

March 2023
****Private Circulation Only***

MDP Legal Updates

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MDP & PARTNERS ACTED AS THE LEGAL ADVISORS FOR A CONSORTIUM OF BANKS IN RESPECT OF THE RESTRUCTURING OF EXISTING FACILITIES UNDER THE RBI CIRCULAR DATED JUNE 7, 2019.

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 Master Restructuring Agreement, First Supplemental Unattested Deed of Hypothecation, First Supplemental Inter Creditor Agreement, First Supplemental Memorandum of Entry, First Supplemental Security Agreement, Lenders Agent Letter, Non-Disposal of Shareholding Undertaking; 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 restructured of a company engaged in construction, development and operation of hotel.

MDP & PARTNERS ACTED AS THE LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR FACILITIES AGGREGATING TO INR 800,00,00,000/- AVAILED BY A PRIVATE LIMITED COMPANY ENGAGED IN THE BUSINESS OF REAL ESTATE DEVELOPMENT

Malav Virani (Partner), Dhruvi Shah (Senior Associate) and Mariam Kalolwala (Associate) of MDP & Partners, Advocates & Solicitors, (i) acted as the legal advisors for a private limited company, (ii) negotiated the terms, drafted the loan documentation including but not limited to the Multi Facility Agreement, Deed of Hypothecation, Deed of Simple Mortgage, Escrow Agreement, Security Trustee Agreement, Letter of Undertaking, Power of Attorney, Tripartite Agreement for Lease Rentals; 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 private limited company engaged in the business of real estate development.

MDP & PARTNERS ACTED AS THE LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR FACILITIES AGGREGATING TO INR 125,00,00,000/- 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 a public sector bank, (ii) negotiated the terms, drafted the loan documentation including but not limited to the Facility Agreement, Unattested Deed of Hypothecation, Escrow Agreement, Security Trustee Agreement, Power of Attorney; 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 of by a company engaged in development of an integrated logistics park.

MDP & PARTNERS ACTED AS THE LEGAL ADVISORS FOR A PUBLIC SECTOR BANK IN RESPECT OF HIVE OFF OF A COMPANY WITH RESPECT TO THE EXISTING FACILITIES AVAILABLE

Malav Virani (Partner), Dhruvi Shah (Senior Associate) and Mariam Kalolwala (Associate) of MDP & Partners, Advocates & Solicitors, (i) acted as the legal advisors for a public sector bank, (ii) negotiated the terms, drafted the loan documentation including but not limited to the First Supplemental Facility Agreement, First Supplemental Agreement for Hypothecation, First Supplemental Application Cum Pledge, Power of Attorney, First Supplemental Third Party Letter of Pledge, Counter Guarantee, Letter of Continuity, Undertakings, Demand Promissory Note, Disposal of Proceeds Letter, Declarations; 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 of by a company engaged in the business of aviation.

MDP & PARTNERS REPRESENTED SEBI IN AN APPEAL AGAINST SEBI ORDER IMPOSING PENALTY FOR NON-COMPLIANCE WITH PMS REGULATIONS, 1993

MDP and Partners represented SEBI in an appeal against the SEBI AO order dated November 15, 2022 imposing an aggregate penalty of Rs. 12 Lakhs out of which Rs. 4 Lakhs was imposed on the Appellant.

The matter deals with the Portfolio Management activities of Karvy Stock Broking Ltd. (KSBL). The penalties are imposed with respect to violations of numerous Portfolio Managers Regulations, 1993.

In the appeal, the Appellant alleged that he was appointed as a Compliance Officer & Principal Officer after the investigation period and hence he should not be held liable. SEBI contented that some facts came into light after his appointment and despite being in a position of authority, the Appellant took no actions to right the wrong and hence failed to carry out his duties. SEBI also urged that the Appellant was not properly qualified or experienced to be designated as a Principal Officer and hence was in further violations.

The order has been stayed by the Hon'ble Securities Appellate Tribunal and three weeks' time has been given to SEBI to file its reply.

The matter is put up for hearing on April 28, 2023.

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

Case: Vikas Rajpal vs. Securities and Exchange Board of India (Appeal No. 216 of 2023)

SEBI OBJECTS TWO DIFFERENT APPEALS BY THE SAME APPELLANTS ON THE SAME CAUSE OF ACTION. HON'BLE SAT ADMITS THE APPEAL AFTER DIRECTING AMENDMENTS.

MDP & Partners represented SEBI in an appeal against the SEBI AO order dated March 15, 2022 imposing a penalty of Rs. 1.21 crores on the Noticees out of which Rs. 8 Lakhs imposed on the Appellant for violation of SEBI (SBEB) Regulations, SEBI (PFUTP) Regulations and other allied laws and circular.

Herein, SEBI initiated adjudication proceedings against noticees pursuant to investigation in the matter of Bodhtree Consulting Limited. An important question of law arose on the maintainability of the appeal.

The Appellants had filed two appeals with the same set of Appellants (except one) against the same Adjudicating Officer. They had contended that the appeals were filed against different charges and hence were maintainable.

However, the Hon'ble Tribunal was of the view that two Appeals cannot be filed out of the same order. The Tribunal further directed Counsel of the Appellant to carry out amendments in Appeal with respect to SBEB Regulations.

The matter is now put up for hearing on May 18, 2023 after the pleadings are completed.

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

Case: Bodhtree vs. Securities and Exchange Board of India (Appeal No. 211 of 2023)

SAT ALLOWS APPEALS, WTM CANNOT PASS A CONTRADICTION ORDER AFTER AO ORDER HAS BEEN PASSED

MDP & Partners represented SEBI in an appeal against the SEBI WTM order dated October 20, 2021 restraining noticees from the securities market.

The matter was related to an investigation in the scrip of Super Sales India Ltd. pertaining to creation of a misleading appearance on the purported ground of no change in the ownership of the shares by way of synchronized trades. SEBI alleged the trades to be synchronized on the basis of the time, quantity and price of the respective buy and sell orders have matched.

The Appellants contended that the WTM Order was contrary to the AO order earlier passed, stating the trades to not have been a violation. The Respondent stated that Ld. AO and Ld. WTM are independent quasi-judicial authorities and hence the subsequent order is maintainable.

The Hon'ble Tribunal upon hearing both sides was of the view that this controversy is squarely covered by the order passed in Nirmal Kotecha matter. Hence, the Hon'ble Tribunal allowed the Appeal and the Impugned Order was set aside for the reasons specified in the SAT order of Nirmal Kotecha.

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

Case: Minal B. Patel & Ors. vs. Securities and Exchange Board of India (Appeal No. 200 of 2022)

MDP & PARTNERS REPRESENTED SEBI IN AN APPEAL AGAINST SEBI ORDER IMPOSING PENALTY FOR NON-COMPLIANCE WITH SEBI (PIT) REGULATIONS

The MDP and Partners appeared for SEBI in an appeal against their order dated December 1, 2022 imposing penalty for trading without seeking pre-clearance and entering into contra trades, failure to make disclosure on trading for value more than 10 Lakhs in the scrip of Shakti Pumps India Ltd., a listed entity.

SEBI had passed an Impugned Order pursuant to the issuance of a Show Cause Notice (SCN). The Appellant contended that once the warning letter is issued, no SCN ought to be issued and therefore, no penalty can be imposed. However, the Respondent submitted that there are different violations involved in the instant matter and the warning letter issued by SEBI was for a different violation.

The Hon'ble Tribunal has given the Respondent time to file a reply and to bring on record necessary documents supporting their case.

The matter will next be heard on March 31, 2023.

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

Case: Sanjay Patildar & Ors vs. Securities and Exchange Board of India (Appeal No. 221 of 2023)

SAT GRANTS RELIEF TO ARSHAD WARSI AND WIFE IN YOUTUBE PUMP AND DUMP CASE

On March 2, 2023 SEBI debarred the Appellants by passing an ex-parte interim order against 31 entities from the securities market in a case related to stock manipulation via YouTube. The order also directed the Appellants to deposit the unlawful gains made by them and directed the banks to freeze all debits till such time an escrow account is opened and the amount is transferred.

The YouTube videos had misled a large number of public shareholders by advising them to buy the stock of Sadhna Broadcast Limited for extraordinary prices with false facts. Sadhna Broadcast limited was incorporated in 1994. The group runs a number of media-related businesses with its flagship being the popular socio-religious TV Channel Sadhna TV. It has recently been in news after being involved in the pump and dump scheme curated by a number of individuals to defraud thousands of public shareholders. Pump and dump is a manipulative scheme to boost the price of stock through fake recommendations based on false, misleading or exaggerated statements. When the price rises, the operators sell the stock. Arshad Warsi, Maria Goretti Warsi and Iqbal Hussain Warsi who were noticees in the said order preferred an appeal against the said ex-parte interim order.

SAT Order

- Merely by a reason of a professional connection at best may give rise to suspicion against the appellants but it cannot lead to any conclusion that the appellants were engaged in a coordinated scheme to induce unsuspected investors to acquire securities in the company in question.
- The principles of Order 38 Rule 5 to 13 of CPC, 1908 are applicable to SEBI in cases of attachment before judgement. The object of attachment before judgement is to prevent any attempt on the part of the appellant to defeat the realization of the final order on disgorgement that may be passed against the noticees.
- It was further held that Arshad Warsi has made an admission that he is connected to the Noticee No. 1 who is alleged to have been the main player in promoting the videos and thereby misleading the investors. The investigations are still pending, thus the involvement in the scheme by the appellant cannot be ruled out.
- The SAT further directed appellants to deposit 50% of the unlawful gains in an interest bearing escrow account within 15 days in a scheduled commercial bank and an undertaking within the same period of 15 days that the appellants will deposit balance amount within 30 days from the date of final order, if any, passed by the WTM.

SEBI APPROVED AMENDMENTS TO LODR REGULATIONS IN ITS BOARD MEETING HELD ON 29th MARCH 2023

SEBI approved amendments to the LODR Regulations to strengthen corporate governance of listed entities by enhancing disclosure and empowering shareholders through the following mechanisms:

- i. Periodic shareholders' approval for any special right granted to a shareholder of a listed entity to address the issue of perpetuity of special rights.
- ii. Strengthening the extant mechanism of sale, lease or disposal of an undertaking of a listed entity outside the 'Scheme of Arrangement' framework
- iii. Periodic shareholders' approval for any director serving on the board of a listed entity to do away with practice of permanent board seats.

Streamlining timeline for submission of first financial results by newly listed entities:

The timeline for submission of first financial results by newly-listed entities has been streamlined in order to overcome the challenges in immediate submission of financial results post listing and to ensure that there is no omission in submission of financial results.

Timeline to fill up vacancy of Directors and other officials of listed entities:

Listed entities shall be required to fill up the vacancy of Directors, Compliance Officer, Chief Executive Officer and Chief Financial Officer within a period of three months from the date of such vacancy, to ensure that such critical positions are not kept vacant.

For more details please refer to the press release of the Board Meeting. Recently, Supreme Court heard the petition seeking investigation against Adani Group in the light of the Hindenburg Report. The Supreme Court expressed concerns over the loss of investor wealth in the securities market and made observations that there was a need to review the existing regulatory mechanisms in the financial sector to ensure that they are duly strengthened.

AN ARBITRATION AWARD IN VIOLATION OF THE PROVISIONS OF THE INDIAN CONTRACTS ACT IS PATENTLY ILLEGAL HOLDS DELHI HIGH COURT

The bench of Justice Neena Bansal Krishna of The High Court of Delhi has held that an arbitration award that is passed in violation of the provisions of the Indian Contracts Act, 1872 would be liable to be set aside as suffering from patent illegality.

The Court referred to Section 28 of the A&C Act that mandates the tribunal to adjudicate the dispute in accordance with the substantive law for the time being in force. It held that evidently, the arbitrator ignored the provisions of Indian Contract Act, 1872 which is a substantive law, therefore, the award suffers from patent illegality. The Court also decided on the issue if it could partly set aside the award and held after referring to *R.S. Jiwani v. Ircon International*, 2009 SCC OnLine Bom 2021 and Supreme Court judgment in *J.G. Engineers Pvt. Ltd v. Union of India* (2011) 5 SCC 758 to hold that it is not permissible to modify an arbitration award under Section 34 of the Act, however, it is possible for a Court to partially set aside an award by severing the illegal portion while retaining the remaining award. It held that power to partially set aside an arbitration award is quintessential because it is possible that an arbitration award would be correctly decide certain claims and incorrectly decides the other and if an award is fully set aside, a parties would again have to go another round of litigation even on claims that were correctly decided.

Case Title: Amazing Research Laboratories v. Krishna Pharma in O.M.P. (COMM) 376/2020

PARTY CAN'T RESTRICT LIMITATION PERIOD FOR INVOKING ARBITRATION CONTRARY TO LIMITATION ACT HOLDS DELHI HIGH COURT

The Delhi High Court has ruled that, in view of Section 28 of the Indian Contract Act, 1872, a party cannot be permitted to restrict the period of limitation for invoking arbitration, in contravention to the limitation period provided by law. The Court observed that a lesser period of limitation provided under the Contract between the parties would be hit by Section 28. While dealing with an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (A&C Act), the Court dismissed the contention of the appellant/award debtor that the claims raised by the claimant were time-barred. While noting that the limitation period for invoking arbitration under the A&C Act is as prescribed under Article 137 of the Limitation Act, i.e., a period of three years, the bench remarked that in view of Section 28 of the Contract Act, Appellant in the present case cannot be permitted to rely on the relevant Clause of the Contract Agreement and restrict the period of limitation for invoking arbitration to 120 days.

Case Title: Municipal Corporation of Delhi vs. Natraj Construction Company in FAO 432/2010

DELHI HIGH COURT EXERCISES JUDICIAL FUNCTION UNDER S. 11 (6) OF ARBITRATION ACT; PRINCIPLE OF RES JUDICATA APPLICABLE TO S. 11 PETITION

The Delhi High Court has ruled that the High Court exercises a judicial function under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (A&C Act), and thus while dealing with a petition filed under Section 11 for appointment of Arbitrator, the High Court can determine the issue of maintainability of a petition on any ground, including on territorial jurisdiction or res judicata.

The Court noted that the Supreme Court's decision in United India Insurance Company Limited vs. Antique Art Export Pvt Ltd (2019) has been overruled by a three Judge Bench of the Supreme Court in M/s. Mayavati Trading Pvt. Ltd. vs. Pradyut Deb Burman (2019), where the Apex Court had ruled that the Court, in view of Section 11(6A), must confine itself to the examination of the existence of an arbitration agreement.

While holding that the principle of res judicata shall be applicable to a petition filed under Section 11, the High Court dismissed the contention of the petitioner that in view of the judgment of the Supreme Court in Mayavati Trading (2019), the judgment of the Apex Court in Antique Art Export (2019) is erroneous / without jurisdiction, and thus the same is not binding between the parties inter-se.

Case Title: Antique Art Export Pvt Ltd vs. United India Insurance Company Ltd in ARB.P. 163/2022

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