

IDFCFIRSTBANK/SD/147/2021-22

August 23, 2021

The Manager-Listing Department
National Stock Exchange of India Limited
Exchange Plaza, Plot No. C - 1, G - Block
Bandra-Kurla Complex, Bandra (East)
Mumbai 400 051.
Tel No.: 022 – 2659 8237/ 38
NSE - Symbol: IDFCFIRSTB

The Manager-Listing Department
BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street, Fort
Mumbai 400 001.
Tel No.: 022 – 2272 2039/ 37/ 3121
BSE - Scrip Code: 539437

Sub.: Newspaper publication regarding 7th Annual General Meeting ('AGM') of the members of the IDFC FIRST Bank ('the Bank').

Ref.: *Disclosure under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended ('SEBI Listing Regulations').*

Dear Sir/ Madam,

Pursuant to Regulation 47 and other applicable provisions of SEBI Listing Regulations, we hereby submit copies of newspaper notice published by the Bank in today's 'Hindu Business Line (English)' and 'Makkal Kural (Tamil)', in compliance with the Ministry of Corporate Affairs General Circular No. 20/2020 dated May 5, 2020, intimating *inter-alia* that the 7th AGM of the Bank will be held on Wednesday, September 15, 2021 at 02.00 p.m. (IST), through Video Conferencing ('VC') / Other Audio-Visual Means ('OAVM').

The above is being uploaded on the website of the Bank at www.idfcfirstbank.com.

Please take the above on record and acknowledge receipt of the same.

Thanking you,

For **IDFC FIRST Bank Limited**

Satish Gaikwad
Head – Legal & Company Secretary
Encl.: as above

COURTROOM

Limits placed on NCLT
What is the role of the Adjudicating Authority (AA) under the IBC? Can the AA go into the merits of the decision of the Committee of Creditors (CoC) or should it confine itself only to ascertaining whether due process under the law has been complied with?

These questions have been settled by the Supreme Court in its verdict in the case of *Pratap Technocrats Vs Monitoring Committee of Reliance Infratel*. Judges DY Chandrachud and MR Shah left no room for ambiguity when they said, "It needs no emphasis that neither the AA nor the Appellate Authority has an uncharted jurisdiction in equity."
They added, "There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC." As such, "The jurisdiction of the AA or the Appellate Authority cannot extend into entering upon merits of a business decision made by a requisite majority of the CoC in its commercial wisdom. Nor there is a residual equity-based jurisdiction in the AA or the Appellate Authority to interfere in this decision, so long as it is otherwise in conformity with the provisions of the IBC and the Regulations under the enactment."
In the present case, "Whether or not some of the financial creditors were required to be excluded from the CoC is of no consequence, once the plan is approved by a 100 per cent voting share of the CoC."

Not time-barred

In the case of *Vivek Malik Vs Punjab National Bank*, it was decided by the National Company Law Appellate Tribunal (NCLAT) that an application filed under Section 7 of the Insolvency and Bankruptcy Code would not be considered time-barred if the application filed by the financial creditor includes a letter of acknowledgment of the debt.
NCLAT said, "The application was filed within the period of limitation as it gives fresh lease of limitation from the date of such acknowledgment of the acknowledgment letter and the corporate debtor defaulted in repaying loans as per the agreed terms and conditions."

Yes, he is a financial creditor!

If a person gives a term loan to a company, free of interest, is he or she a financial creditor, and therefore could initiate Corporate Insolvency Resolution Process (CIRP) under Section 7 of the IBC? Yes, he is a financial creditor, said the Supreme Court, in its judgment for *Orator Marketing Pvt Ltd Vs Samtex Desin Pvt Ltd*. In this, the Court cited as precedent a judgment of its own, in *Pioneer Urban Land and Infrastructure Vs Union of India*, in which it held that even individuals who were debenture holders or fixed deposit holders are also financial creditors, eligible to initiate CIRP. When a corporate debtor commits a default, CIRP by a financial creditor under Section 7 of the IBC is triggered. 'Default' means non-payment of debt in whole or part when the debt has become due and payable. Debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The Court said that the definition of 'financial debt' in Section 5(8) of the IBC, includes financial debt. It does not expressly exclude interest free loans. Also, the definition of 'debt' cannot be read in isolation; it must be read with other relevant definitions – such as, the definition of 'claim' in Section 3(6), 'corporate debtor' in Section 3(8), 'creditor' in Section 3(10), 'debt' in section 3(11), 'default' in Section 3(12), 'financial creditor' in Section 5(7) as also the provisions, of Sections 6 and 7 of the IBC.

Tribunal Reforms Act and the questions it triggers

TRISHA SHREYASHI
NIPUN GAUTAM

The Tribunal Reforms Act, 2021 proposing changes in the constitution processes of a tribunal has become a subject of controversy since it was passed on August 13, 2021. The Supreme Court (SC) took cognisance at the best of a PIL filed by Jairam Ramesh that alleged that the enactment was ultra vires the government's constitutional prerogatives. It further inquired the reasons for re-enacting the very provisions of Finance Act, 2017 that were struck down in *Madras Bar Association (MBA)-III Vs Union of India (2020)* and *MBA-IV Vs Union of India (2021)* on the basis of excessive interference with independence of judiciary, arbitrary power conferred upon the executive by the legislature and constitutionality.

The Act in question dissolves eight tribunals, conferring their jurisdiction on high courts and civil courts. The intent and object behind the legislation is to tackle the problem of insufficiency of staff, infrastructure in tribunals and lagged dispute resolution which puts a heavy financial burden on the exchequer. Secondly, the Act proposes changes in the procedure of constitution of tribunals, conferring the power of appointment and removal, thereof, upon the Search-cum-Selection Committee (SCSC).

'Excessive intervention'

In the present instance, some questions arise. First, whether such SCSC is at par with the National Judicial Appointments Commission (NJAC) that was struck down on grounds of excessive intervention in judicial independence. Second, whether the legislature can override a judicial pronouncement by a subsequent legislation.

Section 3 of the Act provides for the constitution of the SCSCs. Headed by Chief Justice of India (CJI) or his nominee SC Justice as the chairperson, the Act provides for mandatory recommendation of a panel of two names to the Centre who shall take a decision within three months of such recommendation. It also seeks to fix the ten-

ure of chairperson and the members in the tribunal up to four years and bars appointment of persons to the tribunal below fifty years of age. The policies relating to judicial authority vis-a-vis executive dominance backed by legislative supremacy in matters like constituting the bench or appointment of members continues, have been interpreted, evolved and shaped over three distinct eras.

While declaring the provision preventing courts from accessing grounds of detention under Preventive Detention Act (1950) as unconstitutional in the *AK Gopalan* case, the judiciary asserted itself as the upholder of justice. This skirmish aggravated over the litigation in agrarian and land reforms until it hit the ceiling in the celebrated *Keshavanand Bharati* case. It was in the First Judges case (1981) that bolstered the executive opinion in judicial appointments. In the late 1980s, the tide started turning with coalition governments at the Centre and the SC reclaimed judicial control over appointments in the Second Judges Case (1993) replacing the National Judicial Commission with the collegium system. Elucidating further, it conferred primacy to CJI in the event of conflict of opinion with the President of India in matters concerning judicial appointments.

However, it was the Three Judges case (1998) that unanimously set down the modalities. It laid down that CJI in consultation with senior most judges shall form the collegium for appointment of justices. However, this two-decade-old collegium system was scrapped in 2014 and was replaced with the NJAC – which was struck down by the SC in 2015 on premise of constitutionality and validity in violation of separation of powers. The nature of SCSCs is identical to the NJAC, which was struck down. The principles of separation of powers and the rule of law have to be interpreted in line with the conscience of the constitution.

(The authors are lawyers)

Does NCLT hold a magic wand to settle all insolvency-related issues?

A cloud hangs over what matters the National Company Law Tribunal can and cannot entertain

AMEYA GOKHALE/RADHIKA INDAPURKAR

The National Company Law Tribunal (NCLT), was formulated under the Insolvency and Bankruptcy Code, 2016 (IBC) to deal with insolvency and liquidation matters of corporate entities. Experience has shown that litigants tend to approach the NCLT for redressal of all grievances against companies undergoing insolvency resolution or liquidation. However, does the NCLT really have such powers to deal with all and sundry matters concerning these companies?

The Supreme Court had the occasion to opine on the scope of NCLT's power under Section 60 (5) of the IBC in *Embassy Property Developments Vs State of Karnataka* and *Gujarat Urja Vikas Nigam Vs Amit Kumar Gupta*.

'Insolvency resolution'

In the *Embassy* case, the Supreme Court concluded that a matter which is in the realm of public law could not be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution" appearing in Clause (c) of Section 60 (5) and therefore such a matter was outside the authority of the NCLT.

In the *Gujarat Urja (GUVNL)* case, the Supreme Court asked the NCLT to ensure that it does not entertain matters falling within the jurisdiction of other forums and to entertain cases which arise solely from or relate to the insolvency of the company. The Supreme Court made it clear that nexus between the issue at hand and insolvency of the company must exist for NCLT to exercise jurisdiction.

The decisions in the *Embassy* and *GUVNL* cases leave many questions and propositions unanswered. Importantly, these cases have been decided based on the interpretation of only clause (c) of Section 60(5). Clause (a) of the Section, which gives the NCLT jurisdiction to entertain "all applications or proceedings by or against the corporate debtor not-



Litigants tend to approach the NCLT for redressal of all grievances against firms undergoing insolvency resolution or liquidation

withstanding any other law for the time being in force" was not called out for interpretation. One wonders whether the Supreme Court would have decided these cases differently, had it been called upon to consider this provision. If indeed the NCLT cannot decide an issue which is unrelated to the insolvency resolution process of the company, what happens to the case of a third party, (one who is barred from suing the company in any court or tribunal on account of a moratorium imposed by the IBC), who has a dispute with the company that does not arise out of or relate to the insolvency resolution of the company?

Does it mean that such a third party would have no remedy since it can neither approach a civil court nor can it approach the NCLT? For example, in the event there is a breach or default on part of the company which is de hors the insolvency process, the counter-party has no recourse in the form of institution of a suit against the corporate debtor, going by the dicta in *Embassy* and *GUVNL*. It would indeed be a travesty, if legitimate claims were left remediless in such a manner. This

could not have been the Supreme Court's intention. Under the Companies Act, the Company Court overseeing winding up or liquidation proceedings of a company had the power to entertain any suits or proceedings against the company being wound up. The logic behind this was to make the procedure simple and avoid multiplicity of proceedings across different for a when they related to that company being wound up. The IBC, which aims to be a comprehensive code in itself, effectively replacing the winding up provisions and installing the NCLT as the adjudicatory authority in place of the Company Court, does not seem to include such express powers for the NCLT.

Companies Act, 2013

Under Section 424 of the Companies Act, 2013, the NCLT, for the purpose of discharging its functions under the IBC, has powers as vested in a civil court under the Code of Civil Procedure, 1908, including examination of evidence and taking evidence on oath, etc.

Given the ambit of Section 424, perhaps an argument can be made

that the powers of NCLT under Section 60(5) are much wider than envisaged under *Embassy* and *GUVNL*. It is, however, equally true that matters before the NCLT are required to be disposed of in a time bound manner given the limited time period for completion of the processes under the IBC. It would be impossible for the NCLT to decide complex questions of fact and law, like the Company Court could do, in a limited time frame.

Given that the attention of the Supreme Court has not yet been drawn to several critical and important provisions within the IBC and the Companies Act, 2013, it can be argued that *Embassy* and *GUVNL* are limited in their scope and application.

Till the Supreme Court finds another occasion to delve into the scope and extent of the NCLT's jurisdiction, there remains a substantial cloud on what matters the NCLT can and cannot entertain.

(The authors are Partner and Senior Associate respectively at Shardul Amarchand Mangaldas, a law firm)

NEWS

Burden of law



The Indian judiciary seems to be groaning under the burden of litigation. According to data provided by the Ministry of Law and Justice, there are 69,212 cases pending with the Supreme Court, 58,76,632 cases with the 25 High Courts, and 3,93,30,952 cases with the 37 Subordinate Courts in the country.

This seems to have caught the attention of the Parliament. In the last session of the Lok Sabha, at least 11 out of the 30 questions posed to the Ministry of Law and Justice pertained to the pendency of cases and shortage of judges.

No reservation



Appointment of judges of the Supreme Court and High Courts is made under Articles 124, 217 and 224 of the Constitution of India, which do not provide for reservation for any caste or class of persons, the Ministry of Law and Justice has told the Parliament. Hence no class/category wise data is maintained centrally. However, the government has been requesting the Chief Justices of High Courts that while sending proposals for appointment of judges, due consideration be given to suitable candidates belonging to scheduled castes, scheduled tribes, other backward classes, minorities and women to ensure social diversity in appointment of judges in High Courts.

Streamlining outbound investments

RBI's draft proposals have issues that need to be sorted before they are adopted

SAURYA BHATTACHARYA

Outbound investments from India have been traditionally governed by the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 (FEMA 120).

Now, the Reserve Bank of India (RBI) has brought in a Draft Foreign Exchange Management (Overseas Investment) Regulations, 2021, and Draft Foreign Exchange Management (Non-debt Instruments - Overseas Investment) Rules, 2021. It has invited public comments on these. The new regime would bring about a sea change. However, there is scope for more refinement before it comes into effect.

Overseas direct investment

This concept from FEMA 120 has been expanded by the 2021 Rules. FEMA 120 broadly covered primary and secondary acquisition of shares in a foreign entity but did not include portfolio investments. Under the 2021 Rules, "overseas direct investment" (ODI) distinguishes between investment in unlisted and listed entities; and includes sponsor contribution to fund vehicles.

For listed entities, the investment size should be equal to or more than 10 per cent, mirroring the definition of FDI. Investments in energy and agricultural space are specifically addressed. This poses interpretation challenges and are discussed contextually.

Energy sector

Acquisition of "Participating interest/right" in the energy sector constitutes ODI. There are multiple questions that arise from here. In the first instance, "Participating interest/right" is not defined. It would be important for the 2021 Rules to specify that this would imply some form of management control and/or economic interest in a foreign entity (as defined in the 2021 Rules), rather than a commercial/contractual right to use energy assets such as gas pipelines or power distribution cables.

The 2021 Rules also define "strategic sectors" to include energy and natural resources sectors such as oil, gas, coal and mineral ores or any other sector that may be advised by the Central government. However, the definition of ODI singles out only the energy sector, not "strategic sector"; thereby excluding the natural resources sector. Not only is the reason for this unclear, but practical distinction would also be difficult.



It is unclear whether overseas investments in non-energy strategic sectors should only be through routes other than ODI – such as overseas portfolio investment GETTY IMAGES

For instance, is coal to be counted as energy sector or natural resources sector? Furthermore, it is unclear whether overseas investments in non-energy strategic sectors should only be through routes other than ODI – such as overseas portfolio investment (thus, largely in listed securities and governed by Schedule II of the 2021 Rules) or other forms of financial commitments (which the 2021 Regulations cover as debt, guarantee, pledge or charge).

Under the circumstances, it is to be considered whether the construct of participating interest/rights and energy sector at all need to remain specifically in the definition of ODI.

Agriculture sector

The 2021 Rules state that investment outside India in agricultural operations as provided under the 2021 Rules and 2021 Regulations shall also be treated as ODI by way of equity capital. The rationale for treating investments in this sector as ODI by way of equity capital is unclear – though ODI as a concept under the 2021 Rules is largely centered around acquisition of equity shares, it is not limited to investments only by acquiring equity capital.

For instance, acquisition of direct/indirect control otherwise than through holding equity shares should have constituted ODI but for this clarificatory language in the definition. Unfortunately, this notion is reinforced in language in the 2021 Regulations as well. Schedule I of the 2021 Rules makes no such specific distinction, thereby

creating ambiguity on whether the ODI regime would govern acquisition of control in agricultural operations other than through holding of equity capital. Could it be that investment in agricultural operations is intended only as ODI by way of equity capital and not under any other route?

It may serve well to add that the reference to investments under the 2021 Regulations counting as ODI by way of equity capital also remains mystifying, as the 2021 Regulations expressly cover other routes that do not constitute ODI, being financial commitment by way of debt, guarantee, pledge or charge. To treat these as ODI by way of equity capital may be difficult and intractuous.

If indeed the legislative intent is to provide a certain treatment to investments in agricultural operations, it may serve better to address it in procedure-related provisions (permissions, limitations etc) rather than in the conceptual clauses such as the definition of ODI. The 2021 Rules and 2021 Regulations are well intentioned but have built within themselves several inconsistencies that at the time of implementation may create challenges. Therefore, a thorough review to iron these out before replacing FEMA 120 should be considered.

(The author is Mumbai-based Corporate Partner with HSA Advocates, and additionally heads the practice for the Firm's Kolkata Office. Views expressed herein are personal and not to be construed as legal advice.)

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NOTICE TO THE MEMBERS OF THE BANK FOR 7th ANNUAL GENERAL MEETING

NOTICE is hereby given that the Seventh (7th) Annual General Meeting ('AGM') of the Members of IDFC FIRST Bank Limited ('the Bank') will be held on **Wednesday, September 15, 2021 at 02:00 p.m.** Indian Standard Time ('IST'), through Video Conferencing ('VC') / Other Audio-Visual Means ('OAVM'), in compliance with the applicable provisions of the Companies Act, 2013 (the 'Act') and the Rules made thereunder and the Securities and Exchange Board of India ('SEBI') (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended ('SEBI Listing Regulations'), read with General Circular Nos. 14/2020, 17/2020, 20/2020 and 02/2021 dated April 08, 2020, April 13, 2020, May 05, 2020 and January 13, 2021, respectively, issued by the Ministry of Corporate Affairs ('MCA') and Circular No. SEBI/HO/CFD/CMD2/CIR/P/2021/11 dated January 15, 2021 issued by SEBI, (collectively referred as 'Relevant Circulars'), to transact the businesses as set out in the Notice of the AGM which will be circulated for convening the AGM. Members can attend the AGM only through VC/OAVM or view the live webcast of AGM at <https://www.evoting.nsdl.com>. Members attending the AGM through VC/OAVM facility shall be reckoned for the purpose of quorum under Section 103 of the Act.

In compliance with the Relevant Circulars, the Notice of the AGM along with the Annual Report for the FY 2020-21, will be sent only through electronic mode to all those Members whose e-mail addresses are registered with the Bank / Registrar and Share Transfer Agent ('RTA') / Depository Participant(s). Members may note that the Notice of the AGM and the Annual Report for the FY 2020-21 will also be made available on the Bank's website at www.idfcfirstbank.com, on the website of the Stock Exchanges i.e., BSE Limited at www.bseindia.com and National Stock Exchange of India Limited at www.nseindia.com and on the website of the service provider engaged by the Bank for VC/OAVM viz. National Securities Depository Limited ('NSDL') at <https://www.evoting.nsdl.com>. The instructions for joining the AGM will be provided in the Notice of the AGM.

The Bank will be providing remote e-voting facility ('remote e-voting') to all its Members to cast their votes on all resolutions set forth in the Notice of the AGM. Additionally, the Bank is providing the facility of voting through e-voting system during the AGM ('e-voting'). Detailed procedure for remote e-voting / e-voting will be provided in the Notice of the AGM.

Manner of registering / updating e-mail address, mobile number & change of address and manner of registering mandate of bank accounts:

1. Physical Holding	Send a request to the RTA of the Bank, KFAN at ainward.nis@kfintech.com , providing name of shareholder, folio no., scanned copy of the share certificate (front and back) and self-attested scanned copy of PAN card.
2. Demat Holding	Please contact your Depository Participant ('DP') and register your e-mail address and bank account details in your demat account, as per the process advised by your DP.

Members who are holding shares in physical form or who have not registered their e-mail address are requested to refer to the Notice of the AGM for the process to be followed for obtaining the User ID and password for casting the vote through remote e-voting.

In case of any queries, please refer the Frequently Asked Questions ('FAQs') and E-voting User Manual for Shareholders available at the Downloads section of www.evoting.nsdl.com or call on toll free no.: 1800-1020-990/1800-224-430 or send a request to evoting@nsdl.co.in. In case of any grievances connected with the facility for voting by electronic means, please contact Ms. Pallavi Mhatre, Manager, NSDL, 4th Floor, 'A' Wing, Trade World, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai - 400 013.

By order of the Board of Directors
For IDFC FIRST Bank Limited
Sd/-
Satish Gaikwad
Head - Legal & Company Secretary

Place: Mumbai
Date: August 21, 2021

