

Highlights**Corporate Brief**

- Amendments introduced in the Companies (Meetings of Boards and its Powers) Rules, 2014.
- Central Government frames the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
- Central Government frames the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019.
- Amendments introduced in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016.
- Ministry of Corporate Affairs extends the last date of filing of Form NFRA-2.
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RERA Brief

- Karnataka Real Estate Authority has issued a notification dated 27.11.2019 regarding the formation of Conciliation and Dispute Resolution Cell;
- Karnataka Real Estate Authority has issued a circular dated 10.12.2019 for issuing guidelines related to Project Registration Process;
- MahaRERA in a suo-moto enquiry held digital portals which facilitate sale/purchase of real estate projects are real estate agents and other portals which provide functions of advertisements are not agents in Maharashtra;
- Karnataka Real Estate Authority has issued a circular dated 13.12.2019 directing guidelines to digital portals for advertisement of real estate projects under Section 37 of the Real Estate (Regulation and Development) Act, 2016;
- Karnataka Real Estate Authority has issued a circular dated 14.11.2019, directing the guidelines for releasing of advertisement in print and electronic media under Section 37 of the Real Estate (Regulation and Development) Act, 2016;
- In the matter of Narayan Realty Infrastructure v State of Gujarat, the Hon'ble High Court of Gujarat quashes Appellate Authority's penalty order; and
- In the matter of Techno Dirive Engineer Pvt. Ltd. Vs. Renaissance Indus Infra Pvt. Ltd., Maha RERA held that industrial units and buildings that are part of such units won't come under RERA.

Litigation Brief

- BCCI Vs. Kochi Rises: SC strikes down section 87 of Arbitration & Conciliation Act, 1996.
- Citizenship Amendment Act, 2019

Corporate Brief**Amendments introduced in the Companies (Meetings of Boards and its Powers) Rules, 2014.**

The Central Government issued a notification dated 18th November, 2019 vide G.S.R. 857(E) and introduced amendments in the Companies (Meetings of Board and its Powers) Rules, 2014 ("**Rules**") via the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019 ("**Amendment**"). The Amendment pertains to rule 15 (Contract or arrangement with a related party) of the Rules. The Amendment shall come into effect from 1st December, 2019.

The key changes were introduced in the limits specified in sub-clauses (i) to (iv) relating to transactions entered into as contracts or arrangements (with respect to clauses under section 188(1)) of rule 15(3)(a), shall be subject to only the turnover of the company post the abovementioned Amendment.

Central Government frames the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

The Central Government issued a notification dated 15th November, 2019 vide G.S.R. 854(E) and introduced the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("**Rules**"). The Rules shall come into force from 1st December, 2019. The key highlights of the Rules are:

1. The Rules shall apply to insolvency resolution process for personal guarantors to corporate debtors.

2. The application by guarantor shall be submitted in Form A of the rules under sub-section (1) of 94 whereas application by creditor shall be submitted in Form B.
3. The Board may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority, from time to time.
4. The applications shall be filed in accordance with the National Company Law Tribunal Rules, 2016 and the Debt Recovery Tribunal (Procedure) Rules, 2016 and shall be filed in electronic form, as and when such facility is available.

Second Amendment Regulations, 2019 Central Government frames the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019

The Central Government issued a notification dated 15th November, 2019 vide G.S.R. 852(E) and introduced the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("**Rules**").

The Rules shall come into force on the date of their publication in the Official Gazette. The key highlights of these rules are:

1. These Rules shall apply to financial service providers or categories of financial service providers, under section 227, from time to time, for the purpose of their insolvency and liquidation proceedings.
2. In all the provisions relating to insolvency and liquidation proceedings under the Code, the expression "corporate debtor" shall mean "financial service provider" and the terms "insolvency professional", "interim resolution professional", "resolution professional" or "liquidator" shall mean "administrator".
3. The corporate insolvency resolution process shall be initiated against a financial service provider which has committed a default under section 4 of the Code- and on receipt of application (which has to be treated in the same manner as an application under section 7 of the Code), the Adjudicating Authority shall appoint an administrator as proposed by the appropriate regulator.
4. The appropriate regulator may constitute an advisory committee within 45 days of the insolvency commencement date, to advise the Administrator (chair) in the operations of the financial service provider during the corporate insolvency resolution process.
5. The Administrator shall seek 'no objection' of the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of the financial service provider after the approval of the resolution plan by the committee of creditors.

Amendments introduced in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016

The Reserve Bank of India issued a notification dated 13th November 2019 vide Notification No. FEMA 14(R)/(1)/2019-RB and introduced amendments in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 via the Foreign Exchange Management (Manner of Receipt and Payment) (Amendment) Regulations, 2019 ("**Amendments**"). The Amendments shall come into effect on the date of their publication in the Official Gazette. The key Amendments are:

1. There is an insertion of a new term in the definitions clause [Regulation 2(v)] as 'SNRR account' which means a Special Non- Resident Rupee account referred to in sub regulation

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(4) of regulation 5 of Foreign Exchange Management (Deposit) Regulations, 2016.

2. Payment may also be received in rupees by a person resident in India from SNRR Account of person resident outside India after ensuring that the underlying transactions are in conformity with the provisions of the Foreign Exchange Management Act, 1999 and the rules, regulations and directions issued thereunder.

➤ **Ministry of Corporate Affairs extends the last date of filing of Form NFRA-2.**

The Central Government, through the Ministry of Corporate Affairs has extended the last date of filing of Form NFRA-2 ("**Form**") vide General Circular no. 14/ 2019 dated 27th November, 2019 ("**Circular**").

The Form is required to be filed under rule 5 of the National Financial Reporting Authority Rules, 2018. As per the Circular, the time limit for filing of the Form shall be 90 days from the date of deployment of the Form on the website of the National Financial Reporting Authority.

➤ **Ministry of Corporate Affairs extends the last date of filing of Form PAS-6.**

The Central Government, through the Ministry of Corporate Affairs has extended the last date of filing of Form PAS-6 vide General Circular no. 16/ 2019 dated 28th November, 2019 ("Circular").

This Circular extends the time for filing Form PAS-6 (Reconciliation of Share Capital Audit Report [Half Yearly]) required to be filed by every unlisted Public Company within 60 days from the conclusion of each half year due to unavailability of the form on Portal.

RERA Brief

➤ **Karnataka Real Estate Authority ("KRERA" or "Authority") has issued a notification dated 27.11.2019 regarding the formation of Conciliation and Dispute Resolution Cell:**

- Since it was observed by the Authority that in some complaints concerned parties were desirous of undertaking conciliation process so as to ensure participative decision making, preservation of ongoing relationships and mutually win-win solutions, the Authority has the power to regulate its own procedure. Therefore, the Authority has formed a Conciliation and Dispute Resolution Cell to facilitate alternate dispute resolution, hereinafter called 'The CDR Cell'.
- The Objectives of the CDR Cell are as follows:
 - a) To constitute a CDR Cell of a panel including representatives from the Home-buyer Associations and Developers/Promoters Associations; and
 - b) To popularise conciliation as an effective dispute redressal mechanism for the speedy settlement of complaints.
- In this regard guidelines are issued by the Authority with immediate effect which applies to the disputes between the promoters, agents and allottees which are under the purview of RERA Act, 2016. In which the complaints are being heard by the Authority of the Adjudicating Officer, if the Authority concerned is satisfied that there is a possibility of settlement by way of conciliation, then with the consent of both parties involved, it may refer the complaint to

the CDR Cell. On the issuance of order by CDR Cell, if compliance to the settlement order is not done, due cognizance of the non-compliance will be taken into account in the future proceedings of the Adjudicating Officer/Authority, if the aggrieved party approaches the K-RERA.

- Also, if the parties fail to reach an amicable settlement, the conciliation process will stand terminated and the disputes will be pursued as per the Act before K-RERA Dispute Redressal Mechanism or before any other court or forum.

➤ **Karnataka Real Estate Authority ("KRERA" or "Authority") has issued a circular dated 10.12.2019 for issuing guidelines related to Project Registration Process:**

- Since under Section 3 of the Act, mandates prior registration of a real estate project. On application submitted by the Promoter, it is mandatory for the Authority under Section 5 of the Act to dispose the application within 30 days from the date of its filing. Accordingly, the Authority has developed an efficient online system for application for registration of their projects, however as observed by the Authority the promoters who have filed its application do not comply with the requirements and fail to respond to enquiry raised by the Authority for completing the project registration, resulting in clarifications solicitations by the Authority. Thus leading to delays in project registration.
- The step- wise guidelines issued are to overcome such issues and to ensure speedy registration:

STEP-I:

- (i) All documents provided should be legible and clear. Blurred documents are not accepted.
- (ii) Declaration in Form B, Affidavit should be provided as per the prescribed format. Promoters are not allowed to remove or add any clause in the declaration.
- (iii) Some fields in the application form are mandatory, against which information has to be submitted. However, even for rest of the fields which are not mandatory, the promoter should provide as much information as possible.
- (iv) Promoter has to furnish local address and local Bank branch in the state of Karnataka.
- (v) If a data field is kept blank, it shall be assumed that the concerned field is not applicable for the respective project and the values is nil or not applicable.
- (vi) In case of document uploads, if a field is not applicable, then a self-declaration to the same effect shall be uploaded.
- (vii) The promoter should ensure the veracity and completeness of all data and documents provided. The promoter should ensure strict adherence to the Act, Rules and Orders/Circulars issued thereunder by the Authority, while submitting information and documents.
- (viii) Mere grant of registration by the Authority does not necessarily mean that the contents and documents are in conformity with the provisions of the Act, Rules and Orders/Circulars issued by the Authority. Even after the registration, if it is brought to notice of the Authority that misleading/ incorrect information has been provided or documents do not adhere to Act, Rules, Regulations, Orders/Circulars issued by the authority, then necessary action shall be taken in such respect by the authority.

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STEP-II: After receiving the application, acknowledgment to the applicant through registered email to be sent by the Authority.

STEP-III: Each application for registration of the project received in the Authority to be scrutinized by the Authorised Officer to check whether it conforms to the Act, Rules and orders/circulars issued by the Authority and the defects, if any, shall be communicated to the party **within five (5) days**.

STEP-IV: The Applicant(s), on receipt of the communication about the compliance on defects/ changes/ modification/ documents submission to remove the defects by using the temporary login facility within five (5) days of receiving the intimation.

In the event of no response for the first communication from the promoter, second communication will be issued for compliance on defects, to remove the defects by using the temporary login facility within three days of receiving the intimation.

On failure of the compliance for removing the defects for the aforesaid two communications, the Authority to issue a final notice to the promoter calling upon to furnish the documents within 7 days and to hear. In the event, the promoter fails to comply, the Authority will reject the application by forfeiting the fee paid by the promoter for non-compliance.

Step V: If the promoter complied the defects are removed, as per Section 5 of the Act read with rule 3, the Authority to issue a registration number in **Form-C** to the promoter.

If the application is rejected, the Authority shall inform the applicant in **Form 'D'**.

Step VI: If the application is rejected, as per proviso of sub-rule 2 of Rule 6, the Authority may grant an opportunity to the promoter to rectify the defects in the application within a period of 30 days as may be specified by it.

MAHARASHTRA REAL ESTATE AUTHORITY, MUMBAI:

- ➔ *In a suo moto enquiry between MahaRERA ("Authority" or "MahaRERA"), Mumbai Grahak Panchayat, Magicbricks, 99 acres.com, makkan.com, housing.com, Nardco and CREDAI-MCHI, the Authority held digital portals which facilitate sale/ purchase of real estate projects are real estate agents and other portals which provide functions of advertisements are not agents in Maharashtra:*

Facts:

This was a suo-moto enquiry initiated on application of Mumbai Grahak Panchayat (MGP) addressed to MahaRERA. In the application filed by MGP, it informed the Authority that web portals like Magicbricks, 99 acres.com, makkan.com, housing.com etc., advertise real estate projects on their web portals and thereby facilitate sale/ purchase of real estate plots and apartments. The web portals act as real estate agents for the promoters as they negotiate for sale/ purchase transaction of plots/ apartments of real estate projects by introducing the prospective buyers to promoters/ sellers through

digital media, the advanced information technology easily available through internet and they receive remuneration for their services. Thus they web portals are real estate agents under Section 2 (zm) of RERA.

Issue:

Whether the web portals dealing with real estate projects facilitating sale/ purchase of real estate plots, apartments, are 'real estate agents' as defined under RERA?

Contention of Web Portals:

- That they advertise the real estate projects of their clients by making the clients, digital space available on their portals and they charge their clients for the same. The portals submitted that they charge fixed fees for advertising clients products. Their fees does not depend upon success of a sale/ fructification of a transaction. The Portals merely publish content provided by the advertisers/ developers, they do not make any statement or representation of their own relating to any real estate project. Their role is like of a traditional advertisement medium like a newspaper, magazine, billboard etc., they only pass on information as has been prepared and submitted by the advertiser.
- That unless and until they get any fee, commission or remuneration depending upon the success of sale transaction, it cannot be said that by facilitating sale of the real estate.

Contentions of MGP:

- The definition of real estate agent defined under Section 2(zm) of RERA consists of three parts- (i) a "real estate agent" means a person, who **negotiates or acts** on behalf of one person in a transaction of transfer of his plot, apartment or building as the case may be in a real estate project, by way of sale, with another person or transfer of plot, apartment or buliding of any other person to him and **recieved remuneration or fees or any other charges for his services whether as a commission or otherwise**. (ii) Real estate agent **includes** a person who **introduces**, through any medium prospective buyers and sellers to each other for negotiation for sale or purchase. (iii) Real estate agent **includes** property dealers, brokers, middlemen by whatever name called. It contended that each part of the definition is independent and includes a separate activity of a person who can be termed as an agent.
- Thus the web portals, acted like real estate agents because they negotiate and act for the promoter in a transaction of sale of real estate and receive remuneration/ fees/ or other charges. They are not using simply the space for putting advertisements of the real estate projects on their portals but they have gone further and they introduce the parties for sale or purchase of real estate by using internet as medium.

Held:

- The Authority interpreted the term "**means**" and "**includes**" for definition of real estate agent as defined in the Act. For its interpretation, the Authority relied on leading Hon'ble Supreme Court's judgments, wherein when the word "**means**" is used,

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what follows is intended to speak exhaustively, it is a hard and fast definition. When the word **"includes"** is used, it makes the definition enumerative and not exhaustive, that is the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in the definition of real estate agent under the Act is clearly indicative of the legislative intent to make the definition exhaustive.

- The Authority rejected the contention of MGP relating to, that each part of the definition of real estate agent is independent and includes a separate activity of a person who can be termed as an agent. The Authority held that, the first clause of the definition of real estate agent in the Act, relates to **negotiation or acting on behalf of one person** in a transaction of transfer of plot, apartment or building, of any other Person and the second part relates to where **agent receives remuneration or fees**. If the second part is separated from the first one, it will create an absurd result. That might lead to a situation, where any person acquainted with the buyer and the seller, if wants to help them and introduces them with each other will be covered by the definition though such person might not have received any commission, remuneration or fee as the case may be. It is impractical to think of such situation. Therefore, the Authority held that the first part of the definition must be read along with the second part of it to gather the correct meaning particularly relating to remuneration, fees, and commission otherwise.
- The Authority then observed the **functions** performed by the digital portals, for which it interpreted the terms like **"negotiate, commission, remuneration, introduce, facilitate"** appearing in the definition of real estate agent under RERA.
- On the issue whether digital portals **"introduce"** seller with buyer in sale of real estate, it held that it has been admitted by the web portals that when a viewer visits the portal and shows his interest in any particular project then he has to share with the portal his identity by leaving his name, cellphone number or email address which is verified by generating OTP, thereafter details of the developer are provided to the buyer, if the viewer is found to be a genuine person. Similarly the leads of the buyer are given to the promoter/ advertiser. The Authority on this issue held that details of the viewers and the advertisers are supplied by the portals to each other (buyer and seller) for the purposes of selling units of the projects listed with them. Since portals use advance technology, it is not necessary to introduce both parties by procuring their physical presence. Nonetheless, the portals when they collect the details of the viewers and share them with advertiser/ seller and also disclose the information of promoter to buyers, thus they are "introducing" the parties to the sale transaction.
- On the issue whether the digital portals **"negotiate"** in sale of real estate. The Authority held that, negotiations must relate to transaction of sale for fixing the terms and conditions of the transaction relating to the property to be sold. With the style of functioning of digital portals, once a viewer visits the site of the portal, the portal collects the information of his requirement namely his budget, area of property, size, location etc. The portals also supply the information of the real estate project

listed with them and provide comparative prices of similar properties located nearby. The Authority held that the portals thus act on principal to principal basis, even though the portals contended that they do not take any part in settling the terms and conditions of the sale transaction or they do not offer discounts. The Authority held that as per definition of advertisement by Section 2(b) of RERA, they form an integral part of marketing and RERA permits advertisements about the real estate projects, offering them for sale or inviting persons to purchase them or to make advances or deposit for such projects. The advertising through any medium or publicity of any form is permissible as it informs the persons about the real estate project and its sale. Therefore, there is a very sharp line between the activities of advertisement agencies and those of real estate brokers. **If the portals simply provide the information about the real estate project, its offering for sale to the public at large, then they are simply the agencies engaged for advertisements and when an individual buyer is targeted by contacting and persuading him by the portals for sale and purchase of listed properties they travel beyond. Hence if the activities of the portals do not travel beyond providing the information regarding the real estate project and sale, and if they do not negotiate then they are covered under the category of advertisement agencies but once they travel beyond this limit, their interactive, persuasive activities comes under the legal term of 'negotiation.'**

- On the issue whether digital portals **"facilitate"** sale of real estate sale as the websites provide online services allowing users to post classified advertisement and is a platform which facilitates interaction between buyers and sellers by virtue of being an online market place. The Authority held that after taking into consideration the activities of the portals they facilitate the sale of the real estate projects because they introduce the buyer and seller with each other, they provide the information of the project to the buyer, they arrange virtual tour of the project and also provide other information useful for taking an informative decision. The digital portals offer their research results. The portals also make buyers aware of the other facilities like insurers and financiers. Hence the Authority held that digital portals definitely facilitate the sale of real estate project.
- The Authority also held that definition of real estate agent does not provide that the fees/ commission should be paid by both buyer and seller. **The receipt of remuneration or fees or any other charges for his services whether as commission or otherwise is sufficient requirement of law.** The portals admittedly collect charges/ less / remuneration for **listing the real estate projects as 'sponsored'/ 'classified' advertisements from the advertisers.** The Authority also rejected the contention of digital portals that charges/ fess/ remuneration are fixed and therefore they do not depend upon fructification/ consummation of the transaction and therefore, they do not come under said category. The Authority thus held, that once any monetary gain is derived for the purpose of performing any act of the real estate agent by whichever name, it amounts to receipt of charges/ fess/ remuneration irrespective of the result, whether the transaction succeeds or fails thus the Digital Portals collect charges/ fees/ remuneration/ commission.

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- On the issue of conflict between the definitions of real estate agent and agent under RERA and Indian Contract Act, 1872, the Authority held that since RERA has defined real estate agent, it being the special law has overriding effect over the provisions of general law namely the Indian Contract Act, 1872 which defines agency. **Therefore, when the activities of any person / agency are covered by the definition of real estate agent defined by RERA, he or it can be said to be the Real Estate Agent.**
- On the issue as to whether digital portals comes under the ambit of definition of intermediary under Section 79 of Information Technology Act, 2000 (“IT Act”) and thus being intermediaries were exempted from liability arising under “third party information”. Under the IT Act, intermediaries are exempted from all liability (civil and criminal) for any third-party information, data or communication link made available or hosted by him. The purpose of this wide exemption from liability is to protect intermediaries from harassment or liability arising merely out of their activities as an intermediary. However, Section 79(2)(c) of IT Act provides that in order to ensure exemption the intermediary “observes due diligence while discharging his duties under the IT Act and also observes such other guidelines as the Central Government may prescribe in this behalf”.
- After considering the provisions of both acts i.e. RERA and IT Act, the Authority held that the object and purpose of RERA is to protect the interest of the home buyers and to bring transparency in the housing sector. It wants to bridle the unlawful and unregulated activities of the real estate brokers. IT Act was enacted in 2000 whereas RERA was enacted in 2016. The Authority then presumed that when the parliament enacted RERA in the year 2016, it was aware of the non obstante clause provided by it in Section 79 of IT Act. The Parliament has not carved out any exception to the application of the provisions of RERA. Hence, the Authority held that RERA overrides section 79 of IT Act. In this view of the matter, treating intermediaries like 99acres.com as real estate agents and requiring them to register under RERA will make them liable for third party information which will be in conflict with the legal framework of intermediaries under the IT Act. There is well settled principle of harmonious construction which provides that the statutes shall as far as possible be interpreted in a manner to avoid conflict with other statutes and the statutes shall be interpreted harmoniously. Therefore, very wide interpretation of Section 2 (zm) of RERA putting it in direct conflict with Section 79 of IT Act shall be avoided.
- Further on the issue if the portals would be required to register as real estate agent, article 14 and 19 of the Constitution of India will be violated, the Authority held that only because some portals travel beyond their role of advertising agency and caught under the definition of real estate agent their rights under Articles 14 and 19 cannot be said to be infringed. Even though the activities of the portals are spread over the entire country and it would be difficult for them to register with a particular real estate regulatory authority of a state. However, the Authority held that the portals will have to register themselves with real estate regulatory authority of a state where

their activities are going on until the registration at national level is made permissible.

Conclusion:

- Those portals which want to indulge in the activity of agent will have to discharge these functions provided under law i.e. under Section 10 of RERA namely to maintain and preserve books of account, facilitate the possession and the documents. If they do not want to discharge those functions, then it is up to them to confine their activities as advertising agency namely to give information about the real estate project for offering it for sale or inviting persons for purchasing it and not more than that.
 - That it is necessary for the digital portals to maintain self-imposed discipline for the fair practice, so that wrong information of non-listed properties is not disseminated by them which ultimately may result into prejudicing the interest of both the buyers and the promoters.
 - Thus the portals whose activities are simply confined to advertisements defined by section 2(b) of RERA, need not register themselves as real estate agents, provided in disclaimer they declare that they are simply advertising agencies and advise their viewers to cross check the information from other sources including RERA websites. Other portals which carry the function of real estate agent need registration. Such digital portals are directed to register themselves with MahaRERA within next two months, if their activities are spread within the territorial jurisdiction of it.
- ➔ *Karnataka Real Estate Authority (“KRERA” or “Authority”) has issued a circular dated 13.12.2019 directing guidelines to digital portals for advertisement of real estate projects under Section 37 of the Real Estate (Regulation and Development) Act, 2016:*

Similar to MahaRERA, KRERA has also issued guidelines for digital portals which carry the function of real estate agent and works as online intermediaries for promoting real estate projects across the state of Karnataka, in the advertisements advertised by them, they provide incorrect information about real estate projects. Thus, KRERA has directed guidelines to digital portals for advertisement of real estate projects under Section 37 of the Act. These Digital Portals to maintain self-imposed discipline for fair practice so that wrong information of non-registered projects or advertisements without indicating Karnataka RERA registration details are not disseminated by them which ultimately may result in prejudicing the interest of both the buyers and the promoters. Additionally, these digital portals require registration with the Authority within the next two months if their activities are spread within the state of Karnataka. Also, the digital portals are obligated to discharge the functions provided under Section 10 of Act namely to maintain and preserve books of accounts to facilitate the possession and the documents. Those portals which do not want to discharge these functions provided under law, then it is up to them to confine their activities as advertising agency namely to give information about the real estate project for offering it for sale or inviting person for purchasing it and not more than that.

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- **Karnataka Real Estate Authority (“KRERA” or “Authority”) has issued a circular dated 14.11.2019, directing the guidelines for releasing of advertisement in print and electronic media under Section 37 of the Real Estate (Regulation and Development) Act, 2016:**
 - While releasing advertisements of projects on Print Media, outdoor hoardings, or FM Radio and through SMS or the electronic media, the following has to be mentioned:
 - a) Advertisement of Real Estate Projects in the Print Media, on outdoor hoardings or any other visual medium to mention the Registration Number issued by this Authority in the top right corner of the advertisement, it has also prescribed the font size for the same.
 - b) Karnataka RERA website address to be mentioned for more details/information about the project.
 - c) No disclaimer clause should be mentioned stating that the information is subject to change.
 - d) The length and breadth of the “RERA Registered” information must not be less than 10% of the length and breadth (whichever is higher) of advertisement issued in print media.
 - e) However, in advertisements on FM Radio or through electronic media and SMS, the Registration Number issued by the Authority shall be prominently mentioned.
 - Also, if the Completion Certificate was applied before 11.07.2017 has been obtained, the same has to be mentioned in the advertisement.
 - KRERA registration no. to be mentioned in the display board installed at the site.
 - This direction is issued for its strict compliance by all promoters and their agents, failing to which action will be initiated under the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Karnataka Real Estate (Regulation and Development) Rules, 2017.

HIGH COURT OF GUJARAT:

- **In the matter of Narayan Realty Infrastructure (“Appellant”) v State of Gujarat (“Respondent”) the Hon’ble High Court of Gujarat quashes Appellate Authority’s penalty order:**

Facts:

1. The Appellant mentioned the website address of the Gujarat Real Estate Regulatory Authority (“**Authority**”), as required under section 11(2) of the Real Estate (Regulation and Development) Act, 2016 (“**RERA**” or **Act**”) in its prospectus, but failed to mention the same in its advertisement.
2. The Appellate Authority imposed a penalty upon the Appellant for breach of section 11(2) of the Act.

Issues:

Whether the construction and reading of Section 11(2) of the RERA Act is correctly construed by the Authority under the Act?

Observations:

- Section 11(2) of the Act, states that the advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include

the registration number obtained from the Authority and such other matters incidental hereto.

- Under Section 11(2) of the Act, by use of disjunction ‘or’ between ‘advertisement’ and ‘prospectus’, makes it is manifestly clear that it will be a sufficient compliance with the provision if the website as contemplated therein is mentioned either in the advertisement or prospectus. There is no requirement of its mentioning in both- advertisement and prospectus.
- In the present case, the Appellant mentioned the website address as required under Section 11(2) of the Act in the prospectus, but failed to mention the same in the advertisement, this in the opinion of the Court could not have exposed the Appellant to the penalty for contravention of this provision under section 61 of the Act.
- The Authority had imposed a penalty on the Appellant. Subsequently, the Appellate Tribunal lowered the penalty as imposed on it by the Authority as in it had opined that the breach was not of a serious nature. However in the opinion of the High Court, there was no breach at all of the provision of Section 11(2) of the Act. It held that the penalty was thus unnecessarily imposed.

Held:

- There was no breach and penalty was unnecessarily imposed. Thus, the High Court remanded the case back to the Appellate Authority for its reconsideration.

MAHARASHTRA REAL ESTATE AUTHORITY, MUMBAI:

- **In the matter of Techno Dirive Engineer Pvt. Ltd. (“Complainants”) Vs. Renaissance Indus Infra Pvt. Ltd. (“Respondent”), Maha RERA held that industrial units and buildings that are part of such units would not come under RERA:**

Facts:

1. The Complainants contended that they booked some units in the building of Respondents’ project, but they withdrew from the project after the Respondents failed to hand over the possession. Therefore, they claimed refund of their money with interest and compensation.
2. The Respondents raised the objection pleading that provisions of Real Estate (Regulation and Development) Act, 2016 (“**RERA**”) would not be applicable to the industrial units booked by the Complainants, leading to the dismissal of the suit.

Issue:

Whether the provisions of RERA applies to the Industrial Units situated in industrial project?

Observations:

- Maha RERA held that on perusal of that the units are described as ‘estate units’ and they are big in size. Also as mentioned in the documents, the units of the Renaissance Industrial Park (Project of the Respondent), were agreed to be purchased for setting up the industrial business of manufacturing and was permitted under the Industrial Location Policy as was defined in

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the agreement between the Complainants and Respondents. In the agreement also there was mention of various permissions obtained for setting up industrial units/project.

- The Urban Development Department of Maharashtra as well as the Maharashtra Industrial Development Corporation declared the project of the Respondents to be in an industrial area. Maha RERA also stated that the Complainant had booked the units for setting up their industrial manufacturing units and hence, the booked units are industrial units.
- Considering section 2(e) of the RERA which defines "Apartment" and subsequent provision 2(zn) of RERA which defines "Real Estate Project", Maha RERA held that industrial units do not come in the definition of Apartment as under RERA. On the other hand, the definition of "Flat" under Section 2(a-1) of Maharashtra Ownership Flats Act, 1963 encapsulates the premises to carry on an industry or business and includes "a garage, the premises forming part of a building and includes an apartment.
- After perusal of two definitions, Maha RERA held that the MOFA, is applicable to the premises used for carrying on any industry whereas the definition of the apartment does not include the industrial purpose and therefore, Maha RERA held that the industrial units are not included in the definition of apartment defined under RERA. Thus, the building consisting of the industrial units or part thereof will not amount to Real Estate Project defined by RERA.

Held:

The provisions of RERA are not applicable to the industrial units, although the building is registered as a real estate project by the Respondent, some part of it is for the godowns. Maha RERA held that since the units booked by the complainants are not covered under RERA, the question of contravention or violation of its provisions does not arise.

Litigation Brief

➤ *BCCI Vs. Kochi Rises: SC strikes down section 87 of Arbitration & Conciliation Act, 1996.*

Introduction

The Supreme Court of India through its decision in the case of [Hindustan Construction Co. Ltd. v. Union of India](#) 2019 SCC Online SC 1520 has struck down Section 87 of the Arbitration & Conciliation Act, 1996, ("Act") which was inserted by way of Section 13 of the Arbitration and Conciliation (Amendment) Act, 2019 ("2019 Act"). The Apex Court held that the newly introduced section went against both, the basic spirit and purpose of the Arbitration and Conciliation (Amendment) Act, 2015 ("2015 Act") as it was manifestly arbitrary under article 14 of the Constitution of India.

Background

The 2015 Act introduced radical changes into the Arbitration world by removing the disease of automatic stay of the award when its

enforcement was challenged under Section 34. However, the 2015 Act failed to clarify the scope of the applicability of the amended provisions, specifically, whether it would be applicable to court proceedings arising from arbitrations commencing prior to or pending on the date of enforcement i.e. 23rd October 2015.

Fortunately, this lacuna was filled by the SC in *BCCI v. Kochi Cricket Pvt. Ltd.* (2018) 6 SCC 287. ("BCCI case") wherein it held that the 2015 amendments shall be prospective in nature and would apply to the arbitration-related court proceedings that commenced on or after the 2015 Act came into force regardless of whether the connected arbitration proceedings were initiated before or after the 2015 Act.

However, the BCCI case was nullified by the 2019 amendments which inserted section 87 to the Act that stated that the 2015 Act will apply to arbitrations that commence on or after October 23, 2015, and related court proceedings. This created a situation where a large number of cases may have to be reopened and refund applications being filed for payments made pursuant to orders granting a stay on such awards. Moreover, there were a possibility that for arbitrations commenced prior to the date of enforcement in which stays were refused, the automatic stay will begin to apply.

Hence it was in this backdrop that section 87 was challenged before the Hon'ble SC.

Decision of the Supreme Court

The SC held the insertion of section 87 by overlooking the precedent set in the BCCI case to be unconstitutional on account of it being manifestly arbitrary under Article 14 of the Constitution. According to the Court, the introduction of section 87 undermined the object and purpose of the Act and the subsequent amendments which was to fast-track the arbitration process by reducing the interference of the Courts. The Court went on to further state that the very purpose of the 2015 Act was to abolish the incongruity under the 1996 Act of stay operating and the inability to go ahead with the enforcement of the award. But the introduction of section 87 turned the clocks back and resulted in the revival of a regime that caused a delay in the disposal of arbitration proceedings which was contrary to the public interest.

Conclusion

The judgment of the SC once again highlights the pro-arbitration approach of the Courts in India. By reinstating the BCCI case the SC has done away with the clog of the automatic stay which created difficulties for the parties to realize their proceeds out of the arbitral awards and fulfill the underlying objective of arbitration proceedings. It is hoped that this judgment acts as a step towards making India a global arbitration hub.

➤ *Citizenship Amendment Act, 2019*

Background

Citizenship in India is regulated through the Citizenship Act, 1955. The Act stipulates that citizenship can be acquired in India through five methods – **i)** by birth in India, **ii)** by descent, **iii)** through registration, **iv)** by naturalization (extended residence in India), and **v)** by incorporation of the territory into India. Under the Act, any foreigner who **a)** enters the

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country without valid travel documents; or **b)** enters with valid documents but stays beyond the permitted time period is termed as an illegal migrant who could be prosecuted in India, and deported or imprisoned.

The Amendment Act

The Citizenship (Amendment) Bill was introduced in the Lok Sabha on 9th December, 2019. After discussions in both the houses the Bill was passed and has now become an Act after it received the assent of the President on 12th December, 2019.

Features

The Act seeks to provide legal migrant status to the Hindu, Sikh, Parsi, Buddhist, Jain, community coming to India from Afghanistan, Bangladesh, and Pakistan on or before 31 December 2014 and who have been exempted by the Central Government or under the provisions of the Passport (Entry into India) Act, 1920, or the Foreigners Act, 1946. Further, the Act has inserted a new section 6B that gives the power to the Central government to grant a certificate of registration or certificate of naturalization to an applicant belonging to the above-mentioned communities subject to the fulfillment of the conditions mentioned in the Act or the qualifications under the provisions of the Third Schedule.

cancellation of registration. However, cancellation cannot be done without giving the cardholder an opportunity to be heard. Lastly, the Act has also relaxed clause (d) of 'Qualifications for Naturalization' under the Third Schedule of the Act for such community by reducing the period from 11 years to 6 years.

Exceptions

The Act is not applicable to tribal areas of Tripura, Mizoram, Assam, and Meghalaya as there are included in the Schedule VI of the Constitution. In addition to this, the areas falling under the Inner Limit notified under the Bengal Eastern Frontier Regulation, 1873 - i.e. Arunachal Pradesh, Mizoram and Nagaland have also been kept out of the ambit of the Act.

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The Act has also made amendments to provisions related to Overseas Citizenship of India (OCI) cardholders by adding violation of the Act or any other law as notified by the Central government as a ground for