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**Corporate Brief****Negotiable Instruments (Amendment) Act 2018 notified: to be effective from September 1**

The Central Government vide notification issued by the Ministry of Finance, dated 2nd August, 2018, has notified amendments to The Negotiable Instruments Act, 1881, effective from 1st September, 2018. The following key changes have been introduced:

- Insertion of section 143A that empowers the Court to direct the drawer of a cheque to pay interim compensation to the payee in the case of a summary trial or a summons case, where the drawer has pleaded himself to be not guilty of the offence of dishonouring the cheque or in any other case upon the framing of charge. This section is applicable when the Court is trying an offence under Section 138 of the Negotiable Instruments Act. The cap of such interim compensation, that can be directed by the Court for payment, is 20% of the amount of the instrument.
- Insertion of Section 148 that provides for Power of the Appellate Court to order payment by the drawer to be made, in the case of an appeal against his or her conviction under Section 138 of the Act. As per Section 148, the Appellate Court may order the appellant to deposit a

minimum of 20% of the fine or compensation that has been awarded by the Trial Court. Such amount can only be deposited provided that it would be "in addition" to any interim compensation that has been paid by the appellant under Section 143A.

- In case of acquittal of the drawer, however, the payee shall be directed to pay the interim compensation or the amount deposited under the order of the Trial Court or the Appellate Court, as the case may be, back to the appellant-drawer, with an interest at the bank rate as published by the Reserve Bank of India within 60 days from the date of such order passed by the Court.

The Amendment Act seems to be a boon for the trade and commerce industry as it aims to reduce the pendency of cheque dishonor cases and avoid unnecessary litigation on the same. It enables a better regulatory mechanism and therefore helps in increasing the credibility of issued cheques, a move that could be expected to change business relations.

**IBBI releases discussion paper: introduces framework to regulate Insolvency Professional Agencies and Information Utilities**

The Insolvency and Bankruptcy Board of India (IBBI), released a discussion paper, on August 14, 2018, on "The Governance of Insolvency Professional Agencies and Information Utilities." The paper reiterates that the Insolvency and Bankruptcy Code, 2016 (IBC Code) lays down and covers within its ambit, four key pillars namely, Adjudicating Authority which is the National Company Law Tribunal and Debt Recovery Tribunal, the IBBI, the Information Utilities (IUs), and the Insolvency Professionals (IPs). According to the discussion paper, the Bankruptcy Law Reforms Committee (the Committee) that conceptualized the IBC Code, had felt the need to ensure that there must be a proper framework and regulations to ensure that the Insolvency Professionals are competent enough to perform their role as per the IBC Code. They play a significant role in the bankruptcy, resolution and liquidation process and therefore the regulations must insure that the hiring of such Insolvency Professionals must involve minimal conflict of interests and that they must be fair and impartial. The Committee has recommended that the Insolvency Professional Agencies should establish certain rules and standards for their members, and that there is a need for a new model of "regulated self-regulation" which would be "optimal for the Insolvency Professional profession." Some of the key aspects that have been highlighted are that the provisions within the IBC Code and the rules formulated thereunder, relating to the

organizational structure, shareholding pattern, the board composition and managing director have to be designed in such a way that they do not affect the work of an Insolvent Professional Agency, which have to discharge their responsibilities effectively. Further, the paper has recognized the need to strengthen the position of Managing Director and to "energise" the governing board of the Information Utilities as well, by proposing amendments in the IBBI (Information Utilities) Regulations 2017, relating to the Board Composition and Managing Director. The discussion paper has therefore invited comments as well as suggestions from the public, including shareholders latest by 5th September, 2018.

#### *RBI slashes the e-biz portal: filing to now be done through Single Master Form*

The Reserve Bank of India, vide notification dated 31st August 2018, stated that the e-biz portal would no longer be available for filing, consequent to the launching of Single Master Form (SMF). The filing is done on the e-biz portal currently and therefore RBI has advised to clear off all pending cases (FCGPR/FCTRS) in the e-biz portal before 20th September 2018 in the light of the SMF. It was further noted by RBI that there are several cases pending at the company/entity level that require to be resubmitted with some sort of clarification or additional documents. It is therefore advised that the clients who have received foreign investment must be informed that in the cases where such resubmission has to be made, it must be made within one week for RBI to consider the documents within the ambit of FCGPR filing.

#### *SEBI issues a clarification on dematerialization of securities: proposes to raise awareness regarding the same*

On 10th August, 2018, SEBI issued a notification providing some clarity on the issue of transfer of securities in dematerialized form with a depository. SEBI had earlier amended the SEBI Regulation 40 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, stating that the transfer of securities would not be processed unless the securities are held in the dematerialized form with a depository. This regulation was notified to be made effective from 5th December, 2018. Prior to this clarification, SEBI had advised listed companies, depositories and exchanges to reach out to investors holding physical securities and create awareness regarding the amendment. Several initiatives were also taken by SEBI to spread awareness about the proposed change. This new clarification further aims to provide clarity on the following aspects:

a) The investor is not prohibited from holding shares in a physical form, and can do so even after 5th December, 2018.

b) The amendment does not apply to transmission of shares (transfer of title of shares by way of inheritance / succession) and transposition cases (re-arrangement / interchanging of the order of name of shareholders)

c) Transfer of shares can only take place (if after 5th December, 2018) after the shares are dematerialized.

This move of SEBI is expected to bring more clarity and hopefully act as a suitable reply to the complaints received by market participants regarding the ambiguity on this matter.

#### *Committee constituted to deal with 'Fair Market Conduct' submits reports on the same*

In August 2017, SEBI had constituted a committee on Fair Market Conduct, under the chairmanship of Shri T.K. Viswanathan, former Secretary General of Lok Sabha and former Law Secretary. The Committee consisted of representatives of SEBI, law firms, mutual funds, stock exchanges, brokers, etc. The objective of the committee was to review the existing legal framework in terms of market abuse, in order to ensure fair market conduct within the securities market. This was supposed to be achieved through a strict mechanism of surveillance, investigative methods and enforcement, in order to achieve market integrity as well protect the investors from market abuse.

On 8th August, 2018, the Committee submitted its report to SEBI recommending amendments to the SEBI Act, 1992, SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003.

To eliminate market manipulation and fraud occurring in the securities market, it is first important to review the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations), which lays down the provisions relating to "fraudulent, manipulative and unfair trade practices" which are applicable to the persons dealing in securities. The committee has clarified that the phrase 'dealing in securities' refers to those persons who provide assistance in and "orchestrate" or "control" the dealings in securities, or those who knowingly influence investment decisions in securities. The committee recommended that in order to keep up with the changes in the securities market environment, SEBI should also regularly update the rules with respect to what is considered as prohibited conduct and hence deem them as 'fraudulent activities'. Some other recommendations by the Committee include the discouraging of layering of funds, devising a whistleblowing mechanism to obtain information on market abuse, having and maintaining a structured library of orders passed by SEBI, SAT and Courts, promoting inter-regulatory cooperation, etc. One notable recommendation from the committee is to give authorization to

SEBI intercepting different forms of communication, including listening in on phone calls. The current regime provides for a restriction in this regard, in the sense that SEBI can only access the phone numbers contacted and the duration of conversations over the telephone. According to the committee, intercepting would help tracing repetitive offenders and not just one-time cases/incidents of unauthorized sharing of information. Considering the wide scope that such form of interception would entail, the committee has also recognized for there to be a requirement of an efficient system of checks and balances in place for the use of such power. While the report may be viewed as a welcome change by some, others view this as a draconian change, because of the centralization of a wide ambit of powers being proposed to be vested with SEBI.

### SEBI invites public comments on the Draft National Guidelines: Social, Environmental & Economic Responsibilities of Business, 2018

The Ministry of Corporate Affairs (MCA) had issued the National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business (the Guidelines) in the month of July 2011, in order to formulate a sustainable framework that would help carry out business in a transparent and responsible manner, making the parties involved as accountable to the stakeholders as they could be. The primary objective of these Guidelines was to inculcate a global and socio-cultural perspective within the framework.

SEBI had called for top 500 companies to furnish 'Business Responsibility Reports' (Reports) regarding the Guidelines so formed. In view of several amendments in the existing regulations as well as the introduction of new ones, including the Companies Act, 2013, SEBI had formulated an Expert Committee consisting of two members, to review and update the Guidelines

, now called as 'National Guidelines'. According to the National Guidelines, all the Principle stated within it are "equally important, inter-related, inter-dependent and non-divisible". The National Guidelines further urge all kinds of Business to adopt them and demonstrate their commitment in being a responsible business, and at the same, accruing all kinds of benefits that would come with "sustainable business strategies". Some of the key principles that have been enumerated in the National Guidelines, for all businesses to follow are, to adopt an ethical, safe and sustainable approach while conducting business, promoting the equity and well-being of their employees, including the ones in value chain, being responsive and responsible to all stakeholders, protecting and promoting human rights, environmental rights etc. The MCA invites comments on these National Guidelines by 10th September, 2018, specifically on the provisions related to 'Principles and Core Elements' and 'Business Responsibility Reporting Framework.' The reviews and

comments would then be studied by the SEBI in order to incorporate them in the National Guideline.



### SEBI clarifies the procedure of issuance of securities on the Electronic Book Provider platform

Recently, SEBI, vide circular dated 16th August, 2018, proposed to clarify and rationalize the process of issuance of securities on the Electronic book provider platform mechanism, for issuance of securities on private placement basis. An earlier circular had been issued by SEBI on the same matter, in January 2018, which had mandated the use of the EBP Platform for private placement of securities. This circular has clarified the position regarding the same. Some of the additional facilities that have been introduced vide this circular are: multiple bids by an investor on the same issue, closed bidding (in addition to open bidding) which would involve no real time dissemination of bids on the EBP Platform, Multiple yield allotment which would include the issuer to choose either uniform yield or multiple yield allotment provided the same be disclosed in the PPM/IM, depositories, in addition to the stock exchanges, can also act as EBP, etc.

The abovementioned provisions, along with the other provisions mentioned in the circular, shall come into effect from 1st October, 2018

## GST Brief



### The 29th GST Council Meeting held on 4th August, 2018: law on digital payments refined

The 29th GST Council Meeting, was held on the 4th of August, 2018, New Delhi. Some of the key highlights of the meeting were related to digital payments wherein it was suggested that incentives will be given in the form of cashback, offered on the GST component of the bill for payments made digitally and such digital modes shall include: Rupay Debit card, BHIM UPI, UPI Aadhaar and USSD (Unstructured Supplementary Service Data). Such cashback would be 20% on the GST component that would be credited to the consumers, limited to Rs. 100 per transaction.



### CGST issues notifications regarding returns

The Commissioner, CGST has provided for an extension of date, for taxpayer with aggregate turnover of upto Rs. 1.5 Crore for GSTR-1 return. The extension, for each of the months from July 2018 to March 2019, has not extended till the eleventh day of the month succeeding such month. A quarterly return also needs to be filed by registered persons with aggregate turnover upto Rs. 1.5 Crore. Further, the last date of filing the GSTR-3B return for July, 2018 to March 2019 shall be on or before the twentieth day of the month succeeding such month.

### Government provides exemption under Reverse Charge Mechanism

The Central Government has granted that the exemption under the CGST/IGST/UTGST under the Reverse Charge Mechanism for intra-state and inter-state supplies of goods and services, that is obtained from unregistered persons, has been extended till 30th September, 2019.

[Notification Nos.22/2018-C.T./ U.T.T. and 23/2018-I.T, all dated 6-08-2018]

### Government provides extension in FORM GSTR

The Commissioner, CGST has extended the time limit for furnishing return by an Input Service Distributor in the FORM GSTR- for the months of 6 July, 2017 to August 2018 till 30th September 2019.

[Notification No. 30/2018-C.T., dated 30-7-2018]

## RERA Brief

### MAHARERA to tackle complaints of unregistered projects: Bombay HC

The Bombay High court passed an order enhancing the powers of Maharashtra Real Estate Regulatory Authority (MAHARERA). As per the order of the Bombay High Court, MAHA RERA will have the jurisdiction to deal with complaints

of existing real estate consumers. In its order dated 31<sup>st</sup> July 2018, the divisional bench of Justice UM Deshpande, Justice RM Borde said MAHARERA could entertain complaints of unregistered projects. In another order passed by Bombay High Court dated 7 August 2018, the court ruled that the provision of RERA will also apply in case of long-term lease agreements and its complaints will also be heard by it.

### Kerala notifies RERA Rules

The State Government has notified Kerala Real Estate (Regulation and Development) Rules, 2016 for proper implementation of the Real Estate (Regulation and Development) Act, 2016 (RERA). As per the Rules, agents and promoters involved in the real estate sector have to register themselves with Real Estate Regulatory Authority and their details will be furnished on the official website. The Rules further provide for proper tracking of the real state project once ever 3 months.

## RERA Case Brief

### In the matter of: Simmi Sikka Vs. Emaar MGF dated 21.08.2018 (Decided By Real Estate Regulatory Authority, Haryana)

#### Facts:

- The present complaint was filed by the complainant under Section 31(1) of the Act seeking relief for delayed possession and for shortfall of covered area of 228 square feet.
- The complainant booked a Unit in the project Emerald Plaza of the respondent. Agreement for the same was signed on 09.05.2014.
- The possession for the unit was to be handed over by 08.11.2016, whereas it was offered on 22.02.2018.

#### Arguments:

- The Complainant alleged that the promoter failed to give timely possession of the unit in favour of the Complainant as per the terms of the Buyer Agreement and reduction in the area of the unit agreed upon initially.
- The respondent took the preliminary objection that it is not covered under Real Estate (Regulation and Development) Act, 2016 (RERA), as it had already applied for the occupation certificate on 22.05.2017 and the same was deemed to be granted on 21.07.2017, which was prior to the publications of the Haryana RERA Rules (28.7.2017).

#### Issues:

- Whether the project in the present case was to be registered by the promoter under the provisions of the Real Estate (Regulation and Development) Act, 2016 ("the Act").
- Whether the Authority established under the Act had jurisdiction over the present dispute.

#### The court gave its observations on the following issues:

- Applicability of the Act;

The Authority held that the Act nowhere states that its provisions are applicable only to registered projects, thus it is applicable to all the real estate projects. The Act merely provides exemption in certain cases for the project to not be registered which does not take the project out of the purview of the Act. The obligations stated under the Act for the process of registration are applicable only to the projects registered under the act, whereas all the other obligation mentioned in the Act which the promoter needs to adhere to post registration are applicable to all. Complaint can also be filed for structural and defect liability in case the possession of the real estate was within five years prior to date of

complaint. The authority further stated that all real estate projects are covered under the Act for land title defect liability.

- Registration of the project;

The authority passed the following order for the purpose of registration of the projects with RERA:

1. In case the completion certificate of the project was received prior to the enactment of the Act, the project is not required to be registered with the Authority but all the projects which received the completion certificate was received after the commencement of this Act are to be registered.
2. If part occupancy/ occupation certificate or part completion/ completion certificate has been issued prior to publication of the Rules, those parts of the project shall not be required to be registered. Though, the remaining part of the project for which part occupancy/ occupation certificate or part completion/ completion certificate has not been issued is to be registered with RERA.
3. Those projects for which the application for completion certificate has been applied for under Rule 16 of Haryana Development and Regulation of Urban Areas Rules (1976) or under Sub Code 4.10 of the Haryana Building Code (2017) shall not be treated as exempted from the requirement of registration.
4. The projects for which the completion certificate has been granted on or before the publications of the Rules, shall be exempted from requirement of registration.
5. The projects which for which part occupation/ occupation certificate has been issued but still development works have not been completed so far, such projects are also not exempted from the requirement of registration.
6. Those projects for which the occupation certificate has been issued but the date of completion of application along with requisite documents and certificates was after the publication of the Rules such projects shall not be treated as exempted from the requirement of registration.
7. In cases where the promoter intends to advertise, market, book, sale or offer for sale or invite persons to purchase in any manner any plot, apartment or building after completion of the project shall not only be violating section 3 (1) but also in violation of section 4(1)

as new project is to be registered by the promoter irrespective of the fact whether it is to be advertised, marketed etc. before completion of the project or post completion of the project.

- Powers of the Authority and the Adjudicating Officer under the Act;

The Authority stated the division of powers between the Authority and the Adjudicating Officer. The Adjudicating officer has the power to adjudge the matters in relation to the compensation under section 12.14.18 and section 19 of the Act, whereas the Authority will have the power to handle matters in relation to the failure of promoter to discharge any other obligation imposed on him under the Act or the Rules and Regulations made thereunder or in accordance to the agreement of sale. The authority held that it shall have the power to deal will any other matter except a matter of compensation. The Authority has the power to issue directions, impose penalties, ensure compliance of the Act and to take suo-motu action

#### The court gave the following order:

- The Authority has the power to decide the present complaint as it is a case regarding non-compliance of the promoter under the Agreement signed between the parties.
- The respondent had not received the completion certificate from the concerned authorities till 01.05.2018 i.e. the date on which RERA came into force. The respondent had applied for the occupation certificate/ part occupation certificate for the part project on 22.05.2017, which is prior to the publication of the Rules (28.7.2017). The application filed with the concerned authorities was incomplete as there were a lot of deficiencies. The occupation certificate/ part occupation certificate was granted by DTCP only on 8.1.2018, which was much after the Rules were published. Thus, the respondent was under the legal obligation to register the project with the Authority under the Act;
- The respondent was directed to pay interest at the prescribed rate of 10.45% per annum from the due date of possession upto the date of offer of possession;
- The respondent should only charge the complainant on the area being offered and settle the accounts

accordingly so as to incorporate the reduction in size of the unit by 228 square feet.

## RERA Highlights:

- ➔ *UP RERA divisional bench set up in Noida;*
- ➔ *UPRERA appoints Mr. Rajive Kumar as its full time Chairman;*
- ➔ *Registered projects list uploaded on UP RERA website;*
- ➔ *MAHARERA to start online payment facility for payments with respect to registration of complaints;*
- ➔ *Andhra Pradesh government appointed Mr. Ramnath Velamati as APRERA chairman and Dr. Mullapudi Renuka, Sri Chandu Sambasiva Rao and Sri Vishwanath Sista as members of RERA;*

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