

Highlights**Corporate Brief**

- MCA notifies Section 1 and 4 of Companies Amendment Act, 2017
- FDI policy liberalized in key sectors
- Master Directions on Foreign Investments in India
- Online Registration for Stock Exchanges and Depositories
- RBI to issue new Rs. 10 note in chocolate brown colour
- Condonation of Delay Scheme, 2018 issued by MCA
- IRDAI issues draft regulation of Insurance Regulatory and Development Authority of India (Minimum Information for Inspection or Investigation) Regulations, 2018

GST Brief

- Recommendations made on GST rate changes on services by 25th GST Council Meeting

RERA Brief

- MahaRERA Conciliation & Dispute Resolution Forum

Litigation Brief

- Kandla Export Corporation and Another Vs. M/s OCI Corporation and Another

iv) FIIs (“**Foreign Institutional Investor**”) /FPIs (“**Foreign Portfolio Investor**”) are allowed to invest in Power Exchange’s through the secondary market and primary market. Earlier 49% FDI was allowed under automatic route in Power Exchanges registered under the Central Electricity Regulatory Commission (Power Market) Regulations, 2010. Though, FII / FPI purchases were restricted to secondary market only; (v) the definition of ‘medical devices’ has been amended and shall not be subject to amendments in Drugs and Cosmetics Act; (vi) the applications involving investments from countries of concern in automatic route sectors, would be processed by Department of Industrial Policy & Promotion (“**DIPP**”) and cases pertaining to Government approval, and cases falling under the government approval route, requiring security clearance with respect to Countries of Concern, will be continued to be processed by concerned Administrative Department/Ministry.

➔ **Master Directions on Foreign Investment in India**

RBI had revised the regulations on foreign investments in India and repealed the Foreign Exchange Management (Transfer or Issue of security by a person resident outside India) Regulations, 2000 with Foreign Exchange Management (Transfer or Issue of security by a person resident outside India) Regulations, 2017. Consequent to the rationalization, the Master Directions on ‘Foreign Investments in India’ (hereinafter referred to as “**Master Directions**”) consolidating all instructions relevant to foreign investment has been issued. The Master Directions, inter alia, list out prohibited sectors/ persons, entry routes and permitted sectors, permitted investments by persons resident outside India, mode of payment, pricing guidelines, downstream investment, taxes and remittance of sale proceeds etc. The Master Directions comprises of ten annexures containing directions on the following: (i) purchase/ sale of capital instruments of an Indian company; (ii) purchase/ sale of capital instruments of a listed Indian company on a recognized stock exchange in India by Foreign Portfolio investors; (iii) purchase/ sale of capital instruments of listed company on a recognized stock exchange in India by Non Resident India or Overseas Citizen of India on repatriation basis; (iv) investment on non- repatriation basis; (v) purchase or sale of securities other than capital instruments by a person resident outside India; (vi) investment in a limited liability partnership; (vii) investment by a foreign venture capital investor; (viii) investment by a person resident outside India in an investment vehicle; (ix) investment in depository receipts by a person outside India; and (x) issue of Indian depository receipts. [See Master Direction No. 11/2017-2018 dated 4th January 2018]

➔ **Online Registration for Stock Exchanges and Depositories**

Corporate Brief

➔ **MCA notifies Section 1 and 4 of Companies Amendment Act, 2017**

Parliament passed the Companies Amendment Act, 2017 (hereinafter referred to as the “**the Amendment Act**”). The Amendment Act received President of India’s assent and was published in Official Gazette on 3rd January 2018.

The amendments made under the Amendment Act are over 100 which will come into force on dates as notified by Central Government. As of now, only Section 1 and Section 4 of the Amendment Act have been notified. Section 4(5) states the period of reservation of the name of the proposed company from 60 to 20 days from the date of approval. However, in case of change of name or reservation of name of an existing company, the reservation of name by the registrar may be for 60 days from the date of approval. [See MCA File No. 1/1/2018. CL.I dated 23rd January 2018]

➔ **FDI policy liberalized in key sectors**

Government of India has approved key amendments in FDI policy. The major amendments, inter-alia, include: (i) no government approval for FDI in single brand retail trading; (ii) allowing foreign airlines to invest up to 49% under Air India subject to: (a) foreign investment(s) in Air India including that of foreign airline(s) shall not exceed 49% either directly or indirectly, (b) substantial ownership and effective control of Air India shall continue to be vested in Indian Nationals; (iii) real-estate broking service does not amount to real estate business and is therefore, eligible for 100% FDI under automatic route;

SEBI in order to ease process of application for recognition, renewal, reporting and other filings including annual financial statements and returns, monthly development report, rules, bye-laws etc. has introduced a digital platform for online filings related to Stock Exchanges and Depositories. The applicants desirous of seeking registration and renewals shall submit their applications online, through SEBI intermediary portal. [See SEBI Notifications No. SEBI/HO/MRD/DSA/CIR/P/2018/14 and SEBI/HO/MRD/DSA/CIR/P/2018/13 dated 29th January 2018]

➔ *RBI to issue new Rs. 10 note in chocolate brown colour*

RBI will soon issue Rs. 10 note in chocolate brown colour, bearing picture of Konark Sun Temple. RBI had earlier issued the new Rs. 200 and Rs. 50 notes under Mahatma Gandhi series. The move is aimed at achieving RBI's aim to promote less-cash economy.

➔ *Condonation of Delay Scheme, 2018 issued by MCA*

MCA in September, 2017 had identified approximately 3,09,614 directors associated with the companies that had failed to file financial statements or annual returns on MCA for a continuous period of 3 (three) financial years 2013-14 to 2015-16.

Under section 164(2) of the Companies Act, 2013 provides for disqualification of a director on account of default by a company in filing its annual return or a financial statement for a continuous period of 3 (three) years.

The Central Government has decided to introduce this scheme namely "Condonation of Delay Scheme 2018" which shall be valid for a period of 3 (three) months commencing from 01.01.2018 to 31.03.2018, under this scheme the defaulting directors can rectify their default by filing the overdue annual returns or financial statements pending till 30.06.2017. [See General Circular No. 16/ 2017 dated 29th December 2017]

➔ *IRDAI issues draft regulation of Insurance Regulatory and Development Authority of India (Minimum Information for Inspection or Investigation) Regulations, 2018*

IRDAI has drafted Insurance Regulatory and Development Authority of India (Minimum Information for Inspection or Investigation) Regulations, 2018 ("**the Regulations**"). The Regulations are applicable to all registered insurers, reinsurers, branches of foreign reinsurers, intermediaries and insurance intermediaries. The Regulations shall come into force from 1st April 2018. The provisions applicable to Insurers, inter alia include: (i) minimum information shall be maintained by the insurers in respect of each class or sub-class of insurance business including but not limited to: (a) record of all proposals for insurance received, (b) with respect to every proposal

accepted, a record of policies which shall be serially numbered, (c) with respect to group insurance, in addition to the information, the insurer shall maintain a group type like employer-employee or non-employer- employee, group size etc. (d) a record of endorsements mentioning policy number to which it is attached, dates of commencement and expiry of endorsements. The provisions applicable to every intermediary and insurance intermediary in addition to information under Companies Act, 2013, inter alia include: (i) details of all past and present employees; (ii) activities outsourced with details of vendor; (iii) premium of new business with details of proposal number; and (iv) renewal premium of general and/ or health insurance business with details.

GST Brief

➔ *Recommendations made on GST rate changes on services by 25th GST Council Meeting*

Government of India, Ministry of Finance has issued notifications in regard to recommendations of the GST Council meeting held on 18th January 2018. Major recommendations, inter-alia, include: (i) to exempt supply of services by way of providing information under RTI Act, 2015 from GST; (ii) to exempt legal services provided to government, local authority, governmental authority and governmental entity; (iii) reduce GST rate on construction of metro and monorail projects from 18% to 12%. The same shall implemented with effect from 25th January 2018.

RERA Brief

➔ *MahaRERA Conciliation & Dispute Resolution Forum*

MahaRERA has established a forum named MahaRERA Conciliation and Dispute Resolution Forum with an objective to facilitate resolution of disputes under purview of RERA, Rules and Regulations made thereunder amicably, thereby saving cost and time of litigation between the promoters, consumers and the State. The forum consists representatives from consumer body and promoter's association. The notification provides for objectives, composition of core committee and conciliation bench along with location and procedure for conciliation under this forum. [See Circular No. 15/2018 dated 29th January 2018]

Litigation Brief

➔ *Kandla Export Corporation and Another Vs. M/s OCI Corporation and Another*

Questions Of Law Addressed:

Whether an Appeal, not maintainable under Section 50 of the Arbitration & Conciliation Act, 1996 ('Arbitration Act'), is nonetheless maintainable under Section 13(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ('Commercial Courts Act')?

Facts Of The Case:

1. On 28.04.2014, an Arbitration Award was passed directing the Appellants (Sellers) to pay the Respondents (Buyers) a sum of USD 846,750 along with compound interest at the rate of 4% calculated quarterly. Upon appeal to the Appellate Tribunal, this amount was revised to USD 815,000 but at the same interest rate.
2. Being aggrieved, the Appellants filed an appeal before the Queen's Bench which was rejected on 14.07.2015. Against the aforesaid judgment, the Appellant filed an appeal before the Queen's Bench Division, Commercial Court, which was rejected on 15.09.2015. Consequently, an appeal was filed by the Appellants before the Court of Appeal, Civil Division, U.K, which was rejected on the ground that the award had no error.
3. Meanwhile, an Execution Petition was filed under Section 48 of the Arbitration Act on 28.06.2015 by the Respondents before the District Court, Gandhidham-Kutch, which was transferred to the High Court of Gujarat in November, 2016.
4. On 08.08.2017, the High Court of Gujarat allowed the Execution Petition, dismissing the objections filed by the Appellants and being aggrieved by the same, the Appellant filed an appeal under the Commercial Courts Act, which was dismissed by the impugned judgment, dated 28.09.2017, stating that the Commercial Courts Act does not provide any additional right of Appeal which is not otherwise available to the Appellants under the provisions of the Arbitration Act.
5. Hence, the present appeal was filed by the Appellant challenging the impugned judgment before the Supreme Court of India.

Observations and Ruling of the Hon'ble Supreme Court:

1. The Hon'ble Court observed that the main provision under Section 13 of the Commercial Courts Act provides for

appeals from judgments, orders and decrees of the Commercial Division of the High Court and an exception is carved out by the proviso¹, which states that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order XVIII of CPC, 1908 and Section 37 of the Arbitration Act, effectively meaning that an order not appealable under Section 37 of the Arbitration Act would not be appealable under the Commercial Courts Act.

2. The Hon'ble Court heavily relied on the ratio decidendi set forth in the case of *Fuerst Day Lawson Limited vs. Jindal Exports Limited*² which states the following:

"(vii) The exception to the aforementioned rule is where the Special Act sets out a self-contained code and in that event the applicability of the general law procedure would be impliedly excluded...."
3. In the light of the above, the Hon'ble Court held that as Arbitration Act is a self-contained code, a special Act, the applicability of the Commercial Courts Act, as a general law, shall be excluded. Furthermore, citing *Sumitomo Corporation vs. CDC Financial Services (Mauritius) Ltd.*³, it was held that Section 50 of the Arbitration Act states that if an appeal lies under the said provision, only then would Section 13(1) of the Commercial Courts Act be attracted laying down the forum which would hear and decide such an appeal.
4. In the present case, no appeal was maintainable under Section 50 of the Arbitration Act, and therefore, after applying doctrine of harmonious construction to both the statutes, highlighting the object of speedy resolution of disputes of a commercial nature involving a sum of Rupees One Crore and over, the Hon'ble Court dismissed the present Appeal, giving effect to the special statute, i.e., the Arbitration Act, vis-à-vis the more general statute, namely the Commercial Courts Act.

Disclaimer:

For private circulation to the addressee only and not for re-circulation. Any form of reproduction, dissemination, copying, disclosure, modification, distribution and/ or publication of this Newsletter is strictly prohibited. This Newsletter is not intended to be an advertisement or solicitation. The contents of this Newsletter are solely meant to inform and is not a substitute for legal advice. Legal advice should be obtained based on the specific circumstances of each case, before relying on the contents of this Newsletter or prior to taking any decision based on the information contained in this Newsletter. ZEUS Law disclaims all responsibility and accepts no liability for the consequences of any person acting, or refraining from acting, on such information. If you have received this Newsletter in error, please notify us immediately by telephone.

Copyright © 2014 ZEUS Law. All rights reserved. Replication or redistribution of content, including by caching, framing or similar means, is expressly prohibited without the prior written consent of ZEUS Law.

¹ *CIT vs. Indo-Mercantile Bank Limited*, 1959 Supp (2) SCR 256

² (2011) 8 SCC 333

³ (2008) 4 SCC 91