

**October 2022**  
*\*Private Circulation Only*

**MDP Legal Updates**

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

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## **MDP & PARTNERS ACTED AS THE LEGAL ADVISORS IN RESPECT OF THE LOAN DOCUMENTATION FOR THE FACILITY AGGREGATING TO INR 250,00,00,000/- AVAILED FROM A LEADING PUBLIC SECTOR BANK**

Malav Virani (Partner), Sunay Kargatia (Associate Partner) and Mariam Kalolwala (Associate) of MDP & Partners, Advocates & Solicitors, (i) acted as the legal advisors for a leading public sector bank, (ii) negotiated the terms, drafted the loan documentation including but not limited to the Amended and Restated Composite Hypothecation Agreement, Credit Facility Agreement, Declaration Cum Undertaking, Counter Indemnity, Power of Attorney in respect of book debts/ receivables, (iii) advised on the applicable stamp duty and opined on the enforceability of the executed documents in respect of the facilities being availed of by a construction company for renewal of its working capital requirements.

## **MDP & PARTNERS CONDUCTED THE TITLE DUE DILIGENCE AND CERTIFIED THE TITLE FOR SEVEN LEADING RETAIL MALLS OWNED AND OPERATED BY PORTFOLIO COMPANIES BELONGING TO A LEADING AMERICAN COMMERCIAL REAL ESTATE INVESTMENT MANAGEMENT COMPANY FOR THE INITIAL PUBLIC OFFERING OF ITS REAL ESTATE INVESTMENT TRUST (REIT)**

Malav Virani (Partner), Dhruvi Shah (Senior Associate) and Vishvendra Shekhawat (Associate) carried out the title due diligence in respect of the following retail malls belonging to a leading American commercial real estate investment management company for the initial public offering of its Real Estate Investment Trust (REIT):

- (1) Retail mall consisting of ground and twelve upper floors and serviced apartments consisting of 3 (three) floors situated at Whitefield Main Road in Bangalore
- (2) Retail mall constructed on leasehold land admeasuring 3.11 acres situated at Udaipur comprising of 2 basements, ground floor and 6 upper floors
- (3) Retail mall consisting of basement, ground floor and five upper floors situated at Hosur Road, Bangalore
- (4) Retail mall consisting of upper ground floor, lower ground floor and 4 upper floors at Hoodi – Sadaramangala, Whitefield Sub-Division, Bangalore
- (5) Retail mall consisting of 3 (three) basements and 9 (nine) multi-level car parking structure, ground floor and 6 (six) upper floors situated at Kukatpally Mandal, Medchal Malkajgiri District, Hyderabad
- (6) Retail mall consisting of 2 basements, ground, 5 upper floors and terrace situated at Hyderali Road, Nazarabad Mohalla, Mysore City
- (7) Retail mall consisting of of 2 basements, ground floor and 4 upper floors together with an auditorium floor situated at Attavara village, Cantonment Ward, located on Pandeshwar Road, within the limits of Mangalore City Corporation

## **MDP AND PARTNERS SUCCESSFULLY REPRESENTS ZENITH TINS PRIVATE LIMITED IN A REVIEW PETITION FILED BY MCGM**

The Bombay High Court on Monday imposed costs of ₹2 lakh on the Brihanmumbai Municipal Corporation (BMC/ MCGM) for seeking a review of a 2019 order of the Court [The Municipal Corporation of Greater Mumbai & Ors vs Zenith Tins Private Limited & Anr].

A bench of Justices GS Patel and Gauri Godse condemned the review petition, calling it an "abuse of the process of a Court".

"This petition is a gross abuse of the process of a Court. The fact that it is done by the MCGM only makes it worse," the Court said.

The BMC sought review of a 2019 order in a lease dispute in which rule was made absolute after considering an affidavit filed by one Sudhakar Ramkrishna Mahajan on behalf of the BMC.

The review plea was filed on the ground that after the 2019 order, personnel in the Estate Department, after sifting through archives, discovered records that effectively rendered Mahajan's statements on affidavit incorrect.

The Court inquired as to why the sifting was not possible before the filing of the affidavit and noted that it claimed that Mahajan had gone through available relevant records.

"Now we are told in this review petition that Mahajan's statements on sworn affidavit are incorrect. Now we are told that there were records, but to which Mahajan could not have deposed," it added.

Further, the Court remarked that most importantly, it was not told how the case fell within Section 114 or Order 47 of the Code of Civil Procedure (CPC) and particularly how in the circumstances there could be said to have been "due diligence" on the part of the MCGM in finding the material.

Stating that the review petition was entirely without substance, the Court dismissed it with costs of ₹2 lakh payable to the original petitioner i.e. Zenith Tins Private Limited.

ZENITH TINS PRIVATE LIMITED was represented by Mr.Nishit Dhruva (Managing Partner), Mr.Prakash Shinde (Partner) and Ms. Niyati Merchant (Senior Associate) of MDP & Partners.

## **EXECUTION OF AGREEMENT, IN BID DOCUMENT AS CONDITION PRECEDENT; FAILURE TO EXECUTE, NOT A CONCLUDED CONTRACT**

The Bombay High Court has ruled that where reference to a future contract is made in the tender documents and in the Letter of Intent (LoI) issued to a successful bidder, in such terms which shows that the parties do not intend to be bound until the said contract is signed between them, there is no concluded contract between them which can be specifically enforced.

The Division Bench of Justices R.D. Dhanuka and Kamal Khata added that the terms and conditions of the contract, which were not agreed by and between the parties, cannot be drafted by the Court or the arbitrator for incorporating them in the agreement. The Court ruled that it cannot re-write a contract or suggest any conditions of a contract to be incorporated, by passing an order against the parties.

Case Title: Kalpataru Limited versus Middle Class Friends Co-operative Housing Society Limited

## **ADMINISTRATIVE MECHANISM FOR RESOLUTION OF DISPUTES IS NOT A SUBSTITUTE FOR ARBITRATION:**

The Delhi High Court has ruled that the Administrative Mechanism for Resolution of Disputes (AMRD) is not a substitute for arbitration in cases where there is an arbitration agreement between the parties. The Single Bench of Justice Anup Jairam Bhambhani observed that the party invoking the arbitration clause fell within the scope and ambit of the AMRD, under the Office Memorandum No. 334774/DoLA/AMRD/2019, dated 31.03.2020, issued by the Ministry of Law & Justice, Department of Legal Affairs. However, the Court held that the AMRD is only a mechanism for possible settlement of disputes between the governmental organizations and not a substitute for arbitration.

Case Title: Prasar Bharti versus National Brain Research Centre & Anr.

## **ARBITRATION AWARD - JURISDICTION TO ALLOW ANY CLAIM CAN BE CHALLENGED IF QUESTION OF FACT IS NOT INVOLVED**

The Delhi High Court has ruled that a claimant cannot support his claims on grounds that were not urged before the arbitral tribunal. However, the Court has held that if a question with respect to the jurisdiction of an arbitral tribunal to award any claim is raised, which does not involve deciding any question of fact, the party challenging the arbitral award is not prohibited from raising such grounds which were not raised before the arbitral tribunal.

The Bench of Justices Vibhu Bakhru and Amit Mahajan reiterated that a contractual clause, which bars payment of interest on Earnest Money Deposit, Security Deposit or on other amounts payable under the Contract, would also bar award of pendente lite interest by the arbitral tribunal.

Case Title: M/s. Manraj Enterprises versus Union of India

## **MDP AND PARTNERS REPRESENTED SEBI BEFORE THE SECURITIES APPELLATE TRIBUNAL IN THE CASE OF SRBC AND CO**

In this matter, the appellant, an auditor was charged by SEBI for alleged leaking of UPSI, in what the firm alleged was just an inadvertent error.

An employee of the appellant, involved in auditing process of the financial results of Infibeam, had accidentally shared via email, the financial results of the September 2016 quarter to a client with the common name as an employee, and his colleague at SRBC. The firm subsequently intimated the client who had accidentally received the UPSI, but failed to inform the company about the error, as required by the PIT regulations. Pursuant to that SEBI charged the appellant for the failure to take due care, as required for handling of UPSI and imposed a penalty of Rs. 10,00,000 on the firm, and 1,00,000 on the employee.

The appellant alleged before SAT that the inadvertent error had been accepted and recorded by the learned adjudicating authority, no trades were made based on the UPSI resulting in undue profits, and neither had any loss been caused to investors, thus, the penalty of ten lakh rupees was excessive and should be set aside. The Hon'ble tribunal admitted the appeal and granted the respondent time to file reply.

MDP and Partners team consisting of Mr. Nishit Dhruva, Managing Partner, Mr. Ravishekhar Pandey, Senior Associate, Ms. Shefali Shankar, Associate, represented SEBI before the tribunal in this matter.

## **MDP AND PARTNERS REPRESENTED SEBI IN WHAT APPEARS TO BE AS “THE CUT, COPY, PASTE OF KARVY”- A HUMONGOUS BROKER VIOLATIONS MATTER**

Guinness Securities Limited & Anr v. SEBI deals with a plethora of violations of not only SEBI Circulars but also SEBI (Stock Brokers) Regulations, 1992, SEBI (Intermediaries) Regulations, 2008, SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. The violations read as Misappropriation/selling of Client Securities and diversion of proceeds to related entities, Mis-reporting/Non-reporting of data under enhanced supervision to NSE, Falsification of Books of Account, among others.

Vide SEBI order dated June 30, 2022, the Adjudicating Officer passed an order upholding the Interim and Confirmatory Order against the entities and imposed a penalty of Rs. 2 crores on Guinness Securities Ltd., whereas Rs. 1 crore and Rs. 75 lakhs on its directors respectively. The most striking feature of this case is that the company has admitted its violations and has only approached the Securities Appellate Tribunal for reconsideration of quantum of penalty. The Bench granted time for the reply & rejoinder to be filed and listed the matter for final disposal.

## **APPEAL IN SAT AGAINST NSE-BSE SUSPENSION OF TRADING IN SINTEX INDUSTRIES**

Earlier this month, The Securities Appellate Tribunal admitted an appeal which was filed against the Circulars of NSE and BSE in the matter of Sintex Industries Ltd., a company which is undergoing CIRP wherein the Appellants were aggrieved by the alleged procedural violation committed by the Exchanges i.e., abrupt suspension of trading of securities.

It is the case of the Appellant that such abrupt suspension of trading is fallacious and in violation to the Exchanges' own Guidance Note which states that the corporate announcement has to be made only after the Resolution Plan is approved by an Adjudicating Authority as against the current scenario wherein the same was done even before the Resolution Plan was approved by NCLT, and only the approval of the Committee of Creditors was received.

Securities and Exchange Board of India is being represented by MDP and Partners in this matter.

## **BSE RECEIVES CLEARANCE FOR LAUNCHING EGR TRADING ON ITS PLATFORM**

The Bombay Stock Exchange has received final clearance from SEBI to launch trading of Electronic Gold Receipts on its platform. The exchange had already conducted several rounds of mock trading and other trials since it received in principle approval from the market regulator in February this year.

BSE is now working with all depositories and vaults to ensure the development of the entire ecosystem around EGR trade. EGRs are digital receipts of gold issued against an amount of physical gold lying with vault providers. These receipts are issued by the vault managers, in accordance with regulations. EGRs are notified as securities by SEBI which enables us to trade in them like stocks. Subject to regulations, Investors are usually able to both withdraw physical gold from vaults as well as deposit physical gold in vaults and get EGR issued against it.

Last year, SEBI had approved the framework for a gold exchange and has declared "electronic gold receipts" as 'securities' under Section 2(h)(iia) of the Securities Contracts (Regulation) Act 1956. A platform for EGR will infuse transparency in gold spot transactions, it will facilitate better price discovery and enable India, which is one of the largest consumers of gold to emerge as a global price setter.

## **SAT STAYS SEBI ORDER IN RIL-FACEBOOK INSIDER TRADING CASE**

SAT recently stayed a June order by SEBI imposing a joint and severed penalty on RIL and its two compliance officers, K. Sethuraman and Savithri Parekh to the tune of 30 lakhs.

Asking SEBI to file a reply, the Tribunal posted the matter for final disposal on December 12, 2022. The case pertained to 2020 deal between Reliance and Facebook Inc, wherein Facebook had acquired 9.99% stake in Jio, a subsidiary of Reliance which SEBI deemed was public information. This news quickly leaked in the media and the price of the scrip went up by 15%. SEBI then sent a show cause notice dated December 22, 2021 and subsequently charged the company and its compliance officers for violation of SEBI (PIT) Regulations, 2015 and SEBI (LODR) Regulations, 2015. Savitri Parekh was also charged for Code of Conduct violations. Alleging that the entities should have been prompt in dissemination of unpublished price sensitive information.

RIL alleged that it was impossible for the company to issue clarification against every media report and if a company is required to disclose/disseminate UPSI and which has not attained finality, every time a news report contains speculation as to the affairs of the entity, it would lead to companies disclosing UPSI prematurely and fuelling further undesirable speculation in the securities market.

## **PANCARD CLUBS- A THREE WAY TUSSLE OF REGULATORS, INVESTIGATORS, AND AGGRIEVED INVESTORS**

Mumbai-based Pancard Clubs, the directors of which are absconding, is alleged to have run an unregistered Collective Investment Scheme under the garb of a club membership programme when it had raised approximately Rs. 7000 crores from almost Five million investors. The National Company Law Tribunal, earlier this month initiated CIRP proceedings against the Club in pursuit of hundreds of investors approaching the court.

SEBI being the market regulator is investigating the alleged CIS scheme and is afraid that the Insolvency Proceedings might hinder the same. SEBI opposed not only the admission of such a proceeding but also has now moved to the NCLAT to block the said proceedings. This dates back to 2016 when a SEBI order directing the Club to return such monies to the investors was upheld by the Securities Appellate Tribunal, which the Clubs had failed to obey. SEBI then commenced auctioning the Club's properties for such recovery which has now been obstructed by the Insolvency Proceedings; hence the opposition.

## **SEBI AMMENDS DAILY PRICE LIMIT REGULATIONS FOR COMMODITY FUTURES MARKET**

Recently, the Indian exchanges had intimated SEBI that due to a difference in methodology of price calculation, closing prices on domestic exchanges were differing from closing price on international exchanges due to which the Daily Price Limit range on the exchanges determined by a pre-set formula would lag behind international exchanges in the subsequent trading sessions.

To resolve the issue, SEBI relaxed its regulation, allowing the exchanges to further relax the DPL in stages of 3 per cent by the exchange with cooling-off period of 15 minutes in case the price movement in the international markets is more than the aggregate DPL, or if international price is beyond aggregate DPL range. The Daily Price Limit (DPL) defines the range within which the price of a commodity futures contract can move in one trading session. Such limits exist to protect investors from sudden and extreme price movements.

## **19 INVESTORS THRUSTED UPON WITH A HEFTY 95 LAKH PENALTY FOR PFUTP VIOLATIONS IN THE SCRIP OF GLOBAL INFRATECH**

Yet another instance of grave market abuse, creating misleading volume and prices of the scrip through synchronised trading can be seen in the present case of 19 persons who manipulated the stock of Global Infratech and Finance Limited in a way as to prejudice the interests of benign investors. SEBI, recently imposed a penalty of 95 Lakhs on such aforementioned investors for their alarming misconduct with regards to synchronised trading without changing the beneficial ownership.

SEBI's Adjudicating Officer Soma Majumder in the circular said, "I find that such a repeated and uniform strategy of synchronised trades involving substantial quantity of shares was followed by Noticees in order to create a misleading appearance of trading, without any change of beneficial ownership, and thus was a fraudulent activity resorted to by the Noticees in order to mislead investors." In case of default of payment within 45 days, SEBI shall initiate Recovery Proceedings under Section 28A of SEBI Act for the realisation of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties of such 19 persons

## RECENT REGULATORY APPROVALS BY SEBI BOARD

In a recent board meeting, SEBI approved a sea of reforms pertaining to several areas of the securities markets. Notably, some are:

### Relating to IPOs-

- It is now mandatory to make disclosure of Key Performance Indicators (KPIs) and price per share for the issuer based on past transactions and past fund raising done by from the investors under 'Basis for Issue Price' section of the offer document, and in Price Band Advertisement.
- Issuer shall also disclose details of pricing of shares based on past transactions and past fund raising from investors by issuer prior to IPO.

### Relating to payouts of redemptions and dividends-

- SEBI (Mutual Funds) Regulations, 1996 have now been amended to facilitate faster payout of redemption and dividend to unitholders by AMCs from existing 10 working days and 15 days respectively to such period as may be specified by SEBI from time to time, proposed now as 3 working days and 7 working days.

### Relating to net settlement of Cash and F&O-

- Obligations arising out of cash segment settlement and physical settlement of F&O segment, upon expiry of stock derivatives, shall be settled on net basis, as against the existing approach of settling such obligations separately.

### Relating to Pre-filing of offer documents-

- Pre-filing of offer document is now an optional alternative mechanism for the purpose of Initial Public Offer on the Main Board of Stock Exchanges. This would allow issuers to carry out limited interaction without having to make any sensitive information public.

### Relating to approval process for appointment/removal of Independent Director-

- New optional provision in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) have been added for appointment of Independent Directors and a related provision for removal of Independent Directors in listed entities.

As per the existing requirement under the LODR Regulations, appointment, re-appointment or removal of Independent Directors had to be made through a special resolution.

#### Relating to REITs and InvITs-

- The minimum holding requirement of units has been reduced from twenty-five percent to fifteen percent by sponsor(s) and sponsor group(s) of the total outstanding units of the Real Estate Investment Trust (REIT) on post-initial offer basis in line with the requirements specified for sponsor(s) in the SEBI (Infrastructure Investment Trusts) Regulations, 2014.
- Separate regulatory framework for unlisted InvITs has been discontinued.

#### Relating to OFS-

- Minimum 10% shareholding for the non-promoter shareholders for offering shares through OFS mechanism has been removed.
- Cooling off period has been reduced to a range of +-2 weeks to +-12 weeks based on the liquidity of securities.
- Retail investors have been allowed to bid for the unsubscribed portion of non-retail segment.

## **SAT HEARS WISEC GLOBAL THE MEGA PFUTP-VOLUME MANIPULATION CASE**

SEBI was represented by MDP & Partners earlier this week in the appeal that stems from an Order passed by the Respondent in the scrip of Wisec Global Limited wherein 19 Noticees were held liable not only for manipulation of the price of the scrip and created misleading appearance of trading in the scrip but also for the alleged non disclosures by the entity in respect of acquisition of shares. Noticees indulged in an act leading to creation of artificial/fictitious volume, let alone off-loading of shares not through the stock exchange but through off-market which didn't satisfy the requisites of a spot contract.

SEBI initiated Adjudication Proceedings against the Noticees and after a detailed investigation, imposed a penalty ranging from Rs. 1 lakh to Rs. 10 lakhs on each Noticee respectively. Four of such Noticees approached the Securities Appellate Tribunal contesting that the order was erroneously passed against them. However, the Ld. Counsel for the Respondent assisted by Nishit Dhruva, Ravishekar Pandey and Shefali Shankar i/b MDP Partners cracked open the case for the Bench and show cased why the order should not be set aside. Time was thus given to file a reply and the connected appeals were listed to be heard on a later date.

## **A BREATHER FOR BRICKWORKS AT SAT**

Earlier this month, in a first, the Securities and Exchange Board of India cancelled the license of Brickwork Ratings and prohibited it from taking up new clients and directed it to wind up operations in six months, in what is also the toughest regulatory action against any credit rating firm. However, The Securities and Appellate Tribunal (SAT) on Friday granted interim relief to Brickwork Ratings, by staying the market regulator SEBI's order. This direction came after the firm's "failure to exercise proper skill, care and diligence" while discharging duties.

In wake of the aforesaid, the Securities and Exchange Board of India came out with guidelines to facilitate orderly migration of credit ratings of debt securities following cancellation of licence of a credit rating agency. The regulator said on and from the date of the order, or the date of submission of request for surrender of licence, the concerned credit rating agency should prominently disclose in its website the order or the request. It will also have to communicate the same to its clients within 15 days of the order or the request. It should not take any fresh mandates and allow its clients to withdraw any assignment given to it, without any additional cost to such clients- these amongst other guidelines were issued.

## **BOMBAY DYEING AND PROMOTERS CHARGED FOR FRAUD AND MANIPULATION**

The Securities and Exchange Board of India barred Bombay Dyeing, its sister company and its promoters from the securities markets for up to two years and levied a fine totalling ₹15.75 crore on them for their involvement in a fraudulent scheme of misrepresenting the company's financial statements. This stems from the probe done by SEBI into the company's financial numbers for the period between Financial Years 2012-2019, following which a Show Cause Notice was issued.

The company's dealings with Scal Services, an unlisted entity engaged in the real estate business were under scanner, as it involved various entities belonging to the Wadia Group, the company's parent entity. The probe stated that the bulk sales made to Scal Services were diverted to the real estate business of Bombay Dyeing. SEBI noted that the shareholding of Scal Services was done so as to evade the tag of an 'Associate Company', let alone consolidation of statements.

## **ENTITIES PENALIZED FOR FRONT-RUNNING DEUTSCHE MUTUAL FUNDS' TRADES**

In a recent action, SEBI has charged five entities for front-running the trades of Deutsche Mutual Fund. SEBI had investigated the suspected front-running between September 2014 and May 2015 and found that the father of the fund manager of Deutsche Mutual Fund, getting information about the trades of DMF had opened trading accounts in the names of the four of the five entities who were made noticees in the case and were also making trades.

The adjudicating officer found that the five entities, the fund manager and his parents, were working in an arrangement to profit off front-running the trades of DMF. The FM had already made settlements vide a WTM order dated December 21, 2021, in that order, the five aforementioned entities were penalized jointly and severally for a total sum of ten lakhs. Front running is a trade where a broker or an investor joins a trade because they have foreknowledge of a large confidential deal which will impact the asset's price which in this case, were the trades of Deutsche Mutual Fund that influenced the prices

## **SEBI WITHDRAWS RECOVERY NOTICE IN VCG AND CO. CASE**

In a recent order, the Securities and Exchange Board of India has issued a notice regarding cancellation of a recovery notice issued by the market regulator in March earlier this year against VCG and Co. and connected entities. The matter pertains to a case wherein SEBI had imposed a monetary penalty of ₹15 lakh on audit firm VCG & Company and its partner Vishal Chandra Gupta for alleged misleading disclosures with respect to the utilisation of issue proceeds of Tarini International, which came out with an initial public offer in 2014.

It was observed that the Unqualified Utilization Certificate issued by the Statutory Auditor, VCG, was not true, was misleading and contained information in a distorted manner which had the potential to influence the decision of the investors. An Appeal was preferred before the Securities Appellate Tribunal which held that “In absence of a finding that there was deceit or inducement, the appellants can only be held guilty for professional lapse or negligence for which the appropriate authority to take action is ICAI”. SEBI has already made a complaint to the ICAI in the instant case and ICAI is holding an inquiry against the appellants and pursuant to the SAT order, has accordingly cancelled the recovery notice.

## **SEBI HAMMER ON YET ANOTHER ILLEGAL INVESTMENT ADVISOR**

In a recent order, SEBI has charged Momentum Tips, and its Proprietor for violation of SEBI Investment Advisers Regulation, 2013.

Momentum Tips, was an entity that through its website was providing investment advisory services and trading calls to investors and traders. The entity had failed to get registered itself with SEBI as mandated under the IA Regulations, 2013 and between the period of February and July 2019 had made over 33 lakh rupees from rendering its illegal investment advisory services.

The entity failed to respond to the Show Cause Notice from SEBI, and neither did it avail the opportunity of personal hearing to defend its case. In that order, the adjudicating authority, banned the proprietor from accessing the securities market for a period of 3 years and to return the funds of the investors in due time as prescribed by SEBI.

MDP & Partners Advocates & Solicitors  
Tel: +91 22 6686 8900 | Fax: + 91 22 6686 8989  
Email: - [newsflash@mdppartners.com](mailto:newsflash@mdppartners.com)  
Website: [www.mdppartners.co.in](http://www.mdppartners.co.in)

Fort Office: MDP House, 19 Bank Street Cross Lane, Fort, Mumbai 400 001.  
Bandra Office: 303, 3<sup>rd</sup> floor, Kanhaiya Building, Linking Road, Bandra West, Mumbai 400 050.

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