MONTHLY **NEWSLETTER**

- The Business Brief

GNLU CENTRE FOR BUSINESS AND PUBLIC POLICY

Welcome to the inaugural edition of the GNLU Centre for Business and Public Policy's newsletter! In this issue, we explore the major business developments of August and September. From economic trends and policy shifts to emerging technologies and industry insights, we bring you a carefully curated selection of articles and analysis.

Volume I
Issue I

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GNLU CENTRE FOR BUSINESS AND PUBLIC POLICY

TABLE OF CONTENTS

Volume I
Issue I

GCBPP
VOLUME 1 ISSUE 1

SEBI ALLOWS SECURITIES TO BE FUNDED THROUGH CASH COLLATERAL AS A MAINTENANCE MARGIN FOR THE MARGIN TRADING FACILITY (MTF).

The Securities and Exchange Board of India (SEBI) on September 11, 2024, issued a circular whereby it allowed securities funded through cash collateral as maintenance margin for Margin Trading Facility (MTF) with effect from October 1, 2024. This move came after representations were made through the Industry Standards Forum (ISF), to relax the existing requirements.

Earlier, SEBI vide a master circular dated October 16, 2023, listed the requirements of collateral (maintenance margin) which now stands amended facing an addition that provides that, if the broker has collected cash collateral for MTF. He has given the same to the Clearing Corporation for the settlement of the client's obligation, the same can be construed to be the maintenance margin. Further, the Trading member has to ensure that the cash collateral or the funded stock thus received from the client to the extent of maintenance margin is under Group 1 securities. Whether the funded stock is available in the F&O segment or not the applicable margin shall be Var + 5 times the Extreme Loss Margin.

While the master circular mandated disclosure regarding particular details by the stock broker by 12 noon of the following day, the recent circular has amended the same to be on or before 6:00 PM on T+1 day.

The changes have been brought in to promote the object of 'Ease of Doing Business' as informed by the Board.

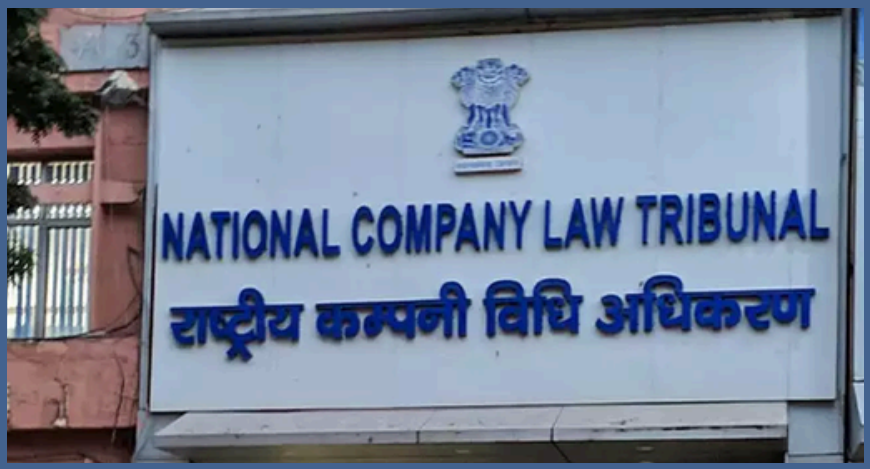
- PRANAV PRATAP SINGH
(2022-27)

NCLAT STAYS ESSAR'S INSOLVENCY

On Tuesday, September 10, 2024, the National Company Law Appellate Tribunal (NCLAT) heard an appeal by the suspended director of Essar Oil and Gas Exploration and Production Ltd. The appeal challenged a decision by the National Company Law Tribunal (NCLT), which had admitted a claim of over ₹24 crores filed by Greka Green Solutions Ltd. under Section 9 of the Insolvency and Bankruptcy Code (IBC).

Essar's main argument was that it had made the final payment before Greka's claim was filed. The NCLT had overlooked the settlement agreement between the two parties, which had been executed before the proceedings. The NCLT's order had appointed Mohit Adatiya of NPV Insolvency Professionals to take control of Essar's assets and begin insolvency proceedings following the IBC regulations.

During the hearing, Essar highlighted its strong financial performance, citing an operating profit of ₹625 crores and revenues exceeding ₹870 crores, along with the fact that it currently employs over 400 active workers. In response, NCLAT issued a notice and temporarily suspended the NCLT's order, with the next hearing scheduled for November 6, 2024.
Essar expressed optimism about the suspension, stating that it would enable them to focus on their core operations without disruptions, suggesting they could successfully navigate the situation and emerge stronger.



- MUHAMMED RAYHAAN
(2024-29)

THE COMPETITION (AMENDMENT) ACT, 2023: RESHAPING INDIA'S M&A LANDSCAPE [1]

India's merger control landscape is undergoing a significant transformation with the Competition (Amendment) Act, 2023, effective September 10, 2024. This legislation aligns India's competition law with global best practices and addresses the evolving needs of its rapidly growing economy. Key changes include:

Deal Value Thresholds: Transactions exceeding INR 2,000 crore (approx. USD 238 million) now require CCI approval. Criteria for "substantial business operations" include digital services, Gross Merchandise Value (GMV), and turnover, replacing former asset and turnover-based exemptions. Incomplete transactions before September 10, 2024, must be reassessed.

Reduced Review Timelines: The maximum deemed approval timeline is reduced from 210 to 150 days. A prima facie view within 30 calendar days allows for quicker initial assessments. Automatic approval occurs if no opinion is expressed within this timeframe.

Derogation for Open Offers: Stock market transactions and open offers no longer require prior CCI notification if certain conditions are met, including notifying CCI within 30 days and not exercising ownership or beneficial rights.

Codification of De-Minimis Exemption: The new Minimum Value Rules codify the existing de-minimis exemption, providing clearer guidelines for small-scale transactions. Transactions below the specified thresholds are exempt from CCI notification.

Green Channel Rules: These rules for deemed approval are now codified, allowing faster approvals for certain transactions. The expanded definition of 'affiliates' includes entities with access to commercially sensitive information, impacting overlap assessments.

New Exemption Rules: New Exemption Rules introduce categories of combinations exempt from CCI notification, such as minority acquisitions, incremental acquisitions, intra-group transactions and certain demergers. A uniform 'change in control' test is proposed for all transactions. Deals initiated before September 10, 2024, need reassessment under these new rules.

Implications and Next Steps

The amendments will profoundly impact businesses, necessitating a reassessment of transactions, strategic adjustments, and anticipation of stricter regulatory scrutiny. Mastering these changes is essential for successfully navigating India's shifting merger landscape.

1 https://trilegal.com/knowledge_repository/trilegal-update-new-era-for-indian-merger-control-begins-on-10-september-2024/

– PRIYAL MANTRI
(2023-28)

SEBI AMENDS FOREIGN VENTURE CAPITAL INVESTOR REGULATIONS TO STREAMLINE REGISTRATION PROCESS, ELIGIBILITY CRITERIA AND DUE DILIGENCE

The market regulator SEBI on 5th September, 2024 in a move to streamline registration process, eligibility criteria and other post-registration procedures for Foreign Venture Capital Investor ("FVCI") has amended the SEBI (Foreign Venture Capital Investors) Regulations, 2000. A FVCI is an investor which inter alia primarily invests at least 66.67% of the investible funds in unlisted equity shares or equity linked instruments of a Venture Capital Undertaking ("VCU") and a VCU is any domestic company which is not listed in a recognized stock exchange in India and is engaged in business that is not specified in the negative list by the SEBI.

Several key provisions of the regulations have been amended with the major focus being on reducing the role of the Board and streamlining registration process of FCVIs at par with the FPIs.

The key amendments include the delegation of authority to grant certificate, rejection of application for granting of certificate, furnishing of further information, etc to the Designated Depository Participant ("DDPs") as defined in Chapter III of the FPI regulations. Several key terms such as "Bilateral Memorandum of Understanding with the Board", "control", "IFSC" have been defined and the eligibility criteria for applicant under Regulation 4 has been expanded to include an entity incorporated or established in IFSC.

Further, as per Regulation 14 the FVCI or global custodian acting on behalf of such investor is now required to enter into an agreement with the DDP and a custodian before making any investment and in every case the DDP and the custodian shall be the same entity. The responsibilities of the custodian have been widened to ensure additional compliances as may be specified by the Board from time to time.

Regulation 15-A and 15-B have been added which set out obligations and responsibilities of FVCI and DDPs respectively. SEBIs right with regards to inspection and investigations has been kept intact and these rights have not been delegated to the DDPs. Also, the FVCIs are now mandated to hold all their investments in dematerialised form to increase the transparency of the process.

As of today, there are close to 250 FVCI in India with an invested amount of close to 48,000 crores and therefore these amendments are a welcome move to usher in greater investments in India and make FVCI investments more streamlined and efficient.

- YASH MUNDADA
(2023-28)

RESOLUTION PLAN APPROVED BY THE COC, CONSEQUENTLY REQUIRING FINANCIAL CREDITORS TO TAKE A HAIR-CUT, NOT VIOLATIVE OF S.30 (2) OF IBC.

The recent judgement of Yogesh Kelkar and Ors. Vs. RP of Anudan Properties Pvt. Ltd. eliminated the ambiguity regarding the nature of Sec. 30 (2) of IBC. The Court relied on Miheer H. Mafatlal v. Mafatlal Industries Ltd.[1], where it was held that when a Court is called upon to execute the Proposal Plan voted by the requisite majority, it shall not blindly trust the commercial wisdom of CoC. It shall rather examine the plan for fairness and reasonability. In light of the present judgement, it can be drawn that S.30(2) of IBC safeguards the right of the dissenting financial creditor by ensuring the creditor receives no amount less than the liquidation value. In other words, the secured financial creditor is entitled to the value realized upon liquidation of the corporate debtor. In a situation where a creditor dissents upon the Resolution Plan proposed, the Plan, withstanding approval of CoC withstanding 66% vote share, shall stand as a collective business decision, binding all the creditors, dissenting creditors and the stakeholders. It is a well-established principle that the Resolution Plan voted and approved by Requisite majority of CoC shall be binding on all Creditors. The mere reduction in the claims and requiring Creditors to take a hair-cut shall not be held violative of S.30 (2) of IBC. The resolution plan once approved by Majority CoC, acknowledging the commercial wisdom of Committed of Creditors, is beyond the scope of judicial review and alteration. No Adjudication Authority shall modify or alter the plan merely because the Dissenting Creditor is aggrieved by the lesser amount to be awarded as a result of the Resolution Plan. Resolution Plans requiring Creditors to take a hair-cut is not violative of S.30 (2) of IBC.

1 Miheer H. Mafatlal v. Mafatlal Industries Ltd. (1997) 1 SCC 579

- JAI NARAYAN
(2023-28)

MESSAGE FROM THE NEWSLETTER TEAM

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Volume I
Issue I