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Private Equity – Why the Lull?

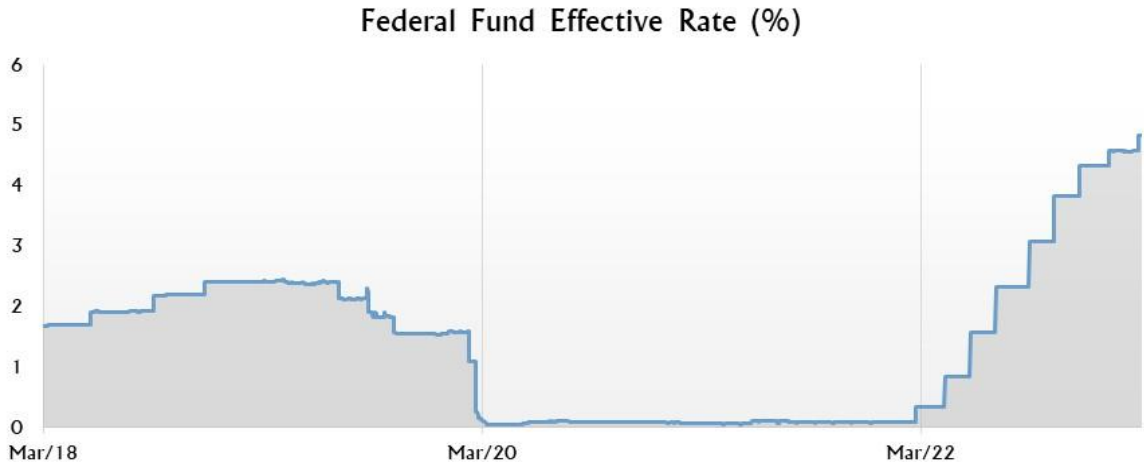
The inflection point in the private equity space seems to have arrived, only a year ago things were looking up and there was robust business across the board. Even in the global context wherein the Private Equity market thrived in the US, but the emerging recessionary impact and the withdrawal of the easy money policies of the US central bank have led to a rather pronounced lack of activity in US private equity markets. Some analysts are of the opinion that the trigger impact was the freefall in the S&P index which has declined by more than 19% (the steepest fall since 2008), coupled with a persistent surge in inflation, the highest in the last 40 years. This has in turn led to the Federal Reserve turning to the age-old panacea of hiking interest rates. Thus, we concur that this unprecedented rise in the cost of funds is slowly but surely leading to the drying up of the money supply to the Private Equity ecosystem across the globe.

The U.S. Perspective

The private equity landscape seems to be heading for a trough if we assume a cyclical viewpoint. The moot reason is the onset of an economic slowdown that is having a negative impact on the valuation in the private equity space. The year 2022 has unravelled this growing concern although the impact on a relative basis might be felt more in the public listed space.

Capital allocation in the private equity market is also witnessing a rationalisation that is in keeping with this emerging economic reality. It is a stated thesis that the private equity market does adjust and adapt to the changing market dynamics to remain relevant and profitable which in turn adds to its ability to capitalize on big-ticket opportunities while remaining tempered towards any undue frenzy that is typical of a robust economic scenario.

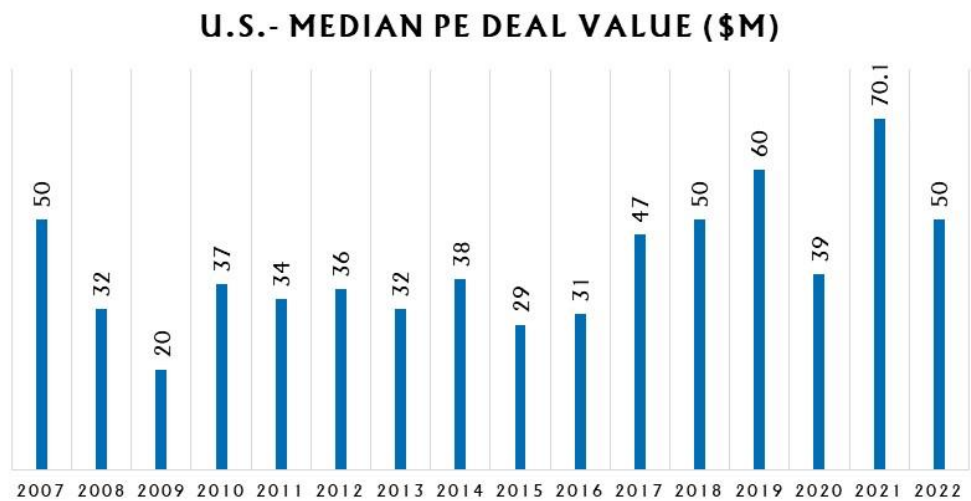
Exhibit: 1



Source: US Bureau of Economic Analysis

The fall in the deal activity as depicted in the below graph bring to the fore the huge fall in private equity deals in the US. It is also a critical sign of resilience amidst an atmosphere of gloom and doom wherein the fund managers have been frantically trying to steer clear of any bias towards irrational deal-making. The economic pessimism that had taken its grip during the fag end of 2021 has manifested in numbers only in 2022. It is also pertinent to remind readers that the market has had a roller-coaster ride while testing the highest of highs before the plummet began. Thus the resilience of the market has been tested to the brink, it remains to be seen in the ensuing months and years how this apparent resilience pans out.

Exhibit: 2



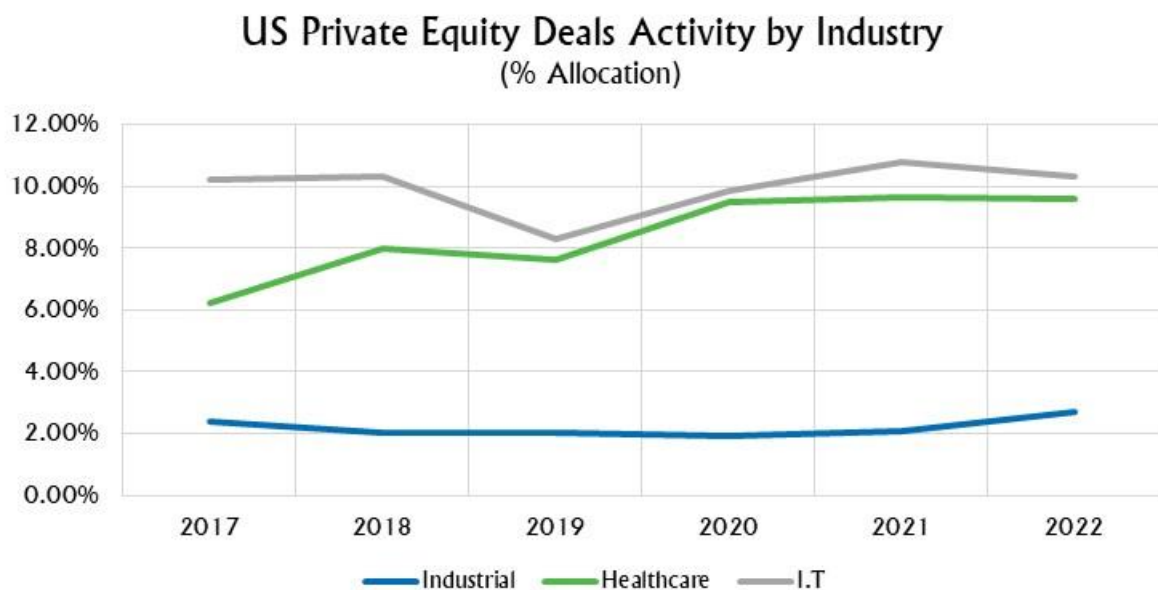
Source: Pitchbook/Geography: US

Industry Analysis

Looking from the prism of the industry-wise allocation of funds in U.S private equity space an interesting fact emerges, although the sign of a gradual slowdown is palpable, not all industries have been impacted to the same extent. The Healthcare industry being a case in point where the resilience alluded to earlier is observed although historically the allocation to this industry when compared to that of Technology lags behind.

Technology stocks having witnessed unprecedented upturn during 2021 owing primarily due to the low interest rate regime globally, plunged into turmoil. This also had a cascading impact on the private equity market which translates to a 25% y-o-y de-growth in the deal volume in this industry with a major decline witnessed in the fourth quarter of 2022.

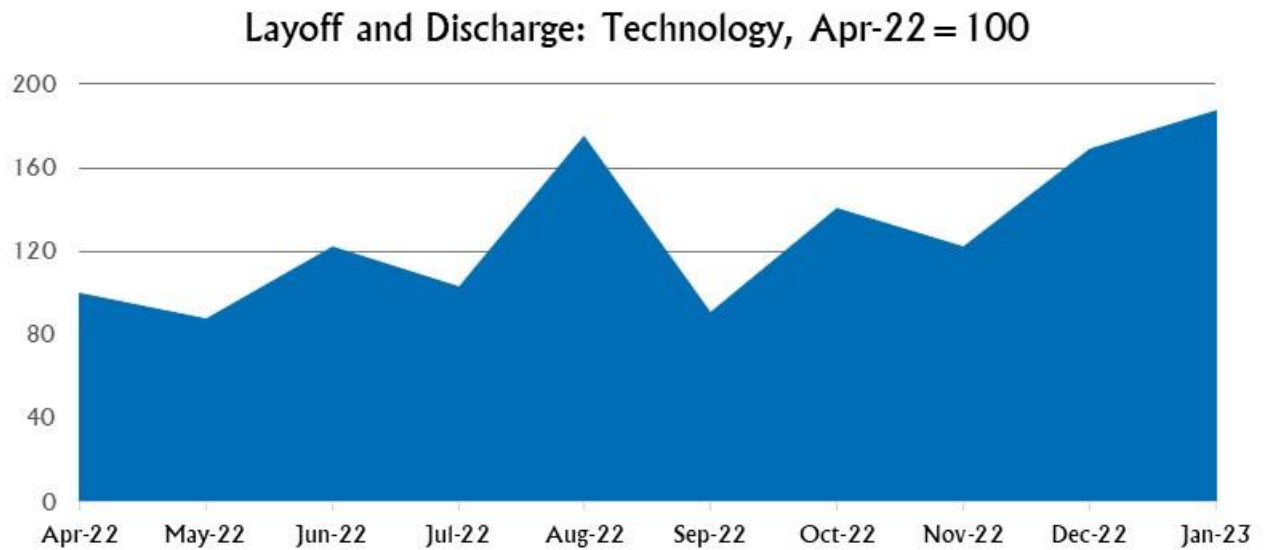
Exhibit: 3



Source: Pchbook/Geography: US

The first ominous sign of a downturn in the industry was visible when workforce rationalisation started in the I.T majors which signalled that management was responding to the changing realities of the interest rate cycle and the end of the ease money days, a period which has seen valuation skyrocket and a belief had entrenched itself among the industry that its historical robust performance coupled with tech cohorts ability to drive significant productivity gains for customers would stem its fall from grace.

Exhibit: 4



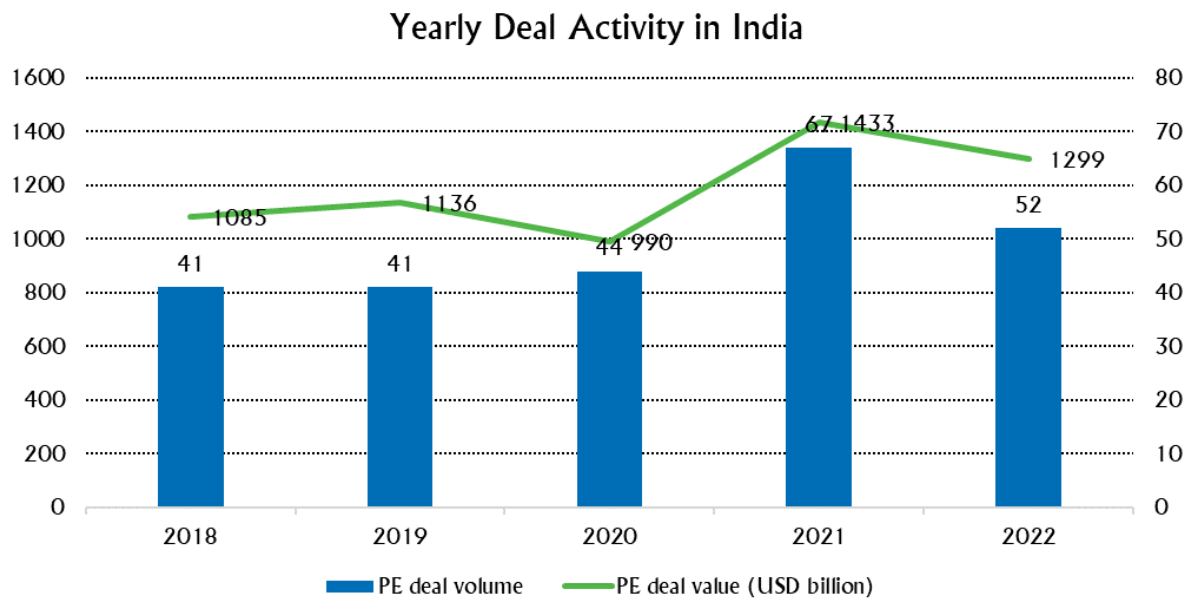
Source: US Bureau of Labor Statistics

The Industrials segment also bucked the trend to a large extent, the onset of Covid-19 lockdowns had played spoilsport to the prospects of M&A and private equity activity wherein historical deal volumes in this segment as a percentage of overall middle market deal activity was muted, yet in 2022 there was a reversal in this trend.

The Indian Conundrum

The much-propounded concept of decoupling from the world did not hold true in the Indian private equity space. Hence it was in 2022 that after consecutive five years of robust growth, a sharp decline in private equity activity resulted. The deal size was also impacted significantly in the aftermath of this decline. In 2022, the story panned out in two halves, while the first half did represent some hope of a continuation of the steady growth period in contrast the second half was a dampener to any exuberance. US \$35.8 million was invested in the private equity space during the first half of 2022, which was in tandem with the surge in growth witnessed during the past five years. Deal sizes of private equity, venture capital, and even start-up segment started to be curtailed in the second half of 2022 owing mainly to the global pessimism and squeeze in liquidity. The number of big-ticket deals (value in excess of US \$100 million) witnessed a fall of in 2022. Both average ticket size and the volume of large deals declined which in turn had its impact on the cumulative value of sizable investment in the private equity space.

Exhibit: 5



Source: Media Report/SFSL Compilation

Table: 1 - Top ten deals announced in 2022

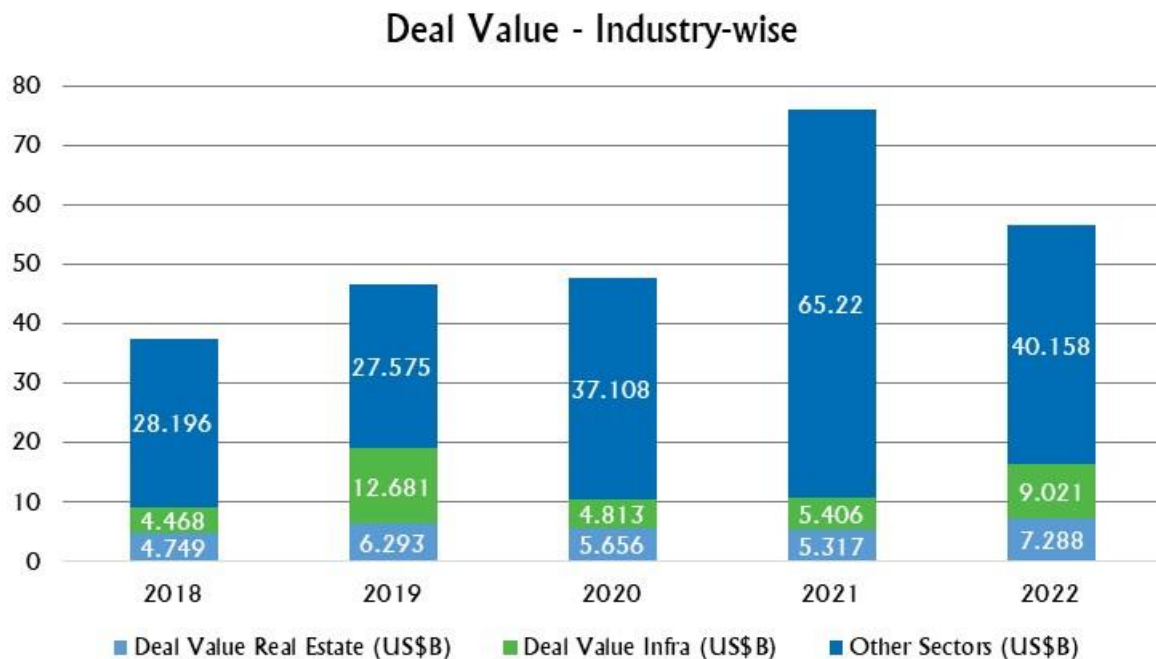
Target	Buyer(s)	Deal Value (US\$B)	% Sought
Housing Development Finance Corporation Ltd	HDFC Bank Ltd	60.4	100%
Ambuja Cement Ltd/ACC	Adani Group	10.5	63%/54.5%
Viartis Ltd	Biocon Biologics Ltd	3.3	100%
Essar Group, infra-Assets	Arcelor Mittal Nippon Steel	2.4	100%
MindTree Ltd	Larsen and Toubro Infotech Ltd	2.2	100%
Adani Group, three portfolio companies	International Holding Company	2.0	NA
Citibank N.A. India consumer banking business	Axis Bank	1.6	100%
Neelachal Ispat Nigam Ltd.	Tata Steel Long Products	1.6	94%
Sembcorp Energy India Ltd.	Tanwar Infrastructure Pte. Ltd	1.6	100%
SolEnergi PowerPvt Ltd.	Shell Plc	1.6	100%

Source: Media Report/SFSL Compilation

A cursory glance at the above data for the top deals during 2022 brings to the fore a downward trajectory in the deal size, wherein except for the HDFC Bank deal which was of a sizeable ticket size, the rest were significantly low. It also has to be appreciated that the measurement currency being the US dollar, it does put the global scenario into perspective. The point to harp on still remains the absence of a decoupling between the emergence of global headwinds and its resultant offshoot effects on the domestic private equity market dynamics. It is a

logical conclusion that foreign fund especially the degree of dollar supply in the international market finds their way into the Indian realm seeking better investment opportunities in target companies with a positive potential to surprise private equity investors on the upside.

Exhibit: 6



Source: Media Report/SFSL Compilation

Looking at the industry-wise allocation and deal activity there was a decline trend that continued except, for Financial Services which recorded a comparatively better deal activity both in terms of value and volume, Technology & E-commerce which was the sought-after investment destination during 2021, Infrastructure, Real Estate and Healthcare.

Delving into the Causes

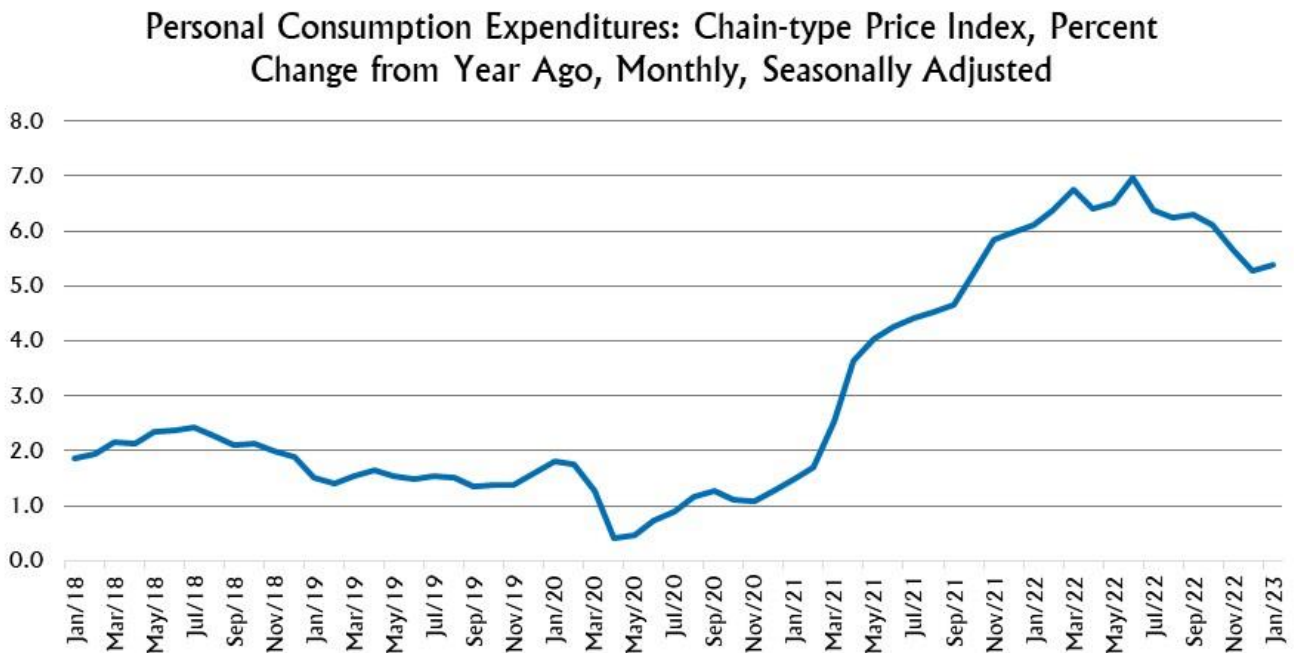
We look at some proximate causes and also otherwise, none of the causes can be analysed in isolation when we consider a real-time dynamic market. This is typical of any thoughtful consideration of the interplay of market forces in a continuum.

Inflation Pressure

The Inflationary concerns began to rear their ugly head by the beginning of 2022 in the US, this was a result of the Federal Reserve keeping rate exorbitantly low in the wake of the COVID-19 pandemic. The fact that

supply-side logistics were in tatters did not seem to mean much, in the absence of supply linkages that have been jolted partly due to the US-China trade war and then on account of prolonged lockdown in business activity across the globe, an extended period of ease money supply only fed into the speculative aspirations of the market participant.

Exhibit: 7



Source: US Bureau of Economic Analysis

The graph which is one of the proxies for inflation indicator in the US clearly depicts that inflationary trend setting in from March'20 onwards coinciding with the beginning of the easy money period. It has been contested by some central bankers of global repute that under situations of an extended supply bottleneck, any quantum jump in the money supply will invite an inflationary dark cloud on the economic horizon. Increasing inflation and subsequent interest rate hikes have drained excess liquidity from the financial system. Riskier assets such as equities of private companies are now viewed with skepticism by financial institutions.

Fault-lines in Global Banking

Even reputed financial institutions such as Silicon Valley Bank and Signature Bank of New York could not remain unharmed on account of the speculative impulses alluded to earlier among the global investor. As has become evident lately on account of the default of the former entity, there was a huge influx of deposits and an imprudent investment of these

funds into long-term bonds. This in hindsight came back to haunt the bank in the form of a mismatch in asset-liability duration since the interest rate cycle peaked and the bond prices collapsed, the double whammy was on account of a steady rise in withdrawal by depositors, a cohort which largely consisted of tech start-up feeling the pressure of rapidly drying up liquidity.

Russian Aggression

Geo-political risk began to emerge on the economic horizon with the Russian special military operation in Ukraine. As per the US Department of Agriculture, Ukraine is one of the largest producers of wheat globally, producing 33000 tons as of 2022. Russia on the other hand remains one of the largest suppliers of natural gas and oil to Europe. Hence a skirmish that has since drawn out into full-scale war further perpetuates the supply crisis that overhangs on the global economic scene. This fed inflationary pressure further and precipitated the cascading impact on interest rates and money supply, both used as tools to arrest inflation.

Looking Ahead

IT would be rather premature to conclude on any doomsday prophesy in the context of both the global and the Indian private equity space. Although there is no quick fix to the inhibitors at this point in time yet on a cautious note it seems the macro environment will remain challenging in the near term. As per the US federal reserve's own admission they were caught napping when monetary policy tightening was warranted in the wake of surging inflation and rising wage rates across the labour market in both the US and Europe. Hence the ongoing course correction might be prolonged, a similar stalemate seems to be in the offing when it comes to the war in Ukraine with no clear winner emerging.

In the Indian context, there is a rather unusual optimism that hinges mainly on the resilience of the domestic macroeconomic fundamentals. Most of the large Indian corporates have lower levels of leverage as compared to the pre-pandemic period of 2019, hence their appetite to consolidate and look for inorganic growth through acquisitions or commissioning new projects might keep the private equity market relevant. As per industry data, in Jan'23 nearly US\$4.212 billion was invested into the private equity space compared to US\$ 5.067 billion in Jan'22. This data point alone might be a harbinger of hope although a global overhang of pessimism remains a constant source of reckoning.

Important Judgements in Insolvency and Bankruptcy Code, 2016

1. [A corporate Insolvency Resolution Process can be initiated against two Corporate Bodies for the same debt if they are falling within the ambit of Corporate Debtors. \[Maitreyi Doshi vs. Anand Rathi Global Finance Limited & Ors. \(Civil Appeal No. 6613 of 2021\) dated 22.09.2022 Supreme Court\]](#)

M/s. Anand Rathi Global Finance Limited being a Financial Creditor filed two separate applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 against Premier (Borrower) and Doshi Holdings (Pledge of Securities) for default in repayment of **INR 8,35,25,298/-** arising out of **Loan-cum-Pledge Agreements** based on the same loan documents.

The Application filed against both parties was admitted by the Adjudicating Authority. Maitreyi Doshi filed an Appeal before Hon'ble NCLAT, New Delhi which was subsequently dismissed.

The Hon'ble Supreme Court on the appeal filed by Maitreyi Doshi observed as follows”

“ 37. If there are two borrowers or if two corporate bodies fall within the ambit of the corporate debtor, there is no reason why proceedings under Section 7 of the IBC cannot be initiated against both the Corporate Debtors. Needless to mention, the same amount can be realized from both the Corporate Debtors. However, once the claim of the Financial Creditor is discharged, there can be no question of recovery of the claim twice over.”

2. [Provisional Attachment of the Properties of the Corporate Debtor does not violate Section 14 of the Insolvency and Bankruptcy Code, 2016. \[Rajiv Chakraborty, Resolution Professional of EIEL vs. Directorate of Enforcement \(W.P. \(C\) 9531/2020 and other applications dated 11.11.2022\) Delhi High Court\]](#)

A Writ Petition was filed before the Hon'ble High Court of Delhi to ascertain the impact of Section 14 of the Insolvency and Bankruptcy Code, 2016 would have on the powers of the Enforcement Directorate to enforce an attachment under the provisions of the Prevention of Money Laundering Act, 2002.

The Court while dismissing the Writ observed that it could be open to a Resolution Professional to approach the competent authorities under the PMLA for such reliefs in respect of tainted properties as may be legally permissible and a Provisional Attachment Order does not invest in that authority a superior or overriding right in property. Ultimately the claim of the properties that may have been attached and the question of distribution and priorities would have to be settled independently and in accordance with law.

The Court further observed as follows:

“82. The Court The PMLA is an enactment which is aimed at affecting the disgorgement of illegal gains. The Court deems it apposite to note that the Insolvency Law Committee Report, 2016 had pertinently observed in Para 8.11 that the moratorium provision is not liable to be interpreted as barring all possible actions "especially where countervailing public policy concerns are involved". It also took note of laws prevailing in different jurisdictions which permit regulatory actions which though not aimed at collecting moneys for the estate protect other vital and urgent public interests. This view finds reiteration in the UNCITRAL Legislative Guide on Insolvency Law which had recognized "actions to protect public policy concerns" falling outside the ken of a moratorium.”

3. CIRP under Section 7 can be initiated for payment of interest even if the principal amount has not yet become due and payable. [Base Realtors Private Limited vs. Grand Realcon Private Limited (Company Appeal (AT) (Ins.) No. 882 of 2022 dated 15.11.2022) NCLAT, New Delhi]

The Appellant Base Realtors Private Limited filed an Application u/s 7 of the Insolvency and Bankruptcy Code, 2016 against Grand Realcon Private Limited for default in payment of accrued interest of three quarters on debentures issued to the Appellant. The Adjudicating Authority dismissed the said Application on the ground that only the interest amount would not fall within the definition of financial debt until and unless principal amount has also become due and payable.

The NCLAT after referring to various definitions observed as follows:

“26. After referring to various definition appearing in Part I and Part II of the Code and explaining the scheme with the help of the decision in the case of Innovative Industries Ltd. and taking a cue from the decision of the Hon'ble Supreme Court in the case of M/s. Orator Marketing Pvt. Ltd. (Supra), we are of the considered opinion that in the facts and circumstances of the present case the application filed under Section 7 of the Code could be maintained in respect of the component of interest which became due and payable, without asking for the principal amount which has not yet become due and payable.....to cost.”

Environmental, Social and Governance (ESG) Considerations in Corporate Governance and Social Stock Exchange

Introduction to Corporate Governance

Weak corporate governance is a common thread found in many company failures. Lack of proper oversight by the board of directors, inadequate protection for minority shareholders, and incentives at companies that promote excessive risk-taking are just a few of the examples that can be problematic for a company. Poor corporate governance practices resulted in several high-profile accounting scandals and corporate bankruptcies over the past several decades and have been cited as significantly contributing to the 2008–2009 global financial crisis.

In response to these failures, regulations have been introduced to promote stronger governance practices to protect financial markets and investors. Academics, policymakers, and other groups have published numerous works discussing the benefits of good corporate governance and identifying core corporate governance principles believed to be essential to ensuring continuous, well-functioning capital markets and the stability of the financial system.

The investment community has also demonstrated a greater appreciation for the importance of good corporate governance. The assessment of a company's corporate governance structure and controls, including consideration of conflicts of interest and transparency of operations, has been an essential factor in investment analysis. More data availability and demands for better governance have increased the weight of corporate governance in the investment decision-making process. In addition, investors have become more attentive to environmental and social issues related to a company's operations. Collectively, these concepts often are referred to as environmental, social, and governance (ESG).

Introduction to Environmental, Social and Governance Issues

The inclusion of governance factors in investment analysis has evolved considerably. Management and accountability structures are relatively transparent, and information regarding them is widely available. Also, the risks of poor corporate governance have long been understood by analysts and shareholders. In contrast, the practice of systematically considering environmental and social factors, which collectively with governance form the commonly used acronym “ESG,” has evolved more slowly. Issues driving the inclusion of environmental and social information in the investment process include scarcity of natural resources, physical impacts of climate change, global economic and demographic trends, diversity and inclusion, treatment of workers, and the rise of social media. A non - exhaustive list of ESG issues is exhibited below:



Environmental Issues

- Climate change
- Air & Water Pollution
- Biodiversity
- Energy Efficiency
- Water Scarcity



Social Issues

- Customer satisfaction and product responsibility
- Data Security and Privacy
- Gender and Diversity
- Human Rights
- Community Relations and Charitable activities



Governance Issues

- Board Composition (independence and Diversity)
- Audit Committee structure
- Executive compensation
- Shareholder Rights
- Whistleblower Schemes

Numerous institutions, such as the Sustainability Accounting Standards Board (SASB), the Global Reporting Initiative (GRI), and the Task Force on Climate-related Financial Disclosures (TCFD) are working to form standards and define materiality to facilitate the incorporation of these

factors into the investment process. ESG reporting in India started in 2009 with the Ministry of Corporate Affairs (MCA) issuing the Voluntary Guidelines on Corporate Social Responsibility, since then the reporting landscape has come a long way with the introduction of Business Responsibility Reporting (BRR), Corporate Social Responsibility (CSR), IR, National Guidelines on Responsible Business Conduct (NGRBC) and the newly introduced Business Responsibility and Sustainability Report (BRSR) (introduced through a SEBI circular dated 10th May 2021).

The Securities and Exchange Board of India (SEBI) introduced the requirement of ESG reporting back in 2012 and mandated that the top 100 listed companies by market capitalisation to file a Business Responsibility Report. This was later extended to the top 500 listed companies by market capitalisation in 2015. On 10th May 2021, the SEBI introduced a new ESG reporting structure by the name Business Responsibility and Sustainability Report (BRSR). Under BRSR, listed entities (top 1000) need to provide an overview of the entity's material ESG risks and opportunities, an approach to mitigate or adapt to the risks along with the financial implications of the same. BRSR was introduced with the aim of making it mandatory for the top 1000 listed companies to report their sustainability performance to maintain transparency with stakeholders.

The Securities and Exchange Board of India recently in its Board Meeting held on March 29, 2023, approved the regulatory framework for ESG (Environmental, Social and Governance) Disclosures, Ratings and Investments to facilitate a balanced approach to ESG.

❖ Introduction of BRSR Core:

In order to enhance the reliability of ESG disclosures, the BRSR core shall be introduced containing a limited set of Key Performance Indicators (KPIs) for which listed entities shall need to obtain reasonable assurance. A glide path will be prescribed for the applicability of BRSR Core, beginning with the top 150 listed entities by market capitalization from F.Y 2023-24 which shall be gradually extended to the top 1000 listed entities by F.Y 2026-2027.

❖ ESG Disclosures for the value chain of listed entities

A number of companies have significant ESG footprints in their value chain. Sebi wants the top 250 listed entities by market capitalization to

disclose their supply-chain emissions on a comply-or-explain basis from F.Y 2024-25 and F.Y 2025-26 respectively.

❖ ESG Ratings

An ESG rating measures a company's exposure to long-term environmental, social, and governance risks. These risks -- involving issues such as energy efficiency, worker safety, and board independence -- have financial implications. But they are often not highlighted during traditional financial reviews. Investors who use ESG ratings to supplement financial analysis can gain a broader view of a company's long-term potential.

Considering that emerging markets have a different set of environmental & social challenges, ESG rating providers shall be required to consider India/Emerging Market Parameters in ESG Ratings. In order to facilitate the credibility of ESG Ratings, ERPs shall offer a separate category of ESG rating called as 'Core ESG Rating' which will be based on the assured parameters under BRSR Core.

❖ ESG Investing

Investors are increasingly applying the non-financial factors of Environmental, Social and Governance as part of their analysis process to identify material risk and growth opportunities. ESG metrics are not commonly part of mandatory financial reporting, though companies are increasingly making disclosures in their annual report or standalone sustainability report. Numerous institutions, such as the Sustainability Accounting Standards Board (SASB), the Global Reporting Initiative (GRI), and the Task Force on Climate-related Financial Disclosures (TCFD) are working to form standards and define materiality to facilitate the incorporation of these factors into the investment process.

SEBI has introduced the following measures to address the risk of mis selling and greenwashing, to enhance stewardship reporting requirements and to promote ESG investing:

- Mandating ESG schemes to invest at least 65% of AUM in listed entities, where assurance on BRSR Core is undertaken.
- Mandating third-party assurance and certification by the Board of AMCs on compliance with the objective of the ESG scheme.
- Mandating enhanced disclosures on voting decisions with a specific focus on environmental, social and governance factors.

- Mandating disclosure of fund manager commentary and case studies which inter- alia highlight how the ESG strategy is applied to the fund/investments.
- Introducing a new scheme category, enabling the launch of multiple schemes on ESG-related factors.

India is steadily moving towards developing regulations around Environmental, Social and Corporate Governance and with the implementation of the BRSR framework, India has joined the group of countries to have issued comprehensive sustainability reporting frameworks in the recent past. With the implementation of the ESG framework, the Government of India understood the need to take the capital markets closer to the masses and meet various social welfare objectives related to inclusive growth and financial inclusion.

Hon'ble Finance Minister Smt. Nirmala Sitharaman as part of the Budget Speech for FY 2019-20 proposed the idea towards creating an electronic fundraising platform- "A Social Stock Exchange"- under the regulatory ambit of the Securities and Exchange Board of India (SEBI) for listing social enterprises and voluntary organisations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like mutual funds.

Social Stock Exchange- a New Paradigm

"Social Stock Exchange"- introduced under the regulatory ambit of SEBI for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund.

"Social Stock Exchange" means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and/or list the securities issued by Not for Profit Organizations in accordance with provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

❖ Objectives of the Social Stock Exchange:

- A regulated platform that brings together social enterprises and donors
- Facilitate funding and growth of social enterprises

- Enabling mechanisms to ensure robust standards of social impact and financial reporting

Fund raising by Social Enterprises

A Social Enterprise may raise funds through the following means:

- a. Not for Profit Organizations may raise funds on a Social Stock Exchange through the issuance of Zero Coupon Zero Principal Instruments to institutional investors and /or non-institutional investors; donations through mutual funds schemes; or any other means as may be specified by the Securities and Exchange Board of India from time to time.
- b. For-profit social enterprises may raise funds through the issuance of equity shares on the main board platform, SME platform or innovators growth platform or equity shares issued to an Alternative Investment fund including a Social Impact Fund; issuance of debt securities; any other means as may be specified by Securities and Exchange Board of India from time to time.

Social Stock Exchange is a novel concept introduced in India and its rationale is multipronged. Moreover, the provisions of essential services can be further improved and private sector and non-profit sector provisions can play a significant role in closing the gap.

Statutory and Regulatory Updates

Securities Law

SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulation, 2023

(Notification No. SEBI/LAD-NRO/GN/2023/117 dated January 17, 2023)

SEBI vide notification dated January 17, 2023 has issued SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulation, 2023 which shall come into effect from April 01, 2023.

The key amendments are as under:

New Definition to *Senior Management* in Regulation 16, all functional heads brought under definition of Senior Management.

“(d) “Senior Management” shall mean the officers and personnel of the listed entity who are members of its core management team, excluding the Board of Directors, and shall also comprise all the members of the management one level below the Chief Executive Officer or Managing Director or Whole Time Director or Manager (including Chief Executive Officer and Manager, in case they are not part of the Board of Directors) and shall *specifically include the functional heads*, by whatever name called and the Company Secretary and the Chief Financial Officer.”

In Schedule V Corporate Governance Report: A new disclosure shall be made in the section on the corporate governance of the Annual Report , w.e.f. Annual Reports of year 2022-23

“(n) Details of material subsidiaries of the listed entity; including the date and place of incorporation and the name and date of appointment of the statutory auditors of such subsidiaries.”

In regulation 26, regulation 31A, sub-regulation (3), in clause (b), in sub-clause (v), and Schedule III, Part A, in paragraph A, in sub-paragraph 16, in Item (I), in point (ix), words “key managerial persons” shall be substituted with the words “key managerial personnel ”

Reappointment also brought under approval of shareholders

Regulation 17 (1C)The listed entity shall ensure that approval of shareholders for appointment or re-appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

The SEBI gives National Stock Exchange permission to introduce Social Stock Exchange as a separate segment. (February 23, 2023).

According to a press release from the exchange, the National Stock Exchange (NSE) gained final approval from the SEBI on February 22, 2023, to establish a Social Stock Exchange (SSE) as a separate segment of the NSE. The SSE intends to give social enterprises a new way to support charitable causes, increase their visibility, and improve the transparency of how they raise money and use it. According to the press release, any social company, whether a Non-Profit Organization (NOP) or a For-Profit Social Enterprise (FPE), that defines the priority of its social objective is eligible to register or list on the Social Stock Exchange segment.

Decision taken by the SEBI Board, with respect to the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015, in its meeting held on March 29, 2023 at Mumbai.

The Board after considering various suggestions received from stakeholders approved the amendments to LODR Regulations. The key amendments are as follows:

Disclosure of material events or information by listed entities: In order to bring more transparency and to ensure timely disclosure of material events or information by listed entities, the Board has, inter-alia, approved the following amendments to LODR Regulations:

- ✚ Introduction of a quantitative threshold for determining ‘materiality’ of events / information.
- ✚ Stricter timeline for disclosure of material events / information for which decision has been taken in the meeting of the board of directors (within 30 minutes) and which are emanating from within the listed entity (within 12 hours)
- ✚ Market rumours to be verified and confirmed, denied or clarified, as the case may be, by top 100 listed entities by market capitalization effective from October 1, 2023 and by top 250 listed entities with effect from April 1, 2024.

Streamlining timeline for submission of first financial results by newly listed entities: The timeline for submission of first financial results by newly-listed entities has been streamlined in order to overcome the challenges in immediate submission of financial results post listing and to ensure that there is no omission in submission of financial results.

Timeline to fill up vacancy of Directors and other officials of listed entities: Listed entities shall be required to fill up the vacancy of Directors, Compliance Officer, Chief Executive Officer and Chief Financial Officer within a period of three months from the date of such vacancy, to ensure that such critical positions are not kept vacant.

Competition Law

National Company Law Appellate Tribunal (NCLAT) upholds the decision of Competition Commission of India (CCI) to penalise Google for anti-competitive practices. [March 31, 2023]

The CCI fined Google Rs. 1,337.76 crore on October 20 of last year for engaging in anti-competitive behaviour with regard to Android mobile devices. The internet giant had also been told to stop engaging in a number of unfair commercial practises by the regulator.

The National Company Law Appellate Tribunal (NCLAT) has upheld a penalty of Rs 1,337.76 crore imposed by the Competition Commission of India (CCI) on Google, for its anti-competitive conduct in the Android ecosystem. The Tribunal held that a number of Google's practices pointed to an abuse of dominance, which in some cases, had also stalled scientific development. The Tribunal overturned four of the ten conditions that the CCI had placed on Google, including those that would have further hampered the tech giant, such as prohibiting side loading of apps and sharing Google's Play Store code with original equipment manufacturers (OEMs). The contest between Google and CCI was among the most high profile battles globally between a tech giant and a regulator, one that was being followed closely by governments across the world. About 97 per cent of the 600 million smartphones in India run on Android, according to Counterpoint Research estimates.

The NCLAT's ruling mainly supports CCI's earlier conclusions from October 2022, which found that Google had exploited its position of market dominance in the Android ecosystem. It was decided that the corporation had abused its dominant position by requiring Manufacturers to pre-install the full Google Mobile Suite (GMS), a group of essential Google products and services that includes Google search, Chrome, YouTube, Google Maps, and Gmail.

Honourable President of India has given assent to the Competition (Amendment) Act 2013 [April 11, 2023]

The President has given assent to the Competition (Amendment) Act, 2023. The amendments reduce the timeline for approving mergers from 210 to 150 days and the decriminalization of certain offences under the Act by changing the nature of punishment from the imposition of fines to civil penalties. In addition, the Act provides a framework for settlement and commitment to faster resolution of investigations.

Some of the other key amendment to the Competition Act are as follows:

- ✚ The amendment introduces a scheme for commitment and settlement, which is meant to reduce litigation by way of negotiated settlements. This scheme is available to cases of anti-competitive agreements and abuse of dominance, but not to cartels.

- ✚ Entities, who are not engaged in identical or similar trade, shall also be presumed to be part of an anti-competitive agreement under Section 3(3) if they participate or intend to participate in the furtherance of such agreement.
- ✚ Section 6-A has been included which states that implementation of an open offer or an acquisition of shares or securities convertible into other securities from various sellers, through a series of transactions on a regulated stock exchange from coming into effect will not be effected by the provision of Section 6(2A) and Section 43A.
- ✚ Section 26 relating to Procedure for inquiry under Section 19 has been revised and sub-section 2A has been inserted which says that the Commission will not inquire into agreement if the same facts and issues raised in the information received from the Central or State Government or any statutory authority has already been decided by the Commission in previous order.
- ✚ The upper limit of penalty mentioned in Section 44 for making false statements or omission to furnish material information has been raised to Rs. 5 crore from Rs. 1 crore.

Insolvency Law

It does not seem justified to blame the IRP entirely for the breach of duty and make him the scapegoat. Equally important is the role of creditors as a catalyst in the insolvency resolution process in light of the current creditor-driven IBC regime.

The National Company Law Appellate Tribunal (NCLAT) noted, among other things, that while the scope of the work related to the CIRP was constrained and restricted as a result of the fact that development was stalled because of a lack of information flow and a lack of claims, the IRP's diligence in moving forward with the CIRP cannot be faulted. Making the IRP the scapegoat and assigning him the full guilt for failing to do his duties does not seem justified. Given the current system of creditor-driven IBC, it is equally vital for the creditors to act as a catalyst in the bankruptcy resolution process. The creditors should be subject to same norms of discipline and rigour. Here is an instance where it is evident that the creditors' lack of participation and cooperation hampered the CIRP procedure. The Operational Creditor's behaviour in this case is deplorable because when the CIRP process started, the Operational Creditor slipped into a slumber. This situation has been made worse by the fact that the appellant/operational creditor initiated the legal process before distancing himself from all obligations. The fact that no claim has been submitted to the IRP as of yet is proof that the Operational Creditor did not appear interested in helping the Corporate Debtor resolve its situation.

Further, NCLAT are of the considered view that Section 217 of the IBC empowers any person aggrieved by the functioning of a Resolution Professional to file a complaint before the IBBI. The Operational Creditor had the right to report any IRP negligence, and because this was not done, the refusal to pay fees and expenses is unacceptable. In the present case, we do not find that the Appellant has at any stage made any complaint that the IRP had contravened the provisions of the IBC or the Rules framed thereunder or complained about the errant conduct of the IRP. The Operational Creditor has failed to substantiate any lapses or deficiency in the performance of

duties by the IRP. It is an admitted fact that CoC could not be constituted by the IRP but that does not seem to be on account of any inefficiency or laxity or leniency on the part of the IRP. We are thus of the considered view that the IRP was entitled in this case to claim his fees/expenses incurred on CIRP and needs to be compensated for his professional services.

Upholding the Adani Power bid, NCLAT directs Shapoorji Pallonji Group to pursue Arbitration. [February 27, 2023]

Adani Power's bid for Korba West Power's 2019 Resolution Plan was approved by the National Company Law Appellate Tribunal (NCLAT), which also instructed Shapoorji Pallonji & Co to initiate arbitration proceedings for any outstanding claims. An NCLAT bench of two members stated "there is no illegality in the order of the approval of the resolution plan by the Adjudicating Authority (NCLT) and it does not see any reason to set aside the resolution plan by Adani Power." The Ahmedabad Bench of the National Company Law Tribunal (NCLT) had issued an order on June 24, 2019, approving the resolution plan by Adani Power. Shapoorji Pallonji & Co. had appealed that decision. RP argued during the hearings before NCLAT that the appellant's claim was only denied after proper verification. It added that the dispute surrounding Shapoorji Pallonji & Co.'s claim is currently being resolved through arbitration. In response to Shapoorji Pallonji & Co.'s assertion that it was not provided written notice of its rejection, RP stated that it is only required to notify the "Operational Creditors" if the total amount owed is at least 10% of the "debt" of the "Corporate Debtor." In the present instance, the total amount of the "Operational Debt" represented just 6% of the acknowledged "Claims" of the "Corporate Debtor."



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