



June 2018

MDP LEGAL UPDATES

**Private Circulation Only*

MDP HIGHLIGHTS

MDP & PARTNERS EXECUTE LOAN DOCUMENTATION FOR A TERM LOAN OF INR 300,00,00,000 GRANTED TO A PUBLIC COMPANY ENGAGED IN THE ENERGY BUSINESS.

Mr. Malav Virani (Partner) and Mr. Sunay Kargatia (Associate) of MDP & Partners, acted as the sole legal advisor for both the Borrower and the Lender and drafted the loan documentation and ancillary documents in respect of term loan of Rs. 300,00,00,000 availed by the Borrower from a public sector bank.

MDP & PARTNERS EXECUTE LOAN DOCUMENTATION FOR A TERM LOAN OF INR 15,00,00,000 GRANTED TO A HYDERABAD BASED REAL ESTATE FIRM.

Mr. Malav Virani (Partner) and Mr. Sunay Kargatia (Associate) of MDP & Partners, acted as the sole legal advisor for both the Borrower and the Lender and drafted the loan documentation and ancillary documents in respect of term loan of Rs. 15,00,00,000 availed by the Borrower for acquisition of residential property situated at Banjara Hills, Hyderabad, Telangana, India .

**MDP & PARTNERS EXECUTE LOAN DOCUMENTATION FOR A TERM
OF INR 23,30,00,000 GRANTED TO A HYDERABAD BASED REAL
ESTATE COMPANY**

Mr. Malav Virani (Partner) and Mr. Sunay Kargatia (Associate) of MDP & Partners, acted as the sole legal advisor for both the Borrower and the Lender and drafted the loan documentation and ancillary documents in respect of term loan of Rs. 23,30,00,000 availed by the Borrower

**APPLICATION UNDER SECTION 7 OR 9 OF THE INSOLVENCY AND
BANKRUPTCY CODE IS NOT MAINTAINABLE ONCE THE ORDER FOR
WINDING UP HAS BEEN PASSED BY THE HIGH COURT**

In the matter of Indiabulls Housing Finance Ltd. v. Shree Ram Urban Infrastructure Ltd., an appeal was filed by the appellant before National Company Law Appellate Tribunal, New Delhi (NCLAT) against the order of the NCLT, Mumbai Bench, dismissing the application for Corporate Insolvency Resolution Process. The issue for consideration before NCLAT was whether an application under section 7 of the Insolvency and Bankruptcy Code, 2016 is maintainable when winding up proceedings against the Corporate Debtor has been initiated. The Tribunal by referring to the case of Innoventive Industries Limited vs. Kumar Motors Private Limited and the cases referred under it held that liquidation or winding up is the second stage of the proceeding. Therefore, initiation of Corporate Insolvency Resolution Process which is the first stage of the proceeding against the same Corporate Debtor does not arise. Thus, the appeal was dismissed.

SERVICE OF SUMMONS PERMITTED VIA WHATSAPP IN CASES OF EVASION OF SERVICE

By an Order of the Hon'ble Bombay High Court dated June 11, 2018 passed in the matter of **SBI Cards & Payments Services Pvt. Ltd., v/s Rohidas Jadhav**, it has been held that service of notice in PDF form along with message on Whatsapp is held to be a valid service under law.

Facts of the case:

The Respondent in this matter was evading service of notice under Order XXI Rule 22 of the Code of Civil Procedure 1908.

Observations of the Court:

The Respondent was served by an authorized officer of the Claimant/Applicant by sending a PDF and message to his mobile number as a Whatsapp message. His Lordship the Hon'ble Mr. Justice G.S. Patel held the same to be valid for the purposes of service of Notice under Order XXI Rule 22 as the icon indicators clearly show that not only the message and its attachment was delivered to the Respondent's number but that both were opened.

The Hon'ble High Court also took a printout of the Whatsapp message is on record and marked it as Exhibit for identification. A scan of the print outs is attached to the Order as well, by way of abundant caution and so that it remains a part of the record

**DELETION OF SECTION 9A OF THE CODE OF CIVIL PROCEDURE BY
THE CODE OF CIVIL PROCEDURE (MAHARASHTRA AMENDMENT)
ORDINANCE, 2018 WHICH NOTIFIES THE DELETION OF SEC 9A OF
THE CODE OF CIVIL PROCEDURE**

The following points are to be noted :-

When preliminary issue framed u/s 9A is pending on the date of commencement of Ordinance, the said issue shall be deemed to be an issue framed under Order XIV of the Principal Act.

When preliminary issue framed u/s 9A has been decided, holding the Court has jurisdiction, and a challenge to such decision is pending before a revisional Court, such revisional proceedings shall stand abated.

When a preliminary issue framed u/s 9A has been decided, holding the Court has no jurisdiction, and a challenge to such decision is pending before an appellate or revisional Court, such appellate or revisional proceedings shall continue as if the amendment ordinance has not been enacted.

When an order granting an ad-interim relief has been passed u/s (2) of section 9A prior to its deletion, such order shall be deemed to be an ad-interim order made under Order XXXIX of the principal Act and the Court shall, at the time of deciding the application in which such an order is made, either confirm or vacate or modify such order .

ENHANCED DISCLOSURE AND TRANSPARENCY NORMS FOR CREDIT RATING AGENCIES RELEASED BY SEBI

All Credit Rating Agencies registered with SEBI have come under the purview of a new circular on Enhanced Disclosure and Transparency norms for CRAs which SEBI has come out with on 30th May 2018. In the past, several firms have expressed dissatisfaction against credit rating agencies (CRAs) after ratings on their debt were suddenly downgraded or withdrawn. Now, such firms may approach credit rating agencies with more supporting documents for a better rating. In the interest of transparency and fairness, it has been decided that all cases of requests by an Issuers for review of the rating(s) provided to its instrument(s) by the CRA, shall be reviewed by a Rating Committee of the CRA that shall consist of a majority of independent members. The term "independent" would mean people not having any pecuniary relationship with the CRA or any of its employees. The circular also provides that the non-accepted ratings be disclosed on CRA's website for a period of 12 months from the date of such rating being disclosed as a non-accepted rating.

Please visit: https://www.sebi.gov.in/legal/circulars/may-2018/enhanced-disclosure-and-transparency-norms-for-credit-rating-agencies_39130.html to have a look at the norms

IBBI COMES UP WITH INSOLVENCY PROFESSIONALS TO ACT AS INTERIM RESOLUTION PROFESSIONALS OR LIQUIDATORS (RECOMMENDATION) GUIDELINES, 2018

The Insolvency Bankruptcy Board of India on May 31, 2018 came up with fresh Guidelines to facilitate the IBC Process. These guidelines shall replace the Insolvency Professionals to act as Interim Resolution Professionals or Liquidators (Recommendation) Guidelines, 2017 and shall come into force from 1st July 2018. The guidelines provide for a 'Panel of IPs'. Since every IP is equally qualified to be appointed as the IRP/Liquidator of any CIRP/Liquidation, if otherwise not disqualified and in the interest of avoiding administrative delays, it was necessary to have guidelines to prepare a Panel of IPs for the purpose of section 16(4) and 34(6) from amongst the registered IPs. What is notable is the fact that the eligible IPs will be included in the Panel in order of the volume of ongoing processes they have in hand. The IP who has the lowest volume of ongoing processes will get a score of 100 and will be at the top of the Panel and likewise.

Please visit the link to have a look at the Guidelines:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/May/31st%20May%202018%20Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20\(Recommendation\)%20Guidelines%202018_2018-05-31%2011:16:31.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/May/31st%20May%202018%20Insolvency%20Professionals%20to%20act%20as%20Interim%20Resolution%20Professionals%20or%20Liquidators%20(Recommendation)%20Guidelines%202018_2018-05-31%2011:16:31.pdf)

INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN DEBT – REVIEW

RBI revised directions on Investment by FPIs in Debt. Major changes brought by the circular are:

No FPI shall invest in partly paid debt instruments.

Investment by any FPI, including investments by related FPIs, shall not exceed 50% of any issue of a corporate bond. In case an FPI, including related FPIs, has invested in more than 50% of any single issue, it shall not make further investments in that issue until this stipulation is met.

No FPI shall have an exposure of more than 20% of its corporate bond portfolio to a single corporate (including exposure to entities related to the corporate). In case an FPI has, as on April 27, 2018, exposure in excess of 20% to any corporate (including exposure to entities related to the corporate), it shall not make further investments in that corporate until this requirement is met.

The cap on aggregate FPI investments in any Central Government security, currently at 20% of the outstanding stock of that security, stands revised to 30% of the outstanding stock of that security.

Please find the circular here:

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=11303&Mode=0>

MAHARERA CHIEF SET TO MAKE LAND TITLE INSURANCE MANDATORY

Though the RERA had made land title insurance mandatory for developers, the state unit was not able to implement the clause right away as there was no insurance player in the market providing such a cover. The Chief manager of the New India Assurance, said his company's product was ready and it was up to the MahaRERA to announce the date for the developers to insure their projects.

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