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Corporate Brief

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Corporate Brief

➲ **Ministry of Labor and Employment : Notification number S.O. 1513(E) dated May 18, 2020 with respect to an amendment in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952)**

Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), talks about the contributions that shall be made to the Employees Provident Fund. Under this section, the Employer shall contribute 10% (Ten percent) of the basic wages, dearness allowance and retaining allowance (if any)] for the time being payable to each of the employees (whether employed by him directly or by or through a contactor)], and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, [if any employee so desires, be an amount exceeding ten per cent.] of his basic wages, dearness allowance and retaining allowance (if any), subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

The First Proviso to this section, confers a power upon the Central Government that, after making, such inquiry as it thinks fit, the Central Government, may, by notification in the Official Gazette, specify, the application of this section to any establishment or class of establishments, for which the words "Ten Percent" in the section will be substituted by "Twelve Percent".

In exercise of powers conferred by first proviso to section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government, after making aforesaid inquiry, makes the following amendments in the said notification number S.O. 320 (E) dated the 9th April, 1997, namely:-

In the said notification, SCHEDULE II mentions the establishments to which this proviso SHALL NOT apply, therefore, vide this amendment, an addition was made to SCHEDULE II, after clause (iv), wherein the following clause has been inserted, namely: - "(v) Any establishment, other than Central Public Sector Enterprises and State Public Sector Enterprises and other establishments owned by, or under the control of the Central Government or the State Government, as the case may be, in respect of wages payable by it for the months of May, June and July, 2020". Provided that this clause shall not be applicable to the establishments eligible for relief under the Pradhan Mantri Garib Kalyan Yojana guidelines issued by the Employees' Provident Fund Organization vide its Office Memorandum No.C-1/Misc. /2020-21/Vol.II/Pt. dated 9th April, 2020.

➲ **Companies Act, 2013: Amendment to the Act as on May 26, 2020 vide notification G.S.R. 313(E).**

1. Section 467 of the Companies Act, 2013 confers a power upon the Central Government to amend the Schedules of the said Act, in exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013, the Central Government hereby makes the following further amendment to Schedule VII of the said Act describes the Activities which may be included by companies in their Corporate Social Responsibility Policies.
2. In Schedule VII, item (viii), after the words "Prime Minister's National Relief Fund", the words "or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)" have been inserted.
3. This notification shall be deemed to have come into force on 28th March, 2020.

➲ **Ministry of Corporate Affairs: Circular number F. No. 21412020-CL-V dated May 05, 2020 on Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM)**

In view of the continuing restrictions on the movement of persons at several places in the country, it has been decided that the companies be allowed to conduct their AGM through

video conferencing (VC) or other audio visual means (OAVM), during the calendar year 2020, subject to the fulfillment of the following requirements:

A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility –

i. The framework provided in para 3 -A of EGM circular - I and the manner and mode of issuing notices provided in sub-para (i)-A of EGM Circular - II shall be applicable mutatis mutandis for conducting the AGM.

ii. In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

iii. In view of the prevailing situation, owing to the difficulties involved in dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), such statements shall be sent only by email to the members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.

iv. Before sending the notices and copies of the financial statements, etc., a public notice by way of advertisement be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspapers having electronic editions, and specifying in the advertisement the following information :-

a. Statement that the AGM will be convened through VC or OAVM in compliance with applicable provisions of the Act read with this Circular.

b. The date and time of the AGM through VC or OAVM.

c. Availability of notice of the meeting on the website of the company and the stock exchange, in case of a listed company.

d. The manner in which the members who are holding shares in physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting.

e. The manner in which the persons who have not registered their email addresses with the company can get the same registered with the company.

f. The manner in which the members can give their mandate receiving dividends directly in their bank accounts through Electronic Clearing Service (ECS) or any other means.

g. Any other detail considered necessary by the company.

v. In case, the company is unable to pay the dividend to any shareholder by the electronic mode, due to non-availability of the details of the bank account, the company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

vi. In case, the company has received the permission from the relevant authorities to conduct its AGM at its registered office, or at any other place as provided under section 96 of the Act, after following any advisories issued from such authorities, the company may in addition to holding such meeting with physical presence of some members, also provide the facility of VC or OAVM, so as to allow other members of the company to participate in such meeting. All members who are physically present in the meeting as well as the members who attend the meeting through the facility of VC or OAVM shall be reckoned for the purpose of quorum under section 103 of the Act. All resolutions shall continue to be passed through the facility of e-voting system.

B. For companies which are not required to provide the facility of e-voting under the Act –

i. AGM may be conducted through the facility of VC or OAVM only by a company which has in its records, the email addresses of at least half of its total number of members, who –

a. In case of a Nidhi, hold shares of more than one thousand rupees in face value or more than one per cent of the total paid-up share capital, whichever is less.

b. In case of other companies having share capital, who represent not less than seventy-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting.

c. In case of companies not having share capital, who have the right to exercise not less than seventy-five per cent of the total voting power exercisable at the meeting.

ii. The company shall take all necessary steps to register the email addresses of all persons who have not registered their email addresses with the company.

iii. The framework provided in para 3-B of EGM Circular - I and the manner and mode of issuing notices provided in sub-para (i)-B of EGM Circular - II shall be applicable mutatis mutandis for conducting the AGM.

iv. In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.

v. Owing to the difficulties involved in dispatching of physical copies of the financial statements (including Board's report, Auditor's report or other documents required to be attached therewith), such statements shall be sent only by email to the members, trustees for the debenture-holder of any debentures issued by the company, and to all other persons so entitled.

vi. The companies shall make adequate provisions for allowing the members to give their mandate for receiving dividends directly in their bank accounts through the Electronic Clearing Service (ECS) or any other means. For shareholders, whose bank accounts are not available, company shall upon normalization of the postal services, dispatch the dividend warrant/cheque to such shareholder by post.

The companies referred to in paragraphs 3 (A) and (B) above, shall ensure that all other compliances associated with the provisions relating to general meetings viz making of disclosures, inspection of related documents/registers by members, or authorizations for voting by bodies corporate, etc. as provided in the Act and the articles of association of the company are made through electronic mode.

The companies which are not covered by the General Circular No. 181402Q, 21.04.2020 and are unable to conduct their AGM in accordance with the framework provided in this Circular are advised to prefer applications for extension of AGM at suitable point of time before the concerned Registrar of Companies under section 96 the Act.

➲ SEBI: Relaxations relating to procedural matters – Takeovers and Buy-Back dated May 14, 2020.

1. In view of the impact of the COVID-19 pandemic and the lockdown measures undertaken by Central and State Governments, based on representations, the following one time relaxations are granted from strict enforcement of certain regulations of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereafter "Takeover Regulations) and SEBI (Buy-back of securities) Regulations, 2018 (hereafter "Buy-back Regulations) pertaining to open offers and buy-back tender offers opening up to July 31, 2020.

1.1. Service of the letter of offer and/or tender form and other offer related material to shareholders may be undertaken by electronic transmission as already provided under Regulation 18(2) of the Takeover Regulation and Regulation 9(ii) of Buy-back Regulations subject to the following:-

1.1.1 The acquirer / company shall publish the letter of offer and tender form on the websites of the company, registrar, stock exchanges and the manager(s) to offer.

1.1.2 The acquirer / company along with lead manager(s) shall undertake all adequate steps to reach out to the/its shareholders through other means such as ordinary post or SMS or audio-visual advertisement on television or digital advertisement, etc.

1.1.3 Further, the Acquirer/ Company shall make an advertisement containing details regarding the dispatch of the letter of offer electronically and availability of such letter of offer along with the tender form on the website of the company, registrar and manager to the offer in the same newspapers in which (i) detailed pubic statement was published as per regulation 14(3) of Takeover Regulation or (ii) public announcements was published as per regulation 7(i) of Buy-back regulation.

1.1.4 Further, the acquirer/ company may have the flexibility to publish the dispatch advertisement in additional newspapers, over and above those required under the respective regulations.

1.1.5 The acquirer/ company shall make use of advertisements in television channels, radio, internet etc. to disseminate information relating to the tendering process. Such advertisements can be in the form of crawlers/ tickers as well.

1.1.6 All the advertisement issued should also be made available on the website of the company, Registrar, Managers to the offer, and Stock Exchanges.

2. The acquirer/ company and the manager to offer shall provide procedure for inspection of material documents electronically.
3. As far as possible, attempts will be made to adhere to the existing prescribed framework.
4. This circular shall come into force with immediate effect.
5. This circular is issued in exercise of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992.

Litigation Brief

➲ Centrotrade Minerals and metals Inc. Vs. Hindustan Copper Ltd (Civil Appeal Nos. 2562 and 2564 of 2006)

Supreme Court Judgment dated 02.06.2020

Centrotrade Minerals and Metals Inc, is a U.S. Corporation who had entered into a contract for sale of 15,500 DMT of copper concentrate to be delivered at the Kandla Port in Gujarat, India. The said goods were to be used at the Khetri Plant of Hindustan Copper Ltd (HCL). After all the consignments were delivered, the payments were to made in accordance with the contract. However, disputes arose between the parties with respect to the quantity of dry weight of copper. The agreement contained a two-tier arbitration agreement by which the first tier was to be settled by arbitration in India. In case either of the party was not agreeable with the award, it had right to right to appeal to a second arbitration to be held by the International Chamber of Commerce (ICC) in London. Centrotrade invoked the arbitration clause and by an Arbitral award, dated 15.06.1999, the arbitrator appointed by the Indian Council of Arbitration passed an award rejecting the claim of Centrotrade. Thereupon, Centrotrade invoked the second part of the arbitration agreement as a result of which ICC London appointed Arbitrator delivered an award, dated 29.09.2001, in the favor of Centrotrade.

Centrotrade approached the Calcutta HC in order to enforce the London Award but was met by HCL's objections under Section 48 of the Arbitration and Conciliation Act, 1996 (Act). A single judge bench of the Calcutta High Court dismissed the objections filed by HCL and pronounced that the foreign award will be enforceable in India. This order was set aside by the Division Bench of the High Court on 28.07.2004 as it held that the awards passed by the two arbitrations will be mutually destructive of each other since both the arbitrators had concurrent jurisdiction.

The matter was then referred to the Supreme Court in 2006 which was, subsequently, referred to a three- judge bench due to lack of consensus amongst the two-judge bench.

The Hon'ble Supreme Court vide its judgment, dated 02.06.2020, finally laid to rest the dispute between the parties. Over the span of 15 years, the Hon'ble Court has decided two key issues;

a. Validity of a multi-tier arbitration clause in India; and

b. Whether the award rendered in the appellate arbitration being a "foreign award" is liable to be enforced under the provisions of Section 48 of the Arbitration and Conciliation Act, 1996?

The Apex court in its judgement, dated 16.12.2016, had answered the first issue in affirmative and upheld the validity of the two/multi-tier arbitration clauses in India. The Hon'ble Supreme Court had held that the Arbitration and Conciliation Act, 1996 (Act) does not prevent, either explicitly or implicitly, the parties' autonomy to agree to a procedure for arbitration of the dispute between them. The Court further held that having a mutually agreed upon multi-tier arbitration clause does not violate the fundamental or public policy of India. The second issue which is dealt below was listed for consideration for a later date.

The second issue, which relates to the enforcement of the London Award, was adjudicated by a three-judge bench, headed by Justice Rohinton Fali Nariman, on 02.06.2020.

The Hon'ble Court rejected the prime contention raised by HCL that they were not allowed to present the case before the learned arbitrator in London by relying upon this Hon'ble Court's recent judgment in Vijay Karia v. Prsymian Cavi E Sistemi (2020)1 and Minmetals Germany GmbH v. Ferco Steel Ltd. (1999)2 to conclude that the scope of section 48 of the Act is extremely narrow and is in consonance with the pro-enforcement objective set out under the Act and by the judicial precedents. The Court has further opined that the word "otherwise" as found in Section 48(1) of the 1996 Act has to be construed in a restricted sense to further the pro-enforcement regime.

Therefore, the foreign award, dated 29.09.2001, has been enforced in the favor of Centrotrade.

➲ Consumer Protection Act, 1986: Whether Section 13(2) (a) of the Act should be read as mandatory or directory?

IN THE MATTER OF: New India Assurance Co. Ltd. vs. Hilli Multipurpose Cold Storage Private Limited (decided by Hon'ble Supreme Court of India on 04.03.2020).

Issue:

1. Whether Section 13(2)(a) of the Consumer Protection Act which provides for the Respondent / Opposite Party filing its response to the Consumer Complaint within 30 days or such extended period, not exceeding 15 days, should be read as

[1] 2020 (1) ARBLR 474 (SC)

[2] (1999) 1 All ER (Comm) 315

mandatory or directory - i.e., whether the District Forum has power to extend the time for filing the response beyond the period of 15 days, in addition to 30 days?

2. What would be the commencing point of limitation of 30 days stipulated under the aforesaid Section?

Facts:

A reference was made to the Constitution Bench relating to the grant of time for filing response to a Complaint under the provisions of the Consumer Protection Act, 1986 ("The Act").

Court's Observations:

- The Hon'ble Supreme Court observed that sub-section (2)(a) of Section 13 of the Act provides that the Opposite Party is required to give a response 'within a period of 30 days or such extended period not exceeding 15 days as may be granted by the District Forum'. The intention of the legislature seems to be very clear that the Opposite Party would get the time of 30 days, and in addition another 15 days at the discretion of the Forum to file its response. No further discretion of granting time beyond 45 days is intended under the Act. In addition to that, the question of natural justice is dealt with by the legislature in sub-section (3) of Section 13 of Act, which clearly provides that "No proceedings complying with the procedure laid down in the subsection (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with." Further, the provisions of Section 13(2)(b)(ii) of the Consumer Protection Act, provides that where the Opposite Party fails to file response to the Complaint within the specified time provided in Clause (a), "the District Forum shall proceed to settle the consumer dispute....on the basis of evidence brought to its notice by the complainant...". Therefore, the legislature was conscious that the Complaint would be decided ex parte, or without the response of the Opposite Party, if not filed within such time as provided under Section 13(2)(a) and in such a case, the Opposite Party will not be allowed to take the plea that he was not given sufficient time or that principles of natural justice were not complied with.

- Further, once the consequences are provided in the Act for not filing the response to the Complaint within the time specified, and it is further provided that such proceedings shall not be called in question on the ground that the principles of Natural Justice have not been complied with, the intention of the legislature is absolutely clear that the provision of subsection 2(a) of Section 13 of the Act in specifying the time limit for filing the response to the Complaint is mandatory, and not directory. After noticing that there were delays in deciding the consumer complaints by the District Forum, the legislature inserted sub-section (3A) of Section 13 of the Act providing for a time limit for deciding the complaints, thus, making it clear that the intention of the legislature was, and has always been, for expeditious disposal of the complaints.

- While answering the second issue, the Hon'ble Supreme Court observed that a conjoint reading of Clauses (a) and (b) of subsection (2) of Section 13 of the Act would make the position absolutely clear that the commencing point of limitation of 30 days, under the aforesaid provisions, would be from the date of receipt of notice accompanied by a copy of the consumer complaint, and not merely receipt of the notice, as the response has to be given, within the stipulated time, to the averments made in the complaint and unless a copy of the complaint is served on the Opposite Party, he/she would not be in a position to furnish its reply. Thus, mere service of notice, without service of the copy of the complaint, would not suffice and cannot be the commencing point of 30 days under the aforesaid Section of the Act.

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