

Highlights

- MCA amends independent director norms, DIN related provisions etc.
- MCA amends Company (Corporate Social Responsibility Policy) Rules, 2014
- RBI permits issue of equity shares under FDI scheme against legitimate dues.
- RBI permits ECB lenders to lend in Indian Rupees.
- SEBI amends revised Clause 49 of Listing Agreement.
- Government of Delhi increases property circle rates by 20%
- Supreme Court strikes down retrospective levy of surcharge in cases of block assessment.
- Supreme Court declares National Tax Tribunal Act, 2005, as unconstitutional

Corporate Brief

➤ *MCA amends independent director norms, provisions related to DIN*

MCA has made changes in Companies (Appointment and Qualification of Directors) Rules, 2014 (Company Rules). Highlights of amendment include the following:

(i) Person, who is willing and eligible to be appointed as independent director and desires to get their name included in data bank of independent directors with authorized agency as provided under Rule 6 of Company Rules, shall not be required to (a) furnish income-tax PAN, (b) provide their mother's name or spouse's name, and (c) make application in Form DIR-1.

(ii) Form for application for allotment of Director Identification Number (DIN) is to be made in DIR-3 which has been substituted by a new version. Also, applicant shall not be required to furnish verification for applying for allotment of DIN in Form DIR-4.

(iii) Intimation by company of DIN of its directors under section 157 of Companies Act, 2013 (the Act) is required to be furnished in Form DIR-3C within fifteen days of receipt of intimation under section 156 of the Act.

[See MCA Notification F. No. 01/9/2013 (Part-II) CL-V, dated September 18, 2014]

➤ *MCA amends Companies (Corporate Social Responsibility Policy) Rules, 2014*

MCA has made amendment in sub-rule 6 of Rule 4 of Companies (Corporate Social Responsibilities Policy) Rules, 2014 to include expenditure made in administrative overheads as part of total expenditure of Corporate Social Responsibility (CSR) activities. As companies are allowed to spend up to five percent of total CSR expenditure of the company in building CSR capacities of their own personnel and those of their implementing agencies, in one financial year, limit of five percent shall be calculated on total CSR expenditure by including administrative overheads. [See MCA Notification F. No. 1/18/2013-CL-V-Part, dated September 12, 2014]

➤ *RBI permits issue of equity shares under FDI scheme against legitimate dues*

RBI permits Indian company to issue equity shares to person resident outside India, under automatic route, against any legitimate dues payable by the investee company, remittance of which does not require prior permission of the Government of

India or Reserve Bank of India under FEMA, 1999 or any rules/regulations framed or directions issued thereunder. Issue of equity shares shall be in accordance with the FDI guidelines. Prior to the amendment, Indian companies were permitted to issue equity shares to person resident outside India only against royalty, lump sum fee, External Commercial Borrowings (ECBs) (other than import dues deemed as ECB or Trade Credit as per RBI guidelines) and import payables of capital goods by units in Special Economic Zones subject to certain conditions. (A.P.DIR Series Circular No. 31 dated September 17, 2014)

➤ *RBI permits ECB lenders to lend in Indian Rupees*

RBI had permitted all eligible borrowers to avail external commercial borrowings (ECB) designated in INR from foreign equity holders, under automatic/approval route, as the case may be, as per the ECB guidelines. However, with a view to provide greater flexibility for structuring of ECB arrangements, RBI has extended the facility of raising ECB in Indian currency from recognized non-resident ECB lenders subject to fulfillment of the following conditions.

(a) lenders are required to mobilize Indian Rupees through swaps undertaken with an AD bank in India;

(b) ECB contract need to comply with all other conditions applicable to the automatic routes as the case may be;

(c) all-in-cost of such ECBs should be commensurate with prevailing market conditions.

For the purpose of executing swaps for ECBs denominated in INR, RBI has also given an option to recognized non-lender to set up a representative office in India. (RBI A.P. DIR Series Circular No. 25 dated September 03, 2014)

➤ *SEBI amends revised Clause 49 of Listing Agreement*

SEBI has made changes in revised Clause 49 of Listing Agreement which inter alia includes the following:

(a) Provisions of Clause 49 shall not be mandatory, for the time being, in respect of the following class of companies. (i) Companies having paid up equity share capital not exceeding Rupees 10 crore and net worth not exceeding Rupees 25 crore as on the last day of the previous financial year; (ii) Companies whose equity shares are listed on SME and SME-IT Platforms.

(b) Provisions regarding appointment of women director as provided in Clause 49 will be applicable with effect from April 01, 2015 which was earlier applicable from October 01, 2014.

(c) Definition of related party has been amended to bring at par with the Companies Act 2013 and accounting standards.

(d) For a related party transaction to be considered material, limit has been changed from 5% of annual turnover or 20% of net worth, whichever is higher, to 10% of annual consolidated turnover.

(e) Companies are permitted to obtain omnibus approval from Audit Committee for related party transactions proposed to be entered into by the company, subject to certain conditions.

(f) Maximum tenure of independent director has been amended to bring at par with the Companies Act, 2013 and clarifications/circulars issued by MCA, in this regard from time to time. (SEBI Circular CIR/CFD/POLICY CELL/7/2014 dated September 15, 2014)

➤ *Government of Delhi increases property circle rates by 20%*

Government of National Capital Territory of Delhi, Revenue Department has increased minimum rates (circle rates) for valuation of land and immovable properties in Delhi for the purpose of payment of stamp duty by 20%. New rates came into effect from September 23, 2014

(Government of National Capital Territory of Delhi, Revenue Department Notification No. F.1(152)/ Regn. Br/Div.Com/HQ/2011/780, dated September 22, 2014)

Litigation Brief

➤ *Supreme Court strikes down retrospective levy of surcharge in cases of block assessment.*

The Constitution Bench (5-Judges) of the Hon'ble Supreme Court in a landmark case of CIT, New Delhi v. Vatika Township Private Limited (Judgment, dated 15.09.2014), has struck down the retrospective application of Provisio (inserted vide Finance Act, 2002) to Section 113 of the Income Tax Act, 1961 ("Act"), which provides for levy of surcharge, in addition to fixed income tax @60%, as applicable in the assessment year relevant to the previous year in which the search was initiated.

As per the un-amended Section 113 of the Act, income tax was levied @60% on the total undisclosed income of the block period (i.e. the period comprising previous years relevant to six assessment years preceding the previous year in which the search operation was conducted). An additional surcharge, as per the applicable rate, was introduced w.e.f. 01.06.2002.

The Income Tax Department, assuming the provisio to be clarificatory, started raising demands upon the assesseees, for levy of surcharge retrospectively for the period before 01.06.2002. Such demands came to be challenged by various assessee(s). The Division Bench of the Hon'ble Supreme Court in an earlier decision in CIT, Central-II v. Suresh N. Gupta, (2008) 4 SCC 362, had upheld the demands raised by the Department.

However, in the present case, the Constitution Bench has overruled the aforesaid decision and thus all the demands raised on the basis of retrospective application of Provisio to Section 113 are liable to be dropped. The present Judgment is a much needed respite to the assesseees who have been subjected to block assessment before the year 2002. Besides, this Judgment also settles a plethora of cases pending before various forums for the past more than 10 years.

➤ *Supreme Court declares National Tax Tribunal Act, 2005, as unconstitutional.*

The Constitution Bench (Five Judges) of the Hon'ble Supreme Court in a landmark decision in Madras Bar Association v. Union of India and another (Judgment, dated 25.09.2014), has declared the National Tax Tribunal Act, 2005 ("Act") as illegal and unconstitutional.

The Petitioners assailed the validity of the Act mainly on the ground that the said Act, by way of which matters involving substantial questions of laws pending before jurisdictional

High Courts were to be transferred to a newly constituted National Tax Tribunal manned by a Judicial Member and other technical members, violates one of the basic structures i.e. the powers of judicial review under Article 226 and 227, of the Constitution of India.

The Hon'ble Court, while rejecting the contention that transfer of matters from jurisdictional High Courts to a special Tribunal is violative of basic structure, categorically held that such transfer would undermine the powers of judicial review vested with High Courts under Article 226 and 227 of the Constitution. The Hon'ble Court further struck down the appointment of technical members viz. Accountant and Company Secretaries, as members of the proposed Tribunal, to adjudicate upon the substantial questions of law.

In light of the above, the Hon'ble Court struck down the whole Act as unconstitutional. This judgment is a welcome step inasmuch as constitution of a separate Tribunal and transfer of lakhs of matters from respective High Courts would have led to unwanted chaos. Such constitution of a special Tribunal would have further aggravated the concerns of the litigants who would have to make huge efforts to get their cases adjudicated.



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