

April 2023

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MDP Legal Updates

**MDP House, 19 Bank Street, Cross Lane,
Fort, Mumbai- 400 001**

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MDP & PARTNERS ACTED AS LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE TERM LOAN FACILITY AGGREGATING TO INR 355,00,00,000/- AVAILED FROM A PUBLIC SECTOR BANK

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Dhruvi Shah (Senior Associate) of MDP & Partners, Advocates & Solicitors, (i) acted as the legal advisors for the lenders legal agent being a public sector bank, (ii) negotiated the terms, drafted the loan documentation including but not limited to the Facility Agreement, Escrow Agreement, Security Trustee Agreement, Deed of Indemnity, Unattested Deed of Hypothecation, Power of Attorney for Hypothecation, Personal Guarantee, Declaration Cum Indemnity; and (iii) advised on the applicable stamp duty, opined on the compliance of the conditions precedent and opined on the enforceability of the executed documents in respect of the facilities being availed by a company engaged in the business of real estate.

MDP & PARTNERS REPRESENTED SEBI IN AN APPEAL AGAINST SEBI ORDER DIRECTING THE APPELLANTS TO REFUND THE AMOUNT COLLECTED BY RUNNING AN UNREGISTERED INVESTMENT ADVISORY SERVICES

MDP and Partners represented SEBI in an appeal against the SEBI WTM order dated January 18, 2022 directing the appellants to refund the amount collected by running an unregistered Investment Advisory service.

The appellants challenged the order of the WTM and contended that the Respondent had exceeded its powers in directing a refund of the amount collected and therefore the order is liable to be set aside. It was further contended that the appellants were carrying on the business of investment advisory services, stock broking and internet services. A certificate from a Chartered Accountant was also presented showing a bifurcation of the amount collected under these heads.

SAT held that directions under 11 and 11B can be issued and read with IA Regulations and ICDR Regulations which provide a refund of the amount collected from the investors. It was also held that a Certificate from the Chartered Accountant should be placed before the WTM for scrutiny. Accordingly, SAT directed the appellants to file an appropriate application along with an affidavit within 4 weeks from the order along with proof of the amounts collected under investment advisory services, stock broking and internet services. SAT also directed the WTM to consider the application made by the appellant and pass appropriate orders within six weeks.

Nishit Dhruva, Managing Partner, Ravishekhar Pandey, Senior Associate, Shefali Shankar, Associate and Rasika Ghate, Associate appeared for MDP and Partners in the matter.

Case: M/s. Cash Cow Broking and Advisory Solutions & Ors. v. SEBI (Appeal No. 234 of 2022)

SEBI DISMISSED AN APPEAL FILED AGAINST AO ORDER FOR VIOLATION OF SAST REGULATIONS.

MDP & Partners represented SEBI in an appeal against the SEBI AO order dated July 27, 2022 imposing a penalty of Rs. 25,00,000 on the Appellant for violation of Regulation 3(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

The appellant was the promoter of a listed company Metkore and had received shares from another promoter. The shareholding of the appellant by virtue of the acquisition of shares increased from 4.26% to 27.36%. According to Regulation 3(3) of SAST Regulations, the appellant was required to make a public offer. However, the appellant failed to make a public announcement. Subsequently, a show cause notice was duly served to the appellant.

The appellant did not appear for the personal hearing nor filed a reply to the show cause notice. The adjudicating officer decided on the matter based on the material available. It was noted that the inter-se transfers between the promoters are exempted under Regulation 10 of SAST Regulations provided they are disclosed as promoters for at least 3 years. The appellant did not satisfy the criteria and accordingly penalty was imposed.

The appeal was dismissed on the ground that no one appeared on behalf of the appellant.

Nishit Dhruva, Managing Partner, Ravishekhar Pandey, Senior Associate, Shefali Shankar, Associate and Rasika Ghate, Associate appeared for MDP and Partners in the matter.

Case: Prashant Boorugu v. SEBI (Appeal No. 933 of 2022)

SAT SET ASIDE AN ORDER OF NSE FOR NON-COMPLIANCE WITH LODR REGULATIONS.

MDP & Partners represented SEBI in an appeal against the SEBI NSE order dated July 12, 2022 imposing a fine of Rs. 2,64,000/- on the Appellant for violation of Regulation 17(IA) Listing Regulations.

Nectar Life Sciences company is listed on NSE. The Non-Executive Independent Director of the Company unfortunately died. Thereafter, the Additional Independent Director of the Appellant Company on the recommendation of the Nomination and Remuneration Committee (“NRC”) appointed another director to fill the casual vacancy. At the time of the appointment, the age of the director was 75 years and 9 months. Accordingly, a fine for violation of Regulation 17(1A) of LODR Regulations was imposed on the Company as according to the regulation, no listed company shall appoint a person unless a special resolution has been passed at the general meeting.

Accordingly, fine was imposed on the Company and an appeal was filed. The Appellant contended that the provisions of the Companies Act 2013 were applicable to fill the casual vacancy at the time of the death of the director of Nectar.

The appeal was allowed and order was set aside. The detailed order is awaited.

Nishit Dhruva, Managing Partner, Ravishekhar Pandey, Senior Associate, Shefali Shankar, Associate and Rasika Ghate, Associate appeared for MDP and Partners in the matter.

Case: Prashant Boorugu v. SEBI (Appeal No. 933 of 2022)

SEBI BANS KARVY STOCKBROKING & ITS PROMOTERS FROM SECURITIES MARKET FOR 7 YEARS & FINES 21 CRORES

SEBI barred Karvy Stock Broking Ltd. and its promoters from the securities market for 7 years and imposed a penalty of Rs. 21,00,00,000/-. SEBI in its order held that Karvy Stock Broking Ltd. was raising funds by pledging clients' securities and by misusing the Power of Attorney (POA) granted to it by clients. Further, the funds by KSBL were diverted to its group entities thereby violating various provisions of law.

For more reading ([Please click here](#))

MDP & Partners Advocates & Solicitors

Tel: +91 22 6686 8900 I Fax: + 91 22 6686 8989

Email: - newsflash@mdppartners.com

Website: www.mdppartners.co.in

Fort Office: MDP House, 19 Bank Street Cross Lane, Fort, Mumbai 400 001.

Bandra Office: 303, 3rd floor, Kanhaiya Building, Linking Road, Bandra West, Mumbai 400 050.

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