

**Newsletter**  
Volume 5, Dec 2022



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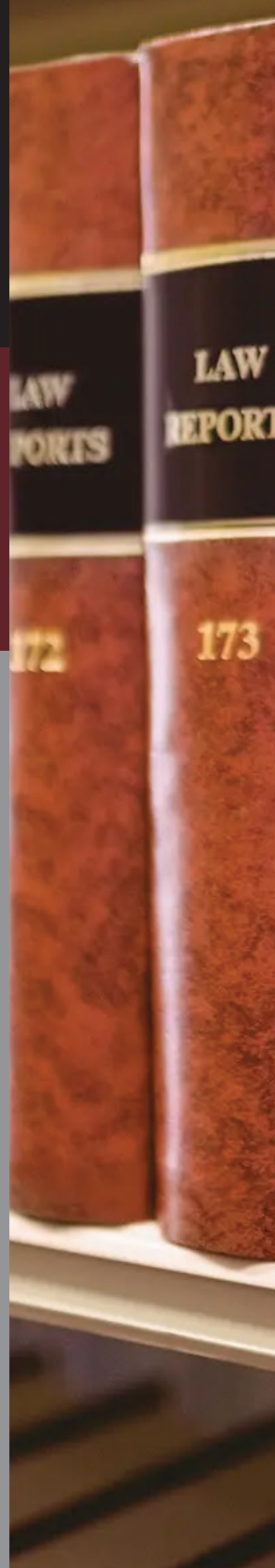
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### UPI CAN NOW BE USED BY NRI'S ON THEIR INTERNATIONAL PHONE NUMBERS





## Editor's note

Dear Readers,

We are pleased to share the 4th edition of SNG Newsletter for the month of December 2022. The RBI's report released in December 2022 on Trends and Progress of Banking in India is a meaningful insight. The report inter alia covers the ESG aspects also which are relevant for the banking industry. It is heartening to see that the regulators are consistently emphasizing on the funding green projects which is conducive for the growth of ESG principles.

The RBI has come up with first pilot for Digital Rupee (e₹-R) which is a landmark development. Launched on 1st December, 2022, this could be a significant development for India at national as well as at international level furthering and promoting aspects of digital banking.

This issue covers several important circulars issued by RBI, SEBI, MCA. The important judgements under the IBC and SARFESI related to banking industry are also included in this issue.

I hope that you would enjoy reading and stand benefitted with the contents.

Best wishes,

*Rajesh Narain Gupta*

Managing Partner,  
SNG & Partners

## A. DEBT RECOVERY (SARFAESI):

### 1. Delhi High Court: Statutory Authorities must recognize the change in ownership of the pledged shares

The Delhi High Court observed that the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 envisages the transfer of assets by the original lender including banks and financial institutions to asset reconstruction companies like the Petitioner in the present case. It also provides for the treatment of such buyers as lenders for all purposes.

It was noted that after the purchasing of the NPA account, the Petitioner became the new pledgee by way of the Debt Assignment Deed and as a buyer acquired the right to deal with the pledged shares. This right is absolute and is required to be recognized by all third parties including statutory authorities.

Further, it was remarked that once the original pledgee issued instructions to Respondent No.2 for substitution, there is no justification for denying so. Merely because no such procedure has been laid down in the Depositories Act, 1996 or SEBI (Depositories and Participant) Regulations, 2018, Respondent No.2 cannot deny the changes.

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### 2. Delhi High Court: Terms of Contract cannot be renovated under Writ Jurisdiction

The issue between the parties was about the date from which the moratorium period had to be calculated. The Learned Single Judge held that the moratorium will be calculated from the date of conveying the original sanction to the Borrower.

The High Court opined that the terms of the settlement unequivocally stated that 3 months moratorium will be calculated from the date of conveying the original sanction to the borrower.

It was held that the writ petition was filed in an attempt to renovate the contract which is not permissible. A contract cannot be rewritten between the parties by the High Court while exercising writ jurisdiction. The terms are to be altered mutually only.

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## B. ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG):

### 1. Reserve Bank of India – Report on the trend and progress of Banking in India

Reserve Bank of India has released a report on the trend and progress of Banking in India. Some of the significant global banking developments noted in the report are:

- a. The International Sustainability Standards Board has proposed standards in general for sustainability-related disclosure requirements and climate-related disclosure requirements. The aim is to develop a global baseline standard of sustainability disclosures with consistent, complete, comparable, and verifiable information.
- b. 18 principles for effective management and supervision of climate-related financial risks have been issued by the Basel Committee on Banking Supervision in June 2022. The principles are designed to seek a balance in improving practices and providing a common baseline for internationally active banks and supervisors, while retaining sufficient flexibility, given the degree of heterogeneity and evolving practice in this area. Based on the size, complexity, and risk profile of the bank or banking sector, the principles can be adopted by a diverse range of banking systems proportionally.
- c. A need for establishing common metrics and data repositories for open access to climate-risk-related data in a consistent form is felt after assessing the progress of SSBs by the Financial Stability Board in July 2022. All four blocks of the roadmap viz., firm-level disclosures, data, vulnerabilities analysis, and regulatory and supervisory tools were assessed.
- d. In July 2022, the European Central Bank (ECB) decided to incorporate climate change considerations into the Euro system's monetary policy framework. The measures include:
  - (i) Tilting ECB's corporate bond holdings towards issuers with lower greenhouse gas emissions, more ambitious carbon reduction targets, and better climate-related disclosures.
  - (ii) Limiting the share of assets issued by entities with a high carbon footprint that can be pledged as collateral by individual counterparties when borrowing from the Euro system

- (iii) Accepting marketable assets and credit claims from companies and debtors that comply with the Corporate Sustainability Reporting Directive as collateral in Euro system credit operations
- (iv) Further enhancing ECB's risk assessment tools and capabilities to capture climate-related risks better.

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## C. INSOLVENCY AND BANKRUPTCY CODE (IBC):

### 1. NCLAT, New Delhi opines: A pre-existing dispute must co-relate with the amount claimed by the Operational Creditor

The NCLAT, Principal Bench, New Delhi observed that Section 8②(a) of the Insolvency and Bankruptcy Code, 2016 provides that the dispute must be in respect of the claimed amount and must not be with respect to any other kind of dispute. It was opined by the Tribunal that the plea of the pre-existing dispute must co-relate with the claimed amount by the Operational Creditor. In the present case, the Respondent did not contend that the Appellant is not entitled to salary, gratuity, bonus, etc., The Appellant asked for the salary that became due before the termination order was issued; therefore, there was no pre-existing dispute between the parties.

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### 2. Delhi High Court: NCLT doesn't have jurisdiction to decide the validity or legality of Regulations under IBC

The Delhi High Court remarked that a reading of Section 60②(c) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") would show that the questions of law or fact to be decided by NCLT ought to be in respect of the proceedings which are pending before it and the questions must arise out or concerning the resolution or liquidation proceedings.

This, therefore, does not include the power to declare Regulation ultra vires. It was opined that NCLT is not equipped to decide on the validity and legality of the Regulations framed under IBC.

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### 3. NCLAT, Chennai enunciates: No limitation of 'look back period' in Section 66 of IBC [6](#)

The NCLAT, Chennai Bench noted that Section 66 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") does not provide for any 'look back period' as far as fraudulent transactions are concerned. Therefore, the Resolution Professional can retrieve/repossess without any limitation on time

The Bench further stated that Section 66 provides for the losses of the creditors to be recovered in the event of Liquidation and that the Directors causing such losses are liable to repay the losses.

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**4. NCLAT, New Delhi enunciates: 'The Insolvency and Bankruptcy Code, Removal of Difficulties Order, 2017' not to be given effect to**

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The NCLAT, Principal Bench New Delhi, noted that the notification issued by the Central Government, "The Insolvency and Bankruptcy Code, Removal of Difficulties Order, 2017" has been adjudged by the Hon'ble Supreme Court as a notification which travelled beyond the scope of the removal of difficulties provisions. Therefore, this notification cannot be given effect.

It was also observed that Section 242① of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") empowers Central Government to issue an order in case of difficulties in giving effect to the provisions in the IBC. The power given is only confined to the extent of removing difficulties and giving effect to the provisions of IBC. The Tribunal noted that the said powers cannot be used to remove any difficulty in regards to reviewing or monitoring of schemes under the Sick Industrial Companies (Special Provisions) Act, 1985.

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**5. NCLT, Chandigarh expounds: Admission of claim after approval of Resolution Plan against the goals of IBC opines NCLT**

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The NCLT, Chandigarh Bench noted that the claim in the present case was submitted after 1 year. Regulation 12 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for a limitation of 90 days from the Insolvency commencement date for submission of claims. The Tribunal opined that if the said claim is allowed then the entire post-CIRP process would be derailed, and the efforts put in the Insolvency Resolution would be negated. It was expounded that CIRP is a strict time-bound process to maximize the value of the Corporate Debtor. Any admission of claim after the approval of the plan would be in the teeth of the objectives of the Insolvency and Bankruptcy Code, 2016.

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**6. NCLAT, New Delhi expounds:  
IBC does not bar continuation of the  
proceedings by an Assignee**

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The NCLAT, Principal Bench, New Delhi observed that Order XXII Rule 10 of the Code of Civil Procedure, 1908 contemplates continuance of proceedings based on devolution of rights with the leave of the Court.

The bench further added that “There is no bar in either Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) or any of the Regulations to prevent the continuation of the proceedings by an assignee. Section 5⑦ of the IBC defines a financial creditor, which includes a person to whom debt has been legally assigned or transferred”.

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**7. NCLAT, New Delhi opines:  
Section 7 IBC Application against an  
NBFC not maintainable**

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The NCLAT, Principal Bench, New Delhi noted that Section 3⑦ of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) explicitly states that financial service providers are not included in the definition of a corporate person. Further, to become a corporate debtor, an entity has to be a corporate person, but the financial service provider does not qualify as a corporate person.

It was noted that the proceedings against Sungrowth have been initiated because Sungrowth is a corporate guarantor as defined under Section 5A of the IBC.

The Tribunal opined that Sungrowth has registration as a financial service provider and therefore it cannot be called a banking institution. It is a non-banking financial institution and therefore, an application under Section 7 cannot be held to be maintainable.

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**8. NCLAT, New Delhi enunciates:  
Once Resolution Plan is approved by  
CoC, no modifications/withdrawals  
are permissible**

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The NCLAT, Principal Bench, New Delhi, has opined that there is no scope for modifications or withdrawals of the CoC-approved resolution plans either by the Successful Resolution Applicant or by the Creditors.

The bench further stated that “The interference by NCLT is only permitted if the plan goes against the IBC. Moreover, once the plan is submitted to the NCLT, the same becomes

binding and irrevocable between CoC and the Successful Resolution Applicant”.

The Appellate Tribunal also propounded that the ‘maximization of value of assets’ has to be done within the specified timelines and if merely because there was a higher offer a plan is considered, the entire objective of IBC i.e., a timebound process would fail.

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**9. NCLAT, New Delhi rules: Date of NPA is irrelevant consideration for purposes of IBC**

The NCLAT, Principal Bench, New Delhi has observed that for acknowledgment of debt in the eyes of law, documents such as entries in a Banker’s Book, recall notices and annual reports can be relied on.

It was further observed that Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) nowhere talks about the occurrence of default to be considered from the date of Non-Performing Assets. It was reiterated that the date of default for IBC has to be when there is actual non-repayment of debt repayable by the Corporate Debtor on the date it becomes due and payable.

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**10. NCLAT, New Delhi expounds: Decisions taken by CoC based on commercial wisdom cannot be termed as material irregularity**

The NCLAT, Principal Bench, New Delhi, reiterated that the Tribunal does not have residual equity-based jurisdiction to direct modifications of claims once the Resolution plan is approved.

The bench stated that “The NCLT has very limited jurisdiction once the Resolution Plan is approved and cannot interfere with the merits of the Business Decision of the Committee of Creditors (hereinafter referred to as “CoC”).

Regarding discrimination between creditors, the Tribunal noted that the equity principle cannot be stretched to a point where unequal are given equal treatment as then the purpose of IBC would be destroyed. The power of judicial review in such cases is also very limited to the extent of seeing that the CoC has considered the fact that the Corporate Debtor stays a going concern during the Corporate Insolvency Resolution

Process (hereinafter referred to as “CIRP”) and the value of its assets is maximized.

It was observed that the Corporate Debtor was dependent on the land owned by GMADA. Even though it was not appreciated by the Tribunal that GMADA did not file their claims, it was noted that the GAMDA was in communication with the Resolution Professional and the statutory dues owed to GMADA cannot be faulted. Moreover, the differential treatment of the dues of the Operational Creditors is solely based on the commercial decision of the CoC and the same cannot be construed as material irregularity.

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**11. NCLT, Chandigarh opines: No need for the Taxation Department to lodge a claim in respect of statutory dues**

The NCLT, Chandigarh Bench observed that the Taxation Department is not obliged to lodge a claim in respect of statutory dues. The claim must be treated as a debt owed to a secured creditor as security interest has been created by the operation of law.

The Department in respect of the claim created a charge on the Input Tax Credit of the Corporate Debtor. About this, the Tribunal noted that since the claims of the Excise and Taxation Department are already directed to be considered by the Liquidator, there is no need to attach the Input Tax Credit of the Corporate Debtor as this would affect the business of the Corporate Debtor and would be in the teeth of the objectives of the Insolvency and Bankruptcy Code, 2016.

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## D. MINISTRY OF CORPORATE AFFAIRS (MCA):

### 1. The second set of Company Forms is to be rolled out in January 2023

Ministry of Corporate Affairs will launch a second set of Company Forms covering 56 forms in two different lots on the MCA21 V3 portal. On January 09, 2023, 10 forms will be rolled out and the remaining 46 forms will be rolled out on January 23, 2023.

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## E. RESERVE BANK OF INDIA (RBI):

### 1. Operationalization of Central Bank Digital Currency – Retail (e₹-R) Pilot

1st Pilot for retail digital rupee (e₹-R) has been launched on December 01, 2022. The e₹-R would be in the form of a digital token, representing legal tender. The denominations in which it will be issued are the same as paper currency and coins. Transactions will be done via a digital wallet offered by participating banks and can be stored on phones.

Currently, 8 banks have been shortlisted for participation in this pilot. The 1st phase would begin with only 4 banks namely, State Bank of India, ICICI Bank, Yes Bank, and IDFC Bank. The cities in which the pilot would initially commence are Mumbai, New Delhi, Bengaluru, and Bhubaneswar.

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### 2. Notification of Significant Bench

In addition to 6 financial benchmarks already administered by Financial Benchmarks India Pvt. Ltd. as 'significant benchmarks', the Reserve Bank of India has notified Modified Mumbai Interbank Forward Outright Rate (MMIFOR) administered by Financial Benchmarks India Pvt. Ltd. as a 'significant benchmark'. Till further notice, MMIFOR administered will continue to remain a 'significant benchmark'.

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### 3. Review of norms for classification of Urban Co-operative Banks (UCBs) as Financially Sound and Well Managed (FSWM)

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Select UCBs are termed FSWM to ensure a financially sound and stable cooperative sector. There are certain parameters for classifying UCBs as FSWM. The parameters were issued vide circular dated January 28, 2015.

Based on the recommendation of the Expert Committee on Primary (Urban) Co-operative Banks, the criteria for UCBs to be classified as FSWM has been revised. Now, the UCBs are allowed to classify themselves as FSWM based on the revised set of parameters.

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### 4. Revised Regulatory Framework- Categorization of Urban Co-operative Banks (UCBs) for Regulatory Purposes

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A need for a tiered regulatory framework was felt to balance the spirit of mutuality and cooperation, especially in banks of smaller sizes with a limited area of operation vis-à-vis the growth ambitions of the large-sized UCBs to spread their areas of operation.

Because of this, an Expert Committee on UCBs was constituted to examine the issues in the banking sector and review the regulatory framework to strengthen the sector.

Now, instead of the current two-tiered framework, it has been decided to adopt a four-tiered regulatory framework for the categorization of UCBs.

The classification of UCBs based on their deposit size is annexed to the circular.

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### 5. Revised Regulatory Framework- Categorization of Urban Co-operative Banks (UCBs)- Net Worth and Capital Adequacy [20](#)

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A circular with detailed guidelines regarding net worth and capital adequacy is issued by the Reserve Bank of India.

Some of the guidelines are:

- a. Tier I UCBs are to have a minimum net worth of Rs. 2 crores and all other UCBs are to have a minimum net worth of Rs. 5 crores.
- b. Tier 1 UCBs to have minimum Capital to Risk-Weighted Average of 9% of the Risk-Weighted Average on an ongoing basis.
- c. Tier 2 to 4 UCBs to have minimum Capital to Risk-Weighted Average of 12% of Risk Weighted Average on an ongoing basis

The circular will come into effect from April 1, 2023.

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## 6. Review of Statutory Liquidity Ratio (SLR) holdings in Held to Maturity (HTM) Category

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Currently, banks have been granted special dispensation of enhanced HTM limit of 23% of Net Demand and Time Liabilities (NDTL) for SLR-eligible securities acquired between September 1, 2020, and March 31, 2023.

It has been decided to extend the dispensation and allow banks to include securities acquired between September 1, 2020, and March 31, 2024, under the enhanced limit of 23%.

The circular applies to all commercial banks and will come into force with immediate effect.

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## 7. Hedging of Commodity Price Risk and Freight Risk in Overseas Markets

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Reserve Bank of India has issued directions to the Authorized Persons under Section 11 of the Foreign Exchange Management Act, 1999. The directions lay down the modalities for the AD Cat-I Banks for facilitating hedging of commodity price risk and freight risk in overseas markets by their customers.

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## 8. Reserve Bank of India (Financial Statements- Presentation and Disclosure) Directions, 2021- Disclosure of material items

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### a. Part A of Annexure II to the Directions

Particulars are to be given in the notes to accounts in case of items exceeding 1% of the total income under “Miscellaneous Income” under the head “Schedule 14- Other Income” or “Other expenditure” under the head “Schedule 16- Operating Expenses”.

### b. Disclosure of items in the notes to accounts where items exceed 1% of the total assets under Schedule 5(IV)- Other Liabilities and Provisions – “Others (including provisions)” or Schedule 11(VI)- Other Assets- “Others”.

The instructions apply to all commercial banks and will come into effect for disclosures in the notes to the annual financial statements for the year ending March 31, 2023, and onwards.

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## 9. Central Payments Fraud Information Registry- Migration of Reporting to DAKSH

In March 2020 the Central Payments Fraud Information registry was operationalized with reporting of payment fraud by scheduled commercial banks.

To streamline the reporting, enhance efficiency and automate the payment fraud management process, the fraud reporting module is being shifted to DAKSH- Reserve Bank's Advanced Supervisory Monitoring System.

This shift will be effective from January 01, 2023.

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## F. SECURITIES EXCHANGE BOARD OF INDIA (SEBI):

### 1. Review of timelines for the listing of securities issued on a Private Placement basis- Chapter VII of the Operational Circular issued under SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

To bring efficacy and standardization in the issuance process and listing of securities on a private placement basis, the timeline for listing has been reduced from T+4 to T+3 days ("T" refers to the issue closure date).

The timeline for making an application for in-principal approval to the stock exchange where the issuer wants to list the securities is also being incorporated in terms of Regulations 6 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 and Regulation 4A of the SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015.

The above-mentioned changes will be effective from January 01, 2023.

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### 2. Net Settlement of Cash Segment and Futures & Options (F&O) Segment upon expiry of stock derivatives

In consultation with the Secondary Market Advisory Committee, it has been decided to introduce the mechanism of Net Settlement of the Cash Segment and F&O Segment upon the expiry of stock derivatives to provide better alignment of the cash and derivatives segment and mitigate price risk.

As against the current approach of settling obligations separately, the settlement of obligations arising out of the Cash Segment and F&O Segment shall now be done on a net basis. The benefit of netting shall be available only to those investors who trade and clear through the same TM-CM combination.

The benefit of netting excludes institutional investors including all categories of Foreign Portfolio investors.

It is clarified that the Securities Transaction Tax and Stamp Duty shall be continued to be computed, levied, and reported on a segment-wise level.

The circular will come into effect from the March 2023 expiry of F&O contracts.

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**3. Inclusion of Equity Exchange Traded Funds as a list of eligible securities under Margin Trading Facility**

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The Equity Exchange Traded Funds have now been included in the list of securities under the Margin Trading Facility. Units of Equity Exchange Traded Funds have been allowed to be categorized as Group-I security.

The circular will be effective from December 30, 2022.

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**4. Updated Operational Circular for listing obligations and disclosure requirements for Non-convertible Securities, Securitized Debt Instruments, and/or Commercial Paper**

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The Operational Circular issued is a compilation of the relevant existing circulars with the consequent changes. Annexure -1 of the circular contains 8 circulars which are superseded by this Operational Circular.

a. Inclusion in Chapter IV

Format for submission of a statement indicating the utilization of issue proceeds of listed Non-Convertible Securities to the Stock Exchange by the listed entities has been included.

b. Chapter XI included

Chapter XI contains the format for review of the rating obtained by the listed entity with respect to its Non-Convertible Securities from Credit Rating Agencies registered with SEBI.

c. Chapter X

It contains provisions applicable to the issue of Securitized Debt Instruments under SEBI (Issue and Listing of Securitized Debt Instruments and Security Receipts) Regulations, 2008.

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**5. Extension of timeline for implementation of Standardized Industry Classification by CRAs**

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The date of applicability of the Standardized Industry Classification has been decided to extend till December 15, 2022, on account of representations received from Credit Rating Agencies requesting an extension.

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## 6. SEBI (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2022

The following amendment has been made to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015:

a. Insertion of new sub-regulation after Regulation 102<sup>①</sup>

“(1A) The Board may after due consideration of the interest of the investors and the securities market and for the development of the securities market, relax the strict enforcement of any of the requirements of these regulations if an application is made by the Central Government in relation to its strategic disinvestment in a listed entity.”

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## 7. Foreign Investment in Alternative Investment Funds (AIFs)

AIFs may raise funds from any investor whether Indian, Foreign or Non-Resident Indians as per Regulation 10(a) of SEBI (Alternative Investment Funds) Regulations, 2012.

In this regard, certain obligations are issued to be ensured by the manager of an AIF:

- a. Foreign Investor of the AIF is a resident of the country whose securities market regulator is a signatory to either the International Organization of Securities Commission's Multilateral Memorandum of Understanding or Bilateral Memorandum of Understanding with SEBI
- b. Investor contributing 25% or more in the corpus of an investor or identified based on control, is not the person mentioned in the Sanctions List and not a resident in the country identified in the public statement of Financial Action Task Force as:
  - (i) a jurisdiction having a strategic Anti-money laundering or combating the financing of Terrorism deficiencies
  - (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies.

If the following conditions are not met, then the manager of AIF shall not draw down any further capital contribution from such an investor.

This applies to the investors already onboarded to the existing schemes of AIFs.

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**8. Clarification -Scheme of Arrangement by entities who have listed their Non-Convertible Debt Securities(NCDs)/ Non-Convertible Redeemable Preference Shares (NCRPS) ('debt listed entities')**

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It has been clarified by SEBI that provisions of the circular dated November 17, 2022 'Scheme of Arrangement by entities who have listed their NCDs/NCRPS' will not apply to a Scheme of Arrangement that solely provides for an arrangement between a debt-listed entity and its unlisted wholly owned subsidiary.

However, the debt-listed entity for the purposes of disclosure shall file the draft Scheme of Arrangement with the Stock Exchange and the Stock Exchange shall disseminate the scheme documents on their websites.

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**9. Informal Guidance under SEBI (Informal Guidance) Scheme, 2003 received from TMC Limited**

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An informal guidance has been provided by SEBI to a listed company on the applicability of Corporate Governance provisions as given in the SEBI (Listing Obligations and Disclosure Requirements).

It has been clarified that the corporate governance provisions do not apply to a listed entity in case the paid-up share capital and net worth are less than Rs. 10 crores and Rs. 25 crores respectively.

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**10. Consultation Paper on strengthening the Investor Grievance Redressal Mechanism in the Indian Securities Market by harnessing Online Dispute Resolution Mechanisms**

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Currently, in case of any grievance, an Investor may file a complaint with the intermediary, Market Infrastructure Institution (MII), or SCORES for resolution.

To streamline and strengthen the mediation and arbitration process, it is being considered to strengthen the existing MII's administered mediation and arbitration process.

It is suggested that these processes are conducted online on an end-to-end basis using the assistance of Online Dispute Resolution institutions. This will ensure that the redressal process becomes simplified, streamlined, and efficient for the investors.

A consultation paper in this respect has been published on the SEBI website inviting inputs from the public. The last date for submission of comments is January 09, 2023.

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## 11. SEBI issues direction to stock exchanges in the Commodities Derivative Segment

Directions were issued to Stock Exchanges having Commodities Derivative Segment in respect of the suspension of trading in derivative contracts in the following commodities in December 2021:

- a. The Paddy (Non-Basmati)
- b. Wheat
- c. Channa
- d. Mustard seed and its derivatives
- e. Crude Palm Oil
- f. Moong

The suspension in the above contracts has been extended till December 20, 2023.

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## 12. Decisions are taken in the SEBI Board Meeting dated December 20, 2022

- i. Strengthening focus and governance mechanisms in Market Infrastructure Institutions (MIs)

The functions of MI will be categorized into 3 verticals. The Key Management Personnel under the first two verticals will be at par with the Key Management Personnel of the third vertical. Higher priority to the resource allocation towards the functions under the first two verticals over the third vertical.

- a. Board Governance

MIs are required to mandatorily appoint Public Interest Directors having expertise in areas of technology, law, finance and accounts, and capital markets. The Directors will meet every 6 months and will submit a report to SEBI. Once in 3 years, an external evaluation by an independent entity will be done.

- b. Accountability of KMPs

The Nomination and Remuneration Committee would handle the appointment and removal of Key Management Personnel. Every 6 months their performance will be evaluated. Employees of MI cannot be simultaneously employees of a subsidiary of the MI.

- c. Policy on Data Sharing

- d. MIs will frame an internal policy for sharing and monitoring data.

ii. Amendment to SEBI (Buy-Back of Securities) Regulations, 2018

a. Buy-back through Stock Exchange Route

The minimum utilization of the amount earmarked for buy-back increased from 50% to 75%.

b. Buy-back through Tender Offer Route

c. The timeline for completion of the buy-back has been reduced by 18 days as the requirement of filing a draft letter of offer with SEBI has been removed.

iii. Introductions of a regulatory framework for “Execution Only Platforms” (EOP)

It has been decided to introduce a regulatory framework for EOP for direct plans of Mutual Fund schemes. Under this framework, EOP will be granted registration under either Category 1 EOP as an agent of AMCs registered with AMFI or Category 2 EOP as an agent of an investor registered as a stockbroker.

iv. Amendments in SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

The scope and definition of green debt security has been expanded by including new modes of sustainable finance in relation to pollution prevention and control. Other concepts such as blue bonds and yellow bonds have been introduced.

Issuers of the listed debt securities now have to incorporate suitable provisions in the Article of Association. The Board of Directors have to appoint a person nominated by the Debenture Trustee as a director in the event of default.

Public Issue of Debt Securities will be kept open for subscription for at least 3 working days and a maximum for a period of 10 working days.

Other decisions such as approval of the framework for the adoption of cloud services by SEBI-regulated entities, the applicability of corporate governance norms to REITs and InvITS irrespective of whether any debt security has been issued by them or not, approval of certain types of transactions in Credit Default Swaps by AIFs, etc. also have been taken in the meeting.

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**13. Clarification on enhanced guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence**

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SEBI has clarified that none of the below-mentioned cases would change the structure of the Non-Convertible Debt Securities unless there are no other changes to the terms or nature of issues of the Non-Convertible Debt Securities. The cases are:

- a. A change in the underlying security
- b. Creation of additional security or
- c. Creation of security in case of unsecured debt securities.

In such cases, the Depository shall not assign a new ISN. In case of change in the underlying security, the Debenture Trustee must comply with Regulation 15<sup>①</sup> of SEBI (Debenture Trustee) Regulations, 1993.

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**14. Applicability of SEBI circular on Principles of Financial Market Infrastructures (PFMIs) to AMC Repo Clearing Limited**

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On October 08, 2020, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2020 was notified vide which Limited Purpose Clearing Corporation for clearing and settlement of repo transactions in debt securities was allowed to be set up.

On January 24, 2020, vide a notification, it was notified that AMC Repo Clearing Limited has been recognized as a Clearing Corporation for clearing and settling transactions in the repo and reverse repo in debt securities traded on recognized stock exchanges.

The provisions of the circular dated September 04, 2013, vide which the Clearing Corporations and Depositories were mandated to comply with the principles of Financial Market Infrastructures published by the Committee on Payments and Settlement Systems shall apply to AMC Repo Clearing Limited with immediate effect.

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**15. Master Circular for Foreign Portfolio Investors, Designated Depository Participants, and Eligible Foreign Investors**

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Operational Guidelines for Foreign Portfolio Investors (FPIs), Designated Depository Participants (DDPs), and Eligible Foreign Investors (EFIs) have been consolidated under the SEBI (Foreign Portfolio Investors) Regulations 2019.

Certain key guidelines are:

- a. FPIs can register by submitting a prescribed application form to DPPs.
- b. Beneficial Ownership declaration is to be provided by FPIs in case of segregated portfolios.
- c. The investment limit of all the multiple FPIs belonging to the same investor group will be clubbed at the investment limit applicable to a single FPI.
- d. FPIs can neither issue nor hedge Offshore Derivative Instruments with derivative positions on stock exchanges in India.
- e. FPIs are allowed to invest in units of REITs, InvITs, and Category III alternative investment funds as per the terms and conditions prescribed by SEBI.

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#### **16. SEBI initiates study of fees and expenses charged by Mutual Funds**

A detailed study of existing regulatory provisions applicable for fees and expenses in mutual fund schemes vis-à-vis market practices has been initiated by SEBI. The policies would seek to balance the need for facilitating financial inclusion, encouraging new participants, leveraging economies of scale, closing arbitrage opportunities, and curbing malpractices.

If the need is felt, based on the study, appropriate policy measures would be undertaken.

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#### **17. Introduction of Investor Risk Reduction Access (IRRA) platform in case of disruption of trading services provided by the Trading Member (TM)**

With the increase in dependence on technology in the securities market, there is an increase in instances of glitches in trading members' systems which puts investors with open positions at risk of the non-availability of avenues to close their positions.

In this regard, it has been decided that exchanges will develop a joint platform to provide IRRA and an opportunity for investors to square off/close the open positions and/or cancel pending orders in case of disruption of trading services provided by the Trading Member.

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**18. Informal Guidance Letter to Karun Carpets Pvt. Ltd. In relation to the Scheme of Amalgamation of promoter company of Greaves Cotton Ltd. Under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011**

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SEBI with respect to SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 has clarified the following:

A Transferor/Transferee Company would not trigger an open offer obligation under Regulation 3 in an acquisition pursuant to a scheme of amalgamation under Regulation 10①(d)(iii) of the Takeover Regulations if:

- a. Component of cash and cash equivalents in the consideration paid being less than 25% of the consideration paid under the scheme; and
- b. Where after the implementation of the scheme of the arrangement, persons directly or indirectly holding a minimum of 33% of the voting rights in the combined entity are the same as the persons who held the entire voting rights before the implementation of the scheme.

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## G. UPI CAN NOW BE USED BY NRI'S ON THEIR INTERNATIONAL PHONE NUMBERS

By : Arya Patel

India has seen a rapid rise in the use of Unified Payments Interface (“UPI”) which enables instant money transfer between two bank accounts securely.

An interesting report by INC42 <sup>1</sup> revealed that UPI enabled 2,348 transaction every second in the year 2022 amounting to a total transactional value of UPI to Rs. 125.95 lakh crore. UPI transactions formed nearly 86% of India's GDP in FY22 and the number of transactions were at Rs.7,404.45 Crore.

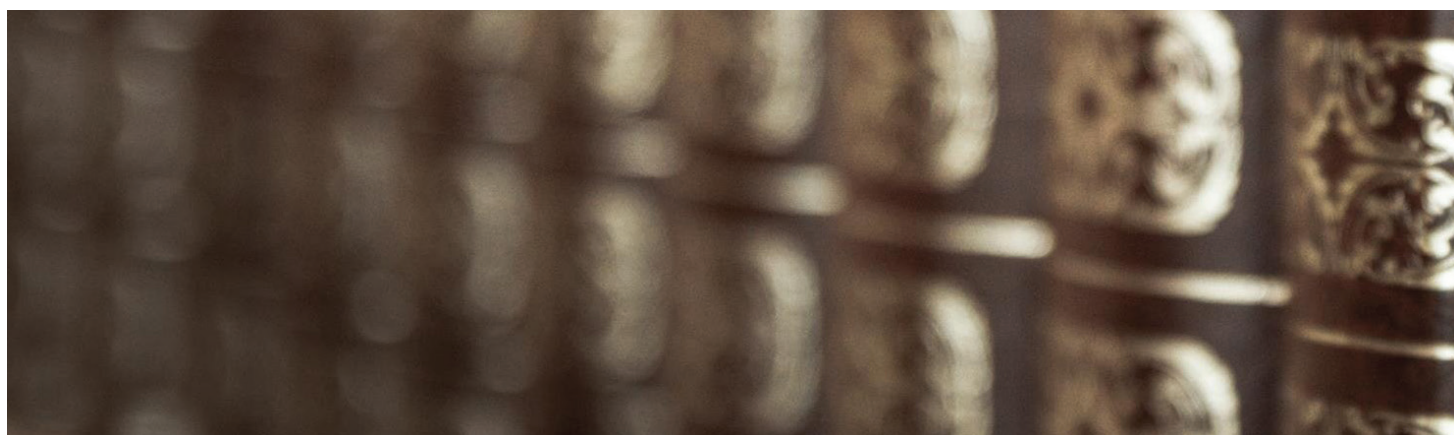
The National Payments Corporation of India (“NPCI”) which provides online transaction routing along with the processing and settlement services to UPI participating members thereby providing the banks partaking in UPI with a system to do so, recently announced guidelines which allow NRIs in ten countries to access the services of UPI via their international mobile numbers from their Non Resident External (NRE) and Non Resident Ordinary (NRO) Bank accounts.

Since UPI apps require an Indian number that is valid to register onto its platform to avail its services, this move provides reliefs to many NRIs who visit India but are unable to use UPI since they do not have Indian phone numbers. In the Indian diaspora, many merchants be it a fruit seller or a vegetable vendor or a supermarket or a restaurant, has the option of paying through UPI and this move will bring big relief to NRIs as they will now have the option of using their own international number with their country code to avail the UPI services.

NPCI has stated that member banks will have to ensure that the ‘international number UPI accounts’ are in adherence as “per the extant FEMA regulations and adherence to the guidelines/instructions issued by the concerned regulatory departments of Reserve Bank of India from time to time” and, all the “necessary Anti-Money Laundering (AML)/ Combating of Financing of Terrorism (CT) checks and compliance validation/account level validations as per the extent” need to be applicable to these bank accounts”.

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<sup>1</sup> Hemant Kashyap, Record-Breaking Numbers of UPI in 2022 Hint at India's Maturing Digital Payments Ecosystem, Inc42 (January 13, 2023 12:30 PM), <https://inc42.com/features/record-breaking-numbers-upi-2022-hint-india-maturing-digital-payments-ecosystem/>



The NPCI has instructed banks to enable such transactions by 30th April, 2023 and the countries along with their country code are:

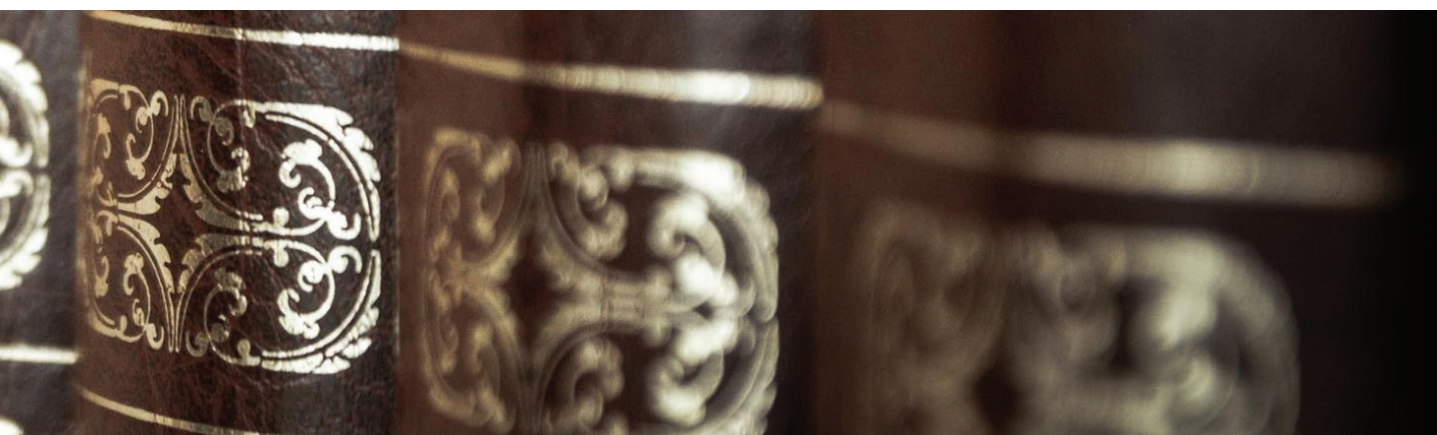
Country Name	Country Code
Australia	+61
Canada	+1
Hong Kong	+852
Oman	+968
Qatar	+974
Saudi Arabia	+966
Singapore	+65
UAE	+971
United Kingdom	+44
USA	+1

NRIs from the above 10 countries who have an NRE or NRO accounts will be allowed as per the FEMA regulations and the RBI regulations from time to time to use their international phone numbers with the above country codes to register with and avail the UPI services.

This move is being applauded by the industry as it is a far-sighted move and this also enables NRIs of these countries (for time being as more countries will be added in the future) to have a hassle-free experience in India if and when they do decide to visit.

UPI is one of the major advances in the Indian economy and it complements India's rise in the world extremely well.

*Arya Patel, B.A., LL.B. (Hons.), 3rd Year, Maharashtra National Law University, Mumbai*





## H. Family Constitution: The need of the hour

By : Anju Gandhi, Avni Gupta

**A family constitution is a formal written document which establishes a set of rules based on family ethos, values, requirements and attending factors.**

Family businesses are one of the oldest forms of business ownership. They play a critical role in their socio-economic environments through their contributions to the country's business growth and stability. Family businesses in India account for a 79 percent of the national GDP. It is interesting to note that despite the influx of MNCs since liberalisation, India is home to the third-largest number of family businesses globally.

Sustainability of the business across time and inter generations becomes a challenge. Factors like absolute control of promoter, lack of training to next generation, hierarchy, resistance to change, undefined roles, ego tussles, lack of vision and planning, unaligned goals and lack of conflict resolution mechanisms often result in plateau in business growth or even disintegration. For business continuity families must try to address all those factors which may lead to differences, disputes and disintegration.

Family governance perpetuates corporate governance which further enables business continuity. A family constitution serves as an important tool to ensure a successful and seamless inter-generational transfer and management of family wealth and business.

A family constitution is a formal written document which establishes a set of rules based on family ethos, values, requirements and attending factors. These rules serve as a guiding protocol which assist the family in navigating various decisions on the management of family businesses (management vs ownership related issues), assets, investments and application and utilization of family wealth. These include family's vision and the shared values; family's reasons to continue and nurture the family business; managing and growing the family business; ring fencing family assets from business risks; criteria to employ, role of family members and professional management in running the business in legally compliant manner; decision making process on matters of common interest including wealth management and periodic distribution for various needs; mechanism related to exist of a family member / branch of





family and the conflicts or disagreements including the issues like ROFR, valuations etc.; matters related to leadership and role of family council in democratic decision-making process, managing disagreements and conflict resolution.

A well thought and written family constitution paves way to constitute family council, record family arrangement on joint and undivided assets, form family trusts and execute Wills of concerned family members, thereby addressing all needs for a proper succession planning.

An external consultant is often advisable when preparing a family constitution given the various strands such a document will draw in. A neutral consultant can detect any underlying issues to be addressed and facilitate meaningful debate between family members.

Family constitution inter alia also provides for a Family Council which generally oversees the functions of the family office and plays a significant role in democratic decision making. It is the apex body which comprises of adult members representing each branch of a family and provides a platform to all the branches of the family to participate in decision making in a democratic way.

Rooted in cultural values and community principles, family businesses have competed strongly and have continued to remain relevant. Just how an impediment to success is stagnation and aversion to change, the family must understand that the relevancy of the family constitution is tested basis the ability of the members to sense and adapt to change. The document must be evolving in nature and respect the dynamic changes in the economy in global context and the stakeholders.

*Anju Gandhi, Partner; Jahnavi Dwarkadas  
Avni Gupta, SNG & Partners, Advocates and Solicitors*



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