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ESG – A sustainable model for a better future

By **Kumar Panda**

Securities Market Regulator, SEBI, on 5 May 2021, made it mandatory for the top 1,000 listed entities (by market capitalization calculated as on the 31st day of March of every financial year) to provide annually a Business Responsibility and Sustainability Report (BRSR) from the financial year 2022-23. SEBI has recently constituted a committee to recommend enhancements to BRSR, rating and investments in Environment, Social and Governance ('**ESG**') practices.

With countries committing to reduce carbon emissions due to the impending climate risk, one of the indicators to measure implementation of the commitments is through the corporate reporting of the ESG factors.

India has no comprehensive legislation concerning ESG disclosures for Indian corporates. The ESG commitments in India can be traced to the Corporate Social Responsibility Voluntary Guidelines, 2009 formulated by the Ministry of Corporate Affairs (MCA), and updated through the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 ('**NVGs**') which were later revised to National Guidelines on Responsible Business Conduct, 2019 ('**NGRBC**'). The NGRBC lays down the principles to operate a business in an ethical, transparent, and accountable manner with emphasis on ESG practices.

One of the primary purposes of BRSR by SEBI is to have listed entities imbibe the NGRBC principles in the business practices. Businesses are required to demonstrate the structures, policies, and processes put in place towards adopting NGRBC principles.

While mandatory reporting is limited to top 1000 listed companies for now, the Companies Act, 2013 ('**Act'**) already has provisions to measure certain ESG commitments by the corporates. This includes a mandatory corporate social responsibility (CSR) expenditure to a tune of 2% of average net profit of the past three (3) years. The annual board report requires disclosure of details on conservation of energy and energy absorption. Further, certain classes of companies are mandated to have a vigil mechanism in place to report acts of corruption and financial mismanagement.

While Indian laws impose certain ESG obligations, investors and customers from Europe and western countries are holding Indian investee companies / vendors to a more robust commitment.

ESG assessments often form a deciding factor for investments or for awarding contracts, thus making ESG compliance a strategic business initiative. Companies having ESG systems in place are often valued higher than the companies with bad ratings on the ESG front. ESG compliance also ensures avoidance of reputational risks for the investor, along with reducing environmental risk that the industry may be responsible for in usual course.

Implementation of ESG:

Written SDG policies: It is common for investors and customers to measure the ESG compliance of a company based on the 17 UN Sustainable Development Goals ('**SDGs**') which detail commitments towards human rights, labour, environment, and anti-corruption. Having written policies towards SDG commitments is an indicator of a company's robust commitments towards ESG.

UN Global Compact partnership: Taking ESG compliance a further step, a company may also consider signing up for the United Nations Global Compact (UNGC) program which is a voluntary initiative based on CEO commitments to implement the SDGs in their internal policies and processes.

Supply chain management: A crucial factor that is often missed by the companies is ESG compliance in the supply chain, that can expose companies to risks concerning environmental asset abuse, human rights abuses including child labour and bonded labour, and corruption and terror financing. Supply chains, while outside the direct control of the company, can impact the reputation, operation, and financial performance of businesses of the investor and promoters. Therefore, it is essential to have defined procurement policies on identifying, managing, and remedying ESG issues in the supply chain.

Responsible procurement: When awarding contracts, decisions must not be based solely on economic, technological and process requirements. ESG factors must also play a vital role while choosing a contractor or a supplier. This includes seeking source of raw materials to ensure the raw materials do not originate through abusive procedures.

Stakeholder awareness: Another important exercise towards ESG compliance is the sensitisation of all stakeholders involved including the management, employees, and suppliers. The company should undertake regular training sessions of all stakeholders on the need to comply with ESG commitments.

Social dialogue and freedom of association: Having social dialogue systems in place is an indication of conducive work environment. Freedom of association including right to join trade unions is a cornerstone of workmen's rights and is regarded as a crucial aspect to achieve sustainable economic and social development.

Waste management: The company must have procedures to recycle its wastes and handle residual wastes. Processes must be implemented in segregating organic and inorganic waste. To the extent possible, manure to energy conversion systems must be implemented for disposal of organic waste. Reuse of articles must be encouraged. India's e-Waste Management Rules mandate companies to have recycle systems in place to enable consumers to dispose electronic waste in an environment friendly manner.

Transition to clean energy: A company must take steps towards transition to efficient clean energy equipment like use of LED lighting systems, installation of overtop solar equipment, or procuring from renewable sources wherever possible. Work processes must be implemented to ensure reduction of greenhouse gas emissions.

Know-your-customer (KYC) systems: All transactions must be entered into after obtaining necessary know-your-customer (KYC) documentation from customers and vendors. This will ensure tracing of the funds in case of

allegations of money laundering or terror financing.

Avoiding cash transactions: Cash transactions must be discouraged and be undertaken only in exceptional cases with prior written permission of the reporting authority.

Cyber security risk: Companies must implement information security management systems to safeguard data in its possession. One widely used standard that corporates may adopt is the ISO/IEC 27001 that specifies the requirements for establishing, implementing, maintaining, and continually improving an information security management.

Vigil mechanism: Policies must be in place to ensure employees and other stakeholders can freely report violations of the company policies without fear of retaliation.

Conclusion:

Mere compliance with Indian laws may not be adequate to meet the enhanced level of foreign investor or customer expectation towards ESG compliance. A corporate sustainable obligation must go beyond legal compliance to achieve the objectives of creating a better future for the next generations. Further, policies must translate into practices to achieve the intended goals. While BRSR is applicable currently only to top 1000 companies, all business houses must be encouraged to voluntarily disclose their ESG metrics.

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Notifications and Circulars

Relaxation in holding of AGM and EGM through VC/OAVM extended till 31 December 2022: In furtherance to the previous relaxation granted by the Ministry of Corporate Affairs (MCA) with respect to holding Annual General Meetings (AGMs) through Video Conference/ Other Audio Visual Modes (VC/OAVM), the MCA has *vide* General Circular No. 02/2022, dated 5 May 2022 permitted companies whose AGMs are due in the Year 2022, to conduct their AGMs on or before 31 December 2022 in accordance with the requirements laid down in Para 3 and Para 4 of the General Circular No. 20/2020 dated 5 May 2020. It may be noted that the Circular also clarifies that the relaxation should not be construed as conferring any extension of time for holding of AGMs by the companies under the Companies Act, 2013 ('**Act**'). It is stated that the companies which do not adhere to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.

In the case of Extraordinary General Meetings (EGMs), the MCA has permitted companies to hold EGMs through VC/OAVM or transact items through postal ballot up to 31 December 2022. The extension has been given *vide* General Circular No. 03/2022 dated 5 May 2022.

SEBI mandates system and network audits of Market Infrastructure Institutions (MIIs): The Securities and Exchange Board of India (SEBI), *vide* Circular dated 7 January 2020, had mandated that stock exchanges, clearing corporations, and depositories (MIIs) should conduct an annual system audit by a reputed independent auditor. The SEBI has reviewed the existing system audit framework to cover the network audit under the ambit of the revised system. From now onwards, MIIs are required to conduct System and Network audits.

MIIs are also required to submit information regarding exceptional major Non-Compliances (NCs)/ minor NCs observed in the System and Network audit. Further, the Systems and Network audit report including compliance with SEBI circulars/ guidelines and the exceptional observation format along with compliance status of previous year observations is required to be placed before the Governing Board of the MII, and then the report along with the comments of the management of the MII shall be communicated to SEBI within a period of one month of completion of the audit.

Vide Circular No. SEBI/HO/MRD1/MRD1_DTCS/ P/CIR/2022/58, dated 2 May 2022, MIIs are required to submit a joint declaration from the Managing Director (MD)/ Chief Executive Officer (CEO) and Chief Technical Officer (CTO) certifying:

a) the security and integrity of their IT Systems.
b) correctness and completeness of data provided to the Auditor.
c) entire network architecture, connectivity (including co-lo facility), and its linkage to the trading infrastructure is in conformity with SEBI's regulatory framework.
d) internal review of Critical Systems, carried out during the Audit period, including the Failure Modes and Effects Analysis (FMEA).

Timelines reduced for the listing of units of InvITs and REITs: The Securities and Exchange Board of India (SEBI) has reduced the timelines for the listing of units of Real Estate Investment Trusts (REITs) and units of Infrastructure Investment Trust (InvITs) to six (6) working days, as against the present requirement of listing within twelve (12) working days.

As per Circulars Nos. SEBI/HO/DDHS_Div3/P/CIR/2022/54 and 55, both dated 28 April 2022, the Self-Certified Syndicate Banks (SCSBs), stock exchanges, depositories, and intermediaries shall co-ordinate to ensure completion of listing and commencement of trading of units of REIT and InvIT, within six (6) working days from the date of closure of the issue.

The provisions of these circulars shall be applicable to the public issue of units of REITs and units of InvITs that open on or after 1 June 2022. Stock Exchanges and SCSBs shall make the required changes to implement the same from 1 June 2022.

SEBI – Requirement of sending hard copy of annual report containing salient features of all the documents prescribed in Section 136 of the Companies Act, 2013 relaxed: The Securities and Exchange Board of India (SEBI) has relaxed up to 31 December 2022, the provisions of Regulation 36(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('**LODR Regulations**'). Said provision requires sending hard copy of the annual report containing salient features of all the documents prescribed in Section 136 of the Companies Act, 2013 to the shareholders who have not registered their email addresses. The SEBI Circular, bearing ref. No. SEBI/HO/CFD/CMD2/CIR/P/2022/62

dated 13 May 2022 however emphasizes that in terms of Regulation 36(1)(c) of the LODR Regulations, listed entities are required to send hard copy of full annual report to those shareholders who request for the same. Further, the requirement of sending proxy forms under Regulation 44(4) of the LODR Regulations has been dispensed with up to 31 December 2022 in case of general meetings held through electronic mode only. It may be noted that the Ministry of Corporate Affairs has *vide* Circular dated 5 May 2022 also extended the relaxations from dispatching of physical copies of financial statements for the year 2022 (till 31 December 2022).

RBI – Limits for investment in debt and sale of Credit Default Swaps by FPIs: The Reserve Bank of India, *vide* A.P. (DIR Series) Circular No.1 - RBI/2022-23/28, dated 19 April 2022, has specified limits for investment in debt and the sale of credit default swaps (CDS) by Foreign Portfolio Investors (FPIs). Investment Limits for the financial year (FY) 2022-23 are as follows:

a) Limits for FPI investment in Government securities (G-secs), State Development Loans (SDLs), and corporate bonds shall remain unchanged at 6%, 2%, and 15% respectively, of outstanding stocks of securities for FY 2022-23.

b) All investments by eligible investors in the 'specified securities' shall be reckoned under the Fully Accessible Route (FAR).

c) Allocation of incremental changes in the G-sec limit (in absolute terms) over the two sub-categories – 'General' and 'Long-term' – shall be retained at 50:50 for FY 2022-23.

d) The entire increase in limits for SDLs (in absolute terms) has been added to the 'General' sub-category of SDLs.

Further, since the aggregate limit of the notional amount of CDS sold by FPIs shall be 5% of the outstanding stock of corporate bonds, an additional limit of INR 2,22,623 crore is set out for FY 2022-23.

Ratio Decidendi

Arbitral Tribunal does not have authority to direct an interim deposit of the amount in dispute if there is serious dispute with respect to payment liability

A division bench of the Supreme Court, while partly allowing the appeal against the impugned order of the High Court, has held that when the payment liability is severely disputed before the Arbitral Tribunal, the Arbitral Tribunal in such cases cannot issue directions for an interim deposit of amount until the disputed facts are adjudicated.

Brief facts

The Respondent had leased out its premises to the Appellant to run its restaurant and bar business by executing a lease agreement ('**Agreement**'). Thereafter, on account of some disputes, the Agreement was terminated by the

Respondent, and the disputes were referred before an Arbitral Tribunal. The Respondent had filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 ('**Arbitration Act**') seeking deposit of the rental amount due and payable for the period between March 2020 to December 2021. Despite the disputes raised by the Appellant, invoking the clause relating to *force majeure* during the lockdown period, the Arbitral Tribunal granted an interim order in favour of the Respondent, directing the Appellant to deposit 100% of the amount due in a fixed deposit (FD) account in a public sector bank. The appeal against this order of the Arbitral Tribunal was also dismissed by the Delhi High Court. Therefore, the present appeal was preferred.

Submissions by the Appellant:

- It was submitted that neither the Arbitral Tribunal nor the High Court took into account the lockdown and its consequences. It was submitted that the *force majeure* clause present in the Agreement should have been applicable in the current case.
- When the liability to pay the rentals during the lockdown period while applying the *force majeure* clause was seriously disputed by the Appellant before the Arbitral Tribunal, such an order to deposit 100% rental amount by way of an interim measure under Section 17 of the Arbitration Act, ought not to have been passed by the Arbitral Tribunal.
- The counsel further submitted that the order passed by the Arbitral Tribunal requires to follow principles applicable for exercise of general power to grant an interim injunction under Order XXXVIII Rule 5 of the Civil Procedure Code, 1908 (CPC), and thus such order could not have been passed without satisfying the conditions provided therein.

Submissions by the Respondent:

- The Counsel for the Respondent submitted that the *force majeure* clause of the lease agreement would not be applicable in the current case as the Appellant continued to occupy possession of the premises despite imposition of lockdown and the following adversaries. Therefore, the liability of the Appellant to pay the rental amount continued.
- Further, the counsel submitted that neither Order XXXVIII Rule 5 nor Order XXXIX Rule 1 is applicable in the current case as, in the instant case, the orders were for directing the lessee to deposit the rental amount due and payable while the lessee continues to be in possession, and thus there was no duty to observe precedent conditions.

Decision

Observing that the Arbitral Tribunal was yet to adjudicate upon the application of *force majeure* clause in the Agreement to the current case, the Supreme Court held that the Tribunal cannot pass an interim order requiring the Appellant to deposit complete amount of rent in arrears as an interim measure under Section 17 of the Arbitration Act, particularly when the legal standing of the complete dispute was unfounded. Instead, the Supreme Court ordered the Appellant to pay due rent for those periods when his business was operating on partial capacity. Thus, the Court held that when a serious dispute is yet to be adjudicated, the Arbitral Tribunal *via*

its power under Section 17 of the Arbitration Act cannot direct for deposit of any amount/percentage of sum regarding the dispute in question.

[*Evergreen Land Mark Pvt. Ltd.* v. *John Tinson and Company Pvt. Ltd. and Anr*. – Judgment dated 19 April 2022 in Civil Appeal No. 2783 of 2022, Supreme Court]

Territorial jurisdiction of Adjudicating Authority under Insolvency and Bankruptcy Code, 2016 cannot be restricted by an agreement between the parties

The National Company Law Appellate Tribunal ('**NCLAT**'), New Delhi Bench has held that the territorial jurisdiction of the Adjudicating Authority for matters pertaining to the Insolvency & Bankruptcy Code, 2016 ('**Code'/ 'IBC'**) cannot be restricted or taken away by an agreement between parties over the subject matter.

Brief facts

A facility agreement had been executed between the Corporate Debtor and the Respondent, as per which only Mumbai courts exercised jurisdiction to try any matter relating to the facility agreement ('**Agreement**'). The Registered Office of the Corporate Debtor was located in New Delhi. On account of dues payable under the Agreement, the Respondent had preferred an application under Section 7 of the Code for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, before the National Company Law Tribunal, Delhi (NCLT), Principal bench, which had been duly admitted. Aggrieved by the same, one of the suspended directors of the Corporate Debtor preferred an appeal before NCLAT stating that the NCLT, Principal Bench exercised no jurisdiction over the dispute.

Submissions

The counsel for the Appellant argued that as per the Agreement executed between the parties, only the '*Courts at Mumbai*' had the jurisdiction in respect of any matter under the Agreement. Thus, the Principal Bench cannot exercise jurisdiction over the dispute and the matter is to be tried before courts in Mumbai.

Decision

The NCLAT held that the Adjudicating Authority, in relation to Insolvency Resolution under the Code, shall be the National Company Law Tribunal having territorial jurisdiction over the place where the Registered Office of the Corporate Debtor is located. The provisions of the Code have to be given overriding effect by virtue of Section 60(1) read with Section 238 of the Code. It was further held that parties cannot rely on their agreements for filing application under Section 7 of the Code. Thus, the provisions of Section 60(1) read with Section 238 of the Code shall be overriding the Agreement to the above extent. Since the Corporate Debtor's registered office was situated in Delhi, the territorial jurisdiction to entertain such application was with the NCLT, at New Delhi. The NCLAT dismissed the appeal and confirmed the acceptance of the application filed by the Respondent before the NCLT, Principal Bench, New Delhi.

[*Anil Kumar Malhotra* v. *Mahindra & Mahindra Financial Services Ltd.* – Order dated 19 April 2022 in Company Appeal (AT) (Insolvency) No. 415 of 2022, National Company Law Appellate Tribunal]

News Nuggets

Arbitration – 'Group of Companies' doctrine for inclusion of non-signatories – Supreme Court refers issue to Larger Bench

Dealing with an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('**Arbitration Act'**), the 3-Judge Bench of the Supreme Court has doubted the correctness of its earlier decision in the case *Chloro Controls India Pvt. Ltd.* v. *Seven Trent Water Purification* and number of subsequent decisions following it on application of the 'Group of Companies Doctrine'. The Apex Court had in Chloro Controls case earlier held that arbitration is possible between a signatory and a third party (non-signatory), however, to proceed with such arbitration, there must be a legal relationship between the non-signatory and the party to the arbitration agreement.

The Court now in the case *Cox and Kings Limited* v. *SAP India Private Limited* [Judgment dated 6 May 2022] has held that the areas which were left open by the Court in *Chloro Control* have created a certain broad-based understanding of the doctrine, which may not be suitable and would clearly go against the concepts of distinct legal identities of companies and party autonomy itself. According to the Court, concepts like single economic entities are economic concepts difficult to be enforced as principles of law. It was also of the view that the line of judgments by the Court, beginning with *Chloro Controls*, premised more on convenience and economic efficiency in resolution of disputes rather than a consistent and clear legal doctrine which respects party autonomy and intent. It said that hence there was a clear need for having a re-look at the ingredients concerning the doctrine.

Insolvency – 'CIRP costs' to include salaries of only employees who worked during CIRP

The Supreme Court has held that the dues towards the wages/salaries of only those workmen/employees who worked during the Corporate Insolvency Resolution Process ('CIRP') are to be included in the CIRP costs and are entitled to have first priority. The Apex Court, in *Sunil Kumar Jain* v. *Sundaresh Bhatt* [Judgment dated 19 April 2022], observed that as per Section 5(13) of the Insolvency and Bankruptcy Code, 2015 ('IBC'), 'insolvency resolution process costs' shall include any costs incurred by the Resolution Professional (RP) in running the business of the corporate debtor as a going concern. Further, on the contention that the RP is under a mandate to manage the operations of the corporate debtor as a going concern, the Apex Court referred to Section 20 of IBC and held that if it is found that the corporate debtor was not a going concern during the CIRP, despite best efforts of the RP, it cannot be presumed that the Corporate Debtor was still a going concern during the CIRP period. The Court was of the view that it depends on the facts of each case.

Related party transactions – Bar of voting under Section 188 of Companies Act, 2013 operates only at the time of entering into a contract

The Supreme Court has upheld the view taken by the Securities Appellate Tribunal ('**SAT'**) that the bar on voting as per Section 188 of the Companies Act, 2013 on related parties operates only at the time of entering into a contract or arrangement. In the facts of the case, a related party transaction was approved by a special resolution where the related parties

abstained from voting. However, the related parties voted in the subsequent extra-ordinary general meeting for rescinding the earlier resolution. This was objected to by SEBI alleging violation of Regulation 23 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. The SAT however found no fault in said parties voting in the recalling/rescinding of the earlier resolution. The Apex Court in *SEBI* v. *R.T. Agro Private Limited* [Order dated 25 April 2022] was of the view that the view taken by the Appellate Tribunal was a plausible view of the matter as nothing of ill-intent on the part of the respondents was established.

ESI Act – Conveyance allowance not includible in 'wages'

Observing that 'conveyance allowance' is equivalent to traveling allowance, the Supreme Court has held that any conveyance allowance/traveling allowance is to be excluded from the definition of 'wages' for the purpose of Section 2(22)(d) of the Employees' State Insurance Act, 1948. The Apex Court, in *Talema Electronic India Private Limited* v. *Regional Director, ESI Corporation* [Order dated 25 April 2022], hence quashed the High Court decision to set aside the order passed by the ESI Court, and upheld the ESI Court's decision that the conveyance allowance paid to the employees by the company (appellant here) is not to be included in the wages.

RERA registration required even if occupancy certificate received before 1 May 2017

Observing that there is a difference between the 'completion certificate' and 'occupancy certificate', as carved out in the Real Estate (Regulation and Development) Act, 2016 ('**Act**') itself, the Punjab and Haryana High Court has held that unless a real-estate developer had obtained a completion certificate for the project in question prior to the date that Section 3 of said Act came into effect, i.e. before 1 May 2017, it was necessarily required to get itself registered with the Real Estate Regulatory Authority ('**RERA**'). The Court in *Experion Developers Private Limited* v. *State of Haryana* [Order dated 20 April 2022] was of the view that simply obtaining an occupancy certificate or having applied for such certificate, in terms of the Haryana Building Code, 2017, would not take the petitioner-developer outside the purview of the jurisdiction of the RERA. The Court however left the question as to whether an occupancy certificate issued for any particular phase as completed, is to be treated as a completion certificate in terms of Section 2(q) of the Act, to be decided by the Appellate authority under the Act.

Minimum Wages Act – Notification fixing minimum rates of wages, issued after a conscious decision, cannot be corrected later under Section 10

The Supreme Court has quashed the errata notification issued by the State of Goa modifying/correcting its earlier notification through which it had fixed the rates of minimum wages in various sectors. The Court observed that a conscious decision was taken by the State Government after consultation with the Minimum Wage Advisory Board and thereafter the minimum wages were revised and determined in the exercise of power under Section 4(1)(i) of the Minimum Wages Act, 1948. It was of the view that therefore, it cannot be said that there was any arithmetical or clerical mistake, which could have been corrected in the exercise of powers under

Section 10. In the present case of *Gomantak Mazdoor Sangh* v. *State of Goa* [Judgment dated 10 May 2022], the appellant had contended that once a conscious decision was taken, it cannot be said that there was any clerical mistake. The State had contended that there was a mistake issuing the original notification and instead of clause (iii), clause (i) was mentioned and therefore, by the subsequent errata notification, the same was sought to be corrected.

Allowing the appeal, the Apex Court also observed that even by applying Section 21 of the General Clauses Act, 1897, which deals with the power to issue, add to, amend, vary or rescind notifications, orders, rules or bye-laws, and assuming that the State was having the power to amend, vary or rescind the notification, in that case also such power can be exercised in a like manner, namely after following the procedure, which was followed while issuing the original notification itself.

Deferment charges on liquidated damages not payable if later damages itself not imposed

The Delhi High Court has held that deferment charges, as agreed to be paid to defer the collection of the liquidated damages in case of non-performance of a contract, are not payable once the liquidated damages were itself not imposed subsequently. Noting that the Arbitral Tribunal had found that the deferment charges were in the nature of interest on the liquidated damages, the High Court in *Haryana Vidyut Prasaran Nigam Limited* v. *Cobra Instalaciones Y Services SA* [Order dated 6 May 2022] was of the view that there was no question of recovery of interest or the deferment charges where there is no liability to pay the principal amount, i.e., the liquidated damages. Dismissing the petition filed for setting aside ofthe arbitral award, the Court rejected the contention that the deferment charges were a separate charge as agreed between the parties for deferring the collection of liquidated damages and that the appellant would be entitled to recover the deferment charges, irrespective of whether the liquidated damages are finally levied or not.

Insolvency – Moratorium provisions apply only to corporate debtors, natural persons remain liable under Section 138 of NI Act

A three-Judge Bench of the Supreme Court has held that the moratorium provisions under Section 14 of the Insolvency and Bankruptcy Code, 2016 ('**Code'**) would be applicable only to the corporate debtors concerned. According to the Court, the directors of the corporate debtor would continue to be statutorily liable under Section 138 and Section 141 of the Negotiable Instruments Act, 1881 ('**NI Act**'). The Court in *Narinder Garg* v. *Kotak Mahindra Bank* [Judgment dated 28 March 2022] placed reliance upon *P. Mohanraj & Others* v. *Shah Brothers Ispat Private Limited,* (2021) 6 SCC 258, to hold that irrespective of whether the original dues of the corporate debtor are later covered under the duly approved resolution plan, the trials under the NI Act will not be obliterated by virtue of such approved plan.

Arbitral Tribunal can grant post-award interest on the interest component already included in the awarded sum

A Division Bench of the Supreme Court has upheld the Arbitral Tribunal's award granting post-award interest @18% p.a. on the amount of interest already included in the

award sum. The Court, in the case of *Indian Oil Corpn. Ltd* v. *U.B. Engineering Ltd and Anr.* [Judgment dated 12 April 2022], by relying on its findings in *Hyder Consulting Ltd.* v. *Governor, State of Orissa*, (2015) 2 SCC 189, stated that Section 31(7) of the Arbitration and Conciliation Act, 1996, which empowers an arbitral tribunal to award interest as a part of the final award, allows for further interest awarded on substantive claims, and that the interest charged thereon is a part of such substantive claim. In the appellate proceedings initiated against the Tribunal's award before the Punjab & Haryana High Court, the High Court had not only struck down the interpretation of the Tribunal but had further reduced the rate of interest charged on the principal sum from 18% to 9%. The Apex Court held the same to be erroneous and restored the interest awarded by the Tribunal.

Contract Act does not conceive sale of pawn by pawnee to self

The Supreme Court has observed that the Contract Act, 1872 does not conceive of sale of the pawn to self by the pawnee and consequently, the pawnor's right to redemption in terms of Section 177 of the Contract Act survives till 'actual sale'. It also held that registration of the pawn, that is the dematerialised shares in the instant case, with the pawnee as the 'beneficial owner' does not have the effect of sale of shares by the pawnee. The Apex Court, in *PTC India Financial Services Limited* v. *Venkateswarlu Kari* [Judgment dated 12 May 2022], was hence of the view that the pledge was not discharged or satisfied either in full or in part and hence, the pawnor would be entitled to redeem the pledge before sale to a third party is made.

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