

Highlights

Corporate Brief

- DIPP amends FDI Policy: introduces new provisions regarding FDI in e-commerce sector
- NCLAT: NCLT cannot decide the legality of a foreign decree
- SC: Provisions of the IBC must prevail over Section 434 of Companies Act, in case of inconsistency
- SEBI provides clarification on clubbing of investment limits of Foreign Portfolio Investors
- SEBI makes physical settlement mandatory for stock derivatives

GST Brief

- 31st GST Council meeting held at New Delhi: Government makes important recommendations
- Refund of IGST on export of goods now paid on exports of goods done on Non-EDI sites

RERA Brief

- Standard operating procedure (SOP) for handling complaints on Non-Registered Projects
- Urban Development Order - TNRERA Registration a pre-requisite for Promoters while issuance of planning permissions by metropolitan authorities:
- Maha RERA Order: Multiple Proceedings on same issue not permissible under RERA 2016.
- In the matter of Ritu Aggarwal ("Complainant") vs TDI Infrastructure Pvt. Ltd. ("Respondent"), before the Haryana Real Estate Regulatory Authority ("HRERA/ Authority") for project namely, Park Street ("the Project").

- v. No seller is mandated to sell its product exclusively on the e-commerce marketplace platform.
- vi. The E-commerce entity providing a marketplace cannot exercise ownership or control over the inventory i.e. goods that are purported to be sold, as such an ownership or control will render the business into an inventory based model. Inventory of a vendor will be deemed to be controlled by e-commerce marketplace entity if more than 25% of purchases of such vendor are from the marketplace entity or its group companies.

➔ **NCLAT: NCLT cannot decide the legality of a foreign decree**

Recently, in the case of Usha Holdings LL.C. & Anr. Vs Francorp Advisors Pvt. Ltd., the National Company Law Appellate Tribunal (hereinafter referred to as "NCLAT") observed that National Company Law Tribunal (hereinafter referred to as "NCLT") cannot ascertain the legality of a foreign decree in an Indian court of law. The appeal was filed against the rejection of application of appellant under section 9 of the Insolvency and Bankruptcy Code (hereinafter referred to as the "IBC") by the NCLT. The appellant claimed to be an 'Operational Creditor' in view of the fact that the respondent company did not comply with a money decree passed by a US Court. NCLT found that decree did not give rise to any claim of operational debt and this led to rejection of application, thereby enforcing the foreign decree. In the appeal, NCLAT has now observed that NCLT is an adjudicating authority under IBC, whose objective is the resolution of corporate debt. It is neither a 'Court' nor a 'Tribunal' and 'Insolvency Resolution Process' is not 'litigation', and therefore, it would have no jurisdiction to decide the legality of such foreign decree. Therefore, any finding with respect to the legality and propriety of a foreign decree, is a nullity in the eye of law.

➔ **SC: Provisions of the IBC must prevail over Section 434 of Companies Act, in case of inconsistency**

The Supreme Court recently held in the case of Jaipur Metal and Electricals Employees Organization vs Jaipur Metal and Electricals Ltd, that provisions of the IBC would prevail in the case of any inconsistency, between provisions of the IBC and Companies Act, 2013. An appeal was filed with the Supreme Court in view of the fact that the High Court of Rajasthan refused to transfer the winding up proceedings of the company to NCLT. Section 434 of the Companies Act, 2013 was interpreted by the Supreme Court and it was held that all the proceedings under the Companies Act, 2013 which relate to winding up of companies, shall stand to be

Corporate Brief

➔ **DIPP amends FDI Policy: introduces new provisions regarding FDI in e-commerce sector**

The Department of Industrial Policy and Promotion, vide notification dated 26.12.2018, amended the Consolidated FDI policy Circular, 2017 (hereinafter referred to as the "FDI policy") to incorporate a regulatory framework regarding Foreign Direct Investment (hereinafter referred to as "FDI") in the e-commerce sector, which is to come into effect from 1.02.2019.

Some of the key aspects of the said notification are:

- E-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce.
- It has been clarified that 100 % FDI is permitted under the automatic route, in marketplace model of e-commerce and FDI is not permitted in the inventory based model of e-commerce.
- Any entity that has equity participation by an e-commerce marketplace entity or its group companies, or such entity has control on its inventory by e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform which is run by such marketplace entity.
- Seller will be responsible for any warrantee/ guarantee of goods and services sold in the marketplace model.

transferred to the NCLT, which are pending immediately before the date as may be notified by the Central Government, in this behalf. The stage at which such proceedings may be transferred to the NCLT, may be determined by the Central Government. The transfer of proceedings can take place when an application for such transfer of winding up proceedings is filed by a party under section 434 of the Companies Act, 2013. After the said transfer of proceedings, NCLT would deal with such proceedings as an application for initiation of the corporate insolvency resolution process under the IBC.

➔ *SEBI provides clarification on clubbing of investment limits of Foreign Portfolio Investors*

In a circular dated 13.12.18, SEBI has recently clarified that:

- i. Clubbing of investment limit for FPIs will be on the basis of common ownership of more than 50% or based on common control. However, in the case of common control, such clubbing shall not be done, when a) FPIs are appropriately regulated public retail funds or b) FPIs are public retail funds, majority owned by appropriately regulated public retail funds on look through basis or c) FPIs are public retail funds and investment managers (IMs) of such FPIs are appropriately regulated.
- ii. In case, two or more FPIs including foreign Governments/ their related entities have direct or indirect common ownership of more than 50% or control, such FPIs will be treated as forming part of an investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single FPI.
- iii. In cases where Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.
- iv. The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government/ its related entities for the purpose of calculation of 10% limit for FPI investments in a single company, if they form part of an investor group.
- v. The investment by foreign Government/ its related entities from provinces/ states of countries with federal structure shall not be clubbed if the said foreign entities have different ownership and control.
- vi. In respect of any breach of the investment limit mentioned above, the FPI's shall have the following two options:-

- a) FPI in breach shall have to divest its holding within five trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company, or,
- b) The said investments shall be treated as Foreign Direct Investment from the date of breach

➔ *SEBI makes physical settlement mandatory for stock derivatives*

SEBI, vide circular dated 31.12.2018, has made physical settlement mandatory for all stock derivatives. Stock derivatives, which are currently being cash settled, are required to move to physical settlement in the following manner:

- i. The stocks shall be ranked in descending order based on daily market capitalization, averaged for the month of December, 2018.
- ii. Based on the abovementioned ranking, the bottom 50 stocks shall move to physical settlement from April, 2019 expiry onwards, the next 50 stocks from the bottom shall move to physical settlement from July, 2019 expiry onwards and the remaining stocks shall move to physical settlement from October 2019, expiry onwards.

Derivatives that are introduced on new stocks, meeting the enhanced eligibility criteria after the date of this circular shall also be physically settled.

GST Brief

➔ *31st GST Council meeting held at New Delhi: Government makes important recommendations*

The 31st meeting of the Goods and Service Tax (hereinafter, referred to as "GST") Council was held on 22nd December, 2018 at New Delhi and following are some of the recommendations that were introduced:

- i. Reduction in GST Rates from 20% to 18%, 12% and 5% for certain items as well exemptions on certain services.
- ii. There would be a single cash ledger for each tax head.
- iii. There would be a new return filing system which shall be introduced on a trial basis from 01.04.2019 and then on mandatory basis from 01.07.2019.
- iv. Taxpayers who do not file their two consecutive returns would be restricted to generate e-way bills.
- v. Refund application filed online shall be rejected if physical documents are not submitted to the jurisdictional officer within 60 days and extended time period of 15 days.

- vi. Clarifications shall be issued on certain refund related matters like refund of inverted duty structure, disbursal of refund within stipulated time, etc.

[See: CBIC-www.cbic.gov.in/]

➤ *Refund of IGST on export of goods now paid on exports of goods done on Non-EDI sites*

The Government has now notified that the procedure for refund of IGST paid on export of goods, which was provided only on Electronic Data Exchange (hereinafter referred to as "EDI") sites earlier, will now be provided on non-EDI sites also, and has prescribed the procedure for processing IGST refund claims made from such non-EDI sites.

[See: M.F. (D.R) Instruction No. 20/2018-Cus, dated 26.11.2018]

RERA Brief

MAHARASHTRA RERA ORDER:

➤ *Standard operating procedure (SOP) for handling complaints on Non-Registered Projects:*

Maha RERA already had a procedure for handling complaints against registered projects, now it has issued a Standard Operating Procedure (SOP) for handling complaints on Non-Registered Projects.

STEP 1- Informant are requested to submit project details at "Non-Registration" tab on Maha RERA's portal and if the informant wants a hearing with the Authority, it can on payment of fee of Rs.5000/- request for a hearing and the informant can also view the status of the application on real time basis by using its mobile number and a generated SC number.

STEP 2- After application is received online, it is assigned by the software to Technical Officers, who will scrutinize the project on basis of information received, meeting promoter, site visit etc.

STEP 3- Technical wing will undertake the following steps for Source Complaint, it will directly schedule a hearing with the Authority. However on the date of hearing complainant shall have to submit a declaration stating that complaint along with hearing details has been duly served upon the respondent.

After the ruling of the authority it will be uploaded on the website. Informant can view the details on his/her dashboard and providing of email ID of respondent is mandatory for Source Complaints.

TAMIL NADU RERA ORDER:

➤ *Urban Development Order - TNRERA Registration a pre-requisite for Promoters while issuance of planning permissions by metropolitan authorities:*

Many Promoters have still not registered their projects with TNREA, which they ought to have registered. Therefore the Housing and Urban Development Department has on the request made by Chairman of TNRERA, directed the Member Secretary Chennai Metropolitan Department Authority and Commissioner of Town & Country Planning and Local Bodies to ensure that while issuing planning permissions to Promoters, in cases where the area of land proposed to be developed exceeds 500 sq.m or the number of apartment proposed to be developed exceeds 8 inclusive of all phases, the registration of projects with TNRERA and its compliance is made a pre-requisite for issuance of a Completion Certificate and permissions to Promoters. This condition is also to be incorporated in the Tamil Nadu Combined Development Regulations and Building Rules, 2018.

RERA Cases

➤ *Maha RERA Order: Multiple Proceedings on same issue not permissible under RERA 2016.*

In the matter of Mr. Jolin Movoni ("**Complainant**") Vs. M/s. Rore Township Pvt. Ltd. ("**Respondent/Promoter**"), before Maha RERA ("**Authority**") seeking a refund along with interest for the delayed possession in respect of booking of a flat in Rare Township's project called 'Rising City- Atlanta Heights' of Ghatkopar ("**Project**").

Facts:

The Complainant had booked a flat in the Project in the year 2011 for a consideration of Rs.1.33 crores (approx) and was assured by the Promoter at the time of booking that the Project will be completed on time and handover of the flat within 36 months from date of commencement of construction.

But the Respondent failed to complete the Project on time and also did not register the agreement.

The Complainant does not want the flat in the Project anymore and is seeking refund of the amount paid by him to the Respondent.

Contentions:

- The Complainant is not an allottee as defined under the provisions of the RERA Act, 2016 and therefore he cannot seek relief under section 12 and 18 of the RERA Act, 2016.

- The provisional letter of allotment was issued to the Complainant, he was also called upon to pay the stamp duty, registration charges and VAT. However he failed to pay such duty, charges etc.
- The draft agreement for sale was sent to the Complainant thrice, however he did not execute the registered agreement for sale.
- The Respondent also contended that the Complainant being one of the member in the Rising City Ghatkopar Association ("Complainant Association") formed by the allottees of the Project, this association of allottees had earlier filed a complaint before Maha RERA, where the Chairman of Maha RERA had already passed an order directing the Respondent to execute the registered agreement for sale with the members of the Complainant Association.

Issues:

- *Whether the Complainant was entitled to get refund of his amount with interest under the RERA Act?*
- *Whether multiple proceedings under same issue are permissible under RERA 2016?*

Observations:

- Since the Complainant was one of the member of the Complainant Association and a complaint had already been filed before Maha RERA by this Complainant Association, to allow cancellation of the flat bookings by the allottee.
- Therefore, Maha RERA held that since the Complainant was also a party to the said proceeding by virtue of the Complainant being a member to the Association and a verdict directing the Promoter to execute registered agreements for sale with the Complainant Association was also passed by Maha RERA. Thus the Authority held in the present complaint that the Complainant can't again separately agitate on the same complaint before Maha RERA, as it will amount to agitation of multiple proceedings on the same issue, which is not permissible in RERA Act, 2016.

Order:

The Authority held that the complaint is not maintainable.

HARYANA REAL ESTATE REGULATORY AUTHORITY (PANCHKULA):

- ➔ *In the matter of Ritu Aggarwal ("Complainant") vs TDI Infrastructure Pvt. Ltd. ("Respondent"), before the Haryana Real Estate Regulatory Authority ("HRERA/ Authority") for project namely, Park Street ("the Project").*

Facts: -

- Complainant booked and allotted a commercial shop on first floor measuring 800 sq. ft on 20.02.2007 in the Project of the Respondent. With possession to be delivered within 24 months of booking after all the development work and obtaining Occupation Certificate.
- Complainant is aggrieved that the Respondent failed to execute sale agreement after a passage of 12 years of booking.
- Complainant has filed the complaint seeking refund of the money Rs.24,82,117/- along with interest @12% per annum and to pay statutory compensation on the amount deposited.

Contentions: -

- The Respondent contended that the Authority does not have jurisdiction to entertain this complaint as the project is covered under a license dated 16.06.2006. Thus it is neither registered nor registerable under Maha RERA.
- The Respondent contended that as per Rule 2(o) of HRERA Rules, 2017 ("**Rules**"), the Project is not an on-going project.
- Promoter denied applicability of Rule 8 as the agreement was executed before enactment of Real Estate Regulatory Authority Act, 2016 ("**Act**") and had already collected the amount in excess of 10 per cent of the total price.
- Promoter contended that the alleged grievances of the Complainant under the complaint can only be filed before Adjudicating Officer u/s 71 of the Act.

Issues: -

- *Whether the authority has jurisdiction to entertain the matter as an agreement was executed before enactment of the Act?*
- *Whether the Complainant was entitled to get refund of his amount with interest?*

Observation: -

- HRERA observed that possession has not been handed over after a lapse of more than 12 years, the Act consists of two distinct parts, first related to the registration of new and ongoing projects for informing prospective buyers, and second for safeguarding interest of buyers of the property in new as well as old projects in respect of obligations under the law subsists on the part of the either parties.

- It was observed that the Respondent's Project is still under construction and may take 8 more months for completion. The occupation certificate was also rejected and the conveyance deed has not been executed. The Authority held that since the core of the transaction between a developer and the allottee still remains to be fulfilled and the Act was enacted to deal with all such situations and for providing level playing field to both the parties.
- Further it held that the plea of Respondent that the complaint could only be preferred to Adjudicating Officer and not before the Authority is devoid of merit as the institution of Adjudicating Officer is meant to determine un-liquidated damages arising out of non-performance of full or part of the contract. The core of the contract falls within the jurisdiction of the Authority only.
- The Authority thus held that the Complainant cannot be expected to wait any further as it was unjust and unfair.

Order: -

- The Authority directed that the Respondent shall pay the entire amount with interest at rate stipulated under rule 15 of Rules within 60 days in two instalments, first instalment will be payable within 30 days and the second instalment payable within next 30 days thereafter.
- As the project is not registered a show cause notice shall be issued to the Respondent under section 59(1) of the Act.

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