

Highlights:

Corporate Brief

- MCA notification on the Companies (Share Capital and Debenture) Rules, 2014.
- MCA circular for Companies regarding extension of time gap between two board meetings.
- MCA circular for Companies regarding clarification on passing of ordinary and special resolution.
- MCA notification on the Companies (Prospectus and Allotment of Securities) Rules, 2014.
- SEBI circular regarding Streamlining the process of rights issue.
- RBI notification about clarification on new definition of micro, small and medium enterprises.
- MCA notification on the Companies (Incorporation) Rules, 2014.
- SEBI notification regarding amendment of the Drugs and Cosmetics Rules, 1945.
- MCA notification for LLPs regarding filing of annual return without additional fee.
- MeitY released draft National Data Governance Framework Policy.
- MCA notification for LLPs regarding extension in timeline for delay in filing event-based e-forms without additional fee.

RERA Brief

- Circular No. MAHAREAT/ADMN./197/2022 dated 02.05.2022 issued Maharashtra Real Estate Regulatory Authority in regard to non-submission of two sets of hard copies.
- Circular No. MAHAREAT/ADMN./201/2022 dated 05.05.2022 issued by Maharashtra Real Estate Regulatory Authority in regard to summer vacation and urgent matters.
- Circular No. HARERA/GGM/Accts/2021-22/13 dated 10.05.2022 issued by Haryana Real Estate Regulatory Authority Gurugram in regards to submission of the audited statements by the promoters for the financial year 2020-2021.
- Circular No. F1(5)RJ/RERA/2018/1352 dated 16.05.2022 issued by Rajasthan Real Estate Regulatory Authority in regards to renewal of registration by real estate agents.
- Economic Times News Report dated 26.05.2022 titled as 'RERA tells Delhi Corporations not to approve unregistered building plans'

NCLT Brief

- CASE ANALYSIS: JASANI REALTY PVT.LTD. V. VIJAY CORPORATION COMMERCIAL ARBITRATION APPLICATION (L) NO. 1242 OF 2022

Corporate Brief

- ➔ **Vide notification No. "CG-DL-E-04052022-235529" dated 04.05.2022, of Ministry of Commerce Affairs, ('MCA')**

It was notified that:

- **Amendment of the Companies (Share Capital and Debentures) Rules, 2014 by Central Government: Companies (Share Capital and Debentures) Rules, 2022.** The form for transfer of securities i.e. form SH-4 has been tweaked to include a declaration from the transferee, who,

under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 ("FEMA Rules") is:

- Not required to obtain Govt. approval, prior to the transfer of shares, or
 - Is required to obtain Govt. approval prior to the transfer of shares and the same has been obtained and is enclosed.
- ➔ **Vide circular No. "02/2022" dated 05.05.2022, of Ministry of Corporate Affairs, ('MCA')**:

It was notified that:

- **Clarification for holding Annual General Meeting (AGM) through Video Conference (VC) or Other Audio-Visual Means (OAVM)**

MCA vide this circular has allowed the companies whose AGMs are due in the Year 2022, to conduct their AGMs on or before 31st December, 2022 in accordance with the requirements laid down previously by MCA vide previous circular dated 05.05.2020.

- ➔ **Vide circular No. "03/2022" dated 05.05.2022, of Ministry of Corporate Affairs, ('MCA')**:

It was notified that:

- **Clarification on passing of ordinary and special resolution**

MCA vide this circular has allowed the companies to conduct their EGMs through VC or OAVM or transact items through postal ballots up to 31st December, 2022, in accordance with the framework provided in previous circulars.

- ➔ **Vide notification No. "CG-DL-E-05052022-235565" dated 05.05.2022, of Ministry of Corporate Affairs, ('MCA')**:

It was notified that:

- **Amendment of the Companies (Prospectus and Allotment of Securities) Rules, 2014 vide Amendment Rules, 2022**

In accordance with this amendment, rule 14 of Companies (Prospectus and Allotment of Securities) Rules, i.e. regarding private placement has been amended to include a proviso, which states that

securities may be offered to a body corporate incorporated in or to a national of a country sharing borders with India, provided such body corporate has obtained government approval under the FEMA Rules and such body corporate shall attach such approval along with the private placement offer cum application letter i.e. form PAS-4.

In respect of the above, form PAS-4 has been amended to include checkboxes for applicants who are required to obtain such approval under FEMA and for applicants who are not required to obtain such approval under FEMA.

⇒ **Vide circular no. SEBI/HO/CFD/SSEP/CIR/P/2022/66 dated 19.05.2022, of Securities Exchange Board of India, ('SEBI'):**

It was notified regarding:

• **Streamlining the process of rights issue**

Vide this circular, SEBI amended a previous circular dated 22.01.2020 regarding the procedure for streamlining the rights issue process.

As per such circular, trading in Right Entitlements on stock exchange should commence along with the opening of the rights issue and has to be closed at least four days prior to the closure of the rights issue offer.

Subsequently, SEBI received market representation and therefore, as per the present amendment, the timeline of four days for closure of Right Entitlements has been changed to three working days and accordingly, such Right Entitlement(s) has to be closed at least three working days prior to the closure of the rights issue offer.

⇒ **Vide notification no. RBI/2022-23/52 FIDD.MSME & NFS.BC.No.7/06.02.31/2022-23 dated 19.05.2022, of Reserve Bank of India, ('RBI'):**

It was notified regarding:

• **Clarification on new definition of micro, small and medium enterprises**

As per a previous notification dated 06.05.2022 issued by RBI, the registration of enterprises registered prior to 30.06.2020 shall be valid till 31.06.2022.

Vide this circular, following clarifications have been given to the above-mentioned amendment:

- the existing Entrepreneurs Memorandum (EM) Part II and Udyog Aadhaar Memorandum (UAM) of the MSMEs obtained till 30.06.2020 shall be valid till 30.06.2022.

- the validity of documents for classification of MSMEs up to 30.06.2020, has been extended to 30.06.2022.

⇒ **Vide notification dated 20.05.2022, of Ministry of Corporate Affairs, ('MCA'):**

It was notified that:

- **Amendment in Form No. INC-9 According to the Companies (Incorporation) Second Amendment Rules, 2022**

Form INC-9 is the declaration by the subscribers to the memorandum of a company and first directors that they are not convicted under any act and are not guilty of any offence.

As per the amended rules, such form INC-9 has been revised to insert a declaration stating whether such subscribers to a company or first directors, prior to the subscription of shares, are:

- Required to obtain approval under FEMA; or
- Not required to obtain approval under FEMA.

⇒ **Vide notification no. G.S.R. 393(E) dated 25.05.2022, of Securities Exchange Board of India, ('SEBI'):**

It was notified that:

- **Amendment of the Drugs and Cosmetics Rules, 1945 *vide* Amendment Rules, 2022**

In accordance with this amendment, a new class of drugs i.e. class 40 has been added to schedule K of the Drugs and Cosmetics Rules, 1945, which can be sold Over-The-Counter without prescription of a Registered Medical Practitioner (RMP).

⇒ **Vide general circular no. 04/2022 dated 27.05.2022, of Ministry of Corporate Affairs, ('MCA'):**

It was notified that:

- **Relaxation in paying additional fees in case of delay in filing form-11**

MCA *vide* this circular has allowed LLPs to file e-form-11 i.e. Annual Return of Limited Liability

Partnerships for the financial year 2021-2022, up to 30.06.2022, without paying any additional fees.

⇒ **Vide notification no. G.S.R. 401(E) dated 30.05.2022, of Ministry of Corporate Affairs, ('MCA')**

It was notified that:

- **Introduction of a new form, Form CAA-16 as per Amendment of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 vide Amendment Rules, 2022**

In accordance with this amendment, rule 25A of Companies (Compromises, Arrangements and Amalgamations) Rules, i.e. regarding merger or amalgamation of a foreign company with an Indian company and *vice versa*, has been amended to include a sub-rule which states that, in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or a body corporate incorporated in a country sharing land border with India, a declaration in Form No. CAA-16 shall be filed by such body corporate/company at the time of submission of application for such compromise or arrangement to the tribunal.

⇒ **The Ministry of Electronics and Information Technology ('MeitY') released draft National Data Governance Framework Policy ('NDGFP' or 'Policy')**

As per the MeitY, this policy:

- Aims to enhance access, quality, and use of data, in accordance with the emerging technology needs.
- Will accelerate creation of common standard based public digital platforms, while ensuring the security of data and informational privacy.
- For the purpose of this Policy, 'India Data Management Office (IDMO)' is proposed which will be responsible for framing, managing and periodically reviewing the Policy and also developing guidelines under this Policy.
- IDMO will be set up under the Digital India Corporation (DIC) under the MeitY.
- The IDMO will also prescribe data anonymization standards for both government and private entities that deal with data, to ensure the maintenance of informational privacy.

⇒ **Vide general circular no. 06/2022 dated 31.05.2022, of Ministry of Corporate Affairs, ('MCA')**

It was notified that:

- **Relaxation in paying additional fees in case of delay in filing all event-based e-forms**

MCA vide this circular has extended the timeline for LLPs filing event-based e-forms due on and after 25th February, 2022 to 31st May, 2022 to 30th June, 2022, without any additional fees.

Real Estate Brief

⇒ **Circular No. MAHAREAT/ADMN./197/2022 dated 02.05.2022 issued by Maharashtra Real Estate Regulatory Authority in regards to non-submission of two sets of hard copies:**

Maharashtra Real Estate Regulatory Authority vide its Circular No. MAHAREAT/ADMN./197/2022 dated 02.05.2022 issued that appeals are instituted online by appellants in person or through their advocates but the appellants/advocates have not furnished the hard copies of the same and other relevant documents so far. As per Regulation 9 of Maharashtra Real Estate Regulations, 2019, it is mandatory that all appeals instituted with tribunal shall be presented on "Form C" as prescribed. It has been further mandated that the hard copies of such appeals along with attachments shall be presented in duplicate in the office within 7 days from the date of filing online appeals.

⇒ **Circular No. MAHAREAT/ADMN./201/2022 dated 05.05.2022 issued by Maharashtra Real Estate Regulatory Authority in regards to summer vacation and for urgent matters:**

Maharashtra Real Estate Regulatory Authority vide its Circular No. MAHAREAT/ADMN./201/2022 dated 05.05.2022 issued that during the ensuing summer vacation, urgent matters will only be taken up by the bench. The Advocates, Representatives, and parties appearing in person to give 24 hrs prior intimation and show urgency and upon satisfaction about urgency, the bench shall hear such matters. Due to COVID-19 pandemic, urgent matters will be taken through Webex on video conferencing the link will be shared to the

advocates on their email and they may share the same to the parties in case parties are to join online hearing.

⇒ **Circular No. HARERA/GGM/Accts/2021-22/13 dated 10.05.2022 issued by Haryana Real Estate Regulatory Authority, Gurugram in regards to submission of the audited statements by the promoters for the financial year 2020-2021:**

Haryana Real Estate Regulatory Authority Gurugram vide its Circular No. HARERA/GGM/Accts/2021-22/13 dated 10.05.2022 directed all the concerned promoters to submit their audited statements of accounts for the financial year 2020-2021 latest by 20.05.2022 failing which a penal action under Section 60 & 63 of Real Estate (Regulation and Development) Act, 2016 shall be initiated against them.

⇒ **Circular No. F1(5)RJ/RERA/2018/1352 dated 16.05.2022 issued by Rajasthan Real Estate Regulatory Authority in regards to renewal of registration by real estate agents:**

Rajasthan Real Estate Regulatory Authority vide its Circular No. F1(5)RJ/RERA/2018/1352 dated 16.05.2022 issued that all registered real estate agents are required to apply for renewal of their registration at least 3 (three) months prior to the expiry of the registration granted. The authority vide its circular started a facility of online renewal and decided that those real estate agents who fail to apply for renewal of registration at least three months before the expiry of registration would have to pay a penalty of Rs. 1000/- in the case of individuals/ proprietorship and Rs. 5000/- in the case of partnerships and companies.

⇒ **Economic Times News Report dated 26.05.2022 titled as 'RERA tells Delhi Corporations not to approve unregistered building plans'**

Real Estate Regulatory Authority (RERA) of Delhi has asked the city's four municipal corporations and the Delhi Development Authority (DDA) not to approve building plans for projects that have not been registered with the authority. The decision came only days after the Authority vide public notice dated 28.04.2022 made it essential for builders to register projects with a total developed area of more than 500 square metres, regardless of the number of flats constructed on it

NCLT Brief

⇒ **CASE ANALYSIS: JASANI REALTY PVT.LTD. V. VIJAY CORPORATION COMMERCIAL ARBITRATION APPLICATION (L) NO. 1242 OF 2022**

FACTUAL MATRIX OF THE CASE

A loan Agreement referred as dated 23 April 2015 was entered between Jasani Realty Pvt. Ltd. ("Applicant") and Vijay Corporation ("Respondent") for providing financial assistance to the tune of Rs.4,50,00,000/-. Due to a change in the business scenario, the parties entered into an another agreement dated July 5, 2016, wherein the date of repayment of the loan was extended from June 30, 2015 to March 31, 2017. Subsequently, in order to discharge the liability under the said agreements, the Applicant issued a cheque dated 7 September 2021 to the Respondent for the sum of Rs.31,08,33,457/-, being the repayment of the Respondent's dues up to 31 August 2021.

When the check was put for encashment, it was dishonoured. In these circumstances, the Respondent filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), on October 12, 2022 before the Hon'ble National Company Law Tribunal ("NCLT"), Mumbai. Till date the Hon'ble NCLT has not issued a notice of the petition, as per the provision envisaged under Sub-section (5) of the Section 7.

Vide a legal notice dated 10 December 2021, the Applicant invoked the arbitration clause and thereby requested that the Respondent to appoint an arbitral tribunal for resolving the disputes arising out of the loan arrangements between them. The Respondent refused to agree to the appointment of an arbitral tribunal, following which an application was filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), requesting for the appointment of an arbitral tribunal.

ISSUE

Whether mere filing of a petition under Section 7 of the IBC would create an embargo on the Courts considering an application under Section 11 of the Arbitration Act.

CONTENTIONS PUT FORTH BY THE APPLICANT

- That when read together, the agreements entered into between the parties on April 23, 2015, and July 5, 2016, comprise of clauses which permit the said parties to resolve any dispute arising out of such agreements via arbitration proceedings.
- That there are no limitations on the Court's ability to adjudicate an application filed under the Section 11 of the Arbitration Act when the simultaneous proceedings under the IBC have reached the preadmission stage, or when the Hon'ble NCLT has not issued a notice admitting the petition filed by the Respondent under Section 7 of the IBC.
- That there is a distinction between the pre-admission stage and the post-admission stage of procedures under Section 7 of the IBC, as it is only after the admission of the petition so filed, the proceedings become proceedings in rem.

CONTENTIONS PUT FORTH BY THE RESPONDENT

- The Applicant's financial debt to the Respondent was an admitted responsibility. The Respondent has already started proceedings before the Hon'ble NCLT, Mumbai under Section 7 of the IBC, which were initiated on October 12, 2021 and merely because the Applicant has no defence before the Hon'ble NCLT, the application under Section 11 of the Arbitration Act has been filed to avoid the IBC's rigours.
- The Respondent relied on "**Indus Biotech Private Limited vs. Kotak India Venture** (Offshore) Fund" [(2021) 6 SCC 436] and contented that in light of the fact that the Respondent's had filed the petition under Section 7 of the

IBC much before the application under Section 11 of the Arbitration Act was filed by the Applicant, the Respondent's proceedings should be adjudicated first and will supersede the Applicant's current proceedings i.e., the application Section 11 under the Arbitration Act.

OBSERVATIONS OF THE HON'BLE HIGH COURT OF MUMBAI

Observing the ratio laid under **Indus Biotech Private Limited vs. Kotak India Venture** (*supra*), the Hon'ble High Court drew a distinction between a position previous to the admission of the proceedings under Section 7 of the IBC and a position after the admission of the proceedings under Section 7.

It was pointed out that once the proceedings under Section 7 of the IBC are admitted, they will be treated as proceedings in rem. Furthermore, the proceedings will have an *erga omnes* impact. It was held that by simply filing the petition under the said Section 7 of the IBC, and waiting for it to be admitted cannot be considered as an admission by the Hon'ble NCLT. The Hon'ble High Court held that the admission of the petition and the initiation of the Corporate Insolvency Resolution Process ("**CIRP**") is the relevant stage for determining the status and nature of the pendency of the proceedings, and thus, a creditor by merely filing a petition under Section 7 of the IBC does not trigger the insolvency process. The Hon'ble High Court further held that, in the present case, the proceedings arising out of the application filed under Section 7 of the IBC were not an action in rem because they had not been admitted yet.

The Hon'ble High Court in the present case came to an inevitable conclusion that by mere filing of the proceedings under Section 7 of the IBC cannot be treated as an embargo on the Court exercising jurisdiction under Section 11 of the Arbitration Act, for the reason that it is

only after an order under Sub-section (5) of Section 7 of the IBC is passed by the NCLT, the proceedings initiated under the Section 7 of the IBC would gain a character of the proceedings in rem, which would ultimately trigger the embargo precluding the Courts to exercise jurisdiction under the Arbitration Act or any other prevailing laws.

Going by the matrix of the case, the CIRP proceedings against the Respondent are yet to commence and even a notice has not been issued in the petition filed under the Section 7 of the IBC, thus, the Courts would not be precluded from exercising their jurisdiction under Section 11 of the Arbitration Act, when admittedly, the parties have a valid and subsisting arbitration agreement.

Therefore, the Hon'ble High Court allowed the application and ordered for the appointment of an arbitral tribunal to resolve the disputes and disagreements that have emerged between the parties as a result of the agreements in question.

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