

MDP LEGAL UPDATES

**Private Circulation Only*

MDP HIGHLIGHTS

MDP & PARTNERS SUCCESSFULLY REPRESENTED SECURITIES AND EXCHANGE BOARD OF INDIA IN THE APPEALS FILED BY BAADER BANK AKTIENGESELLSCHAFT AND GULF INVESTMENT SERVEICES HOLDING CO. BEFORE THE SECURITIES APPELLATE TRIBUNAL, MUMBAI

MDP & Partners successfully represented Securities and Exchange Board of India (“SEBI”) before the Securities Appellate Tribunal in the Appeals filed by Baader Bank Aktiengesellschaft and Gulf Investment Services Holding Co. challenging an Order passed by SEBI inter alia directing the Appellants to make a public announcement to acquire shares of the Target Company viz. Parsoli Corporation Limited in accordance with the provisions of Takeover Regulations 1997 within a period of 45 days from the date of the order. Further, the Appellants were directed to pay the consideration amount along with interest @ 10% per annum with effect from October 30, 2006 to the date of payment to the shareholders who were holding shares in the Target Company after adjustment of dividend paid, if any.

The Hon’ble Tribunal held that that there is no bar under the SEBI Act and the Takeover Regulations 1997 in directing two different persons / entities to make an open offer at different moment of time. The Appellants, on the other hand, violated Regulation 10, 11 and 12 of the

Takeover Regulations 1997 and were thus required to make a public announcement. The guiding principle for issuance of a direction under Regulation 44 of the Takeover Regulation is the interest of the investors and securities market. Had the Appellants made the open offer within a period of 4 days from the date of acquisition in accordance with the Takeover Regulations 1997 and complied with the time line specified therein, the formalities could have been complied by October 2006, i.e. from the date of making the public announcement.

SEBI was represented by Mr. Nishit Dhruva (Managing Partner) and Mr. Chirag Bhavsar (Senior Associate) before the Securities Appellate Tribunal, Mumbai.

**MDP & PARTNERS SUCCESSFULLY REPRESENTED
SECURITIES AND EXCHANGE BOARD OF INDIA IN
APPEALS FILED BY SMS TECHSOFT LIMITED
BEFORE THE SECURITIES APPELLATE TRIBUNAL,
MUMBAI**

MDP & Partners successfully represented Securities and Exchange Board of India (“**SEBI**”) before the Securities Appellate Tribunal in Appeals filed challenging an Order passed by SEBI in the scrip of SMS Techsoft Limited (“**Company**”). Upon investigation by SEBI, it was found that 37 entities were acting together as a group and had adopted a fraudulent device and artifice to defraud the genuine shareholders of the company by falsely portraying fraudulent transactions as genuine preferential allotment of shares and offloading the shares allotted pursuant to the preferential allotment thereby earning illegal profits in violation of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations.

SEBI after considering the evidence and the replies filed by the noticees to the Show Cause Notice, passed an order debarring the noticees from accessing the securities market directly or indirectly for a period of 10 years from the date of completion of disgorgement. The noticees were further restrained from dealing in the securities market, in any manner, for a period of 10 years and were made jointly and severally liable to disgorge an amount of Rs. 6,78,85,716/- alongwith simple interest calculated at the rate of 12% p.a. with effect from November 5, 2013 till the date of payment.

The Hon’ble Tribunal held that a person can be directed to disgorge amount equivalent to the wrongful gain made by him. By such contravention, the liability to disgorge the amount is individual and not collective. Thus, the direction of SEBI directing the appellants to pay the

amount jointly or severally is against the provisions of Section 11B and to that extent, it cannot be sustained. The order of SEBI was consequently, modified to the extent that the liability of the noticees in question to disgorge the amount was to the extent of the profit earned by them as calculated by SEBI in the Order. In the event of failure by these noticees to pay the amount, it would be open to SEBI to recover the amounts in the order of hierarchy stipulated in the order.

SEBI was represented by Mr. Nishit Dhruva (Managing Partner) and Mr. Chirag Bhavsar (Senior Associate) before the Securities Appellate Tribunal, Mumbai.

**MDP & PARTNERS REPRESENTED DENA BANK IN
THE MATTER OF PANACHE ALUMINIUM EXTRUSIONS
PVT. LTD. BEFORE NCLT, MUMBAI**

On 17th October 2019, MDP & Partners appeared on behalf of Dena Bank in the matter of Panache Aluminium Extrusions Pvt. Ltd. wherein the matter was heard at length and the matter has now been reserved for orders. Dena Bank filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process in the matter of Panache Aluminium Extrusions Pvt. Ltd.

**MDP & PARTNERS REPRESENTED ANDHRA BANK IN
THE MATTER OF KRISHNA KNITWEAR
TECHNOLOGIES LIMITED BEFORE NCLT,
AHMEDABAD**

On 4th October 2019, MDP & Partners appeared on behalf of Andhra Bank in the matter of Krishna Knitwear Technologies Limited wherein the matter was heard at length and the matter has now been reserved for orders. Andhra Bank filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process in the matter of Krishna Knitwear Technologies Limited.

**MDP & PARTNERS REPRESENTED BANK OF BARODA
IN THE MATTER OF U S REALTY PVT. LTD. BEFORE
NCLT, MUMBAI**

On 17th October 2019, MDP & Partners appeared on behalf of Bank of Baroda in the matter of U S Realty Pvt. Ltd. wherein the matter was heard at length and the matter has now been reserved for orders. Bank of Baroda filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process in the matter of U S Realty Pvt. Ltd.

**MDP & PARTNERS REPRESENTED CANARA BANK IN
THE MATTER OF KGS SUGAR AND INFRA
CORPORATION LTD. BEFORE NCLT, MUMBAI**

On 10th October 2019, MDP & Partners appeared on behalf of Canara Bank in the matter of KGS Sugar and Infra Corporation Ltd. wherein the matter was heard at length and the matter has now been reserved for orders. Canara Bank filed a Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process in the matter of KGS Sugar and Infra Corporation Ltd.

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 (HEAD OFFICE)

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

NEW DELHI OFFICE (ASSOCIATE OFFICE)

A-178, L.G.F. DEFENCE COLONY, NEW DELHI—110024.

This legal update is not intended to be a form of solicitation or advertising. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular update is intended for private circulation only.