

LEGAL BRIEFS: BI-WEEKLY LEGAL UPDATES

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Synergia Legal is bringing it to you a fortnightly compilation of digestible summaries of key legal developments and case laws impacting the business, commercial and economic landscape in India:

SECURITIES LAW

1. **The Securities and Exchange Board of India issued a circular on revised framework for computation of Net Distributable Cash Flow (NDFC) by Infrastructure Investment Trusts (InvITs) (December 06, 2023):**

The Securities and Exchange Board of India issued a circular dated December 06, 2023 outlining considerations related to the computation and distribution of Net Distributable Cash Flow (NDCF) within an Infrastructure Investment Trust (InvIT). It emphasizes the retention options at both the Special Purpose Vehicle (SPV) and Trust levels, the need for cumulative periodic distributions, and the disclosure of surplus or restricted cash. Additionally, it addresses restrictions on external debt usage, temporary parking of proceeds from asset sales, and the exclusion of certain cash flows from NDCF calculations when used for operational purposes within the Trust or other entities.

(The SEBI circular bearing number SEBI/HO/DDHS-PoD/CIR/2023/184 is accessible [here](#).)

2. **The Securities and Exchange Board of India issued a circular on revised framework for computation of Net Distributable Cash Flow (NDFC) by Real Estate Investment Trusts (REITs) (December 06, 2023):**

The Securities and Exchange Board of India issued a circular dated December 06, 2023 on the computation and distribution of Net Distributable Cash Flow (NDCF) within a Real Estate Investment Trust (REIT). It emphasizes the inclusion of NDCF computed at the Special Purpose Vehicle (SPV) level, regardless of the timing of actual cash flows to the REIT, and highlights the option for the Trust to retain surplus amounts for reserves. The text also addresses the computation of the 10% distribution retention under Regulation 18(16), the treatment of surplus cash in SPVs, restrictions on external debt usage, and considerations for proceeds from the sale of real estate assets.

(The SEBI circular bearing number SEBI/HO/DDHS-PoD/CIR/2023/185 is accessible [here](#).)

3. The Securities and Exchange Board of India issued a circular on credit of units of AIFs in dematerialized form (December 11, 2023):

The Securities and Exchange Board of India issued a circular dated December 11, 2023 mandating alternative investment funds (AIFs) with a corpus exceeding INR 500 Crore to dematerialize and credit units to investors' demat accounts. A specified process has been outlined for dematerializing/crediting units for investors who have not provided demat account details. Units not yet credited due to missing details will be held in an "Aggregate Escrow Demat Account," and once investors provide demat details, the units will be transferred within 5 working days, with no other transfers permitted from/within this account.

(The SEBI circular bearing number SEBI/HO/DDHS-PoD/CIR/2023/186 is accessible [here](#).)

FINTECH/BANKING

4. The Reserve Bank of India issues circular for processing of e-mandates for recurring transaction (December 12, 2023):

The Reserve Bank of India issued a circular dated December 12, 2023, revising the limit of recurring transactions from INR 15,000 to INR 1,00,000 per transactions for the following categories: (a) subscription of mutual funds; (b) payment of insurance premium; and (c) credit card bill payments. The circular has been issued pursuant to the announcement made by the RBI in the Statement on Development and Regulatory Policies dated December 08, 2023.

(The RBI circular bearing number CO. DPSS. POLC. No. S-882/02.14.003/2023-4 is accessible [here](#).)

5. The Reserve Bank of India issued a press release on the completion of test phase of 'On Tap Retain Payments' thematic regulatory sandbox (December 11, 2023):

The Reserve Bank of India issued a press release dated December 11, 2023 notifying the completion of the test phase of a regulatory sandbox on the theme of on tap application for 'Retail Payments'. The product 'Offline Retail Payments' developed by the HDFC Bank in partnership with Crunchfish AP completed the test phase of the said regulatory sandbox.

(The RBI press release number 2023-2024/1461 is accessible [here](#).)

6. The Reserve Bank of India issued a press release cautioning against unauthorized campaigns on loan waiver (December 11, 2023):

The Reserve Bank of India issued a press release dated December 11, 2023 cautioning of misleading advertisements enticing borrowers by offering loan waivers. The press release highlights the *modus operandi* of such enticing entities.

(The RBI press release number 2023-2024/1459 is accessible [here](#).)

7. The Reserve Bank of India issued a press release on the Statement of Developmental and Regulatory Policies (December 08, 2023):

The Reserve Bank of India issued a press release dated December 08, 2023 on the statement on developmental and regulatory policy measures relating to (a) financial markets; (b) regulations; and (c) payment system and fintech. As part of the statement, the following have been addressed:

- (i) Review of the regulatory framework for hedging of foreign exchange risks to consolidate all the directions in respect of all types of transactions over the counter (OTC) and exchange traded, under a single master direction. The statement further states that the framework further enhances the operational efficiency and ease of reference.
- (ii) The RBI recognized the risks associated with connected lending i.e., lending to persons who are in a position to control or influence the decision of a lender. The RBI will be issuing a draft circular in this regard for public comments.
- (iii) The RBI has decided to bring loan aggregation services extended by lending service providers under single regulatory framework. The same has been decided in furtherance to the recommendation of the Working Group on Digital Lending to come up with a regulatory framework for web-aggregators of loan products.
- (iv) Recognizing the increasing popularity of the Unified Payment Interface, the transaction limit for UPI has been revised to INR 5,00,000 from INR 1,00,000 per transaction for payments to hospitals and educational institutions.
- (v) The RBI has decided to enhance the limit of e-mandates for recurring online transactions from INR 25,000 to INR 1,00,000 per transaction, in certain categories such as insurance payments, credit card bills and mutual funds.
- (vi) The RBI has announced that it is working on establishing cloud facilities for financial sectors in India.

- (vii) The RBI has announced for setting up of a repository for capturing essential information about FinTech, encompassing their activities, products, technology stack, financial information etc.

(The RBI press release number 2023-2024/1439 is accessible [here](#).)

OTHERS

8. **The Insolvency Professionals to act as Interim Resolution Professional, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Second Guidelines, 2023 (December 08, 2023):**

The Insolvency and Bankruptcy Board of India (IBBI) is mandated to recommend names of Insolvency Professionals (IPs) for appointment as Interim Resolution Professionals, Resolution Professionals, Liquidators, and Bankruptcy Trustees in response to references from the National Company Law Tribunal and Debt Recovery Tribunal. New guidelines, titled "Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) (Second) Guidelines, 2023," have been introduced to streamline the process by preparing a panel of IPs in advance. This panel, effective from January 1, 2024, to June 30, 2024, aims to prevent administrative delays in the appointment of IPs.

(The guidelines are accessible [here](#).)

CASE LAWS

9. **A Seven Judge Bench of the Supreme Court upheld the validity of unstamped arbitration agreement (December 13, 2023):**

In the case of N.N. Global Mercantile Private Limited v. Indo Unique Flame Ltd., the Supreme Court held that an 'instrument' comprising of arbitration clause shall not be void due to insufficiency in stamp duty. The Court noted that an 'instrument' which is unstamped or insufficiently stamped is inadmissible in evidence (under Section 35 of the Stamp Act, 1899) and can be admitted as an evidence upon payment of penalty (under Section 42 of the Stamp Act, 1899). The court further highlighted the difference between inadmissibility and void.

(The judgment can be accessible [here](#).)

10. The Supreme Court held that arbitration agreement can bind non-signatory group companies (December 06, 2023):

The Supreme Court in the case of Cox and Kings Ltd. v. SAP India Pvt. Ltd. upheld the doctrine of 'group of companies' by which, "an arbitration agreement which is entered into by a company within a group of companies may bind non-signatory affiliates, if the circumstances are such as to demonstrate the mutual intention of the parties to bind both signatories and non-signatories". The bench emphasized the doctrine's importance in determining parties' intentions in transactions with multiple parties and agreements. The judgment clarified that signatories and non-signatories can be bound by an arbitration agreement if there is a defined legal relationship and intent.

(The judgment can be accessible [here](#).)

11. The High Court of Bombay upholds the validity of amendment to Finance Act, rejecting the plea by the Serum Institute of India (December 06, 2023):

The High Court held that while the Constitution protects the right to trade, it does not extend that protection to the right to profit. In response to a petition from a Pune-based biotechnology company challenging a 2016 amendment to the Income Tax Act, the Court upheld the inclusion of subsidies and concessions as 'income,' stating it aligns with economic realities and allows for recalibration of fiscal advantages in line with broader economic and policy considerations. The judgment emphasized that taxing such subsidies does not constitute the removal of a benefit but rather reflects a necessary adjustment in the nation's fiscal machinery.

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