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Corporate Brief**Standard Operating Procedure (SOP) for processing FDI Proposals notified**

Ministry of Commerce & Industry has notified Standard Operating Procedure (SOP) for processing FDI proposals, pursuant to which, all proposals for foreign investment in sectors requiring government approval will be filed online on the revamped FIPB portal. Highlights of the SOP are: (a) The proposal for foreign investment will be filed in the format as available on the portal; (b) After the proposals are filed online, DIPP will identify the concerned administrative Ministry/ Department and e-transfer the proposal within 2 days; (c) The applicant would be required to submit one signed physical copy of the proposal to the competent authority in case the applications are not digitally signed; (d) In Respect of sectors/ activities which are presently under automatic route but required government approval earlier as per the extant policy, concerned administrative Ministry/ Department would be the competent authorities for the grant of post-facto approval for foreign investment; (e) The SOP has also prescribed timelines for dissemination of investment proposal by DIPP to concerned Ministry/ Department, submission of signed physical copy of the proposal by applicant, initial scrutiny of the proposal etc. [See DIPP Notification, dated 29th June 2017]

MCA invites Public Suggestions on restrictions on number of layers for certain classes of holding companies

MCA has invited suggestions/ comments from stakeholders on the draft notification/ rules proposing amendments to the Companies (Specification of Definitions Details) Rules 2014 ("**The Draft Rules**"). The Draft Rules proposes to restrict every holding companies to have not more than two layers of subsidiaries. However, such restriction shall not be applicable to following classes of companies, namely: (a) banking company, (b) NBFC, (c) insurance company and (d) government company. The Draft Rules also clarifies that in computing the layers, one layer which is represented by a wholly owned subsidiary shall not be taken into account. [See MCA Public Notice, No. 3/3/2017-CL-I, dated 28th June 2017]

Introduction of Financial Resolution & Deposit Insurance Bill, 2017 to deal with bankruptcy of financial entities Approved by Union Cabinet

Union Cabinet has approved the proposal to introduce Financial Resolution and Deposit Insurance Bill, 2017 ("**The Bill**"). The Bill provides for comprehensive resolution framework for specified financial sector entities to deal with bankruptcy situation in banks, insurance companies and financial sector entities. Highlights of the Bill are: (a) The Resolution Corporation will be set up to protect the stability and resilience of the financial system, protecting the consumers of covered obligations up to a reasonable limit and protecting public funds to the extent possible; (b) It will result in repealing of the Deposit Insurance and Credit Guarantee Corporation Act, 1961. [See Press Information Bureau, Government of India, Print Release dated 14th June 2017]

RBI to issue new currency notes of Rs. 500

RBI will introduce a new batch of banknotes with inset letter "A", bearing the signature of Dr. Urjit R. Patel, Governor, RBI, with the year of printing on the reverse. The design will be similar with that of new Mahatma Gandhi (New) Series issued post demonetisation. [See RBI PR dated 13th June 2017]

Constitution of Regional Committees to review withdrawal of prosecution cases

MCA has, with the need to reduce the arrears and backlog of cases in the Court, constituted Regional Committee (s) under the chairmanship of Regional Director of the concerned region. Such Regional Committees will review all

the prosecution/ pending litigation in their regions including cases filed by Official Liquidator and furnish a report to the MCA within 2 months. [See MCA Order No. 10/17/2017-Legal, dated 14th June 2017]

➤ ***Insolvency and Bankruptcy Board of India (Inspection & Investigation) Regulations, 2017 notified by MCA***

MCA has issued Insolvency and Bankruptcy Board of India (Inspection & Investigation) Regulations, 2017 (“**The Regulations**”). Henceforth, The Regulations shall apply to inspection and investigation of service providers. The Regulations define “service provider” as insolvency professional agency, insolvency professional, insolvency professional entity or information utility. Highlights of The Regulations are: (a) The Board (“**The Board**”) shall conduct inspection and investigation of such number of service provider every year, as may be decided by the board from time to time; (b) The Board may, direct an Inspecting Authority to conduct inspection and investigation of records of a service provider; (c) the purpose of inspection by the Board will, inter alia, be to ensure that records are being maintained by a service provider in the manner required under relevant regulations to ascertain whether adequate internal control systems, procedures and safeguards have been established and followed by a service provider, to ascertain whether the provisions of the Insolvency and Bankruptcy Code, 2016 are being complied with etc. [See MCA Notification No. IBBI/2017-18/GN/REG011, dated 12th June 2017]

➤ ***SEBI provides for online registration mechanism for Mutual Funds***

SEBI has, with a view to provide for Online Registration Mechanism for Mutual Funds, operationalized SEBI Intermediary Portal for the entities to submit the mutual funds registration applications online. The SEBI Intermediary Portal will include an application for registration, processing of application, grant of in-principle approval, grant of final registration etc. [See SEBI Circular No. SEBI/HO/IMD/DF3/CIR/P/2017/52, dated 1st June 2017]

➤ ***SEBI allows hedge funds, PIPE funds to invest in Commodity Derivatives Market***

SEBI has permitted participation of Category III Alternative Investment Funds (AIFs) like hedge funds, PIPE (private investment in public equity) funds in commodity derivatives market in order to improve quality of price discovery and better price risk management. Prior to this, institutional

participants were not allowed to participate in commodity derivatives market in India. Such Category III AIFs will not be permitted to invest more than ten percent of the investable funds in one underlying commodity. They will be required to make disclosures in private placement memorandum issued to the investors about investment in commodity derivatives. [See SEBI Circular No. SEBI/HO/CDMRD/DMP/CIR/P/2017/61, dated 21st June 2017]

GST Brief

➤ ***Commencement of official GST website***

Central Government has notified www.gst.gov.in as the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax and electronic way bill. [See Central Tax Notification No. 4/2017, dated 19th June 2017]

➤ ***Exempted persons from Registration under CGST***

Central Government has notified the persons engaged in making supplies of taxable goods or services or both, the total tax which is liable to be paid on reverse charge basis by recipient of such goods are being exempted from obtaining registration under The Central Goods and Services Tax Act, 2017. [See Central Tax Notification No. 5/2017, dated 19th June 2017]

➤ ***Composition Levy Rates enhanced***

Central Government on recommendations of the Council, has prescribed that a person whose aggregate turnover in the preceding financial year is not exceeding Rs. 75 lakhs can opt for this scheme, and the aggregate turnover in preceding financial year is Rs. 50 lakhs under the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh. Further, the Central Government has prescribed rates in lieu of central tax: (a) 1% of the turnover in state in case of manufacturer; (b) 2.5% of turnover in state in case of persons engaged in making supplies; (c) 0.5% of turnover in state in case of other suppliers. [See Central Tax Notification No. 8/2017, dated 27th June 2017]

➤ ***GST Council revises rates of 66 items***

GST Council Meeting held on 11th June 2017 has revised rates of 66 items such as pickles, fruit preservers, insulin, cashew nuts, school bags, notebooks, printers, cutlery to name a few. [See <http://cbec.gov.in>]

➤ **Rates fixed for some items**

GST Council Meeting held on 3rd June 2017, fixed the GST rates charges for some items: (a) rate for gold, gems, jewellery fixed at 3%; (b) rate of 0.25% on rough diamond; (c) bidi to be taxed at 28%; (d) ready garments to be taxed at 12%; (e) yarn and fabric cotton at 5%. [See <http://cbec.gov.in>]

RERA Brief

➤ **Builders cannot advertise projects without registration**

Ministry of Housing & Urban Poverty Alleviation has issued clarification regarding advertisement and sale in ongoing projects. Section 3(1) of the RERA, 2016 prohibits the promoter from advertising or marketing the real estate project without prior registration with the Real Estate Authority, which has been further clarified by the Ministry. [See Circular No. O-17034/101/2016-H/EFS-3018177, dated 12th June 2017]

➤ **States notify RERA rules, establish State Authority & begin Registration**

The states/ UT's which have notified RERA rules are: Andaman & Nicobar Islands, Andhra Pradesh, Bihar, Chandigarh, Chhattisgarh, Dadra & Nagar Haveli, Daman & Diu, National Capital Territory of Delhi, Gujarat, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Odisha, Puducherry, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh & Uttarakhand.

Andaman & Nicobar, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, Madhya Pradesh and Maharashtra have established Permanent Real Estate Authority. Whereas, Andhra Pradesh, Bihar, National Capital Territory of Delhi, Haryana, Jharkhand, Kerala, Puducherry, Punjab, Rajasthan, Tamil Nadu, Telangana, Uttar Pradesh and Uttarakhand have established an Interim Real Estate Regulatory Authority as on date.

Meanwhile, only 4 states i.e. Madhya Pradesh, Maharashtra, Punjab & Rajasthan have started their registration process.

Litigation Brief

➤ **Pawan Hans Helicopters Ltd. Versus Maritime Energy Heli Air Services Pvt. Ltd.**

FACTS:

1. The Appellant had entered into an agreement with the Respondent for mobilization of seaplane to connect popular tourist destinations in the Andaman & Nicobar Islands. It was agreed that the Respondent shall mobilize the sea plane within 75 days from the date of issuance of the Letter of Intent. The agreement was entered upon primarily with a motive to earn revenue during the forthcoming tourist season. The Respondent, however, failed to mobilize the sea plane within the period of 75 days, as was agreed and the Appellant requested the Respondent to pay a sum of Rs.11,86,614 /- as liquidated damages. The Respondent paid the said amount under protest.
2. Since disputes had arisen, the Respondent invoked the arbitration clause and a sole arbitrator was appointed. The Arbitrator held that the Appellant were not entitled to receive any liquidated damages since they could not prove if it suffered any damages on account of the seaplane being not mobilized in time. Further, the Arbitrator held that the Respondent could not be alone be held responsible for the time taken in obtaining clearances. An appeal was filed by the Appellant against the said order before the Ld. Single Judge at the High Court of Delhi, and the Ld. Single Judge upheld the decision of the arbitrator to the said extent.
3. The Appellant, aggrieved, filed an appeal before the Division Bench of the High Court under Section 34 of the Arbitration and Conciliation Act, 1996 against the said order of the Ld. Single Judge.

ISSUE INVOLVED:

Whether the Appellant is entitled to any Liquidated Damages without quantifying the damages by any comparative data viz, of the number of tourists lost; profit earned in subsequent years etc.?

DECISION:

1. The High Court while allowing the Appeal, held that in certain eventualities, the parties may contemplate payment of damages or compensation to cater to specific situations because the quantification of such damages by evidence is impossible or impractical.
2. It was further held that the learned arbitrator failed to interpret Clause 5 of the Agreement, which provided in clear terms that "The date of delivery and starting of operations shall be the essence of the Agreement" and observed that since time was the essence of the contract, the Respondents were liable to pay liquidated damages on account of delay caused in the mobilization of the sea plane. It was also observed that the time period of 75 days given to the Respondent to mobilize the seaplane included not only the physical delivery of the sea plane but also all the necessary approvals/ permissions for the operation of the seaplane.
3. It was also observed that in such a contract it would be difficult to prove exact loss or damage which the parties suffer because of the breach thereof. In such a situation, if the parties have pre-estimated such loss after clear understanding, it would be totally unjustified to arrive at the conclusion that the party who has committed breach of the contract (in this case, delay in mobilizing the seaplane) is not liable to pay compensation.

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