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Corporate Brief

➲ *Committee submits report on Cross-Border Insolvency in line with UNCITRAL Model Law*

The Insolvency Law Committee which was set up in November, 2017, to give recommendations on the adoption of the UNCITRAL Model Law on Cross-Border Insolvency, 1997, submitted its report to the Government on 16th October, 2018, on the same.

Following are some of the recommendations as have been suggested by the Committee:

a) Since the provisions related to insolvency resolution and bankruptcy for individuals and partnership firms have not yet been notified by the IBC, 2016, provisions related to the application of cross-border insolvency to corporate debtors could be introduced to begin with and depending upon the experience gained, the same could be extended to individual insolvency eventually.

b) Foreign insolvency professionals and foreign creditors could have direct access to domestic courts and an ability to participate in and commence domestic insolvency proceedings against a debtor, as has also been provided for in Model Law. The Committee recommends that the Central Government could be empowered to devise a mechanism for the same.

c) Some of the provisions of the Companies Act, 2013, deal with the insolvency of foreign companies. As soon as the cross-border insolvency provisions are introduced under the IBC, there would be a dual regime for insolvency of foreign companies and therefore to avoid that, the Committee recommends that the MCA may review such provisions of the Companies Act, 2013 Act and matters pending under such provisions of the Companies 2013 Act, may be transferred for adjudication under the IBC and the overlapping provisions could be done away with.

➲ *IBBI clarifies position of the registered valuer under the Companies (Registered Valuers and Valuation) Rules, 2017*

On 17th October, 2018, the Insolvency and Bankruptcy Board of India (IBBI) issued a circular on valuation under the IBC, stating that every valuation that is required under the IBC or under any regulations made thereunder, has to be conducted by a 'registered valuer' who is the valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. This would be effective from 1st February, 2019, post which no valuer other than such registered valuer will be appointed by any insolvency professional to conduct valuation under the IBC. This clarification would help in effective decision making due to the transparent and credible determination of value of the assets that would be conducted by such registered valuers.

➲ *MCA notifies the constitution of the National Financial Reporting Authority.*

MCA has notified 1st October, 2018, to be the appointed date for the constitution of the National Financial Reporting Authority (NFRA) which has been provided for under Section 132 of the Companies Act, 2013. The NFRA as may be notified by the Central Government, will be constituted for the purpose of providing for matters relating to accounting and auditing standards under the Act. The head office of the NFRA will be situated at New Delhi and the NFRA may hold meetings in different parts of India, as it may deem fit. On 24th October, 2018 the MCA further notified the rest of the provisions of Section 132 of the Act.

➲ *MCA launches an online web-service for incorporation of LLPs*

The MCA has launched a web service process called "RUN-LLP- Reserve Unique Name – Limited Liability Partnership" with the help of which, LLPs can now be

incorporated through a complete online system along with the allotment of name of that LLP through an e-form titled "FiLiP (Form for incorporation of Limited Liability Partnership)." Consequently, the Limited Liability Partnership Rules have also been amended incorporating the abovementioned changes.

➲ *RBI releases Operational Guidelines for Interoperability amongst the PPIs*

On 16th October, 2018, RBI released the Prepaid Payment Instruments (PPIs) - Operational Guidelines for Interoperability. The concept of interoperability allows PPI Issuers, System Providers and System Participants the technical compatibility to undertake, clear and settle payment transactions across different systems without having to participate in multiple systems. As per the Master Direction on PPIs issued by the RBI in 2017, interoperability of all KYC-compliant PPIs was to be enabled in three phases –

a) Interoperability of PPIs issued in the form of wallets through Unified Payments Interface (UPI),
b) Interoperability between wallets and bank accounts through UPI, and
c) Interoperability for PPIs issued in the form of cards through card networks

In addition to the provisions of PPIs as provided for under the Master Direction issued by the RBI, RBI has introduced some of the following requirements in the said Guidelines:

A few requirements for achieving interoperability Common to Wallets and Cards:

(i) When PPIs are issued in the form of wallets, interoperability across PPIs would be enabled through UPI (when issued in the form of wallets) and through authorized card networks (when issued in the form of cards).
(ii) PPI issuers operating exclusively in the instruments- Meal, Gift and MTS- may also implement interoperability.
(iii) The interoperability shall be facilitated to all PPI accounts that are KYC compliant and entire acceptance infrastructure.
(iv) Technical requirements such as card network requirements / UPI including, merchant on-boarding, certifications and audit requirements, governance, etc.
(v) Reconciliation, customer protection and grievance redressal requirements

➲ *CCI amends the Combination Regulations vide notification dated 9.10.18*

On 9th October, 2018, the CCI amended the Combination Regulations in order to provide certainty and transparency with respect to faster disposal of combination related cases before the CCI. Following are some of the key amendments:

a) Parties to combinations, in response to the notice issued under section 29 (1) of the Competition Act, 2002 can submit their remedies voluntarily, in which case combination could be approved if such remedies are perceived to be sufficient to address competition harm. This would further help to expedite the disposal of such combination cases.
b) In case such notice issued contains information gaps, the parties to combination can withdraw the notice and refile the same, with appropriate adjustments being made to the fee paid for the old notice, if the refiling is done within 3 months. Such withdrawal of notice would help the parties in addressing the deficiencies of the old notice without having to face an invalidation by CCI.

➲ *CCI issues policy note on- 'Making markets work for affordable healthcare'*

On 22nd October, 2018, the government released key issues and recommendations regarding the pharmaceutical and healthcare sector, culminated during the technical workshop on 'Competition Issues in the Healthcare and Pharmaceutical Sector in India' held in August, 2018 at New Delhi. These have been documented in a policy note titled 'Making Markets Work for Affordable Healthcare.' Some of them are as follows:

a) Role of intermediaries in drug price build-up: The high trade margins and self-regulation by trade association could possibly contribute towards high drug prices in India. To circumvent that:
(i) Efficient and wider public procurement and distribution of essential drugs could be implemented,
(ii) Electronic drug trading with appropriate regulatory safeguards could be introduced.

These measures would bring in transparency and spurring price competition among platforms and among retailers, as has been witnessed in other product segments.

b) Quality perception behind proliferation of branded generics:
(i) CCI recommended that the regulatory framework must ensure consistency in the application of statutory quality control measures and better regulatory measures. As long as the quality of drugs sold in the markets conforms to the statutory standards, regardless of the brand names of the drugs, there would be a decrease in monopolizing of the market by the branded generics and 'generic

competition' in the true sense of the term would be able to take off.

(ii) The practice of creating 'artificial product differentiation' for the exploitation of consumers may be addressed through a 'one-company-one drug-one brand name-one price policy.'

c) Vertical arrangements in healthcare services:

(i) There could be a regulation for hospitals to allow consumers to buy standardized consumables from the open market as in some in-house pharmacies the inpatients are not allowed to purchase products from other pharmacies outside the hospital.

(ii) There must be a provision for portability of patient data, etc. so patients are not constrained in switching hospitals and there is no 'lock-in effect.'

d) Regulation and competition: The Central Drugs Standard Control Organization (CDSCO) may devise a mechanism to harmonize regulations governing the pharmaceutical sector at the central and state level.

e) The other two issues that were identified by the CCI were the shortage of healthcare professionals in the country and inadequacy in health insurance.

➲ *Union Cabinet approves the National Indicator Framework (NIF) for monitoring Sustainable Development Goals*

The Union Cabinet has approved the constitution of a High Level Steering Committee for the purpose of reviewing the National Indicator Framework (NIF) for monitoring Sustainable Development Goals (SDGs) along with their associated targets. Some of the key goals of this committee would include:

a) To evolve measures to incorporate the SDGs within national policies, programs and action plans,

b) Statistical indicators of NIF to be the backbone of monitoring of SDGs at both central and state level therefore measuring the outcomes of policies,

c) MoSPI to bring out national reports on SDGs to facilitate assessment of progress in achieving the SDGs, identify challenges, etc.,

d) The Committee so formulated shall review the National Indicator Framework regularly,

e) Information will be regularly provided to the MoSPI by data source Ministries / Departments when required, and

f) In order to ensure close and effective monitoring, advanced IT tools will be used.

➲ *Time taken due to litigations for corporate insolvency resolution process to be excluded from the stipulated period of 270 days*

In the case of Arcelormittal India Private Limited v Satish Kumar Gupta & Ors., the Supreme Court has ruled that the time limit of 270 days that is given during the corporate insolvency resolution process would not be inclusive of the time taken up due to litigations during the process. Therefore, the time taken by the NCLT or NCLAT or the Supreme Court to decide an application beyond the stipulated period of 270 days, would not be included as it would result in a good resolution plan to be shelved consequently resulting in "corporate death and the consequent displacement of employees and workers."

GST Brief

➲ *Government introduces amendments related to Tax Collection at Source (TCS)*

The Central Government has notified that the Tax Collection at Source (TCS) for intra-Union Territory supplies by every e-commerce operator, who is not an agent, would be calculated at the rate of half percent of the net value and for inter-Union Territory supplies by such e-commerce operator, it would be calculated at one percent of the net value.

[*Source: CBIC-www.cbic.gov.in/]*

➲ *Government introduces changes in provisions related E-way Bill*

Following are the changes regarding E-way Bills (EWB) that have been introduced by the Central Government:

a) New enhancements in the EWBs, in the form of a document, are uploaded online on the website- www.ewaybill.nic.in in order to prepare the taxpayers and transporters with respect to generating EWBs

b) Multi Vehicle option for EWB has been introduced with the procedure to avail the same being prescribed on the website- www.ewaybill.nic.in

c) Release of new tool for EWB generation bulk

[*Source: CBIC-www.cbic.gov.in/]*

Real Estate Brief

➲ *Haryana Development and Regulation or Urban Areas Act, 2016*

The State cabinet of Haryana Government has approved amendments in certain Sections in the Haryana Development and Regulation of Urban Areas Act, 2016 so as to provide relaxation of extension of license for construction of Community Sites granted before April 2, 2012.

The approval in amendments has been made to provide extension of validity of renewal of License from existing two year period to five year period as real estate projects normally take more than ten years for completion.

Provision has also been made to ensure the completion of projects with the transfer of such colonies to any third party like HSVP, HSIIDC for undertaking developmental works on the cancellation of license. Similarly, for the recovery of dues, stringent provisions have been made in tune with the GMDA Act.

New Integrated Licensing Policy, 2016

The State cabinet of Haryana Government has approved amendments in the New Integrated Licensing Policy, 2016. The FAR and density norms in the policy have been altered.

- Population density in New Integrated Licensing Policy colonies is increased to 300 persons per acre.
- The permissible FAR, irrespective of the size of the colony has been revised to 1.25 with a provision of availing Purchasable Development Rights (PDR) limited to the maximum of 0.25 FAR of the entire project.
- The FAR will continue to be permitted on 88 per cent of the licensed area after excluding the 12 per cent area reserved for EWS / Affordable housing.
- The Colonizer will be allowed to provide two pieces of land for community sites of atleast 1.25 acres each in colony upto 40 acres. For colonies above 40 acres, the land of community sites will be at least 2 acre each.

Deen Dayal Jan Awas Yojna (DDJAY)-Affordable Plotted Housing Policy, 2016

The Government of Haryana has approved amendments in Deen Dayal Jan Awas Yojna (DDJAY)-Affordable Plotted Housing Policy.

The External development Charges will now be rationalised between the various potential towns.

- In High-I and High-II Potential zone of Faridabad Ballabhgarh Urban Complex, Sohana, Panchkula, Sonipat Kundli Urban Complex and Panipat, the revised rate structure will now be 75 per cent of the applicable rates of Residential Plotted Colonies and payment term will be 25 per cent upfront and balance in six half yearly instalments with interest.
- In medium Potential Zone, the revised rate structure will now be 50 per cent of the applicable rates of Residential Plotted Colonies and payment term will be 25 per cent upfront and balance in three half yearly instalments with interest.
- In low Potential Zone district headquarters and other than district headquarters, the revised rate structure will now be 25 per cent of the applicable rates of Residential Plotted Colonies and payment term will be upfront.

DTCP Haryana: Registration of 4th floor to be allowed as a separate dwelling unit in residential Plots

The Department of Town and Country Planning, Haryana on 21.11.2018 by exercising powers provided under Section 11 of Haryana Development and Regulation of Urban Areas Act, 1975, issued a letter stating that the Government has allowed registration of 4th floor as an independent dwelling unit on the following conditions:

- The 4th floor as an independent dwelling unit shall be allowed on payment of 1/3rd of applicable EDC for respective Urban Areas against the plot area to be rounded off to 100/- at the time of approval of building plan/ revised building plan. Such recovery shall be over and above that prescribed for purchasable FAR, if availed. The permissible height shall be 16.5 meter subject to Fire NOC and certificate of conformity to Rules and Structure Safety (for height above 15 meter) and as prevalent laws.
- Such EDC recovered for registration of 4th floor as independent unit shall be transferred to the respective agency for carrying out EDC works i.e. HSVP / GMDA / HSIIDC / M. C. as the case may be.

The Department of Town and Country Planning, Haryana has been asked to carry out necessary amendments in the zoning regulations of respective Development Plans and also to take necessary steps and procedure for amendment in Haryana Building Code, 2017 regarding maximum permissible height of 16.5 meters for residential buildings. The maximum permissible height of 16.5 meters shall be permitted only after final publication of amendment in Haryana building Code, 2017.

RERA Cases

➲ *Order on complaints against Ansal Properties and Infrastructure Limited (U. P. RERA)*

U. P. RERA issued an Order dated 25.10.2018 stating that 403 complaints have been filed in U. P. RERA against Ansal Properties and Infrastructure Ltd ("**APIL**"), as on Oct 24,2018. U.P. RERA has heard 256 complaints filed against Ansal and the consortium / subsidiaries and associate entities through various collaboration agreements / understandings or other forms of arrangements, who, though having inter-se defined responsibilities, had a collective obligation to deliver completed units to the homebuyers / allottees under the Act.

Since, the nature of and cause of action in all the complaints was, by and large, the same, all the complaints were consolidated and were considered together. In majority of the cases, APIL had not complied with the terms and conditions of agreement of sales/ allotment letters signed by it with the allottees. There had been an extra ordinary delay by Ansal in completion of the project and handing over possession to complainants. In some cases, Ansal had not even started construction work of the project even after realizing full or substantial part of full amount from the allottees in the initial years and committed time frame for possession as per the agreement to sale having ended long back. In some of the comlaints it has been alleged that Ansal did not have the land although it was announced that they had the possession over land and had obtained the required approvals from the competent authority.

Allegations made by the complainants against Ansal were as follows:-

- Ansal has not followed the timeline to complete the project. The time to complete the projects and handover possession of the unit to allottees has been over already.
- Ansal has given very unreasonable completion date in RERA, in some cases still 4 to 5 years away and in some further more.
- There is no work going on in the project and hence they cannot trust Ansal to complete the project even by the revised timeline given by the promoter in RERA.
- The management of Ansal does not respond to their queries about the status of the project or give a convincing action plan to complete the project or to pay them delay penalties or to refund the money deposited by the complainants.
- In certain cases, Ansal does not have the project land. Allotment was made to the complainants without having the required land and thus gross negligence on Ansal.
- Ansal has not started the construction in the project besides having taken sizable amount against the cost price of the unit from complainants years back. It had been stated by Ansal in the agreement for sale that they had the required land and necessary approvals from the competent authority.
- Ansal has diverted the money received from the complaianants to other activities. Many of complainants have alleged that Ansal has siphoned off the project money to some other destinations.
- Many of the complainants alleged that they have invested their hard earned money in the projects by Ansal in the hope of a roof on their heads that they are paying huge amount against the EMI and house rent. Now they have neither money nor the house and want their hard earned money back with interest.
- A fairly large number of complainants have labelled very serious charges of mismanagement of the project and financial irregularities by Ansal.
- Some of the complainants/allottees are ready to wait for possession but want a firm commitment from Ansal for possession within a reasonable time and payment of delay penalty.

The Authoritygave following directions amongst few others:

- Secretary UP RERA, after taking approval from appropriate level, will get a forensic audit of all the projects of Ansal registered in RERA through a reputed financial consultant with a view to investigate into the affairs, especially the accounts of Ansal and their subsidiaries or consortium to find out the possible diversion of funds, causes of inordinate delay, to assign responsibilities therefor and to suggest effective corrective remedial measures. The financial consultant may be required to complete the audit maximum in 2 months.
- The auditor will scrutinize the accounts to ascertain the money collected (cash inflows) in the projects from homebuyers and financial avenues vis-a-vis money

deployed (cash outflows) on the project to ascertain whether the money has been properly utitized or not Ansal. The auditor will carry out assessment of the stuck up projects through site surveys and make observations w.r.t the work done and to be done to complete the project. The auditor is also expected to compile future receivable from stock as well as disposable/unsold assets and estimate the possible inflow of funds.

- The auditor will further suggest the ways and work out the modalities to dispose of unsold inventory/ assets and other receivables so that funds could be used to refund the money with interest to homebuyers and complete the ongoing projects for expediting delivery of plots, flats and villas.
- The Authority directeed the auditor to act as a Financial Observer to oversee all financial transactions including inflows and outflows of funds in Ansal and to periodically report to the Authority.
- Whenever any third party right is created by these companies or their subsidiaries or consortium by way of sale, transfer, mortgage, or any other means, the same will be intimated to the Financial Observer by the promoter.
- The promoter will, within 15 days submit the following to the authority:

  i. The details of project-wise Escrow accounts

  ii. List of each incomplete projects and funds required to complete them, along with timelines.

  iii. List of all their allottees including FSI who have not paid up their dues (overdue amount)to the promoter and the balance to be paid in Instalments / payments due in future.

  iv. List and details (amount / area) of allotees who have paid advance money but they haven't been allotted the property (amount to be given) but have not been given their plots / flats / shops etc and reasons for nonperformance.

➲ ***HRRERA:*** *Cases with respect to VAT not under the purview of RERA*

In the matter of Mr. Satpal Yadav ("**Complainant**") vs M/s Mapsko Builders Private Limited ("**Promoter**"), before the Haryana Real Estate Regulatory Authority (**"HRRERA"**), relief was sought by the Complainant seeking refund of the amount charged by the promoter as VAT from the Complainant.

HRRERA was of the view that the matter is in relation to VAT and is in no manner covered under the Real Estate Regulation and Development Act, 2016. HRRERA directed the Complainant to pursue the matter with the VAT authority for all the intents and purposes.

➲ ***HRRERA:*** *If payment not made by the Allottee, refund will not be granted.*

In the matter of Mr. Rishi Kumar Khanna and another ("**Complainant**") vs M/s Sare Gurugram Private Limited & another ("**Promoter**"), before the Haryana Real Estate Regulatory Authority (**"HRRERA"**), relief was sought by the Complainant seeking refund of the entire amount paid to the Promoter along with interest as the Promoter has delayed in giving possession of the flat.

The Promoter and the Complainant entered into the Builder Buyer Agreement on 2.7.2013. The possession of the flat was to be delivered by 29.4.2016 i.e. with in 36 months + 6 months (grace period) from the start of construction i.e. 29.10.2012.

The project is registered with HRRERA and the revised date of delivery is 31.3.2019. The HRRERA stated that the Compainant has not made full payment, as such he is only eligible for delayed possession charges at the prescribed rate of interest i.e. 10.75%. The HRRERA held that if the Promoter fails to hand over the possession on revised date of delivery, the Complainant is entitled to seek refund.

➲ ***HRRERA:*** *Projects where construction is already completed before Real Estate Regulation and Development Act, 2016 came into place are not registrable.*

In the matter of HRRERA ("**Complainant**") vs The Estate Officer, HSVP, Hisar ("**Respondent**"), before the Haryana Real Estate Regulatory Authority (**"HRRERA"**), the HRRERA dealt with the issue of invitation of applications for sale by the Respondent without getting the project registered with HRRERA.

It was brought to the notice of HRRERA that the respondent vide an advertisement in a newspaper has invited applications for sale of commercial sites in Sector old court and Sector 9 and 12, Hisar without getting the project registered. HRRERA issued a show cause notice as to why action under Section 59 of Real Estate Regulation and Development Act, 2016, should not be initiated.

The respondent stated that he is not selling plots by developing a new sector. He further explained that the portion now offered for sale comprises of plots that earlier could not be sold and are part of a sector already developed in the year 2002.

HRRERA was of the view that the Sector in which construction work had already been completed before commencement of the Real Estate Regulation and Development Act, 2016, is not registrable with the HRRERA and therefore no action as contemplated under Section 59 is required. Accordingly further proceedings in the matter were dropped.

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