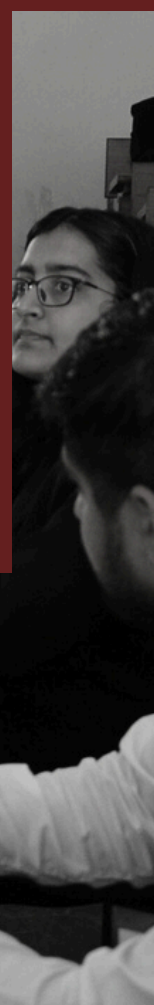




# AU COURANT

RGNUL FINANCIAL AND MERCANTILE LAW REVIEW



JUNE 2024

# **PREFACE**

It gives us immense joy to share the June edition of our monthly newsletter, "Au Courant," with our readers. In this edition, the current on-goings in various fields of law have been analysed succinctly in the 'Highlights' section to provide readers with some food for thought.

This includes a brief on the notification issued by the SEBI regarding the framework for financial disincentives for surveillance lapses, the order pronounced by Telangana High Court regarding Section 9 IBC and Section 11 of the Arbitration Act, and the guidelines issued for arbitration and mediation in contracts for domestic public procurement.

Major happenings in various fields of law such as Insolvency law, Banking and Finance, Competition and Intellectual Property Rights Law have been recorded in the 'News Updates' segment to keep the readers abreast of the latest legal developments.

We hope that this Edition of the Au Courant finds you well and is once again an enjoyable and illuminating read for you!



## HIGHLIGHTS OF THE MONTH

# HIGHLIGHTS



## SEBI Issues Framework of Financial Disincentives for Surveillance related Lapses

On June 6, 2024, the Securities and Exchange Board of India issued a framework of financial disincentives in case of surveillance lapses by Market Infrastructure Institutions (MIIs), such as stock exchanges, clearing corporations and depositories. The Framework will come into effect from July 1, 2024, said the SEBI. Market surveillance by MIIs includes monitoring the day-to-day activities in the market, reporting abnormal or suspicious activities, monitoring the conduct of market intermediaries through the generation and processing of alerts, carrying out the snap analysis and the like. Surveillance-related lapses include any inadequate reporting or non-reporting of surveillance-related activity, and not only failure to implement surveillance-related measures but also any delay in implementing them or partly implementing them.

The disincentive will be decided on the basis of annual revenue and number of lapses in a financial year. If the total annual revenues of an MII is less than Rs 1,000 crore, there would be a fine of Rs 25 lakh at the first instance of surveillance-related lapse, Rs 50 lakh on the second instance and Rs 1 crore for the third instance onwards. In case the total annual revenue of an MII is between less than Rs 1,000 crore and up to Rs 300 crore, then a penalty of Rs 5 lakh, Rs 10 and Rs 20 lakh would be levied on the first, second and third instance, respectively. Similarly, if the revenue is less than Rs 300 crore, a fine of Rs 1 lakh, Rs 2 lakh and Rs 4 lakh would be levied for the first, second and third instances of surveillance-related lapse, respectively.

[Read more](#)

# HIGHLIGHTS

## DEPARTMENT OF EXPENDITURE MINISTRY OF FINANCE

### **FinMin issues Guidelines for Arbitration and Mediation in Contracts for Domestic Public Procurement**

The Department of Expenditure, Ministry of Finance, issued an official memorandum titled “Guidelines for Arbitration and Mediation in Contracts for Domestic Public Procurement,” which delineates the use of arbitration and mediation in domestic public procurement contracts. The following guidelines are issued for contracts of domestic procurement by the Government and by its entities and agencies (including Central Public Sector Enterprises [CPSEs], Public Sector Banks [PSBs] etc. and Government companies):

1. Arbitration as a method of dispute resolution should not be routinely or automatically included in procurement contracts/ tenders, especially in large contracts.
2. As a norm, arbitration (if included in contracts) may be restricted to disputes with a value of less than Rs. 10 crore.
3. In matters where arbitration is to be resorted to, institutional arbitration may be given preference.
4. In matters covered by arbitration/ court decisions, the guidance contained in General Instructions on Procurement and Project Management dated 29.10.2021 should be kept in mind.
5. Government departments/ entities/ agencies are encouraged to adopt mediation under the Mediation Act, 2023 and/ or negotiated amicable settlements for resolution of disputes.
6. Approval of the appropriate authority will need to be obtained for the final accepted solution. Section 49 of the Mediation Act, 2023 is also relevant in this regard.

The Arbitration Bar of India has also called for withdrawal of these guidelines.

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# HIGHLIGHTS



## **Section 9 IBC Petition Does Not Preclude Arbitration Under Section 11(6) of the Arbitration Act**

The Telangana High Court held that mere filing of petition under Section 9 of Insolvency and Bankruptcy Code, 2016 before NCLT does not bar initiation of proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996. It was held that there is no statutory provision that prevents parties from initiating the proceedings under Section 11 during the pendency of the petition.

The bench referred to Section 21 of the Arbitration Act. It opined that arbitral proceedings for any dispute begin on the date on which the respondent receives the request to refer to arbitration. The Court cited Supreme Court's decision in State of Goa v. Praveen Enterprises that Section 21 mandates a party to outline disputes, but does not necessitate quantifying the amount. Thus, a claim remains valid and can be referred to arbitration even when the notice lacks the specified amount. It also referred to Indus Biotech Private Ltd. v. Kotak India Venture (Offshore) Fund for filing an application under Section 7 of IBC, that without its admission, it does not constitute proceeding in rem and does not hinder arbitration.

Thus, the court held the arbitration proceedings to be maintainable.

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# NEWS BITS



# NEWS BITS



## **New Digital Platform to Address Payment Frauds: RBI Constitutes Committee for Recommendations**

The Reserve Bank of India (RBI) plans to set up a Digital Payments Intelligence Platform to decrease payment fraud in the country. For the same, the RBI has instituted a committee led by Chairman A.P. Hota, the former MD, and CEO of the National Payments Corporation, to design the infrastructure of the digital domain and submit its recommendations within 2 months.

The RBI governor, Shaktikanta Das encapsulates the aim of the RBI succinctly, it is to establish an intelligence platform for a real-time data-sharing mechanism across the digital payments' ecosystem.

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## **Indemnity Obligations do not Constitute Operational Debt under IBC: NCLT**

The petitioners filed against the respondents over payment defaults related to goods supplied. The Petitioner claimed the Respondent guaranteed Empathy's payment. However, the NCLT dismissed the petition, ruling it time-barred under the Limitation Act since the default occurred in 2015 and the petition was filed in 2019.

The NCLT referred to precedent, including the case of M.S. Jain v. TVG Limited, which clarified that indemnity obligations under a guarantee do not constitute operational debt. Therefore, the NCLT concluded that invoking the IBC against a guarantor for operational debt was not maintainable.

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# NEWS BITS



## No prima facie case of contravention of Section 4: CCI Dismisses Compliant Against Maruti Suzuki

The Competition Commission of India (CCI) held that the discounts offered by Maruti Suzuki on subsequent car models could not be held as anti-competitive, as they devalued previous purchases made by customers. In examining allegations of Maruti Suzuki's abuse of dominant position, the CCI first evaluated the definition of the 'relevant market.' Public information indicated Suzuki's significant market share to be India's passenger vehicle segment. The CCI noted Maruti Suzuki's SUV market share was approximately 22% in 2022 and 21.5% in 2023. However, this did not demonstrate dominance as it could not be proven that Suzuki was capable of influencing market dynamics or consumer choices. The CCI found no violations in Section 4 despite Suzuki's significant market share. Addressing price disparity and refund refusal, the CCI held it to be an inter-se pricing dispute and that subsequent discounts do not entitle buyers to retrospective benefits. Consequently, the CCI found no prima facie case of Section 4 contravention and dismissed the information under Section 26(2) of the Competition Act.

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## Breach of Settlement Agreement is Outside the Scope of 'Operational Debt'

The National Company Law Tribunal (NCLT), Kolkata held that the breach of a settlement agreement between corporate debtor and operational creditor does not fall within Section 5(21) of the IBC's scope of 'operation debt.' Operational debt is the claim in respect of goods and services, including debts for payment of dues under any current law, payable to the Central Government, any State Government, or any local authority. The NCLT bench referred to *Trafigura India Pvt. Ltd. v. TDT Copper Ltd.* to hold that default based on non-payment of dues under settlement agreement do not constitute 'operational debt' under the provision of Section 5(21) of the IBC. It further held that as the breach of the settlement agreement is outside the scope of 'operational debt' under the IBC, CIRP proceedings cannot be triggered against the Corporate Debtor.

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# NEWS BITS



## Government Plans to Introduce Policies to Invigorate Deep-tech Start-Ups

With the growing need to focus on companies handling Intellectual Property (IP), the Commerce Ministry plans to include a bulky grant for research, development, and innovation for IP and to support the companies in the IP sector. The government plans to release an umbrella framework, under which the state governments and the companies in the space are to be guided.

Comments from 18 ministries and gov. departments have been sought, and learned luminaries have been consulted and remain in the most advanced stages at the moment. The proposed policy aims to establish a unified IP framework across the country.

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## SEBI Approves Regulatory Norms for Unregistered Financial Influencers

The Securities and Exchange Board of India (SEBI) has approved norms for regulating the unregistered financial influencers, also known as "Finfluencers"; who manage to convey unsolicited advice to unwise investors to disrupt the market.

The regulator has approved a set of norms to curb the influence of the unregistered finfluencers, through the prohibition of all monetary transactions, client referrals, or professional interactions between regulated entities and the unregistered finfluencers.

The Regulator is adamant that the rules would not apply to individuals or entities engaged in investor education, who offer general financial advice rather than directing their client's portfolio.

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RGNUL FINANCIAL AND MERCANTILE LAW REVIEW

ISSN(O): 2347-3827

[www.rfmlr.com](http://www.rfmlr.com), [rfmlr@rgnul.ac.in](mailto:rfmlr@rgnul.ac.in)

