

Highlights

Corporate Brief

- MCA notifies provisions related to Registered Valuers & rules thereof
- Government rescinds a notification relating to gems and jewellery sector
- RBI issues master direction on Issuance & operation of Prepaid Payment Instruments
- SEBI reviews Block Deal Window Mechanism
- Categorization and Rationalization of Mutual Fund Schemes
- National Coastal Zone Management Committee constituted

GST Brief

- Exporters relieved as Government moves to lower GST burden
- Composition scheme window open for six more months
- Payment of tax on issuance of invoice by registered persons having aggregate annual turnover of less than Rs. 1.5 crores

RERA Brief

- Bihar RERA website launched
- Bombay HC starts hearing constitutional challenges to the provisions of RERA

Litigation Brief

- Ahluwalia Contract (India) Limited VS. The Union of India

➔ *Government rescinds a notification relating to gems and jewellery sector*

Ministry of Finance, Government of India, has decided to withdraw its Notification No. 4/2017 dated 23rd August 2017, wherein dealers in precious metals, precious stones and other high value goods having a turnover of Rs. 2 crore in a financial year were brought within the purview of Prevention of Money Laundering Act, 2002. After due consideration of various aspects the government has decided to rescind the said notification. A separate notification will also be issued in due course. [See Press Information Bureau, Release dated 6th October 2017]

➔ *RBI issues master direction on Issuance & operation of Prepaid Payment Instruments*

RBI has issued master direction on issuance & operation of Prepaid Payment Instruments (“PPIs”). It shall be applicable on all PPI issuers, system providers and system participants. The purpose of the directions are: (i) to provide a framework for authorization, regulation and supervision of entities (banks and non-bank entities who have approval/ authorization from the RBI to issue PPIs as well as those proposing to issue PPIs operating payment systems for issuance of PPIs) in the country; (ii) to foster competition and encourage innovation in this segment in a prudent manner while taking into account safety and security of transactions as well as systems along within customer protection and convenience; and (iii) to provide harmonization and interoperability of PPIs. The master directions inter-alia provide for: (i) eligibility to issue semi-closed and open system PPIs; (ii) authorization process for setting up payment systems for issuance of PPIs; (iii) safeguards against money laundering provisions; (iv) issuance, loading and reloading of PPIs; and (v) PPIs under co-branding arrangements. [See RBI Master Direction No. RBI/DPSS/2017-18/58, dated 11th October 2017]

➔ *SEBI reviews Block Deal Window Mechanism*

SEBI, in order to facilitate execution of large trades, had permitted stock exchange to provide a separate trading window and a trade executed on this separate trading window is termed as ‘block deal’. SEBI has now revised the framework for block deals by providing two block deal windows as follows: (i) morning block deal window operating between 8:45 AM to 9:00 AM and afternoon block deal window operating between 2:05 PM to 2:20 PM; (ii) the minimum order size for execution of trades in block deal has been increased from Rs. 5 crore to Rs. 10 crore. This shall come into effect from 1st January 2018 and the

Corporate Brief

➔ *MCA notifies provisions related to Registered Valuers & rules thereof*

MCA issued notification for commencement of Section 247 of the Companies Act, 2013 with effect from 18th October, 2017, which deals with valuation by Registered Valuers.

MCA has also notified the Companies (Registered Valuers and Valuation) Rules, 2017 (“**the Rules**”). The Rules inter alia provide the following: (i) provisions for registration of valuers for conduct of valuation under the Companies Act, 2013; the valuers would be required to be registered with the authority specified by the Central Government; (ii) eligibility requirements relating to qualifications & experience for registration of different categories of valuers have been set forth; (iii) the registered valuers are also required to be members of the Registered Valuers Organisations (“**RVOs**”) recognised by the authority under the Rules. Eligibility norms for RVOs have been laid down; and (iv) mechanism to prescribe valuation standards has been laid down.

Further, MCA has also delegated its power and functions vested under section 247 of the Companies Act, 2013 to the Insolvency and Bankruptcy Board of India. [See MCA Notification No. F. No. 1/27/2013- CL-V dated 18th October 2017 and MCA Notification No. F. No. 1/27/2013-CL-V (Part- I) dated 23rd October 2017]

earlier circular of 2005 shall stand withdrawn. [See SEBI Circular No. CIR/MRD/118/2017, dated 26th October 2017]

➔ *Categorization and Rationalization of Mutual Fund Schemes*

SEBI has, to bring in uniformity and to standardize the scheme categories for mutual funds as well as characteristics of each category, issued a circular laying down the categories of scheme, its characteristics and uniform description for each category. Now the schemes have been broadly classified in the following groups: (i) equity schemes (ii) debt schemes; (iii) Hybrid schemes; (iv) solution oriented schemes and; (v) other schemes. Further, in order to ensure uniformity in respect equity schemes, large cap, mid cap and small cap have been defined as follows: (i) large cap- 1st- 100th company in terms of full market capitalization; (ii) mid cap- 101st- 250th company in terms of full market capitalization and; (iii) 251st company onwards in terms of full market capitalization. This circular will apply to all existing open ended schemes of all mutual funds. [See SEBI Circular No. SEBI/HO/IMD/DF3/CIR/P/2017/114, dated 6th October 2017]

➔ *National Coastal Zone Management Authority constituted*

Ministry of Environment, Forest and Climate Change has, issued a notification to constitute National Coastal Zone Management Authority ("**the Authority**") with the purpose of protecting and improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in coastal areas. The notification also specifies the powers and functions of the Authority which inter-alia include: (i) to co-ordinate the actions of the state coastal zone management authority and union territory coastal zone management authorities; (ii) to review of cases involving violation of the Environment (Protection) Act, 1986; (iii) to file complaints in cases of non-compliance of the directions issued by it; (iv) to advise the central government on policy, planning, research and development, setting up of centers of excellence and funding, in matters relating to coastal regulation zone management; and (v) to deal with all environment issues relating to coastal regulation zone which may be referred to it by the central government. [See Ministry of Environment, Forest and Climate Change Notification No. F.No. J-17011/18/1996-IA.III, dated 6th October 2017]

GST Brief

➔ *Exporters relieved as Government moves to lower GST burden*

Government after announcing a series of steps to reduce the payment and compliance burden of GST gave exporters a breathing sigh of relief. GST Council approved the creation of an e-wallet for each exporter with a notional advance refund amount. E-wallet for exporters is to be implemented by 1st April 2018 till then nominal 0.1% GST will be applicable to exports. [See <http://cbec.gov.in>]

➔ *Composition scheme window open for six more months*

GST Council has decided to keep open the composition scheme, an easier compliance and tax option till 31st March. The second window of the scheme closed on September 30. It allows small taxpayers to pay a fixed rate of turnover as tax and eases GST formalities. The scheme is not available for manufacturers of tobacco and tobacco substitutes, pan masala and ice cream. [See <http://cbec.gov.in>]

➔ *Payment of tax on issuance of invoice by registered persons having aggregate annual turnover of less than Rs. 1.5 crores*

Central Government on the recommendations of the Council notified the registered person whose aggregate turnover in the preceding financial year did not exceed one crore and fifty lakh rupees or the registered person whose aggregate turnover in the year in which such person has obtained registration is likely to be less than one crore and fifty lakh rupees and who did not opt for composition levy scheme, shall pay the central tax on the outward supply of goods at the time of supply and shall also accordingly furnish details and returns. [See Notification No. 40/2017-C.T., dated 13th October 2017]

RERA Brief

➔ *Bihar RERA website launched*

Bihar State Government launched its website of Real Estate Regulatory Authority. The website features online registration, registration of real estate agents and online complaint filing.

➤ *Bombay HC starts hearing constitutional challenges to the provisions of RERA*

Bombay High Court began hearing petitions challenging the constitutional validity of certain provisions of RERA. Real estate developers including DB Realty, MIG (Bandra) Realtors and builders along with several individual land owners have moved to the court.

Litigation Brief

➤ *Ahluwalia Contract (India) Limited VS. The Union of India*

Questions of Law Addressed:

- 1) When can the Court interfere with the Award of the Arbitration Tribunal under Section 34 of the Arbitration & Conciliation Act, 1996?
- 2) What is the scope of interference of the Appellate Court under Section 37 of the Arbitration & Conciliation Act, 1996?

Facts Of The Case:

- 1) The Appellant was awarded a contract after it successfully bid in a tender floated by the Respondent, through the Ministry of Health and Family Welfare ("Principal"), on 11.08.2011. The contract involved the supply, installation, testing and commissioning of electrical equipment(s) at AIIMS, Raipur ("Site"). The total contract value was Rs. 41, 20, 09,326/-. The completion period of the contract was 16 months, starting from 19.08.2011.
- 2) The Appellant alleged that the Principal did not hand over the entire site till December, 2015. In the meanwhile, the tenure of completion under the Contract was extended eleven times. Hence, the Appellant claimed compensation which was refused by the Respondent. Consequently both the parties were referred to Arbitration in terms of the contract.
- 3) The Appellant raised various claims including loss of profits and bonus during the extended period which were refused by the Tribunal. Therefore, the Appellant filed objections against the said Award before the Single Judge, High Court of Delhi, under Section 34 of the Act.
- 4) The Single Judge held that Section 34 of the Act did not give the Court the power to re-appreciate the evidence and material on record even though it opined that the view of the Tribunal was unsustainable. Thus, it chose not to interfere and declined to set aside the Award.

- 5) Hence, the Appellant filed the present Appeal before the Division Bench of the High Court of Delhi under Section 37 of the Act, challenging the Judgment of the Single Judge.

The Hon'ble Court observed and held as follows:

- ≡ A claim for damages (general or special) in the proceedings cannot result in an award without proof of having suffered an actual injury.
- ≡ The narrow scope of Section 37 of the Act was highlighted, emphasizing that unless the Court which had dealt with a petition under Section 34 renders a finding which is plainly unreasonable or unsustainable in law, the scope of interference in appeal is limited.
- ≡ The award cannot be set aside unless findings reveal a patent error in law contrary to the stipulations in the contract. Or an approach indicative of such unreasonableness on the part of the Tribunal that no reasonable person placed in such or like circumstances would have arrived at.
- ≡ It was stated that the Tribunal as well as the Learned Single Judge appreciated the circumstances of the present case in its entirety. While the Tribunal had the powers to appreciate the evidence and material on record as the primary adjudicatory body, it could not find any substantial material to justify the claim of Appellants for damages towards loss of profits.
- ≡ Keeping in view the limited powers of the Learned Single Judge under Section 34 of the Act, the court upheld the award of the Tribunal and held that there was no unreasonableness in its findings.
- ≡ Therefore, the Division Bench in its decision held that the entire case was dealt with correctly and reasonably by the learned Single Judge in the impugned judgment and did not warrant any interference, in light of the limited scope of Section 37 of the Act.

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