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- MCA notified extension of time for holding of Annual General Meeting for Financial year ended 31.03.2021;
- MCA notified extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rule, 2014;
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Corporate Brief**⇒ MCA Notifies extension of tenure of company law committee**

Ministry of Corporate Affairs (hereinafter "MCA") vide order dated 23.09.2021 extended the tenure of the Company Law Committee by further one year i.e. till 16.09.2022.

⇒ MCA notified extension of time for holding of Annual General Meeting for Financial year ended 31.03.2021

MCA vide office memorandum dated 23.09.2021 had decided to advise the registrar of Companies to accord approval for extension of time for a period of 2 (Two) months beyond the due date by which companies are required to conduct their AGMs for the Financial Year 2020-21.

⇒ MCA notified extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rule, 2014

MCA vide its circular dated 27.09.2021 stated that in view of the extraordinary disruption caused due to the Pandemic, decided to extend the time of timeline to file Form CRA – 4 which is in respect of filing of Cost Audit Report to the Registrar of Companies ("ROC"). Now, Form CRA - 4 shall be filed within a period of 30 (thirty) days from the receipt of the copy of the cost audit report by the Company and the same shall not be considered as violation of Companies Act, 2013 in case the cost auditor report is submitted before the Board of Directors of the Company by 31st October, 2021.

However, in case the company has been granted extension of time for holding of Annual General Meeting under Section 96(1) of the Companies Act, 2013, then Form CRA – 4 may be filed within the timeline as provided under Rule 6(5) of Companies (Cost Records and Audit) Rule, 2014.

⇒ SEBI releases Guidelines for Investment Advisers - Extension of timelines

SEBI vide circular dated 30.09.2021 issued "Guidelines for Investment Advisers" wherein a timeline of 6 (six) months has been prescribed from the end of each financial year for Investment Advisers ("IA") to conduct annual audit in respect of compliance of SEBI (Investment Advisers) Regulations, 2013 ("IA Regulations") and circulars issued thereunder. Further, IA are required to submit a report in case of any adverse findings from such audit within a timeline of 1 (one) month from the date of audit report but not later than 31st October of every year.

A timeline of 6 (six) months from the end of the financial year for the IAs has been provided to obtain an annual certificate from an auditor confirming compliance with the client level segregation requirements.

Accordingly, the Circular stands partially modified as under:

- For financial year ending March 31, 2021, the IAs shall conduct the annual compliance audit by December 31, 2021 and submit the adverse findings of the audit, if any, by January 31, 2022.
- For financial year ending March 31, 2021, IAs shall obtain a certificate from an auditor by December 31, 2021.

⇒ RBI releases Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021

RBI vide its notification no. FEMA 23(R)/(5)/2021-RB dated 08.09.2021 issued amendments to the Foreign Exchange Management (Export of Goods and Services) Regulations, 2015 wherein as per RBI, the rate of interest, if any, payable on the advance payment shall not exceed 100 basis points above the London Interbank Offered Rate ("LIBOR") or other applicable benchmark as may be directed by the Reserve Bank, as the case may be.

REALESTATE Brief**BIHAR**

➤ Vide Public Notice dated 29.09.2021, Real Estate Regulatory Authority, Bihar (“**Authority**”)

It was decided that:

The promoters of registered real estate projects situated in the state of Bihar, who have till date not uploaded the quarterly status/progress report of their registered projects shall within 15 (fifteen) days of the expiry of the quarter ending on 30th September 2021, upload such reports on the official website of the Authority. In case, a promoter fails to upload such quarterly status/progress report required under the Real Estate (Regulation & Development) Act, 2016 and rules made thereunder (“**RERA Act**”) within the prescribed timeline, then, then such promoter shall be liable to pay a fee as a penalty for the delayed submission of the report.

Further, in case for promoters who have not uploaded quarterly status/progress reports of the registered project for 2 (two) successive quarters or more, shall be liable for proceedings under Section 8 (*Obligation Of Authority Consequent Upon Lapse Of Or On Revocation Of Registration*) of the RERA Act for revocation of registration of project and/or levy of penalty under Section 61 (*Penalty for contravention of other provisions of this Act*) of RERA Act.

The notice was issued by the Authority on observance of non-compliance by many such promoters of registered real estate projects who have not been uploading on the Authority’s website quarterly progress/status report of their respective projects along with block-wise/floor wise status of construction with photographs in time.

KERALA

➤ Vide Public Notice No. K-RERA/T3/102/2020 dated 09.09.2021 Kerala Real Estate Regulatory Authority (“**Authority**”)

The Authority had released directives related to strict compliance of the provisions of the Real Estate (Regulation & Development) Act, 2016 (“**RERA Act**”) by the promoters while uploading the details of the project on the official web portal of the Authority and release of advertisements of projects by promoters. The Authority had noticed that some promoters have been committing default continuously in relation to the compliance concerning the uploading of project details on the official web portal. Therefore, in pursuance to the above, the Authority had issued vide notice directing all promoters to adhere to the following instructions related to uploading of project details.

(i) Quarterly updates related project details:

In accordance with Section 11(1) (*Functions and Duties of Promoter*) of RERA Act, a promoter shall quarterly update following details of the project on the official web portal (a) list of number and type of apartments or plots booked; (b) list of number of garages; (c) list of approvals taken and approvals which are pending subsequent to commencement of the project; (d) status of project; and (e) other information and document specified under the Kerala RERA (Regulation & Development) Rules, 2018 (“**KerRERA Rules**”) and Kerala Real Estate Regulatory Authority (General) Regulations, 2020 (“**KRERA Regulations**”) released by the Authority. Further, in accordance with Rule 17 (*Details to be published on Website*) of KerRERA Rules, a promoter shall update quarterly progress on the official web-portal within 7 (seven) days from expiry of each quarter.

(ii) Uploading of forms required for withdrawal of money from designated account:

Form No. 2 (Architect’s Certificate), Form No. 3 (Engineer’s Certificate) and Form No. 4 (Chartered Accountant’s Certificate) provided under the KRERA Regulations are to be uploaded on the official website of the Authority along with the quarterly project progress report.

(iii) Annual Report:

The annual report on statement of accounts in Form No. 5 provided under KRERA Regulations issued in accordance with third proviso to Section 4(2)(l)(D) of the RERA Act, shall be certified and signed by the Chartered Accountant in practice and uploaded on the web portal by the promoter on or before 31st October of every year until the project is completed.

(iv) Completion certificate for projects:

The promoter shall upload a certificate from an Architect in Form No.6 as required for registered ongoing projects, which has been completed in all respects pursuant to Regulation 5(4) (*Additional Disclosure by Promoters on their webpage after registration and other disclosure*) of KRERA Regulations.

(v) Displaying K-RERA Registration Number and Website Address in Advertisements and other public releases by the Promoter:

In pursuance to requirement laid under Section 11(2) (*Functions and Duties of the Promoter*) of the RERA Act, vide this notice, the Authority had redirected all promoters to duly comply with the said provisions of the

act wherein a promoter shall be required to state K-RERA registration number and website address of the project in all advertisements and prospectus prepared by the promoter and uploaded on the website of the Authority.

(vi) Display plans and other specifications at project site:

In pursuance to requirement laid under Regulation 5(4) of the KRERA Regulations, vide this notice, the Authority had redirected all promoters to prominently display in laminated form, the sanctioned plans, layout plans along with specifications as approved by the competent authority and also the registration certificate issued by the Authority at the project site.

(vii) Penalty:

In case the promoter fails to comply with any of the particulars of this notice wherein any data/information/document furnished by the promoter is found to be false/incorrect/deficient in any manner, it shall be treated as a contravention of Section 4 (*Application for registration of real estate project*) of RERA Act and failure shall entail to penalty which may extend up to 5% (five-percent) of the estimated project cost as provided under Section 60 (Penalty for contravention of Section 4) of the RERA Act.

such other reasons, shall be treated as no ground for adjournment.

- (f) Party fails to show sufficient cause while seeking adjournment before the Authority.

(ii) Submission of Convenience Document set:

In addition of the complainant and respondent filing complaint/reply/ written argument etc. on which reliance will be placed in the matter, a hard copy of "**Convenience Document**" shall also be submitted with the Authority at its physical office address. The Convenience Document set shall not be more than 20 (twenty) pages and shall consist of only relevant pages on which reliance will be placed by the complainant/respondent.

(iii) Mode of Hearing

The mode of hearing shall be online video conferencing. However, in cases where the Authority feels that physical hearing is crucial for adjudication of the dispute, then such hearing will take place in physical mode wherein only the parties concerned and their authorized representative shall attend the hearing by following COVID-19 protocols prescribed by state government.

MAHARASHTRA

- Vide Order No. 23/2021, File No. 27/189/2021 dated 08.09.2021, Maharashtra Real Estate Regulatory Authority ("**Authority**")

On the issue of slow adjudication of disputes and complaints virtual hearings before the Authority, vide this order, the Authority had decided to reformulate the procedure and had laid down the following:

(i) Adjournment

- No party shall be granted adjournment more than two times.
- Adjournments shall not be granted to any party unless there are compelling circumstances or circumstances which are beyond the control of the party.
- A legal practitioner engaged in another court room hearing cannot be treated as a ground for adjournment.
- In case the legal counsel so appointed by the party is suffering from illness and party has sought for adjournment of hearing before the Authority, the adjournment shall be granted only if the party is able to satisfactorily explain that it could not engage another legal counsel in time.
- Excuses such as (1) "*I have been briefed in the matter recently/yesterday/in the morning*"; or (2) "*I am not prepared/ready with the arguments in the matter*" or for

- Vide Order No. 24/2021, File No. 27/203/2021 dated 21.09.2021, Maharashtra Real Estate Regulatory Authority ("**Authority**")

The Authority had noticed that several projects registered on the web-portal of the Authority had expired but the promoters of such projects had neither applied for extension of project date nor uploaded Form 4 (Architect's Certificate on Completion of Project). Further, it was observed by the Authority that many of the promoters had been uploading Form 4 with or without Occupancy Certificate (OC) or they are applying for extension of project completion date.

On observance of the above issue, the Authority had decided to provide procedure for validation of Form 4 in the following manner:

- (i) Projects with Form 4 and with OC having date of OC before the date of expiry of the project and in cases where OC has been received after date of completion:**
- Form 4 with OC within date of completion will be validated as correct submission.
 - Form 4 with OC received after date of completion

- 1) If there sold inventory is not sold, the promoter can apply in correction module and completion date can be corrected.
 - 2) In cases where inventory is sold, the promoter has to apply for extension which will be valid up to date of OC.
- (ii) **Projects with Form 4 but no OC or Part OC, or Projects which are expired but have not uploaded either Form 4 or OC:**
- (a) In case a promoter has Form 4 but no OC or Part OC:
 - 1) If the inventory is not sold, promoter can apply in correction module and completion date can be corrected.
 - 2) If the inventory is sold then, the promoter has to apply for extension under Section 6 (*Extension Of Registration*) of the RERA Act with the Authority or the promoter shall apply by obtaining consent from 51% (fifty-one) percent of the allottees required under Section 7(3) (*Revocation of Registration*) of the RERA Act or if consents are less than 51% (fifty-one) percent, the promoter shall apply with available consents where in such a case a joint hearing may be set up by the Authority with the allottees and may consider extension with additional conditions.
- (iii) **Project is expired but no Form 4 or OC is uploaded:**
- (a) In case inventory is not sold, the promoter can apply in correction module and completion date can be corrected.
 - (b) In case inventory is sold, then the promoter, the promoter has to apply for extension under Section 6 (*Extension Of Registration*) of the RERA Act with the Authority or the promoter shall apply by obtaining consent from 51% (fifty-one) percent of the allottees required under Section 7(3) (*Revocation of Registration*) of the RERA Act or if consents are less than 51% (fifty-one) percent, the promoter shall apply with available consents where in such a case a joint hearing may be set up by the Authority with the allottees and may consider extension with additional conditions. If the promoter does not apply for extension, or does not respond then allottee's society can apply to Authority under Section 7 (*Revocation of Registration*) of the RERA Act and after hearing, appropriate order can be issued by the Authority.

RAJASTHAN

- ⇒ Vide order No. F.1(231) RJ/RERA/EA/2021/1914 dated 29.09.2021, Rajasthan Real Estate Regulatory Authority (“**Authority**”)

It was decided that:

The Authority shall take strict action against the banks and shall debar them from having Collection Account (the account in which

100% (one-hundred percent) of the money paid by homebuyers of a registered real estate project is collected) and/or RERA Retention Account (separate bank account for the project where 70% of the money is collected in Collection Account is required to be transferred) if they fail to transfer the mandatory 70% (seventy percent) of the money collected in Collection Account to RERA Retention Account as required under Section 4(2)(l)(D) (*Application for Registration of Real Estate Project*) of the Real Estate (Regulation & Development) Act, 2016 (“**RERA Act**”). Section 4(2)(l)(D) of RERA Act states that the promoter shall maintain a separate bank account for the real estate project and shall be used for collection of money from allottees towards the unit, meeting land and development and construction costs.

NCLT Brief

- ⇒ **CASE ANALYSIS: M/S ORATOR MARKETING PVT. LTD Vs. M/S SAMTEX DESINZ PVT. LTD, CIVIL APPEAL No. 2231 of 2021**

A. BRIEF BACKGROUND OF THE FACTS

On 26th July, 2021, a Division Bench of the Hon'ble Supreme Court consisting of Indira Banerjee J. and V. Ramasubramanian J. delivered a landmark judgement upholding that interest free loans would fall under the definition of 'Financial Debt' as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 ('IBC'). This civil appeal before the Hon'ble Supreme Court arises out of an Order dated 08.03.2021 of the Hon'ble National Company Law Appellate Tribunal ('NCLAT') in No. 1064 of 2020, whereby the Hon'ble Appellate Authority had dismissed the Appeal filed by the Appellant and had upheld the Order dated 23.10.2020 delivered by the Hon'ble NCLT, New Delhi wherein the Hon'ble NCLT had refused to admit a Section 7 Application filed by the Appellant, on the ground that the Loan disbursed by the Financial Creditor to the Corporate Debtor is in the nature of an *interest free-loan* which is excluded from the definition of 'Financial Debt' under Section 5(8)(f) of the Code.

- (i) **Factual details regarding Disbursement of Loan by the Financial Creditor to the Corporate Debtor**

M/S Sameer Sales Private Limited, is the 'Original Lender' in the aforementioned case. It advanced a term loan of **Rs. 1.60 Crores** to **M/S Samtex Desinz Private Limited ('Corporate Debtor')** without any interest for a period of two years from the date of execution of the Loan agreement entered between M/S Sameer Sales Private Limited and M/S Samtex Desinz Private Limited ('parties'). The Loan Agreement was entered between the parties on 20.01.2018 and the Loan was due and payable after 20.01.2021. It is pertinent to mention here that the parties herein are sister concerns and that M/S Samtex Desinz Private Limited had taken a loan of Rs. 14,00,00,000 (Rupees Fourteen Crore Only) from M/S Tata Capital Financial Services Limited ('Institutional Lender') and thus it mortgaged all the assets in favour of the Institutional lender. However, this loan facility was not sufficient to meet the working capital requirements of the Corporate Debtor. Therefore, the M/S Samtex Desinz Private Limited ('**Corporate Debtor**') decided to avail an interest free loan of Rs. 1.60 Crore from its sister concern, which is the Original Lender.

It is crucial to mention here that this loan disbursed by the Original Lender was later assigned by it to **M/S Orator Marketing Private Limited ('Financial Creditor')**.

(ii) Background of the Proceedings at Hon'ble NCLT and NCLAT

The Financial Creditor filed a Section 7 Application under the Code before the Hon'ble NCLT, New Delhi. The Hon'ble NCLT rejected the Application vide its Order dated 01.02.2020. The primary question before the Hon'ble Adjudicating Authority was '*Whether the interest free loan of Rs. 1.60 Crores disbursed by the Original Lender to the Corporate Debtor is in nature of Financial Debt as defined under Section 5(8) of the Code?*'

The Hon'ble Adjudicating Authority relied on a decision of the Hon'ble NCLT i.e *Dr. B.V.S Lakshmi Vs. Geometrix Laser Solutions Private Limited* and a decision of the Hon'ble NCLAT i.e *Shreyans Realtors Private Limited & Anr Vs. Saroj Realtors & Developers Private Limited, Company Appeal (AT) (Insolvency) No. 311 of 2018* and held the view when the Corporate Debtor never accepts the component of interest in relation to a debt, then that particular debt cannot be termed as a 'Financial Debt' within the meaning of Section 5(8) of the Code.

Being aggrieved by the Order of the Hon'ble NCLT, the Appellant filed an Appeal before the Hon'ble NCLAT.

The Hon'ble NCLAT perused the statutory definition of 'Financial Debt' enumerated in the Code and interpreted the same with respect to the relevant Clauses in the Loan Agreement. A bare perusal of the provisions of the Loan Agreement provides that- (a) Under the Loan Agreement, the Lender has extended to the borrower a term loan of Rs. 1,60,00,000.00 (Rupees One Crore Sixty Lakh) ('Term Loan') for a period of two years commencing from the date of signing of the Agreement. (b) That the Term Loan is an unsecured loan. (c) That the Loan shall bear no interest. The Hon'ble NCLAT took the view that money borrowed against the payment of interest comes within the definition of 'Financial Debt'. The judgement and Order of the Hon'ble NCLT was affirmed by the Hon'ble NCLAT.

(iii) View of the Hon'ble Apex Court

The Hon'ble Apex Court viewed that Hon'ble NCLAT and NCLT have misconstrued the definition of 'Financial Debt' and have read it in isolation, in a very pedantic manner. The Hon'ble Apex Court meticulously analysed the definition of 'Financial Debt'. It quoted the definition of 'Financial Debt' under Section 5(8)(f). Section 5(8)(f) defines 'Financial Debt' to mean "a debt along with interest if any which is disbursed against the consideration for time value of money". It caught hold of the word 'if any'. The Hon'ble Apex expressed the view that 'Financial Debt' means outstanding principal due in respect of a loan and would also include an interest thereon, if any interest were payable and if there is no interest payable on the loan, then only the outstanding will qualify as a 'Financial Debt'.

It analysed Section 5(8)(f) and observed that the scope of the definition of 'Financial Debt' enumerated under Section 5(8)(f) is inclusive and not exhaustive. Section 5(8)(a) which provides for money borrowed against

payment of interest, inclusively comes under the purview of the definition of 'Financial Debt'. The Hon'ble Apex Court observed that, sub clauses (a) to (i) of sub-section 8 of Section 5 of the Code are apparently illustrative and not exhaustive.

The Hon'ble Apex Court relied on a couple of judgements to interpret the word 'include'. It relied on a Privy Council judgement that is *Dilworth Vs. Commissioner of Stamps, 5(1899) AC 99*. In this judgement, the Privy Council had expressed the view that, *"The word 'include' is generally used in interpretation clause in order to enlarge the meaning and when it is so used these words and phrases must be construed as comprehending, not only such things as they signify from their natural import, but also those as things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or the expressions defined. It may be equivalent to mean and include, and in the case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to words and expressions."*

The Hon'ble Apex Court was, however careful and cautioned that the scope of the term 'means and includes' cannot be so expansive so as to defeat the purpose of a statute. On this point, it relied on *Anuj Jain Interim Resolution Professional for Jaypee Infratech Ltd. Vs. Axis Bank Ltd, 8(2020) 8 SCC 401*. In this case, the Hon'ble Apex Court speaking through Maheswari J. referred to various precedents on restrictive and expansive interpretation of words and phrases used in a statute, particularly the words 'means' and 'includes' and held that- *"The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, is an essential ingredient for existence of debt, which is disbursed against consideration for time value of money. In any case, the definition, by its frame cannot be read so expansive, rather infinitely wide, that the root requirements of disbursements against the consideration for time value of money could be forsaken in a manner that any financial transaction could stand alone to become a financial debt"*.

The Hon'ble Apex Court interpreted Section 5(8) and held that *"money borrowed against payment of interest"* is one of a kind of financial debt, under the various kinds of financial debt are enumerated under Section 5(8)(a) to Section 5(8)(i). The Hon'ble Apex Court finally held that the definition of 'Financial Debt' in Section 5(8) of the Code does not expressly exclude an interest free loan. **The Hon'ble Apex Court held that 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body.**

B. SHORT ANALYSIS

However, the question that arises here is in the present set of facts is *"What was actually the consideration for time value of money in the present transaction?"* The term *'time value of money'* essentially means that the money that one might have now, would have more worth than its present value in future.

In this case, there is a entity which has taken a loan from an institutional lender and has mortgaged all his assets, however the loan taken is not sufficient to meet his working capital requirements. So now to fix the same, he has taken an unsecured term loan from one of its sister concerns without any interest (This term loan was though later assigned to the Appellant). So the question arises, *what exactly is the consideration for time value of money in this case?* The Judgement does not answer this question very elaborately rather it doesn't undertake an extensive analysis of the nature of the financial transaction between the parties. It can be presumed that the entity would meet his working capital requirements through the term loan advanced by his sister concern and generate some profit. The question that arises is *"Would the profit generated by the entity with the help of monies received through the term loan advanced by its sister concern is the consideration in nature of time value of money?"*. The judgement does not sufficiently elaborate on this aspect.

Litigation Brief

⇒ **Whether the RERA Act bars remedy under the Consumer Protection Act?**

IN THE MATTER OF: Imperia Structures Ltd. v. Anil Patni. (Decided by Hon'ble Supreme Court of India on 02.11.2020)

Issues:

- Whether the complainants were Consumer under the Consumer Protection Act?
- Whether the remedy provided under the Consumer Protection Act be available to the consumer if the project is registered under the RERA Act?
- Whether the authorities under the Consumer Protection Act are barred by the Section 79 of the RERA Act which bars the jurisdiction of the civil courts?

Facts:

- ❑ The Appeals under Section 23 of the Consumer Protection Act, ("said Act") 1986 were filed against the common judgement and order dated 12.09.2018 passed by the National Consumer Redressal Commission ("National Commission"). The connected appeal sought to challenge the judgement in Pinki Saini Vs. Imperia Structures Ltd. Dated 09.08.2018 passed by the National Commission.
- ❑ "ESFERA," a housing scheme ("Project") in Sector-13C, Gurugram, Haryana was launched by the Appellants sometime in 2011. The Respondent in the leading Appeal had booked an Apartment bearing No.1803 on the 18th floor of Tower C of the Project having super built-up area 154.34 Square Meters ("Apartment"). The Aggregate Pricing of the Apartment after the additional charges to the basic price was Rs.76,43,000 (Rupees Seventy-Four Lakhs Forty-Three Thousand Only).
- ❑ Over the period of time, the Respondent in the leading Appeal had had paid over Rs.63,53,625 (Rupees Sixty-Three Lakhs Fifty-Three Thousand and Six Hundred Twenty-five) out of the Rs.76,43,000 agreed. During the same period, the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") came into force on 01.05.2016. Even after 4 (four) years of the agreement between the Appellant and Respondents the Project being signed upon, the construction of the Project had not been completed and in the said circumstances, the Respondents in the leading Appeal filed the Consumer Case No.3011/2017 before the National Commission ("Complaint") which submitted that the Project is in an abandoned condition and there was nothing to be show that any meaningful progress has been being made despite the number of bookings and allotments made in favour of the Project to the Appellants.

- ❑ The National Commission held that the Appellant was deficient in rendering service to the Respondent and granted relief, i.e., refund the amounts @ 9% p.a. interest from the dates of deposits till the date of realizations to the Respondent, along with costs of Rs.50,000 (Rupees Fifty Thousand) payable to each Complainant in the Consumer Case. The Appellants aggrieved preferred the instant appeal dated 14.03.2019.

Contentions of the Appellants:

- ❑ It was the assertion of the Appellant that the delay in competition of the Project was caused due to the severe shortage of contractual labour, delay in obtaining statutory requisite permissions, and due to the policy of demonetization.
- ❑ The Appellants also brought to the attention through the Appeal that Haryana RERA, Gurugram had passed an order in the case of one Himanshu Giri, wherein directions wherein the Appellant were to provide delay possession charges at a prescribed rate of 10.75% p.a. for every month w.e.f. 15.09.2016 to the complainants within 90 days. The Appellants further contented that they have been making the refunds as per the directions of the National Commission whilst also providing the delay compensation wherever applicable. It was further the contention of the Appellant that the apartments were booked for investment purposes and profit motives since the complainants/allotees did not agree for an offer floated by the Appellant for alternative accommodation.
- ❑ The main contention of the Appellant was that since the RERA Act has come into force any question regarding the Project including the construction and competition would be under the exclusive authority and jurisdiction of the authorities under the RERA Act, therefore, the National Commission had no jurisdiction to entertain the consumer cases.

Contention of the Respondents:

- ❑ The main contention of the Respondent was that the answer of the delay being Force Majure or not was answered by the National Commission in favour of the Respondent as there was no evidence provided by the Appellants. Furthermore, there was no mention provided by the Appellants during the proceedings in the National Commission that the Project was registered under the RERA Act.
- ❑ The Respondent also stated that the complainants in the National Commission were all consumers under the

ambit of the said Act as all of them had taken home loans to pay off the bookings made in the Project except for one, who being a retired Air Force officer had used his life savings to book an apartment in the Project. Hence, none of the complainants were outside of the ambit of Consumer as under the said Act.

Court's Observations:

- ❑ The Supreme Court in perusal of the provisions of the RERA Act and said Act, along with the ratio given by the Supreme Court in the cases, Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha, (2004) 1 SCC 305, National Seeds Corpn. Ltd. v. M. Madhusudhan Reddy, (2012) 2 SCC 506, and Virender Jain v. Alaknanda Coop. Group Housing Society Ltd. Virender Jain v. Alaknanda Coop. Group Housing Society Ltd., (2013) 9 SCC 383, held that remedies available to a Consumer under the said Act are in addition to the remedies available under any special statutes; and that the availability of an alternate remedy is no bar in entertaining a complaint under the said Act.
- ❑ The Supreme Court further observed that though Section 79 of the RERA Act bars jurisdiction of a Civil Court to entertain any proceedings in respect of any such matter which the Authorities under the RERA Act are to determine, yet, in Section 88 it is specified that the provisions of the RERA Act would be in addition to and not in derogation of the provisions of any other law. Therefore, in consideration of the ratio in Malay Kumar Ganguli vs. Dr. Sukumar Mukherjee, (2009) 9 SCC 221, wherein it was held that, "The proceedings before the National Commission are although judicial proceedings, but at the same time it is not a civil court within the meaning of the provisions of the Code of Civil Procedure. It may have all the trappings of the civil court but yet it cannot be called a civil court." Hence, Section 79 of the RERA Act does not bar the National Commission under the said Act to entertain any complaint.

- ❑ Further, the ratio held in the Pioneer Urban Land & Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416 : (2019) 4 SCC (Civ) 1, that, "100. RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA.
- ❑ In addition, the Supreme Court observed that the legislative intent is crystal that the allottee has the choice or discretion either initiate appropriate proceedings under the said Act or to file applications under the RERA Act. Thus, the Supreme Court held that the proceedings under the said Act in the National Commission and the judgement passed thereto are saved and not affected by the RERA Act. Therefore, the Supreme Court dismissed the appeal filed.

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