

**Highlights****Corporate Brief**

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(iv) Capital instruments will have to be issued within 60 days of the receipt of consideration as compared to 180 days earlier; and (v) the old regulations required compounding in case of filing documents beyond the designated time. However, the new regulations allow delay reporting subject to payment of late fees.

### ➡ *Constitution of Insolvency Law Committee*

**MCA** has, with a view to further improve the process of corporate insolvency resolution & liquidation prescribed in Insolvency & Bankruptcy, 2016 ("**the Code**"), constituted an Insolvency Law Committee ("**the Committee**"). Objectives of the Committee will be: (i) to take stock of the functioning and implementation of the Code; (ii) to identify the issues that may impact the efficiency of the corporate insolvency resolution and liquidation framework prescribed under the Code; and (iii) make suitable recommendations to address such issues, enhance efficiency of the processes prescribed and for effective implementation of the Code. The Committee may also make any other relevant recommendation as it may deem necessary. [See MCA Order No. 35/14/2017 dated 16<sup>th</sup> November 2017]

### ➡ *RBI mandates Unique Code for all large corporate borrowers*

**RBI** has notified all scheduled commercial banks and financial institutions to make it mandatory for corporate borrowers having aggregate fund based and non-fund based exposure of Rs. 50 crore and above to obtain a legal entity identifier ("**LEI**") registration and capture the same in the Central Repository of Information on Large Credits ("**CRILC**"). Borrowers who do not obtain LEI will not be granted renewal/ enhancement of credit facilities. RBI has further notified that it would issue a separate road map for borrowers having exposure between Rs. 5 crore and upto Rs. 50 crore. [See RBI Notification dated 2<sup>nd</sup> November 2017]

### ➡ *Haryana Government notifies stamp duty on order on merger/ demerger or reconstruction or amalgamation*

The Government of Haryana has made certain amendments in the Indian Stamp Act, 1899 in its application to the State of Haryana. One of the amendments is related to the revision in the amount of stamp duty payable under Article 5(d) on an instrument related to giving authority or power to a promoter or a developer for construction, development, sale or transfer of any immovable property. By virtue of the present amendment the stamp duty payable on the instruments covered under Article 5(d) has

## Corporate Brief

### ➡ *RBI notifies Foreign Exchange Management (Transfer or issue of Security by a person Resident outside India) Regulations, 2017*

**RBI** has issued Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017 which has superseded the erstwhile Notification No. FEMA 20/2000-RBI and Notification No. FEMA 24/2000-RB, both dated May 3<sup>rd</sup>, 2000. The key highlights of amendments in the new regulations inter alia include the following: (i) the definition of 'capital' has been replaced with 'capital instruments' where it expressly provides for the following: (a) warrants can be issued to a person resident outside India only in accordance with the regulations issued by SEBI and (b) 25% of the total consideration shall be received upfront in the case of partly-paid shares and warrants, the balance amount shall be received within 12 months and 18 months respectively; (ii) Definitions of foreign direct investment, foreign investment and foreign portfolio investment have been added; (iii) The concept of issue of shares have been aligned with the concept of Companies Act, 2013, accordingly general permission is available for issuance of shares in a scheme of merger, demerger or amalgamation pursuant to orders of NCLT or other competent authority subject to entry routes, sectoral caps or investment limits;

been revised to 2% of the market value of the property or the amount of such consideration as set forth in the collaboration agreement, whichever is higher. Another important amendment has been made vide the said notification, whereby a new entry "Article 23 A" has been added wherein stamp duty has been prescribed on an order of High Court/ Tribunal on reconstruction or amalgamation or merger/ de-merger of companies. Under this new entry 23 A, stamp duty of 1.5% subject to maximum of Rs. 7.5 crore on an amount of the market value of the property or the amount as set forth in instrument or order, whichever is higher has been prescribed. [See Notification No Leg. 32/2017 dated 22<sup>nd</sup> November 2017]

### ➡ *RBI issues directions to regulate outsourcing of key functions by NBFC's*

**RBI** has issued directions to all Non-Banking Financial Companies ('**NBFC**') on managing risks and code of conduct in outsourcing of financial services by NBFCs. The key points of the directions are: (i) NBFCs are now prohibited to outsource core management functions, including internal audit, strategic and compliance functions and decision making functions such as determining compliances with KYC norms for opening deposit accounts, according sanctions for loan and management portfolio; (ii) For NBFCs in a group / conglomerate, these functions may be outsourced within the group subject to compliance with instructions of RBI; (iii) NBFC intending to outsource any of its financial activities will be required to put in place a comprehensive outsourcing policy, approved by its Board; (iv) NBFCs will be required to evaluate and guard against the strategic risk, reputation risk, compliance risk, operational risk, legal risk, exit strategy risk, counter party risk, contractual risk, concentration and systematic risk and country risk, while outsourcing. [See RBI Notification No DNBR.PD.CC. No. 090/03.10.001/2017-2018 dated 9<sup>th</sup> November 2017]

### ➡ *SEBI broadens the definition of Issuer*

**SEBI** has amended the definition of issuer in Securities and Exchange Board of India (International Financial Services Centre) Guidelines, 2015. Earlier, "issuer" meant a company incorporated in India seeking to raise capital in foreign currency other than Indian Rupee which has obtained requisite approval under the FEMA, 1999 or exchange control regulations as maybe applicable, or company incorporated in a foreign jurisdiction. The definition of 'Issuer' has been amended to mean: (i) any entity incorporated in India seeking to raise capital in foreign

currency other than Indian Rupee which has obtained requisite approval under the FEMA, 1999 or exchange control regulations as maybe applicable, or; (ii) an entity incorporated in a foreign jurisdiction. [See SEBI Circular No. SEBI/HO/MRD/DRMNP/CIR/2017/120, dated 14<sup>th</sup> November 2017]

### ➡ *CCI imposes penalty of Rs. 52.24 crore for anti-competitive conduct*

**CCI** has imposed a penalty of Rs. 52.24 crore on BCCI ("Board of Cricket Control in India") for giving assurances to the IPL broadcasters that BCCI shall not organize, sanction, recognize, or support another professional domestic Indian T20 competition that is competitive to IPL, for a sustained period of 10 years. CCI held that the impugned restriction had no nexus to the legitimate interest of cricket in the country. CCI directed BCCI inter alia the following: (i) it shall not place any restriction on organization of professional domestic cricket league/ events by non-members; (ii) issue appropriate clarification regarding the rules applicable for organization of professional domestic cricket leagues/ events in India; and (iii) file a report to the Commission on the compliance on the directions issued to BCCI. [See Press Information Bureau, release dated 29<sup>th</sup> November 2017]

## GST Brief

### ➡ *Exporters can file for GST refunds manually*

**Government** allowed exporters to file manual application for refund of GST. Exporters are zero-rated under GST and all taxes paid on inputs have to be refunded. [See <http://cbec.gov.in>]

### ➡ *GST rates on various items revised*

**GST Council** in a meeting held on 10<sup>th</sup> November 2017 recommended major relief in GST rates on certain goods from 28% to 18%. The changes inter alia include the following: (i) wires, cables, switches, sockets; (ii) articles of wood; (iii) furniture; (iv) suitcases, vanity cases, brief cases; (v) washing and cleaning preparations; (vi) liquid or cream for washing the skin; (vii) hair creams; (viii) cosmetic or toilet preparations; (ix) beauty or make-up preparations; (x) sanitary wares; (xi) articles of plastic; (xii) goods of marble and granite; (xiii) wrist watches and clocks; (xiv) articles of apparel and clothing and (xv) articles of cutlery. The revised rates came into effect from 15<sup>th</sup> November 2017. [See C.B.E & C Press Release No. 120/2017, dated 16<sup>th</sup> November 2017]

### ➤ *High Court rejects PIL against GST Council*

**Gujarat High Court** rejected a PIL requesting to stay or declare null and void the recommendations and decisions made by the GST Council. The petition was moved on the grounds that the Model Code of Conduct was notified in the last week of October and hence the Council's decision and announcement was in violation of the conduct. However, the same was rejected. [See <http://cbec.gov.in>]

## RERA Brief

### ➤ *Maharashtra Real Estate Regulatory issues circular on procedure for transferring or assigning promoter's right and liabilities to a third party*

**Maharashtra Real Estate Regulatory Authority**, has issued a circular providing a clarity on Section 15 of the Real Estate (Regulation and Development) Act, 2016 regarding obligations of a promoter in case of transfer of a real estate project to a third party. The section requires approval from 2/3<sup>rd</sup> allottees before such transfer can be made. However, vide the circular, the following exemptions have been laid down for obtaining the consent of the allottees: (i) changes in internal shareholding or constituents of a promoter's organization that doesn't affect obligations and liabilities with respect to the allottee(s) and the rights and liabilities of the promoter's organization; (ii) any conversion of the promoter entity under any statute, of: (a) partnership firm into LLP/ private limited company, (b) conversion of private limited company or unlisted company to a LLP or otherwise and (c) proprietorship change by succession to legal heirs; (iii) if amalgamation or merger or demerger of the companies is not regarded as a transfer; and (iv) where 75% of the shareholders remain same in the resultant company. [See Circular No. 11/2017 dated 8<sup>th</sup> November 2017]

### ➤ *Appointment of Chairperson for Real Estate Regulatory Authority Haryana*

**Haryana Governor**, after much await appointed Shri Rajan Gupta as the Chairperson of Real Estate Regulatory Authority, Panchkula and Shri Krishana Kumar Khandelwal as the Chairperson of Real Estate Regulatory Authority, Gurugram. [See Notification dated 25<sup>th</sup> November issued by the Town and Country Planning Department]

### ➤ *Haryana Real Estate Regulatory Authority recovers Rs. 1,170 crore from defaulting buyers*

**Haryana Real Estate Regulatory Authority** has recovered an amount of Rs. 1,170 crore from defaulting developers the Real Estate (Regulation and Development) Act, 2016 and further the authorities are expecting at least Rs. 2,000 more to be recovered.

## Litigation Brief

### ➤ *Bharat Broadband Network Limited Vs. United Telecoms Limited*

#### **Questions of Law Addressed:**

Whether the party appointing an arbitrator, being fully aware of the appointed arbitrator's disability/ineligibility under the Seventh Schedule, can later challenge the very appointment on the ground of his ineligibility to be appointed as an arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996 ("the Act")?

#### **Brief Facts of the Case:**

1. Disputes between the parties led to Respondent invoking the arbitration clause and, subsequently, the Petitioner appointed Sole Arbitrator for adjudication and determination of the said disputes.
2. The Petitioner filed the Statement of Defence without any objection about the conduct of proceedings by the Arbitrator or its jurisdiction after the first sitting.
3. However, the Petitioner later raised a challenge before the Sole Arbitrator on the ground of his ineligibility under Section 12(5) of the Act. The same was, however dismissed by the Sole Arbitrator vide his order, dated 21.10.2017.
4. The present application was filed, in the High Court of Delhi, by the Petitioner under Section 15 read with Section 14(2) of the Act to seek declaration of the Sole Arbitrator as de jure incapable of acting as an Arbitrator from the very date of his appointment and further appoint a new Sole Arbitrator.

#### **Arguments Advanced by the Counsels**

- ≡ The counsel for the Petitioner submitted that the appointment of the Sole Arbitrator was void ab initio and

in terms of Section 14(1)(a) of the Act, the arbitrator had become de jure ineligible to perform his functions as an arbitrator and had to be substituted by this Court by another arbitrator.

- ≡ The counsel for the Respondent submitted that as the Sole Arbitrator had been appointed by the Petitioner itself and the Respondent had not raised any objection to such appointment, the case was governed by the proviso to Section 12(5) of the Act.

***The Hon'ble Court observed and held as follows:***

- ≡ The judgment of the Supreme Court in TRF Ltd. vs. Energo Engineering Projects Ltd.<sup>1</sup> was accepted, wherein it was held that if any person falls under any of the categories specified in the Seventh Schedule, not only he shall be ineligible to be appointed as an arbitrator in view of Section 12(5) of the Act, even his nominee would suffer from such ineligibility. However, the question of whether the plea of such ineligibility can be taken by a party who appoints such an arbitrator was also raised simultaneously.
- ≡ In light of the ruling of Supreme Court in Voestalpine Schienen GMBH vs. Delhi Metro Rail Corpn. Ltd.<sup>2</sup>, it was stated that Section 12(5) of the Act had been introduced by the Legislature to allay the fear of partiality or perceived bias of an arbitrator who is in a relationship with parties or counsels or the subject matter of the dispute falling under the Seventh Schedule of the Act.
- ≡ The proviso of Section 12(5) of the Act was emphasized to answer the question of law raised in the present case and attention was drawn to the case of TRF Ltd. (supra), wherein the Supreme Court while interpreting Section 12(5), held that there are fundamentally three components of the said proviso, namely, waiver of the applicability of the sub-section by the parties; existence of disputes between the parties before the waiver and such a waiver being an express agreement in writing.

- ≡ Despite the full knowledge of the arbitrator suffering from an ineligibility in terms of Section 12(5) of the Act, the Petitioner proceeded to nominate him as a Sole Arbitrator and the Respondent concurred in such appointment and even proceeded to file its Statement of Claim before the Arbitrator. The disputes had arisen between the parties and both parties waived the applicability of Section 12(5) of the Act. The appointment being in writing and the filing of the Statement of Claim without any reservation also being in writing, it was held that it amounted to an express agreement in writing as required under proviso to Section 12(5) of the Act. Therefore, the three conditions afore-mentioned were fulfilled in the present case.
- ≡ By virtue of Section 12(4) of the Act, a party may challenge an arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made but in the present case, the ground of ineligibility was known on the date of appointment itself and still the Petitioner proceeded with the appointment.
- ≡ Thus, the Hon'ble Court held that the Petitioner was ineligible to challenge the same and dismissed the present application.

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<sup>1</sup> (2017) 8 SCC 377

<sup>2</sup> (2017) 4 SCC 665