whether employed by him directly or by or through a contactor). The employee's contribution shall be equal to the

contribution payable by the employer in respect of him. The Central Government, may, by notification, increase the contribution percentages to twelve per cent (12%) for both employers and employees of certain establishments.

If any person being an employer, fails to pay any contribution under the SS Code or rules, regulations or schemes made thereunder, he shall be punishable with: (i) imprisonment for a term which may extend to three (3) years, but which shall not be less than one (1) year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of Rupees One Lakh (Rs. 1,00,000/-); or (ii) which shall not be less than two (2) months but may be extended to six (6) months, in any other case and shall also be liable to a fine of Rupees Fifty Thousand (Rs. 5,000/-).

### **Gratuity**

The SS Code has fixed different thresholds with respect to eligibility for gratuity of permanent and fixed term employees. Gratuity shall be payable to eligible employees by every shop or establishment in which ten (10) or more employees are employed, or were employed, on any day of the preceding twelve (12) months. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five (5) years,



on his superannuation; on his retirement or resignation; on his death or disablement due to accident or disease; on termination of his contract period under fixed term employment. However, a continuous service of five (5) years shall not be necessary where the termination of the employment of any employee is due to death or disablement or expiration of fixed term employment. For every completed year of service or part thereof in excess of six (6) months, the employer shall pay gratuity to an employee at the rate of fifteen (15) days' wages. The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government. Gratuity under the SS Code is payable to employees hired directly or through a contractor.

If any person fails to pay any amount of gratuity to which an employee is entitled to, he shall be punishable with imprisonment for a term which may extend to one (1) year or with fine which may extend to Rupees Fifty Thousand (Rs. 50,000/-), or with both.

### **Employees State Insurance**

The SS Code allows for voluntary registration under the Employee State Insurance if the employer and majority of the employees agree. Further, the Government has the power to extend the Employee State Insurance Scheme to any hazardous occupation irrespective of the number of employees employed. The SS Code

also provides for coverage of Gig Workers and Unorganised Sectors under the Employee State Insurance Scheme. The employer shall pay in respect of every employee, whether employed by him directly or through a contractor, both the employer's contribution and the employee's contribution. Neither the employer nor the contractor shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

### **Maternity Benefit**

Maternity benefits shall be applicable to every shop or establishment in which ten (10) or more employees are employed, or were employed, on any day of the preceding twelve (12) months; and such other shops or establishments notified by the appropriate Government. No employer/ nor woman can knowingly employ a woman/work in any establishment during the six (6) weeks immediately following the day of her delivery, miscarriage or medical termination of pregnancy. A woman shall be entitled to maternity benefit if she has actually worked in an establishment of the employer from whom she claims maternity benefit, for a period of not less than eighty (80) days in the twelve (12) months immediately preceding the date of her expected delivery. The maximum period for which any woman shall be entitled to maternity benefit shall be twenty-six weeks (26) of which not



more than eight (8) weeks shall precede the expected date of her delivery. However, the maximum period entitled to maternity benefit by a woman having two or more surviving children shall be twelve (12) weeks of which not more than six (6) weeks shall precede the date of her expected delivery.

If any person is in contravention of the provisions of maternity benefits or dismisses, discharges, reduces in rank or otherwise penalizes a woman employee or fails to provide any maternity benefit to which a woman is entitled to, he shall be punishable with imprisonment for a term which may extend to six (6) months or with fine which may extend to Rupees Fifty Thousand (Rs. 50,000/-), or with both.

### **Conclusion**

The SS Code will subsume various existing labour laws in India. The SS Code has widened the coverage by including the unorganised sector, fixed term employees and gig workers, platform workers etc., in addition to contract employees. It will be therefore very important for establishments to assess the implications and revisit the compliance requirements under the SS Code, once it is brought into effect.





## Legal Decisions

### Insolvency And Bankruptcy Code

#### 1. SBI Versus Animesh Mukhopadhyay

*[Passed by Hon'ble National Company Law Appellate Tribunal, New Delhi in Civil Appeal no. 7469/2008 vide order dated 05.01.2021 (Bench comprising of Hon'ble Mr. Justice Navin Sinha and Hon'bl Ms. Justice Indira Banerjee)]*

**Held:** NCLAT has held that till payment is received in one Corporate Insolvency Resolution Process (CIRP), the claim of the lender for the same amount can be maintained in the insolvency proceedings against both the Principal Borrower and Corporate Guarantor.

**Facts:** In the present case, State Bank of India (Appellant) had granted credit facility in the nature of Term Loan to Purple Advertising Services Pvt. Ltd. (Principal Borrower). Zenith Finesse India Pvt. Ltd (Respondent No 1/Corporate Guarantor) was the guarantor for securing the dues of the Principal Borrower.

Subsequently, the Principal Borrower and the Corporate Guarantor became NPAs. Their liability being co-extensive, they became liable to pay outstanding dues to the Appellant bank.

NCLT initiated CIRP against the Principal Borrower on an application



**Adv Ishita Rawat,  
Senior Associate**

filed by the United Bank of India. The Appellant Bank filed its claim before the Resolution Professional and at present, the CIRP is pending and the Resolution Plan is being evaluated. According to the Appellant, it might not get any substantial sum in the CIRP of the Principal Borrower even if any resolution is found.

Meanwhile, CIRP was initiated against Corporate Guarantor as well on an application filed by the United Bank of India.

The Appellant bank filed its claim before Resolution Professional of the Corporate Guarantor. However, this Resolution Professional, after discussing the claim with the Committee of Creditors, opined that the claim was not tenable in the eye of law. The Appellant, thereafter, moved the NCLT for acceptance of its claim and its inclusion in CoC. The same was, however, turned down by the NCLT which held that the claim of the Appellant against the Corporate Guarantor was not admissible as it had filed a claim in the Principal Borrower's CIRP.

In its order, the NCLAT opined that the impugned order had failed to discuss





the IBC provisions or judgments on this aspect.

Considering Section 60 IBC and its own judgments, the NCLAT held that when two CIRPs are maintainable, claim in both (subject to adjustments on receipts) would also be maintainable holding, *"Till payment is received in one CIRP, claim can be maintained in both CIRPs for same amount and representation in CoC in both CIRPs to the extent of amount due will be justified. This is the reason why Section 60 (3) provides for transfer of proceeding to Adjudicating Authority where already there is a pending proceeding. There is no question of looking into Judgments when Section 60 of IBC is clear and makes the two CIRPs maintainable in such matters. If they are maintainable, claim in both (subject to adjustments on receipts) would also be maintainable."*

The Appeal was accordingly allowed with a direction to the Resolution Professional of the Corporate Guarantor to consider the claim of the Appellant and to appropriately deal with the Appellant as Financial Creditor in the CoC.



## Writ Jurisdiction Under Article 226 Of COI

### 2. Mehra Bal Chikitsalaya Evam Navjat Shishu I.C.U. vs. Manoj Upadhyaya

*[Passed by Hon'ble Supreme Court of India, New Delhi in Special Leave to Appeal No. 4127 of 2021 vide order dated 12.03.2021 (Bench comprising of Hon'ble Mr. Justice Navin Sinha and Hon'ble Mr. Justice Krishna Murari)]*

**Held:** The Hon'ble Apex Court has held that Writ Petition under Article 226 is not maintainable against order passed by State Consumer Commission.

**Facts:** In the present case, the Hon'ble M.P. High Court relying on decision of Single Judge of Orissa High Court and the Division Bench of the High Court of Andhra Pradesh at Hyderabad held that the writ petition was maintainable against order passed by State Consumer Commission and thereafter, dismissed the Writ Petition on merits. The Hon'ble Apex Court therefore held that despite the attention of the High Court having been drawn to *Cicily Kallarackal vs. Vehicle Factory*, (2012) 8 SCC 524 without even dealing with or discussing the judgment and the reason for its inapplicability as the judgment has categorically issued direction of caution stating that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission.



Hence, the Hon'ble Apex Court in the present case relying upon Cicily judgment (supra) held that the writ petition itselfa was not maintainable and thus, the Special Leave Petition was dismissed.

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## Unlawful Activities Prevention Act (Uapa), 1967

### 3. Fakhrey Alam versus State of U.P.

*[Passed by Hon'ble Supreme Court of India, New Delhi in Criminal Appeal No. 319 of 2021 vide order dated 15.03.2021 (Bench comprising of Hon'ble Mr. Justice Sanjay Kishan Paul, Hon'ble Mr. Justice R. Subhash Reddy)]*

**Held:** The Supreme Court observed that Default bail under Section 167 of Code of Criminal Procedure is a procedure established by law under Article 21 of the Constitution and thus is a fundamental right and not merely a statutory right.

**Facts:** The appellant Fakhrey Alam was arrested on March 8, 2017 and was charged for offences under Sections 420,467, 468, 471 and 120-B, Indian Penal Code and 3/25/30 of the Arms Act and under Section 18 of the Unlawful Activities Prevention Act (UAPA), 1967.

The Chief Judicial Magistrate, Lucknow

granted a total of 180 days to the police for filing the charge sheet. The police filed charge sheet on 04.09.2017 under all provisions, except under the UAPA Act as it was mandatory to obtain prosecution sanction from the State Government which had not been forthcoming till the date of filing of the charge sheet. Thereafter, a second charge sheet was filed after obtaining sanction of the State Government on 5.10.2017.

Meanwhile, the accused had filed an application for default bail under Section 167(2), on 03.10.2017, i.e. two days prior to the charge sheet having been filed under the UAPA Act. The case of the appellant accused was that the charge sheet had been filed after 180 days and thus, he was entitled to default bail.

The Court, however, opined that what was stated to be a second charge sheet was really a supplementary charge sheet and so default bail would not be admissible. The aforesaid view was confirmed by the Allahbad High Court by its order dated 03.11.2020 which was challenged before the Hon'ble Supreme Court which noted that the charge sheet under the provisions of law as originally filed on September 4, 2017 was required to be filed within 90 days but was actually filed within 180 days. This was on the premise of the charge under Section 18 of the UAPA Act. However, no charge sheet was filed even within 180 days under the UAPA Act, but post filing of the application for default



bail, it was filed after 211 days. Thus, undoubtedly the period of 180 days to file the charge sheet qua UAPA Act had elapsed.

It was therefore held that the State cannot use supplementary chargesheets with respect to UAPA offences to extend the deadline prescribed under Section 167 of Cr.P.C. The Hon'ble Apex Court further held that since, liberty is a Constitutional right, time periods were specified in the default of which the accused will have a right to default bail which is a valuable right. Hence, time limit to complete investigation and file charge sheet under Section 167 cannot be extended by seeking to file the supplementary charge sheet with respect to offences under the Unlawful Activities Prevention Act.

2019 which came into force on July 20, 2020 will continue before the fora envisioned under the Consumer Protection Act of 1986 and should not be transferred in terms of the pecuniary jurisdiction set for the fora established under the 2019 Act.

**Facts:** The Appellant instituted consumer case before the National Consumer Disputes Redressal Commission (NCDRC) on 18.06.2020 seeking a claim of Rs. 2.19 Crores. The NCDRC by its order dated 30.07.2020 dismissed the case on the ground that after the enforcement of the 2019 Act, its pecuniary jurisdiction stood enhanced from Rs 1 crore to Rs 10 crore. The Appellants also filed review petition of the said order which was also dismissed by the NCDRC on 05.10.2020. Thereafter, against a decision of NCDRC, the Appellants approached the Hon'ble Apex Court.

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## Consumer Protection Act

### 4. Neena Aneja and Anr. v. Jai Prakash Associates Limited

*[Passed by Hon'ble Supreme Court of India, New Delhi in Civil Appeal No. 3766-3767 of 2020 vide Judgment dated 16.03.2021 (Bench comprising of Hon'ble Mr. Justice D.Y. Chandrachud and Hon'ble Mr. Justice M.R. Shah)]*

**Held:** The Hon'ble Apex Court held that a consumer complaint instituted before the Consumer Protection Act,

The Hon'ble Apex Court discussed Section 6 of the General Clauses Act which protects the pending legal proceedings for the enforcement of an accrued right from the effect of a repeal and further dealt with the question whether the pending legal proceedings are required to be transferred to the newly created forum by virtue of the repeal holding Transferring these complaints as per the pecuniary jurisdiction laid down in the new Act will impact the interests of the consumer and defeat the object of the legislation, which is to protect and promote consumer welfare and thus held, "All proceedings instituted



before 20 July 2020 under the Act of 1986 shall continue to be heard by the fora corresponding to those designated under the Act of 1986 as explained above and not be transferred in terms of the new pecuniary limits established under the Act of 2019,”

## 5. In Re: Cognizance For Extension of Limitation

*[Passed by Hon'ble Supreme Court of India, New Delhi in Suo Moto Writ Petition (Civil) No. 3 of 2020 vide order dated 08.03.2021 (Bench comprising of Hon'ble Mr. Justice S.A. Bobde, Hon'ble Mr. Justice L. Nageshwara Rao and Hon'ble Mr. Justice S. Ravindra Bhatt)]*

**Held:** The Supreme Court has ordered that the period from March 15, 2020 to March 14, 2021 shall be excluded from computing the limitation period.

**Facts:** Due to the onset of COVID-19 pandemic, the Hon'ble Apex Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 27.03.2020 the Court extended the period of

limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders which was extended from time to time.

Thereafter, looking into the considerable improvement in the situation across the country and lockdown being lifted and that all the Courts and Tribunals are functioning either physically or virtual mode. Hence, the Hon'ble Apex Court held:-

- (i) In computing the period of limitation for any suit, appeal, application or proceeding, period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
- (ii) In cases where limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
- (iii) The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of



- (iv) The Government of India shall amend guidelines for containment zones, to state.

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

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## Negotiable Instruments Act - Insolvency And Bankruptcy Code

### 6. P Mohanraj v. M/S Shah Brothers Ispat Pvt Ltd

*[Passed by Hon'ble Supreme Court of India, New Delhi in Civil/ Criminal Appellate Jurisdiction/ Civil/ Criminal Original Jurisdiction, Civil Appeal No. 10355 of 2018 with batch of tagged cases vide order dated 01.03.2021 (Bench comprising of Hon'ble Mr. Justice Rohinton Fali Nariman, Hon'ble Mr. Justice Navin Sinha and Hon'ble Mr. Justice K.M. Joseph)]*

**Held:** The Hon'ble Supreme Court held that proceedings under Section 138 of Negotiable Instruments Act (NI Act) for cheque dishonour will be barred against the Corporate Debtor during the moratorium period declared under the Insolvency and Bankruptcy

Code, 2016.

**Facts:** In the lead case, Shah Brothers Ispat Private Ltd (SBIPL), a supplier of steel products, had filed a criminal complaint under Section 138 of NI Act before Ld. Trial court against Directors of Diamond Engineering Chennai Ltd (corporate debtor) after 51 cheques issued by debt-ridden firm were dishonoured for “insufficient funds”.

The Ld. NCLT, Chennai, had initiated insolvency process against the firm on another plea by SBIPL in June 2017. Later in September 2019, the Ld. NCLT approved the resolution plan submitted by the promoters as a result of which, the moratorium order of June 2017 ceased to have effect.

While the Ld. tribunal accepted the directors plea that no further complaints can be filed during the period of moratorium, the Ld. NCLAT ruled that Section 138 is a penal provision, which empowers the Ld. trial court to pass order of imprisonment or fine, which cannot be held to be proceeding or any judgment or decree of money claim, thus parallel criminal proceedings under the Negotiable Instruments Act can continue even as the resolution process is on.

Aggrieved by the aforesaid order passed by Ld. NCLAT, the Directors of Diamond Engineering (Corporate Debtors) approached the Hon'ble Supreme Court, similar other petitions were clubbed together.





The Hon'ble Apex Court observed that moratorium under Section 14 of IBC also includes criminal proceedings for cheque bounce cases under Section 138 of the Negotiable Instruments Act, thus parallel proceedings against a corporate debtor cannot be allowed. The Hon'ble Court further held that the legal impediment contained in Section 14 of the IBC would make it impossible for such proceeding to continue or be instituted against the corporate debtor. Thus, for the period of moratorium, since no Section 138/141 NI Act proceeding can continue or be initiated against the corporate debtor because of a statutory bar, such proceedings can be initiated or continued against persons (directors/persons in management or control of the corporate debtor) mentioned in Section 141(1) and (2) of the NI Act.



**Quote of the month:**

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“Do what you can, with what you have,  
where you are”

- Theodore Roosevelt

This newsletter is authored collectively  
by:-

1. Adv Nivedita Sarda (Partner)
2. CA Priyanshi Roongta (Senior Associate)
3. Adv Ishita Rawat (Senior Associate)
4. Adv Sakshi Jain (Associate)
5. Adv Rachit Sharma (Senior Associate)

