

March, 2024
**Private Circulation Only*

MDP Legal Updates

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MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE FACILITIES AGGREGATING TO INR 750,00,00,000/- 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 and drafted the loan documentation including but not limited to the Facility Agreement, Deed of Hypothecation, Power of Attorney for Deed of Hypothecation, Escrow Agreement 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 credit facilities of an aggregate amount of Rs. 750,00,00,000/- (Rupees Seven Hundred and Fifty Crores Only) to a private limited company engaged in the construction business.

MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE FACILITIES AGGREGATING TO INR 645,00,00,000/- 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 and drafted the loan documentation including but not limited to the Facility Agreement, Unattested Deed of Hypothecation, Power of Attorney for Deed of Hypothecation, Escrow Agreement, Security Trustee Agreement and Personal Guarantee; (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. 645,00,00,000/- (Rupees Six Hundred and Forty Five Crores Only) to a private limited company engaged in the leasing business.

MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE CREDIT FACILITIES AGGREGATING TO INR 142,00,00,000/- AVAILED FROM A PRIVATE SECTOR BANK

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, advised and acted for a Private Sector Bank and (i) negotiated the terms and drafted the loan documentation including but not limited to the Facility Agreement, Unattested Deed of Hypothecation, Power of Attorney for the Unattested Deed of Hypothecation, Deed of Guarantee and Indenture of Mortgage; (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. 142,00,00,000/- (Rupees One Hundred and Forty Two Crores Only) to a company engaged in the business of construction of hotels, resorts and restaurants.

MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE TERM LOAN FACILITY AGGREGATING TO INR 50,00,00,000/- 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 and drafted the loan documentation including but not limited to the Hypothecation of Vehicles Agreement, Hypothecation of Movables, Personal Guarantee, Corporate Guarantee, Interest Agreement, Undertaking for Equipment Finance, Letter of Continuity, Demand Promissory Note, Undertakings and Declarations; (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 (Equipment Finance) of an aggregate amount of Rs. 50,00,00,000/- (Rupees Fifty Crores Only) to a private limited company engaged in the business of infrastructure construction.

MDP & PARTNERS CONDUCTED THE TITLE DUE DILIGENCE IN RESPECT OF A TECH PARK LOCATED IN CHENNAI.

Acted for a public sector bank and conducted the due diligence of tech park constructed on a land parcel admeasuring approximately 5 acres in Taluk Tambaram, Chennai belonging to a private limited company engaged in the business of real estate development.

MDP & PARTNERS CONDUCTED THE TITLE DUE DILIGENCE OF LAND AND BUILDINGS SITUATED IN NEW OKHLA INDUSTRIAL DEVELOPMENT AREA.

Acted for a public sector bank and conducted the due diligence of a land parcel admeasuring approximately 8,000 square meters along with the building standing thereon situated in New Okhla Industrial Development Area, District Gautam Buddh Nagar, belonging to a private limited company engaged in the business of real estate development.

MDP & PARTNERS SUCCESSFULLY REPRESENTED BANK OF BARODA IN A COMMERCIAL SUIT FILED BY NOWROSJEE WADIA & SONS LIMITED.

MDP & PARTNERS successfully represented Bank of Baroda (“**Defendant**”) in a Commercial Suit filed by Nowrosjee Wadia & Sons Limited (“**Plaintiff**”), whereby the Plaintiff had challenged the invocation of Corporate Guarantee given by the Plaintiff to the Defendant at the instance of Go First Airlines (“**Borrower**”) to the tune of Rs.500 crores and for seeking injunction against the Defendant from proceeding in accordance with law pursuant to such invocation.

It was argued on behalf of the Defendant that the reliefs as sought are not maintainable as the same would have a cascading effect and would eventually oust the jurisdiction of the appropriate forum to deal with the issue of invocation i.e. invocation of the Corporate Guarantee. That restraining the Defendant to take recourse to any other proceedings which the Defendant is entitled to in law, is wholly unjustifiable and contrary to the public policy. It was also argued that if the reliefs were granted to the Plaintiff, every defaulter would then resort to these means and burden the Court for such injunctory reliefs.

Plaintiff however pleaded that they apprehend that the Defendant would initiate proceedings before the NCLT and the Plaintiff would not have any defense as the NCLT would not go into disputed factors.

However, the Hon’ble Court however was not convinced by the arguments put forth by the Counsel for the Plaintiff and has accordingly passed detailed Order recording that the Bank is at liberty to initiate such legal proceedings as may be available in law and therefore interim reliefs have been refused to the Plaintiff.

Bank of Baroda was represented through Mr. Nishit Dhruva (Managing Partner) and Ms.Niyati Merchant (Associate Partner) of MDP & Partners

MDP & PARTNERS SUCCESSFULLY REPRESENTS AXIS FINANCE LIMITED BEFORE THE HON'BLE BOMBAY HIGH COURT

At the instance of Axis Finance Limited, the High Court has restrained education Trust- Gifted Education and Research Foundation from disposing of their assets after defaulting on a loan worth Rs.35 crore given by Axis Finance. In its plea, Axis had sought urgent intervention from the court to protect and preserve the outstanding loan amount pending the hearing and final disposal of the Arbitration Petition.

This comes after Axis Finance filed a commercial Arbitration petition under Section 9 of the Arbitration and Conciliation Act in the Bombay High Court. Section 9 provides reservation or inspection of any property or thing which is the subject matter of the dispute in arbitration. Axis stated that despite receiving the entire loan amount, Gifted Education did not comply with the terms and conditions of the loan agreement signed by the two. Under the loan agreement, the tenor mentioned was 8 years from the date of initial disbursement and rate of interest of 9.75% per annum which was payable quarterly.

Moreover, under the terms and conditions of the loan Agreement, security was to be created for securing the loan which had been availed of by the educational institution. The security included the creation of a mortgage on the said property which was the building adjoining the school premises of 2 acres and an area built-up area of 116568 sq. ft. owned by Gear Foundation.

Pertinently, in addition to this Dr Muthusamy Srinivasan(Founder) and a respondent in the matter by way of Deed of Guarantee in August 2022 had given a personal guarantee in favour of Axis Finance.

A bench led by Justice R I Chagla while restraining GEAR from selling or disposing of any of its assets has clarified that the educational institution would have to disclose the bank account details along with all other movable/immovable assets held by it.

Axis Finance Limited was represented by Advocates- Mr.Nishit Dhruva (Managing Partner, Niyati Merchant (Associate Partner) of MDP & Partners

MDP & PARTNERS SUCCESSFULLY REPRESENTED 67 HOMEBUYERS IN A SECTION 7 PETITION FILED BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL.

The National Company Law Tribunal (NCLT) has admitted real estate developer Snehanjali S. B. Developers Pvt Ltd for insolvency. The tribunal has appointed Dinesh Kumar Deora as the interim resolution professional for the company. Snehanjali's promoters—Jagdish and Gautam Ahuja – have been under the scanner of various police and investigating agencies for allegedly cheating more than 1,000 homebuyers.

A plea was filed by nearly 67 prospective homebuyers, who as financial creditors dragged the realtor to the dedicated bankruptcy tribunal. Under the 2018 amendment to the Insolvency and Bankruptcy Code, homebuyers have been given the stature of financial creditors.

“The default has occurred on part of the corporate debtor (Snehanjali) due to non-fulfilment of its obligations under the sale agreements executed with the financial creditors. Hence, it is found to be a fit case for directing initiation of CIRP in respect of the corporate debtor”, a bench led by justices K R Sajikumar and Sanjiv Dutt said.

Incorporated in 2019, the developer was earlier under a partnership with S.B. Developers. In 2015, Snehanjali started collecting money from home buyers against booking of flats/units in respect of a redevelopment project (O2 Project) located on Sion-Chembur Road, Mumbai. It issued letters of allotment and also entered into agreements for sale in favour of the home buyers from time to time. Thereafter, the project was to be completed initially by June, 2019. However, the real estate developer was unable to complete the project till June, 2023. The developer neither handed over possession of the respective flats/units to the home buyers nor refunded the amounts with interest. Aggrieved by the situation an appeal was lodged by them seeking initiation of insolvency proceedings against the company.

The homebuyers submitted that collectively they had invested more than ₹81 crore in the project which was duly acknowledged by the developer. The timelines were extended from 2019 to 2023; however, despite indefinite extensions the project remains to be completed, they added. July 2023 was set as the date of default in the application.

Niyati Merchant, Associate Partner at MDP and Partners, representing the homebuyers submitted that the home buyers invested their lifetime savings, obtained loans and made financial arrangements, relying on the promises made by the corporate debtor for modern amenities and facilities as well as timely completion of the project. Since the project was incomplete, Merchant added that it led to causing distress to the home-buyers who received neither possession nor refunds till date.

On the other hand, Counsel for the developer argued that Snehanjali is a solvent company. It is pointed out that the corporate debtor had repaid the loan of Kotak Mahindra Investments Limited of around ₹68 crores and obtained its “No Dues Certificate” dated August 2023 thereby confirming that it does not have any charge over the ‘O2’ Project.

SEBI PASSES ORDER AGAINST CIG REALTY FUND

We recently represented SEBI before the Hon'ble Securities Appellate Tribunal wherein the order passed in the matter of CIG Realty Fund (CIGRF) was challenged by the Trustees of the Fund.

There were various non-compliances observed, which include non-winding up of schemes, non-liquidation of the fund's assets and failure to distribute monies to the investors. It was alleged that the schemes were extended beyond the permissible limit as mentioned in the Private Placement Memorandum. The aggrieved investors made complaints to SEBI to get their grievances redressed however, no response was received from the Fund. An earlier SEBI order of 2019 had already imposed a monetary penalty with respect to the first two schemes. Despite the order, no steps have been taken by the Fund to wind up the schemes till date.

As per the 2023 SEBI Order, monetary penalty of Rs. 10 lakh each has been imposed upon these Trustees for the new scheme along with directions of winding up all the 3 schemes as well as imposing a restriction on taking up new assignments as Trustees of Alternative Investment Fund and associating themselves with any SEBI registered intermediary for two years.

The matter is slated to be heard next on April 22, 2024.

SAT STAYS SEBI ORDER AGAINST VEDANTA FOR OUTSTANDING DIVIDEND PAYMENT

Through its recent order, SEBI had directed Vedanta to pay Cairn UK Holdings Ltd. (CUHL) Rs. 77.62 crore along with a simple interest of 18% per annum, for delayed payment of dividend. However, SAT has granted a conditional stay to Vedanta.

In April 2017, CUHL had raised a complaint with Sebi alleging nonpayment of dividend of Rs 340.64 crore by Cairn India Limited (CIL) (merged with Vedanta on April 11, 2017) in respect of 184,125,764 equity shares of CIL owned by CUHL. CIL had submitted that all outstanding unpaid dividends of Rs.666.53 crore to the account of CUHL had been paid to the Income Tax Department (“ITD”) against recovery notice from Deputy Commissioner of IT, International Taxation, New Delhi, issued under Section 226(3) of the Income Tax Act, 1961, on June 19, 2017 and June 20, 2017. With the matter before the IT department, SEBI closed the complaint of CUHL. CUHL approached SAT, who then asked Sebi to reconsider the complaint. The tribunal agreed in part with Sebi's ruling and said that CUHL should approach the income-tax authorities for return of the dividend amount. But the tribunal added that if Cairn India (now Vedanta India) had not released the dividends when there was no embargo on it, then Sebi should inquire into this and take action if there has been a violation. The IT Department's order that acted as restraint on payment of dividend had expired on March 31, 2016. CIL had contended that the IT Department letters that CUHL submitted as proof of lifting of this restraint were only internal departmental communications, and therefore could not be acted upon. The Sebi order stated that the regulator does not find any merit in such a contention.

BSE AND NSE LAUNCH BETA VERSION OF T+0 SETTLEMENT ON MARCH 28

On March 21, 2024 SEBI issued the framework for implementing the beta version of same day or T+0 settlement on an optional basis, in addition to the T+1 settlement cycle.

To begin with, the beta version will be for a limited set of 25 scrips and with a limited number of brokers. The price in the T+0 segment will operate with a price band of +100 basis points from the price in the regular T+1 market. This band will be re-calibrated after every 50 basis point movement in the underlying T+1 market.

SEBI SUSPENDS REGISTRATION OF RESEARCH ANALYST HARINDER KUMAR SAHU

Sahu is a FinFluencer and has lakhs of followers across various social media channels for his stock recommendations. His account has been suspended by SEBI on March 21, 2024 for a period of 3 months. The Regulator has found him in violation for not publishing the investor charter and investor complaints on his website, for not holding the necessary certification for a period of time, for making unverifiable claims of 80-90 percent accuracy with various products offered, for trading in securities that he recommended through his Telegram channel within a time frame that isn't allowed by law, for not disclosing material information including his financial interest in the securities he was recommending, for earning from referral income without disclosing it and making misleading claims such as "No loss options strategy! 500% profitable strategy", and not maintaining a record for recommendations he was making on Telegram channels. Also, by way of his own admission, Sahu informed the regulator that the compliance audit was not done for two fiscals – FY 2021 and 2022.

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