



August 2018

# MDP LEGAL UPDATES

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## **MDP** **HIGHLIGHTS**

### MDP AND PARTNERS REPRESENT THE ASSENTING FINANCIAL CREDITORS IN THE MATTER OF MANDHANA INDUSTRIES LIMITED

Axis Bank filed a Miscellaneous Application intervening in the insolvency proceedings pending against Mandhana Industries Limited before the NCLT, Mumbai Bench, wherein Axis Bank (being a dissenting financial creditor) claimed that it was entitled to liquidation value in proportion to its share / nature of charge on the security held by it over the assets of Mandhana Industries Limited. However, the Committee of Creditors had decided that the financial creditors would be paid in proportion to their admitted claim vis – a – vis the total claim. MDP represented the assenting financial creditors and opposed the Miscellaneous Application filed by Axis Bank. The matter has been reserved for orders.

The assenting financial creditors were represented by Mr. Nishit Dhruva (Managing Partner), Mr. Prakash Shinde (Partner), Mr. Rohan Agrawal, Mr. Darshit Dave and Ms. Swati Mardani (Associates) of MDP.

### MDP & PARTNERS REPRESENTED DUFLON INDUSTRIES LIMITED

DUFLON Industries Ltd (“Company”) filed a Summary Suit against FAAB Industries (“Distributor”) for recovery of its outstanding dues with respect to the contractual liability arisen out of the Master Distributor Agreement (“MDA”). Arbitration clause contained in the MDA provides that in case any dispute and difference arises between the parties in relation to the said MDA, the decision of the Company shall be final unless the Distributor within a period of 30 days from the date of communication of the said decision, refers the matter to arbitrator.

Despite being in receipt of the decision of the Company the distributor did not refer the matter to arbitrator. Even after filing Summary Suit and Summons for Judgment, the Distributor through Advocates on their behalf filed appearance within a period of 10 days from the date of receipt of writ of summons, intentionally failed and neglected to file application under section 8 of the Arbitration and Conciliation Act, 1996 (“the Act”).

Subsequently, at a belated stage the distributor filed NMSu/s 8 of the Act and the same was rejected by the Hon’ble High Court stating that the Applicant did not raise any dispute at material time in relations to the damages it had suffered and it has also not invoked the arbitration clause contained in MDA within the specified period. In the circumstances, the NMS is only by way of an afterthought and an attempt to delay the proceedings. In the circumstances, the Hon’ble High held that present NMS has no merits and since the mandatory nature of the provision of the section 8 of the Act will be subject to specific provision of the arbitration agreement, no case is made out for reference to Arbitration.

DUFLON Industries Ltd was represented by Mr. Ashok Paranjpe (Managing Partner), Ekta Tripathi (Senior Associate) of MDP & Partners.

MDP & PARTNERS SUCCESSFULLY REPRESENTED THE FLAT PURCHASERS IN APPEALS FILED BEFORE THE APPELLATE TRIBUNAL OF THE MAHARASHTRA REAL ESTATE & REGULATORY AUTHORITY, MUMBAI

The Appellate Tribunal - Maharashtra Real Estate & Regulatory Authority, Mumbai disposed of Appeals of five flat buyers ruling that the Appellants are entitled for interest as a compensation, under section 18 of Real Estate (Regulation and Development) Act 2016 ("Act"), since they have invested their hard-earned money in the re-development project of Building No. 133 at Nehru Nagar, Kurla East ("Project") promoted by then M/s. Re-built Developer, which was subsequently assigned by registered Deed of Assignment dated 9th November 2015 ("Assignment") to present M/s. Samruddhi Developers ("Developer")

Mr. Tushar Kadam (Senior Associate) successfully represented all flat purchasers in the Appeals filed before the Appellate Tribunal Maharashtra Real Estate & Regulatory Authority, Mumbai.

Appellants booked their flats on eighth floor in the said Project and were promised possession of the flats by 2015. Under the said Assignment, Developer took over all assets and liabilities of M/s. Re-Built and therefore, Developer was liable to handover the possession of eighth floor flats. However, Developer failed to handover possession till 2017.

In view of the same, the Appellants filed complaints before the MahaRERA praying for interest alongwith compensation to be paid to them under section 18 of the said Act. In order dated 15th January, 2018 ("Impugned Order"), passed by Hon'ble Shri. Gautam Chatterjee held that "the dispute raised by the complainants is against the Erstwhile Developer with whom Agreements for Sale have been signed and which are civil in nature" . He however, refused

interest and compensation to the Appellants, but stated Appellants are entitled to possession of their flats on or before 31st December 2018, as mentioned in the project registration

Appellants challenged the Impugned Order before The Appellate Tribunal Maharashtra Real Estate & Regulatory Authority, Mumbai. In Order dated 29th August, 2018, the Authority held that under the Assignment, the Developers have also purchased the rights alongwith risk and responsible to complete the Project within time. Accordingly, Hon'ble Justice K. U. Chandiwal directed the Developers to pay interest @ 10.05 % per annum on the amount paid from January, 2018 till date of possession. The Authority further directed to pay interest amount till August, 2018 within one month to all Appellants

MEDIA PUBLICATIONS:MDP & PARTNERS REPRESENTED OIL AND NATURAL GAS CORPORATION

Nishit Dhruva (Managing Partner) and Khushbu Chhajed (Senior Associate) of MDP & Partners represented Oil and Natural Gas Corporation (“ONGC”) in the proceedings filed by Reliance Naval and Engineering Limited (“RNEL”) in a Writ Petition filed by RNEL challenging the termination and invocation of Bank Guarantee by ONGC amounting to more than Rs.500 Crores. The said Writ Petition came up before the Division Bench of Justice R.M. Borde and Justice V.M. Deshpande and has been adjourned to 6 September 2018.

The link to the article published in Livemint on 7 August 2018 is as follows:

[https:// www.livemint.com/ Companies/ dDun3yEFExzrPanc0OtTgK/ Reliance-Naval-sues-ONGC-for-terminating-pact-for-12-vessels.html](https://www.livemint.com/Companies/dDun3yEFExzrPanc0OtTgK/Reliance-Naval-sues-ONGC-for-terminating-pact-for-12-vessels.html)

MDP & PARTNERS REPRESENTED ANDHRA BANK

Mr. Nishit Dhruva , Managing Partner and Mr. Rohan Agrawal, Associate of MDP & Partners represented Andhra Bank in proceedings against Provogue (India) Ltd before the NCLT (Mumbai Bench) for Initiation of a Corporate Insolvency Resolution Process. State-run Andhra Bank, which filed the insolvency petition has claimed dues to the tune of about Rs. 90 Crores. Provogue’s promoters lost control of the company in 2016 after a group of lenders led by Andhra bank acquired 51% in the company, exchanging debt for equity. Debt was admitted by Provogue and the company’s account was declared a non-performing asset in 2017. The Mumbai Bench of the NCLT has admitted Provogue for the Corporate Insolvency Resolution Process on 25 July 2018.

MDP & Partners quoted in Livemint on 2 August 2018:

[https:// www.livemint.com/ Industry/ GLstapP7Kpfe1HmVGKuogO/ NCLT-admits-insolvency-petition-against-apparel-brand-Provog.html](https://www.livemint.com/Industry/GLstapP7Kpfe1HmVGKuogO/NCLT-admits-insolvency-petition-against-apparel-brand-Provog.html)

### MDP & PARTNERS PROMOTE HETA MODI TO PARTNER



MDP & Partners promote Heta Modi to partner, growing the firm to 8 partners. She specializes in real estate, banking, finance and general corporate and commercial laws and is a 2010 graduate of Government Law College (GLC), Mumbai, having secured a Gold Medal from the Mumbai University and having secured the first rank at GLC. She has also qualified as a Company Secretary from ICSI in 2010 and has in depth knowledge of the various company secretarial practices.

She has been with the firm for the past 8 years since its formation.

Managing Partner Mr. Ashok Paranjpe states: "Heta primarily focuses on the real estate and corporate practice of the Firm and is valued by clients for her diligent and dedicated approach to negotiating deals and ensuring well-structured documentation for each transaction. It is a well deserved and well earned promotion, Congratulations Heta."

**MDP & PARTNERS**

**ADVOCATES & SOLICITORS**

**TEL: +91 22 6686 8900 I FAX: + 91 22 6686 8989**

**EMAIL:- NEWSFLASH@MDPPARTNERS.COM**

**WEBSITE: WWW.MDPPARTNERS.CO.IN**

**MUMBAI OFFICE**

**1ST FLOOR, UDYOG BHAVAN, 29, WALCHAND HIRACHAND MARG, BALLARD ESTATE,  
MUMBAI – 400001**

**PUNE OFFICE**

**OFFICE NO. 114-B, FIRST FLOOR, TOWN SQUARE, NEW AIRPORT ROAD, VIMAN  
NAGAR, PUNE, MAHARASHTRA 411014**

**KOLKATA OFFICE**

**ROOM NO. 19, MEZZANINE FLOOR, RAJAJI CHAMBER, 4, KIRAN SHANKAR ROY  
ROAD, KOLKATA – 700001**

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