

## INSIDE

### Regulatory Updates

Key regulatory updates across practice areas

### Judicial Pronouncements

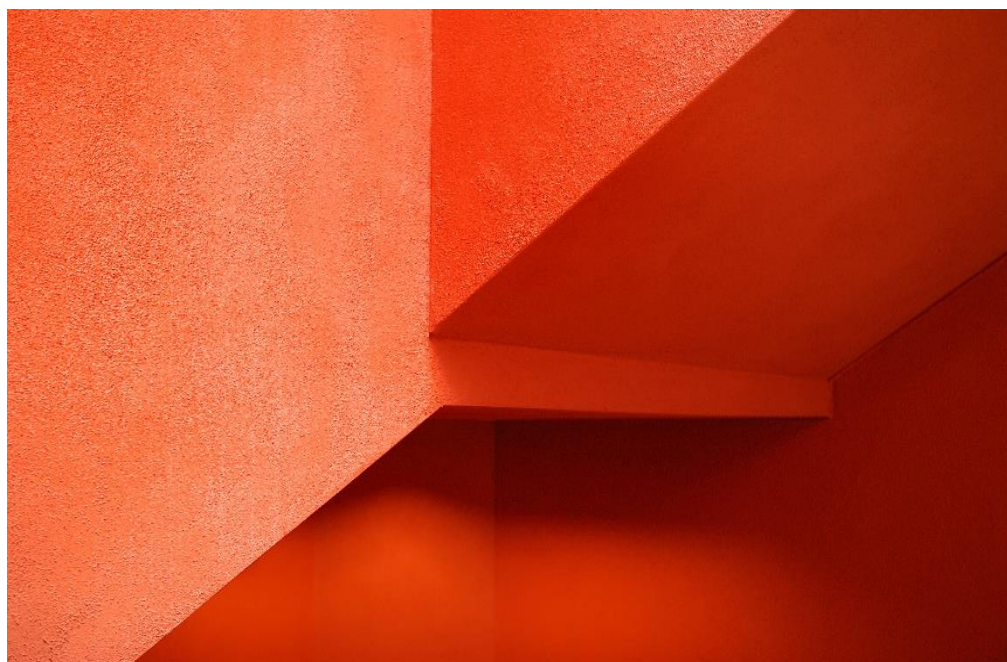
Material judicial pronouncements impacting business

### S&P Thought

In-depth analysis on and thoughts from our practice area experts on pressing issues

### Quarterly Milestones

A walk along in our growth story



## Regulatory Updates

### Key company law amendments

Key amendments to the provisions of the Companies Act, 2013 and the rules made thereunder were passed by the Ministry of Corporate Affairs (**MCA**) in relation to *inter alia*:

- Issue of Securities in Dematerialized Form by Private Companies
- Designation of Individual for Reporting Beneficial Interest in Shares of the Company
- Listing of Indian securities on foreign stock exchanges

For more click [here](#).



"Drawing on our sector-experts, Saraf and Partners is privileged to present to you **LegIt** - our quarterly newsletter."

### Mohit Saraf

Founder & Managing Partner

### Limited Liability Partnership Rules

The MCA introduced the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 and the Limited Liability Partnership (Third Amendment) Rules, 2023.

For more click [here](#).

### Regulating RE investments to prevent loan evergreening

RBI issued a circular restricting certain Regulated Entities (such as commercial banks, co-operative banks, non-banking financial companies (**REs**)) from making investments in Alternate Investment Funds (**AIFs**) with a view to prevent evergreening of loans. For more click [here](#).





### Additional disclosures by FPIs

SEBI (Foreign Portfolio Investors) Regulations, 2019 amended to require certain Foreign Portfolio Investors (**FPIs**) to provide additional disclosures on ultimate ownership, economic interest and control. For more click [here](#).

### Regulating cross-border Payment Aggregators

Reserve Bank of India (**RBI**) issued the Regulation of Payment Aggregator - Cross Border (PA - Cross Border) (**PA - CB Directions**) marking a significant change from the existing regulatory framework governing the facilitation of cross-border payment transactions. For more click [here](#).

### Guidelines to prevent and regulate Dark Patterns

Central Consumer Protection Authority introduced the Guidelines for Prevention and Regulation of Dark Patterns, 2023 to regulate and prevent deceptive behaviours adopted by online platforms. For more click [here](#).

### Clarifications on verifying market rumors

In response to the stakeholder concerns on the latest stipulation on verifying market rumors, Securities and Exchange Board of India (**SEBI**) published a consultation paper providing much needed clarifications. For more click [here](#).

### IBC moratorium and aircraft transactions

MCA notified that section 14(1) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) shall not apply to relevant transactions relating to aircraft, aircraft engines, airframes etc. For more click [here](#).

### GST regime rejig for Online Gaming

With effect from October 1, 2023 actionable claims supplied in casinos, horse racing and online gaming may be taxed at the rate of 28% on full face value, irrespective of whether the activities are a 'game of skill' or 'game of chance'. For more click [here](#).

### Step towards revival of stalled RE Projects

UP government approved recommendations of the committee chaired by former NITI Aayog CEO Amitabh Kant, aimed to address challenges faced by homebuyers in stalled real estate projects across the country. For more click [here](#).

### Bombay HC pecuniary jurisdiction increased

The Bombay City Civil Court (Amendment) Act, 2023 was enacted, enhancing the pecuniary jurisdiction of the Bombay High Court to INR 10 crores. For more click [here](#).

### Key amendments to Waste Management Rules

The Plastic Waste Management (Second Amendment) Rules, 2023 and the Hazardous and Other Wastes (Management and Transboundary Movement) Second Amendment Rules, 2023 we notified. For more click [here](#).



## Judicial Pronouncements



### Supreme Court holds nomination ≠ right to ownership

In the matter of Shakti Yezdani v. Jayanand Jayant Salgaonkar, the hon'ble Supreme Court of India (**Supreme Court**) pronounced that nomination does not amount to statutory testament and that a nomination under the provisions of company laws does not supersede the provisions Indian succession laws. For more click [here](#).

### RERA decree holders recognized as 'Financial Creditors'

The Supreme Court, in its decision in Vishal Chelani & Ors v. Debashis Nanda has reaffirmed that home buyers in insolvency cases who had previously secured a decree from the Uttar Pradesh Real Estate Regulatory Authority would be 'Financial Creditors'. For more click [here](#).

### Initiation of the insolvency proceedings against individuals and personal guarantors

The Supreme Court upheld the constitutional validity of the provisions under part-III, chapter-III of the IBC pertaining to the insolvency process of individuals and personal guarantors. For more click [here](#).

### Supreme Court clarifies applicability of the MFN clauses

The Supreme Court in its decision in Assessing Officer Circle (International Taxation) New Delhi v. M/s Nestle SA aligned with the Tax Department's position on applicability of most favoured nation (**MFN**) clause in Tax treaties based on the following premise:

- it is imperative that the subsequent treaty partner should be an OECD member at the time of signing of the Tax treaty for the earlier treaty beneficiary to claim parity; and
- it is vital to look into India's practice and conduct of giving effect of the subsequent event through an express action. In order to give effect to a Tax treaty/protocol thereto, which may have the effect of changing the existing law, a notification under section 90 of the ITA is a pre-requisite.

For more click [here](#).

### Arbitration in unstamped agreements enforceable

In Re: Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, the Supreme Court conclusively resolved the longstanding dispute regarding the stamping of arbitration agreements. For more click [here](#).

### Supreme Court confirms doctrine of group companies

In Cox and Kings Ltd. v. SAP India Private Ltd., the Supreme Court upheld the applicability of the doctrine of group of companies in the context of complex transactions involving multiple parties and agreements in the Indian arbitration jurisprudence. For more click [here](#).

## Statutory authorities at par with Secured Creditors

The Supreme Court dismissed the review petition filed seeking the review of the judgment passed in the matter of State Tax Officer v. Rainbow Papers Ltd. and reaffirmed its decision to hold that statutory authorities having a security interest created under any other legislation will be treated at par with the secured creditors under the IBC. For more click [here](#).

## Interim moratorium not to be extended to proceedings initiated under RBI Master Circular to declare an account as willful defaulter

The hon'ble High Court of Gujarat, in the matter of Jagdish Prasad Saboo v. IDBI Bank Limited, held that proceedings initiated under chapter III, Part III of the IBC will have no bearing on the proceedings initiated against the debtor under the master circular issued by the RBI to declare the account as willful defaulter. For more click [here](#).

## Receivables accruing in a barter agreement not 'Operational Debt'

The National Company Law Appellate Tribunal, New Delhi, vide its judgment in the matter of Real Estate Regulatory Authority vs. M/s D.B. Corp Limited and Anr., *inter alia*, held that non-payment of debt is *sine qua non* for issuing demand notice under section 8 of the IBC. Hence, unless the Operational Creditor has the right to payment against the Corporate Debtor, no operational debt could arise to enable the Operational Creditor to take recourse under the IBC. For more click [here](#).

## Section 29A of the IBC not applicable to MSMEs

The Supreme Court, in the matter of Hari Babu Thota v. Shree Aashraya Infra-Con Ltd., settled that the benefit regarding the non-applicability of the disqualifications provided under section 29A of the IBC shall be available, even if, the Corporate Debtor had attained the status of a MSME after the initiation of the Corporate Insolvency Resolution Process (**CIRP**). For more click [here](#).



## Compulsory Convertible Debentures: Whether 'Financial Debt' or 'Equity'

In an appeal challenging the NCLAT decision holding Compulsorily Convertible Debentures (**CCDs**) issued under "put option" to be treated as equity for the purposes of the treatment under the IBC, although the Supreme Court has upheld the NCLAT judgment, the same was restricted only to the given set of facts. Thus, the law in relation to the same still remains unanswered. For more click [here](#).

## S&P Thought



### Understanding the Evolving FDI Framework through Press Note 3

A few months back, the Department for Promotion of Industry & Internal Trade, Government of India (**DPIIT**) amended its Standard Operating Procedure (**SOP**) for Processing Foreign Direct Investment (**FDI**) Proposals (**FDI Approval SOP**). The FDI Approval SOP generally governs how FDI approval applications are to be processed (including PN 3 approval applications) and also prescribes the documentation requirements for filing approval applications with the Government. For more click [here](#).

### New criminal law landscape in India

Government of India introduced the Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita and the Bharatiya Sakshya to replace the Indian Penal Code, 1860, the Code of Criminal Procedure, 1898 and the Indian Evidence Act, 1872 respectively. For more click [here](#).

### Enhancing the effectiveness of the IBC | IBBI releases discussion papers on significant issues

The Insolvency and Bankruptcy Board of India (**IBBI**), in exercise of its powers conferred under the provisions of the IBC, has issued various discussion papers with a view to enhance the effectiveness of the IBC. For more click [here](#).

### Empowering SSFs for a dynamic market shift

The recently released SEBI consultation paper on the regulatory framework governing Special Situation Funds (**SSFs**) seeks to not only fine-tune the regulatory guidelines for SSFs but also to broaden their impact on the investment landscape. For more click [here](#).

## Quarterly Milestones



## Key Awards & Recognitions

- We were featured amongst the Top 10 M&A Law Firms in India by Venture Intelligence League Table 2023.
- We won Project Finance International's APAC Digital Infrastructure Deal of the Year 2023 Award for USD 213 million Data center financing of AdaniConneX.

## Key Deal Announcements

- We acted for **Viatrix** in divestment of its Women's Healthcare business, and Active Pharmaceutical Ingredients (API) business in India for total consideration of USD 1.2 billion.
- We advised a **consortium of lenders**, comprising Punjab National Bank, State Bank of India and IDBI Bank, on the refinancing of DB Power Limited's existing facilities, aggregating to USD 699 million.
- We advised **KRBL Limited**, the world's largest rice miller and basmati rice exporter, in relation to a buyback of equity shares for an aggregate amount of INR 325 crores, through the tender offer route.
- We acted for Fortis Healthcare in sale of **Fortis Malar Hospital**, Chennai to MGM Healthcare for INR 128 Crores.
- We advised the **Committee of Creditors** led by the Bank of India in the Corporate Insolvency Resolution Process of McNally Bharat Engineering Company Limited under the Insolvency and Bankruptcy Code, 2016.
- We advised **Pristine Group** in its acquisition of Distribution Logistics Infrastructure Pvt. Ltd. and other group entities.
- We advised **Amansa Investment Ltd.** in connection with its investment in Aequus Pvt. Ltd.

## Other News

- We launched our **Hyderabad Office** with partner duo from DSK, Durga Bose Gandham and Altaf Fathima along with their entire team.
- We expanded our Delhi team with the joining of partners Avirup Nag, Ramya Suresh and Dhruv Chatterjee.



**Saraf and Partners** is India's fastest growing, independent, professionally owned and managed firm with a strength of 38 partners and 250 lawyers. We are a contemporary full - service law firm with over three decades of experience. We provide bespoke, out of the box, innovative and integrated legal solutions using global best practices. Drawing on sector-experts with years of experience and expertise, Saraf and Partners is privileged to work with some of India's leading corporations as also advising global behemoths looking at India.

Communication is key at Saraf and Partners. We take time to listen to our clients' concerns and goals, and we are committed to responding promptly to our clients' inquiries and keeping them informed every step of the way. Backed by a team with limitless capabilities, we take pride in providing timely and cutting-edge legal advice while upholding the highest standards of ethical behaviour.

Our unwavering commitment to our clients and their commercial interests is at the heart of everything we do. Our extensive experience, coupled with learned pragmatism in our approach, ensures that our clients receive the best legal advisory for nuanced legal concerns. It is this dedication to professional excellence that has led our leadership team to be recognized amongst the top legal advisors in India.

#### Our offices:

##### Delhi NCR

FC - 10 & 11, Sector 16 A,  
Filmcity, Noida - 201 301  
+91 (11) 4405 0600

[Delhi@sarafpartners.com](mailto:Delhi@sarafpartners.com)

##### Mumbai

One International Centre,  
Tower 2, Unit No 2402, 24th  
floor, Senapati Bapat Marg,  
Lower Parel - 400013  
+ 91 (22) 4405 0600

[Mumbai@sarafpartners.com](mailto:Mumbai@sarafpartners.com)

##### Bengaluru

6 Awfis Residency Square,  
Richmond Rd, Shanthala  
Nagar, Richmond Town,  
Bengaluru - 560025  
+91 (80) 4405 0600

[Bengaluru@sarafpartners.com](mailto:Bengaluru@sarafpartners.com)

##### Hyderabad

8-2-619, Third Floor, SAHA  
Complex, Road No. 11, Banjara  
Hills, Hyderabad - 500034  
+91 81061 66662

[Hyderabad@sarafpartners.com](mailto:Hyderabad@sarafpartners.com)

Subscribe now to **LegIt** and stay connected with us as we navigate the legal terrain together. We would love to hear your views @ [legit@sarafandpartners.com](mailto:legit@sarafandpartners.com)

**Disclaimer:** All information contained in this newsletter has been compiled from credible, reliable sources and while reasonable care has been taken to ensure that the information contained herein is true and accurate, such information is provided on an 'as is' basis, with no warranty, express or implied, as to its accuracy or completeness. The contents of this newsletter are provided for general informational purposes only and should not be construed as legal or other advice on any subject matter. You should not act or refrain from acting on the basis of any content included in this newsletter without seeking legal or other professional advice. The views and opinions expressed in this newsletter are those of the author(s) and do not necessarily reflect the views of the firm. Saraf and Partners shall not be liable for any losses incurred by any person from any use of this newsletter or its contents.

