JANUARY - JUNE | 2019

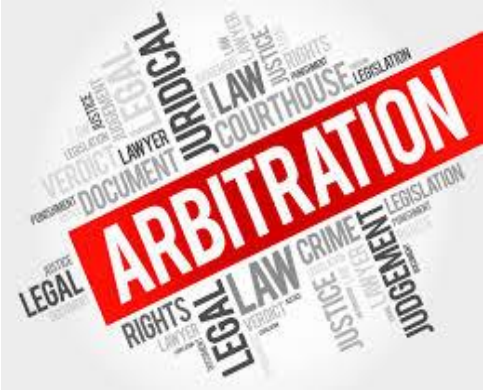
Newsletter

RRG & Associates
LAW OFFICES

AN OVERVIEW OF THE MAJOR CHANGES PROPOSED IN THE ARBITRATION & CONCILIATION ACT (AMENDMENT) BILL, 2018

ARBITRATION & CONCILIATION ACT (AMENDMENT) BILL, 2018

The Bill tries to alter the Arbitration Act with an expressed target to find a way to advance institutional discretions in India, and further amend the Arbitration Act in light of the observations made in the decisions of Supreme Court before. The same has been passed by the Lok Sabha on 10.08.2018 and is still pending in the Rajya Sabha.



- Establishment of a statutory body called Arbitration Council of India "ACI"
- Amendment in Section 29A of the Act;
- Introduction of Section 42A
- and 42B;
- Introduction of Section 87

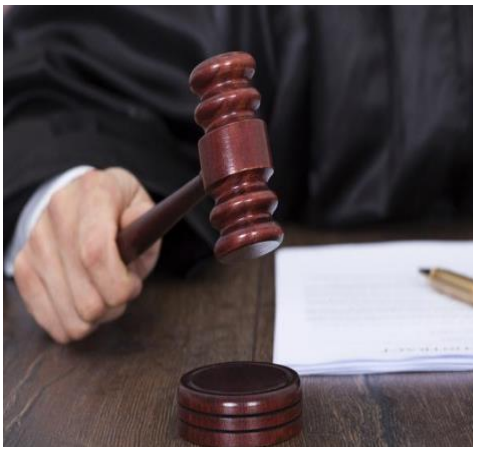
ESTABLISHMENT OF ACI

Framing polices governing the grading and accreditation of arbitral institutions and arbitrators; The 2018 Amendment Bill, in Schedule Eight also provides for the minimum qualifications, experience and norms for accreditation of arbitrators. Making policies for the establishment, operation and maintenance of uniform professional standards for all alternate dispute redressal matters. Establish and maintain depository of arbitral awards made both in India and overseas

TIMELINE FOR DOMESTIC ARBITRATIONS

Section 29A was introduced by means of the 2015 amendment to the Arbitration act. The bill proposes amendments to section 23 and section 29A by means of which;

- International commercial arbitrations are specifically excluded from the requirements laid down in section 29A and are not amenable to the time limit of 12 months laid down therein.
- For domestic arbitrations, a time period of 6 months has been put in place for completion of pleadings i.e. Filing of Statement of Claim and Defence; and only after the completion of the pleadings does the time limit of 12 months for arbitral award laid down in section 29A kick in.



SCOPE OF CONFIDENTIALITY REQUIREMENTS EXPANDED

Section 42A of the Amendment Bill, 2018 proposes the imposition of confidentiality requirements on the Arbitrator, the Arbitral institution, and the parties to the arbitration agreement in all matters of the arbitration proceeding. This is in line with international practice and is also a major reason why many parties opt to go for arbitration instead of litigation. Positive steps being taken to enumerate these principles are highly welcome. The only exception that has been introduced is with regard to the situations where "disclosure is necessary for the purpose of implementation and enforcement of award."

SOME IMPORTANT JUDGMENTS IN RELATION TO ARBITRATION LAW:

- **"Rajasthan Small Industries Corporation Limited v. M/S Ganesh Containers Movers Syndicate (2019 SCC OnLine SC 65)"**

  "Mere neglect of an Arbitrator to act or delay in passing the award by itself cannot be the ground to appoint another Arbitrator in deviation from the terms agreed to by the parties." The Apex Court decided an appeal against an order passed by the High Court of Rajasthan and allowed an application for termination of mandate and substitution of Arbitrator, on the ground that there had been a considerable delay in the arbitral proceedings due to the Arbitrator's conduct. In the aforesaid appeal, the question before the Supreme Court was whether in the facts and circumstances of the case, approaching the High Court under Section 11 and Section 15 of the Arbitration Act, 1996 for appointing a substitute arbitrator was justified. The Apex Court, while setting aside the order of the Rajasthan High Court and allowing the appeal, held that mere neglect on behalf of an arbitrator to act, as opposed to an incapacity or refusal to act, was not reason enough to substitute the current arbitrator.

- **"Zhejiang Bonly Elevator Guide Rail Manufacture Co. Ltd. vs. Jade Elevator Component [(2018) 9 SCC 774]"**

  The Apex Court while deciding on a dispute resolution clause wherein both the options, being Litigation and Arbitration had been envisaged as the modes for resolution of disputes in agreement between parties, held that in order to ascertain whether arbitration or litigation shall be adopted for resolution of disputes, the entire agreement should be read along with the dispute resolution clause. If the intention of the parties appears to be amicable settlement, the mode of dispute resolution should be arbitration since arbitration is a private dispute resolution mechanism which the Arbitration and Conciliation Act as well as Courts extensively promote.

- **"M/s Emaar MGF Land Limited v Aftab Singh (2018 SCC OnLine SC 2771)"**

  The Apex thoroughly analyzed the effects of the amendment of Section 8 of the Arbitration & Conciliation Act, 1996 to the Arbitrability of a consumer dispute as envisaged under the Arbitration Act. Hon'ble Court in the present case was hearing an appeal against a judgment of the National Consumer Disputes Redressal Commission, a quasi-judicial body set up in 1988 under the Consumer Protection Act, 1986 specifically in order to deal with issues of deficiency in goods and services between businesses and persons as opposed to disputes between two or more businesses. Taking this into consideration, the NCDRC had refused to refer a dispute for arbitration stating that an arbitration clause cannot circumscribe the jurisdiction of Consumer Fora to hear matters. The Supreme Court undertook a review of judgments dealing with arbitrable and non-arbitrable disputes and thereafter analyzed the

true intent of the amendment to Section 8 by referring to the 246th Law Commission Report and arrived at the conclusion that the amendment of Section 8 cannot be given such an expansive meaning and intent so as to inundate the entire regime of special legislations where such disputes were held to be not arbitrable. The Supreme Court accordingly held that an arbitration clause in an agreement cannot circumscribe the jurisdiction of the Consumer Forum. It further held that however, in cases where a consumer is entitled to seek a remedy under the Consumer Protection Act and does not opt for the same, there is no inhibition in disputes being dealt with via arbitration.

- **"Himangni Enterprises v. Kamaljeet Singh Ahluwalia (2017) 10 SCC 706"**

In the case discussed above, the court was plagued with the age-old issue about the Arbitrability of landlord-tenant disputes. While noting that no bar operated in the Transfer of Property Act to arbitrate disputes as to determination of lease, the court differed from a series of earlier judgments which have held that the said category of disputes are non-arbitrable. The court, in particular, expressed its reservations regarding the decision by a coordinate bench in Himangni Enterprises v. Kamaljeet Singh Ahluwalia (Himangni Enterprises), which barred arbitration in matters covered by the Transfer of Property Act, and stated that the same would also require a re-look by a larger bench. The court rightly notes that the earlier judgment in Himangni Enterprises and Natraj Studios dealt with Arbitrability of tenancy matters (i) governed by special statutes, i.e., the Delhi Rent Control Act and Bombay Rent Act respectively; (ii) where the tenants enjoyed statutory protection against eviction; and (iii) where only specified courts are conferred exclusive jurisdiction. Such decisions failed to assess the provisions of the Transfer of Property Act which are silent on Arbitrability and thus, does not negate it.

- **"Vidya Drolia and Ors. v. Durga Trading Corporation, Civil Appeal No. 2402 of 2019, 28 February 2019"**

The Apex Court on 28 February 2019, expressed doubts over the scope of power of courts while appointing an arbitrator. A larger bench will now decide whether a court is required to only look at mere "existence" of an arbitration agreement or does it also test the "validity" of such arbitration agreements while appointing an arbitrator. Referring to various provision of the Act, the court noted that 'validity' of an arbitration agreement is distinct from its 'existence'. It also stressed upon the recommendations in the 246th Law Commission Report, discouraging the court from referring parties to arbitration if there does not exist an arbitration agreement or if it is null and void. Such view is not reflected in the relevant provision under the Act, which confines the court to restrict its examination of an arbitration agreement to its mere existence and nothing more.

- **"The Government of Haryana PWD Haryana (B and R) Branch v. M/s GF Toll Road Private Limited and Ors. Civil Appeal No. 27 of 2019, 03 January 2019"**

Deciding upon the independence and impartiality of a former employee being appointed as an arbitrator, the Apex Court has held that the Arbitration Act does not pose an embargo on nominating a past/ former employee of a party as an arbitrator. Discerning the appointment of a current employee or a person having a business relationship (whether past or current) as an arbitrator, the court held that past employment, which ended almost 10 years ago, does not pose any justifiable doubts as to the arbitrator's independence and impartiality. The court also clarified that mere allegations of bias are not a ground to remove an arbitrator. Though the present case was governed by the pre-amended 1996 Act, the court took guidance from the Fifth Schedule of the Arbitration Act. The fifth Schedule statutorily incorporates the Red and Orange List of the International Bar Association Guidelines (IBA Guidelines) on Conflicts of Interest in International Arbitration. Such guidelines throw much needed light on how to curtail the subjectivity involved while adjudicating on objections to appointment of arbitrator(s).

INSOLVENCY & BANKRUPTCY

INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) AMENDMENT RULES, 2019

The Central Government by its notification dated March 14, 2019, amended the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The rules have made the following substitutions / insertions:

(a) Heading of Form 1 has been substituted to read as 'Application by Financial Creditor(s) to initiate Corporate Insolvency Resolution Process under Chapter II of Part II/ under Chapter IV of Part II of the Code';

(b) In Part-II of Form 1, additional details of the corporate debtor pertaining to assets and income, class of creditors or amount of debt and category of corporate person need to be mentioned by the financial creditor(s);

(c) Heading of Form 5 has been substituted to read as 'Application by Operational Creditor(s) to Initiate Corporate Insolvency Resolution Process under Chapter II of Part II/ under Chapter IV of Part II of the Code';

(d) In Part-II of Form 5, additional details of the corporate debtor pertaining to assets and income, class of creditors or amount of debt and category of corporate person need to be mentioned by the operational creditor(s);

(e) Heading of Form 6 has been substituted to read as 'Application by Corporate Applicant to Initiate Corporate Insolvency Resolution Process under Chapter II of Part II/ under Chapter IV of Part II of the Code'; and

(f) In Part-I of Form 6, additional details of the corporate debtor pertaining to assets and income, class of creditors or amount of debt and category of corporate person need to be mentioned by the corporate applicant.

SOME IMPORTANT JUDGMENTS IN RELATION TO INSOLVENCY AND BANKRUPTCY LAW, 2016.

- **Rai Bahadur Shree Ram and Company Pvt. Ltd. v. Rural Electrification Corporation Ltd. & Ors. [Order dated February 11, 2019 in [Civil Appeal No.1484-2019].**

  An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") for initiation of corporate insolvency resolution process by a Financial creditor, is maintainable against a corporate guarantor without initiation of such process against the principal borrower/ debtor. The appeal before the NCLAT arose out of an order dated July 6, 2017 by which the adjudicating authority (being the NCLT Bench at Kolkata) admitted an application under Section 7 of the IBC preferred by the 'Rural Electrification Corporation Limited' ("**Financial Creditor**") against 'Ferro Alloys Corporation Ltd. ("**Corporate Guarantor**"), who had guaranteed repayment of loans availed by the principal debtor ("**Principal Debtor**").

  In construing whether the application under Section 7 was maintainable against the Corporate Guarantor, the court noted that the term "corporate guarantor" found no mention in the IBC. The court observed that in absence of any express provision providing for *inter-se* rights, obligation and liabilities of a corporate guarantor qua a financial creditor under the IBC, the same would have to be gleaned from the Indian Contract Act.

- **Dharani Sugars and Chemicals Limited v. Union of India & Others, Transfer Petition (CIVIL) NO.1399 OF 2018**

  The Hon'ble Supreme Court of India by its judgement dated April 2, 2019, set aside the circular dated February 12, 2018, issued by the RBI on the ground of it being ultra vires Section 35AA of the Banking Regulation Act, 1949 ("**Banking Act**"). The circular, which was issued under Section 35AA, Section 35AB, and Section 35A of the Banking Act, and Section 45L of the Reserve Bank of India Act, 1934 ("**RBI Act**"), was challenged by petitioners (such as The Association of Power Producers and the Independent Power Producers Association of India), who argued that the circular was manifestly arbitrary and suffered from the absence of guidelines.

  The Supreme Court, making a reference to the recent judgment of Swiss Ribbons Private Limited vs. Union of India, observed that the economic legislations were to be viewed with greater latitude, and opined that the impugned sections did not lack any guiding principles or were manifestly arbitrary, and on the contrary, it conferred regulatory powers on the RBI. However, since the circular concerned the proceedings under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), the Supreme Court held that it must be in accordance with Section 35AA, which alone allowed the RBI to issue directions in relation to the corporate insolvency resolution process ("**CIRP Process**"), provided there was a specific authorisation by the Central Government to the RBI for issuance of directions in respect of specific defaults by a specific debtor, and any directions regarding the debtors in general, would be ultra vires Section 35AA. The Supreme Court also observed that since the conditions prerequisite for Section 45L of the RBI Act, were not satisfied in the issuing circular, the same stood ultra vires as regards to the non-banking and banking financial institutions. Hence, the Supreme Court invalidated the entirety of the circular and opined that any CIRP Process which was initiated by financial creditors in pursuance of Section 7 of the IBC under the circular, would now, from their very inception, be non-existent.

- **Rasiklal S. Mardia v. Amar Dye Chem Limited, Company Appeal (AT) No.337 of 2018**

  The National Company Law Appellate Tribunal ("**NCLAT**") by its judgment dated April 8, 2019, held that shareholders/ promoters of a company can file an application for approval of settlement with creditors, even after the official liquidator has been appointed. The Promoter-Director of Amar Dye Chem Limited ("**the Respondent**") had filed a scheme of compromise in the winding up proceedings before the Hon'ble High Court of Bombay where the liquidator had already been appointed. The matter was transferred to the National Company Law Tribunal ("**NCLT**"), Mumbai bench, which held that the application filed under Section 391 of the Companies Act, 1956 (corresponding to Section 230(1), Companies Act, 2013) could not have been moved by the shareholders after the appointment of official liquidator since only the official liquidator was entitled to represent the company under liquidation and formulate or approve any scheme of settlement. Hence, the present appeal was filed.

  The NCLAT, however, rejected the arguments of the NCLT by placing its reliance on the judgement of the High Court in the matter of National Steel & General Mills v. Official Liquidator and held that the liquidator was only an additional and not an exclusive person who could move an application under Section 391 of the Companies Act, 1956 when the company was in liquidation, and so the promoter/director of the Respondent was entitled to move the application. The NCLAT also opined that the proceedings should continue in the courts of the Hon'ble High Court as no judicial order to transfer appeared on the face of the matter and the appeal was disposed of accordingly.

- **Padmanabhan Venkatesh v. Shri V. Venkatachalam & Others with Indian Bank v. Shri V. Venkatachalam, Company Appeal (AT) (Insolvency) No. 128 of 2019 & I.A. No. 675 of 2019**

  The NCLAT, by its judgement dated April 8, 2019, set aside a resolution plan approved by the Committee of Creditor ("**CoC**") on the reasoning that the proposed upfront payment suggested by the resolution applicant for the stressed asset was significantly lesser than the liquidation value. Appeals have been preferred by Mr. Padmanabhan Venkatesh ("**Promoter**") and the Indian Bank ("**Financial Creditor**"). It was submitted by the Promoter that the resolution plan was against the object of the IBC and the Financial Creditor submitted that its claim had not been properly decided and the resolution plan did not take care of the report of the valuers.

  The NCLAT held that the upfront payment proposed by the resolution applicant was not only less than the liquidation value but also discriminated against the operational creditors and therefore, the resolution plan approved by the NCLT was against section 30(2) of the IBC. It also upheld the decision of the Hon'ble Supreme Court in Swiss Ribbons Private Limited vs. Union of India and stated that the power to negotiate with the resolution applicant to revise its plan, for its nonconformity with the IBC, vested with the CoC but it was also open to the NCLT and the NCLAT to ask the resolution applicant to provide modifications in the plan to make it in consonance with the IBC. Hence, the NCLAT opined that the resolution applicant substitute the resolution plan with modification in agreement with the object of the IBC.

- **DG of Income Tax & Ors. vs. Synergies Dooray Automotive Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 205 of 2017**

  The National Company Law Appellant Tribunal ("**NCLAT**") by its judgement dated March 20, 2019, held that the statutory dues of Income Tax, Value Added Tax ("**VAT**"), etc. are to be treated as 'operational debt' under Section 5(21) of the Insolvency Code, and that the 'Income Tax Department of the Central Government' and the 'Sales Tax Departments of the State Governments' and 'local authority', are 'Operational Creditors' within the meaning of Section 5(20) of the Insolvency Code. The judgment arises out of multiple appeals filed by the Income Tax Department and the Sales Tax Department against the judgements passed by the National Company Law Tribunal ("**NCLT**") which approved resolution plans containing tax dues. The NCLAT noted the definition of operational debt under Section 5(21) of the Insolvency Code, which states that an 'operational debt' is a claim in respect of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force, and payable to the Central Government, any State Government or any local authority.

Since an operational debt means a debt arising during the operation of the company, it was held, that as these statutory dues also arise when the company is operational, they have a direct nexus with the operation of the company. Hence, all statutory dues including Income Tax, VAT etc. come within the meaning of operational debt.

Therefore, in light of the aforesaid, the NCLAT also held that the Income Tax Department, Sales Tax Department and the local authority(s), who are entitled for dues arising out of the existing law are 'operational creditor' within the meaning of Section 5(20) of the Insolvency Code.

- **Standard Chartered Bank and State Bank of India vs. Essar Steel India Ltd., C.P. (I.B) No. 40/7/NCLT/AHM/2017**

The NCLT, Ahmedabad Bench, by its order dated March 8, 2019, approved the resolution plan submitted by ArcelorMittal India Private Limited ("**AIPL**") for the corporate insolvency resolution process of Essar Steel India Limited.

The NCLT suggested that the committee of creditors reconsider the distribution waterfall proposed under the resolution plan, and said that operational creditors must get at least similar treatment as compared to the dues of the financial creditors on the principle of equity and fair play. Various dissenting applicants, claiming to be either financial creditors, secured creditors, operational creditors or stakeholders, were rejecting the resolution plan for it did not apportion the amount of consideration in a fair and reasonable manner, thereby endangering their interest. Taking into account the above, the NCLT, while approving the resolution plan, held that it is not made open to the adjudicating authority to make judicial review with regard to the commercial decision of the committee of creditors on a resolution plan. The same was held to be beyond the scope of Section 31 read with Section 30(4) of the Insolvency Code. The NCLT opined that they can only supplement the view of the committee of creditors and not supplant it.

The NCLT while referring to the NCLAT judgment in the matter of Binani Industries Limited v. Bank of Baroda, opined that the aim and object of the Insolvency Code is for reorganization and insolvency resolution of corporate persons, for maximization of value of assets, and also to balance the interests of all stakeholders and creditors, so as to avoid any disparity in making payments and discriminatory practices could be ruled out. Hence, the NCLT suggested that the committee of creditors relook and reconsider the method of apportionment of the amount received in the ratio of 85:15 between the financial and operational creditors.

- **Bhandari Hosiery Exports Ltd. & Ors. vs. In-Time Garments Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 143 of 2019**

The NCLAT, by its judgement dated March 1, 2019, held that a text message sent by a corporate debtor to an operational creditor with respect to the quality of goods being defective, shall be treated as 'dispute' under Section 9 of the Insolvency Code. Bhandari Hosiery Exports Limited ("**BHEL**") had filed an application for initiation of corporate insolvency resolution under Section 9 of the Insolvency Code with NCLT, New Delhi. BHEL had filed a demand notice under Section 8(1) while the corporate debtor relied upon a 'WhatsApp message' sent by him to BHEL, raising an issue with the products, prior to the issue of the demand notice. The NCLT rejected the application for initiation of corporate insolvency resolution and hence an appeal was filed.

The NCLAT opined that the "WhatsApp message" sent by the corporate debtor, prior to the issue of the demand notice, to an operational creditor constitutes a pre – existing dispute and in light of the same, the application filed by BHEL for initiation of corporate insolvency resolution process under Section 9 of the Insolvency Code was not accepted. However, the NCLAT also added that the NCLAT has not delved into the dispute and that the same is left to be decided by a court of competent jurisdiction.

- **Forech India Ltd v. Edelweiss Asset Reconstruction Co. Ltd, CIVIL APPEAL NO. 818 OF 2018**

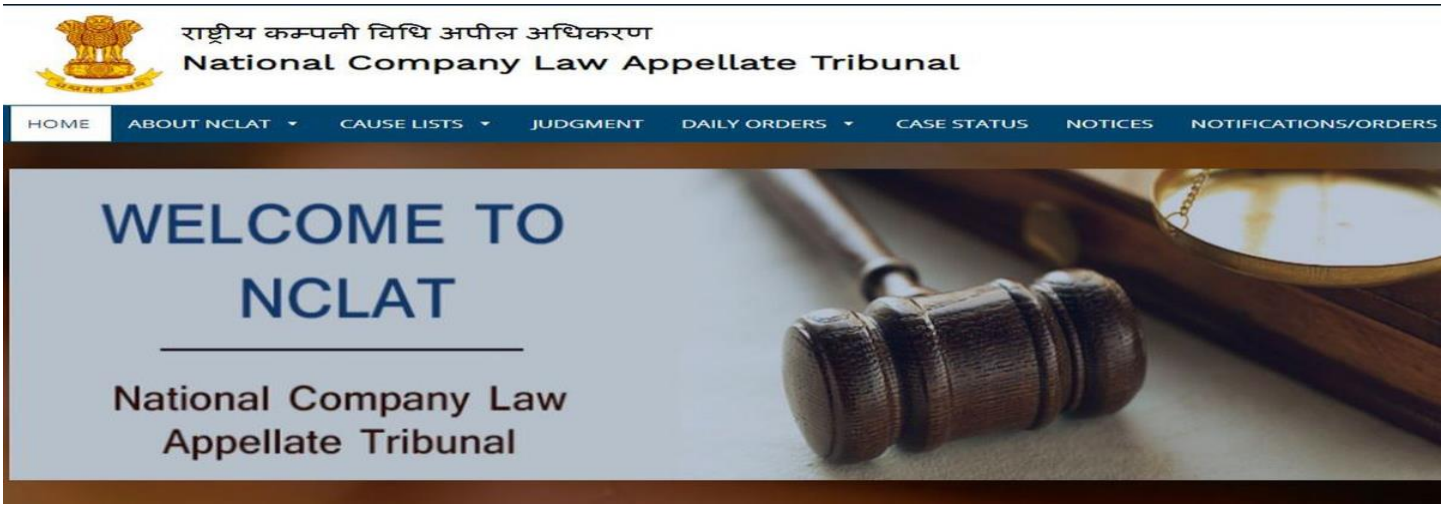
  The Supreme Court by its judgment dated January 22, 2019, held that post-notice winding up petitions, continue to be governed by the Companies Act, 1956. However, if a new proceeding is filed under the IBC, after the post-notice winding up petition and where orders have been passed by the NCLT, the consequences provided for under the IBC will apply to the post-notice proceeding, whatever their stage may be. Therefore, the mere fact that post notice winding up proceedings are to be "dealt with" in accordance with the provisions of the Companies Act, 1956, does not bar the applicability of the provisions of IBC in general to proceedings validly instituted under IBC, nor does it mean that such proceeding can be suspended.

  While upholding the order of the NCLAT, the Supreme Court held that the financial creditor's application, which has been admitted by the NCLT, is clearly an independent proceeding which must be decided in accordance with the provisions of the IBC. The Supreme Court further granted the liberty to Forech India Ltd. to transfer the winding up proceeding pending before the High Court of Delhi to the NCLT, which can then be treated as a proceeding under Section 9 of the IBC.

- **K. Sashidhar v. Indian Overseas Bank & Ors., CIVIL APPEAL NO.10673 OF 2018**

  The Supreme Court has held by its judgment dated February 5, 2019, that the NCLT has no jurisdiction and authority to analyse or evaluate the commercial decision of the committee of creditors to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.

  Kamineni Steel & Power India Private Limited and Innoventive Industries Limited ("**Corporate Debtor(s)**") did not receive the required 75% approval of the committee of creditors for their respective resolution plans. On being dissatisfied with the decision of the NCLT, they made a joint appeal to the NCLAT which recorded the fact that, the proposed resolution plan in respect of both the Corporate Debtor(s) was approved by vote of "less than 75%" of voting share of the committee of creditors, or deemed to have been rejected. In that event, the inevitable consequence was to initiate the liquidation process relating to the concerned Corporate Debtor(s), as per Section 33 of the IBC, hence the present appeal was filed.



COMPANIES ACT, 2013

On February 8, 2019, the Ministry of Corporate Affairs issued the Companies (Significant Beneficial Owners) Amendment Rules, 2019 (**'Amendment Rules'**), amending the provisions of Companies (Significant Beneficial Owners) Rules, 2018 (**'SBO Rules'**). Every individual who is considered to be a 'significant beneficial owner' (**'SBO'**) for a reporting company, was required to file a declaration with the reporting company in Form BEN-1. Some of the key requirements under the amended SBO Rules are briefly summarized below:

- **Who is an SBO in a Reporting Company?**
  i. As per the amended SBO Rules, an SBO for a reporting company is an individual who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company.
  ii. Therefore, the amended SBO Rules now prescribe two categories of independent thresholds to be evaluated for assessing an SBO in a reporting company i.e. objective threshold and subjective threshold. Accordingly, it is possible that a reporting company may have more than one SBO.
- **Duties of the Reporting Company**
  i. It is the duty of the reporting company to take 'necessary steps' to find out if there is any SBO of the reporting company, and to cause such SBO to make a declaration in Form BEN-1. What would be treated as 'necessary steps' has not been clarified, thereby putting a greater degree of onus on reporting companies.
  ii. Additionally, every reporting company is required to give notice in Form BEN-4 to such members (other than individual), who hold not less than 10% of its shares, voting rights, or distribution rights, to seek information relating to the SBO. Whilst the amended SBO Rules provide for filing of BEN-1 by the SBOs within 90 days from the date of commencement of the Amendment Rules, in the event the reporting company sends a notice under Form BEN-4, as per Section 90 of the Companies Act, the SBO is required to provide the details within 90 days from the date of the receipt of the Form BEN-4 from the reporting company.
- **Penalties for Non-Compliance**
  i. As per the provisions of the Act, an SBO who fails to make the prescribed declaration, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs 1,00,000 (approx. US$1,450) but which may extend to Rs 10,00,000 (approx. US$14,500) or with both, and where the failure is a continuing one, with a further fine which may extend to Rs 1,000 (approx. US$145) for every day during which the failure continues. Separate penalties are also imposed on the reporting companies which fail to comply with the provisions of the Act. Willfully providing any false or incorrect information or suppressing material information in the declaration made under these amended SBO Rules will be regarded as a 'fraud' under Section 447 of the Act.
- **Non Applicability**
  i. The amended SBO Rules are not applicable to the extent the shares of the reporting companies are held by the following entities:
    a) an authority for administration of Investor Education and Protection Fund;
    b) its holding reporting company (only if details of such holding company are reported in Form BEN-2);
    c) the Central Government, State Government or any local authority;
    d) a reporting company, body corporate or an entity which is controlled by the State Government/s or Central Government or partly by the Central Government and partly by one or more State Governments);
    e) investment vehicles registered and regulated with the Securities and Exchange Board of India, such as mutual funds, alternative investment finds, real estate investment trusts, infrastructure investment trusts; and

ENERGY SECTOR

- **MEASURES TO PROMOTE HYDRO POWER SECTOR**

The Ministry of Power has issued an office memorandum detailing the new measures adopted to promote the hydro power sector in India, on 8 March, 2019. The salient features of the memorandum are as follows:

- Change in category for large hydropower projects
- Introduction of hydropower purchase obligation
- Tariff rationalization measures
- Budgetary Support

- **ISLAND PROTECTION ZONE NOTIFICATION, 2019**

The Ministry of Environment, Forest and Climate Change ("**MoEFCC**") has issued the new Island Protection Zone Notification, 2019, in supersession of the Island Protection Zone Notification, 2011, on 8 March, 2019. The notification regulates the Island Coastal Regulation Zone ("**ICRZ**"). As per the notification, the ICRZ applies to islands forming part of Andaman and Nicobar and Lakshadweep.

OTHER LEGAL UPDATES

- **CABINET NOD FOR SETTING UP OF THE GST APPELLATE TRIBUNAL**

The Union Cabinet has approved the creation of a National Bench of Goods and Services Tax Appellate Tribunal (**GSTAT**). The GSTAT will be in New Delhi and will be presided over by a president. It will consist of a technical member from the Centre and a technical member of the States. This is pursuant to Chapter **XVIII** of the Central Goods and Services Tax Act (the "**CGST Act**"), which provides for an appeal and review mechanism for dispute resolution under the GST regime. Section 109 of this Chapter empowers the Centre to constitute, on the recommendation of the GST Council, an appellate tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

- **CABINET APPROVES THE NEW DELHI INTERNATIONAL ARBITRATION CENTRE ORDINANCE, 2019**

The Union Cabinet, has approved promulgation of the Ordinance for establishing the New Delhi International Arbitration Centre (**NDIAC**) for the purpose of creating an independent and autonomous regime for institutionalised arbitration. Previously, the New Delhi International Arbitration Centre Bill, 2019 was passed by Lok Sabha, however, the Bill eventually lapses with the dissolution of the Lok Sabha.

- **AADHAAR AMENDMENT ORDINANCE PERMITTING USE OF AADHAAR FOR SIM CONNECTIONS & BANK ACCOUNTS PROMULGATED BY THE PRESIDENT**

The President has promulgated Aadhaar and Other Laws (Amendment) Ordinance 2019 (the "**Ordinance**") to make amendments to the Aadhaar Act, 2016 (the "**Act**"), Prevention of Money Laundering Act, 2005 & Indian Telegraph Act, 1885. Recently, the Constitution Bench of the Supreme Court had upheld the constitutional validity of the Act with certain restrictions and changes. The compulsory use of Aadhaar based KYC for mobile connections and bank accounts was prohibited by the Apex Court, which was to be followed with amendments in the various Acts, in order to ensure that personal data of Aadhaar holder remains protected against any misuse and Aadhaar scheme remains in conformity with the Constitution. Towards this, the Aadhaar and Other Laws (Amendment) Bill, 2018 was passed by the Lok Sabha which eventually lapsed. The Ordinance amends the Act to *inter alia* provide for voluntary use of Aadhaar for taking mobile connections and opening bank accounts. Other salient features of the Ordinance include offline verification, i.e. use of Aadhaar number to establish identity without authentication using biometric data or other electronic means; Virtual ID, which enables one to authenticate identity without providing aadhaar number; authentication failure due to old-age, sickness, or technical reasons should not result in denial of

any service, benefit or subsidy; civil penalties for collection, use and disclosure of Aadhaar information in contravention with the provisions of the Act.

- **MINISTRY OF FINANCE ENHANCES INCOME TAX EXEMPTION FOR GRATUITY TO 20 LAKHS**

The Ministry of Finance recently enhanced the income tax exemption for gratuity as stipulated under section 10 (10) (iii) of the Income Tax Act, 1961 to Rs. 20 lakhs from the existing Rs. 10 lakhs. The latest enhancement of tax exemption limit on gratuity follows a government notification issued on March 29, 2018, under which the ceiling was increased from Rs 10 lakh to 20 lakh effective from the date of the notification.

- **JUSTICE P C GHOSE APPOINTED AS INDIA'S FIRST LOKPAL**

Former Supreme Court judge Justice Pinaki Chandra Ghose has been appointed as the country's First Lokpal. In addition, four judicial and four non-judicial members have been appointed.

- **TRIPLE TALAQ ORDINANCE RE-PROMULGATED BY THE PRESIDENT**

The President re-promulgated The Muslim Women (Protection of Rights on Marriage) Second Ordinance 2019, which seeks to protect the rights of married Muslim women and prevent divorce by the practice of instantaneous and irrevocable 'talaq e-biddat', i.e tripletalaq by the their husbands" and to "provide the rights of subsistence allowance, custody of minor children to victims of triple-talaq. The Muslim Women (Protection of Rights on Marriage) Bill 2018 as amended (the "**Bill**") makes pronouncement of triple-talaq a non-cognizable and non-bailable offence. The Bill further stipulates that cognizance of the offence can be taken only on complaint is lodged by the victim wife or her close blood relatives. Further, the Bill states that the offence was compoundable at the instance of the wife on such terms and conditions as deemed fit by the Magistrate.
The Bill also states that the offence is bailable, and Magistrate can grant bail, but only after hearing the wife.

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