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Corporate Brief

➤ *MeitY notifies National Policy on Electronics on 25th February, 2019*

To improve India's Electronic System Design and Manufacturing ("ESDM") sector, the Ministry of Electronics and Information Technology ("MeitY") recently notified the National Policy on Electronics ("Policy") on 25th February, 2019.

Some of the key motives behind introducing this Policy are to:

- Promote domestic market in terms of manufacturing and thereby increase 'domestic value addition' and reduce dependence on import of electronic goods and further emphasise on skill, technology, scale and global market;
- Promote research and development in all sub-sectors of electronics;
- Ensuring effective ways for protection of the domestic ESDM industry, etc;
- Improve the Ease of Doing business for the ESDM Industry;
- Provide policy support and special package of incentives for highly capital intensive projects;
- Enhance the availability of skilled manpower, including re-skilling, by providing them incentives and support;
- Create specialised governance structures to cater to the specific needs of the ESDM Sector, etc.

➤ *RBI introduces the Ombudsman Scheme for Digital Transactions: provides efficient complaint redressal mechanism*

On 31st January, 2019, the Reserve Bank of India ("RBI") introduced the Ombudsman Scheme for Digital

Transactions ("the Scheme"). The aim of the Scheme was to provide an expeditious and cost-free complaint redressal mechanism in relation with the deficiency in customer services in digital transactions that are conducted through non-bank entities regulated by RBI. Here, the term 'digital transaction' denotes a payment transaction in which a payment is effected without the need for cash 'at least in one of the two legs', if not both. This would include transactions that are made through digital / electronic modes wherein both the originator and the beneficiary use digital / electronic medium to send or receive money. It is pertinent to note that complaints received regarding customer services in relation to the transactions conducted through banks, will continue to be handled by the Banking Ombudsman Scheme.

As per the Scheme, RBI may appoint one or more of its officers in the rank of Chief General Manager or General Manager, to be known as Ombudsman for Digital Transactions, to carry out the functions entrusted to them by or under the Scheme and such appointment may be made for a period not exceeding three years at a time. Further, the Scheme also provides for an appellate authority under which the complainant would have the option to appeal against the decision of the Ombudsman before such appellate authority

➤ *Companies (Second Amendment) Ordinance, 2019 gets approval: aims to improve corporate governance and compliance framework*

The Cabinet recently approved the promulgation of the Companies (Second Amendment) Ordinance, 2019 ("the Ordinance") as was notified by the Government on 19th February, 2019. The Ordinance is based on the recommendations of the Committee to review offences under the Companies Act, 2013 ("the Act") for the purpose of filling certain critical gaps in the corporate governance framework and compliance framework in the Act and promoting Ease of Doing Business amongst corporates. Following are some of the issues that are addressed by the Ordinance:

- Re-categorization of 16 minor offences as purely civil defaults which would help in de-clogging special courts.
- Transfer of certain routine functions from NCLT to the central government such as dealing with applications for change of financial year and conversion from public to private companies.
- Grounds for striking off from the register of companies have been extended towards non-maintenance of

registered office of the company and non-reporting of the commencement of business grounds.

- d) Provisions have been made more stringent and timelines have been reduced for the creation and modification of charges.
- e) Grounds for disqualification have been extended to the breach of ceiling on directorships. The Ordinance is being expected to lead to greater compliance by corporates and de-clogging of the courts..

➤ *MCA amends the Companies (Significant Beneficial Owners) Rules: clarifies on reporting procedures*

Recently, on 8th February, 2019, the Ministry of Corporate Affairs ("MCA") released the Companies (Significant Beneficial Owners) Amendment Rules, 2019 "**amended SBO Rules**"). The emphasis of the amended SBO Rules is primarily on the process of requiring significant beneficial owners to commence reporting procedures. Following are some of the aspects that the amended SBO Rules have clarified upon with respect to the disclosure mechanism of significant beneficial owners:

- a) The definition of significant beneficial owners in relation to a reporting company has been clarified to mean an individual who acting alone or together, or through one or more persons or trust, possesses the following rights or entitlements in such reporting company, namely:-
 - i. holds indirectly, or together with any direct holdings, not less than 10% of the shares;
 - ii. holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
 - iii. has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;
 - iv. has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.
- b) Additional compliances such as the following have been introduced:
 - i. each company is required to maintain a register of SBOs which would be available for inspection to the shareholders, in Form No. BEN-3;
 - ii. after receiving a declaration by an SBO by the reporting company, the reporting company is required to file a return in Form No. BEN-2 within 30 (thirty) days of receiving such declaration, with the relevant registrar of companies, etc.
- c) Persons who are exempt from making disclosures under the amended SBO Rules are: the Investor Education and

Protection Fund, holding reporting company of the reporting company, investment vehicles regulated by the Reserve Bank of India or Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority, all investment vehicles registered with the Securities and Exchange Board of India ("**SEBI**") and Central Government, State Government or any local authority or any entity controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments.

➤ *MCA notifies the Companies (Incorporation) Amendment Rules 2019*

Recently, MCA notified the Companies (Incorporation) Amendment Rules 2019 on 21st, February 2019, for the purpose of inserting Rule 25A in the Rules which requires every company incorporated on or before 31st day of December 2017 to file particulars of that company as well as its registered office in the prescribed 'e-Form ACTIVE (Active Company Tagging Identities and Verification)' on or before 25th, April, 2019.

Some of the prerequisites that would be required prior to the filing of the above said Form are:

- a) Companies shall not have been in default under the Section 137 of the Companies Act, 2013, in terms of filing of financial statements (except the companies which are under management dispute);
- b) Companies shall not have been in default under Section 92 of the Companies Act, 2013 in terms of filing of annual return (except companies which are under management dispute);
- c) Companies shall not have been struck off or under process of striking off or under liquidation or amalgamated or dissolved, as recorded in the register.

➤ *New amendment to the revised ECB framework calls for relaxation of end-use restrictions for resolution applicants*

As per the New External Commercial Borrowings ("**ECB**") Framework that was notified by the Government on 16th January, 2019, the ECB proceeds cannot be used for the purpose of repayment of domestic Rupee loans, except for when the ECB is availed from a foreign equity holder as defined in the framework. On 7th February, 2019, RBI notified that the end-use restrictions for resolution applicants under the Corporate Insolvency Resolution

Process ("CIRP") were relaxed and they shall now be allowed to raise ECBs from recognised lenders, (except branches/ overseas subsidiaries of Indian banks), for repayment of Rupee term loans of the target company, under the approval route

GST Brief

➤ *33rd GST Council meeting held on 24th February, 2019 at New Delhi*

The 33rd GST Council meeting was held on 24th February, 2019 at New Delhi and its agenda primarily covered aspects of the 'Under-Construction Housing' sector and 'Private Lottery Distribution'. Following are some of the key highlights from the meeting:

- The GST rate for affordable housing was cut down to 1% without the benefit of the Input tax credit ("ITC") as against the earlier GST rate of 8%
- GST rate for non-affordable housing was reduced to 5% without ITC as against the earlier GST rate of 12%
- Further, the intermediate tax on development rights shall be exempted for Transfer Development Rights, Joint Development Agreement, Lease (premium), and FSI and exemption shall be given to only those residential properties that fall under the scope of GST.

[Source: www.gstcouncil.gov.in].

➤ *Government issues clarification on tax payment for supply of warehoused goods*

In a recent notification dated 18th February, 2019, the Government issued a clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018. It was notified that the supply of warehoused goods while they were deposited in custom bonded warehouses were to be treated as inter-State supply as per the provisions of Integrated Goods and Services Tax Act, 2017 ("IGST Act"). Further, as a 'one-time exception', suppliers who have paid central tax and state tax on such supplies as mentioned above, during the said period, would be deemed to have complied with the provisions of law with respect to the payment of tax on such supplies as long as the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax that was to be paid on such supplies.

[Source: www.cbic.gov.in]

Real Estate Brief

PUNJAB RERA ORDER:

➤ *Authority issues Public Notice to Promoters of non-registered projects:*

Authority has issued a Public Notice dated 05.03.2019 under section 53 of the Real Estate (Regulation & Development) Act, 2016 ("Act") for appearance in respect of projects not registered with RERA, Punjab. As under Section 3 of the Act, the Promoters of ongoing projects were required to register their projects with the Authority within 3 months of commencement of the Act i.e by 31.07.2017. Violation of this provision is punishable u/s 59 of the Act. Therefore, the Authority then issued notices to few Promoters in the State as they violated the provisions of the Act by not registering their projects with RERA. Accordingly, proceedings for imposition of penalty under Section 59 were initiated and notices were issued to Promoters, however individual notices have been received back from the Authority on account of refusal to accept the notice, refusal to submit a reply personally. The Authority was consequently satisfied that service of notice in ordinary manner was not possible, thus in some cases the Authority have ordered the Promoters that it has proceeded ex-parte, however it has issued this Public Notice in the interest of justice and since the penalty provided u/s 59 is quite heavy, the Authority has vide this Public Notice called the Promoters to appear before the Authority or through their authorized agent on dates mentioned in the Notice, thereby affording another opportunity to them for defending themselves.

TELANGANA REAL ESTATE REGULATORY AUTHORITY

➤ *From 1st to 15th March, 2019 for registration of ongoing projects:*

In accordance with Section 3 of the RERA Act, it is mandatory for Promoter to make application for registration of ongoing projects within 3 (three) months from the date of commencement of the Act. As per Telangana Real Estate (Regulation & Development) Rules, 2017 the projects which are approved on or after 01.01.2017 by the competent authorities viz., UDAs/DTCP/Municipal Corporations/Municipalities/ TSIIIC as the case may be, are to be registered with TS RERA.

TS RERA announced timelines to register the projects before 30.11.2018 online for the projects approved between 01.01.2017 and 31.08.2018. Further several show cause notices and press notes were issued. Now TS RERA has issued the following orders:

- All applications received after 28.02.2019 for the registration of project have violated Section 3 of the Act, therefore on this ground their applications are liable for rejection u/s 5(1)(b) of the Act.
- However, the Authority has decided that it may not be appropriate to out-rightly reject applications. Therefore in exercise of their powers u/s 59 of the Act, TS RERA has given another opportunity by charging Rs. 2,00,000/- (Rupees Two Lakhs only) as penalty, if registration is done on or before 15.03.2019.
- TS RERA has decided to keep the registration of ongoing projects open for which permissions have been taken between 01.01.2017 and 31.08.2018.
- After the Application by Promoter, Authority would communicate through pop-up/email to the Promoters who have uploaded their application between 1st to 15th March 2019 asking them to pay online penalty for late registration.
- If Promoter does not pay penalty, his application shall be further processed u/s 5(1)(b) of the Act.

HARAYANA-PUNCHKULA RERA ORDER:

➔ *In the order of Aditi Mangal (Complainant)& Rajat Mangal vs Ashiana Realtech (Respondent)*

FACTS:

The Complainant booked a flat in a housing project, they entered into an apartment buyer agreement and an allotment letter was given to the complainants the same date, they paid an amount against the total sale consideration and had opted for the construction linked plan. The Respondent failed to deliver the possession of the unit within stipulated time. The Complainant prays for refund of the amount along with interest and revocation of registration of the project .

CONTENTIONS:

The Respondent contended that 70% of the Project is complete and they submitted that Authority did not have jurisdiction to entertain the complaint as the project has been registered under RERA with a revised date of completion of project i.e 31.03.2019 and also it is being developed by two other developers namely M/s Ashiana Realtech Pvt Ltd and M/s Intime Developers Pvt Ltd as a party and the complainants have not impleaded M/S Intime Developers Pvt Ltd as a party, hence the complaint is liable to be dismissed for non-joinder of necessary party.

HELD:

The Authority observed that since the project is 70% complete and the Promoters are willing to complete, however since they could not complete on account of certain government orders, as the project is at the stage of completion, therefore refund and revocation of registration will jeopardize the project. It ordered in favor of the Promoters.

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