

Highlights

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Corporate Brief

➔ Action Plan on Startup India announced

Government of India has announced the Action Plan on Startup India, a flagship initiative intended to build a strong ecosystem for nurturing innovation and startups in the country. Highlights of the Action Plan on Startup India are: (a) Definition of Startup: Startup is defined, only for the purpose of government schemes, as an entity, incorporated or registered in India not prior to five years, with annual turnover not exceeding INR 25 crore in any preceding financial year, working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property. Such startup will be eligible for tax benefits only after it has obtained certification from the Inter Ministerial Board, setup for such purpose. (b) Compliance regime of Startups: To reduce regulatory burden on Startups and to keep compliance cost low, simplifications in the regulatory regime are proposed under which Startups will be allowed to self-certify compliance, through Startup mobile app, with nine labour laws and environment laws. (c) Startup India Hub: To create a single point of contact for the entire Startup ecosystem and enable knowledge exchange and access to funding, Startup India Hub will be launched which will assist Startups through their lifecycle with specific focus on important aspects like obtaining financing, feasibility testing, business structuring advisory, marketing skills, technology commercialization and management evaluation. (d) Fast-tracking patent examination: Patent application of Startups will be fast-tracked for examination and disposal. A panel of facilitators will be set up to provide general advisory on different IPRs and also provide assistance on filing and disposal of IP applications and the central government will bear the entire fees of the facilitators. (e) Funding Support and Incentives: Government will set up a fund in the nature of Funds of Funds to provide funding support for development and growth of Startups. Profits of Startup will be exempted from income tax for a period of 3 years.

➔ MCA issues FAQs with regard to CSR

MCA has issued a set of FAQs for facilitating effective implementation of Corporate Social Responsibilities ('CSR'). Highlights of the clarifications made by MCA on FAQs are: (a) The amount spent by a company towards CSR cannot be claimed as business expenditure. (b) No specific tax exemptions have been extended to CSR expenditure per se. (c) Holding or subsidiary of a company does not have to comply with section 135(1) of the Companies Act, 2013 unless the holding or subsidiary itself fulfills the criteria. (d) No specific exemption is given to section 8 companies with regard to applicability of section 135, hence section 8 companies are required to follow CSR provisions. (e) Contribution to corpus of a trust/ society/section 8 companies etc. will qualify as CSR expenditure as long as the trust/society/section 8 company etc. is created exclusively for undertaking CSR activities or where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Companies Act, 2013. [See MCA General Circular No. 01/2016 dated January 12, 2016, http://mca.gov.in/Ministry/pdf/FAQ_CSR.pdf]

➔ MCA amends Companies Incorporation Rules

MCA has amended the Companies (Incorporation) Rules, 2014. Highlights of the amendments are: (a) The following names which were earlier considered to be undesirable for incorporation of a company under the Companies Act, 2013 are now allowed to be applied: (i) name which is not in consonance with the principal objects of the company as set out on the memorandum of association; (ii) name which is vague or an abbreviated name; and (iii) name which is intended or likely to produce a misleading impression regarding the scope or scale of its activities which would be beyond the resources at its disposal. (b) The requirement to change name of a company if the company has changed its activities which are not reflected in its name has been omitted. (c) The requirement to furnish no-objection of person whose name is used as a key word in the name proposed for a company has been omitted. (d) Three opportunities, instead of two, shall be given to resubmit the documents for reservation of name of the company, to remove the defects and deficiencies in the documents. (e) Form No. INC-1, i.e. e-form for filing application for reservation of name, has been revised. [See MCA Notification F.No. 1/13/2013 CL-V-part II dated January 22nd, 2016]

➔ Central Registration Centre established

Government of India has established a Central Registration Centre (CRC) having territorial jurisdiction all over India for discharging or carrying out the function of processing and

disposal of applications for reservation of names under the provisions of the Companies Act, 2013. CRC shall be responsible to process the application for reservation of names of companies, i.e. e-form no. INC-1. CRC shall function under the administrative control of Registrar of Companies, Delhi. [MCA Notification F.No. A-42011/03/2016-Ad. II dated January 22, 2016]

➔ **MCA issues the Investors Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016**

MCA has issued the Investors Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016 for establishment of Investors Education and Protection Fund ('IEPF') Authority under section 125 of the Companies Act, 2013. Functions of the IEPF Authority *inter alia* include the following: (a) To maintain funds and invest the same in interest bearing account of any nationalized bank; (b) To open depository account of authority and transfer into account securities of investor and transfer to investors account securities upon settlement of the claim; (c) To make refunds to eligible investors and to distribute disgorged amount as per the order of the court; (d) To initiate legal cases against non-compliant companies or persons and to handle disputes and legal cases arising out of claims or settlement or any other disputes; (e) To register associations or institutions or professional bodies or chambers of commerce and industry or other organizations engaged in investor education and protection activities, sanction them grants for seminars, programmes, projects or activities in the field of corporate governance and monitor the utilization. [See MCA Notification F.No. 05/27/2013-IEPF dated January 13, 2016]

➔ **MCA clarifies on eligibility to become partner/designated partner of LLP**

MCA has clarified that HUF or Karta cannot become partner or designated partner in Limited Liability Partnerships (LLPs) and only an individual or body corporate may be a partner or designated partner in LLP. [See MCA General Circular No. 2/2016 dated January 15th, 2016]

➔ **FSSAI notifies Food Safety and Standards (Import) Regulations**

FSSAI has notified the Food Safety and Standards (Import) Regulations, 2016. Highlights of the regulations are: (a) Import of goods without an import license from the Central Licensing Authority shall not be allowed. Food article shall not be allowed to be cleared from the custom unless it has 60% shelf life at the time of its clearance from the customs. (b) In addition to the FBO license for import of food, the food importer shall also register himself with DGFT and possess valid Import-Export Code. (c) Licensing Authority shall be authorized to cancel the Food

Import license granted under the applicable regulations, if it has reason to believe that the food importer has attempted to import unsafe food, prohibited food or food from prohibited sources or the food importer did not comply with the conditions of the license. (d) Importer will be allowed to affix a non detachable sticker to rectify the labeling error related to the name and address of the importer, FSSAI and license number and non-veg/veg logo. [See FSSAI Notification F.No. 1/2008/Import Safety/FSSAI dated January 14th, 2016]

➔ **CCI amends 'Procedure in regard to the transaction of business relating to combinations' Rules**

CCI has amended the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. Highlights of the amendments are: (a) In sub regulation 2A, a new proviso has been inserted which provided that the CCI may give an opportunity of being heard to the parties to the combination in accordance with regulation 24 of these regulations before deciding to invalidate a notice (b) As per Clause 1 of Schedule 1 of the Regulations, acquisition of shares or voting rights solely as an investment or in the ordinary course of business, upto twenty five percent, are exempt from the filing requirements under Section 6(2) of the Competition Act, 2002, subject to certain conditions. The amendment has added an explanation that the acquisition of less than ten percent of the total shares or voting rights of an enterprise shall be treated as 'solely as an investment'. This shall be subject to the following conditions: (i) the acquirer shall not be a member of the board of directors of the enterprise whose share/voting rights are being acquired, and (ii) the acquirer do not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired. (c) As per Clause 1A of Schedule 1 of the Regulations acquirer are exempt from filing requirement under Section 6(2) of the Competition Act, 2002 where such acquirer holds 25% or more shares and acquires not more than 5% additional shares in a financial year until a post acquisition of 50%. The amendment has omitted the words "not resulting in gross acquisition of more than five percent (5%) of the shares or voting rights of such enterprise in a financial year."

➔ **SEBI streamlines the process of public issue of equity shares and convertibles**

SEBI has issued clarification circular on streamlining the process of public issue of equity shares and convertibles. Highlights of the circular are: (a) Stock Exchange may validate the electronic bid details with depository's records for DP ID, Client ID, PAN and bring the inconsistencies to the notice of intermediaries concerned for rectification and re-submission. (b) Syndicate members, registered brokers of stock exchanges, depository participants, registers to an issue and share transfer

agents registered with SEBI may also forward the physical application forms received by them on day to day basis during the bidding period to designated branches of the respective self certified syndicate banks for blocking of funds. Such applications should be value of not more than Rupees 2 lakhs. (c) Working days shall be all trading days of stock exchanges excluding Sundays and bank holidays. [See SEBI circular No. SEBI/HO/CFD/DIL/CIR/P/2016/26 dated January 21, 2016]

➔ **Government of National Capital Territory of Delhi clarifies on registration and filing of return by dealers engaged in e-commerce**

Department of Trade and Taxes, Government of National Capital Territory of Delhi has issued clarification with respect to filing of return by the persons engaged in providing facility of electronic shopping ('ecommerce') through their web portals. The department has clarified that only the persons who are providing these e-portals/websites to other dealers for passing on the orders from customers to the dealers / other vendors are required to enroll and file the returns. [See Department of Trade and Taxes, Government of National Capital Territory of Delhi, Circular No. 33 of 2015-16 dated December 29, 2015]

Litigation Brief

➔ **Essar Oil Limited v. Hindustan Shipyard Limited and Ors., (2015) 10 SCC 642**

In the instant case, Oil and Natural Gas Commission (ONGC) contracted certain works to Hindustan Shipyard Ltd. (HSL) which were to be carried out at various stations in the coastal areas. Essar Oil Ltd. (EOL) was engaged for the completion of the work as the contract allowed HSL to engage a sub-contractor to complete the work. Subsequently, disputes arose between HSL and EOL due to non-payment for the work done, which were referred to Arbitration. It is pertinent to note that ONGC was not a party to this Arbitration.

The Arbitral Tribunal passed an award wherein the majority view was that: (i) as there was no privity of contract between ONGC and EOL; (ii) ONGC could not be held liable for making payments; and (iii) the liability was that of HSL. On the other hand, the minority view was that there was a contract between EOL and ONGC and therefore, appropriate legal action was to be taken against ONGC for recovery of the amount due. HSL challenged the Arbitral award under Section 34 of the Arbitration and Conciliation Act and the District Court confirmed the majority view in the award.

This was further heard in an appeal in the High Court, wherein the Arbitral Award and District Court's Order were set aside for the reason that ONGC ought to have been made a party

to the Arbitration as there existed a tripartite agreement among ONGC, HSL and EOL and as ONGC wasn't made a party, the award was bad in law.

The High Court's Order was challenged before the Supreme Court. The issue before the Supreme Court was the determination of the person who was to be made liable for the payments. The Court observed that the fact that ONGC made some direct payments to EOL was only due to HSL's financial difficulties and to ensure that the work was completed on time and without any hassels. It was further observed that ONGC was paying on behalf of HSL as the payments were made only upon HSL's certification of the work. This was further established by the fact that ONGC showed such direct payments as debited to HSL's accounts. Thus, the Supreme Court held that merely making of payments would not constitute a contract between ONGC and EOL.

The Supreme Court concluded by agreeing with the majority opinion of the Tribunal and held that ONGC could not be held liable, as there was no privity of contract between ONGC and EOL. HSL had sub-contracted the work to EOL and therefore HSL was liable to make the payments.



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