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- Government amends the Central Goods and Services Tax Rules, 2017

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- Punjab RERA issues notice to Promoters of registered real estate projects.
- Rajasthan RERA held that winding up order will not bar RERA proceedings

Corporate Brief

➔ **MCA invokes restriction on LLPs from carrying out manufacturing activities**

Recently, Ministry of Corporate Affairs ("MCA") had issued a clarification that Limited Liability Partnerships ("LLP") were restricted from carrying out any manufacturing and allied activities vide notification dated 06.03.2019. However, on 17.04.2019, MCA invoked the clarification with immediate effect.

➔ **MCA re-examines the Insolvency and Bankruptcy Code, 2016**

On 18.04.2019, the MCA notified regarding reconstitution of the Insolvency Law Committee as the standing committee under the chairmanship of secretary of MCA, to analyze the functioning and implementation of the Insolvency and Bankruptcy Code, 2016 ("Code"), identifying issues impacting the efficiency of the insolvency resolution and liquidation framework for corporates, individuals and partnership firms.

➔ **Government takes a step towards promoting ease of doing business: introduces e-form AGILE**

For the promotion of ease of doing business in India, the government recently introduced the AGILE Form INC-35 ("e-Form Agile") to be filed with the e-form SPICE, at the time of incorporation of a company. The e-form AGILE is applicable to companies that are registered after 29.03.2019 and companies that are required to be incorporated using online services or through the SPICE form only. The e-form AGILE will not be applicable to companies incorporate through physical application.

➔ **RBI releases draft "Enabling Framework for Regulatory Sandbox"**

Reserve Bank of India ('RBI') vide notification dated 18th April, 2019 ('said Notification') notified on 'Enabling Framework for Regulatory Sandbox' ('Circular')

- For growing innovation of FinTech, the Sub Committee constituted to make recommendations on it, has decided to set up a Working Group ("WG"), to look into the report on the granular aspects of FinTech and to review and reorient the regulatory framework.
- RBI to set up an inter-regulatory WG under the chairmanship of Executive Director, Department of Banking Regulation and report upon the same.

➔ **MCA notifies amendments to Companies (Registration of Charges) Amendment Rules, 2014**

MCA vide notification 30.04.2019 ("said Notification") notified an amendment to the Companies (Registration of Charges) Amendment Rules, 2014 ("said Rule"). Some of the key amendments are as follows:

- Where the company fails to register the charge and the registration is affected, on the application of the charge-holder, charge-holder shall be entitled to recover from the company the amount of any fees or additional fees or advalorem fees paid by him to the registrar.
- The Registrar may, if satisfied that the company had sufficient cause for not filing the particulars within a period of thirty days of the date of creation of the charge, allow the registration of the same after thirty days but within the period as specified on payment of fee, additional fee or advalorem fee, as prescribed in said Rule.
- The rectification in register of charges on account of omission or misstatement of particulars in charge previously recorded and extension of time in filing of satisfaction of charge with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83 of the Companies Act, 2013.

➔ **SEBI issues granular norms for computation of risk for clearing corporations**

Subsequent to the issuance of the notification of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 ("SECC Regulations"), wherein it is provided that every recognized Clearing Corporation shall at all times maintain, a minimum net worth of Rs. 1,00,00,000/- (one hundred crore rupees) or capital as determined under Regulation 14 of the SECC Regulations, whichever is higher, SEBI issued a circular on 'Risk-based capital and net worth requirements for Clearing

Corporations under Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018' ("Circular") dated 10.04.2019.

The Circular is issued post consultations of the government with the recognised Clearing Corporations and consequentially it was decided to issue 'granular norms' related to 'computation of risk based capital and net worth requirements for Clearing Corporations' based on the following factors:

- a. Credit risk
- b. Business risk
- c. For Orderly Wind down
- d. For Operational and Legal Risks

➤ *NCLT initiates insolvency resolution process after corporate debtor fails to acknowledge demand notices regarding outstanding payments*

Facts: In the case of Dharnendra Enterprise Versus H.V. Synthetics Pvt. Ltd., the operational creditor supplied different chemicals to the corporate debtor, due to which a certain amount of money was due by the corporate debtor towards the creditor. Even after issuance of demand notices by the creditor for the said amount of money outstanding on part of the corporate debtor, the corporate debtor refused to accept the same.

The corporate debtor only made the payment of outstanding dues during the pendency of the Corporate Insolvency Resolution Process ("CIRP") application was filed and the same was pending. Even though there were repeated efforts by the financial creditor, the corporate debtor neither came forward for the settlement nor appeared before the NCLT.

Held: The NCLT held that this was a fit case to initiate the insolvency resolution process and admit the CIRP application, even though the corporate debtor had paid the outstanding amount as the corporate debtor had repeatedly ignored demand notices in the past that required the payment to be made by the corporate debtor.

GST Brief

➤ *Government amends the Central Goods and Services Tax Rules, 2017*

The Central Government recently amended the Central Goods and Services Tax Rules, 2017 ("CGST Rules"). Some of the amendments are as follows:

- a) The definition of "value of assets" is added as an explanation to Rule 41(1) of the CGST Rules to mean "the value of the entire assets of the business, whether or not input tax credit has been availed thereon."
- b) Insertion of Rule 88A of the CGST Rules which provides that the order of utilization of input tax credit to provide that Input Tax Credit on account of the integrated tax should be utilised towards payment of integrated tax first and then if there is any amount remaining, utilised towards the payment of Central tax or State tax or union territory tax, as the case maybe, in any order
- c) Rule 100 of the CGST Rules has been substituted with effect from 01.04.19 and it provides regarding assessment in certain cases to issue order of assessment, issue notice, to file an application for withdrawal of assessment order, etc.
- d) Rule 142 of the CGST Rules has been substituted with effect from 01.04.2019 which provides that notice and order for demand of amounts payable under of the CGST Rules.

Real Estate Brief

MAHARSHTRA RERA AMENDMENT RULES:

➤ MAHA RERA has vide its notification dated 06.06.2019 issued the Maharashtra Real Estate (Regulation and Development) (Registration of Real Estate Projects, Registration Of Real Estate Agents, Rates Of Interests And Disclosures On Website) (Amendment) Rules, 2019 ("**Amendment Rules**") makes the following amendments to the Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interests and disclosures on website) Rules, 2017 hereinafter referred to as "**Principal Rules, 2017**"

• **Insertion of definition for Plotted Development:**

The words "plotted development" appeared in Rule 4(3)(b) of the Principal Rules, 2017 but they were not defined previously.

The new rule is reproduced herein below:

Rule2 (p-i) "plotted development" means the projects where land is developed into plots for the purpose of selling all or some of the said plots."

Further in case of plotted development at the time of application for registration, the promoter to pay registration fee calculated on the area of the land

proposed to be developed, at rate of rupees five per square meter.

- **Amendment to Rule 7(3) of the Principal Rules:**

For filing an application for extension of Real Estate Project by the Promoter to be accompanied with fees calculated on the area of land proposed to be developed at the rate of rupees ten per square meter, subject to a **minimum of rupees ten thousand** and a **maximum of rupees ten lakhs only and in case of plotted development**, the promoter to pay an extension fee, calculated on the area of the land proposed to be developed at the rate of rupees five per square meter.

- Under the Amendment Rules, in model form of agreement for sale to be entered by the Promoter and allottees for plotted development, it has been stated that the model form of Agreement can be modified and adapted in each case having regard to the facts and circumstances of respective case but in any event, matter and substance mentioned in those clauses, which are in accordance with the statute and mandatory according to the provisions of the Act, in that event only relevant clauses to be retained in the Agreement for Sale.
- The Amendment Rules further mandates that, in case the transaction being executed by the agreement between the Promoter and the allottee is facilitated by a Registered Real Estate Agent, all amounts (including taxes) agreed as payable remuneration / fees/ charges for services/ commission/brokerage to the said Registered Real Estate Agent, to be paid by the Promoter/ allottee/ both, as the case may be, in accordance with the agreed terms of payment.
- **Land Cost:**

In the Principal Rules, 2017 Explanation I and II of Rule 5 sub-rule (ii) provided for the calculation of 'Land Cost' as follows:

"Explanation I. – In ascertaining the cost of completion of percentage of the project, the land cost shall include,-

- (i) The costs incurred by the Promoter for acquisition of ownership and title of the land

parcels proposed for the real estate project, including its lease charges, which shall also include overhead cost, marketing cost, legal cost and supervision cost;

- (ii) Premium payable to obtain development or redevelopment rights;
- (iii) Amount paid for acquisition of TDR;
- (iv) Premium for grant of FSI, including additional FSI (if any), fungible FSI; and any other instruments permissible under the Development Control Regulations;
- (v) Consideration payable to the outgoing developer to relinquish the ownership and title rights over such land parcels;
- (vi) Amounts payable to State Government or Competent Authority or any other Statutory Authority of the State or Central Government, towards Stamp Duty, transfer charges, registration fees etc.; and
- (vii) ASR linked premiums payable by any Promoter as per requirement of any Law, rules or regulations for obtaining right for redevelopment of lands owned by Public Authorities;

Explanation II. – Where the promoter, due to inheritance, gift or otherwise, is not required to incur any cost towards acquisition of ownership and title of the land parcels proposed for the real estate project, the cost of land shall be reckoned on basis of the value of the land as ascertained from the ASR prepared under the provisions of the Maharashtra Stamp Act, relevant on the date of registration of the real estate project.

Explanation III. – Where the promoter, due to inheritance, gift or otherwise, is not required to incur any cost towards acquisition of ownership and title of the land parcels proposed for the real estate project, the cost of land shall be reckoned on basis of the value of the land as ascertained from the ASR prepared under the provisions of the Maharashtra Stamp Act, relevant on the date of registration of the real estate project".

Now, under the **Amendment Rules**, the above Explanation I and II have been deleted and substituted with a new Explanation I, which is reproduced as follows: **"Explanation I.** – In ascertaining the cost of completion of percentage of the project, the land cost shall be reckoned on basis of the value of the land as ascertained from the Annual Statement of Rates (ASR) prepared under the provisions of the Maharashtra Stamp Act, relevant on the date of registration of the real estate project."

In view of the deletion of the entire Explanation I of the Rules, which prescribed the details of cost, fees and expenses, which would form part of the land cost, an uncertainty is cast as to whether or not these costs and expenses still form part of the land cost.

- Further the **Amendment Rules** has introduced two new explanations in the definition of Land Cost prescribed in the Rules these are:

“Explanation IV—all cost items should be mutually exclusive. There should not be any double counting of costs.

Explanation V—The development cost or cost of construction of the project shall not include marketing and brokerage expenses towards sale of apartments. Such expenses though part of the project cost, should not be borne from the amount that is required to be deposited in the designated separate account.”

This restricts the Promoters from withdrawing marketing expenses from the 70 percent in the separate account.

- Period of Registration:**

Rule 6 of the **Principal Rules** provided that at the time of grant or registration of the project, that the period for which registration shall be valid shall exclude such period where actual work could not be carried by the promoter as per sanctioned plan due to specific stay or injunction orders relating to the real estate project from any Court of law, or Tribunal, competent authority, statutory authority, high power committee etc., or due to such mitigating circumstances as may be decided by the Authority.

“The proviso to the Rule stated that “while deciding on such mitigating circumstances, the Authority shall give reasonable opportunity of hearing to the allottees and such other person, who in the opinion of the Authority, have interest in the project.”

The **Amendment Rules** have completely deleted the provision of mitigating circumstances as grounds for seeking grant, extension of validity of registration of project.

- Time period for Conveyance of Title:**

Under section 17 of RERA, a conveyance is to be executed in favor of the allottee, association of allottees within a specified period as provided under the local laws and in absence of a local law, within a period of three months from the date of issue of Occupancy Certificate. As on the date of enactment of RERA, the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) was the local law prevailing in the state of Maharashtra for under-construction projects, which was not repealed by RERA and which

provided for execution of conveyance deed by allowing parties to decide mutually such timelines.

Previously, under the **Principal Rules, Rule 9(2):**

“In case of single building project. - If no period for conveying the title of the Promoter to the legal entity of the allottees is agreed upon, the Promoter to execute the conveyance within three months from the date of issue of occupancy certificate or fifty one per cent. of the total number of allottees in such a building or a wing, have paid the full consideration to the promoter, whichever is earlier.

In case of a building or a wing of a building in a Layout- If no period for conveying the title is agreed upon, the Promoter to execute the conveyance of the structure of that building or wing of that building (excluding basements and podiums) within one month from the date on which the Co-operative society or the company is registered or, as the case may be, the association of the allottees is duly constituted or within three months from the date of issue of occupancy certificate, whichever is earlier.

In case of the entire undivided or inseparable land underneath all buildings/ wings along with structures of basements and Podiums constructed in a Layout - If no period for conveying the title of the Promoter in respect is agreed upon, the Promoter to execute the conveyance within three months from the date on which the Apex Body or Federation or Holding Company is registered or, as the case may be, the association of the allottees is duly constituted or within three months from the date of issue of occupancy certificate to the last of the building or wing in the layout, whichever is earlier.”

The **Principal Rules** allowed the promoter and allottees to decide timeline for execution of Conveyance Deed of land/building in their agreement and if such timelines are not agreed upon, the Principal Rules provided the aforementioned timelines to be followed.

Now as per the **Amendment Rules**, the conveyance has to be executed within a period of three months from the date of issuance of occupancy certificate.

PUNJAB RERA ORDER:

➔ PUNJAB RERA issues circular to Promoters of Registered Real Estate Projects:

Since the validity of registration of real estate projects has expired for a large number of projects but the Completion Certificate in relation thereof has not been furnished by the Promoter to the Authority and the registration of real estate projects under RERA is valid upto a definite period,

indicated at the time of registration. The registration so granted can be extended by the Authority under Section 6 of the Act and Rule 6 of the Punjab State Real Estate (Regulation and Development) Rules, 2017. Thereby vide the notice the Authority is calling out to the Promoters of projects whose registration has expired and who have not submitted the Completion Certificate to the Authority are given a one-time opportunity to apply for extension of registration by 30.06.2019 on payment of fees prescribed in registration fees. Thereafter, late fee to the extent of 10% of the registration fee to be applicable.

RAJASTHAN RERA ORDER:

➔ In the matter of Kuldeep Kaur & Ors (Complaint) vs MVL Ltd (Non-Complaint) before RAJ RERA ("Authority") with regard to winding up order will not bar RERA proceedings:

Facts:

- An application is filed under Section 279 of Companies Act, 2013 by the builder seeking stay of proceedings before the Authority on the ground that the Delhi High Court had appointed a provisional liquidator in respect of the builder-company, while the proceedings under RERA were pending.
- Hon'ble High Court of Delhi admitted a winding up petition against the non-complaint and appointed a provisional liquidator.

Issue:

Whether RERA prevails over Companies Act, 2013?

Observations:

- Section 279 of Companies Act, 2013 states that when a winding up order has been passed or provisional liquidator is appointed no legal proceeding shall be commenced or if pending shall continue with the permission of the tribunal.
- Authority was of the view that the stage of staying the present proceeding has not yet arrived and admission of winding up petition and appointment of provisional liquidator has no bearing on proceedings before the authority.
- Proceedings are pending before the authority under RERA Act. Which is a special act of the parliament. Section 79 of RERA Act has barred the jurisdiction of all civil courts in respect of all matters under RERA Act.
- RERA Act is a special act and it was made in 2016 after Companies Act, 2013. RERA Act has a overriding effect under Section 89 of RERA Act.

- Authority thus held that Section 31 of RERA Act will prevail over the provisions of Section 279 of Companies Act, 2013.
- Authority also took into account judgment of Hon'ble Supreme Court in Allahabad Bank Vs. Canara Bank & Anr, that provisions of special law like RDB Act will prevail over the provisions of Companies Act, 2013 which is a general law. Authority said that RERA Act is like RDB Act and it will prevail over the Companies Act.

Held:

- Authority held that Section 279 of the Companies Act, 2013 does not interfere with the proceedings of the Authority and permission of Tribunal is not required.
- Application for staying the present proceeding is rejected.

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