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Article

DPDPA: Concerns and impact in the online gaming world

By **Prashant Phillips, Sameer Avasarala and Abhishek Singh**

The article discusses how the gaming industry will be impacted by the Digital Personal Data Protection Act, 2023. It discusses how the new law once enforced will require platforms, gaming developers, and gamers (or users) alike to pay attention to the framework under which personal data may be processed, notices reviewed, consents provided (where required) and rights exercised with regard to the processing of personal data. Elaborately discussing the impact on gaming platforms, covering technical and organizational measures, grievance redressal, etc., the authors also examine the requirements associated with processing of children's data. According to them, the advent of DPDPA requires entities in the online gaming sector to realign and reimagine their data collection and handling practices, as entities may have to implement more elaborate measures, especially in the context of processing activities, advertising, and engagements, in order to remain compliant. They, in this regard, also note that privacy measures play a greater role today in instilling confidence among various stakeholders, users, employees, and investors alike.

DPDPA: Concerns and impact in the online gaming world

By Prashant Phillips, Sameer Avasarala and Abhishek Singh

India has seen a significant spike in internet and technology penetration in the past decade as estimates[1] project at reaching a 900-million active user count by 2025. The massive influence of internet and technology in every facet of life is also witnessed by the rise of an accessible foray of applications, websites, and platforms in almost all sectors, including the 'sunrise' gaming industry. Gaming as an industry is also staged for exponential growth with some reports[2] indicating that the sector is expected to grow by 20% by FY25 to reach over INR 200 billion in revenue. The user base of online gamers in India contributes a major fraction worldwide, with mobile gaming being a major contributor of such user base.

Privacy interface in gaming

While the regulation of online gaming, including protection of digital assets, payment methods, and protection against impersonation are well-discussed risks associated with online gaming, those associated with the processing of personal data by platforms, purposes of processing, and sharing of data merit deeper attention. The advent of the Digital Personal Data Protection Act, 2023 ('**DPDPA**') requires platforms, gaming developers, and gamers (*or users*) alike to draw attention towards the framework under which personal data may be processed, review notices, provide consents (where required) and exercise rights with regard to the processing of their personal data.

The obligations imposed on Data Fiduciaries have been drafted to provide a framework in which personal data may be processed without hampering the ability of such platforms to innovatively offer products and services. This is done so with the legislative intent of encouraging informed, specific consent and transparent processing, while also enabling Fiduciaries to innovate and develop new products and services, akin to the concepts of Privacy-by-design and default.

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[1] Over 50% Indians are active internet users; base to reach 900 million by 2025, available here

[2] 20% Surge in Online gaming in India, available here

Privacy stakeholders and impact on gaming platforms

Gaming intermediaries and platforms that onboard users for providing gaming services and determine how and why user data is processed are likely to be considered 'Data Fiduciaries', while those that process user data under the control or instructions of the former (*such as cloud gaming service providers, payment processors, analytics or support service providers*) are more likely 'Data Processors' under the DPDPA.

It is important to recognize that the DPDPA is a sector-agnostic law that aims to govern the processing of personal data across sectors and industries. Its sectoral impact may be assessed considering the impact of obligations in light of the user journey and different activities undertaken throughout such journey specific to the sector.

(a) ***Informed Notice and Consent***: Providing an appropriate notice (*in English and other local languages*) containing the datasets collected, purposes of processing, sharing with third parties and the rights of individuals, along with the right to file a complaint, is one of the key obligations under the DPDPA. In addition to the same, Fiduciaries must rely on consent or process user data on the basis of certain 'legitimate uses'.

Apart from alignment of notices, the grounds of processing i.e., consent and 'legitimate use' (*particularly voluntary submission*) as grounds for processing would have to be specifically evaluated in the context of voluntary sign-ups on gaming platforms, processing personal data for safety and security of platforms and users, processing for providing targeted advertising, in-game communication, in-app purchases. Processing in each of these situations would have to be evaluated if legitimate use may be relied upon or consent would have to be obtained from users.

Where consent may have to be relied upon, gaming platforms may have to reimagine and embed the same as part of their user flows and journeys in accordance with the free, specific, informed, and unconditional consent threshold provided under the DPDPA. These obligations may also have to be considered in addition to the requirements under the Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rules, 2021 ('Intermediary Guidelines') as significant peer-to-peer exchange of information may also be facilitated by such gaming platforms.

(b) ***Technical and organizational measures***: Online gaming data fiduciaries may be required to scale technical, organizational as well as security measures to protect user data. While the extent of such measures would only be clear upon the notification of the rules, some of these measures may include data encryption, alignment with information security standards (*such as SOC2 or ISO/IEC/27001*), periodic employee training and appointing designated personnel to address queries.

(c) ***Engagement of processors and other entities***: Gaming intermediaries may engage a wide range of processors ranging from analytics providers, advertising partners, cloud service providers, and authentication providers many of which may process user data. All engagements with such processors must be codified in terms of a valid contract while also defining the scope and purposes of processing, subcontracting, and cross-border transfers, while also fortifying them with appropriate warranties, indemnities and other protections.

(d) ***Grievance redressal***: Gaming intermediaries must establish grievance redressal mechanisms to enable users to exercise their rights and raise concerns regarding the processing of personal data. This may require them to provide appropriate internal policies and procedures and designation of personnel who would receive, enquire and redress such complaints and exercise of rights, as per timelines specified by law.

(e) ***Internal mechanisms***: Compliance with the DPDPA also requires entities to carry out implementational changes such as introducing policies and procedures at the organizational and departmental levels for periodic audit and verification of Processor conduct, identification and removal of user data no longer necessary, procedures for facilitating rights, policies for conducting parental verification for personal data of children and persons with disabilities etc.

Processing of children's data

The requirements associated with processing children's data remain one of the key considerations for entities in the gaming sector. The DPDPA provides for the 'verifiable consent' of parent or guardian prior to processing personal data of children (*any person below eighteen years of age*) and persons with disabilities.

Additionally, children's data may not be processed in any manner which may amount to tracking, behavioral monitoring, involve targeted advertising or otherwise cause detrimental effect on well-being.

(a) This requirement may call upon online gaming platforms to present users with notice and implement mechanisms for confirming the age of users before entering the website and incorporate measures for implementing 'verifiable' parental or guardian consent. The details around the threshold and manner of such verifiability (*including verification documents to be sought and mechanisms to be implemented*) are expected to be detailed in the rules to follow.

(b) Online gaming platforms may have to segregate users based on age, and limit targeted advertising and tracking activities to users who have attained the age of majority. Apart from the technical implementations required for such segregation, such measures may also require platforms to reconsider advertising strategies and choices, particularly targeted advertising, in each of these user bases. Some of these obligations must also be considered and evaluated by intermediaries hosting such gaming platforms.

While certain exemptions have been allowed for certain entities to comply with some of the above obligations, it remains likely that such exemptions are targeted towards educational, healthcare, and related institutions and their extension to online gaming platforms appears unlikely at the moment.

Conclusion

The advent of the DPDPA requires entities in the online gaming sector to realign and reimagine their data collection and handling practices. While some of the implementations such as privacy notices, consent mechanisms, and age verification may already be in place as a standard measure in many platforms, such measures may have to be assessed for adequacy to demonstrate compliance with the threshold provided under the DPDPA. Specific use case situations such as the extent of reliance on 'legitimate use', and data use concerns with in-app data collected must also be factored in, from time to time.

In other cases, entities may have to implement more elaborate measures, especially in the context of processing activities, advertising, and engagements to remain compliant. These measures are not only from the perspective of the DPDPA, but also under the Intermediaries Guidelines which regulate aspects beyond privacy and data protection such as content moderation. It is, however, important to consider that such privacy and technology measures have shifted beyond mere compliance activity and play a greater role today in instilling significant confidence among various stakeholders, users, employees, and investors alike in such entities.

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Notifications & Circulars

- Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 amended
- SEBI standardizes Private Placement Memorandum (PPM) Audit Report
- Key Facts Statement (KFS) for loans & advances
- Omnibus framework for recognizing Self-Regulatory Organisations (SROs) for Regulated Entities (REs) of RBI
- Protection of investors on transfer of securities in dematerialised form
- Additional disclosure requirements by FPIs

Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 amended

Reserve Bank of India *vide* Notification No. FEMA. 395(2) /2024-RB, dated 19 April 2024 has notified Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) (Amendment) Regulations, 2024 ('**Amendment**') through which Regulations 3.1 and 4 of the Foreign Exchange Management (Mode of Payment and Reporting of Non-Debt Instruments) Regulations, 2019 ('**Principal Regulations**') stand amended.

Vide this Amendment, Regulation 3.1 of the Principal Regulations shall now include the mode of payment and remittance of sale proceeds requirements with regards to the Purchase or Subscription of Equity Shares of Companies Incorporated in India on International Exchanges Scheme by Permissible Holder as introduced in Schedule XI *vide* Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2024. Any consideration for purchase or subscription can be paid through banking channels to a foreign currency account of the Indian company or as an inward remittance from abroad through banking channels. It also includes any deposit in a foreign currency account of the Indian company. Further, the sale proceeds (net of taxes) of the equity shares may be remitted outside India or may be credited to the bank account of the permissible holder. Regulation 4(8) has been substituted to provide that the aforementioned transaction can be reported to the Reserve Bank in Form LEC (FII) by an Investee Indian Entity.

SEBI standardizes Private Placement Memorandum (PPM) Audit Report

SEBI *vide* Circular No. SEBI/HO/AFD/SEC-1/P/CIR/2024/22 dated 18 April 2024, has mandated annual audits of compliance with the terms of Private Placement Memorandum (PPM) for Alternative Investment Funds ('**AIFs**') under Regulation 28 of SEBI (AIF) Regulations, 2012 and Clause 2.4 of SEBI Master Circular SEBI/HO/AFD/PoD1/P/CIR/2023/130 dated 31 July 2023. A new standard reporting format for PPM Audit Reports has been developed in consultation with the pilot Standard Setting Forum for AIFs ('**SFA**') to ensure uniform compliance standards and ease of reporting. AIFs are required to submit PPM audit reports online to SEBI through the SEBI Intermediary Portal (SI Portal) as per the prescribed format. Optional audit sections include 'Risk Factors,' 'Legal, Regulatory and Tax Considerations,' 'Track Record of First Time Managers,' 'Illustration of Fees and Expenses,' and 'Glossary and Terms.' These provisions are applicable for PPM audit reports for the Financial Year ending 31 March 2024 onwards. The reporting format will be periodically reviewed by the pilot SFA in consultation with SEBI to accommodate changes in the AIF industry landscape.

Key Facts Statement (KFS) for loans & advances

RBI *vide* Circular No. DOR.STR.REC.13/13.03.00/2024-25 dated 15 April 2024 has issued guidelines for Key Facts Statement ('**KFS**') for loans & advances in order to enhance transparency and to empower borrowers to make an informed financial decision. This Circular covers all retail and MSME term loan products extended by all Regulated Entities ('**REs**'). REs are mandated to provide a KFS to all prospective borrowers, written in a language understood by such borrowers in a standardised format. The KFS shall include all essential loan details, fees, charges, annual percentage rate ('**APR**') computation, and amortization schedule of the loan over the loan tenor. REs must obtain an acknowledgment from the borrower, stating that she/he has understood the KFS.

Further, it has been provided that a KFS shall have a validity period of at least three working days for loans having a tenor of seven days or more, and a validity period of one working day for loans having a tenor of less than seven days, within which the borrower shall agree to the terms of the loan. It has further been emphasized that all charges associated with the loan, including third-party service providers' charges, shall form part of the APR and shall be disclosed separately. Any fees/charges not mentioned in the KFS cannot be charged without the explicit consent of the borrower. Also, a summary of the KFS shall be included as part of the loan agreement. The Circular exempts credit card receivables from the applicability of these provisions.

The standardized format of KFS is available here.

Omnibus framework for recognizing Self-Regulatory Organisations (SROs) for Regulated Entities (REs) of RBI

Department of Regulation at RBI on 21 March 2024, introduced a framework for recognizing Self-Regulatory Organisations ('**SROs**'), aiming at enhancing industry standards and fostering self-regulation within Regulated Entities. The framework clarifies that the existing SROs already recognized by RBI shall continue to be governed by the terms and conditions under which they were recognized unless this framework is specifically extended to the SROs. SROs are expected to operate with credibility, objectivity, and responsibility under the regulator's oversight. The SROs derive sufficient authority from membership agreements to set and enforce ethical, professional, and governance standards on their members. It shall act as a representative of its members in engagements with RBI, collect and share sectoral information with RBI, and encourage research and development.

SROs must fulfill the eligibility criteria of being a not-for-profit company, representing the sector, having professional competence, and being fit and proper. SRO must have a diverse mix of members at all levels to represent the sector holistically. They shall attain the minimum membership within the prescribed timelines, failure of which could result in revocation of recognition granted. It has been emphasized that the membership of SRO shall be voluntary for the members.

Investments in Alternative Investment Funds (AIFs)

Reserve Bank of India *vide* Circular No. DOR.STR.REC.85/21.04.048/2023-24 dated 27 March 2024, has addressed suspicious concerns regarding investments/transactions with Alternative Investment Funds ('**AIFs**') by Regulated Entities ('**RE**') that entail substitution of direct loan exposure of REs to borrowers, with indirect exposure through investments in units of AIFs. Previously, concerns were addressed and notified under Circular No. DOR.STR.REC.58/21.04.048/2023-24 ('**2023 Circular**') dated 19 December 2023. *Vide* this Circular, the downstream investment in equity shares of the debtor company of the RE shall now be excluded. However, other investments, including hybrid instruments, continue to be covered within the ambit of the 2023 Circular. It has further been clarified that provisioning for unliquidated investments is to be made only to the extent of RE's investment in AIF which is further invested by the AIF in the debtor company, but not the entire investment of RE in the AIF.

Paragraph 3 of the 2023 Circular (i.e., investment by REs in the subordinated units of any AIF Scheme shall be subject to full deduction from RE's capital funds) applies only if the AIF has not made any downstream investment in a debtor company of the RE. The proposed deductions from capital shall take place equally from both tier-1 and tier-2 capital and the reference to investment in subordinated units includes all forms of subordinated exposures, including sponson units. Furthermore, the Circular clarifies that investments by REs in AIFs through intermediaries such as fund of funds or mutual funds do not fall within the scope of the 2023 Circular.

Protection of investors on transfer of securities in dematerialised form

SEBI *vide* Circular No. SEBI/HO/MRD/MRD-PoD-2/P/CIR/2024/18 dated 20 March 2024, has made amendments to Para 1.12 of the Master Circular for Depositories dated 6 October 2023, have introduced comprehensive measures to strengthen safeguards against unauthorized transfer of securities and enhance investor protection. These amendments, effective from 1 April 2024, emphasize Depository Participants' ('**DPs**') compliance and communication with SEBI to ensure implementation and investor protection in the securities market.

Key provisions include a heightened focus on investor education, particularly emphasizing the careful preservation of Delivery Instruction Slips (DIS) by the Beneficial Owner ('**BO**') and advising against leaving blank or pre-signed DIS with DPs or any other entity. Additionally, the amendments prohibit DPs from accepting pre-signed DIS with blank columns from BOs, aiming to prevent potential misuse. Moreover, the amendments mandate BOs to promptly inform DPs in writing if their DIS booklet is lost, stolen, or untraceable, prompting DPs to cancel any unused DIS from the reported booklet. It also ensures that a new DIS booklet is issued only upon completion of a DIS instruction request slip from the previous booklet, with exceptions made for instances of loss or similar circumstances. Inactive or dormant accounts, defined as those without transactions for 12 consecutive months, receive particular attention, with DIS booklets delivered to the registered address of the BO and issuance authorized by designated officials. Additionally, limits are placed on the issuance of loose DIS, requiring personal signature confirmation by BOs in the presence of authorized DP officials. Stringent checks and balances are mandated for signature verification by DPs, including cross-checks with BOs and mandatory verifications for certain transactions, especially in inactive accounts or those with multiple securities transfers.

Additional disclosure requirements by FPIs

SEBI, through Circular No. SEBI/ HO/ AFD/ AFD-PoD-2/CIR/P/2023/148 dated 24 August 2023, introduced additional disclosure requirements for Foreign Portfolio Investors (FPIs) ('**Circular**'). However, FPIs meeting certain conditions listed under Para 8 of the Circular were exempted from these additional disclosure requirements. Building upon this, SEBI *vide* Circular No. SEBI/HO/AFD/AFD-POD-

2/P/CIR/2024/19SEBI/HO/AFD/AFD-POD-2/P/CIR/2024/19 dated 20 March 2024 ('**New Circular**') has now decided that FPIs with over 50% of their Indian equity Assets Under Management (AUM) within a corporate group need not comply with the additional disclosure norms specified in Para 7 of the Circular, subject to certain conditions. These conditions include the requirement that the apex company of the corporate group has no identified promoter and that the FPI holds no more than 50% of its Indian equity AUM within the corporate group after excluding its holdings in the apex company without an identified promoter. Additionally, the cumulative holdings of all such FPIs in the apex company must remain below 3% of the total equity share capital of the apex company. Custodians and Depositories are tasked with monitoring the utilization of this 3% limit for apex companies without identified promoters on a daily basis, publicly disclosing any breaches before the start of trading on the following day. In the event of a breach, FPIs meeting the 50% concentration criteria in the corporate group must either realign their investments below the 50% threshold within 10 trading days or make additional disclosures as prescribed in the circular. However, no realignment or disclosure is required unless the 3% cumulative limit for the apex company continues to be met during the specified 10 trading days.

The New Circular further stipulates that FPIs meeting certain objective criteria as of October 31, 2023, and not realigning their portfolios within the specified time period nor qualifying for exemption, were required to make additional disclosures by March 12, 2024. However, FPIs meeting the conditions specified in the New Circular as of 12 March 2024, are exempted from actions consequent to non-disclosures, as outlined in the Circular. The implementation of the New Circular will be guided by a process flow framed by the pilot Custodians and DDPs Standards Setting Forum (CDSSF), to be adopted by all DDPs/Custodians in consultation with SEBI.

Ratio Decidendi

- Real estate projects registered separately under RERA though in single township, cannot be constituted as single project to ascertain threshold prescribed for homebuyers under IBC Section 7 – NCLAT
- Additional stamp duty not leviable on increase in authorized capital of a company if the prescribed maximum stamp duty already paid – Supreme Court
- 'Free of cost' copy of final order sent by NCLT Registry as per NCLT Rules, cannot be used as a certified copy for filing appeal before NCLAT – NCLAT
- Operational creditor can only be paid under IBC Section 30(2)(b) by way of cash payment and not by way of issuing equity – NCLAT
- Arbitration Section 16 empowers Arbitral Tribunal to implead a non-signatory to arbitration proceedings even if same not sought in Section 11 application before High Court – Bombay High Court

Real estate projects registered separately under RERA though in single township, cannot be constituted as single project to ascertain threshold prescribed for homebuyers under IBC Section 7

The National Company Law Appellate Tribunal, New Delhi (**'NCLAT'**) has rejected the homebuyer's application under Section 7 of IBC seeking initiation of Corporate Insolvency Resolution Process **('CIRP')** against the Ansal Hi-Tech Township Limited **('Respondent').**

The Appellant in this case was the representative for Homebuyers who had purchased apartments in a township. The Respondent **('Corporate Debtor')** had undertaken to develop apartments under different Plans/Projects registered separately under RERA under the township, which it failed to deliver.

The Appellant initiated proceedings under Section 7 of the Insolvency and Bankruptcy Code before the National Company Law Tribunal, Delhi. However, NCLT rejected the Appellant's application on the ground that the homebuyers are part of several projects located inside the Township, each one of which was constructed and registered under RERA separately and independently. According to it, homebuyers must meet the minimum threshold requirement of 10% or 100 buyers for each project to qualify for the threshold of homebuyers as specified under Section 5 (8) of the IBC.

Before the NCLAT, the Appellant, *inter alia*, primarily contended that the township ought to be seen as a single project and that NCLT misinterpreted Section 5(8) of the IBC's explanation (ii), implying that each RERA registration is a separate real estate project.

The NCLAT did not concur with the submissions of the appellant and upheld the decision of NCLT affirming that the homebuyers are connected to different Projects that are being built and are registered separately under RERA. Hence, to meet the minimum requirement under Section 7(1), homebuyers must meet the minimum threshold under separate projects that are registered independently under RERA.

[*Pankaj Mehta* v. *Ansal Hi-tech Township Limited* – Judgement dated 01 April 2024 in Company Appeal (AT) (INS) No. 248 / 2023, NCLAT]

Additional stamp duty not leviable on increase in authorized capital of a company if the prescribed maximum stamp duty already paid

The Supreme Court has held that in case the maximum stamp duty payable on the authorized share capital of a company is already paid, as prescribed under the relevant stamp laws, no additional stamp duty is payable for the subsequent increase in the share capital unless the law specifically requires payment of additional stamp duty.

The National Organic Chemical Industries Limited ('**NOCIL**') paid a stamp duty of INR 1.12 crore in the year 1992 as it increased its share capital from INR 36 crore to INR 600 crore as per the Bombay Stamp Act, 1958 ('**Stamp Act**'). Subsequently, the Stamp Act was amended introducing a cap of INR 25 lakh as stamp duty for companies increasing their authorized share capital.

Subsequent to the said amendment, NOCIL increased its authorized capital to INR 1200 crore. Considering the same, NOCIL inadvertently paid INR 25 lakh as an additional stamp duty. However, noting the fact that the maximum stamp duty was already paid, NOCIL sought a refund of INR 25 lakh, which was rejected by the Deputy Superintendent of Stamps. NOCIL challenged this before the Bombay High Court by way of a writ petition and the same was allowed directing the State of Maharashtra to refund the additional stamp duty along with interest @ 6% per annum.

On appeal by State of Maharashtra, the Supreme Court considered the ratio laid down by Allahabad High Court in *New Egerton Wollen Mills* 1899 SCC Online All 22 and held that Form No. 5 is only an intimation to RoC regarding the increase in the Authorized Capital. Rather, it is the Memorandum and Articles of Association (AoA) that are liable to be assessed under Section 2(1) of the Stamp Act to ascertain the stamp duty.

The Supreme Court further held that the Companies Act, 1956 being a special law and Stamp Act being a general law with regard to AoA, the special law will prevail over the general law, in case of conflict. It was further clarified that in terms of Section 31 of the Companies Act, 1956, any increase in the share capital of the company shall be valid as if it were originally there when the AoA was first stamped; and that the amended AoA cannot be considered as a fresh instrument.

Based on the above, the Hon'ble Supreme Court held that the Stamp Duty paid by NOCIL in 1992 will have to be considered while calculating the duty payable on the increased authorized share capital.

[*State of Maharashtra* v. *National Organic Chemical Industries Limited* – Judgement dated 5 April 2024 in Civil Appeal No. 8821 of 2011, Supreme Court]

‘Free of cost’ copy of final order sent by NCLT Registry as per NCLT Rules, cannot be used as a certified copy for filing appeal before NCLAT

The Appellant received a free-of-cost copy of the order of NCLT from the NCLT Registry. Thereafter the Appellant filed an E-Appeal against the NCLT Order before the NCLAT.

NCLAT observed that the appellant had not applied for a certified copy of the NCLT Order by paying fees as per the NCLT Rules, 2016. Further, Rule 22(2) of NCLAT Rules, 2016 states that every appeal before the NCLAT shall be accompanied by a certified copy of the impugned order.

The Hon’ble NCLAT opined that a mere reading of Rule 50 of NCLAT Rules, 2016 would clarify that there exists a requirement on the part of the appellant to apply for a certified copy by paying the requisite fees. The free of cost copy of the NCLT Order sent by the NCLT Registry cannot be considered as a substitute for a certified copy.

[*Munagala Roja Harsha Vardhini* v. *Vardhansmart Private Limited* – Judgement dated 15 March 2024 in Company Appeal (AT) (CH) (Ins) No. 23/2024, NCLAT]

Operational creditor can only be paid under IBC Section 30(2)(b) by way of cash payment and not by way of issuing equity

The NCLAT, New Delhi held that the amount payable under the resolution plan to Operational Creditors in terms of Section 30(2)(b) of IBC, can only be by way of cash and not by way of issuing equity.

Insolvency Proceeding was initiated against Television Home Shopping Network Limited (‘**Corporate Debtor**’). The said IBC proceeding was admitted, and CIRP was initiated against the Corporate Debtor. In the CIRP, Goblin India Limited, being the Operational Creditor filed its claim. The Centre for Economic and Social Inclusion Private Limited (‘**CFEASI/ Financial Creditor**’) also filed its claim in the capacity as a Financial Creditor and was the sole member of the Committee of Creditors **(‘CoC’)** with 100% voting rights.

The Resolution Professional submitted the Resolution Plan of the Successful Resolution Applicant, to the adjudicating authority i.e., NCLT Mumbai for approval. As per the Resolution Plan, the total claim of the Operational Creditor was admitted for INR 16,36,64,956/- and the amount proposed to be payable to the Operational Creditor was INR 35,34,092/-, i.e., 2.16% of the total claim amount as a cash payment. The Resolution Plan also proposed to transfer 49.96% of the partly paid redeemable preference share of the Corporate Debtor towards the claim of the Operational Creditor. The NCLT approved the Resolution Plan. However, aggrieved by the proposed payment in the form of a partly paid redeemable preference share, the Operational Creditor challenged the approval of the Resolution Plan before NCLAT.

The Operational Creditor in the appeal before NCLAT relied on Section 30(2)(b) of the IBC and submitted that the claim of the Operational Creditor should not have been paid by virtue of equity i.e., the redeemable preference shares of the Corporate Debtor. In this regard, reliance was placed on the judgment of the Supreme Court in the case of *Jaypee Kenisington Boulevard Apartments Welfare Association & Ors. v NBCC & Ors* (2022) 1 SCC 401, where it was held that operational creditors are to be paid in priority over the Financial Creditor only by cash and not by issuing the equity shares.

The Hon'ble NCLAT placing reliance on the judgment of Jaypee *(supra)* held that offering Operational Creditors redeemable preference shares in addition to just 2.16% in cash is against Section 30(2)(b) of the IBC. Hence, the NCLAT ordered to modify the Resolution Plan to make it compliant with Section 30(2)(b)(ii) and Section 53(1) of the IBC.

[*Gupta Textiles* v. *Darshan Patel & Ors*. – Judgement dated 1 April 2024 in Company Appeal (AT) (Insolvency) No. 408 of 2024, NCLAT]

Arbitration Section 16 empowers Arbitral Tribunal to implead a non-signatory to arbitration proceedings even if same not sought in Section 11 application before High Court

The Bombay High Court has held that the power to implead a non-signatory to an arbitration proceeding vests with the Arbitral Tribunal even if there was no such prayer in the application filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('**A&C Act**').

A Memorandum of Understanding (**'MoU'**) was executed between Subramanya Construction and Development Company Limited ('**Respondent No. 1**'), Prakruthi Infrastructure and Development Company Limited ('**Respondent No. 2**'), and Swan Energy Limited ('**Respondent No. 3**') and the said MoU contained an Arbitration Agreement. However, a dispute arose amongst the Parties leading to the issuance of a Notice invoking

Arbitration by Respondents No. 1 and 2. Thus, the Bombay High Court on an application filed under Section 11 of the A&C Act appointed a Sole Arbitrator to adjudicate the disputes arising out of the MoU.

In the arbitration proceedings, Respondent Nos. 1 and 2 sought to implead Cardinal Energy and Infrastructure Private Ltd. (**'Petitioner'**). Respondent No. 3 challenged this, contending that impleadment could only be directed by the High Court, not the arbitral tribunal since there was no such prayer for impleadment before the High Court under Section 11 Application. However, the Arbitral Tribunal exercising its power under Section 16 of the A&C Act, allowed the impleadment of the Petitioner.

The Petitioner, on receiving a notice from the Arbitral Tribunal of being impleaded as a party in the arbitration proceeding, filed a petition before the Hon'ble Bombay High Court under Section 34 of the A&C Act. Deciding on the issue of impleadment, the Bombay High Court dismissed the Petition and held that the Arbitral Tribunal has the power to decide whether the non-signatory is bound by the Arbitration Agreement and the impleadment as a party, even if no such impleadment was sought in the Section 11 Application.

The Hon'ble Bombay High Court also placed reliance on the case of *Cox and Kings Limited* v. *SAP India Private Limited* [Comm Arbitration Petition (L) No. 2603 of 2024], where the Hon'ble Supreme Court had held that when at a referral stage, impleadment of a non-signatory to the arbitration agreement is raised, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory is bound by the Arbitration Agreement.

Based on the above ruling, the Bombay High Court held that the Arbitral Tribunal considering its power under Section 16 of the A&C Act was justified in determining the impleadment of the Petitioner.

[*Cardinal Energy & Infra Structure Private Limited* v. *Subramanya Construction and Development Co. Limited* – Judgement dated 27 March 2024 in Comm. Arbitration Petition (L) No. 2603 of 2024, Bombay High Court]

News Nuggets

- Wage ceiling under EPFO may be raised to INR 21,000
- Draft Digital Competition Bill – Deadline for comments extended till May 15
- RBI to permit linking of PPIs through third-party UPI applications
- Reliance Securities receives SEBI's approval for change in control
- SEBI launches new version of SCORES
- ASCI and CCPA join hands to curb misleading advertisements

Wage ceiling under EPFO may be raised to INR 21,000

The Government of India is mulling raising the Employees' Provident Fund Organisation (**EPFO**) wage ceiling limit from the extant INR 15,000 to INR 21,000. Notably, the last amendment on the limit of wages was made in the year 2014.

[*Source:* *Economic Times*, published on 11 April 2024]

Draft Digital Competition Bill – Deadline for comments extended till May 15

The Government has extended the deadline for submission of comments by the stakeholders on the Draft Digital Competition Bill, 2024 ('**Bill**') and the report of the Committee on Digital Competition Law until 15 May 2024. Notably, the Bill seeks to impose certain obligations on large digital enterprises including tech companies and news aggregators, as part of the Government's efforts to ensure a level playing field and fair competition across the digital sector and prevent any possible anti-competitive practices.

[*Source:* *Economic Times*, published on 10 April 2024]

RBI to permit linking of PPIs through third-party UPI applications

The Reserve Bank of India has on 5 April 2024 announced that the RBI will soon permit linking of Prepaid Payment Instruments ('**PPIs**') through third-party Unified Payment Interface ('**UPI**') applications which will enable customers to use any of their UPI apps to access any of their wallets, even if such wallet and the UPI app belong to different companies.

[*Source:* *Economic Times*, published on 10 April 2024]

Reliance Securities receives SEBI's approval for change in control

The Securities and Exchange Board of India ('**SEBI**') has approved the application of a proposed change in control at Reliance Securities from the erstwhile Anil Ambani promoter group to the Hinduja group. The Hinduja Group was the successful resolution applicant to acquire the parent Reliance Capital under the Corporate Insolvency Resolution Process.

[*Source:* *Business Standard*, published on 4 April 2024]

SEBI launches new version of SCORES

The SEBI has launched the new version of the SEBI Complaint Redress System (SCORES 2.0) on 1 April 2024. As per the SEBI press release, the system is touted to be more efficient and user-friendly given its auto-routing, auto-escalation, monitoring by the 'Designated Bodies' and reduction of timelines.

[*Source: Money Control*, published on 1 April 2024]

ASCI and CCPA join hands to curb misleading advertisements

The Department of Consumer Affairs has stated that the Central Consumer Protection Authority ('**CCPA**') shall collaborate with the Advertising Standards Council of India ('**ASCI**') to protect the interests of the consumers by mitigating the practice of misleading advertisements in the digital space. The CCPA has requested the ASCI to forward to it any advertisement that is non-compliant of ASCI's guidelines and could potentially also violate the Consumer Protection Act, 2019 ('**Act**'). The CCPA has also warned that any such cases escalated by the ASCI shall be handled with strict adherence to the provisions of the Act.

[*Source: Lokmat Times*, published on 26 March 2024]

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