

Highlights:**Agricultural Brief**

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- *The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Rajasthan Amendment) Act, 2020; and*
- *The Essential Commodities (Special Provisions and Rajasthan Amendment) Act, 2020.*

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- *Extension of LLP Settlement Scheme, 2020 by Ministry of Corporate Affairs;*
- *Public Notice issued by Ministry of Information and Broadcasting regarding compliance of FDI policy of Government of India with regard to the entities involved in uploading/ streaming of news and current affairs through digital media;*
- *Operational Guidelines for Emergency Credit Line Guarantee Scheme updated on 26.11.2020; and*
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- *Kerala RERA's Order regarding registration of real estate projects and advertisements of projects;*
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Litigation Brief

- *Mines and Minerals (Development and Regulation) Act: No bar under Section 22 of Mines and Minerals Act for registration of FIR by the Magistrate under Section 156(3) of Cr.P.C.*

Agricultural Brief

➤ **The Farmers' Produce Trade and Commerce (Promotion and Facilitation) (Rajasthan Amendment) Act, 2020**

- The Farmers' Produce Trade and Commerce (Promotion and Facilitation) (Rajasthan Amendment) Act, 2020 was passed by the State Legislature of Rajasthan on 02.11.2020.
- Key features of the enactment are:

- It goes against the legislation passed by the Central Government and restores the provisions mentioned in the Rajasthan Agriculture Produce Markets Act, 1961. Thereby allowing levy of market fee on trade of agriculture produce outside Agriculture Produce Market Committee ("APMC").
- State Government is empowered to notify a fee to be levied on electronic trading platforms or private traders. Fee will go towards the fund for the welfare and promotion of farmers or any other purposes related to agriculture.
- It even lays down that no punitive action will be taken against any person violating the provisions mentioned in the Central Legislation.
- It even provides for punishment for harassing the farmers. A person can be imprisoned for a term not less than three years which may go upto seven years and fine.
- Jurisdiction of civil court will be in accordance with the provisions of Rajasthan Agriculture Produce Markets Act, 1961 and rules made there under.

➤ **The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Rajasthan Amendment) Act, 2020**

- The Farmers' (Empowerment and Protection) Agreement on Price Assurance and Farm Services (Rajasthan Amendment) Act, 2020 was passed by the State Legislature of Rajasthan on 02.11.2020.
- Key features of the enactment are:
 - It mentions that cess/fee shall be levied on farm produce cultivated through a farming agreement. Cess/fee shall be compulsorily be payable by the sponsor and the cess/fee collected shall be used for the welfare of farmers and development of market infrastructure.
 - It even lays down that sale or purchase of produce under a farming agreement shall only be allowed at the minimum support price declared by the central government or above it.

- It states that all the disputes arising under a farming agreement shall be resolved by the Market Committee and all appeals shall be made to the Director of Agriculture Marketing.
- All the decisions of Market Committee and Director of Agriculture Marketing shall have the same force as that of a decree of a civil court and fines shall be collected as arrears of land revenue.
- State government is authorised to impose stock limit on any agriculture produce if the prices have gone beyond 25% of the maximum support price prevalent in the market within 2 years immediately before passing order or if it is facing shortage in the state.
- It lays down that it should be the duty of sponsor to remove the manpower from the farm/ field after the termination of the farm agreement. It also imposes a liability on the sponsor to pay damages to the farmer as notified by the state government. Damages shall not be less than Rs. 1,000 per bigha per day.

➤ **The Essential Commodities (Special Provisions and Rajasthan Amendment) Act, 2020**

- The Essential Commodities (Special Provisions and Rajasthan Amendment) Act, 2020 was passed by the State Legislature of Rajasthan on 02.11.2020.
- Key features of the enactment are:
 - State government is empowered to pass orders relating to regulation or prohibition of production, supply, distribution and impose stock limit under extraordinary circumstances, which may include famine, price rise, natural calamity or any other situation.
 - State Government empowered to make rules for enforcing the provisions of this Act.

Corporate Brief

➤ **SEBI issues guidelines in regard to creation of Security in issuance of listed debt security and due diligence by debenture trustee(s)**

- SEBI had previously amended the SEBI (Issue and Listing of Debt Securities) Regulations, 2008. In furtherance of this

amendment, it has now issued guidelines in this regard vide its circular dated 03.11.2020. As under:

1. Creation of Security:

- Issuer has to provide certain information to debenture trustee ("DT") at the time of entering into Debenture Trustee Agreement and enable him to exercise his power to conduct due diligence in regard to issuance of security.
- It lays down a list pertaining to information that must be provided to DT.

2. Due Diligence:

- It is the duty of DT to independently conduct due diligence in regard to the security and assess whether such creation of security is adequate for the proposed issue or not.
- DT is also required to issue due diligence certificate as per the format mentioned in the circular.
- DT is required to maintain all documents and records in regard to due diligence for a minimum period of 5 (Five) years.
- DT is required to verify all the necessary filings made on websites of ministry of Corporate Affairs, stock exchanges(s), CIBIL, etc.

3. Disclosures in Offer Document ("OD")/ Private Placement Memorandum ("PPM")/ Information Memorandum ("IM")

- Process of due diligence carried out by DT;
- Due Diligence Certificate;
- Terms and conditions of Debenture Trustee Agreement;
- Details of security created; and
- Debt securities will only be considered as secured only if the charged asset is registered with Sub-Registrar of Assurance and Registrar of Companies, etc. or is independently verified by DT.

4. Creation and Registration of Charge:

- Charge as mentioned in OD or PPM or IM shall be in favour of DT and Issuer shall execute a trust

deed with DT before an application for listing is made.

- Stock exchange shall only list the debt security after received due diligence certificate from DT in prescribed form.
- Charge shall be registered with the relevant authorities within 30 days of creation of charge.

⇒ **RBI issued a circular in regard to establishment of branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India by foreign law firms**

RBI vide its circular dated 23.11.2020 has made it clear that Hon'ble Supreme Court has held that only advocates enrolled under the Advocates Act, 1961 are only entitled to practice law in India. Foreign law firms/ companies or foreign lawyer cannot practice in India or any other person resident outside India are not permitted to establish branch Office (BO)/ Liaison Office (LO)/ Project Office (PO) or any other place of business in India. AD Category- I Banks are directed not to grant any approval to any branch office, project office, liaison office or any other place of business in India under FEMA for the purpose of practicing legal profession in India.

⇒ **Extension of LLP Settlement Scheme, 2020 by Ministry of Corporate Affairs**

Ministry of Corporate Affairs vide its circular dated 09.11.2020 has extended the LLP Scheme of 2020 from 30.11.2020 to 31.12.2020.

⇒ **Public Notice issued by Ministry of Information and Broadcasting regarding compliance of FDI policy of Government of India with regard to the entities involved in uploading/ streaming of news and current affairs through digital media**

- Ministry of Information and Broadcasting issued a public notice on 16.11.2020 instructing all eligible entities dealing with uploading/ streaming of news and current affairs through digital media to comply with the decision of Union Government dated 18.09.2019.
- All entities that have foreign investment below 26% have to furnish an intimation to the Ministry of Information and Broadcasting within one month from 16.11.2020 giving information about the company/ entity, shareholding pattern along with name and address of its directors/

shareholders, the name and address of promoters/ significant beneficial owners.

- Notice also requires entities exceeding 26% limit to provide same information as stated above and take necessary steps to bring down the foreign investment limit below 26%.
- All entities aiming at bringing fresh investments need prior approval of Central Government.

⇒ **Operational Guidelines for Emergency Credit Line Guarantee Scheme updated on 26.11.2020**

- Government has now extended the Emergency Credit Line Guarantee Scheme to the health sector and 26 other sectors.
- Some of the sectors identified under the scheme are power, construction, real estate, textiles, pharmaceuticals, logistics, cement, auto components and hotel, restaurants and tourism.
- New updated scheme provides incentive to Member Lending Institutions. This will enable more funding to eligible borrowers, MSMEs/ business enterprises and identifies sectors that are supporting MSMEs, this will lead to revival of economy.

⇒ **Standard Operating Procedure (SOP) for processing FDI Proposals**

- Government has issued fresh SOP for processing FDI Proposals on 09.11.2020.
- The main aim for bringing fresh SOPs was to smoothen the process of investment.
- Commerce and Industry ministry has advised administrative ministries to get the FDI proposals cleared from identified group of persons within the ministry.
- SOPs also provide that in order to prevent pendency of FDI proposals, competent authorities will hold regular monthly review on pending proposals and decide on disposal within time bound manner.
- FDI approvals requiring approval of government can be filed online through Foreign Investment Facilitation Portal (FIFP).
- A list of competent authorities for approval and rejection of foreign investment in various sectors is provided in the SOPs.

- It is the duty of the Department for promotion of industry and internal trade that once an application is filed online it shall forward it to the concerned administrative department/ ministry within 2 (two) days for processing and disposal of the case.
- It also provides for time limits for disposal of applications.
- SOPs lays down the procedure for processing of applications seeking approval for foreign investment. After receiving a proposal, the Department for promotion of industry and internal trade shall circulate the same online within 2 (two) days to Reserve Bank of India for their comments. Those proposals that require security clearance would additionally be referred to ministry of Home Affairs for their comments.
- Few proposals require approval from Ministry of Home Affairs. Such as:
 - i. Investment in Broadcasting, Telecommunication, Satellites establishment and operation, Private Security Agencies, Defence, Civil Aviation and Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities; and
 - ii. Applications arising out of Press Note 3 of 2020 dated 17.04.2020 read with Foreign Exchange Management (Non-Debt Instruments) Amendment Rules, 2020 dated 22.04.2020.
- Ministry/ Department whose comments are required on the proposal shall upload the same on the portal within 4 weeks of receiving the proposal online.
- Where a competent authority rejects the proposal or where conditions for approval are stipulated in addition to the conditions laid down in the FDI policy or sectoral laws/regulations, concurrence of Department for promotion of industry and internal trade shall compulsorily be made within 10 (ten) weeks/ 12 (twelve) weeks (in case of comments from Ministry of Home Affairs) from the date of receipt of proposal.
- Time limits mentioned in the SOPs exclude the time taken by the applicants in removing deficiencies in the proposals/

supplying additional information that maybe required by the competent authority.

RERA Brief

➔ KERALA

Vide Order No. K-RERA/T3/102/2020, dated 18.11.2020, Kerala Real Estate Regulatory Authority ("**Authority**"):

The Authority under this order had provided further clarification in respect of the following:

A. Registration of Real Estate Projects for which Occupancy Certificate and/or Development Certificate have already been issued:

Vide Order K.RERA/T3/102/2020 dated 17.09.2020, it was clarified that all ongoing real estate projects in Kerala which had obtained occupancy certificate on or after 01.01.2020, were required to be registered with the Authority. In case of all ongoing plot subdivision/villa projects, it was clarified that such projects which had not obtained Development Certificate and Occupancy Certificate (as per requirement) prior to 01.01.2020 were required to be registered with the Authority.

In pursuance to the above, as observed by the Authority, certain promoters of such ongoing projects had submitted their application for registration of project along with occupancy certificate however, the details pertaining to separate bank account as required under Section 4(2)(I)(D) (*Application for registration of projects*) of Real Estate (Regulation & Development) Act, 2016 ("**RERA**") were not submitted by the applicant promoters. Such promoters claimed that there was no requirement of opening separate bank account for their projects as such account were opened for ensuring that amounts received from allottees were used for the particular project. However, it was observed by the Authority that the work in the project of such promoters had been completed and occupancy certificate and/or development certificate had been issued by competent authorities.

On examination the above matter, it was clarified by the Authority under this order that applicant promoter of such project shall:

- i) specify and quote "Not Applicable" against item no. 40 to 46 under Application Form A1 in relation to the details of separate bank account;
- ii) submit/resubmit Declaration cum Affidavit under Form B of Kerala Real Estate (Regulation and Development) Rules, 2018 for such project with replacing entries in item no. 4, 5 and 6 with the following description:

"Occupancy Certificate/Development Certificate] for the project has already been issued by LSGI concerned and the real estate project is already completed in all respects as offered and committed to the allottees and hence there is no need to open separate account as provided under section 4(2)(l)(D) of Real Estate (Regulation and Development) Act, 2016 (*strike out whichever is not applicable)";*
- iii) enclose copy of Occupancy Certificate and/or Development Certificate duly executed by promoter/authorized signatory;
- iv) not be required to enclose following documents along with application for registration under Form A1:
 - o Enclosure as per item no. 83
 - o Certificate from Bank under Form No. 1 of Kerala Real Estate Regulatory Authority (General) Regulations, 2020.

B. Advertisements/Prospectus of Real Estate Projects:

As per requirement under Section 11(2) (*Functions and Duties of Promoter*) of RERA, the promoter issuing or publishing advertisement/prospectus for any real estate project shall prominently mention the registration number issued by the Authority in respect of the said project. In case of non-compliance of the said provision, such promoter shall be liable to be

penalized in accordance with Section 61 (*Penalty for contravention of other provision of the act*) of RERA.

It was observed by the Authority that some promoters were displaying advertisements without project registration number and were quoting words such as "RERA Approved" or "RERA Registered" in their advertisements/prospectus.

In consideration with the above matter, it was decided that:

- i) All promoters shall ensure that the advertisement/prospectus of their projects published in physical and electronic form shall prominently mention project registration number issued by the Authority in the format of "**K-RERA Registration Number: K-RERA/PRJ/.../...**". The term "RERA Approved" should not be mentioned anywhere in their advertisement/prospectus.
- ii) In case the promoter has completed the project and occupancy certificate and/or development certificate has been obtained before 01.01.2020 however, the said project has not been registered with the Authority, in such a scenario the promoter shall ensure that advertisement/prospectus for such projects (not required to be registered under RERA) published in physical and electronic form shall prominently mention that "**K-RERA Registration is not required-Occupancy Certificate received before 01.01.2020**".

➔ **MADHYA PRADESH**

Vide Order No. 6354/RERA/2020, dated 03.11.2020, Madhya Pradesh Real Estate Regulatory Authority ("**Authority**"):

It was decided that:

The due date for submission of Quarterly Performance Report (QPR) for September 2020 with Authority for ongoing projects which was originally due on 31.10.2020 had been extended up to 30.11.2020 as due to COVID-19, Chartered Accountant's (CAs) of builder/promoter were facing shortage in relation to the availability of their staff. In consideration with this reason, the Authority had decided to extend the due date for submission of the said QPR and further ordered the CAs of such builder/promoter that no further extensions on due date will be granted post 30.11.2020.

➤ HIMACHAL PRADESH

Vide Gazette Notification No. HSG-A (3)-6/2020 dated 25.11.2020 issued by Government of Himachal Pradesh

In accordance with the powers conferred under Section 84 (*Power of Appropriate Government to make rules*) of RERA, Government of Himachal Pradesh had introduced amendment in Rule 22 (*Recovery of interest, penalty and compensation*) of Himachal Pradesh Real Estate (Regulation and Development) Rules, 2017 ("**2017 Rules**") under the Himachal Pradesh Real Estate (Regulation and Development) Amendment Rules, 2020 ("**Amendment Rules**"). The Amendment Rules shall be in force from the date of the notification published in the official gazette. Following amendment had been introduced by the State Government under the Amendment Rules:

- Every order, direction or decision of the Adjudicating Officer/Authority/Appellate Authority as the case may be, under RERA shall have the effect as that of a decree, order, direction or decision passed by a Civil Court. The Adjudicating Officer/ Authority/ Appellate Authority shall also have the power to transfer the order/ direction/ decision passed by them under this rule to the Civil Court for execution of order/decision/direction in the jurisdiction at which the real estate project is situated/jurisdiction of the defaulting party, in case of failure of execution of said order/direction/decision passed by the Adjudicating Officer/Authority/Appellate Authority by the defaulting party.

➤ MAHRASHTRA

Vide Order dated 24.11.2020, Maharashtra Real Estate Regulation Authority (MahaRERA) ("**Authority**"):

With the increase in pending disposal of applications filed by the aggrieved party on the ground of non-compliance of the orders passed by the Authority and Adjudicating Officer in respective matters by the defaulting party, so as to undertake quick disposal of such applications, the Authority under the powers conferred to it in Section 81 of RERA, decided to delegate powers under Section 40(1) of RERA to the Secretary of Maha RERA who will also be empowered to deal with non-compliance applications filed by the aggrieved party in accordance with law. Such delegation was undertaken by the Authority to facilitate quick disposal of such non-compliance applications.

Litigation Brief

➤ **Mines and Minerals (Development and Regulation) Act: No bar under Section 22 of Mines and Minerals Act for registration of FIR by the Magistrate under Section 156(3) of Cr.P.C.**

IN THE MATTER OF: Jayant vs. State of Madhya Pradesh (Decided by Hon'ble Supreme Court of India on 03.12.2020)

Issues:

1. Whether the Learned Magistrate can exercise its power under Section 156(3) of the Code of Criminal Procedure ("**Cr.P.C.**") to order the registering of FIR for offence under Mines and Minerals (Development and Regulation) Act, 1957 ("**MMDR ACT**")?
2. When and at what stage can the Magistrate be said to have taken cognizance attracting the bar under Section 22 of the MMDR Act?
3. Whether there can be further proceedings under provisions of Indian Penal Code ("**IPC**") against the violators if pursuant to the compounding of the violation earlier, the violators have duly deposited the amount of penalty in terms of MMDR Act or Rules therein?

Facts:

1. On an inspection, the respective Mining Inspectors found that the private appellants were indulged in illegal mining/transportation of minor mineral. The mining Inspectors prepared their respective cases under Rule 53 of the Madhya Pradesh Minor Mineral Rules, 1996 ('1996 Rules') and submitted them before the Mining Officers with a proposal of compounding the same for the amount calculated according to the concerned 1996 Rules. The concerned Mining Officers submitted those cases before the Collector, who approved the proposal. The violators accepted the decision and deposited the amounts determined by the Collector for compounding the cases.
2. After some time, a news was published in a daily newspaper with respect to illegal excavation/transportation of mineral sand from Chambal, Shivna and Retam and other Tributary rivers flow from District Mandsuar and in surrounding places. It was revealed that due to illegal mining, storage and transportation of the minerals, carried out at large scale without payment of royalty, revenue loss is occurring. It was also reported that despite the offences under Sections 379 and 414 of IPC and the offences under the MMDR Act and the 2006 Rules were found attracted, necessary legal action has not been taken and the violators were permitted to go on compounding the offence under Rule 53 of the 1996 Rules.
3. The learned Judicial Magistrate, First Class, Mandsuar took note of the aforesaid information and having taken note of the decision of this Court in the case of State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772, the learned Magistrate in exercise of powers conferred under Section 156(3), Cr.P.C. (suo motu) directed to register criminal case under Section 156(3) Cr.P.C. for initiation of investigation and for submitting of report after due investigation is conducted. The learned Magistrate also directed the concerned Incharge/SHOs of the concerned police stations to register the first information report (FIR) and a copy of the same be sent to the learned Magistrate as per the provisions of Section 157, Cr.P.C. Pursuant to the above order, the In-charge/SHOs of the concerned police stations lodged separate FIRs for the aforesaid offences for illegal mining/transportation of sand.
4. The private appellants and others approached the High Court of Madhya Pradesh at Indore, to quash the aforesaid FIRs registered against them for illegal

mining/transportation of sand by submitting the applications under Section 482, Cr.P.C. It was mainly contended by the violators that in view of Bar under Section 22 of the MMDR Act, the order passed by the learned Magistrate directing to register the FIRs is unsustainable and deserves to be quashed and set aside. It was also contended that once there was compounding of offence in exercise of powers under Rule 53 of the 1996 Rules and the violators paid the amount determined by permitting them to compound the offence, thereafter the Magistrate was not justified in directing to initiate fresh proceedings.

5. By common judgment and order, the High Court of Madhya Pradesh at Indore, dismissed all the aforesaid applications filed under Section 482 of Cr.P.C. relying upon the decision of this Court in the case of Sanjay (supra). Aggrieved with the common judgment and order passed by the High Court in refusing to quash the FIRs filed against the private appellants and other violators, the present appeal has been preferred.

Court's Observations:

- The Counsel for Appellants submitted that on a plain reading of Section 22, cognizance of the offence can be taken by the Magistrate only if there is a written complaint in that regard by the Mining Officer/Authorised officer. In the present case, admittedly, there is no written complaint made by the Mining Officer/authorised officer therefore the Magistrate cannot have taken cognizance. The Counsel for the Appellant further stated that the MMDR Act does not contemplate the taking of suo motu cognizance by the Magistrate and the Magistrate does not have jurisdiction under the MMDR Act to direct the Mining Officer/police officer in-charge to register FIR under the penal provisions of the MMDR Act.
- The Court noted that the learned Magistrate can in exercise of powers under Section 156(3) of the Cr.P.C. to order/direct the concerned Incharge/SHO of the police station to lodge/register crime case/FIR even for the offences under the MMDR Act and the Rules made thereunder and at this stage the bar under Section 22 of the MMDR Act shall not be attracted.
- The Court observed the learned Magistrate in exercise of the suo motu powers conferred under Section 156(3), Cr.P.C. directed the concerned In-charge/SHO of the police station to lodge/register the criminal case/FIR and directed initiation of investigation and directed the concerned In-charge/SHO of the police station to submit a report after

due investigation. Applying the law laid down by this Court in the various cases, it cannot be said that at this stage the learned Magistrate had taken any cognizance of the alleged offences attracting bar under Section 22 of the MMDR Act. On considering the relevant provisions of the MMDR Act and the Rules made thereunder, it cannot be said that there is a bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173, Cr.P.C. Replying on Anil Kumar vs. M.K. Aiyappa, 'when a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage'. The Court further relied on the case of A.R. Antulay vs. Ramdas Srinivas Nayak, where it was observed that filing of a complaint in court is not taking cognizance. Therefore, when an order is passed by the Magistrate for investigation to be made by the police under Section 156(3) of the Code, the police is obliged to investigate the case and submit a report under Section 173(2) of the Code. Thereafter the investigating officer is required to send report to the authorised officer and thereafter as envisaged under Section 22 of the MMDR Act the authorised officer as mentioned in Section 22 of the MMDR Act may file the complaint before the learned Magistrate along with the report submitted by the investigating officer and at that stage the question with respect to taking cognizance by the learned Magistrate would arise.

- The Court further noted that in a case where the violator is permitted to compound the offences on payment of penalty as per sub-section (1) of Section 23A, considering

sub-section (2) of Section 23A of the MMDR Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the MMDR Act or any rule made thereunder so compounded. However, the bar under sub-section (2) of Section 23A shall not affect any proceedings for the offences under the IPC, such as, Sections 379 and 414 IPC and the same shall be proceeded with further.

- The Court also held that for commission of the offence under the IPC, on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMDR Act and Rules made thereunder.

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