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Corporate Brief

Department of Financial Services issues the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2019.

The Union Government, via the Department of Financial Services, notified the Indian Insurance Companies (Foreign Investment) Amendment Rules, 2019 ("**Rules**") vide notification no. G.S.R. 619(E) dated 02.09.2019 with a view to amend the existing Indian Insurance Companies (Foreign Investment) Rules, 2015.

The Rules provide for the following:

a) The Rules have allowed 100% foreign equity investment in insurance intermediaries under the automatic route. However, this is subject to verification from the Insurance Regulatory and Development Authority of India ("**IRDAI**").

b) Extensive compliance provisions have been laid down for intermediaries with majority foreign shareholding, like:
   (1) Such intermediary entities can be incorporated only as a limited company under the provisions of the Companies Act, 2013
   (2) At least one from amongst the Chairman of the Board of Directors or the Chief Executive Officer or Principal Officer or Managing Director of the insurance intermediary required to mandatorily be a resident Indian citizen.
   (3) Prior IRDAI approval required for repatriating dividend.
   (4) Composition of the Board of Directors and key management persons is required to be in line with the provisions specified by the concerned regulators;

c) Investment by Foreign Portfolio Investors continues to be governed by provisions of the Foreign Exchange Management Act, 1999 and Securities Exchange Board of India (Foreign Portfolio Investors) Regulations

d) Any increase in foreign investment is required to be made in accordance with the pricing guidelines prescribed by the Reserve Bank of India in this respect.

The Rules also reiterate that foreign equity investment in entities such as a bank, whose primary business is outside the realm of insurance, and which are also allowed by the IRDAI Regulatory to function as an insurance intermediary, continue to be subject to foreign equity investment caps applicable in that sector. However, this is subject to the condition that the revenues of such entities from the primary (noninsurance related) business must remain above 50% of their total revenues in any financial year

Ministry of Corporate Affairs relaxes additional fees and grants extension of last date of filing of Form BEN-2 and BEN-1.

The Ministry of Corporate Affairs ("**MCA**") notified the relaxation of additional fees and extension of the last date of filing of Form BEN-2 and BEN-1 under the Companies Act, 2013 ("**Act**") vide the General Circular No. 10/2019 dated 24.09.2019 ("**Circular**").

Form BEN-2 deals with the declaration to be made by a company to the Registrar of Companies under section 90 of the Act. The MCA has granted extension of the time limit for filing this form up till 31st December 2019 without paying any additional fees. Furthermore, the Circular also stated that subsequent to the filing of Form BEN-2, the filing of Form BEN-1, which deals with the declaration to be made by a beneficial owner who holds or acquires significant beneficial ownership in shares under section 90 of the Act, may be construed accordingly.

The Ministry of Corporate Affairs amends Schedule VII of the Companies Act, 2013 to allow Corporate Social Responsibility contributions to incubators, universities & research by companies.

The Ministry of Corporate Affairs ("**MCA**") recently brought amendments in Schedule VII ("**Schedule**") of the Companies Act, 2013 ("**Act**") vide notification no. G.S.R. 776(E) dated 11.10.2019.

This Schedule specifies activities which qualify as Corporate Social Responisbility ("**CSR**"). The MCA has amended clause

9 of this Schedule, which deals with contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government. Previously, this provison was restricted and narrow, however, with the notification of the amendment, the scope of the same has been broadened, especially for research in science, technology and medicine, aimed at promoting Sustainable Development Goals.

It includes contributions to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology, National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research, Indian Council of Medical Research, Council of Scientific and Industrial Research, Department of Atomic Energy, Defense Research and Development Organization, Department of Science and Technology, Ministry of Electronics and Information Technology, engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals.

➲ *The Insolvency and Bankruptcy Board of India specifies the valuations to be conducted mandatorily by Registered Valuers.*

The Insolvency and Bankruptcy Board of India ("**IBBI**") vide circular no. IBBI/RVO/026/2019 dated 16.09.2019 ("**Circular**") has notified a list of provisions under the Companies Act, 2013 ("**Act**") and the Insolvency and Bankruptcy Code, 2016 ("**Code**") under which valuations are required to be conducted exclusively by registered valuers only. The list of such provisions has been duly annexed to the Circular, including the following:

Under the Act, there is mandatory valuation for provisions regarding further issue of share capital, restriction on non-cash transactions involving directors, mergers and amalgamations of companies, purchase of minority shareholding etc.

Under the Code, there is mandatory valuation for provisions regarding voluntary liquidation of corporate persons, valuation of assest intended to be sold, initiation of liquidation, fair value and liquidation value etc.

➲ *Securities and Exchange Board of India notifies a Risk Management Framework for liquid and overnight funds and Norms for governing investment in short term deposits.*

The Securities and Exchange Board of India ("**SEBI**") recently notified vide circular no. SEBI/HO/IMD/DF2/CIR/P/2019/101 dated 20.09.2019 ("**Circular**") which specified the risk management framework for liquid and overnight funds and laid down the norms governing investment in short term deposits.

This Circular lays down the following:

a) Liquid funds shall hold at least 20 per-cent of its net assets in liquid assets. 'Liquid assets' shall include cash, government securities, repo on government securities etc. compliance of this requirement by the asset management company is mandatory and no future investments shall be allowed in case of non-compliance.
b) Liquid Funds and Overnight Funds shall not park funds pending deployment in short term deposits of scheduled commercial banks.
c) Liquid Funds and Overnight Funds shall not invest in debt securities having structured obligations and/or credit enhancements. However, debt securities with government guarantee shall be excluded from such restriction.
d) Mutual Fund shall levy exit load on investors who exit the Liquid Fund within 7 days of their investment. However, the requirement to levy exit load shall not be applicable to investments made in liquid funds prior to 30 days from this Circular.
e) This circular also specified the cut off timings for the applicability of net asset value, which effectovely also modifed SEBI Circular No. Cir/IMD/DF/19/2010 dated 26.11.2010.

The aim of notifying this Circular was to protect the intrests of investors in securities and to promote the development of, and to regulate the securities market.

Real Estate Brief

➲ *Vide notification dated 12.09.2019, Haryana Government, Town and Country Planning Department amended the Haryana Real Estate (Regulation and Development) Rules, 2017 framed by Haryana Real Estate Authority ("Authority"):*

The following amendments are made:

- **Substitution in definition of association of allottees in rule 2, in sub-rule (1), for clause (c)**: The definition of "association of allottees" has been substituted. Namely "association of allottees" means a collective of the allottees of a real estate project, by whatever name called, registered under any law for the time being in force, acting as a group to serve the cause of its members, and shall include the authorised representatives of the allottees as recognised by the Authority. The manner in which the association of allottees of a project or a part thereof may be

recognised for the purposes of transfer of title by the Promoter to the allottee, association of allottee or competent authorities as prescribed under Section 17 of RERA.

- **Power to grant refund and compensation amendment in Rule-28**: This rule implements the following sections under RERA i.e. filing of complaint with Authority (Section 31), and inquiry into allegations or contravention or violation (Section 35) and disposal of complaint (Section 36, Section 37 and Section 38). As per the amended rule, any aggrieved person may file a complaint with the Authority for any violation of the provisions of the Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent as in Form 'CRA', or in form as specified which shall be accompanied by a fees as prescribed in Schedule III in the form of a demand draft or a bankers cheque drawn on a Scheduled banker online payment in favour of "Haryana Real Estate Regulatory":
  (a) Complaint under Section 31 may be filed by an aggrieved person, in case of violation or contravention of the provisions of the Act by the promoter, allottee or real estate agent, and such violation or contravention has been established after an inquiry made by the Authority under Section 35.
  (b) In case, in the complaint, only allegation has been made regarding contravention or violation of the Act, regulations or rules mde thereunder, then the Authority shall conduct an inquiry in relation to the affairs of the promoter or the allottee or the real estate agent, for establishing the verasity of allegations of the contravention.
  (c) If after an inquiry, it is not established that contavention/ violation of the provisions of the Act, or the rules or regulations, then the Authority to then drop the allegations.
  (d) In case, it is established that contravention or violation of the provisions of Act, regulations or rules had been committed by the promoter, allottee or real estate agent, then the Authority to pass such orders or issue directions or grant relief as per provisions of the Act. However, where the allottee is an aggrieved person and the promoter has violated the provisions of the Act, regulations or rules made thereunder as established on inquiry by the Authority under Section 35 of the Act and in complaint compensation has been sought by the allottee, the complaint for adjudging quantum of compensation to be referred to Adjudicating Officer by the Authority.
- The Authority for the purposes of deciding any complaint as specified under sub-rule (1), follow summary procedure for inquiry. Thus, after having come to the conclusion that the respondent has committed contravention of the provisions of the Act or the rules or the regulations made thereunder or the provisions of the agreement for sale, the Authority shall pass orders and directions for the purpose of discharging its functions under the provisions of this Act or rules or regulations, in addition, the Authority under Rule 2(k) may provide relief in such form as deemed appropriate including return of amount to the allottee received by the promoter along with interest at the rate as precribed in amended rule 15 (i.e. State Bank of India highest marginal cost of lending rate +2%).
- Further Rule 2(m) of Rule 28 clearly laid down that compensation before the Adjudicating Officer only be claimed once a complaint as to contravention is decided by the Authority. Thus, this lays down that a complaint shall be primarily filed before the Authority and then after its ruling before the Adjudicating Officer. Further, the Authority has also been granted the power to send the complaint where the component of compensation is the sort to the Adjudicating Officer once it is established the contravention of promoter/ developer.
- Furthermore, Rule 28 sub-rule 2(g) the Authority has now been granted the power to initiate suo moto penal proceedings in case gross violations are made by the promoter/ developer or real estate agent as the case may be.
- **Insertion of Rule 29-A for appointment and terms and conditions of adjudicating officer**: Wherein the Authority to appoint in consulation with the Government one or more Judicial Officers as deemed necessary, who is / or has been a District Judge/ additional District Judge to be an adjudicating officer for holding an inquiry. Eligibility conditions for his appointment shall be:

  That he may be a serving district judge/ additional district judge or a retired district judge/ additional distrcit judge;

  He should be below the age of sixty five years; He should not have faced any disciplinary proceedings in his carreer which have resulted into awarding of a punishment to him.

Furthermore, if more than one adjudicating officers are appointed, the Authority may specify by way of regulations the manner in which the eork will be distributed amongst them.

➲ Vide notification dated 20.09.2019, Uttar Pradesh Real Estate Regulatory Authority repealed its regulation 36 (a) (b) (c) (d) under Uttar Pradesh Real Estate Regulatory Authority (General) Regulations, 2019:

The Uttar Pradesh Real Estate Regulatory Authority has now repealed its regulation 36 (a) (b) (c) (d) under Uttar Pradesh Real Estate Regulatory Authority (General) Regulations, 2019, relating to review of its decisions, directions and orders. As per this regulation any person aggrieved by a direction, decision or order of the Authority from which (i) no appeal had been preferred or (ii) which had been passed ex pate or (iii) for which no appeal was allowed, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, to apply for a review of such decisions, directions and orders, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Authority.

The Authority has further decided that the proceedings in pending review applications to be stopped at the existing state and fee received from the review applicant to be returned to the applicant electronically. However, it stated that the decision to repeal this provision will not have effect on the orders under these provisions already passed by the Authority.

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA:

➲ In the matter of M/s Ferrous Infrastructure Pvt. Ltd. ("**Complainant**") Vs. M/s Maximal Infrastructure Pvt. Ltd ("**Respondent**"), Haryana Real Estate Regulatory Authority ("**Authority**") has put onus on the Department of Town and Country Planning to adopt a pro-active approach for protecting interest of the alloottees:

Facts:

- Two hundred and eight complaints had been received against five developers for the entire licensed project. Majority of the allottees sought refund of the money paid by them to the developers because their projects were stuck on account of inordinate delay on account of dispute pending between the licensees and the developers.
- Vide an agreement, the Respondent had assigned development and marketing rights upon Complainant. The Complainant was under an obligation to complete the project on or before the year 2009, whereas till now only 4 out of 12 towers were stated to be ready for possession.
- A Local Commissioner was also appointed by Authority, which pointed out multiple serious violations with respect to building plans, thereby it has became difficult for the Complainant to obtain occupation certificate. The Local Commissioner stated in his Report that the license granted by Department of Town and Country Planning ("**Department**") for developing a group housing society was valid upto 22.01.2009, later renewed upto 22.01.2016. Further, no approval of competent authority for sub-division of the licensed project was taken whereas the licensee had sub-divided the project amongst five developers. There was no apartment for which occupation certificate had been issued by the department. None of the requisite sanctions/ approvals taken for the Project. Furthermore, there was poor quality of construction.

Observation:

- Upon review, it was observed that the main licensee companies had disposed of all the land of the project to five developer companies.
- The parties in violation of law of the land then prevailing, at their own level had sub divided the license and assigned its development rights to 5 different companies which they could have done only with the approval of the State Government.
- The Authority held that if they would have obtained approval of the Department, while dividing the license, the Department would also have separated their other rights and liabilities. Nonetheless, it stated that now an appropriate and a practical solution has to be found keeping in view of interest of the allottees.
- The Authority held, that the Department had consciously approved the colony to be developed in five distinct zones. Right from the inception of the whole project it was conceived as five separate and distinct zones/ colonies within the same licensed colony. It was implied as well as express while approving the plans that the colony will be developed in five zones and by five separate individuals. The

intention of the colony to be developed by five distinct entities was abundantly clear right rom the beginning.

- It held that the only way forward for resolution of this complex dispute was to formally treat them as five independent, separate and standalone colonies, which are factually being developed by five different promoters- developers. These five independent promoters have executed agreements for sale of apartments separately with different sets of allottees. The most important thing now was to Department to upfront recognize this fact, which has been impliedly and repeatedly accepted at the time of the approval of the plans etc.
- In the interest of the allottees and the real estate project, the developer companies had approached Department for beneficial rights to be transferred in favour of each of the developer companies in respect of the zone which has come into their share. The Authority has held that they must now review Department's decision of declining the request of the licensee and developer companies, since this proposition is permissible as per laws and rules of the Town & Country Planning Department and as held in *Landmark Apartments Pvt. Ltd Vs. State of Haryana* order, which held that the concern of the State regarding impermissibility of bifurcation of the license is that Rule 17 of Haryana Development and Regulation of Urban Areas rules, 1976 does not permit transfer of license in part, however there are certain conditions prescribed to such transfer. It held that the residents of the area who have invested in the project considering it to be lawful as it was indeed, cannot be made to suffer on account of technical objection of the State in not permitting such transfer of license against some portion of land. Bifurcation of a license is a procedure between the developer and the State. Law permits it either in complete or in parts with a stipulation of payment, an accompanying amount under Rule 17 of Haryana Development and Regulation of Urban Areas rules, 1976.
- Therefore in the present order, the Authority held that technicalities cannot be allowed to come in way of protecting the interests of thousand of allottees of the project who have invested their hard-earned money in the project on the basis of licensees and approvals granted by the State Government. The State Government is bound to protect their interest. It is a sovereign duty of the State.
- The Authority held that the promoters for each zone have to be held answerable to their allottees in respect of their contractual obligations. The entitlement rights and liabilities of each zone have to be determined separately and independently. It stated that the big mistake, which complicated the matters, being committed by the Town & Country Planning Department is that inspite of the ground realities being very different, they were treating all the five zones together as one licensed colony. Accordingly, the liabilities of the promoters are now being determined jointly. As per facts of the matter those liabilities are neither sole responsibility of the licensee company nor jointly of five promoter companies. This fact has to be recognized that five separate & independent zones have practically nothing to do with each other.
- It thus held that unless rights and responsibilities of five promoters in respect of their own zones are determined separately, the matter will never be resolved. The Department therefore should recognize this fact and review its earlier decision and take actions to effectively consider the license having been divided into five parts or the rights of beneficial development having been devolved from the licensee company to the five developer-promoter companies.
- It thus held that a way forward for the Department is that it develops a compassionate understanding of the fact situation and, by usage of the existing provision of law or by creating a new law, divide the license amongst the developer companies; re-determine their liabilities; re-sanction their development plans; and let the project move forward. Further it held that the conditions of the license, and the provisions of the Haryana Urban Development Act and rules framed thereunder, obliges the Department to adopt a pro-active approach for protecting interest of the alloottees.

Held:

- That it is on account of the assurance of the State Government held out to the general public by way of granting license to the colony and approving its development plans that the allottees have booked the apartments in the colony. Had such a license been not granted nobody would have not invested in their hard-earned money in it.
- License for developing a colony should be treated as a sovereign guarantee of the State Government to the general public that in the event of the failure of the project, State Government would step in to safeguard their interests.

- It also held that the liabilities on account of overdue licensee fee, EDC, IDC, penal interest and other charges will have to be and should be separately determined in respect of each developer companies by the Department. Since principal responsibility for not acting in contravention of the conditions of license was that of the licensee company. Department to credit the EDC/IDC and other duties received from the license in favour of four developers. After crediting such amounts, remaining liabilities should be determined separately in respect of each developer company for division of the license.
- The original licensee company may not co-operate with the developers for this purpose. The Department should consider their consent granted for division of the license, regardless of approval of licensee company.

REAL ESTATE REGULATORY AUTHORITY, PUNJAB, CHANDIGARH

➲ In the matter of Dr. Vinay Goyal ("**Complainant**") Vs. Omaxe Limited ("**Respondent**"):

Facts:

- The Complainant had filed the present complaint in form-N seeking possession of the residential unit, grant of interest on the delayed period in delivery of possession and compensation.

Contention of Complainant:

- The Complainant contended that he sought relief of interest for delay in handing over possession of the residential unit on account of non-receipt of occupancy certificate/ completion certificate from the competent authority, although the actual possession of the unit had been handed over to the Complainant on 09.06.2016.
- That the Complainant contended that he had taken possession of only the fitments and possession cannot be deemed to be actual possession in the absence of occupancy certificate.

Contention of Respondent:

- The Respondent contended that the complaint was not maintainable as the Complainant had taken peaceful possession of the unit on 09.06.2016 which was prior to notification of the RERA Act and no fresh cause of action had arisen after the RERA Act came into being.

Issue:

Whether the Respondent failed to complete or was unable to give possession of the unit and the Complainant was entitled to return of amount and compensation under Section 18 of RERA Act?

Observation:

- The Authority held that as per certificate signed between the parties, it revealed that possession of the unit was with all the required gadgets, bathroom fittings, wooden doors, kitchen fitments along with an electricity meter. Further the handing/ taking over was duly signed by both Complainant/ Respondent, which clearly showed that the said possession couldn't be deemed to possession for fitments only.
- Further the Complainant also accepted that he was in continuous possession of the unit and was living there.
- Thus, the Authority on the issue of the applicability of the Act in regards to the complaints made regarding violations which took place prior to the notification of the Act reiterated in this order, a previous order of the Authority in *Bikramjit Singh and others vs. State of Punjab*, it held that the following conditions must be fulfilled while deciding the maintainability of complaints where cause of action arose prior to the enforcement of the Act:
  (i) The alleged violation, though commencing before the enforcement of the RERA Act, must be continuing till date;
  (ii) The alleged violation must also constitute a contravention of the RERA Act and the rules and regulations made thereunder; and
  (iii) The issue should not have been decided, or pending, in any forum/ court before approaching the Authority. This is necessary to avoid multiplicity of litigation.

Only if all three aforesaid conditions are fulfilled, then the onus would on the Complainant to prove these, would any alleged violation that took place before the coming into force of this Act be considered by the Authority.

Held:

The violation was not continuous in nature after the notification of the Act and the delay, if any, took place prior to notification of the Act. Since the possession had already

been given to the Complainant on 09.06.2016, hence the provision of Section 18 of the Act shall not apply.

Litigation Brief

➲ M/s. Tecnimont Pvt. Ltd. (Formerly known as Tecnimont ICB Private Limited) Vs. State of Punjab & Others. (Decided By the Supreme Court of India)

Validity of Section 62(5) of the Punjab Value Added Tax Act, 2005

Issue: The questions of law involved in the present case were framed by High Court of Punjab and Haryana at Chandigarh, as under:

a. Whether the State is empowered to enact Section 62(5) of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as "**PVAT Act**")?

b. Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and therefore violative of Article 14 of the Constitution of India?

c. Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?

Facts:

- The Petitioner, in the present SLP, is a statutory body constituted under the Electricity (Supply) Act, 1948, engaged in generation, distribution and supply of electric energy/electricity power to the consumers viz. domestic, commercial and industrial consumers in the State of Punjab.

- The petitioner had been filing returns as prescribed and depositing tax therein payable in terms of PVAT Act. For the year 2007-08, returns along with requisite information in prescribed form had been filed with the authority. Thereafter, annual statement had been filed before the last date as prescribed under the PVAT Rules. Similarly, for the years 2008-09 and 2009-10, returns were filed in time and annual statements were also filed before the last dates.

- Respondent No.2, The Excise and Taxation Officer cum Designated Officer (ETO), initiated assessment proceedings for the years 2007-08, 2008-09 and 2009-10 by issuing notice under the PVAT Act and subsequently, assessments had been framed. The officer made additions to the taxable turnover declared in the returns: - i) the receipts in respect of charges from the customers as meter rent had been brought to tax; ii) the receipts in respect of charges from the customers as service line rental had been bought to tax while treating these as meter rent. In addition to the above tax, the ETO imposed penalties and interest under the PVAT Act, resulting in raising demand for the three aforesaid years.

- The petitioner approached the appellate authority i.e. the Deputy Excise and Taxation Commissioner (Appeals), for stay of recovery of tax, however, the appellate authority directed the petitioner to make deposit of 25% of the additional demand in the government treasury failing which the appeals would be dismissed in limine.

- Aggrieved by the order, the petitioner filed appeals before the Punjab VAT Tribunal. The petitioner pleaded that he was facing tight financial position and that since he had already paid voluntarily tax for the assessment years in question, the same should be adjusted against the additional demand created by the assessing authority. The Tribunal agreed with the latter contention, however, directed to deposit 25% of the amount of tax, penalty and interest in terms of the order in the case of Ahulwalia Contracts India Pvt. Limited.

- Aggrieved by the order, the petitioner challenged the vires of Section 62(5) of the PVAT Act along with the orders passed by the Tribunal.

Court's Observations:

- In reference to Issue (a) and (b) - The High Court submitted that the State is empowered to enact Section 62(5) of the Act and the said provision is legal and valid. The High Court further held that the condition of 25% pre-deposit for hearing first appeal is not onerous, harsh, unreasonable and violative of the provisions of Article 14 of the Constitution of India.

- The High Court relied on *ITO v. T.S. Devinatha Nadar*, "where the language of a taxing provision is plain, the court cannot concern itself with the intention of the legislature. In this connection we may also mention that just as the reference under Section 47-A has been made subject to deposit of 50% of the deficit duty, similarly there are provisions in various statutes in which the right to appeal has been given subject to some conditions. The constitutional validity of these provisions has been upheld by this Court in various decisions."

- It further observed that – "there is no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by A.P. Amendment Act 8 of 1998. This amendment was only for plugging the loopholes and for quick realization of the stamp duty. Hence it is well within the power of the State Legislature vide Entry 63 of List II read with Entry 44 of List III of the Seventh Schedule to the Constitution. It is well settled that stamp duty is a tax, and hardship is not relevant in construing taxing statutes which are to be construed strictly." In the situation where the demand is arbitrary or in case hardship is caused, it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer and the High Court has discretion to set aside such demand.

- In reference to Issue (c) – It was concluded that even when no express power has been conferred, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act by the first appellant authority. It would follow that the provisions of Section 62(5) are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances, when a strong prima facie case is made out.

- The Apex Court held that the principle laid down in *Matajog Dobey* case states with clarity that so long as there is no express inhibition, the implied power can extend to doing all such acts or employing such means as are reasonably necessary for such execution. The principle of enabling the Appellate Authority cannot go to the extent of overriding the limitation prescribed by the statute and go against the requirement of pre-deposit. As stated in various precedents, in genuine cases of hardship, recourse would still be open to the concerned person. However, it would be completely a different thing to say that the Appellate Authority itself can grant such relief.

- The Apex Court accepted the conclusions drawn by the High Court as regards questions (a) and (b) are concerned but set aside the view taken with regards question (c). The appeals preferred by the assesses are therefore dismissed and those preferred by the State against the decision in respect of question (c) are allowed.

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