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- *What is Constitutional validity of Farm laws?*

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- *Order issued by the Rajasthan Real Estate Regulatory Authority regarding Submission of Quarterly Progress Reports (QPRs) for Registered Real Estate Projects;*
- *Clarification Order issued by the Kerala Real Estate Regulatory Authority regarding Expiry of Registration of Project and Sale of Units;*

Litigation Brief

- *Pre-Deposit is a mandatory requirement for filing an Appeal before DRAT under Section 21 of Recovery of Debts and Bankruptcy Act, 1993.*

Agriculture Brief

- **What is constitutional validity of the farm laws? And whether the farmers' occupation of public space to protest is violative of the residents' fundamental rights?**

IN THE MATTER OF: *Rakesh Vaishnav and Ors. Vs. Union of India and Ors.*

(Decided by the Hon'ble Supreme Court of India)

- Hon'ble Supreme Court while hearing the petition challenging the constitutional validity of farm laws, after hearing the arguments was pleased to pass an interim order to:
 - 1) stay the implementation of the three farm laws until further orders:
 - a) Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020;
 - b) Essential Commodities (Amendment) Act, 2020; and
 - c) Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020.
 - 2) direct that minimum support price system that was present before the implementation of the farm laws will continue to be in existence.
 - 3) order that the farmers will be protected and no farmer will be deprived or dispossessed of his title for any action taken under the farm laws.

- 4) constitute a committee to hear grievances of farmers in respect of the 3 farm laws. Committee consists of Shri Bhupinder Singh Mann, Dr. Parmod Kumar Joshi, Shri Ashok Gulati and Shri Anil Ghanwat.
- 5) require committee to submit a report containing its recommendations within 2 (two) months of first sitting. And first sitting is to be held within 10 days from the 12.01.2021.

Corporate Brief

- **Ministry of Corporate Affairs Introduces Companies (Corporate Social Responsibility Policy) Amendment Rules To Expand Scope of Social Activities.**

Ministry of Corporate Affairs (MCA) vide notification E-F No. CSR-05/3/2020-CSR-MCA dated 22.01.2021, introduced the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 to make following key amendments to the Companies (Corporate Social Responsibility Policy) Rules, 2014:

- Entities covered by these Rules, intending to perform Corporate Social Responsibility ("CSR") activity must register with the Central Government by filing the Form CSR-1 electronically with the Registrar, with effect from 01.04.2021;
- New definitions have been introduced for CSR Policy, Ongoing Project and Net Profit;
- Administrative overheads shall not exceed 5% of total CSR expenditure of the company for the Financial Year;
- Entities which are exempted under these Rules are allowed to set off any surplus CSR expenditure against its CSR obligations for the succeeding three financial years;
- Under these Rules, entities having CSR obligation below INR 50 lakhs need not form a CSR Committee.
- If CSR spending is less than the prescribed amounts, the unspent amount must be transferred to a specified fund except in case of ongoing projects;
- Companies with average CSR obligation of INR 10 crore or more in the immediately preceding three financial years, will be required to undergo impact assessment, conducted by an independent agency, evaluating their CSR projects having outlays of INR 1 crore or more which have been completed at least 1 year before such assessment;
- The companies must display CSR activities on their website, the composition of the CSR Committee, CSR Policy and Projects approved by their Board;
- A new format for the annual report on CSR activities has been introduced in the board's report for financial year commencing on or after 01.04.2020.

⇒ SEBI Releases Issue of Capital & Disclosure Requirements Amendment Regulations 2021.

On 08.01.2021, Securities and Exchange Board of India (SEBI) vide notification no. SEBI/LAD-NRO/GN/2021/03 came up with the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2021. Under the provisions of the amendment, Regulation 112 (b), which specifies the requirement of minimum promoters contribution not applicable in certain cases, has been substituted.

- The amended regulation states that requirement of minimum promoters contribution shall not be applicable in certain cases where - the equity shares of the issuer are frequently traded on a stock exchange for a period of at least three years immediately preceding the reference date, and the issuer:
 - i. Has redressed at least ninety five per cent of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date;
 - ii. Has been in compliance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for a minimum period of three years immediately preceding the reference date.
- However, if an issuer who was non-compliant with the provisions relating to composition of board of directors, during the last three years immediately preceding the date of filing of draft offer document/offer document, shall be deemed to be in compliance if:
 - i. Complies with such provisions at the time of filing of draft offer document/offer document; and
 - ii. Adequately discloses such non-compliances during the three years immediately preceding the date of filing the draft offer document/offer document.
- Moreover, under Regulation 167 (4), which specifies the lock-in period, a new proviso has been inserted laying down that the lock-in provision shall not be applicable to the specified securities to the extent it enables achievement of 10% public shareholding.

⇒ The Ministry of Corporate Affairs (MCA) Notifies Companies (Incorporation) Amendment Rules, 2021

The MCA has vide Notification No. G.S.R. 44(E) [F. NO. 1/13/2013 CL-V, VOL.III], dated 25.01.2021, introduced the Companies (Incorporation) Amendment Rules, 2021. The notification has amended Rule 41 of Companies (Incorporation) Rules, 2014 which relates to application under section 14 Companies Act, 2013 ("the Act") for conversion of public company into private company. The notification lays down the following key points:

- Where Regional Director on examining the application himself has specific objection or on receiving an objection under the provisions of the Act, the Regional Director shall:

- i. Record in writing and hold a hearing or hearings within a period of 30 days as required;
 - ii. Direct the company to file an affidavit to record the consensus reached at the hearing;
- In case of consensus, Regional Director shall pass an order either approving or rejecting the application along with the reasons within 30 days from the date of hearing;
 - In case where no consensus is received the Regional Director may approve the conversion if he is satisfied that:
 - i. The conversion would not be against the interests of the company; or
 - ii. The conversion is not being made with a view to contravene or to avoid complying with the provisions of the Act, with reasons to be recorded in writing.
 - Regardless, no conversion shall be allowed if any inquiry, inspection or investigation is pending against the company or any prosecution has been initiated against the company.

⇒ SEBI Amends Schedule III Of Securities And Exchange Board Of India (Listing Obligations And Disclosure Requirements) 2015:

Securities and Exchange Board of India ("SEBI") has via its Notification No. SEBI/LAD-NRO/GN/2021/02, dated 08.01.2021, exercised the powers conferred by Section 11(2), 11A and 30 of the Securities and Exchange Board of India Act, 1992 and amended the Securities and Exchange Board of India (Listing Obligations And Disclosure Requirements) ("said Regulations"). The notification makes changes in Schedule III under Part A of the said Regulations which lists events under which listed companies must make certain disclosures to the stock exchanges.

- Following details have been added under Clause 16(l) covering specific details of the resolution plan which need to be disclosed, in case Corporate Insolvency Resolution Proceedings ("CIRP") are initiated against a listed company:
 - i. Pre and Post net-worth of the company;
 - ii. Details of assets of the company post CIRP;
 - iii. Details of securities continuing to be imposed on the companies' assets;
 - iv. Other material liabilities imposed on the company;
 - v. Detailed pre and post shareholding pattern assuming 100% conversion of convertible securities;
 - vi. Details of funds infused in the company, creditors paid-off;
 - vii. Additional liability on the incoming investors due to the transaction, source of such funding etc.;
 - viii. Impact on the investor - revised P/E, RONW ratios etc.;
 - ix. Names & Past experience of the new promoters, key managerial persons(s);
 - x. Brief description of business strategy.
- Moreover, the following additional disclosures under sub-clauses n, o and p have now been added after 16(m):

- i. Proposed steps to be taken by the incoming investor/acquirer for achieving the MPS;
- ii. Quarterly disclosure of the status of achieving the MPS;
- iii. Details as to the delisting plans, if any approved in the resolution plan.

- a. Rs. 2000/- if the editing is done before the end of the next quarter; and
- b. Rs. 5000/- if the editing is done after the end of the next quarter.

- As per the Rules, the QPR should be submitted within 15 days of the end of a quarter. If a QPR is not submitted within this prescribed time, a delay charge of Rs. 5000/- will have to be paid for each delayed submission.
- Forms R-1 (Certificate by Architect), R-2 (Certificate by Engineer) and R-3 (Certificate by Chartered Accountant) prescribed under the Rajasthan RERA Regulations, 2017 will form the basis of each QPR. Therefore, the promoters are required to obtain these certificates four times a year for the purpose of submitting the QPRs.
- The QPRs for the quarters before January 2021:
 - a. Earlier QPRs need to be submitted/edited on the online system by 31.03.2021;
 - b. No delay processing charges will be levied for submissions/edits of earlier QPRs till 31.03.2021;
 - c. Submission/ edits of earlier QPRs after 31.03.2021 can only be done by paying the specified delay processing charges;
 - d. Obtaining Forms R-1, R-2 and R-3 has been made non-mandatory for earlier QPRs.

It is clarified vide a Rajasthan RERA order dated 04.01.2021 bearing number F1(167)RJ/RERA/QPR/2020/35 that the relaxed timeline of 31.03.2021 also applies to the October-December 2020 quarter. Rajasthan RERA has also requested that the QPRs for the earlier quarters be submitted in a chronological order.

- Submission of false information in the QPRs will attract penalty under Section 60 of the Act.
- The online QPR forms have been auto-populated with the data already available on the RERA web portal which means that the subsequent submissions will be easier and smoother for the promoters.
- This provision of online submission of QPRs is viewed as an opportunity for the promoters to review the progress of their projects and statutory compliances; allottees and potential buyers to know the latest status of the project and for the RERA authority to monitor the progress of the registered projects and use the data in decision making.

⇒ **Clarification Order issued by the Kerala Real Estate Regulatory Authority regarding Expiry of Registration of Project and Sale of Units.**

- The Kerala Real Estate Regulatory Authority issued an order dated 06.01.2021 bearing number K-

Real Estate Brief

⇒ **Order issued by the Rajasthan Real Estate Regulatory Authority regarding Submission of Quarterly Progress Reports (QPRs) for Registered Real Estate Projects.**

- The Rajasthan Real Estate Regulatory Authority ("Rajasthan RERA") issued an order dated 01.01.2021 bearing number F1(167)RJ/RERA/QPR/2020/12, for online submission of quarterly progress reports for registered real estate projects.
- In view of the Covid-19 pandemic, the Rajasthan RERA has added the following online services onto their web portal:
 - a. Online generation of registration certificates
 - b. Extension of registration
 - c. Updation of revised approved maps
 - d. Change of RERA account with banks
 - e. Updation of encumbrances
 - f. Uploading of Completion/ Occupancy certificates
- Every promoter of a project is required to submit a QPR and update the project details online under Section 11(1) of the Real Estate (Regulation and Development) Act, 2016 (the "Act") read with Rule 16(1)(D) of the Rajasthan Real Estate (Regulation and Development) Rules, 2017 (the "Rules") and the non-submission of the same attracts a penalty. Therefore, the Rajasthan RERA has launched an online facility with effect from 01.01.2021 for submission of QPRs of registered projects.
- From the date of the order, all QPRs must be submitted online through the dashboard and no paper QPRs will be accepted by the Rajasthan RERA.
- For the purpose of submitting QPRs, quarters have been defined as January to March, April to June, July to September and October to December. The first QPR becomes due at the end of the quarter in which a project is registered and last QPR becomes due at the end of the quarter in which the project is completed.
- QPRs can be submitted only for the period of validity of the registration, beyond which the registration of the project must be extended in order to submit the QPRs.
- While there is no fee for submitting QPR online, if the promoter wants to edit an already submitted QPR, then he/she will incur the following charges:

RERA/T3/102/2020(2) for providing a clarification regarding the expiry of registration of a project and sale of units.

- Section 3 of the Real Estate (Regulation and Development) Act, 2016 mandates that no promoter shall advertise, market, book, sell or offer for sale etc. any project without registering the real estate project with the Real Estate Regulatory Authority. Section 5(3) of the Act stipulates that the registration granted will be valid for the time period within which the promoter undertakes to complete a particular project or phase thereof. This provision is given to imply that the registration certificate will be valid only till such date of completion of project, unless extended under the provisions of the Act and that the advertising, marketing and selling of units have to be completed within the registration period.
- However, it is clarified in this order that the main intention for stipulating the validity period for registration of project is to ensure that the promoter completes the project within the completion period it undertook and assured to allottees.
- It is further clarified that the activities of advertisement, marketing, booking, sale and offer for sale etc. as per Section 3 of the Act can continue even after the project is completed. Therefore, the date of expiry of registration shall not be construed as a hindrance to the promoter in continuing with such activities beyond the date of expiry of registration.

was thereafter auctioned by Respondent No. 6 - IFCI Ltd., wherein the Appellant herein was the successful bidder and accordingly, the unpaid debt and NPA was assigned in their favor.

2. The said assignment was assailed by the Respondents No. 1 to 3 before the High Court in a Writ Petition which came to be dismissed and an SLP filed was taken note by this Hon'ble Court and in the said proceedings the settlement which was entered into between the parties was recorded and disposed of. As per the settlement, the Respondents No. 1 to 3 had agreed to repay the sum of Rs.145 Crores with interest at 15% per annum. The Respondents No. 1 to 3 have not adhered to the terms of settlement and the re-payment was not made. The Appellant Bank, therefore, instituted recovery proceedings by filing an application before the Debts Recovery Tribunal ('DRT'), New Delhi. In the said proceedings the Appellant Bank claimed that the Respondents No. 1 to 3 would be liable to pay the entire outstanding, accordingly, the sum of Rs.572,18,77,112/- which was due along with interest and other charges was claimed before the DRT.
3. During the pendency of proceeding before the DRT, the Respondent No. 7, acquired a portion of the mortgaged property belonging to Respondent No. 3 and deposited the compensation amount of Rs.62,31,87,312/- before the DRT. The compensation was thereafter enhanced and a further sum of Rs.72,96,12,827/- was deposited. Thus, in all a sum of Rs.152,81,07,159/- was the compensation amount which was deposited on behalf of Respondent No. 3. The DRT had proceeded to consider the claim application and ultimately ordered issue of recovery certificate. Through the aforesaid order, as against the claim, the DRT had limited the decretal amount to Rs.145 Crores with future interest at 9% per annum till the realization, on reducing balance. It was further ordered therein that the amount would be payable after taking into consideration the amount of Rs.152,81,07,159/- paid during the pendency of the proceedings.
4. The Appellant/Bank as well as Respondents No. 1 to 3 preferred appeals before the DRAT. The Respondents No. 1 and 2 herein, in their appeal before the DRAT had also filed an application in IA No. 511 of 2018 seeking waiver of pre-deposit amounting to fifty per cent of the debt determined by the DRT. The DRAT having noticed the contentions on the said aspect and also taking into consideration that the amount of Rs.152,81,07,159/- was received by the Appellant Bank, had in that context noted that the balance of the debt due works out to

Litigation Brief

⇒ Pre Deposit is a mandatory requirement for filing an appeal before DRAT under Section 21 of Recovery of Debts and Bankruptcy Act, 1993.

IN THE MATTER OF: Kotak Mahindra Bank Private Limited Vs. Ambuj A. Kasliwal and Others (Decided by Hon'ble Supreme Court of India on 16.02.2021)

Issues:

- Whether Pre-Deposit for filing appeal before DRAT is a Mandatory Requirement?
- Whether the Court / Tribunal has power to waive off the pre-deposit in entirety?

Facts:

1. The Respondent No.3, namely, Hindon River Mills Ltd., had availed financial assistance from the Respondent No. 6 - IFCI Ltd. The Respondents No. 1 and 2 had offered their personal guarantee in respect of the aforesaid financial assistance. The Respondents No. 1 to 3 had defaulted in re-payment of the dues and the account having been classified as non-performing asset ("NPA")

Rs.68,18,92,841/-, hence, DRAT through the order dated 27.02.2019 directed that fifty per cent of the said amount is to be deposited.

5. The Respondents No. 1 and 2 claiming to be aggrieved by the orders of the DRAT, approached the High Court of Delhi, which arrived at the conclusion that the Respondents No. 1 and 2 are to be permitted to prosecute the appeal without pre-deposit. Aggrieved by the Order of the High Court, the Appellant/Bank filed the present appeal before the Hon'ble Supreme Court of India.

Court's Observations:

- The Court took appropriate note of Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 which provides for deposit of the amount of debt due on filing the appeal and observed that the provision injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate Tribunal, fifty per cent of the amount of debt so due from him as determined by the Tribunal under Section 19 of the Act. The proviso to the said Section, however, grants the discretion to the Appellate Tribunal to reduce the amount to be deposited, for reasons to be recorded in writing, but such reduction shall not be less than twenty-five per cent of the amount of such debt which is due. Hence, the pendulum of discretion to waive pre-deposit is allowed to swing between fifty per cent and twenty-five per cent of the debt due and not below twenty-five per cent, much less not towards total waiver.
- Thus, when prima facie it was taken note by the DRAT that further amount was due and the pre-deposit was ordered, without finding fault with such conclusion the High Court was not justified in setting aside the orders passed by the DRAT. All that the High Court has concluded is that the benefit of the receipt of Rs.152,81,07,159/- as against the decretal amount cannot be denied though it was received before passing of the final judgment. Such conclusion in any event could not have tilted the balance in favour of the Respondents No. 1 and 2 to waive the entire pre deposit, unless the High Court had rendered a categorical finding that the entire decretal amount stands satisfied from such receipt and there was no debt due which in any event was beyond the scope of consideration in a petition of the present nature. On the other hand, the DRAT having taken note of the decretal amount, the receipt of the

amount credited as compensation and, having further noted the debt is still due, has directed the pre-deposit limited to that extent.

- The Court concluded that when further amount is due and payable in discharge of the decree/recovery certificate issued by the DRT in favour of the Appellant/Bank, the High Court does not have the power to waive the pre-deposit in its entirety, nor can it exercise discretion which is against the mandatory requirement of the statutory provision as contained in Section 21, which is extracted above. In all cases fifty per cent of the decretal amount i.e. the debt due is to be deposited before the DRAT as a mandatory requirement, but in appropriate cases for reasons to be recorded the deposit of at least twenty-five per cent of the debt due would be permissible, but not entire waiver. Therefore, any waiver of pre-deposit to the entire extent would be against the statutory provisions and, therefore, not sustainable in law.
- The Court, taking note of the instant case, deemed it appropriate to permit the pre-deposit of twenty-five per cent of the amount as taken note by the DRAT i.e. twenty-five per cent of Rs.68,18,92,841/-. To the said extent, the order passed by the DRAT on IA No. 511 of 2018 was directed to be modified. It was clarified that the consideration made herein and debt due quantified is limited to the aspect relating to pre-deposit. All other contentions including as to the actual amount of debt due is left open to be urged in the pending appeals.

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