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## Corporate Brief

**Department of Industrial Policy and Promotion defines 'Startup'**

According to **DIPP** an entity shall be considered as a startup: (i) upto a period seven years from the date of incorporation/ registration, if it is incorporated as private limited company under the Companies Act, 2013 or registered as a partnership firm under the Partnership Act, 1932 or a limited liability partnership under the Limited Liability Partnership Act, 2008 in India. In case of startups in the biotechnology sector, the period shall be upto ten years from the date of incorporation/ registration; (ii) turnover of the entity for any financial years since incorporation/ registration has not exceeded Rs. 25 crore; and (iii) entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with high potential of employment generation or wealth creation. It has further been clarified that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'startup'. [See Department of Industrial Policy and Promotion notification dated 11<sup>th</sup> April 2018]

**SEBI issues master circular for Debenture Trustees**

**SEBI**, has decided to operationalize SEBI Intermediary Portal for the SEBI registered Debenture Trustees to submit all the registrations online. The SEBI Intermediary Portal shall include online applications for registration, processing of application, grant of final registration, application for surrender/ cancellation, submission of periodical reports, requests for change of name/ address/ other details. [See SEBI Circular No. SEBI/HO/MIRSD/DOP2/CIR/P/2018/ 0000000063 dated 9<sup>th</sup> April 2018]

**Cabinet approves the Protection of Human Rights (Amendment) Bill, 2018**

**Union Cabinet** has given its approval to the Protection of Human Rights (Amendment) Bill, 2018 ("**the Bill**") for better protection and promotion of human rights in the country. The Bill for the protection of Human Rights Act, 1993 will make National Human Rights Commission ("**NHRC**") and State Human Rights Commission ("**SHRC**") more complaint with the Paris Principle concerning its autonomy independence, pluralism and wide-ranging functions in order to effectively protect and promote human rights. The Bill will strengthen the Human Rights Institutions of India further for effective discharge of the mandates, roles and responsibilities and the Bill will be in perfect sync with the agreed global standards and benchmarks towards ensuring the right to life, liberty, equality and dignity of individual of the country. The features, of the Bill are: (i) it proposes to include "National Commission for Protection of Child Rights" as deemed member of the Commission; (ii) it proposes to add a woman member in the commission; (iii) it proposes to enlarge the scope of eligibility and the scope of chairperson, NHRC as well as SHRC; and (iv) it proposes to incorporate a mechanism to look after cases of human rights violation in the union territories. [See Press Information Bureau, release dated 4<sup>th</sup> April 2018]

**SEBI issues circular for monitoring of foreign investment limits in listed Indian Companies**

**SEBI** in consultation with RBI has decided to put in place a new system for monitoring the foreign investment limits in order to facilitate the listed Indian companies to ensure compliance with various foreign investments limits. The onus of compliance with foreign investment limits rests on the Indian company as per the provisions of Foreign Management Act, 1999. The system for monitoring the foreign investment limits in listed Indian companies shall be implemented and housed at the depositories. A Designated Depository is a depository which has been appointed by an Indian Company to facilitate the monitoring of the foreign investment limits of that company. [See SEBI Circular No. IMD/FPIC/CIR/P/2018/61 dated 5<sup>th</sup> April 2018]

**SEBI issues circular on strengthening the guidelines and raising industry standards for RTA, Issuer Companies and Banker to an Issue**

SEBI has constituted a committee on "strengthening the guidelines and raising standards for Registrar to an Issue/ Share Transfer Agents ("**RTAs**")". The objective of the committee was to suggest guidelines to streamline and

strengthen the procedures and processes with regard to handling and maintenance of records, transfer of securities and payment of dividend/ interest/ redemption by the RTAs, issuer companies and bankers to issue. The guidelines have been issued which inter-alia, include: (i) provisions with respect to payment of dividend/interest/redemption; (ii) provisions with respect to transfer/transmission/correction of errors etc; (iii) compulsory internal audit of RTAs; (iv) the records/ documents shall be maintained for a period of not less than eight years after completion of relevant transactions by banker to issue, issuer companies, and/or by RTAs on behalf of issuer companies; and (v) RTAs, bankers to issue, and the issuer companies can put in place more stringent internal checks and controls if they so desire. [See SEBI circular no. SEBI/HO/MIRSD/DOP1/CIR/2018/73 dated 20<sup>th</sup> April 2018]

### ➤ *SEBI issues measures to strengthen algorithmic trading and co-location/ proximity hosting framework*

SEBI had in order to address the concerns relating to algorithmic trading and co-location/ proximity hosting facility offered by stock exchanges and to provide a level playing field between algorithmic/ co-located trading and manual trading issued a discussion paper requesting market participants to provide their views on the efficacy and need to introduce further mechanisms to address the aforementioned concerns. SEBI in light of public comments received, in consultation with Technical Advisory Committee of SEBI and Secondary Market Committee of SEBI has decided to introduce the following measures which inter-alia, include: (i) in order to facilitate small and medium sized members, who otherwise find it difficult to avail co-location facility, due to various reasons including but not limited to high cost, lack of expertise in maintenance and troubleshooting, etc to avail co-location facility, stock exchanges shall introduce 'Managed Co-location Services'; (ii) the vendors shall provide technical knowhow, hardware, software and other associated expertise as services to trading members and shall be responsible for upkeep and maintenance of all infrastructure in the racks provided to them; (iii) stock exchanges shall publish reference latency, which is the time taken for an order message to travel between a reference rack in co-location facility and the core router; (iv) tick-by-tick data offered by stock exchanges provides a detailed view of the entire order-book, which includes details relating to addition, modification and cancellation of orders and trades on a real time basis; and (v) in order to ensure enhanced surveillance, stock exchanges shall now allot a unique identifier to each algorithm approved by them. Stock exchanges shall ensure that every algorithm order reaching on exchange platform is tagged with the unique identifier allotted

to the respective algorithm and that such unique identifier tags are part of data sent/ shared with SEBI for surveillance purpose. [See SEBI circular no. SEBI/HO/MRD/DP/CIR/P/2018/62 dated 9<sup>th</sup> April 2018]

## GST Brief

### ➤ *E-way bill rolled out for inter-state goods transit*

Nationwide electronic or e-way bill system for inter-State movement goods had been rolled out on 01-04-18, Karnataka is only state which has implemented the e-way bill system for moving goods within the state. The state has been using the e-way bill platform since September last year for intra-State movement of goods.

### ➤ *Intra-State E-way bill rolled out in five states from April 15, after inter-State rollout on April 1*

Government will introduce intra-State e-way bill for five states- Andhra Pradesh, Gujarat, Kerala, Telangana and Uttar Pradesh from April 15. The announcement came ten days after the rollout of the e-way bill for inter-state movement of goods and intra-State e-way bill system for Karnataka.

## Litigation Brief

### ➤ *Sundaram Finance Limited Vs. Abdul Samad and Another*

**Issue-** Whether an award under the Arbitration & Conciliation Act, 1996 (the Act) is required to be first filed in the court having jurisdiction over arbitral proceedings for execution and to obtain transfer of decree or whether the award can be straightaway filed and executed in the court where the assets are located?

The divergence of legal opinion of different high courts on the said issue has been settled in this appeal.

### **Brief Facts**

- ≡ The respondent approached the appellant for a loan for purchase of a Tata Lorry which was granted vide a loan agreement dated 18.08.2005.
- ≡ The respondent committed default in the payment of the loan installment and since the repossession of the vehicle could not take place, arbitration proceedings were initiated in terms of the arbitration clause contained in the loan agreement.
- ≡ Since none appeared for the respondents, an ex-parte arbitration award was passed on 22.10.2011 for a sum of Rs 12, 69, 420 with interest of 18% p.a. till realization and costs.

- ≡ The appellant filed for the execution proceedings in the jurisdiction of the courts at Morena, Madhya Pradesh under Section 47 read with Section 151 and Order 21 Rule 27 of the Code of Civil Procedure, 1908 ( the Code).
- ≡ The trial court vide order dated 20.0.2014 returned the execution application on account of lack of jurisdiction. The effect of the judgment was that the appellant was required to file the execution proceedings first before the court of competent jurisdiction in Tamil Nadu, obtain a transfer decree and then only could the proceedings be filed in the trial court at Morena.
- ≡ This view adopted by the trial court at Morena was based on the judgment of the Madhya Pradesh and Karnataka High Court while it was pleaded that the view of the Rajasthan and Delhi High Court were to the contrary.
- ≡ The appellant straightway approached the Supreme Court against the said order of the trial court by filing special leave petition on the ground that no useful purpose would be served by approaching the Madhya Pradesh High Court in light of an already existing conflicting view.

### **Highlights of the Judgment**

- ≡ The Hon'ble Court read into Section 37 of the Code that defines the "court" which passed the decree and Section 38 of the Code that provides as to by which court the decree would be executed. The Court also read into Section 39 of the Code which provides for transfer of decree.
- ≡ The Court then went into defining "precepts" as given under Section 46 of the Code. The relevance of the aforesaid provision is that the application of the decree-holder is made to the court which passed the decree, which issues the precepts to any other court competent to execute the said decree. The Court noted that in the case of an award there is no decree passed but the award itself is executed as a decree by fiction.
- ≡ The court then referred to the provisions of the Act, more specifically Section 36 which deals with the enforcement of the award. The said provision says that an award is to be enforced in accordance with the provisions of the said Code in the same manner as if it were a decree. It is, thus, the enforcement mechanism, which is akin to the enforcement of a decree but the award itself is not a decree of the civil court.
- ≡ The Court then moved to Section 42 of the Act and has been reproduced below:

*Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.*

The Court noted that jurisdiction in respect to this provision applies to an application being filed in court under Part 1. The jurisdiction is over the arbitral proceedings. However, this provision has to be read in consonance with Section 32 of the Act which lays down that the arbitral proceedings get terminated by the final arbitral award.

- ≡ Therefore, when an award is already made of which execution is sought, the arbitral proceedings already stand terminated on the making of the final award and, thus, Section 42 which deals with jurisdiction issue in respect of arbitral proceedings would not have any relevance.
- ≡ The Court upheld the view of Delhi High Court in Daelim Industrial Co. Ltd v. Numaligarh Refinery Ltd. that Section 42 of the Act would not apply to an execution application which is not an arbitral proceeding and that Section 38 of the Code would apply.
- ≡ It was held that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed in view of Section 37 of the Code and there is no requirement for obtaining a transfer decree from the court which would have jurisdiction over the arbitral proceedings.

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*42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that*