

Highlights

Corporate Brief

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- 32nd GST Council Meeting held on 10th January, 2019: key recommendations regarding MSME sector made

GST Brief

- 32nd GST Council Meeting held on 10th January, 2019: key recommendations regarding MSME sector made

RERA Brief

- Punjab RERA issues a circular for compliance by Promoters.
- Supreme Court admits petition of homebuyers on constitutional validity of WBHIRA.
- Bombay High Court orders the promoter to deposit amounts before appealing at Maha RERA Tribunal.
- Maha RERA orders that Section 12 operates before the execution of the agreement for sale.

- d) Concept of untraceable entities introduced: Untraceable entities are entities which are in breach of reporting requirements as per the ECB regulations for 8 or more consecutive quarters.
- e) ECB by entities undergoing restructuring: In the case of entities undergoing restructuring or if their corporate insolvency resolution process has already started, such entities shall be eligible to raise ECB only if it is expressly permitted under the resolution plan.

Insider Trading Regulations amendment: SEBI takes note of recommendations by Committee on Fair Market Conduct

SEBI recently notified the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018 ("said Amendment Regulations") on 31st December, 2018 and it shall come into effect from 1st April, 2019. The said Regulations have incorporated a lot of recommendations from the Committee on Fair Market Conduct that was constituted in 2017 for the purpose of identifying and addressing issues in SEBI Act, 1992, SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003. Some of the key changes that were introduced in the said Amendment Regulations are: (a) The definition of Unpublished Price Sensitive Information ("UPSI") has been altered to the extent that the inclusion of "material events in accordance with the listing agreement" in the said definition has been deleted; (b) an explanation regarding the meaning of 'legitimate purpose' has been inserted which includes that an insider can share UPSI in the ordinary course of business with partners, collaborators, lenders, customers, suppliers, etc. provided such information is not shared to circumvent the provisions of the said Regulations and (c) Compliances have been made more structural and convenient, including though not being limited to usage of two separate codes for listed companies and intermediaries and other such regulatory framework.

Government amends Companies (Prospectus and Allotment of Securities) Rules, 2018

Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2018 were recently amended by the Government vide notification dated 22nd January, 2019 which laid down the provisions of issue of securities in dematerialized form of unlisted companies. According to the new amendment, in the form of insertion of sub-rule (11) in the said Rule 9A, such issue of dematerialized securities would not be applicable to a Nidhi, a government company and a wholly owned subsidiary.

Corporate Brief

Government notifies revised ECB Framework: aims at improving India's Ease of Doing Business

In view of improving India's Ease of Doing Business, the Central Government recently notified a revised framework of External Commercial Borrowings ("revised ECB Framework") on 16th January, 2019. Some of the key relevant highlights of the revised ECB Framework are:

- a) The list of Eligible Borrowers has been expanded and made more inclusive: As per the revised ECB Framework, Eligible Borrowers would mean all entities that are eligible to receive foreign direct investment ("FDI"). Additionally, certain specific entities such as Port Trusts, Units in SEZ etc. have been included within the ambit of Eligible Borrowers.
- b) Classification of Recognised Lenders eased out: As per the revised ECB Framework, in order to qualify as a Recognised Lender, the lender should be a resident of the Financial Action Task Force (FATF) or should be an International Organization of Securities Commission (IOSCO) compliant country.
- c) Relaxation of Minimum Average Maturity Period ("MAMP"): As per the revised ECB Framework, overall MAMP has been set out as 3 years across all tracks/forms of ECB.

➤ *New Order enforces payment of outstanding dues to MSME industry*

The Central Government vide notification dated 22nd January, 2019 has issued the Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 with effect from the date of issuance of said order. Companies, that receive supplies of goods or services from micro and small enterprises and whose payments to such micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services, shall file all details of outstanding dues to micro or small enterprises suppliers in the MSME Form I, existing on the date of notification of this order within thirty days from the date of publication of said notification. Further, such companies shall also file a return as per MSME Form I annexed to said Order by 31st October, for the period from April to September and by 30th April for the period from October to March.

➤ *SC decides upon the constitutional validity of certain provisions of the IBC*

Recently, the Supreme Court in the case of *Swiss Ribbons v Union of India*, decided upon the constitutional validity of various provisions of the IBC. Some of the key aspects that were recognised and/or established in the judgement are that (a) the primary focus of the IBC is reorganization and insolvency resolution of corporate debtors and to ensure their revival and therefore the IBC exists not just for the benefit of the creditors but also the corporate debtors in order to put them back up on their feet, (b) there exists an intelligible differentia between financial and operational creditors with respect to the nature and end-usage of the finances they lend, nature of disputes that could arise in their cases etc., and (c) Section 29A which lists down the persons who are not entitled to be resolution applicants was read down and interpreted in the manner so as to increase the number of such resolution applicants.

➤ *Resale Price Maintenance interpreted by CCI in the case of Snapdeal V KAFF*

Facts: In the case of *Jasper Infotech Private Limited (Snapdeal) v KAFF Appliances (India) Pvt. Ltd. (KAFF)*, Jasper Infotech, a company that owns and operates the online marketplace website Snapdeal, had filed a complaint against KAFF for indulging in 'Resale Price Maintenance'. The facts of the case were that Snapdeal displayed products of KAFF for sale on its website at discounted prices as a result of which KAFF issued a caution notice to Snapdeal to not sell

its products at low discounted rates as that act was not authorized and permitted by KAFF in the first place. Consequent to receipt of said caution notice by Snapdeal, it filed a complaint with the CCI alleging that KAFF was imposing a restriction of 'resale price maintenance' on Snapdeal which, is violative of the provisions of the Competition Act, 2002 and is said to cause an 'appreciable adverse effect' on the market. 'Resale Price Maintenance is a concept wherein there is an agreement to sell goods by one party to another on the condition that the prices to be charged on the resale by the purchaser party shall be the prices stipulated by the seller party unless it is clearly stated that prices lower than those prices may be charged.

Held: Since this concept of resale price maintenance was often understood with respect to traditional offline platforms, this was a case of online platform market which required a deeper analysis by the CCI. CCI clarified that the concept of resale price maintenance was judged under the 'rule of analysis'. It was seen that an online platform of a market would act the same way as an offline platform of market and CCI noted that in resale price maintenance "what may be relevant is to examine as to whether such player provides any active service to the end customer in availing the product or service involved". This meant that Snapdeal is only a market platform and not a purchaser of the product and Snapdeal is merely in the possession of the product and that there was no concept of 'resale' involved in this case. Further, it was observed that even if there exists price restriction by KAFF, 'appreciable adverse effect' needs to be established which was not the case here. In light of this, CCI therefore dismissed the complaint of Snapdeal.

GST Brief

➤ *32nd GST Council Meeting held on 10th January, 2019: key recommendations regarding MSME sector made*

The 32nd GST Council Meeting was held on 10th January, 2019 and the key recommendations that were made are: (a) Relief to be granted to MSME (including Small Traders) and to be implemented w.e.f. 1st April, 2019; (b) Higher exemption threshold limit has been granted for the supplier of goods wherein there would be two threshold limits for such suppliers for goods: for exemption from registration and payment of GST, which would be Rs. 40 lakhs and 20 lakhs respectively. The threshold limit for registration for service providers would continue to be Rs. 20 lakhs and in case of Special Category States it would be Rs. 10 lakh, (c) the limit of annual turnover in the preceding Financial Year

for availing composition scheme for Goods shall be increased to Rs. 1.5 crore; (d) the compliance under the Composition Scheme to be simplified as now one Annual Return would be needed to be filed. However payment of taxes would remain quarterly, along with simple declaration; and (e) Changes made by the IGST/CGST/UTST (Amendment) Act, 2018 and GST (Compensation for States) Amendment Act, 2018 and the corresponding changes in the SGST Acts notified w.e.f 1st February, 2019.

Real Estate Brief

PUNJAB RERA ORDER:

➔ Punjab RERA issues a circular for compliance by Promoters.

The Authority has issued a notice for the Promoters, since the hard copy of files for online project applications, submitted by the promoters do not have complete documents, index, page numbering and/ or are not being flagged properly. Therefore the Authority in its notice has stated that the promoters are required to ensure that hard copy files of online project applications contain complete documents, wit index, page numbering and flagging, as per online application checklist, before it is submitted in the office of the Authority.

WEST BENGAL HOUSING INDUSTRY REGULATORY AUTHORITY:

➔ Supreme Court admits homebuyers petition challenging constitutional validity of WBHIRA:

The Supreme Court has admitted a PIL filed by a the Forum for People's Collective Efforts (FPCE), an umbrella homebuyers association that challenge the constitutional validity of West Bengal Housing & Industrial Regulation Act 2017 (WBHIRA), the Supreme Court has issued a notice to West Bengal Government to file its reply. West Bengal is the only state in the country that has not accepted RERA. The Central Real Estate (Regulation & Development) Act came into effect on May 1, 2017, exactly after a year it was passed by the Parliament. In its petition the association has said that if WBHIRA is allowed to continue, it would give away for state legislatures to enter into other fields to legislate under the concurrent list, which otherwise are occupied by central legislators and it may also prompt other states to come out with their own State Laws, further diluting the provisions in favour of the builders, thereby defeating the purpose of a uniform RERA and rendering RERA redundant. In its petition the association has passed that Supreme Court pass an order declaring WBHIRA as ultra vires the provisions of Constitution of India and consequently, issue an appropriate writ/ order or direction in the nature of writ of mandamus/

order directing the State of West Bengal to not enforce the provisions of the West Bengal Housing Industry Regulation Act, 2017 within the State of West Bengal.

RERA Cases

Bombay High Court:

➔ Deposit 50% of Refund Amount for hearing the case:

In the matter of Jayesh Tanna, ITMC Developers Pvt. Ltd ("Petitioner") Vs. Maharashtra Real Estate Regulatory Authority & Ors ("Respondent") before Hon'ble High Court of Bombay :

Facts:

The Respondents were flat purchasers in a project being developed by the Petitioner, an agreement for sale was entered in 2015, however the Petitioner failed to handover the possession on the agreed date and the project has not been taken up till date. The Respondents approached the Maharashtra Real Estate Regulatory Authority, Mumbai, in a complaint under Section 18 of the RERA and the Authority subsequently passed an order in April' 2018 to refund the amount. This order was challenged by the Petitioner before the Maharashtra Real Estate Appellate Tribunal, the Tribunal as per the provisions of Section 43(5) of RERA directed the petitioner to deposit 50% of the amount as directed by the authority in its earlier order. The Petitioner filed an appeal with Hon'ble Bombay High Court which it had withdrawn and subsequently filed a Writ Petition.

Issue:

Whether proviso to Section 43(5) of RERA Act states that for entertaining an appeal by the promoter with the Appellate Tribunal filed against any direction/ order/ decision of the Authority, requires the Promoter to deposit thirty per cent of the penalty or such higher amount or the total amount including interest and compensation as imposed, mandatory in nature?

Observations:

- The Authority in its order had directed the Petitioner to refund the amount with interest from the date of receipt or payment to the government as the case may be till they are refunded, aggrieved by this order the Petitioner challenged the order before the Appellate Tribunal.
- The Tribunal held that before the appeal can be heard, as per provisions of Section 43(5) of RERA it directed the Petitioner to deposit 50% of the amount as directed by the Authority in its order. On its failure to deposit, the Tribunal dismissed its appeal for non-compliance of mandate required under Section 43(5) of the Act.

- Thereafter the Petitioner filed an appeal with the Hon'ble High Court of Bombay against the order of the Tribunal by preferring a second appeal, which was withdrawn to pursue appropriate remedies.
- Subsequently a writ was filed by the Petitioner, the Hon'ble High Court of Bombay, it was held that though in the interest of justice a final chance ought to be given to the Petitioner to pursue the appeal as it was willing to deposit the said amount with the Appellate Tribunal, however due to passage of substantial time and in the interest of homebuyers it directed the Petitioner to deposit 50% of the amount and held that payment of cost is a condition precedent for pursuing an appeal before the Appellate Tribunal and non-compliance of mandate required under Section 43(5) could be dismissal of appeal.

Judgment:

- The petition is disposed off.

MAHA RERA ORDER:

- ➔ In the matter of Anita Castellino ("Complainant") and Godrej Landmark Redevelopers ("Respondent"), a complaint was filed before Maha RERA:

Facts:

The Complainant had booked a flat in the Respondent's project and believed the false representations of the marketing team's with respect to the flat that the flat would be at the end of the podium and no car would be parked on it and later the Complainant entered into an agreement for sale with the Respondent, with full knowledge of specifications of the flat. Now the Complainant has raised objections with the flat and vide this complaint and has claimed refund of price along with interest.

Issue:

Whether Section 12 & 18 of RERA operate at two different stages of the same transaction in two different spheres?

Observations:

- There are various stages of transactions for purchasing flats by the allottee by the promoter. In the first stage, the project is launched by the promoter and he invites the clients for making advances or for depositing money with him on the basis of the information of his project presented by him by way of notices, advertisements or prospectus or by showing model apartment etc. Thereafter, the buyer on the basis of this information furnished by the promoter applies for the allotment when the deal is struck. After collecting initial payment of booking, the promoter allots the flat and issues the allotment letter.
- In the second stage of the transaction, the parties discuss and settle the terms of the agreement for sale regarding the Payment schedule of the consideration, the description of the flat and its specifications, date of possession etc.
- The third stage is the construction of the project i.e the implementation of the terms and conditions of the agreement and the fourth stage is completion of the project and delivery of possession of the flat after receiving the occupancy/completion certificate, the conveyance of the title of the apartment to the allottee and that of the land and common amenities to the society.
- Section 18 applies on the promoter's failure to complete the apartment as per the agreement for sale or his inability to give possession by the date specified in the agreement, the allottee gets the right to withdraw from the project and claim refund of his amount with interest/ and or compensation, however if the allottee continues he is entitled to get interest on his investment for every month of delay in possession.
- The Authority held that, the parties, are at liberty to settle the terms and conditions of their own choice agreeable to both regarding the construction of the apartment when they enter into agreement for sale. Therefore, once those terms and conditions are settled, that being the subsequent act of the parties done with open eyes out of their volition, they prevail over the earlier commission or omissions of the parties.
- In other, words, the agreement for sale supersedes all other earlier documents including the brochures, prospectus and notices etc. mentioned in Section 12.
- The same view is fortified by Rule 10 (2) of the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Project, Registration of Real Estate Agent, Rates of Interest and Disclosures on Website) Rule, 2017.
- The Authority while interpreting the provisions of the Act and Rules thereunder concluded that once the agreement for sale is executed and when it supersedes the earlier documents, acts or omissions of the parties, the parties are estopped from raising the claims based on the documents,

act and omissions which had taken place prior to the execution of the agreement for sale.

- After execution of the agreement for sale, Section 12 ceases to operate and such cases shall be governed by Section 18 of the Act only.
- Section 12 operates before the execution of the agreement for sale. In other words' in the first stage, when the Promoter invites the offer for Purchasing the apartment from prospective buyer by furnishing information of the Project and the allottee makes payment on the basis of such information which proves to be false or incorrect, then in this circumstance, the allottee wants to come out of the Project, he is entitled to get back his amount with interest and/or compensation.
- However, if he chooses to continue then, he may., be entitled to compensation if he sustains any loss or damage by such incorrect or false information Provided by the Promoter.

- Thus Section 12 and Section 18 operate at different stages of the sale transaction and they operate in different spheres. Section 12 operates from the stage of booking till the execution of the agreement for sale and Section 18 operates thereafter.

Order:

The complaint is dismissed with cost.

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