

VERITAS LEGAL

ADVOCATES & SOLICITORS

BY VERITAS LEGAL | April - June 2024

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COMPETITION

Enforcement Matters

NCLAT and Delhi High Court decide the quantum of penalty imposed on Godrej and Geep for their participation in a bilateral ancillary battery cartel

Godrej and Boyce Manufacturing Co (“**Godrej**”) and its officials had filed an appeal before the National Company Law Appellate Tribunal (“**NCLAT**”) challenging the CCI's order dated 15 January 2019 which imposed a penalty of INR 8.50 million (~USD 100,000) on Godrej and a penalty of INR 1.50 million (~USD 10,000) against its officials for participating in a bilateral ancillary cartel for the sale of dry cell batteries in India. The NCLAT, without interfering with the CCI's findings on merits, reduced the penalty imposed from 4% to 2% of Godrej's turnover for each year of continuance of the cartel activity, while maintaining the penalty imposed on its Godrej's office bearers.

The NCLAT, while reducing the penalty, made note of mitigating factors such as (a) Godrej's market size, its presence and low bargaining power; (b) losses suffered by Godrej and its subsequent exit from the market for dry cell batteries; (c) the fact that Godrej approached the Director General of Anti-Dumping and Allied Duties to complain about the possibility of cartelisation in the dry cell batteries' market; and (d) the fact that Godrej sold its products at rates that were lower than those involved in the primary cartel. Further the NCLAT also compared the present case with an earlier NCLAT decision arising out of the similar facts *qua* Geep Industries Private Limited (“**Geep**”) where the penalty was also reduced. Notably, the NCLAT in this decision dated 5 April 2024 did not waive the interest payable on the penalty amount, holding that a pendency in appeal and continuation of stay would not be a ground for such

waiver.

That said, on, 26 April 2024, the Delhi High Court, while *inter alia* deciding on whether Geep would be liable to pay interest on the penalty imposed by the CCI, either from the (a) date of the CCI's penalty order; or (b) the date of the CCI's demand notice, held that interest on CCI penalties would only be calculated from the date the CCI officially issues a demand notice to deposit a penalty amount, which was presently made only after the NCLAT passed its order in 2023.

NCLAT upholds penalties imposed on Delicacy Continental and Toyfort on the basis of their total turnover

The NCLAT, vide two orders dated 31 May 2024 and 2 July 2024, upheld the CCI's findings and penalty (based on total turnover) against Delicacy Continental Private Limited (“**Delicacy**”) and M/s Toyfort (“**Toyfort**” and collectively “**Appellants**”). Pursuant to these orders the two entities were found to have violated the cartel provisions of the Competition Act, by providing cover bids during tenders floated by the Department of Agriculture, Government of Uttar Pradesh for soil sampling during 2017 and 2018 and consequently fined Delicacy and Toyfort INR 3.30 million (~USD 30,000) and INR 1.20 million (~USD 10,000) respectively at the rate of 5% of their average turnover for the financial years 2017-18, 2018-19 and 2019-20.

While dismissing the Appellants' pleas that their penalty should not be based on their total turnover, but rather, their relevant turnover (*i.e.* turnover only *qua* soil testing), the NCLAT noted that the Appellants being first time bidders and not in the soil testing business, would have a nil 'relevant turnover'. Consequently, holding that the CCI had correctly imposed penalties on the

basis of total turnover. That said, the NCLAT also noted that the Appellants only played a supporting role in the cartel by providing cover bids and accordingly reduced their penalties from 5% to 3% of their average annual turnover(s) for the financial years 2017-18, 2018-19 and 2019-20.

CCI dismisses abuse of dominance complaint against Google

On 24 June 2024, the CCI dismissed a complaint against Google India Private Limited ("**Google**") which *inter alia* alleged that Google was affording Truecaller preferential treatment by allowing it access to android users' contact book details, (a) in violation of its own policies and (b) to the exclusion of other competition applications, since Truecaller had availed Google's ad and cloud computing services.

While acknowledging Google's dominant position in the market, the CCI at the time of dismissing the allegations relating to Google preferencing Truecaller, took note of the arguments advanced by Google *viz.* (a) the informant in its complaint had relied on the specifications and functions of a version of the Truecaller app that was not available on Google's play store but rather available through third party downloads; (b) the presence of competing caller ID and spam protection apps on the play store that provide the same services and functions as Truecaller negates the allegation of preferential treatment; and (c) any access to a user's contacts has been granted after obtaining such user's consent; and accordingly dismissed the allegations.

Further, with respect to the commercial relationships between Google and Truecaller, the CCI emphasized that a mere commercial relationship between two entities *ipso facto* can't be assumed to grant any favourable or

preferential treatment outside of what those commercial arrangements envisage.

CCI dismisses complaint against Covai Properties, Covai Senior Citizen Services and Ozone Urbana

On 5 April 2024, the CCI dismissed a complaint against Covai Property Centre (India) Private Limited, Covai Senior Citizen Services Pvt. Ltd. ("**Covai Services**") and Ozone Urbana Infra Developers Private Limited (collectively as "**Opposite Parties**") which alleged that by (a) making property purchasers mandatorily accept the catering and housekeeping services of Covai Services as a condition of sale; (b) imposing unilateral changes in allotment of housekeeping staff; and (c) increasing the monthly maintenance charges, the Opposite Parties had abused their dominance and entered into anticompetitive vertical agreements.

On account of the presence of other real estate developers, offering similar services (*i.e.*, development and sale of apartments for senior citizens), the CCI observed that the Opposite Parties were not dominant and consequently their conduct could not be considered as abusing their dominant position. However, with respect to the allegations of anti-competitive vertical agreements, the CCI noted that the impugned agreement was between an enterprise and an end consumer, and as such was not covered within the ambit of provisions of the Competition Act that dealt with anticompetitive vertical agreements.

CCI dismisses abuse of dominance allegations against WordPress

On 29 April 2024, the CCI dismissed a complaint against Automattic Inc., the parent entity of WordPress.org ("**WordPress**"), which alleged that

WordPress had abused its dominance by delisting Mr. Tiwari ("**Informant**"), an app developer's plugins from the plugin's directory and allegedly removing its reviews in an attempt to self-preference its own WordPress plugins.

While acknowledging that WordPress was the market leader in the markets for content management software and WordPress-specific plugin directories, the CCI held that the actions taken against the Informant were justified since these actions were taken pursuant to Informant not conforming to the WordPress' prescribed standards as provided under its guidelines. Further noting that these guidelines had not been applied in a discriminatory or unfair manner since 35 developers, including the Informant, had been permanently banned from WordPress for repeated violations of the guidelines.

Additionally, with regard to the allegations of self-preferencing, the CCI noted that there was a substantial distinction between the scope and depths of features of the WordPress' and Informant's plugins and as such they would not be in direct competition with each other, thus concluding that the self-preferencing allegations were unfounded.

Madras High Court quashes CCI's investigation against MRF due to irregularities in procedure

On 30 April 2024, the Madras High Court ("**MHC**") quashed an order and a notice issued by the CCI that had the effect of including MRF Ltd. ("**MRF**") as a party to an ongoing investigation against certain tyre companies on account of procedural infirmities.

Notably that MHC, while acknowledging that the CCI had the authority to include additional parties to

an investigation, held that prior to changing the status of MRF from 'third party' to an investigation from whom industry information was being sought, to an 'opposite party' in the said investigation, the CCI ought to have given MRF prior notice to defend itself. Further emphasizing that the status of a party in a proceeding determines the extent of the application of the statutory provisions and connected regulations; their consequences; and available protections.

Karnataka High Court directs CCI to revisit its decision on Swiggy's confidential data sharing

On 26 June 2024, the Karnataka High Court ("**KHC**") directed the CCI to revisit its decision that had the effect of giving National Restaurant Association of India ("**NRAI**") access to Swiggy's confidential information, through a confidentiality ring, after allowing both parties to be heard. Notably, this direction came pursuant to a writ petition that was filed, before KHC, by Swiggy against the CCI's order that included NRAI in the confidentiality ring even though the said order was unreasoned and passed without affording Swiggy an opportunity of being heard.

Merger Control

CCI approves the acquisition of an additional stake in Religare Enterprises by its existing shareholders

On 23 January 2024, the CCI approved the acquisition by Puran Associates Private Limited, M.B. Finmart Private Limited, VIC Enterprises Private Limited and Milky Investment and Trading Company (collectively, the "**Acquirers**") in Religare Enterprises Limited ("**Religare**"),

pursuant to which, the collective shareholding of the Acquirers would increase from 21.25% to (up to) 26% through a series of open market purchases. At the time of assessing the horizontal and vertical overlaps between (a) the portfolio of the Burman family, since they controlled the Acquirers; and (b) Religare, the CCI concluded that they would not cause an appreciable adverse effect to competition ("**AAEC**"), and also observed that while assessing the effect of the proposed combination, the CCI is neither concerned about the criminal matters involving the parties to the transaction nor any submissions made to other regulators if no prayer is made to the CCI under such submissions.

CCI approved the acquisition of Tianish Laboratories by the Matrix Pharma

On 13 February 2024, the CCI approved the acquisition of 100% of the equity shares of Tianish Laboratories Private Limited ("**Target**"), an entity into which Mylan India would demerge its Active Pharmaceutical Ingredients ("**APIs**") business, by Matrix Pharma Private Limited ("**Matrix**") and a Kotak alternate investment fund ("**Investor**"). At the time of granting its approval the CCI *inter alia* assessed overlaps between the Target's API business and, Biocon a portfolio company of the investment manager of the Investor. Notably at the time of undertaking its overlap analysis, the CCI while considering Biocon's presence in the Indian markets noted that the Target's market presence could be considered nil since the APIs produced by the Target were for export and as such were not utilised in the production of formulations that are sold in India, accordingly concluding that such potential overlaps were not likely to cause an AAEC.

CCI approves JSW's acquisition of up to 38% in MG Motor India

On 23 January 2024, the CCI approved the acquisition of up to 38% in MG Motor India ("**MG**") by JSW Ventures ("**JSW**"). Further, in its application to the CCI, JSW had also intimated the CCI of its future right to acquire an additional stake in MG, pursuant to which JSW's effective shareholding could increase up to 46%. Notably, the CCI analyzed the overlaps between the JSW group and MG, concluding that the same would not cause an AAEC. Consequently, the CCI approved JSW's acquisition of up to 38% in MG, while noting that the subsequent acquisition of additional shares in MG by JSW up to 46% was dependent upon occurrence of certain futuristic events, and as such should be dealt with by the CCI at such time in the future.

Developments in the Legal Framework

Amendments to the Competition Commission of India (General) Regulations, 2009

On 10 May 2024, certain changes to the Competition Commission of India (General) Regulations 2009 ("**General Regulations**") relating to access to confidential information, were notified. These amendments, broadly provide (a) that parties must self-certify their confidentiality claims through affidavits; (b) timelines and process to be followed by parties to a confidentiality ring seeking to access confidential information; and (c) the timelines, processes and costs related to inspections of case records and obtaining certified copies, documents

reviewed during an inspection of the CCI's case record.

Further, CCI also released draft amendments to the General Regulations on 6 June 2024 introducing certain changes *inter alia* relating to the (i) translation of documents; (ii) contents and procedure for filing of the information or reference and inquiry; (iii) mode of service of notice; and (iv) implementation and monitoring of orders passed by the CCI.

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FINANCE

Regulatory Updates

Master Circular - Guarantees and Co-acceptances

The RBI, *vide* 'Master Circular on Guarantees and Co-acceptances' dated 1 April 2024, consolidated guidelines/ instructions issued to all scheduled commercial banks (excluding payments banks and regional rural banks) till 31 March 2024, on matters relating to guarantees and co-acceptances.

Some of the key provisions of the master circular are:

- Bank guarantees should not normally have a maturity of more than 10 years. However, in case banks extend loans for a period longer than 10 years for projects, banks may issue guarantees for such longer period.
- Banks should refrain from issuing non-fund-based facilities to/ on behalf of constituents who do not enjoy credit facilities with them. However, non-fund-based facilities may be granted to customers who do not avail any fund-based facility from any bank in India.
- Bank guarantee or letter of credit may be issued by scheduled commercial banks to clients of co-operative banks against counter guarantee of the co-operative bank.
- The guarantee of parent companies may be obtained in the case of subsidiaries whose own financial condition is not considered satisfactory.

In addition to the above, the master circular also *inter alia* provides for (i) precautions and safeguards which should be taken by banks while issuing guarantees on behalf of their customers, (ii) guidelines relating to obtaining of personal guarantees of

promoters, directors, other managerial personnel, and shareholders of borrowing concerns, (iii) guidelines for issuing bid bonds and performance guarantees for export, (iv) restrictions on guarantees to be executed by banks for placement of funds with NBFCs or other non-bank entities, and (v) precautions to be taken in the case of letter of credit for import of goods.

Master Circular on Basel III Capital Regulations

The RBI, *vide* 'Master Circular on Basel III Capital Regulations' dated 1 April 2024, consolidated the prudential guidelines on Basel III capital adequacy issued to banks till that date.

The regulations under master circular are based on three-mutually reinforcing pillars, *viz.* minimum capital requirements, supervisory review of capital adequacy and market discipline. The master circular *inter alia* compiles guidelines on composition of regulatory capital, capital charge of credit risk, external credit assessments, credit risk mitigation, capital charge for market risk etc.

Some of the key guidelines provided in the master circular are:

- Banks are required to maintain a minimum capital to risk-weighted assets ratio of 9% on an on-going basis (other than capital conservation buffer and countercyclical capital buffer etc).
- The capital conservation buffer has been set as 2.5% of risk weighted assets, requiring banks to build up capital buffers during periods of economic expansion.
- The minimum leverage ratio has been set as 4% for domestic systemically important banks and 3.5% for other banks.

As per the master circular, small

finance banks and payments banks may refer to their respective licensing guidelines and operating guidelines issued by the RBI, for prudential guidelines on capital adequacy.

Master Direction on the scheme of penalties for bank branches and currency chests for deficiency in customer service to public

On 1 April 2024, RBI issued the master direction on the scheme of penalties for bank branches and currency chests for deficiency in rendering customer service to members of public ("**Penalties Master Directions**") for ensuring that all bank branches / currency chests provide proper customer service in view of the objectives of clean note policy and enhancing operational efficiency.

Under the Penalties Master Directions, the RBI has prescribed penalties for bank branches for deficiencies in remittances sent to RBI, compliance with operational guidelines and memorandum of agreement, exchange of notes and coins, operations of currency chests, replenishment of cash in ATMs, etc.

The Penalties Master Directions have also laid down that the Officer-in-Charge of the Issue Department of the Regional Office under whose jurisdiction the defaulting currency chest/bank branch is located shall decide upon the nature of irregularity and any appeal against this decision may be made by the controlling office of the currency chest/branch to the Regional Director/Chief General Manager/Officer-in-Charge of the concerned Regional Officer, within one month from the date of debit.

Master Circular on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances

The RBI, *vide* 'Master Circular on Prudential norms on Income

Recognition, Asset Classification and Provisioning pertaining to Advances' dated 2 April 2024, consolidated the guidelines issued to all commercial banks (excluding regional rural banks) on matters relating to prudential norms on income recognition, asset classification and provisioning pertaining to advances, issued up to 31 March 2024.

Some of the key provisions of the master circular are:

- Non-performing assets ("**NPAs**") have been divided in three categories: (i) substandard assets (assets which have remained NPA for a period less than or equal to 12 months), (ii) doubtful assets (assets which have remained in the substandard category for a period of 12 months), and (iii) loss assets (assets where loss has been identified by the bank or internal or external auditors or the RBI inspection, but the amount has not been written off wholly).
- The policy of income recognition has to be objective and based on the record of recovery. Banks should not charge and take to their income account, interest on any NPA.

The master circular also contains further guidelines in relation to write-off of NPAs, prudential norms applicable to restructuring, wilful defaulters and non-cooperative borrowers, bank loans for financing promoters' contribution, conversion of principal into debt / equity, etc.

Mandatory Key Facts Statement for Loans and Advances

On 15 April 2024, RBI issued a notification regarding the key facts statement ("**KFS**" and such notification, "**KFS Notification**") for loans and advances with an intent to harmonize the instructions on the said subject and reduce information asymmetry on financial products being offered by

different REs. All new retail and MSME term loans sanctioned on or after 1 October 2024, including fresh loans to existing customers, need to comply with the KFS Notification without any exception.

According to the KFS Notification, REs are mandated to provide a KFS to all prospective borrowers to help them take an informed view before executing the loan agreement, as per the standardised format given in the KFS Notification. The contents of the KFS shall also be explained and an acknowledgement shall be obtained from the borrower of the same. The KFS shall be provided with a unique proposal number and shall have a validity period of at least three working days for loans having tenor of seven days or more, and a validity period of one working day for loans having tenor of less than seven days.

Master Direction – Reserve Bank of India (Asset Reconstruction Companies) Directions, 2024

The RBI, *vide* 'Master Direction – Reserve Bank of India (Asset Reconstruction Companies) Directions, 2024' dated 24 April 2024, issued certain directions to ensure prudent and efficient functioning of Asset Reconstruction Companies ("**ARCs**") and to protect the interest of investors, which are applicable to all ARCs registered with the RBI under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Some of the key provisions of the master direction are:

- ARCs are required to have a minimum net owned fund ("**NOF**") of INR 300 crore and thereafter, on an ongoing basis.
- ARCs shall maintain, on an ongoing basis, a capital adequacy ratio of

minimum 15% of its total risk weighted assets.

- ARCs shall frame a Board-approved 'financial asset acquisition policy' within 90 days of grant of the certificate of registration, which shall provide that transactions take place in a transparent manner and at a fair price in a well-informed market and the transactions are executed on arm's length basis by exercise of due diligence.

Further, certain conditions have been prescribed to determine eligibility of ARCs to undertake activities as a resolution applicant under the provisions of the IBC (*eg.*, minimum NOF of INR 1000 crores). Conditions have been prescribed for eligibility of an ARC to sell financial assets to another ARC (*eg.*, transaction should be settled on cash basis).

The master direction also contains directions and guidelines in relation to asset reconstruction and securitisation, governance and conduct, accounting and disclosures, prudential regulations, etc.

Limits for investment in debt and sale of Credit Default Swaps by FPIs

The RBI, *vide* circular dated 26 April 2024, has notified investment limits for the Financial Year ("**FY**") 2024-25 in debt and sale of credit default swaps by foreign portfolio investors ("**FPIs**"), *inter alia* providing for the following:

- The limits for FPI investment in government securities ("**g-secs**"), state government securities ("**SGSs**") and corporate bonds shall remain unchanged at 6%, 2% and 15% respectively, of the outstanding stocks of securities for FY 2024-25.
- As hitherto, all investments by eligible investors in the 'specified securities' shall be reckoned under the Fully Accessible Route ("**FAR**").

- The allocation of incremental changes in the g-sec limit (in absolute terms) over the two sub-categories – 'General' and 'Long-term' – shall be retained at 50:50 for FY 2024-25.
- The aggregate limit of the notional amount of Credit Default Swaps sold by FPIs shall be 5% of the outstanding stock of corporate bonds. Accordingly, an additional limit of ₹2,54,500 crore is set out for FY 2024-25.

New RBI instructions regarding charging of interest by lenders

With a view of upholding transparency and fairness in the lending operations of Regulated Entities ("REs"), the RBI, *vide* circular dated 29 April 2024, has issued directions regarding charging of interest ("**Fair Practices Circular**").

- According to the Fair Practices Circular, RBI has come across instances of lenders resorting to certain unfair practices in charging of interest, for instance: Charging of interest from the date of sanction of loan and not from the date of actual disbursement of the funds to the customer;
- Charging of interest for the entire month, rather than only for the period for which the loan was outstanding; and
- Collecting one or more instalments in advance but reckoning the full loan amount for charging interest.

Accordingly, the RBI has advised REs to refund excess interest and other charges to customers in cases of such non-standard practices of charging interest, noting that the same are not in consonance with the spirit of fairness and transparency. RBI has also encouraged the REs to use online account transfers in lieu of cheques

being issued in a few cases for loan disbursement. Further, RBI has directed the REs to review their practices regarding mode of disbursement of loans, application of interest and other charges and take corrective action.

Amendment of the term 'Bulk Deposit'

The RBI has *vide* instructions dated 7 June 2024 amended the definition of 'Bulk Deposits' for all Scheduled Commercial Banks (excluding Regional Rural Banks), Small Finance Banks and Local Area Banks as has been provided for in the Master Direction-Reserve Bank of India (Interest Rate on Deposits) Directions, 2016 ("**Interest Rate Directions**"). Prior to the amendment, 'Bulk Deposits' meant:

- single Rupee term deposits of INR 2 crore two crores and above for Scheduled Commercial Banks (excluding Regional Rural Banks) and Small Finance Banks; and
- single Rupee term deposits of INR 1 crore and above for Regional Rural Banks.

However, post the amendment to the Interest Rate Directions, the definition of 'Bulk Deposits' has been amended to mean:

- single Rupee term deposits of INR 3 crore and above for Scheduled Commercial Banks (excluding Regional Rural Banks) and Small Finance Banks; and
- single Rupee term deposits of INR 1 crore and above for Regional Rural Banks and Local Area Banks.

Priority Sector Lending – Amendments to the Master Directions

On 21 June 2024, RBI issued a notification to amend the master directions on priority sector lending ("**PSL**"). The following amendments

have been made -

- Adjustments for weights in PSL Achievement: FY 2024-25 onwards, a higher weight (125%) would be assigned to the incremental priority sector credit in the identified districts where the credit flow is comparatively lower (per capita PSL less than INR 9 thousand, and a lower weight (90%) would be assigned for incremental priority sector credit in the identified districts where the credit flow is comparatively higher (per capita PSL greater than INR 42 thousand). This aims to reduce regional disparities in credit flow. Unidentified districts will continue to have existing weightage of 100%. Lists containing the districts with comparatively high and low PSL credit have been updated and will remain valid until FY 2026-27.
- Micro, Small & Medium Enterprises ("MSME"): The definition of MSMEs has been referenced to the Master Direction - Lending to Micro, Small & Medium Enterprises (MSME) Sector, for clarity.
- Monitoring of Priority Sector Lending targets: Urban Co-operative Banks ("**UCBs**") shall be guided by Master Direction – Reserve Bank of India (Filing of Supervisory Returns) Directions – 2024 dated February 27, 2024, as updated from time to time, as regards filing of applicable returns for reporting PSL data.

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INSURANCE

Regulatory Updates

Master Circular on Rural, Social Sector and Motor Third Party Obligations, 2024

The Insurance Regulatory and Development Authority of India (“**IRDAI**”) notified the IRDAI (Rural, Social Sector and Motor Third Party Obligations) Regulations on 20 March 2024 with the object of specifying the norms relating to minimum rural, social sector and third-party motor insurance businesses. Thereafter, on 10 May 2024, the IRDAI issued the Master Circular on Rural, Social Sector and Motor Third Party Obligations 2024 (“**Rural and Social Sector Master Circular**”) which has repealed certain past circulars. The Master Rural and Social Sector Circular is applicable to all life, general and stand-alone health insurers, and, *inter alia*, provides for methodologies of arriving at the obligations of insurers with respect to the rural sector, social sector and motor third party.

Master Circular on Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers, 2024

The IRDAI (Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers) Regulations, 2024 (“**Registration Regulations**”) were notified on 22 March 2024 with the object of simplifying the process of registration, transfer of shareholding, other forms of capital, amalgamation of insurers, listing of shares on stock exchanges and promoting ease of doing business for insurers. Thereafter, on 15 May 2024, the IRDAI issued the Master Circular on Registration, Capital Structure, Transfer of Shares and Amalgamation of Insurers, 2024 (“**Registration Master Circular**”) which has repealed the (i) Master Circular on Registration of Indian Insurance Companies, 2023, (ii) Circular on Exercise of ESOPs, 2021 and (iii) Circular on Creation of Debenture Redemption Reserve, 2018. The Registration Master Circular has provided certain clarifications relating to the Registration Regulations

and provided the various forms required to be filled by an applicant entity for obtaining registration as an Indian Insurance company. The Registration Master Circular has provided clarifications on aspects relating to, *inter alia*, grant and exercise of ESOPs, transfer of shares, listing of equity shares and issuance of other forms of capital.

Master Circular on Expenses of Management, including Commission, of Insurers, 2024

The IRDAI (Expenses of Management, including Commission, of Insurers) Regulations, 2024 (“**Expenses of Management Regulations**”) were notified on 23 January 2024 with the object of providing flexibility to insurers to manage their expenses, including commission within overall limit as specified by the IRDAI. Thereafter, on 15 May 2024, the IRDAI issued the Master Circular on Expenses of Management, including Commission, of Insurers, 2024 (“**Expenses of Management Master Circular**”) which repealed the (i) circular dated 31 March 2023 on “Guidance note – Board policy of the insurer on the commission structure” and the (ii) circular dated 5 April 2023 on “IRDAI (Expenses of Management of insurers transacting Life Insurance business) Regulations 2023 – Clarifications” while supplementing the Expenses of Management Regulations. The Expenses of Management Master Circular, applicable to life, general and health insurers, provides clarifications on, *inter alia*, provisions pertaining to payment of commission, business plan for general/health/life insurers, returns of expenses of management and returns of commission required to be filed by insurers.

Master Circular on Actuarial, Finance and Investment Functions of Insurers, 2024

The IRDAI (Actuarial, Finance and Investment Functions of Insurers) Regulations, 2024 (“**AFIFI Regulations**”) were notified on 20 March 2024 with the

object of ensuring sound management practices and standards in discharge of actuarial, finance and investment functions in order to protect the interests of policyholders and facilitate ease of doing business. Thereafter, on 17 May 2024, the IRDAI issued the Master Circular on Actuarial, Finance and Investment Functions of Insurers, 2024 (“**Actuarial Master Circular**”) which has approximately 37 previous circulars on the subject. The Actuarial Master Circular, applicable to all insurers including those engaged exclusively in reinsurance business, *inter alia*, provides for necessary guidance on aspects pertaining to various provisions of the AFIFI Regulations.

Master Circular on Corporate Governance for Insurers, 2024

The IRDAI (Corporate Governance for Insurers) Regulations, 2024 (“**CGI Regulations**”) were notified on 21st March 2024 with the object to outline general terms, framework to adopt sound and prudent principles and practices of their governance structure and to delineate the roles and responsibilities of the board and management of the insurers. Thereafter, on 22 May 2024, the IRDAI issued the Master Circular on Corporate Governance for Insurers, 2024 (“**Corporate Governance Master Circular**”) which has repealed approximately 11 previous circulars on the subject. The Corporate Governance Master Circular is applicable to all insurers except a foreign company engaged in re-insurance business through a branch established in India. The Corporate Governance Master Circular, *inter alia*, sets out the norms in relation to composition of board of directors, appointment of common directors, roles and responsibilities of the board, conflict of interest, delegation of functions, remuneration of directors, disclosure requirements, and the various policies required to be adopted by the insurers.

Circular on Unsolicited Commercial Communications (UCC) through Telecom Resources – TRAI’s Guidelines, 2024

The IRDAI vide a circular dated 28 May 2024, brought recent guidelines of Telecom Regulatory Authority of India to the notice of all the Regulated Entities in order to curb Unsolicited Commercial Communications through voice calls or messages, by requiring them to follow various measures, including registration with any telecom service provider for sending commercial communication, use only of the ‘140/160’ number series for making commercial calls and registration of headers for sending SMS messages. Further, the regulated entities are required to be responsible for confidentiality and security of their customer’s data and are required to take steps to spread awareness among the customers in local language.

Master Circular on Health Insurance Businesses, 2024

The IRDAI (Insurance Products) Regulations 2024 (“**Product Regulations**”) were notified on 20 March 2024 with the object to facilitate insurers to respond faster to the emerging market needs, to promote ease of doing business, to improve insurance penetration and to protect the interests of policy holders. Thereafter, on 29 May 2024, the IRDAI issued the Master Circular on Health Insurance Business, 2024 (“**Health Insurance Master Circular**”) which has repealed approximately 55 previous circulars/orders/guidelines on the subject. The Health Insurance Master Circular, *inter alia*, requires insurance products not in compliance with the Product Regulations and the Health Insurance Master Circular to be modified before 30 September 2024. The Health Master Circular, *inter alia*, provides certain requirements to be followed by insurers undertaking health insurance business to ensure that the objectives of the Product Regulations are met.

Master Circular on Reinsurance, 2024

The IRDAI (Registration and Operations of Foreign Reinsurers Branches and Lloyd’s India) Regulations, 2024 were notified on

20 March 2024 with the object of strengthening and harmonizing the regulatory framework for reinsurance operations in India. Thereafter, on 31 May 2024, the IRDAI issued the Master Circular on Reinsurance, 2024 (“**Reinsurance Master Circular**”) which has repealed approximately 7 past circulars on the subject. The Reinsurance Master Circular, *inter alia*, provides norms on reinsurance programme and collateral requirements for placement of reinsurance business with cross border reinsurers.

Master Circular on General Insurance Business, 2024

Pursuant to the notification of the Product Regulations, on 11 June 2024, the IRDAI issued the Master Circular on IRDAI (Insurance Products) Regulations 2024 – General Insurance (“**General Insurance Master Circular**”) which has repealed approximately 16 previous circulars on the subject. The General Insurance Master Circular, *inter alia*, provides the norms relating to information for a retail policyholder, general operation principles and product management.

Master Circular on Life Insurance Products, 2024

The IRDAI issued the Master Circular on Life Insurance Products on 12 June 2024 (“**Life Insurance Master Circular**”) to be read with the Product Regulations. The Life Insurance Master Circular has repealed approximately 4 previous circulars on the subject.

The Life Insurance Master Circular provides norms in relation to, *inter alia*, general information for the policyholder/prospect/customer and implementation of the IRDAI (Insurance Products) Regulation, 2024.

The Life Insurance Master Circular envisages a product governance framework to ensure that every life insurer has board approved policies in place for product design, pricing, underwriting and advertisement of products. An internal governance framework is sought to be put

in place by all insurers to ensure adherence to product design and pricing principles.

Provisions in relation to pricing of insurance products and the product approval process have been provided in the Life Insurance Master Circular along with the relevant forms.

Master Circular on Submission of Returns, 2024

The IRDAI issued the Master Circular on Submission of Returns on 14 June 2024 (“**Returns Master Circular**”). The Returns Master Circular has repealed approximately 10 previous circulars on the subject. The Returns Master Circular applies to all life insurers, general insurers, health insurers, reinsurers and foreign reinsurance branches transacting reinsurance business in India.

The Returns Master Circular has specified the various returns required to be submitted by the different categories of insurers/reinsurers and provides the formats for the same.

Master Circular on Operations and Allied Matters of Insurers, 2024

The IRDAI issued the Master Circular on Operations and Allied Matters of Insurers on 19 June 2024 (“**Operations Master Circular**”) with a view of strengthening the governance measures in relation to the operations of insurers.

The Operations Master Circular has repealed approximately 11 past circulars/guidelines on the subject. The Operations Master Circular provides compliances and other norms in relation to, *inter alia*, advertisement, opening of places of business of insurer, outsourcing of activities by insurers, grievance redressal mechanism, usage of trade logos of promoter partners/related parties, group insurance policies, unclaimed amounts of

policyholders and servicing of policies in case of exit of distribution channels.

It has been clarified in the Operations Master Circular that insurers shall be required to open places of business within a period of one year from the date of approval, post which the approval shall stand lapsed. In relation to outsourcing the Operations Master Circular provides certain principles required to be followed by insurers when undertaking outsourcing of activities.

In relation to usage of trade logos of promoting partners/any other party, the parties shall be required to enter into an agreement and specify the consideration towards usage of trade logo in the agreement.

Order in the matter of Go Digit General Insurance Ltd.

The IRDAI vide order dated 02 May 2024 imposed a penalty of Rs 1 crore on Go Digit General Insurance Ltd. (to be charged to its shareholders account) for failure to comply with Section 26 of the Insurance Act, 1938, which provides that any alterations made to any matters required to accompany an application (which includes shareholders agreements) by an insurer for registration shall be furnished to the IRDAI. In this case, there was an inordinate delay in filing the amendment to the joint venture agreement with the IRDAI (which amended the conversion ratio for the compulsorily convertible preference shares). The change was material as it led to a change in the shareholding of the promoter entity of the insurer, upon conversion of the compulsorily convertible preference shares. Hence, a penalty was imposed on the insurer.

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PROJECTS & INFRASTRUCTURE

Regulatory Updates

Guidelines for monitoring of projects and issuance of Provisional Certificate of Completion/ Completion Certificates

In order to address concerns regarding erroneous issuances of provisional certificate of completion ("PCC") and completion certificates ("CC"), the National Highways Authority of India ("NHAI") has issued the 'Guidelines for monitoring of Projects and issuance of Provisional Certificate of Completion (PCC)/ Completion Certificate (CC)' dated 24 May 2024, with the following key features:

- NHAI's engineers/ independent engineers will be required to prepare and share at the time of the kick off meeting in consultation with the regional officer / project director, a detailed checklist based on the indicative checklist shared by the NHAI;
- During site visits, the regional officer / project director shall review the checklist along with the routine test to be conducted at the site and laboratory;
- A meeting and site visit shall be carried out by the regional officer / project director, three months prior to the probable issuance of the PCC or CC to assess the preparedness of the site for the PCC or CC; and
- Upon successful compliance of all items of the checklist, contractual requirements and successful tests on completion, the PCC/ CC shall be issued.

Ministry of Power issues clarifications regarding Guidelines for operationalizing the optimum utilization of Energy Stations

The Ministry of Power ("MoP"), on 22 April 2024, has issued certain clarifications regarding the 'Guidelines for operationalizing the optimum utilization of generating stations as per the requirement in the Electricity Grid' dated 8 October 2021. The clarifications have been provided amid concerns that certain power generators are not offering surplus power in the power market, leading to unused power capacity.

It has been clarified that power stations must always be ready and available to dispatch power according to the Tariff Policy, 2016, and the power generators can sell surplus power in the power market for optimum usage of the unutilized generation capacity.

Further, Section 9 (5) of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 permits generators to sell surplus power which is within their declared generation capacity but not requisitioned by distribution companies. In light of feedback from power utilities highlighting certain restrictions in existing agreements, the MoP has clarified that generating companies, including those with long term coal linkages under fuel supply agreements can offer un-requisitioned surplus power in the market.

Directions to Gas-based generating stations

MoP has, *vide* its order dated 12 April 2024 ("Order"), issued directions to gas-based generating stations ("GBSs") for optimum utilization of the operational capacity of GBSs during the hot weather season (till June 2024) having high power demand. According to the Order, GRID-INDIA will inform the GBSs about expected high demand and stress in advance, and the number of days they are required to

generate in a week shall be informed at least fourteen days in advance. According to the Order, the GBSs notified and scheduled on D-1 basis shall be guaranteed for dispatch at a minimum of 50% capacity round-the-clock during the designated high-demand period. Further, the GBSs holding power purchase agreements ("**PPAs**") shall offer their capacity on the basis of energy charge rate ("**ECR**") while GBSs not holding PPAs must offer their capacity on the basis of the benchmark ECR determined by the concerned committee unless there is a mutually agreed price. The payments will be made on a weekly basis by the procurer and the payment security mechanism under the Late Payment Surcharge Rules, 2022 shall apply.

The Order was valid for generation and supply of power from 1 May 2024 to 30 June 2024.

Guidelines for Payment of Compensation for right of way (RoW) for transmission lines

The MoP has issued guidelines on 14 June 2024 for determining compensation for damages regarding the Right of Way ("**RoW**") for laying transmission lines. The states/ union territories may adopt these guidelines in entirety or issue their own modified guidelines. In the absence of state government's guidelines, these guidelines by the MoP shall apply for determining the compensation. The key guidelines provided by the MoP are as follows:

- The compensation shall be payable only for transmission lines supported by a tower base of 66 Kv voltage level and above.
- District magistrate or the district collector or the deputy commissioner shall be the

determining authority for compensation.

- The compensation shall be based on the circle rate, guidelines value, or stamp act rates of the land, except where the market rate of land exceeds the circle rate, guidelines value or stamp act rates.
- The compensation for the tower base area (*i.e.* the area enclosed by the four legs of the tower at ground level plus an additional one-meter extension on each side) shall be 200% of the land value.
- The compensation amount for RoW corridor shall be 30% of the land value. Land within the RoW corridor, as defined in Schedule VII of the Central Electricity Authority (Technical Standards for construction of Electrical Plants and Electric Lines) Regulations, 2022, shall be eligible for compensation.
- Compensation payment shall be one-time and upfront and whenever possible, shall be paid through digital payment methods.

Amendment in Scheme Guidelines for Implementation of strategic Intervention for Green Hydrogen Transition (SIGHT) Programme-Component II

The Ministry of New and Renewable Energy (Hydrogen Division) ("**MNRE**"), *vide* its order dated 16 January 2024, issued 'Scheme Guidelines for Implementation of Strategic Intervention for Green Hydrogen Transition (SIGHT) Programme-Component II: Incentive for Procurement of Green Ammonia Production (under Mode- 2A) of the National Green Hydrogen Mission' ("**Scheme Guidelines**"). The MNRE has, *vide* its letter dated 21 June 2024, amended the Scheme Guidelines to increase the capacity available for

bidding of green ammonia under tranche I of mode 2A to 75,000 MT per annum, as against the earlier existing capacity of 5,50,000 MT per annum.

The amendment was brought to achieve greater participation from industry players and foster an environment conducive to innovation and growth in the green energy sector.

CERC (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2024

On 23 May 2024, the Central Electricity Regulatory Commission ("**CERC**") notified the CERC (Procedure, Terms and Conditions for grant of Transmission Licence and other related matters) Regulations, 2024. The regulations regulate the process for granting transmission licenses, including eligibility criteria, application processes, and the conditions of a license. Some key features of these regulations are as follows:

- The application for the grant of licence shall be made to the CERC. The CERC shall, before granting licence or rejecting the application, provide an opportunity of hearing to the applicant.
- The transmission licence shall, unless revoked earlier, continue to be in force for a period of 25 years from the date of issue.
- In case of default by a licensee in debt repayment, the CERC may, on an application made by the lenders of the licensee, assign the licence to a nominee of the lenders.

Clarification to Revised Policy for Biomass Utilisation for Power Generation through Co-firing in Coal based Power Plants

On 14 May 2024, the MoP issued a clarification with regard to the 'Revised Policy for Biomass Utilisation for Power Generation through Co-firing in Coal based Power Plants' ("**Biomass Policy**"), dated 8 October 2021. According to paragraph 3(viii)(b) of the Biomass Policy, for projects set up under Section 63 of the Electricity Act, 2003, increase in energy charge rate due to biomass cofiring can be claimed under 'Change in Law' provisions. However, under the provisions of the PPAs signed under section 63 of the Electricity Act, 2003, compensation is payable only if cost to the power plant exceeds 1% of the letter of credit each year.

The MoP has examined the above issues and clarified that for projects established through competitive bidding under Section 63 of the Electricity Act, 2003, wherein 'fuel cost pass through' is provided in their PPAs, the cost of biomass pellets shall also be pass through in the Energy Charge Rate.

CERC (Connectivity and General Network Access to the inter-State transmission System) (Second Amendment) Regulations, 2024

The CERC, *vide* notification dated 19 June 2024, amended the CERC (Connectivity and General Network Access to the inter-State Transmission System) Regulations, 2022 ("**Connectivity Regulations**"). Such amendments shall come into force on a date as central government may notify. The key amendments introduced are as follows:

- **REIA:** Renewable Energy Implementing Agency has been introduced in the Connectivity Regulations to aid government entities in procuring power from renewable sources.

- **Minor deficiencies:** Applicants will now be notified of minor deficiencies in the application for grant of connectivity or general network access within 10 working days of application (as against the earlier timeline of 7 days), and which need to be rectified within 7 working days thereafter, failing which the application shall be closed along with levy of monetary penalties.
- **Revised minimum capacity for some regions:** A different minimum capacity requirement of 25 MW has been introduced for connectivity applications in the north-eastern region and Sikkim.
- **Documents for land rights:** The requirements for documentation of land rights for connectivity have been updated, allowing government orders as valid proof towards land use rights under certain conditions. Furthermore, the financial guarantee thresholds based on project capacity has been revised.
- **Submission of land documents:** The deadline for submission of documents for land has been stipulated as 18 months post in-principle grant of connectivity or 12 months of issuance of a final grant of connectivity, whichever is earlier.
- **Consequence of failure of financial closure:** Steps following a failure to achieve financial closure within the stipulated period, including potential revocation of connectivity have been provided.

CERC Notifies Renewable Energy Tariff Regulations, 2024

On 12 June 2024, the CERC introduced the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2024, effective from 1 July

2024 until 31 March 2027 unless reviewed earlier or extended by the CERC. Key aspects of these regulations include:

- **Scope and Application:** These regulations apply to cases where the tariff, for a grid connected generating station or a unit thereof which is commissioned during the contract period (*i.e.* 01 July 2024 to 31 March 2027) and based on renewable energy sources, is to be determined by the CERC. The regulations specifically outline the eligibility criteria for various types of renewable projects like wind, solar, biomass and hybrid energy systems.
- **Tariff Determination:** The regulations establish a mechanism for generic tariffs applicable to certain renewable projects (such as small hydro project) and project-specific tariffs for other projects (such as solar and wind projects). The regulations specify components like return on equity, interest on loan, and depreciation for tariff computation for renewable energy sources.
- **Operational and Financial Norms:** The regulations stipulate provisions for the calculation of operation and maintenance expenses, capital cost considerations, and incentives or subsidies impact from governmental bodies.

Advisory to generating companies for timely import of coal for blending purposes and maximizing production in captive coal mines

The MoP, *vide* an advisory dated 4 March 2024, provided for blending of imported coal at 6% (by weight) till June 2024. The MoP, *vide* advisory dated 27 June 2024, has extended the abovementioned advisory until 15

October 2024. Further, the MoP has modified the requirement for blending of imported coal from 6% (by weight) to 4% (by weight).

Despite a robust growth of power demand in the country and a significant improvement in rake loading as well as receipt of domestic coal, a gap between receipt and consumption of coal at the domestic coal based ("DCB") plants has been observed.

Therefore, to bridge this gap and to meet the power demand during the crucial monsoon months, the MoP has instructed all GENCOs and independent power producers to firm up their imported coal contracts for ensuring supplies till 15 October 2024. The GENCOs have also been instructed to continuously review the stock positions of their DCB plants and opt for blending. It is to be noted that the advisory dated 27 June 2024 will not be applicable to DCB plants located within a radius of 200 kms from the linked mine/coal source.

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