

**February 2024**  
*\*Private Circulation Only*

**MDP Legal Updates**

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February, 2024  
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## **MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE CREDIT FACILITIES AGGREGATING TO INR 450,00,00,000/- AVAILED FROM A PUBLIC SECTOR BANK**

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, advised and acted for a Public Sector Bank and (i) negotiated the terms, drafted the loan documentation including but not limited to the Mortgage Deed, Hypothecation Agreement, Borrower's Undertaking, Corporate Guarantee, Personal Guarantee, Omnibus Counter Guarantee, Undertaking to CIBIL, Letter of Continuity, Letter of Lien, Letter of General Lien and Demand Promissory Note; (ii) drafted the compliance and ancillary documents; and (iii) advised on the applicable stamp duty and opined on the enforceability of the executed documents in respect of the loan documentation for credit facilities of an aggregate amount of Rs. 450,00,00,000/- (Rupees Four Hundred and Fifty Crores Only) to a company engaged in the business of infrastructure construction.

## **MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE TERM LOAN FACILITY AGGREGATING TO INR 250,00,00,000/- AVAILED FROM A PUBLIC SECTOR BANK**

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, advised and acted for a Public Sector Bank and (i) negotiated the terms, drafted the loan documentation including but not limited to the Facility Agreement, Deed of Hypothecation, Power of Attorney for Deed of Hypothecation, Escrow Agreement, Indenture of Mortgage and Security Trustee Agreement; (ii) drafted the compliance and ancillary documents; and (iii) advised on the applicable stamp duty and opined on the enforceability of the executed documents in respect of the loan documentation for a rupee term loan under the lease rental discounting scheme of an aggregate amount of Rs. 250,00,00,000/- (Rupees Two Hundred and Fifty Crores Only) to a limited company engaged in the business of real estate development.

## **MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE FACILITIES AGGREGATING TO INR 100,00,00,000/- AVAILED FROM A PUBLIC SECTOR BANK**

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, advised and acted for a Public Sector Bank and (i) negotiated the terms, drafted the loan documentation including but not limited to the Facility Agreement, Deed of Hypothecation, and Guarantee Agreement; (ii) drafted the compliance and ancillary documents; (iii) advised on the applicability of Section 185 of the Companies Act, 2013 and (iv) advised on the applicable stamp duty and opined on the enforceability of the executed documents in respect of the loan documentation for credit facilities of an aggregate amount of Rs. 100,00,00,000/- (Rupees One Hundred Crores Only) to a leading limited company in the power sector.

## **The Insolvency and Bankruptcy Board of India (“IBBI”) has amended the IBBI (Liquidation Process) Regulations, 2016, with effect from 12.02.2024.**

The amendments have been introduced to strengthen the regulatory framework of liquidation process by ensure accountability and bolstering the confidence of stakeholders in the liquidation process.

### **Key Amendments**

1. The liquidator may reduce the reserve price by up to 25% for assets with existing valuation of the Corporate Insolvency Resolution Process (CIRP) on one occasion with the approval of the Stakeholders' Consultation Committee (SCC) at any time during the process. For assets where fresh valuation is conducted during liquidation, the reserve price can be reduced by up to 10% in subsequent auctions with SCC's approval.
2. The liquidator may sell the assets of the corporate debtor (CD) by means of private sale only upon prior consultation with SCC, and the successful buyer shall be confirmed only after such consultation. Further, the option for the private sale of an asset, i.e., 'the asset is sold at a price higher than the reserve price of a failed auction' by the liquidator, has been removed.
3. Liquidators are mandated to convene SCC meetings with a maximum interval of 30 days, to ensure timely decisions and oversight. However, the SCC may reduce the frequency of meetings if deemed necessary, provided that at least a minimum of one meeting is held per quarter. Decisions during these meetings are to be taken based on present and voting members.
4. At every SCC meeting, liquidators are required to present a comprehensive report which inter alia includes progress made in the liquidation process, the consolidated status of all legal proceedings, and cumulative costs incurred during the process. Any cost overruns beyond initial estimates must be justified with a rationalization plan.

5. For fresh asset valuations, liquidators are required to facilitate meetings where registered valuers explain their methodology and reasons for significant deviations, if any, from the CIRP valuations. Further, the liquidator shall share the valuation reports with the SCC members after obtaining a confidentiality undertaking.
6. Before initiating or continuing any legal proceedings, liquidators must consult the SCC, presenting the economic rationale.
7. The liquidator, upon considering the viability, must consult the SCC before deciding to run the affairs of the corporate debtor as a going concern. Further, the sale of the CD as a going concern cannot be put on an auction exclusively after the first auction, and in case of a failed auction, the liquidator shall review the marketing strategy in consultation with the SCC.
8. Prior to applying for early dissolution, the liquidator must seek the SCC's views and recommendations, providing a detailed report in the application to the Adjudicating Authority (AA).
9. To capture additional details regarding the realisation and distribution made during the process, the Compliance Certificate under Form H has been modified
10. During the period after submission of the final report but before a corporate debtor is dissolved, stakeholders claiming entitlement to any amounts deposited in the Corporate Liquidation Account can apply to the liquidator for withdrawal. Upon receiving such a request, the liquidator shall verify the claim and request the Board to release the funds to him/her for onward distribution
11. The liquidator shall file the proposal of compromise or arrangement only in cases where the Committee of Creditors made such a recommendation during the CIRP and such proposal shall not be filed after the expiry of thirty days from the liquidation commencement date.
12. The liquidator may extend the payment period of balance sale consideration beyond ninety days, after consultation with the SCC.

13. Wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor
14. The Form A for reporting consultation with the stakeholders has been modified to capture the meetings details such as the interval between two meetings, dissent by the SCC etc.

## **SEBI slaps Rs 7.4-crore fine on 5 Zee Business guest experts, 10 others**

SEBI issued orders of action against 15 guest experts of the Zee Business channel for their indulgence in unlawful trading. They made unlawful gains to the extent of ₹7.41 crore from such trades and the profit was shared among guest experts as per prior understanding. SEBI said in its 127 page order that “facts of this case demonstrate a clear scheme of manipulation to harm the interest of investors by misguiding them to take position in securities so that profit makers could make profit at the cost of such investors.” Unlawful gains made by these profit makers come, from the pockets of innocent investors who follow the advice of guest experts unaware of the fraudulent scheme. Present proceedings are stemming from an investigation carried out by SEBI to examine the high correlation between the trading activities of certain entities and stock recommendations given by guest experts shown in different shows broadcasted on the television channel Zee Business during the period starting from February 1, 2022 and ending with December 31, 2022. Considering the prima facie pattern of correlation of trades of suspect entities with recommendations made by guest experts on Zee Business, further investigation was undertaken in order to gather evidence of possible violation of SEBI rules. Search and seizure operation was carried out on the premises after obtaining a Court order and certain electronic devices were seized and statements were recorded under oath.



## SEBI MULLS RELAXATION IN TIMELINES FOR FPIs' material change disclosures

SEBI proposal to relax timelines for disclosure of material changes by Foreign Portfolio Investors (FPIs). The regulator also suggested a framework for providing flexibility to FPIs in dealing with their securities after expiry of their registration. Type I includes changes that require FPIs to seek fresh registration, or which affect any privileges or exemption available to such foreign investors and Type II includes all other material changes. The regulator has proposed that FPIs should report Type I changes within seven working days and provide supporting documents within 30 days and Type II changes require notification and supporting documents within 30 days.

At present, FPIs get time up to seven working days to submit information to it with regard to any material change in its structure or ownership or control or investor group. Some of the Type 1 material changes include change of jurisdiction; name change on account of acquisition, merger, demerger, and ownership. The suggestions came after market participants faced challenges in meeting the prescribed timelines for disclosures, particularly regarding changes in beneficial owners. There are no regulatory guidelines for handling securities that remain in FPI demat accounts after the registration expires or after the prescribed timelines for liquidation, nor for dealing with securities written off by FPIs.

## **SEBI cautions investors against entities falsely claiming to be registered intermediaries**

SEBI has cautioned investors against unscrupulous unregistered entities promising high returns and asked them to do proper checks before investing their money. The regulator observed that “rising trend of unscrupulous entities and online platforms that falsely claim to be registered with SEBI as intermediaries. These entities often entice the general public by showcasing fake certificates purportedly issued by SEBI and promising or implying assured, high returns on investments”. Regulator also made investors aware that investments offering high returns, involve high risk, including fraud, and there can be no guarantees of assured returns in securities market. The regulator asked investors to be cautious about high –return investment because they come with high risk, check enforcement action by the regulator on its website and be well informed to safeguard themselves.

## **Party Agreeing To Constitute Arbitral Tribunal Forfeits Right To Oppose Appointment Based On Non- Fulfilment Of Pre-Arbitral Process: Delhi High Court**

**Case Title: Surya Alloy Industries Ltd Vs Union Of India And Anr - ARB.P. 655/2023**

The Delhi High Court single bench of Justice Sachin Datta held that once a party has agreed to constituting an arbitral tribunal, it is precluded from subsequently opposing the appointment of an arbitrator based on the alleged non-fulfillment of pre-arbitral steps.

The High Court noted that the Respondents agreed to constitute the arbitral tribunal in a letter. It noted that Respondents' request for waiver of clause 12(5) of the Arbitration Act and after the Petitioner's refusal do so, the Respondents were obligated, as per the arbitration agreement, to send a panel of arbitrators to the Petitioner within 60 days from the demand for arbitration. The High Court held that this crucial step was not been taken by the Respondents.