

# VERITAS LEGAL

ADVOCATES & SOLICITORS

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# COMPETITION

## Enforcement Matters

### Supreme Court emphasizes the need of an effects-based analysis in abuse of dominance cases

The Supreme Court while dismissing abuse of dominance allegations against Schott Glass India Private Limited ("**Schott India**") has emphasized the necessity of undertaking an effects-based analysis in determining whether an entity has abused its dominance. Further in its order the Supreme Court has also dealt with the competitive impact and evidentiary thresholds required to be met in order to demonstrate that certain types of commercial arrangements such as volume-based discounts, functional discounts, margin squeeze and tying arrangements cause an appreciable adverse effect to competition in India ("**AAEC**").

With respect to abuse of dominance investigations, it was *inter alia* observed that an effects-based analysis is an obligatory component of every abuse of dominance inquiry because 'abuse', by definition, is conduct that distorts the competitive process or harms consumers, and therefore the statute after determining the dominance of an enterprise contemplates two logically separate findings: (a) that the impugned practice falls within one of the types of abusive conduct set out in the Competition Act; and (b) that such conduct results in, or is likely to result in, an AAEC.

Further whilst dealing with averments in relation to the right of cross-examination, the Supreme Court has emphasized that where findings of the CCI depend upon oral statements of witnesses, the denial of cross-examination of such witnesses whose statements were relied upon vitiates the decision of the CCI.

With respect to the specific allegations made against Scott India, in relation to

Schott India's target-based rebate scheme, it was observed that differential pricing would only become abusive when it lacks objective commercial justification or when equivalent customers cannot obtain the same terms. On the allegations in relation to certain discounts that were linked to performing certain functions, the Supreme Court observed that such arrangements were not discriminatory in nature since the conditions for availing such functional discounts were applied uniformly to all the players.

With respect to allegation that the prices at which Schott India supplied its neutral amber and clear glass to an entity in which Schott India's parent entity was a 50% shareholder ("**JV Entity**") resulted in margin squeeze / market foreclosure, the Supreme Court reasoned that the said commercial arrangement was not anticompetitive because (a) Schott India was not present in the downstream market itself; (b) the competitors of the said JV Entity were able to operate with sustainable margins; (c) there were no market exits; (d) the prices in the downstream market did not increase on account of the existing commercial relationship between Schott India and the JV Entity; and (e) the prices charged by the JV Entity in the downstream market were comparable to that of its competitors.

Further while rejecting the allegation that the target-based rebate schemes offered by Schott India resulted in tying because it was based on the aggregate amount of neutral amber and clear glass purchased, the Supreme Court reasoned that the two variants of neutral glass were alternative specifications of one input rather than as independent products, and as such the said arrangement would not result in tying.

Based on the aforesaid, the Supreme Court, while upholding the decision of the Competition Appellate Tribunal, imposed cost of INR 500,000 (approx.

USD 5,830.22) on the appellant, owing to the unsubstantiated nature of allegations and prolonged litigation.

### **Kerala High Court affirms CCI's jurisdiction over competition issues in the broadcasting sector**

On 28 May 2025, the Kerala High Court (“**KHC**”) dismissed the writ petitions filed by Star India Private Limited (“**Star India**”), Asianet Star Communications Private Limited (“**Asianet**”), and Disney Broadcasting (India) Private Limited (“**Disney**”), which challenged the jurisdiction of the CCI to investigate allegations concerning abuse of dominance against Star India in the broadcasting sector.

It was argued that the complaint before the CCI related to violations of the Telecom Regulatory Authority of India (“**TRAI**”) Act, 1997 (“**TRAI Act**”) and allied regulations, which govern broadcasting sector to *inter alia* ensure fair competition amongst service providers. Accordingly, the TRAI Act, being the special law, should prevail over the Competition Act.

In relation to these averments the KHC observed that both the Competition Act and the TRAI Act are specialised legislations and while some overlaps may exist, the TRAI Act does not contain specific provisions to deal with the assessment of anti-competitive agreements and abuse of dominance and consequently, such matters would fall within the domain of the CCI since the Competition Act provides for the same. Taking note of the fact that regulatory issues and competition issues fall within separate statutory mandates the KHC clarified that the CCI has primary jurisdiction to examine allegations of abuse of dominant position, whereas TRAI’s jurisdiction is confined to matters involving non-compliance with licensing terms or violations of its regulations and tariff orders.

### **CCI passes its first settlement order while dealing with abuse of dominance allegations against Google in the Android TV market**

On 21 April 2025, the CCI accepted the settlement proposal made by Google LLC and Google India Private Limited (collectively referred as “**Google**”) in relation to an investigation that had been instituted against it and imposed a settlement amount of INR 202.4 million (approx. USD 2.37 million) on Google.

Notably, in 2021, the CCI had ordered the director general (“**DG**”) to investigate allegations of anti-competitive practices in relation to the way Google’s Android TV OS was being licensed and made available to smart TV manufacturers (“**OEMs**”). Pursuant to its investigation, the DG in its report (“**DG Report**”) noted that Google was dominant in the market for (a) licensable smart TV device operating systems in India; and (b) app stores for Android smart TV OS in India.

Further, the DG Report observed that pursuant to the provisions of certain commercial agreements such as the Television Application Distribution Agreement (“**TADA**”) and the related Android Compatibility Commitments (“**ACC**”) Google *inter alia* required OEMs to mandatorily pre-install the entire suite of Google apps in order to be able to licence Android TV OS which resulted in abuse of dominance since Google imposed unfair conditions and had made the conclusion of contracts contingent upon the acceptance of supplementary obligations which were unrelated to the subject matter of such contracts. Additionally, it was also noted that by restricting the ability and incentive of device manufacturers to develop and sell devices running on alternative versions of Android (i.e., Android forks), Google had limited

technical/ scientific development and also denied market access to developers of Android forks.

In order to address the findings of the DG and allay concerns which the CCI would have in relation to the same, Google *inter alia* volunteered the following settlement terms in its settlement application which would be applicable on Google for a period of 5 years:

- (a) Google would introduce a New India Agreement ("**NIA**") pursuant to which current Android TV OEMs as well as other interested OEMs would, for a fee, be able to license, the Google Play Store and Google Play Services for their compatible Android-based smart TVs with no requirement to preload any other Google service. Further these OEMs would not be compelled to include any placement or default requirements for the Play Store or any other Google service. Notably alongside NIA, Google will continue to make TADA available to Android TV OEMs.
- (b) Google would eliminate the provisions in the TADA that required OEMs to have a valid ACC for devices shipped in India that do not preload Google apps. Thus, enabling OEMs to sell, develop, and distribute Android forks that did not carry Google's proprietary apps. Notably this waiver also extended to other types of Android devices such as smart watches or mobile devices.
- (c) Google would communicate these developments to its Android TV partners in India through letters that would remind them of their ability to use the open-source Android OS for smart TVs without taking any applications from

Google or signing an ACC and their freedom to develop smart TVs using other competing OSs including Tizen, WebOS, and Roku OS.

That said, at this juncture it is pertinent to note that one member of the CCI in its dissenting order raised concerns regarding the nature of choice given to the OEMs to choose between TADA and NIA. The member *inter alia* noted that the dual structure places OEMs in a position where opting for NIA incurs additional costs, while the bundled applications under TADA remain free but come with restrictive conditions, which was likely to skew market dynamics in favour of the existing arrangements (which were found to be anti-competitive by the DG).

### **CCI imposes penalty on UFO Moviez India Limited and others for anti-competitive practices**

On 16 April 2025, the CCI found UFO Moviez India Limited ("**UFO**"), its wholly owned subsidiary Scrabble Digital Limited ("**Scrabble**"), and Qube Cinema Technologies Private Limited ("**Qube**") to be in violation of the provisions of the Competition Act that deals with anti-competitive agreements.

In its order the CCI noted that both UFO and Qube supply Digital Cinema Equipment ("**DCE**") to Cinema Theatre Owners ("**CTOs**") enabling them to display film content. Further noting that in order for film content to be compatible with the DCE it was necessary for it to undergo certain post-production processing which is undertaken by Qube.

In this context, the CCI *inter alia* observed that while leasing the DCE to CTOs, UFO/Qube (a) mandated that CTOs must avail processing services

only from its subsidiary (i.e., Scrabble); (b) imposed conditions that restricted CTOs from procuring film content processed by any other post-production processing service providers; and (c) blocked film content supplied by any other post-production processing service provider through the software installed on the DCEs, thereby forcing CTOs to procure film content processed by UFO (through Scrabble). Consequently, holding that such conduct amounted to anti-competitive tying, exclusive supply and refusal to deal.

The CCI imposed a monetary penalty of INR 10.4 million (approx. USD 121,303.64) on UFO and Scrabble and INR 16.6 million (approx. USD 193,330.22) on Qube and also directed them to modify the existing lease agreements by removing the restrictions, and further directing them to cease and desist from such conduct. going forward.

## Merger Control

### CCI fines CA Plume Investments and Bequest Inc. for wrongly filing under the green channel route

On 26 June 2025, the CCI imposed a penalty of INR 400,000 (approx. USD 4,629.73) on CA Plume Investments and Bequest Inc. for incorrectly filing a combination notice under the green channel route. The case involved the acquisition of up to 23.6% equity stake in Quest Global Services Pte. Ltd. by CA Plume Investments and approximately 9.17% equity stake by Bequest Inc. The CCI found that the combination did not qualify for the green channel approval as there were certain existing vertical and complementary overlaps between the products/services of the affiliates of the acquirers and the target.

Consequently, the CCI declared the notice and deemed approval granted to the combination as void *ab initio*. Further, while the acquirers admitted to inadvertent errors in the identification of overlaps and tendered unconditional apologies the acquirers were also held liable for gun-jumping since the combination had already been consummated. Additionally, the CCI also directed the acquirers to file a fresh notice providing complete information as required under the applicable form within thirty days from the date of receipt of the said order.

## Developments in the Legal Framework

### CCI releases new merger control FAQs

On 20 May 2025, the CCI published revised frequently asked questions ("FAQs") on merger control which provides clarity and guidance on the various concepts of merger control provisions of the Competition Act as well as allied rules and regulations. Set out below are some of the key concepts discussed in these FAQs:

#### Change in Control

It has been clarified that the phrase "change in control" as used in the Competition (Criteria for Exemption of Combinations) Rules, 2024 ("**Exemption Rules**") is not only limited to changes between joint and sole control (i.e., joint to sole or sole to joint control), but rather encompasses all situations where there is a change in the quality or degree of control.

Notably it has also been explained that (a) 'Quality of Control' refers to change in the controlling arrangements that exist between the same set of shareholders that remain within the same shareholding thresholds that are relevant for inferring control; and (b) 'Degree of Control' relates to changes in shareholding that cross relevant

thresholds and includes substantial changes in rights that transform the nature of control (e.g., from negative control to positive control). Furthermore, it has also been explained that a change in the degree of control occurs when a controlling shareholder exits, or a new controlling shareholder enters.

#### Calculation of the Deal Value Threshold

With respect to some of the types of consideration that will be considered for the purpose of the INR 2,000 crore Deal Value Thresholds ("DVT") it has been clarified that:

- With respect to call options: Both the premium paid for the option and the consideration paid for shares upon full exercise will be considered for the purpose of the DVT.
- With respect to future events: Future payments based on predetermined future events are to be included while calculating the DVT. However, corporate guarantees and unplanned future investments or acquisitions will not be included within the scope of DVT.
- With respect to prior acquisitions: The value of consideration paid by an acquirer and/or its affiliates for the acquisition of shares in a particular target company in the two years preceding the date of the transaction being assessed will be included in the DVT.
- With respect to multiple co-investors participating in the same funding round: The consideration paid by the multiple co-investors is to be aggregated only if their respective transactions are 'inter-connected' in nature.
- With respect to the treatment of debt: It has been clarified that pure debt transactions (debt not convertible to equity) are not notifiable, and therefore, their value

will not be included while calculating the DVT. However, if, as part of the consideration for an acquisition, any debt is assumed by the acquirer, the amount of assumed debt should be included in the DVT.

- With respect to ongoing business arrangements: It has been clarified that payments flowing from the target/seller to the acquirer or its affiliates for ongoing business arrangements (e.g., services, goods) after the conclusion of the equity deal are not included in the computation of the DVT since the focus of the CCI is on the consideration provided by the acquiring party to the seller. That said, whilst calculating the DVT additional payments made to a seller post-closing that are contingent on the target's performance (e.g., earn-outs) must be included.
- With respect to internal reorganizations: If the reorganization does not qualify for an exemption, then the DVT will be calculated by aggregating the value of all inter-connected steps involved in the reorganization.
- With respect to acquisition of multiple targets: If an acquirer simultaneously purchases multiple targets, consideration for all the targets should be aggregated for applying DVT test.

#### Thresholds to determine Substantial Business Operations in India

If a transaction meets the DVT discussed above, then the said transaction can trigger a CCI approval requirement provided that the target entity has Substantial Business Operations ("**SBO**") in India which is determined on the basis thresholds linked to such Target's India turnover, Gross Merchandise Value ("**GMV**") and/or users (in case of digital services). With respect to the assessment of whether the SBO

thresholds are met, the FAQs *inter alia* clarify that:

- GMV thresholds will apply only if the target facilitates sales/services as an agent or otherwise, regardless of whether a digital or traditional business model is used. However, it will not apply if the target solely sells goods/services on its own behalf.
- With respect to e-commerce platforms that also sell their own products, it has been clarified that such entity's overall GMV should be considered for the purposes of calculating whether the SBO thresholds are met.
- GMV should be calculated on a target enterprise level for the purposes of calculating whether the SBO thresholds are met. However, if a portion or division is acquired, only the GMV (or users in case of digital services) of that relevant portion are to will be considered.
- When an acquirer simultaneously purchases multiple targets, for purposes of assessing SBO thresholds, users, turnover, and GMV of all the targets should be aggregated for applying SBO tests.
- Digital Services has been explained to mean the provision of a service, digital content, or activity via the internet, in this regard it has been clarified that selling 'goods' via a website is not a digital service, however providing services to facilitate such transactions will be considered to be digital services.
- Merely using the internet as a distribution channel will not classify an offline service as digital. A service will not exclusively be classified as 'digital' based on being offered, delivered, and consumed online. The determination of 'digital services' will be based on the nature of the service and not the delivery

channel. Some examples of digital services provided in the FAQs include e-commerce platform services, cloud services, and online gaming.

#### Commercially Sensitive Information

It has been clarified that Commercially Sensitive Information (“**CSI**”) is data crucial for competitive positioning and will include information relating to pricing, costs, profit margins, capacity, quality market shares, customer terms, pipeline products, innovations, technology, R&D, trade secrets, and strategic plans. However, it will not include publicly available information, information available to an ordinary shareholder of a company, unaudited or audited financial statements (provided that such statements only contain the information found in the entity's audited annual financial statements submitted to the Registrar of Companies or equivalent regulatory authority), historical information that is not relevant to commercial decision making or information not linked to a specific company.

Further, in the context of the exemption relating to creeping acquisition not leading to a holding of more than 25% in the target enterprise, it has been clarified that if an acquirer already has the right or ability to access a target's CSI by virtue of director or observer rights, it cannot benefit from the relevant exemption even if other criteria are met.

#### Interconnected Transactions

It has been clarified that acquisitions by different persons will be treated as inter-connected when they are steps toward achieving a common ultimate intended effect, and there is a meeting of minds between the acquirers regarding the decision to invest in the target, based on factors such as (a) simultaneity of investments; (b) mutual interdependence or conditionality; (c) common agreements; and (d) functional and economic links. That said, the FAQs highlight that having

separate agreements in and of itself will not preclude parties from the inference of interconnection, if other facts indicate that the investors/acquirers acted with shared intent.

With respect to the notification of interconnected transactions, the FAQs provide that if acquisitions by different persons are inter-connected, and one or more steps constitute a notifiable transaction, then all the acquirers must jointly notify the interconnected transactions in a single notice before the CCI. In this regard, it has been clarified that if a particular acquirer's transaction(s) qualifies for an exemption under the Exemption Rules, then such acquirer need not furnish overlap details in the filing. However, the CCI will nonetheless retain the discretion to request such details if needed, based on the facts of the case.

#### Acquisitions through stock exchange

It has been clarified that while acquisitions undertaken as 'block deals' and 'bulk deals' through a stock exchange would be able to benefit from the derogation from standstill obligations; 'preferential allotments' would not be able to benefit from the derogation of standstill obligations. The FAQs explain that reason for this distinction is because block/bulk deals involve the secondary acquisition of existing shares on a stock exchange, whereas preferential allotments are primary acquisitions where new shares are allotted by the company.

### **CCI notifies the Competition Commission of India (Determination of Cost of Production) Regulations, 2025**

On 7 May 2025, the CCI notified the Competition Commission of India (Determination of Cost of Production) Regulations, 2025 ("**Cost Regulations 2025**") which replaced the erstwhile regulations of 2009. Set out below are some of the key changes that have been introduced through these new

regulations 2025

- (a) The definition of 'total cost' has been revised to explicitly include depreciation and to exclude financing overheads, thereby ensuring a more appropriate and consistent measurement of the cost of production.
- (b) The definition of 'long run average incremental cost' ("**LRAIC**") has been updated to include all variable and fixed costs, including sunk costs, that are directly or indirectly attributable to the production of a specific product or service. This encompasses product specific fixed costs incurred either before or during the period under investigation. The definition further clarifies that, for multi-product enterprises, common costs are included in LRAIC to the extent they are caused by or incrementally attributable to the production of the relevant product or service.

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# FINANCE

## Regulatory Updates

### Notification on Processing of Regulatory Authorisations/ Licenses/ Approvals through PRAVAAH

The Reserve Bank of India (“**RBI**”) has, *vide* notification dated 28 April 2025, directed all regulated entities (including Scheduled Commercial Banks (such as Small Finance Banks, Local Area Banks, and Regional Rural Banks), Primary (Urban) Co-operative Banks, State and Central Co-operative Banks, All-India Financial Institutions, Non-Banking Financial Companies (including Housing Finance Companies), Primary Dealers, Non-bank Payment System Operators, and Credit Information Companies) to submit applications for regulatory authorisations, licenses, and approvals to the RBI exclusively through RBI’s PRAVAAH portal.

### Relaxation of limits on investments by FPIs in Corporate Debt Securities through the General Route

The RBI has, *vide* circular dated 8 May 2025, announced key relaxations for Foreign Portfolio Investors (“**FPIs**”) investing in corporate debt securities through the general route. Specifically, the RBI has withdrawn two regulatory constraints previously applicable under the Master Direction – Reserve Bank of India (Non-Resident Investment in Debt Instruments) Directions, 2025: the short-term investment limit and the concentration limit.

Earlier, FPIs were restricted from investing more than 30% of their corporate debt portfolio in corporate debt securities with a residual maturity of up to one year, and a single FPI (including related FPIs) could not invest in corporate debt securities for more than 15% of the prevailing investment limit for these securities in case of long-term FPIs and 10% of prevailing investment limit for other FPIs. With

these limits now removed, FPIs are afforded greater flexibility to manage their portfolios.

### SEBI introduces Framework for ESG Debt Securities (other than green debt securities)

The Securities and Exchange Board of India (“**SEBI**”) has, *vide* circular dated 5 June 2025, introduced a framework for the issuance and listing of Environment, Social and Governance (“**ESG**”) Debt Securities, excluding green debt securities (“**Framework**”). The Framework has been notified under Regulation 12A of the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021, and comes into immediate effect.

The Framework defines and provides conditions for three categories of ESG debt securities: social bonds, sustainability bonds, and sustainability-linked bonds (“**SLBs**”). Social bonds are debt securities issued to fund projects that aim to address or mitigate a specific social issue and/or achieve positive social outcomes such as affordable basic infrastructure/housing, access to essential services (e.g. health, education), employment generation, food security and socio-economic empowerment. Sustainability bonds are debt securities issued for raising funds, to be utilised for finance or re-finance of a combination of eligible green project(s) and social project(s), while SLBs are debt securities having as its financial and/or structural characteristics linked to predefined sustainability objectives of the issuer, subject to the condition that such objectives are measured through predefined Sustainability Key Performance Indicators (“**KPIs**”) and assessed against predefined Sustainability Performance Targets (“**SPTs**”).

Some of the key provisions of the Framework are:

- Issuers can label debt securities as

ESG debt instruments only if the projects to be financed align with SEBI's definitions or with international frameworks such as the International Capital Market Association (ICMA) Principles / Guidelines, Climate Bonds Standard, ASEAN or EU standards, or other standards specified by Indian financial regulators. The selected standard must be disclosed in the offer document and followed consistently throughout the life of the instrument.

- Post-issuance, issuers of social and sustainability-linked bonds are required to provide annual disclosures on fund utilization, performance against social impact objectives, and mitigation plans for social risks. These disclosures must be included in the issuer's annual report and verified by an external auditor. SLB issuers must report annually on KPI performance, including independent third-party verification of SPT achievements and their effect on bond terms.
- An independent third-party reviewer or ESG rating provider registered with SEBI is required to certify compliance with applicable standards. The scope of review and credentials of the certifier must be disclosed in the offer document.
- To curb "purpose-washing", the Framework imposes norms against false or misleading claims about the bond's purpose, misuse of proceeds, or misrepresentation of third-party certifications. In case of deviation regarding the usage of funds for social bonds or sustainability bonds already issued, majority debenture holders may require early redemption of such securities.

### **RBI (Know Your Customer (Amendment) Directions, 2025**

The RBI has, *vide* notification date 12

June 2025, notified RBI (Know Your Customer (KYC)) (Amendment) Directions, 2025 ("**Amendment Directions**") to amend the Reserve Bank of India (Know Your Customer (KYC)) Directions, 2016 ("**KYC Directions**"). The key provisions introduced *via* the Amendment Directions are set out below:

In relation to a low-risk customer (including for whom periodic updating of KYC has already fallen due), Regulated Entities ("**REs**") are now mandated to allow all transactions and ensure the updating of KYC of such customers within one year of its falling due for KYC or up to 30 June 2026, whichever is later. The REs are required to subject accounts of such customers to regular monitoring.

Banks shall now collect customer self-declarations including the supporting documents, if required, for KYC updates via authorized Business Correspondents (BCs), using biometric e-KYC and electronic systems. Until digital options are fully enabled, physical submissions are allowed. BCs must authenticate and forward supporting documents submitted by customers to the bank and provide acknowledgment copies to the customers for such submission. Banks are required to update the customer's KYC records and intimate the customer once the records get updated in the system.

REs are now required to notify customers in advance to update their KYC. At least three advance KYC update reminders are required to be provided, including one by letter, before the due date, and at least three follow-up reminders, including one by letter, after the due date if not complied with. Communications should include clear instructions for updating KYC, escalation details, and possible consequences of failure to update KYC on time. All intimations must be recorded in the RE's system, with implementation mandated by 1 January

2026.

### **RBI Master Direction on Electronic Trading Platform, 2025**

The RBI has, *vide* notification dated 16 June 2025, issued the Master Direction – Reserve Bank of India (Electronic Trading Platforms) Directions, 2025 (“**Directions**”), which supersedes the Electronic Trading Platforms (Reserve Bank) Directions, 2018 dated 5 October 2018. The Directions apply to entities operating Electronic Trading Platforms (“**ETPs**”) i.e., any electronic system, other than a recognised stock exchange, on which transactions in eligible instruments are contracted (other than where a scheduled commercial bank or standalone primary dealer operating the ETP is a sole quote/price provider and a party to all transactions). Eligible instruments comprise of securities, money market instruments, foreign exchange instruments, derivatives, or other instruments of like nature, as may be specified by the RBI from time to time.

Some of the key provisions of the Directions are:

- No entity shall operate an ETP without prior authorisation from the RBI. The eligibility criteria of such entity, *inter alia* includes the requirement of such company being incorporated in India, with at least 2 key managerial personnel with at least 3 years of experience in operating trading infrastructure in financial markets along with a minimum net worth criterion.
- The Reserve Bank may cancel an ETP operator’s authorisation, after giving a chance to be heard, if there is a legal or regulatory violation, breach of authorisation terms, or if continuance of authorisation harms public interest or the financial system.
- ETP operators must adhere to a

comprehensive operating framework. This should cover maintenance of an objective and transparent membership criteria by the ETP, conducting proper due diligence, identifying members, having well-documented rules and regulations and ensuring pre-trade and post-trade transparency in relation to information regarding the transactions on the ETP.

- ETP operators must adopt a comprehensive risk management framework, including a robust internal control framework, covering all aspects of its operations. ETP operators must implement surveillance systems and controls to ensure fair and orderly trading.
- ETP operators must submit quarterly reports detailing the functioning of the ETP and file an annual compliance report by 30 April of the succeeding financial year. ETP operators must immediately notify the RBI of any trading disruptions or market abuse. Compliance obligations also include maintaining cybersecurity and information security protocols, conducting annual IT/IS audits through certified professionals, implementing business continuity plans, and securely storing data for at least 10 years.

### **RBI issues the Reserve Bank of India (Project Finance) Directions, 2025**

The RBI has, *vide* notification dated 19 June 2025, issued the Reserve Bank of India (Project Finance) Directions, 2025 (“**Project Finance Directions**”), which shall be effective from 1 October 2025.

Some of the key provisions of the Project Finance Directions are:

- **Scope and Applicability:** The directions apply to project finance exposures of all commercial banks (excluding regional rural banks, local

area banks, and payment banks), all India financial institutions, co-operative banks (including urban co-operative banks), non-banking financial companies (including housing finance companies), and small finance banks.

- **Project Lifecycle Phases:** The framework classifies the project lifecycle into three distinct phases: Design Phase (from conceptualisation to financial closure), Construction Phase (from financial closure until the Date of Commencement of Commercial Operation (DCCO)), and Operational Phase (from DCCO until the final repayment of project-finance exposure).
- **Framework for Early Stress Resolution:** The guidelines introduce a principle-based framework for early recognition and resolution of stress in project loans. A "credit event" during the construction phase — such as default with any lender, need for extension of the original or extended DCCO, expiry of the original or extended DCCO, is required to be reported to Central Repository of Information on Large Credit (CRILC) by the lender, followed by a 30-day prima facie review process. A consortium lender is required to notify such credit event to all other consortium members, notifying other lenders. The decision to implement a resolution plan shall be guided by the prudential framework / the Project Finance Directions.
- **Resolution plans involving DCCO extension:** Extension of DCCO (original / extended) under a resolution plan, whilst maintaining the 'standard' status of a project finance account is permitted if: (a) the extension is accompanied with a consequential shift in repayment schedule for equal or shorter duration, for up to 3 years for infrastructure projects and up to 2 years for commercial real estate projects; (b) conditions for cost overrun financing (if applicable) are met which includes a cap of 10% of original project cost excluding interest during construction, as the permitted limit of cost overrun funding by a lender; and (c) DCCO extension necessitated by an increase in scope and size of the project, complies with conditions such as such increase should be at least 25% of the original outlay.
- **Downgrade to NPA:** If the resolution plan is not implemented within 180 days from the end of the 30-day review period, the exposure must be downgraded to non-performing asset (NPA) status.
- **Minimum Exposure Norms for Lenders:** For projects in the construction phase, individual lender exposure must be at least 10% of the total project exposure if the overall exposure of lenders in the project is up to INR 15 billion. For projects with exposure above INR 15 billion, the minimum individual lender exposure should be the higher of INR 1.5 billion or 5% of the total exposure.
- **Prudential conditions for Financial Closure and Disbursement:** All applicable approvals for implementing/constructing a project should be obtained before financial closure (i.e. when the capital structure of the project including debt and equity, accounting to 90% of the total project cost, becomes legally binding on all stakeholders). For disbursement of funds, land or right-of-way must be in place for at least 50% of the project area in PPP

infrastructure projects, and at least 75% in other project types, with the lender having the right to determine such sufficiency for transmission line projects.

- **Treatment of Existing Projects:** Projects that have already achieved financial closure as on 1 October 2025 will continue to be governed by the existing prudential guidelines on project finance. However, the new directions will become applicable if a fresh credit event occurs or if there is a material modification to the loan contract in such existing projects.

## Case Summaries

### Notice under Section 13(2) of SARFAESI Act, an invocation notice if demand therein made as per guarantee terms

The National Company Law Appellate Tribunal, Principal Bench, New Delhi (“**NCLAT**”), *vide* its judgement dated 15 May 2025 in the matter of *Asha Basantilal Surana v State Bank of India and Others (Company Appeal (AT) (Insolvency) No. 84 of 2025) inter alia* addressed whether a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”) can be treated as notice for invocation of personal guarantee. The matter arose when the appellant- Asha Basantilal Surana, who had executed a personal guarantee for credit facilities obtained by M/s. Surana Metacast (India) Private Limited, filed an application under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) to initiate personal insolvency proceedings against herself after receiving a notice under Section 13(2) of the SARFAESI Act from State Bank of India (“**SBI**”).

The NCLAT analysed the language of the guarantee agreement, which required guarantors to “forthwith on demand made by the Bank deposit such sum or security as the Bank may specify”. The Tribunal held that whether a Section 13(2) notice invokes a personal guarantee depends on the words and intent of the notice. If the said notice demands payment from the personal guarantor in accordance with the guarantee agreement, it constitutes an invocation. Examining the notice in this case, the NCLAT found it was clearly addressed to the Appellant as guarantor and demanded payment of the specified amount.

The NCLAT ultimately allowed the appeal, ruling that where a notice under Section 13(2) of the SARFAESI Act makes a demand as per the guarantee agreement between the parties, such notice must be treated as notice for invocation of personal guarantee. This significant decision clarified the legal position on when SARFAESI notices can trigger personal insolvency rights, establishing that once a personal guarantee is invoked through such a notice, the personal guarantor may initiate personal insolvency proceedings under the IBC.

### NCLAT directs vacation of corporate debtor's premises occupied by suspended directors

The NCLAT, *vide* its judgment dated 15 May 2025, in the matter of *Harish Raghavji Patel and Others vs Ajit Gyanchand Jain and Others (Company Appeal (AT) (Insolvency) No. 682 of 2025) inter alia* examined whether the National Company Law Tribunal (“**NCLT**”) has jurisdiction to entertain an application by the resolution professional seeking possession of assets occupied by suspended directors.

The NCLAT affirmed the NCLT’s jurisdiction, referring to Section 18(1)(f)

of the Insolvency and Bankruptcy Code, 2016 ("IBC"), which empowers the resolution professional to "take control and custody of any asset over which the corporate debtor has ownership rights". The NCLAT noted that the appellants were neither lessees nor licensees and had no legal right to retain possession after the commencement of Corporate Insolvency Resolution Process ("CIRP").

The NCLAT emphasized that the appellants' continued possession was hindering the resolution process, with potential resolution applicants withdrawing due to uncertainty over the flats. Further, the NCLAT observed that the 10 (ten) month notice period mentioned in the board resolution permitting occupation by the appellants, had already elapsed since the resolution professional's email requesting possession. This case was also distinguished from precedents cited by the appellants, noting that unlike those cases, here there was no leave and license agreement or civil court decree protecting the appellants' possession.

Dismissing the appeal, the NCLAT noted that requiring the resolution professional to file a separate eviction suit 'would unduly prolong the insolvency process, which is a time-bound process'. The NCLAT directed the appellants to vacate the premises within 10 days from the date of its judgment.

**Arbitration under SARFAESI Act applies to inter-creditor disputes without pre-existing written arbitration agreement**

The Supreme Court of India ("SC"), vide its judgment dated 23 May 2025, in the matter of *Bank of India vs M/S Sri Nangli Rice Mills Pvt. Ltd. and Others (Civil Appeal No. 7110 OF 2025)*, addressed a dispute between two banks over the same secured assets. The case involved competing claims by Bank of India and Punjab National Bank

over stocks of paddy and rice that were hypothecated to Bank of India in 2003 and later pledged to Punjab National Bank in 2013. When the borrower, M/s Sri Nangli Rice Mills Pvt. Ltd., defaulted on loan repayment to Bank of India in 2015, recovery proceedings were initiated.

The central legal issue was whether the Debt Recovery Tribunal ("DRT") had jurisdiction to adjudicate disputes between two banks under the SARFAESI Act, or whether such disputes must be resolved through arbitration under Section 11 of the said Act. The DRT initially ordered a joint sale of the secured assets but later held it had no jurisdiction to adjudicate disputes between two banks and directed them to resolve the dispute through arbitration under Section 11 of the SARFAESI Act. The High Court of Punjab and Haryana upheld this decision *vide* order dated 7 October 2010 ("2010 Order"), leading to Bank of India's appeal to the SC.

The SC upheld the 2010 Order, holding that for Section 11 of the SARFAESI Act to apply, two conditions must be met: (i) the dispute must be between financial institutions, and (ii) it must relate to securitization, reconstruction, or non-payment of any amount due. The SC clarified that Section 11 of the SARFAESI Act creates a legal fiction of an arbitration agreement between the specified parties, thus there is no requirement for a pre-existing written arbitration agreement. However, if the relationship between two banks is that of a lender and borrower, then Section 11 will not apply.

This judgment significantly impacts the financial sector by providing clarity on jurisdictional aspects of dispute resolution under the SARFAESI Act. The SC noted that the objective of Section 11 of the SARFAESI Act was to avoid delays in recovery proceedings caused by disputes between creditors and to ensure that such conflicts do not obstruct the recovery of bad debts.

Given that proceedings before the DRT are primarily summary in nature, the legislature deliberately excluded inter-creditor disputes from its scope by omitting the term 'borrower' in Section 11. Accordingly, when a dispute arises between secured creditors, and they meet the two conditions, the DRT has no jurisdiction and arbitration is the prescribed mechanism for resolution.

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# PROJECTS & INFRASTRUCTURE

## Regulatory Updates

### Amendment in Standard Bidding Documents for procurement of Inter-State Transmission Services through Tariff Based Competitive Bidding process

The Ministry of Power (“**MoP**”) has, *vide* resolution dated 5 June 2025, notified amendments to standard bidding documents for procurement of inter-state transmission services through Tariff Based Competitive Bidding process.

Some of the key changes brought in the standard Request for Proposal (“**RfP**”) are:

- The definition of ‘Bid Bond’ has been modified to include reference to an unconditional and irrevocable Insurance Surety Bond issued by insurance company authorized by Insurance Regulatory and Development Authority of India or Payment on Order Instrument, with their respective standard formats being prescribed in the RfP.
- The definition of ‘Payment on Order Instrument’ has been added to *inter alia* mean letter of undertaking from Indian Renewable Energy Development Agency or Power Finance Corporation or REC Limited, to pay in case of default in terms of tender conditions.

Some of the key changes brought in the standard Transmission Service Agreement (“**TSA**”) are:

- The definition of ‘Contract Performance Guarantee’ has been modified to include reference to ISB and PoN. Standard formats for these have also been prescribed in the TSA.

- The definition of “Payment on Order Instrument” has been added in line with the definition added in the RfP.

### Viability Gap Funding Scheme introduced for Battery Energy Storage Systems

The MoP has approved a Viability Gap Funding (“**VGF**”) Scheme on 9 June 2025, allocating INR 54 billion from the Power System Development Fund (“**PSDF**”) to support the development of 30 GWh Battery Energy Storage Systems (“**BESS**”) capacity across India.

The VGF has been fixed at INR 18 lakh per MWh, and 15 states and National Thermal Power Corporation (“**NTPC**”) will receive allocations of 25 GWh and 5 GWh respectively.

The MoF has also provided guidelines for the VGF. Some of the key provisions of these guidelines are:

- The VGF for each project shall be disbursed to the eligible entity / renewable energy implementing agency, once the Central Electricity Authority (“**CEA**”) certifies the achievement of the disbursement schedule milestone and submission of the bank guarantees required to be obtained by such eligible entity / renewable energy implementing agency.
- The VGF disbursement follows a structured schedule: 20% upon financial closure (with bank guarantee submission), 50% at Commercial Operation Date (“**COD**”), and the remaining 30% after completing 1 year from COD.
- To qualify for VGF, the Battery Energy Storage Purchase Agreement or Power Purchase Agreement must be signed within 9

months from the issuance date of the VGF Guidelines and the projects must be commissioned within 18 months from signing these agreements.

- The BESS projects are to be awarded under Tariff-Based Competitive Bidding as per Section 63 of the Electricity Act, 2003, and can be implemented on a Build Own Operate or Build Own Operate Transfer basis, preferably for contract durations of 12 to 15 years.
- The VGF Guidelines include strict compliance, audit and financial oversight requirements in line with the General Financial Rules, 2017. Further, the VGF Guidelines mandate that the bidding entities' shareholding in the project company must remain above 51% until COD.

The MoP retains the authority to amend the guidelines to address any implementation challenges.

### **Regime for waiver of ISTS Charges for Energy Storage Systems amended**

This MoP has, *vide* order dated 10 June 2025 ("**Order**"), provided for certain amendments to its earlier orders regarding waiver of inter-state transmission ("**ISTS**") charges for energy storage systems.

Before the Order, ISTS charge waivers were provided for energy storage systems through a series of orders dating back to 2021. Under such orders, hydro Pumped Storage Projects ("**PSPs**") were eligible for 100% waiver of ISTS charges if construction work was awarded on or before 30 June 2025. For BESS, the waiver was applicable for projects commissioned up to 30 June 2025, provided at least 51% of their annual electricity requirement for charging was met through solar and/or wind power plants.

The Order makes the following provisions with respect to Hydro PSP and BESS projects:

#### *For Hydro PSP projects:*

- 100% ISTS charges waiver for projects where construction work has been awarded on or before 30 June 2028.
- No ISTS charges waiver for projects where construction work is awarded after 30 June 2028.

#### *For BESS Projects:*

- 100% ISTS charges waiver for co-located BESS projects commissioned on or before 30 June 2028, if power is consumed outside the state where the BESS project is commissioned. A BESS project shall be considered "co-located" when the BESS and renewable energy projects are connected at the same ISTS sub-station.
- No ISTS charges waiver for co-located BESS projects commissioned after 30 June 2028.
- For non-co-located BESS projects, ISTS charges waiver shall be as per existing MoP orders and CERC regulations.

### **PNGRB to support AERA Mandate for Common Fuel Storage Facilities on Open Access Basis at Major Airports**

The Petroleum and Natural Gas Regulatory Board ("**PNGRB**") has, *vide* press release dated 18 June 2025 ("**Press Release**"), extended its support to strategic initiative of the Airports Economic Regulatory Authority of India ("**AERA**") issued *via* an official order dated 16 May 2025 for mandating the establishment of Common Fuel Storage Facilities on an open access basis at all major airports across India.

According to the Press Release, this strategic initiative, outlined in AERA's official order, aligns with the Central Government's push for sustainable infrastructure development in both the aviation and petroleum sectors. All airport operators, including those under the Airports Authority of India and state governments, have been directed to develop such shared infrastructure within twelve (12) months if not already in place.

The Press Release provides that this move complements PNGRB's vision of a nationwide common carrier pipeline network for petroleum products, including Aviation Turbine Fuel ("ATF"). The integrated model is designed to enhance operational safety, ensure a reliable supply of fuel, and minimize environmental impact across India's airport network.

### **Amendments to the Deviation Settlement Mechanism**

The CERC has, *vide* its notification dated 25 June 2025, issued the CERC (Deviation Settlement Mechanism and Related Matters) (Second Amendment) Regulations, 2025, which came into force on 1 July 2025 ("**Amendment Regulations**").

Charges for deviation due injection infirm power shall be zero as per the existing regulations. However, if such infirm power was scheduled, deviation charges for such power were applicable for a general seller or WS Seller (*defined below*). The Amendment Regulations *inter alia* provide that charges for injection of infirm power shall be zero, except in cases of thermal generation stations and if infirm power is scheduled after a successful trial run as specified in the grid code.

For thermal generating stations, infirm power injected into the grid from the date of first synchronization until successful completion of the trial run shall be paid at the normal rate of

charges for deviations for each time block, subject to a ceiling of INR 2.86 per kWh. If infirm power is scheduled after a successful trial run as specified in the grid code, the charges for deviation over the scheduled infirm power shall be as applicable for a general seller or a seller in case of generating station based on wind or solar or hybrid of wind-solar resources ("**WS Seller**"), as the case may be. However, when the system frequency exceeds 50.05 Hz, the charges for injection of infirm power or for deviation of scheduled infirm power after the successful trial run by way of over injection by a general seller or WS Seller shall be zero.

### **Central Electricity Regulatory Commission (Sharing of Inter-State Transmission Charges and Losses) (Fourth Amendment) Regulations, 2025**

The CERC *vide* notification dated 26 June 2025, has issued the CERC (Sharing of Inter-State Transmission Charges and Losses) (Fourth Amendment) Regulations, 2025 ("**Fourth Amendment Regulations**"), introducing amendments to the CERC (Sharing of Inter-State Transmission Charges and Losses) Regulations, 2020 ("**Transmission Charges Regulations**"), which amendments will come into effect upon publication in the official gazette.

Some of the key amendments are:

- The definition of 'Terminal Bay' has been inserted, adopting the meaning assigned to it in the General Network Access ("**GNA**") Regulations.
- A key change has been made in the allocation of additional charges for Unscheduled Deviation beyond Cap ("**AC-UBC**"). The Fourth Amendment Regulations now clarify that any drawee entity (excluding state distribution licensees) that holds GNA separately from the state's distribution licensees will

bear AC-UBC charges in proportion to its own GNA.

- In the case of generating stations connected to both inter-state and intra-state transmission systems, new provisions clarify how transmission deviation is calculated. These stations will now be assessed based on their net injection exceeding the combined quantum of their ISTS GNA and STU access. To facilitate this, State Transmission Utilities ("**STUs**") are required to share access details with the Central Transmission Utility ("**CTU**") and National Load Dispatch Centre ("**NLDC**").
- A significant part of the amendment revises the structure for waiver of inter-state transmission charges. For solar, wind, and renewable hybrid generating stations, projects commissioned on or before 30 June 2025 will continue to enjoy a 100% transmission charge waiver for 25 years. Projects commissioned later will see a phased reduction in waiver: 75% for projects up to June 2026, 50% up to June 2027, 25% up to June 2028, and no waiver thereafter. Offshore wind projects have been explicitly included and will be eligible for a full 25-year waiver as well.
- Energy Storage Systems ("**ESS**") have been given a differentiated treatment. Pumped storage systems with hydro components will receive a 100% waiver for 25 years if their construction contracts are awarded before 30 June 2028. Battery-based ESS co-located with renewable generators can claim a 100% waiver for 12 years from COD if commissioned by the same date, subject to grid charging not exceeding 10% of their total annual input. Standalone battery storage systems are eligible for a reduced, phased waiver over a 12-year period.
- For hydro generating stations without storage, the amendment provides a full waiver of transmission charges for 18 years from COD, provided their PPAs or project awards are finalized by 30 June 2025. Later projects will be subject to a similar phased structure as other renewable sources.
- Green hydrogen and green ammonia plants are now covered under the waiver framework. These plants will qualify for the higher of two waivers: one applicable to their category or that applicable to the renewable energy source supplying them, provided at least 51% of their electricity consumption over a year comes from renewable sources.
- The amendment also introduces a force majeure relief mechanism. Projects originally scheduled to be commissioned by 30 June 2025 but delayed due to force majeure will retain their waiver eligibility, provided such delays are certified by designated authorities. Each project can receive a maximum of two extensions, up to six months each.
- To ensure compliance in waiver claims, especially for ESS, developers must now submit monthly self-declarations confirming that at least 51% of the system's energy is charged from renewable sources. Annual statements will also be verified, and transmission billing will be revised retroactively if actual compliance falls short.

## Case Summaries

### Government notifications regularizing defaults in obtaining environmental clearance struck down

The Ministry of Environment, Forest and Climate Change ("**MoEFCC**") had

issued a notification dated 14 March 2017 allowing projects that had begun operations, expanded capacity, or changed production without obtaining prior environmental clearance ("**EC**") (which is a requirement under the Environmental Impact Assessment Notification dated 4 September 2006) to apply for ex post facto EC within six months thereof ("**2017 Notification**"). Subsequently, an Office Memorandum dated 7 July 2021 extended such regularization even to completed projects, aiming to legalize violations of the 2006 notification ("**2021 OM**").

In the matter of *Vanashakti v. Union of India (Writ Petition (C) No. 1394 of 2023)*, the 2017 Notification as well as the 2021 OM was challenged. The Supreme Court relied on the matters of *Common Cause v. Union of India (Writ Petition (C) No. 114 of 2014)* and *Alembic Pharmaceuticals v. Rohit Prajapati (AIR Online 2020 SC 445)*, wherein it held that an *ex post facto* environmental clearance would be detrimental to the environment and could lead to irreparable degradation of the environment, and that even a 'one-time measure' or 'one-time relaxation' was illegal and such measures infringe the right to live in a pollution free environment guaranteed by Article 21 of the Constitution of India.

The Supreme Court *vide* its judgement dated 16 May 2025 held that the 2017 Notification and the 2021 OM along with all the circulars/orders issued for giving effect to these notifications are illegal and were therefore struck down. The court restricted the Central Government from issuing circulars / orders / notifications providing for grant of *ex post facto* EC in any form or manner or for regularizing any acts done in contravention of the 2006 notification. All the ECs granted till date under the said notifications shall remain unaffected.

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