- Framework for processing e-mandates on recurring online transactions issued by RBI

- Now Companies need to Disclose Cryptocurrency holdings, Benami Properties and Audit Trail

- MCA permits Remuneration to Independent Directors in case of Loss Made by Companies

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RECENT AMENDMENTS

ARBITRATION & CONCILIATION (AMENDMENT) ACT, 2021 NOTIFIED

Imapct on India's Pro Arbitration outlook in the World

The Arbitration and Conciliation (Amendment) Act, 2021 was brought into effect on 11th March, 2021. The aim of the amended Act is to address the issue of corrupt practices in securing contracts or arbitral awards by ensuring that all the stakeholder parties get an opportunity to seek unconditional stay on enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award is induced by fraud or corruption. The amendment was also done to promote India as a hub of international commercial arbitration by attracting eminent arbitrators to the country and for achieving this purpose it was also felt necessary to omit the Eighth schedule.

For achieving the above-mentioned purpose, the Arbitration and Conciliation (Amendment) Ordinance was promulgated on 4th Nov, 2020 as the Parliament was not in session. The same has now been brought into effect as amended act on 11th March, 2021.

KEY FEATURES OF THE AMENDED ACT There has been an insertion of proviso under sub-section (3) of Section 36 retrospectively with effect from 23rd Oct, 2015 which provides the grant of an unconditional stay on enforcement of arbitral awards, where the underlying arbitration agreement, contracts or arbitral award is induced by fraud or corruption. The unconditional stay would defeat the pro-arbitration regime leading to the losing party falsely pleading for an automatic stay alleging corruption and fraud. It would defeat the very purpose of ADR mechanism by giving rise to frivolous litigations. The use of terms like fraud and corruption is without an exhaustive list or clarification of what would constitute fraud and corrupt practices which will again give rise to frivolous proceedings.

In case of pending applications for adjudication, the applicants will need to make renewed applications based on the amended grounds listed in the amended Act and will involve delays and costs unless the courts take *sua sponte* notice of this new amendment and dispose the same with filing of new submissions.

The amended Act has omitted Eighth Schedule of the Act which laid down the qualifications, experience and norms for accreditation of arbitrators and also had a minimum requirement of persons with an educational qualification at degree level with ten years of experience in scientific or technical streams and other general norms like fairness, integrity and neutrality and so on. It restricted the appointment of qualified foreign lawyers in India and was a hurdle to pro-arbitration regime.

The Act specifies by regulations the qualifications, experience and norms for accreditation of arbitrators by amending Section 43 J and the said amendment is consequential in nature. The term regulation defined under Section 2 (1) (j) has again been left undefined in the amended Act. By this amendment, the Act makes possible the appointment of foreign arbitrators backed by UNCITRAL Model Law provisions and provides party autonomy.

While omission of Eighth Schedule which restricted the ability of qualified foreign lawyers from acting as arbitrators in India has been considered a progressive step towards pro-arbitration regime, the unconditional stay on awards is a regressive step, detrimental to the prospect of pro arbitration regime.

COPYRIGHT AMENDMENT RULES, 2021, NOTIFIED

Amendments will result in bringing the existing rules in parity with other relevant legislations and encourage accountabilty.

The Government of India published the Copyright (Amendment) Rules, 2021 in the Gazette under the reference G.S.R. 225(E) on March 30, 2021. The amendments have been introduced with the aim of bringing the existing rules in parity with other relevant legislations. It seeks to ensure smooth and error-free enforcement in the digital age by using electronic means as the primary mode of communication and function in the Copyright Office.

KEY CHANGES :A new clause has been added regarding the publishing of a Copyrights Journal, which eliminates the need for publication in the Official Gazette. On the Copyright Office's website, the Copyrights Journal will be available. In light of technological advancements in the modern age, the same ensures smooth and seamless compliance by using electronic means as the primary mode of communication and working in the Copyright Office.

The Central Government's alloted time period for responding to an application for registration as a copyright society filed with it, has been extended to 180 days. The same procedure has been followed to ensure a thorough review of the application.

A new regulation, Rule 65A, has been added, requiring Copyright Societies to prepare and publish an Annual Transparency Report for each financial year within six months of the end of the financial year. This will aid in the transparency of copyright societies' operations.

The 2021 amendment modifies Rule 58 (reproduced below), requiring the copyright society to (i) hold separate royalties of those writers who could not be found or located; (ii) take all appropriate steps to identify the authors and owners; and (iii) pass undistributed royalties of such unidentified persons to the copyright society's welfare fund at the end of three years.

The amendments also brought the Copyright Rules into line with the terms of the Finance Act of 2017, which combined the Copyright Board with the Appellate Board.

The enforcement requirements for software works registration have been greatly reduced, with the applicant now having the option of filing either the first 10 and last 10 pages of source code, or the entire source code if less than 20 pages, with no blurred out or redacted sections.

INSURANCE AMENDMENT ACT, 2021,

will be be implemented from April 1st, 2021, paving the way for 74% FDI

The President of India has assented to the Insurance Amendment Act, 2021 on 25th March, 2021. The aim of the act is to achieve the objective of Government's Foreign Direct Investment Policy of supplementing domestic long-term capital, technology and skills for the growth of the economy and the insurance sector, and thereby enhance insurance penetration and social protection. The Insurance Amendment Act, 2021 has been brought into place to raise the limit of foreign investment in Indian Insurance Companies from the existing 49% to 74 %.

KEY FEATURES OF THE AMENDED ACT

The Act increased the limit on foreign investment in an Indian Insurance company from 49% to 74% by the substitution of sub-clause (b) in the definition of 'Indian Insurance Company' in clause (7A) of Section 2 of the Act and allowed foreign ownership and control with safeguards. The amendment is done with the object of accelerating growth and spur competition in the sector by introducing foreign capital in the private Indian insurance sector. It will also accelerate growth in local private insurers' business and expand their presence which has one of the lowest insurance penetration levels globally at present.

The Act has omitted the Explanation under S.27(7) which required the insurers to hold a minimum investment in assets which would be sufficient for the discharge of liabilities and if the insurer is incorporated or domiciled outside India, such assets must be held in India in a trust vested with trustees who must be residents of India.

The Explanation provides that this will also apply to an insurer incorporated in India whose share capital to the extent of (i) one third is owned by investors domiciled outside India, or (ii) one third of the members of the governing body are domiciled outside India. This Explanation has been removed in the new Act.

The fact that insurance companies are facing severe liquidity pressure and needs an urgent revival scheme, the higher limit would help meet the growing capital requirement. The apprehension of transfer of greater control in the hands of foreign firms and effect on reservation policy in public insurance sector for employees and agents cannot be denied, however, the majority of directors and key management persons will be residents of India covered by law of the land.

ARBITRATION TRIVIA

Existence of Aribitration Clause does not Debar Court from Entertaining a Writ Petition in Contractual Matter

Supreme Court in Uttar Pradesh Power Transmission Corp. Ltd. v. CG Power, held that the existence of arbitration clause does not debar the Court from entertaining a Writ Petition.

The High Court may entertain a Writ Petition notwithstanding the availability of an alternative remedy particularly,

1.Where the writ petition seeks enforcement of a fundamental right, or

2.Where there is failure of principles of natural justice, or

3.Where the impugned orders or proceedings are wholly without jurisdiction or

4. the vires of an Act is under challenge

CASE ANALYSIS

CONSTITUTIONAL LAW

FPCE v. THE STATE OF WEST BENGAL

1. The Supreme Court bench of Justices DY Chandrachud and MR Shah, in (Writ Petition (C) No. 116 of 2019) a plea filed by NGO FPCE, held the West Bengal Housing Industry Regulation Act, 2017(WB-HIRA) as unconstitutional as the same was in clear conflict with Central legislation, Real Estate (Regulation and Development) Act, 2016.
2. The Court held that both the legislations, the Central and the State refers to the same Entries in Concurrent List- Entries 6 and 7 of List III. The State contended that the HIRA fell under law regulating 'industry' which comes under Entry 24 of List II but the same was denied by the Court.
3. Article 254 stipulates that in case of repugnancy between the laws enacted by Parliament and State Legislatures, the law enacted by the Centre would prevail. The tests for determination of whether two legislations are repugnant to each other has evolved through catena of judicial precedents and is summarised in recent judgement of SC in *M/S Innoventive Industries Ltd. v. ICICI Bank.* as enumerated below-
4. The first test of Repugnancy is where there is a clear conflict between the Parliamentary and State Enactment and it is not possible to obey one without disobeying the other. The Court assessed the encroachment of the State enactment WB-HIRA upon the Parliamentary enactment by applying the first test of Repugnancy in the present case and held that there was a clear conflict between the provisions of WB-HIRA and RERA. The conflict could be curable when the provisions of the State legislation is brought into conformity with the Parliamentary enactment but in the present case the conflict is incurable as the WB-HIRA lacks the valuable safeguards introduced by the Parliament in RERA in public interest.
5. The conflicting provisions include (i) selling of 'open parking spaces' allowed under HIRA while not so in RERA, (ii)altered definition of garage in HIRA which allows an unenclosed space to be sold as a 'garage' separately while 'Garage' means an enclosed space covered on three sides under RERA, and therefore uncovered spaces not permitted to be sold separately, (iii) offences are compoundable under RERA while not so in HIRA, (iv) extended definition of 'force majeure' in HIRA which incorporates 'other circumstances as may be prescribed'. All these provisions were considered Developer friendly and against the interest of buyers in HIRA and also lacked the institutuional safeguards provided in RERA in the interest of homebuyers.
7. The second test of Repugnancy is where the intention of the Parliament is to lay down an exhaustive code in repect of the subject-matter replacing the Act of the State Legislature. Applying the second Test of Repugnancy, the Court held that as RERA was in itself a complete and exhaustive code, HIRA doesn't stand the test of constitutionality.
8. The Third Test of Repugnancy is where the Law made by Paarliament and the Law made by the State Legislature occupy the same field. Applying the Third Test of Repugnancy, the Court held that both the legislations deal with identical subject matter**.** RERA being a complete code with a superior efficacy, covers the whole field, therefore, the enactment of WB-HIRA was held repugnant.
9. The Court held that under Section 88 of RERA, the State Legislature only possess the power to enact cognate laws in respect to the RERA and as the provisions of HIRA are not cognate to the RERA but overlapping, the State Enactment suffers from clear repugnancy.
10. The Court observed that the State of West Bengal neither reserved the impugned State Act for consideration of the President nor had ever obtained the President's assent inspite of the fact that the entire field stood occupied by RERA, 2016 enacted by the Parliament.
11. The court by exercising its power under Article 142 clarified that all sanctions and registrations previously granted under HIRA prior to the date of this judgement will continue to prevail.
12. The Court clarified that revival of 1993 would not take place as the same was repealed by the enactment of the RERA for the regulation and promotion of construction in real estate sector.

GOOGLE TRIVIA

GOOGLE V. ORACLE DEFINITION OF 'FAIR USE' ALTERED

The US supreme Court in this recent Judgement held that Google's copying of JAVA SE API, which inlcudes only those lines of code that were needed to allow programmers to put their accrued talents to work in a new and transformative program, was a fair use of that material as a matter of law.

INSOLVENCY AND BANKRUPTCY CODE, 2016

BHARAT ALUMINIUM COMPANY LTD. V. M/S J.P. ENGINEERS PVT. LTD & ORS.

law pleaded and argued by RRG & Associates

The NCLAT on 26th February 2021, overruled an impugned judgment of the NCLT which held that bank guarantee cannot be encashed as it is covered under the moratorium provided under Section 14 of the Insolvency and Bankruptcy Code, 2016, which authorizes the Adjudicating Authority (the NCLT) to pass an order of moratorium prohibiting institution of certain suits against the corporate debtor, transfer of property of the corporate debtor, or any action to enforce any security interest.

Bharat Aluminium Company Ltd. entered into an agreement with M/s J.P. Engineers Pvt. Ltd. for sale and purchase of aluminium. A bank guarantee was executed by the Andhra bank which promised to ensure timely payments by the Respondents. On default of such payments, the Appellant tried to execute the bank guarantee, which was denied by the Andhra bank. Hence, the Appellant brought an action against the Respondents.

The Appellate Tribunal, relying on the Report of Insolvency Law Committee, 2018, held that the assets of the surety in a contract of guarantee are separate from those of the debtor. Hence, a bank guarantee can be invoked even during the period of moratorium provided under section 14.

The NCLAT, relying on the judgment of State Bank of India v. Ramakrishnan [Civil Appeal No. 4553 of 2018], held that section 14 is only applicable to the corporate debtors, and the sureties are excluded from such moratorium as the creditor has a remedy in relation to his debt both against the debtor and the surety. The object of the Code does not allow sureties to escape from their liabilities which is why section 14 is not applicable to them.

Reliance was also made upon the case of Haryana Telecom Ltd. v. Aluminium Industries Ltd. [(1995) SCC Online AP 721], wherein the Court held that the bank guarantee cannot be said to be the property of the Corporate Debtor simply because it is indirectly going to be affected by enforcement of the said bank guarantee by the beneficiary.

The Appellate Tribunal also relied upon the judgment of UP State Sugar Corporation v. Sumac International Ltd. [Civil Appeal No. 15357 of 1996], where it was held that the surety cannot escape its liability regardless of any action taken by the creditor against the debtor.

Thus, a bank guarantee falls under the purview of the proviso to Section 3(31) of the Code which excludes performance guarantees, and hence, bank guarantees can be invoked even during the moratorium period under Section 14 of the Code.

CONTRACT ACT

SC ON MANUFACTURER'S LIABILITY ON SALE OF A DEFECTIVE CAR AFTER TWO YEARS OF ITS DELIVERY TO ITS DEALER

The Supreme Court recently ruled in *Tata Motors Limited vs. Antonio Paulo Vaz & Anr* that when a car manufacturer and a dealer have a principal-to-principal relationship, the former cannot be held liable for the latter's conduct that resulted in the selling of a faulty car unless it can be proven that the car manufacturer was aware of the defect. As a result, Antonio Paulo Vaz declined to accept delivery of the 2009 model vehicle. He tried to resolve this problem and thereby sent a legal notice to both the dealer and the car manufacturer, Tata Motors Limited.

According to the facts of the case, Antonio Paulo Vaz purchased a car in 2011 from the second respondent, Vistar Goa (P) Limited, a car dealer, after paying the accepted total consideration price. Antonio Paulo Vaz took out a loan to buy the 2009 car, which had traveled 622 kilometers as stated on the odometer when he bought it. When Vaz realized it was an old vehicle, he demanded a refund of the purchase price or a substitute. The car was not replaced or refunded by the dealer.

As a result, Antonio Paulo Vaz declined to accept delivery of the 2009 model vehicle. He tried to resolve his problem and a legal notice was given to both the dealer and the car manufacturer, Tata Motors Limited.

According to the district forum order, the car had a few faults, the music system was not provided as promised, and the car had traveled 622 kilometers as stated on the odometer before delivery. The Appellant and Antonio Paulo Vaz were both heard by the District Forum. The Dealer was missing and unrepresented despite service of notice (of the complaint), so it was prosecuted ex parte. The District Forum found a "deficiency in operation" holding the Dealer and the Appellant jointly and severally responsible for the replacement of the car. with a new one of the same model or to refund the entire amount of car with interest.

Aggrieved, the Appellant preferred an appeal to the State Commission. The appellant's argument that its relationship with the dealer was principal-to-principal was dismissed by the State commission on appeal. There was no material or documentary proof to back up the same.

As a result, it also dismissed the appellant's arguments that no direct selling was made. The forum ruled that the sale was valid because the appellant sold a faulty car that they had made & the dealer and the appellant were liable for the sale of the defective car.

The Appellant argued before the National Consumer Dispute Redressal Commission that Vaz was not a consumer because he refused to accept the car's delivery from the Dealer. The Appellant's arguments were rejected by the National Commission, which upheld the District Forum's decision.

The full bench of Supreme Court held that the sale of defective car due to dealer's fault will not make car manufacturer liable unless knowledge is proved. It held that *"It is difficult to expect the appellant, a manufacturer, to be aware of the physical condition of the car, two years after its delivery to the dealer. During that period, a number of eventualities could have occurred; the dealer may have allowed people to use the car for the distance it is alleged to have covered. Also, the use of the car and prolonged idleness without proper upkeep could have resulted in the undercarriage being corrugated. All these are real possibilities,"*

ARBITRATION LAW

PRAVIN ELECTRICALS V. GALAXY INFRA & ENGINEERING PVT. LTD.

For the appointment of implementing agencies for execution of a Scheme on a turnkey basis, a South Bihar Power Distribution Company Ltd. (SBPDCL) had invited bids. EPL was named the winning bidder and was given the job. Galaxy claimed that it had made significant efforts, as required by the Agreement, to assist PEPL in obtaining the contract for which it was entitled to a fee. PEPL declined to comply with the arbitrator's nomination and refused to execute the Agreement. Galaxy filed a petition for the appointment of a Sole Arbitrator under Section 11(6) of the Act. The HC maintained, among other things, that the documents filed by Galaxy clearly demonstrated the existence of an arbitration agreement between the parties & thus, appointed a Sole Arbitrator. The appeal before the Supreme Court arose from this Delhi High Court order on appointment of an Arbitrator under Section 11(6) of the Act to adjudicate disputes between the parties regarding payment obligations.The issue on whether an arbitration agreement, in fact, existed was faced by the SC.

The Court held-

The court by partially setting aside the order of the High Court to the extent it considers the presence of an arbitration agreement, upheld the appointment of Justice G.S. Sistani (Retd.) as the sole arbitrator.

It held that in order to decide the existence of an agreement it would have to examine the documentary evidence and witness the testimony. And since the proceedings under section 8 may require summary proceedings, the questions of arbitration agreement cannot be decided only on the basis of the facts. The Supreme Court left the question of existence of arbitration agreement on the sole arbitrator who is to examine the documentary evidence produced before him in detail after witnesses are cross-examined on the same. It also directed the arbitrator to go ahead with the proceedings only if he finds out that an agreement exists.

The Court also noted, in light of the decision in *Vidhya Droliya v. Durga Trading Corp,(2021)* that while a refusal to refer parties to arbitration under Section 37(1)(a) of the Act is appealable, a similar refusal to refer parties to arbitration under Section 11(6) read with Sections 6(A) and 7 of the Act is not, creating an anomaly. As a result, it is suggested that the parliament should re-look at Section 11(7) Act, so that orders made under Sections 8 and 11 of the Act, are brought at par.

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MORE TO KNOW

Pre- Grant Opposition- An Overview

Th Section 25 (1) of the Patents Act, 1970 ('the Act' hereafter) provides that any person can file an opposition to a Patent, in writing to the Controller specifying the reasons for opposition. This provision was added through the Patents (Amendment) Act, 2005. Prior to the amendment, only a person interested (as defined under Section 2(1)(t) of the Act) was allowed to file an opposition, which includes person who is either involved in the field of the invention, or its promotion. This provision was added to further widen the scope of opposition against a patent. However, it raises a crucial issue of frivolous oppositions to an invention. The Bombay High Court analyzed this issue in the recent case of *Dhaval Diyora v. Union of India*.

Interpretation of "any person" under Section 25(1)

Soon after the amendment of 2005, the interpretation of the phrase "any person" was in question before various courts. Some of the landmark judgments on interpretation of this phrase are discussed below:

J. Mitra and Co. Pvt. Ltd. v. Assistant Controller of Patents and Designs (SLP No. 15729 of 2008)

In this case, the Supreme Court held that pre-grant opposition is much wider in scope than post-grant opposition. The Court also remarked that, *"such objection can be raised on a wider concept of public health and nutrition and the issue of affordability of medicine at a reasonable rate to those persons who are affected by disease."*

Snehlata C. Gupte v. Union of India (W.P. (C) No. 3516 and 3517 of 2007)In this case, the Delhi High Court held that where an opposition is raised between the grant of the patent by Controller and subsequent issue of the patent, such opposition shall be considered as an abuse of the process of law.

Dhaval Diyora v. Union of India (W.P. (L) No. 3718 of 2020)

In this case, the Bombay High Court condemned the act of filing frivolous pre-grant oppositions and held that the intent of the Legislature was to provide assistance to the Controller, and frivolous oppositions tend to delay the grant of patent by the Controller. The appellant approached the High Court against the order of the IPAB which held that the petitioner had no right to file pre-grant opposition after the IPAB had granted the patent. It was also observed that the conduct of petitioner while approaching the IPAB was abuse of the process of law. The Court also imposed fine on the appellant for frivolous objections on the patent.

The impact of the case would be on those oppositions which are filed by people who are in no connection with the subject matter of the patent. Such oppositions may not be entertained by the Controller of Patents anymore.

Key Amendments in the Budget 2021:

- Smt. Nirmala Sitharaman, the Finance Minister, has made 127 amendments to the initial Finance Bill, 2021, which was passed in the Lok Sabha on February 1, 2021.
- .On March 23, 2021, the Lok Sabha passed the finance bill 2021 with many of these amendments.
- One of the most important reforms is the increase in the tax exemption cap on interest received on employee provident fund Contributions to Rs 5 lakh a year in designated situations, up from Rs 2.5 lakh proposed in the Budget.
- It also mandated ULIPs with high premiums to retain a certain amount of equity. Under Section 10(10)(D) of the Income Tax Act, 1961, ULIPs with annual premiums above Rs. 2.5 lakh will lose their tax-exempt status on maturity earnings and will be charged in the same way as equity mutual funds.

IBC TRIVIA

In the recent judgement Sesh Nath v. Baidyabati the SC held that condonation can be delayed under Section 5 Limitation Act even in absence of a formal application.

SC in Commissioner of Income Tax-I v. Reliance Energy Ltd. held that Deduction under Section 80-IA Income Tax Act not Restricted to 'Business

- The amendments introduced in Finance Bill 2021 have greatly broadened the reach of the equalisation levy, putting into the net a large number of transactions that are strictly speaking outside e-commerce.
- Another major change is that overseas e-commerce platforms are no longer required to pay a 2% equalisation levy, also known as digital service tax, on the portion of products sourced from India.

- The equalisation levy is a tax levied to level the playing field between Indian firms that pay taxes in India and international e-commerce corporations that do business in India but do not pay income tax. The equalisation levy is being used to ensure that everybody working in India is treated equally. The equalisation fee would not apply to overseas e-commerce firms that pay income tax here. As a result, no additional pressure is placed on any organisation

- In the case of slump sale transactions, under the existing provisions (section 50B), the actual consideration of the slump sale transaction is respected and considered as the full value of consideration for computing capital gains. In other words, there was no need for arriving at Fair Market Value or obligation of a valuation exercise. An amendment has now been made to provide that FMV of the undertaking/division on the date of transfer (to be determined based on the rules, which may be prescribed later) as a full value of consideration. Accordingly, FMV will have to be considered irrespective of the transaction value actually received by the seller. The seller would have to recompute capital gains based on FMV and would be liable to pay the taxes along with interest, as requisite advance tax would not have been paid by the taxpayer. While the government sticks to its promise of no retrospective changes, this clearly is a retroactive amendment which in essence does affect transactions that have taken place till March 23, 2021.This is a substantive amendment changing the very basis of taxation and would have a significant impact on M&A transactions and internal restructuring exercises by corporates as slump sale was the preferred method for the same.

- Finance Bill 2021 proposed to amend the definition of "intangible asset" to exclude goodwill of business or profession thereby making the goodwill ineligible for depreciation from FY21 onwards – both for existing goodwill as of March 31, 2020, as well as new goodwill acquired or on will, after April 1, 2020. It also proposed to amend capital gains provisions to provide that cost of acquisition of self-generated goodwill acquired in tax neutral transfer will be nil. The amendment now has provisions to adjust the closing written down value of intangible assets as of March 31, 2020, by reducing the standalone tax WDV of goodwill computed as the difference between the actual cost of goodwill and depreciation allowable on such goodwill till March 31, 2020. The reduction shall, however, not exceed the closing WDV of intangible assets as of March 31, 2020. This provides much-needed clarity on how one needs to compute the written down value in case of goodwill.

- The provisions relating to taxability of receipt of capital assets or stock in trade at the time of reconstitution or dissolution of partnership firms which was proposed in the original Bill stand revamped.The entire clauses have now been rewritten with an introduction of additional Section 9B. The new section has been inserted to provide that receipt of a capital asset or stock–in trade by a partner/member (in case of Association of Persons / Body of Individuals) on dissolution or reconstitution of firm/AOP/BOI shall be deemed to be transferred in the hands of such firm/AOP/BOI and profits/gains arising on such transfer based on FMV of such asset shall be taxable as business income or capital gains. At the same time, Section 45(4) has been redrafted to provide for the computation of capital gain in the hands of the partner/member at the time of reconstitution of the firm. The amount of capital gain shall be FMV of the capital asset and money received exceeding the capital amount balance of the partner.

- On an overall basis, although some of the revisions included in the supplemental amendments are intended to simplify complexity and challenges faced by taxpayers, others are substantive. This causes the taxpayer to be unsure of any transaction he or she undertakes. With the changes concerning slump sale, equalisation levy, the taxpayer will be liable to pay taxes in lieu of transactions done before these being passed.

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Sports Arbitration: Recent Developments in India

Most Recent Case: Sporty Solutionz Private Limited v Badminton Association of India and Others (2020 Indlaw DEL 532)

Facts of The Case:

Sporty Solutionz Private Limited ("Sporty Solutionz") is a full-service sports marketing firm that specialises in sports rights distribution, broadcasting, event operations, sponsorship, and other related services. The Badminton Association of India (BAI) is India's badminton governing body. In return for a predetermined amount, Sporty Solutionz had the right to format, develop, and organise the Indian Badminton League ("IBL"), as well as all commercial rights. It was also decided that the Sporty Solutionz owned the IBL's intellectual property. The right to terminate the contract was vested with the BAI subject to a 90-day written notice and if Sporty Solutionz breached the contract, it was subject to an opportunity to remedy it within 90 days.

While the first IBL of 2013 was a positive event, the BAI cancelled the 2014 season on April 22, 2014, and issued provisional dates for 2015 without consulting Sporty Solutionz. The BAI requested that Sporty Solutionz have a bank guarantee in the amount of Rs. 50 crores solely because the IBL lost money in the first season. According to the BAI, the Governing Council convened an emergency meeting to amend the contract in this manner. The Sporty Solutionz refuted the claim that any vote or resolution in relation to a bank guarantee took place. As a result, any documents of the conference are argued to be false and forged.

Sporty Solutionz asked the BAI to announce the dates for the upcoming season on January 31, 2015, without which it would pursue legal action. The latter, in turn, requested the bank guarantee, failing which the deal would be terminated. Sporty Solutionz promised to have a Rs. 15 crore guarantee in instalments. The BAI replied with a termination notice dated April 21, 2015. The termination was challenged in the Delhi High Court by Sporty Solutionz.

Sporty Solutionz used the arbitration clause against BAI to settle the conflict over the agreement's termination. The Respondent announced on December 3,2015, that the IBL had been renamed the Premier Badminton League and that the league's long-term rights had been sold to a third party. Any claim to the arbitral tribunal for an injunction against the league's actions under section 17 of the Act was denied on the grounds that a significant amount of money had already been spent on the tournament's organisation. The order was issued on the 28th of December, 2015. The award for the ongoing arbitration hearings was issued on May 8, 2017. Sporty Solutionz had violated the deal by failing to have a bank guarantee, according to the arbitrator. However, in exercising its right to terminate, the BAI violated the contract's protocol by failing to have a 90-day notice prior to termination. As a result, the Petitioner was only entitled to compensation for the failure.

Sporty Solutionz filed this petition in the Delhi High Court against the BAI under section 34 of the Act. It was requested that the award dated May 8, 2017, be set aside because it was partially in favour of the BAI.

Nirav Modi's extradition to India has been approved

by Priti Patel, the UK Home Secretary, in connection with the diamond merchant's role in the Rs 14,000-crore Punjab National Bank fraud. In the PNB scam case, the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) are investigating the diamantaire for money laundering. This decision was made after a UK court ruled on February 25 that there is sufficient prima facie proof to convict the diamond merchant. Modi's claim that he will not receive justice in India due to media attention and political interference was also dismissed by the UK judge, who stated that there is no reason to believe that Indian politicians were attempting to manipulate the trial and that the Indian judiciary is biased.

Modi, who had 14 days to challenge the ruling, filed an appeal with the High Court of Appeal on April 28, 2021, challenging the lower

Judgment:

The Court stated that an award should only be overturned if it is clearly illegal. The Court has no authority to review the merits or the evidence under section 34 of the Act. In reaching its verdict, the Court must consider the arbitrator's previous interpretation of the contract. The clause which was introduced by extension which requires Sporty Solutionz to include a bank guarantee, and the one, which called for a 90-day notice period prior to termination of the contract, are in dispute before the Court.

The Court stated that detailed evidence must be shown to prove that a document submitted by the opposing party is forged and thus subject to rejection. The Court did not believe it was necessary to intervene since the arbitrator had already made his decision. Sporty Solutionz was also found to have acknowledged the tribunal's compensation without hesitation in the case of the BAI's inability to comply with the 90-day notice period. As a result, it was barred from contesting the award at this time.

Thus, the petition was rejected and the arbitral award was confirmed.

MoEF circulates Draft Notification on 22nd April,2021 to Further Amend Guidelines for 100 % Fly Ash Utilisation by TPPs

To utilize the ash produced by the industries, and protect the environment from the pollution caused by it, the Ministry of Environment, Forest and Climate Change has issued a Draft Notification on 22nd April, 2021 under the Environment (Protection) Act, 1986. The government intends to use 100% of fly ash/bottom ash produced by industries. The Draft Notification also seeks to implement the Polluter Pays Principle and penalize those industries or Thermal Power Plants(TPP) which do not utilize 100% ash produced. Every coal or lignite based Thermal Power Plant shall have the responsibility to ensure 100% utilization of ash generated by it. Such utilization has to be made in an eco-friendly manner, which includes manufacturing of brick/blocks/tiles/cement, filling of mine voids, construction of dams etc. The Draft Notification has been divided into five parts, which are summarized as follows-

Part A – Responsibility of Thermal Power Plants to utilize fly ash and bottom ash

1.The TPPs shall be responsible to utilize 100% ash generated by it during a financial year. This shall be checked in a three-year cycle, and in no circumstances shall the utilization go below 80% in any year. Moreover, the government has intended to provide relaxation to those TPPs which cannot utilize 100% ash in the first cycle. Those TPPs which can utilize between 60%-80% ash shall have one year in addition to three years of the first cycle and those TPPs which can utilize not more than 60% ash produced shall have two years in addition to three years of the first cycle.

2.The TPPs having accumulated unutilized ash (legacy ash) shall have to utilize it within 10 years from the date of the Notification, provided that those TPPs which have stabilized the ash within the

Ash ponds and those reclaimed it to the green belt, shall receive a certificate from SPCB or PCC for exemption from utilizing legacy ash.

3.The utilization of legacy ash shall be done over and above the 100% utilization every year. Not less than 20% legacy ash shall be utilized in the first year after Notification, not less than 30% in the second year, and not less than 50% in the subsequent years.

4.The utilization of ash shall be done in an eco-friendly manner to produce bricks/tiles/cement etc., filling up of mine voids, construction of dams etc.

5..Every TPP shall install dedicated dry ash silos for storage of at least 15 days of ash. Moreover, the TPPs are required to provide real time availability of ash through CPCB website and mobile application.

Part B – For the purpose of Utilization of Ash

1.The Draft Notification states that all the government agencies involved in construction of roads, dams, flyover etc. situated within three hundred kilometers of TPPs shall utilize the ash which shall be provided and transported free of cost to construction sites by the TPPs, subject to any agreements to the contrary.

2.All the mines situated within three hundred kilometers from the TPPs shall utilize at least 25% of the ash by backfilling the same as per the guidelines by Director General of Mines Safety. The ash shall be provided and transported free of cost by the TPPs, subject to any agreements to the contrary.

3.All the government buildings under construction within three hundred kilometers shall use the products made from utilizing ash, provided that such products are available at a cost not more than the cost of alternative products.

Part C – Fines for Non-Compliance

1.The draft notification contains provisions for non-compliance with the 100% utilization. Non-achievement of 100% utilization in a three-year cycle, or 80% utilization in a financial year, would attract a fine of Rupees 1000 per ton of unutilized ash. However, such fines are not applicable for first year or first three-year cycle.

2.The transportation shall be done carefully, and any mishandling would attract penalties from the authorities, which shall amount to Rupees 1500 per ton, in addition to execution of such transporters by State or Pollution Control Committee.

3.The authorized user agencies shall also utilize 100% of the ash provided to them by the TPPs, and non-compliance would attract a fine of Rupees 1500 per ton.

Part D – Procedure for Supply of Ash/Ash based Products

1.The owners of TPP or the user agencies shall serve a written Notice to the persons/agencies liable to utilize the ash.

2.Those notified agencies who have been served a Notice and cannot utilize ash due to tie-ups with other TPPs/user agencies shall notify the concerned TPP/user agencies that they cannot use the ash/ash products.

Part E – Enforcement, Monitoring, Audit and Reporting

1.The Central Pollution Control Board along with the concerned State Pollution Control Board/Pollution Control Committee shall be the enforcing and monitoring authority for compliance of provisions of the Notification. The CPCB shall develop a web portal for the same within six months.

2.The TPPs shall upload monthly information of generation and utilization of ash by 5th of the next month on the web portal of CPCB. Annual implementation report shall be uploaded by 30th April to the portal created by CPCB and all such reports shall be compiled by the CPCB till 31st May every year.

3.For the purpose of reviewing the annual implementation report, a committee shall be constituted under the Chairperson of CPCB along with members of Ministry of Power, Ministry of Coal, Ministry of Mines, MoEF&CC, Ministry of Road Transportation & Highways and Department of Heavy Industry. The Committee shall meet every six months to review the annual implementation reports.

4.For the purpose of solving disputes between the TPPs and user agencies, another committee shall be constituted by the concerned authorities.

5.The TPPs and user agencies shall be audited for compliance every year, and the report of such audit shall be submitted by November 30 every year to the CPCB along with SPCB/PCC. The CPCB shall take actions against non-compliance within 15 days of receipt of the audit report.

NGT Trivia

In the recent landmark judgement Directed the NGT on March 23rd, 2021 directed Haryana State Pollution Control Board (HSPCB) to strengthen its capacity, both in terms of human resource and setting up of modern labaratories.

HIGHLIGHTS OF THE ORDER

1.Inspection of Higher Frequencies
2.Capacity Enhancement of SPCBs/ PCCs with consent funds
3.Capacity Enhancement of CPCB utilising environment compensation funds
4.Annual Performance audit of State PCBs/ PCCs
5.CPCB to prepare a Format containig qualifications, minimum eligibilitu critria and required experience for key Positions.

RRG & Associates
LAW OFFICES RESEARCH DESK

RECENT REGULATORY CHANGES IN SEBI

- **SEBI CIRCULAR ON RELAXATION IN TIMELINES FOR COMPLIANCE WITH REGULATORY REQUIREMENTS BY DEBENTURE TRUSTEES DUE TO COVID-19 PANDEMIC**

  SEBI vide Circular No. SEBI/HO/MIRSD/CRADT/CIR/P/2021/561 dated May 03,, 2021 has informed its decision to extend the timelines for compliance with certain regulatory requirements.

  https://www.sebi.gov.in/legal/circulars/may-2021/relaxation-in-timelines-for-compliance-with-regulatory-requirements-by-debenture-trustees-due-to-the-covid-19-pandemic_50042.html

- **SEBI CIRCULAR ON TIMELINES FOR UPDATION OF SCHEME INFORMATION DOCUMENT (SID) AND KEY INFORMATION MEMORANDUM (KIM)**

  SEBI vide Circular No. SEBI/HO/IMD-I DOF2/P/CIR/2021/0560 dated April 30, 2021 has provided timeline for updation of SID and KIM as attached below.

  https://www.sebi.gov.in/legal/circulars/apr-2021/timelines-for-updation-of-scheme-information-document-sid-and-key-information-memorandum-kim-_50020.html

- **SEBI CIRCULAR ON RELAXATION IN TIMELINES FOR COMPLIANCE IN REGULATORY REQUIREMENTS**

  SEBI vide Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2021/559 dated April 29, 2021 has informed its decision to extend the timelines for compliance with certain regulatory requirements.

  https://www.sebi.gov.in/legal/circulars/apr-2021/relaxation-in-timelines-for-compliance-with-regulatory-requirements_50007.html

- **SEBI CIRCULAR ON ADDENDUM TO SEBI CIRCULAR ON "RELAXATION IN ADHERENCE TO PRESCRIBED TIMELINES ISSUED BY SEBI DUE TO COVID 19 ON APRIL 13, 2020"**

  SEBI vide Circular No. SEBI/HO/MIRSD/RTAMB/P/CIR/2021/558 dated April 29, 2021 has informed its decision to add 'Processing of the demat requests', to the list attached below.

  HTTPS://WWW.SEBI.GOV.IN/LEGAL/CIRCULARS/APR-2021/ADDENDUM-TO-SEBI-CIRCULAR-ON-RELAXATION-IN-ADHERENCE-TO-PRESCRIBED-TIMELINES-ISSUED-BY-SEBI-DUE-TO-COVID-19-DATED-APRIL-13-2020_50006.HTML

- **SEBI CIRCULAR ON RELAXATION FROM COMPLIANCE WITH CERTAIN PROVISIONS OF THE SEBI (LISTING OBLIGATIONS DISCLOSURE REQUIREMENTS) REGULATIONS, 2015/ OTHER APPLICABLE CIRCULARS DUE TO THE COVID-19 PANDEMIC**

  SEBI vide Circular No. SEBI/HO/DDHS_Div1/P/CIR/2021/557 dated April 29, 2021 has informed its decision to extend timelines for various filings and provide Relaxation from compliance with certain provisions of the SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015/ inter-alia due to the CoVID-19 pandemic and restrictions imposed by various State Governments.

  https://www.sebi.gov.in/legal/circulars/apr-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-disclosure-requirements-regulations-2015-other-applicable-circulars-due-to-the-covid-19-pandemic_50001.html

CBDT - Extension of Due Dates for Tax Payers/Assessees

On Account of the surge in COVID cases, the following dates have been extended by the CBDT-

i)Filing Belated Return of Income u/s 139(4) for AY 2020-21 (FY 2019-20) – Extended to 31st May, 2021 (which ended on 31st March, 2021)

ii)Filing SFT (Form 61) extended to 31st May, 2021 (where the due date was 30th April, 2021)

iii)Return filed in response to 148 of the Income Tax Act – where return of income had to be filed on or after 1st April, 2021 - can now be filed upto 31st May, 2021

iv)Relaxation of Filing Appeal dates for Appeals to CIT (Appeals) extended to 31st May, 2021 (where such last date was 1st April, 2021 or after)

v)Payments of TDS deducted u/s 194IA, 194IB and 194M and filing of challan-cum-statement on the same may be furnished on or before 31st May, 2021 (earlier date 30th April, 2021)

MCA - UPDATES

1. Relaxation of time for filing certain forms under the Companies Act, 2013. http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo6_03052021.pdf
2. Relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013. http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo7_03052021.pdf
3. Gap between two board meetings under section 173 of the Companies Act, 2013 (CA-13) – Clarification – reg. http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo8_03052021.pdf

The Ministry has issued General Circular Number 06/2021 and Number 07/2021 on 3rd May, 2021 allowing stakeholders to file various forms due for filing during 01/4/2021 to 31/05/2021 under the Companies Act, 2013/LLP Act, 2008 by 31st July, 2021 without payment of additional fees. The changes required in the MCA-21 System to implement this decision are being made and stakeholders would be informed in this regard in due course through a similar Notice. The stakeholders may, therefore, plan accordingly.

MOEF EXTENDS TIMELINE FOR COMPLIANCE OF EMISSION NORMS FOR PARTICULATE MATTER, SULPHUR DIOXIDE, OXIDES OF NITROGEN AND MERCURY BY TPPS BASED ON THEIR AREA AND RETIREMENT TIME VIDE NOTIFICATION DATED 31ST MARCH, 2021

The Environment (Protection) Amendment Rules, 2021 were published by the Ministry of Environment, Forest and Climate Change (MoEFCC) on March 31, 2021, to amend the Environment (Protection) Rules, 1986.

Serial number 25, which describes the Thermal Power Plant Industry, has been substituted in Schedule I, namely –

(i) The Central Pollution Control Board (CPCB) will form a task force with representatives from the Ministry of Environment, Forest and Climate Change, the Ministry of Power, the Central Electricity Authority (CEA), and the CPCB to categorise thermal power plants into three categories based on their location in order to comply with emission norms within the time limit specified in Table-I:

S. NO	Category	Location/Area	Timelines for compliance – Non retiring units	Timelines for compliance – retiring units
1	Category A	Within 10 km radius of National Capital Region or cities having million plus population.	Upto 31st December 2022	Upto 31st December 2022
2	Category B	Within 10 km radius of Critically Polluted Areas2 or Non-attainment cities.	Upto 31st December 2023	Upto 31st December 2025
3	Category C	Other than those included in category A and B	Upto 31st December 2024	Upto 31st December 2025

(ii) Thermal power plants that have been declared to retire before the date specified in column (5) of Table-I are not expected to follow the specified norms if they apply an undertaking to CPCB and CEA requesting an exception on the grounds of retirement: If the plants' service is extended past the date stated in the Undertaking, they will be charged an environment compensation of rupees 0.20 per unit of electricity produced.

(iii) After the date stated in column (4) of the above-mentioned Table, environmental compensation will be imposed on non-retiring thermal power plants at the rates specified in the following Table, namely: -

Non-Compliant operation beyond the Timeline	Environmental Compensation (Rs. per unit electricity generated) – Category A	Environmental Compensation (Rs. per unit electricity generated) – Category B	Environmental Compensation (Rs. per unit electricity generated) – Category C
0-180 days	0.10	0.07	0.05
181-365 days	0.15	0.10	0.075
366 days and beyond	0.20	0.15	0.10”

Contact Us:
C-14, Lower Ground Floor,
Chirag Enclave, Greater Kailash-1,
New Delhi-110048
Direct No. 011-40537591
TEL No. 011-40563742
Fax No. 011-41005046
Website:- www.rrgassociates.com

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