Highlights

Corporate Brief

- Amendments introduced in the Companies (Appointment and Qualification of Directors) Rules, 2014.
- Amendment introduced in the Companies (Accounts) Rules, 2014.
- The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Second Amendment Regulations, 2019.
- Amendments in the Companies (Meetings of Board and its Powers) Rules, 2014.
- Central Government delegates its power to appoint officers and employees to the National Company Law Tribunal and National Company Law Appellate Tribunal.
- The Reserve Bank of India withdraws exemption granted to Housing Finance Institutions.
- Disclosure of divergence in the asset classification and provisioning by banks.

Real Estate Brief

- KRERA-Land Owners having area/ revenue share in real estate project to be treated as a Promoter;
- Tamil Nadu Real Estate Authority held development of plots for industrial purpose will come under the ambit of RERA.
- Maharashtra Real Estate Authority has proposed to introduce Self-Regulatory Organizations (SROs) in the real estate sector in Maharashtra and to register them with MahaRERA;
- Maharashtra Real Estate Authority prescribed a procedure for referring the conversion of applications filed before MahaRERA Conciliation and Dispute Resolution forum to Suo-Moto Complaints by MahaRERA;
- Maharashtra Real Estate Authority has issued further directions with respect to filing of complaints with MahaRERA; and
- Maharashtra Real Estate Authority has issued additional disclosure requirements to be complied with by the Promoter.

Litigation Brief

- M Siddiq (D) Thr Lrs Vs. Mahant Suresh Das & Others (Decided by Supreme Court of India on 09.11.2019)
- Kaushaliya Versus Jodha Ram & Ors
- The Major Points addressed by the Apex Court is the matter of Essar COC Judgement dated 15th November, 2019

Corporate Brief

Amendments introduced in the Companies (Appointment and Qualification of Directors) Rules, 2014

The Government of India issued a notification dated 22nd October 2019 vide G.S.R. 804(E) and introduced amendments in the Companies (Appointment and Qualification of Directors) Rules, 2014 ("**Rules**") via the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 ("**Amendment**"). The Amendment pertains to rule 6 (compliances required by a person eligible and willing to be appointed as an independent director) of the Rules lists the compliances, which independent directors are, required to follow. The Amendment shall come into effect from 1st December 2019. The key changes introduced are:

1. Every person appointed as an independent director shall either within three months of appointment or prior to such appointment, apply to the Indian Institute of Corporate Affairs (notified by the Ministry of Corporate Affaris vide notification S.O. 3791(E) dated 22nd October, 2019) ("**Institute**") for inclusion of his/her/its name in the data bank for a period of 01 (one) year, 05 (five) years or for their/its lifetime. An independent director not having a DIN (director identification number) may voluntarily apply for the inclusion of his name to the Institute.
2. Every individual whose name has been included in the data bank shall file an application for renewal for a further period of one year or five years or for their/its life-time, within a period of thirty days from the date of expiry of the period upto which the name of the individual was applied for inclusion in the data bank, failing which, the name of such individual shall stand removed from the data bank of the Institute.
3. Independent director shall submit a declaration of compliance to the board of directors, as required under sub-section (7) of section 149 of the Companies Act, 2013.
4. Independent directors are required to pass an online proficiency self-assessment test conducted by the institute within a period of one year from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the Institute.

Amendment introduced in the Companies (Accounts) Rules, 2014

The Central Government recently notified the amendments in Companies (Accounts) Rules, 2014 ("**Rules**") vide Companies (Accounts) Amendment Rules, 2019 ("**Amendment**") having G.S.R 803(E) dated 22nd October 2019.

The aim of the Amendment was to amend rule 8 (Matters to be included in Board's report) of the Rules, which made it mandatory for the board of directors to include in its report a statement with regard to the integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Second Amendment Regulations, 2019

Amendments were introduced in the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Regulations, 2011**") by the Competition Commission of India vide notification F. no. CCI/CD/Amend/Comb. Regl./2019(2) dated 30th October, 2019 through the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Second Amendment Regulations, 2019 ("**Regulations, 2019**").

The Regulations, 2019 aims to amend regulation 11 of the Regulations, 2011 which stipulates the amount of fee payable along with the notice in Form I or Form II. For Form I the fee paybale has been increased to Rs. 20,00,000 (Rupees Twenty Lakh Only) and for Form II the fee payable has been increased to Rs. 65,00,000 (Rupees Sixty Five Lakh Only).

The Regulations, 2019 came into force on 30th October, 2019.

Amendments in the Companies (Meetings of Board and its Powers) Rules, 2014

The Ministry of Corporate Affairs introduced the amendments in the Companies (Meetings of Board and its Powers) Amendment Rules, 2014 ("**Rules**") vide notification dated 11th October, 2019 through the Companies (Meetings of Board and its Powers) Amendment Rules, 2019 ("**Amendment**").

The Amendment aims to amend rule 11 of Rules which defines the term 'business of financing companies.' Under the Amendment, the words 'business of financing companies' is now replaced and substituted by the words 'business of financing industrial enterprises' to bring this portion of the Rules in conformity and consensus with section 186, sub-section 11 of the Companies Act, 2013.

➲ *Central Government delegates its power to appoint officers and employees to the National Company Law Tribunal and National Company Law Appellate Tribunal*

The Central Government through Ministry of Corporate Affairs vide notification F No. A-12018/02/2017-Ad-IV/P dated 14th October, 2019 has delegated its power and functions under section 148, sub-section 1 of the Companies Act, 2013 to provide for the appointment of officers and other employees to the National Company Law Tribunal and National Company Law Appellate Tribunal as the case may be subject to the recruitment rules to the respective posts as notified by the Central Government from time to time.

➲ *The Reserve Bank of India withdraws exemption granted to Housing Finance Institutions*

The Reserve Bank of India ("**RBI**") has duly withdrawn exemptions granted to housing finance institutions vide notification RBI/2019-20/98 dated 11th November, 2019.

Presently, housing financing institutions (as defined under section 2 (d) of the National Housing Bank Act, 1934) are exempted from the provisions of Chapter IIIB of Reserve Bank of India Act, 1934. However, upon review of the same by the RBI, it has been decided that the abovementioned expemtions shall be withdrawn and the provisions of Chapter IIIB with the execption of section 45-IA of Reserve Bank of India Act, 1934, applicable to housing finance institutions.

➲ *Disclosure of divergence in the asset classification and provisioning by banks*

The Securities and Exchange Board of India ("**SEBI**") vide circular no. CIR/CFD/CMD1/120/2019 dated 31st October, 2019 ("**Circular**") has made it mandatory for banks having listed specified securities to disclose divergences in classification of assets and provisioning by banks beyond specified threshold, as given by the Reserve Bank of India ("**RBI**") vide notification no RBI/2018-19/157DBR.BP.BC.No.32/21.04.018/2018 dated April 1, 2019, the banks must as soon as reasonably possible and not later than 24 hours upon receipt of the RBI's Final Risk Assessment Report, which must make disclosures to the stock exchange(s) in either of the following cases:

1. The additional provisioning for non-provisioning assets assessed by RBI exceeds 10 per cent of the reported profit before provisions and contingencies for the reference period; and
2. The additional gross non-provisioning assets identified by RBI exceeds 15 per cent of the published incremental gross non-provisioning assets for the reference period.

This Circular was issued by the SEBI under regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 which states that an entity shall disclose to stock exchange(s) all events or information, which are material, as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information.

Real Estate Brief

➲ *Karnataka Real Estate Authority ("KRERA") has issued a circular wherein Land Owners having area/ revenue share in real estate project to be treated as a Promoter (landowner):*

- KRERA has issued clarification and/or explanation, for better understanding, working and implementation of the Real Estate (Regulation and Development) Act, 2016 ("**Act**") and rules made thereunder in regard to the definition of the term "Promoter" contained in the said Act.
- As per the elaborated definition of Promoter in section 2(zk) in the Act, defines and explains that the land owner also falls under the purview of definition clause, keeping in view the overall purpose, object and the intention behind enacting the said Act, more particularly various duties, responsibilities and obligations imposed thereby upon KRERA so as to inter-alia bring in maximum transparency in the real estate sector and resultantly to promote it and to promote awareness about the provisions of the said Act and educate general public about nuances of it.
- KRERA observed that during the online registration process, it was observed that several developers have entered into arrangement with individuals/organisations like land owners, by which the said individuals/organisations are entitled to a share of the total revenue generated from sale of apartments or share of the total area developed for sale which are also marketed and/or sold by such individuals/organisations.
- They are therefore jointly liable for the functions and responsibilities specified in the Act in the same manner as the Promoter who actually obtains building permissions and carries out construction.
- Now, for the benefit of customers and for the ease of filing online registration it is necessary to distinguish and/ or to identify whether such Promoter is the land owner or is actually obtaining the building permissions for carrying out the construction and is in fact carrying out construction. Therefore, it is directed that:
  - (a) Such Individual organizations who fall within the aforesaid definition of the term 'Promoter' on account of being landowners, shall be specified as such, at the time of online registration with Karnataka Real Estate Regulatory Authority.
  - (b) Further the 'Developer/Promoter' shall register his project including the share of the 'Landowner/Promoter' and to monitor the transaction to be done by the 'Landowner/Promoter' to comply Section 4(2) (1) (D) of the Act and also Rule 15 made thereunder.
  - (c) Though liabilities of such 'Landowner/Promoter' shall be as co-terminus with the written agreement / withdrawal from the designated bank account of a real estate project, the obligations and liabilities of all such Promoters shall be at par with each other.
  - (d) A copy of written agreement or arrangement between 'Landowner/Promoter' which clearly specifies and details the rights and shares of each Promoter should be uploaded on the KRERA website, along with other details for public viewing.
  - (e) Further, the 'Landowner/Promoter' and 'Developer/Promoter' should also submit a joint affidavit as prescribed by the Authority and the 'Landowner/Promoter' shall be answerable to the claim regarding the title over the land involved in the project as well as any claim pertaining to the real estate project.
  - (f) The 'Developer/Promoter' shall be liable to provide the details of transaction carried out by the 'Landowner/Promoter' before obtaining the Completion Certificate/Occupancy Certificate for his project and the 'Developer/Promoter' shall ensure by asking

the 'Landowner/Promoter' to deposit of 70% of the sale proceeds realised from the allottees of landowner share (in case of area sharing) to the Designated Account of the real estate project in case the 'Landowner/Promoter' does the transaction before obtaining the Completion Certificate/ Occupancy Certificate.

(g) The Developer/Promoter shall comply with Rule 15 by furnishing the details of the transaction done by him as well as the 'Landowner/Promoter'.

(h) Also all Developer/Promoter and Landowner/Promoter shall have the express clause in their Agreement or Joint Developer Agreement or Joint Venture Agreement or by whatever name called and the Developer/Promoter and Landowner/Promoter shall have the responsibility to comply with the above terms.

TAMIL NADU REAL ESTATE APPELLATE TRIBUNAL ("TRIBUNAL"):

➲ *In the matter of GMR Krishnagiri SIR Limited ("Appellant") v. Tamil Nadu Real Estate Regulatory Authority ("Respondent") held development of plots for industrial purpose will come under the ambit of RERA:*

Facts:

- The Appellant entered into a memorandum of understanding with the Respondent to develop a project SEZ in Tamil Nadu as a joint venture with an Infrastructure Development Company under Public Private Partnership Model. The Appellant's project involved development of plots for industrial purposes.
- The Appellant had sent a letter of clarification asking Real Estate Regulatory Authority ("**RERA**" or "**Authority**") whether their project should be registered under RERA. The authority expressed that the project should be registered and passed an order to that effect. The Appellant sought for a personal hearing to which the Respondent never replied. Hence, the appeal was filed by the appellant

Issues:

1. *Whether development of plots for industrial purpose will come under the ambit of RERA?*
2. *Whether sufficient opportunity was not given to appellants to explain their stand thereby violating natural justice?*

Appellant's Contention:

- The Appellant contended that the project is clearly industrial in nature and hence should not be subject to the provisions of RERA. The Appellant have been denied a hearing by the authority thereby violating principle of natural justice.
- The Appellant have further contended that it was not the intention of the legislature to make the act applicable to industrial projects and the same is evident from the bare perusal of the act and drafting history. The standing committee on urban development in its report ("**Standing Committee**") envisaged including "industrial projects" along with 'residential and commercial projects' into the definition of the terms 'Apartment and Building' in the Act. However, the Act specifically omitted the word industrial projects disregarding the recommendations of the Standing Committee. Hence the Act as as it stood today, only applied to 'Apartment', 'Building' and 'Plots' for 'residential and commercial use'
- Further, the Appellant claimed that they have used the land for public use and hence it does not fall under the purview of the plot.

Respondent's Contention:

- The Respondent's contented that RERA has not differentiated plots into housing plots, commercial plots or industrial plots and the very purpose of the Act is to regulate sale of plots and apartments. By virtue of this, the project of the Appellant should be registered under RERA.

Observations:

- The Tribunal observed that the legislative intent behind RERA was far more nuanced than it was made out by the Appellant.
- The Appellant stated that by not including the recommendations of the Standing Committee to incorporate "industrial projects" along with residential and commercial project into the definition of "apartment and building" in the Act, the legislature has consciously made the Act inapplicable to industrial buildings.
- However, the Tribunal observed that the purpose of the bill was only to regulate the real estate sector to ensure the sale of plots, apartments or buildings and also to protect the interest of the consumers as well as the promoters. Further, there is no differentiation of housing plots, commercial plots and industrial plots. Any plot or apartment or building sold under the name and style of real estate will certainly make RERA applicable. This is the purpose of the Act. Hence, the regulatory authority has rightly pointed out that RERA has not differentiated plots into housing plots, commercial plots or industrial plots and the very purpose of the Act is to regulate sale of plots and apartments.

Held:

The appeal has been dismissed.

➲ *Vide order dated 11.10.2019, Maharashtra Real Estate Authority has proposed to introduce Self-Regulatory Organizations (SROs) in the real estate sector in Maharashtra and to register them with MahaRERA:*

- In order to ensure greater professionalism among promoters, to bring a certain level of consistency in the practices of promoters, enforcement of a code of conduct and to discourage fraudulent promoters, MahaRERA proposed to introduce Self-Regulatory Organizations (SROs) in the real estate sector in Maharashtra and to register them with MahaRERA.
- The basic eligibility criteria for these Self-Regulatory organizations (SRO) shall be as follows:
  a. The proposed SRO has to be a group / association/ federation of promoters' which is a legal entity.
  b. The proposed SRO should have at least 500 MahaRERA registered projects of their members.
  c. Details of Membership fees, duration of Membership, qualification of membership and code of conduct to be followed by the members may be decided by the respective SRO and shall be made available to their members.
- The functions and obligations of the SRO shall be to encourage its members to comply with the provisions of the Act, applicable rules, regulations, orders or circulars issued by the MahaRERA from time to time; be responsible for carrying out awareness and education

activities among its members; to specify standard of conduct for its members and also be responsible for the implementation of the same by its members and that any information or particulars furnished to MahaRERA by the applicant shall not be false or misleading in any material respect.

- MahaRERA has prescribed the process for registration with the authority on payment of online fees of RS.10,000/- in the form prescribed by the authority.
- Further the registration of SRO shall be valid for a period of 5 years.

➲ *Vide order dated 23.10.2019, Maharashtra Real Estate Authority prescribed a procedure for referring the conversion of applications filed before MahaRERA Conciliation and Dispute Resolution forum to Suo-Moto Complaints by MahaRERA:*

- Previously, MahaRERA had established MahaRERA Conciliation and Dispute Resolution Forum for resolving disputes between the allottees and the promoters to facilitate the resolution of disputes amicably. MahaRERA for further strengthening the Conciliation Forum issued the procedure for conversion of applications to suo-moto complaints by MahaRERA.
- Conciliation application is filed by an allotee who has paid the fees of Rs. 1000 after the consent of the Promoter: As per different possibilities. the following procedure is prescribed for conversion of such application.
  a. Non-attendance of parties for conciliation proceedings even after providing consent-
     If a conciliation application, wherein both parties have provided consent and the complainant has paid the fees, but other party does not appear for conciliation hearing then Conciliation bench with their observations, may decide to refer such case to MahaRERA. The Authority, on receiving such a case, shall take a decision and the said decision may include treating the said matter as a suo-motu complaint if it relates to the issue of general importance.
  b. Unsuccessful Conciliation-
     If both parties remain present during hearing but in the event of unsuccessful conciliation due to lack of agreement on terms of conditions of settlement, then the conciliation bench may decide to refer such a case to the MahaRERA authority which shall take a decision that may include to take the matter as suo-moto complaint if it relates to the issue of general importance.
  c. Successful Conciliation but not executed or not complied-
     In case of successful conciliation, wherein both the parties have resolved their dispute amicably but the compliance/execution of settlement agreement is delayed beyond the time mentioned in the settlement agreement then in that case the buyer may again approach the conciliation forum for non-compliance of settlement agreement in time.
     The Forum shall hear such complaints and direct all parties to comply at earliest. At any point of time, the conciliation panel may also refer this request to Authority for suo-moto action by Maha RERA and Maha RERA may take up the said matter for further suo-moto action.
- As per Rule 30 of Annexure (A) attached with Model Form of Agreement in Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, registration of real estate agents, rates of interests and disclosure on website) Amendment Rules, 2018, it provides that any dispute between parties shall be settled amicably, in case of failure to settle the dispute amicably, it shall be referred to the authority under RERA. Such amicable settlement of dipute as referred in Rule 30, shall be conducted through MahaRERA Conciliation and Dispute Resolution Forum.
- It also suggested that **Self-Regulatory Organization (SRO)** should initiate/communicate with their members to accept the Conciliation request initiated by the first party in order to solve the disputes at the basic level itself and to encourage the applicant/complainant to arrive at an early solution to their grievances by approaching Conciliation Forum.

Litigation Brief

➲ *M Siddiq (D) Thr Lrs Vs. Mahant Suresh Das & Others (Decided by Supreme Court of India on 09.11.2019)*

Issues:

The questions involved in the present case were framed by the Supreme Court of India, as under:

a) Whether the demolition occurred on December 6, 1992, is a violation of rule of law?
b) Which party should hold title over the disputed land?
c) What is the relevance of the findings of Archeological Survey of India in the present case?
d) Whether the decision given by High Court regarding distribution of land among the parties correct?

Facts:

- The present dispute arose from four suits instituted between 1950 and 1989. The disputed land was a part of the village of Kot Ram Chandra (also as Ramkot). At the disputed site, a mosque existed which was claimed to be formed by Emperor Babur. The Hindu devotees asserted that there existed, at the disputed site, an ancient temple dedicated to Lord Ram, which was demolished upon the conquest of Mughal Emperor Babur.
- On December 6, 1992, the Babri Mosque was demolished by Hindu groups claiming that the disputed land was birthplace of lord Ram and that a temple had existed there while on the other hand the Muslim groups claimed that the land was built on a vacant land by Babur.
- A suit was instituted in 1950 before the Civil Judge at Faizabad, Uttar Pradesh, by a Hindu worshipper named Gopal Singh Visharad seeking a declaration that according to his religion and custom, he is entitled to offer prayers at the main Janmabhumi temple near the idols.
- The second suit was filed by Nirmohi Akhara, representing Hindu religious sect, who claimed the management and charge of the temple. The third suit was filed by Uttar Pradesh Central Board of Waqf and others for declaration of their title in the disputed land. They denied the fact that the mosque was constructed on the site of a destroyed temple. The fourth suit was filed by next friend on behalf of the deity claiming that the

place of birth is sanctified as an object of worship, personifying the divine spirit of lord Ram.

- On 30.09.2010, the Allahabad High Court held that the suit filed by the Sunni Central Waqf Board and Nirmohi Akhara were barred by limitation. In a split verdict of 2:1, the High Court held that the Hindu and Muslim parties were joint holders of the disputed premises. The Nirmohi Akhara was granted the remaining one third. Each of them were held entitled to one third of the disputed property. A preliminary decree to that effect was passed in the suit brought by the idol and the birthplace of Lord Ram through the next friend. Being aggrieved by the said judgment, an appeal was preferred in the Supreme Court.

Court's Observation:

- The Supreme Court, in the present case, has emphasized on the principles of 'Rule of Law' and 'Secularism' in India. The Court admitted that the idols were kept in the Mosque on December 22/23, 1949 and the Mosque was demolished on December 6, 1992 and the said act was in violation of Rule of Law.
- The Court relied on the reports of Archaeological Survey of India and stated that at the disputed place there was a structure of Hindu religion which was demolished in the twelfth century i.e. way before the construction of Mosque.
- The Court stated that the disputed site belongs to the Hindus as there is substantial proof which emphasized on the faith of Hindus. On the other hand the Sunni Central Waqf Board was not in a position to prove the continuous possession of the land. However, the Court in order to do complete justice exercised its power given in Article 142 of the India Constitution to provide the Sunni Central Waqf Board, 5 acres of land in Ayodhya, this was done because of the injustices that had happened in 1949 and 1992.
- Suit filed by Nirmohi Akhara to be a shebait was rejected as this claim is barred by limitation. The three-way bifurcation by the High Court was legally considered unsustainable as dividing the land will not subserve the interest of either of the parties or secure a lasting sense of peace and tranquility.
- Regarding historic presence and role of Nirmohi Akhara in the disputed site, the Court directed that an appropriate role in management must be given to the Akhara in the framing of scheme by Central Government. Within three months the Central Government must formulate a scheme according to section 6 and 7 of the acquisition of certain area under Ayodhya Act 1993, which would be done accordingly by setting up a trust. On all other hand, matters relating to functioning and management of trust, power of trustees, construction of temple and all necessary matters a scheme shall be formed by the Central Government which shall make all the necessary provisions regarding this matter.

➲ *Kaushaliya versus Jodha Ram & Ors*

SUPREME COURT: PROPERTIES, NOT MATTER IN ISSUE BEFORE COURT, CAN BE BROUGHT IN MEDIATION

CONTEMPT PETITION NO. 1868 OF 2018 in
Special Leave Petition (C) No.10022 of 2016

Brief Facts:

Plaintiff filed a suit for injunction against her father with respect to some property. Defendant also filed his counter-claim before the Trial Court. The suit was decreed in favor of the Defendant and his counter-claim was allowed. The matter finally reached before the Apex Court by way of Special Leave Petition. During the pendency of the suit, the matter was referred to the Mediation center to explore the possibility of amicable settlement between the parties. Both the parties entered into a settlement agreement dated 10.02.2017.

The Hon'ble Supreme Court disposed of the aforesaid Special Leave Petition in terms of the Settlement Agreement dated 10.02.2017 vide order dated 05.05.2017.

Since the terms of the Settlement Deed, dated 10.02.2017, was not complied with in pursuance of the Court order dated 05.05.2017, parties approached the Hon'ble Supreme Court in Contempt Petition.

The major contention of the parties, which was put across the Hon'ble Bench, was that, as the disputed properties in question were not the subject matter of original suit proceedings and thus, the same could not have been the subject matter Settlement Agreement entered into between the parties. Furthermore, applications were filed by Applicants seeking ownership over the said property by virtue of Agreement to Sell.

The Hon'ble Supreme Court gave the following observations:

"In the Mediation, it is always open for the parties to explore the possibility of an overall amicable settlement including the disputes which are not the subject matter of the proceedings before the Court. That is the benefit of the Mediation. In the Mediation, parties may try for amicable settlement, which is reduced into writing and/or a Settlement Agreement and thereafter it becomes the part of the Court's Order and the Court disposes of the matter in terms of the Settlement Agreement. Thereafter, the order in terms of the Settlement Agreement is executable irrespective of the fact whether the Settlement Agreement is with respect to the properties which was/were not the subject matter of the proceedings before the Court. Thereafter, the order passed by the Court in terms of the Settlement is binding to the parties and is required to be acted upon and/or complied with and as observed above the same is executable."

"As per the settled preposition of law, Agreement to Sell does not confer any right, title or interest in the property. Therefore, as such on

the basis of the Agreement to Sell, Applicants cannot claim any ownership and/or right, title or interest in the disputed properties."

Therefore, they have no locus to object to the Settlement Agreement entered upon between the parties and the order, dated 05.05.2017, passed by this Court in SLP (C) No.10022 of 2016.

The Major Points addressed by the Apex Court is the matter of Essar COC Judgement dated 15th November, 20191

The Judgement of the National Company Law Appellate Tribunal (NCLAT), laid down that the secured financial creditors share recoveries in a Resolution Plan under the IBC code irrespective of the ranking of their security positions and with trade creditors, on a parri passu basis, was held to be a leading to a "confusion in the different types of creditors" and a hindrance to the growth of secondary debt market in India.

In a landmark judgement on November 15th, 2019, the three judge bench of the Supreme Court set aside the majority of the NCLAT's judgement and has given much needed clarity to the stakeholders. Some major points addressed and laid down by the Hon'ble Supreme Court are dealt with briefly below:

A. COMMITTEE OF CREDITORS (CoC) is the supreme decision maker and reinforcing the primacy of the commercial wisdom with regard to the resolution process of the Corporate Debtor as held its in its earlier decision of K. Sashidhar.2 and the Role of the NCLT and NCLAT is circumscribed under Section 30(2) of the IBC Code.

B. No Principle of Equality between Financial Creditors and Operational Creditors. The Apex Court held that *Equitable Treatment is to be accorded to each creditor depending upon the class to which it belongs: secured or unsecured, financial or operational.* The court observed that the *"the equality principle cannot be stretched to treating unequal's equally, as that will destroy the very objective of IBC- to resolve stressed assets.* Further, the Supreme Court held that the CoC in its commercial wisdom may approve a resolution plan which provides for " *differential payment to different class of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve difference in distribution of amounts between different classes of creditors."*[3]

C. The maximum timeline period of 330 days (including legal proceedings) is not *mandatory* as per the 2019 Amendment Act and only in exceptional circumstances, the NCLT and NCLAT can extend the timelines.

D. Sub-committees of the CoC- The Supreme Court observed that the CoC can delegate administrative and negotiation powers with prospective Resolution Applicants to a smaller committee but such acts ultimately would be required to be ratified and approved by the CoC.

E. CONCLUSION: The Supreme Court has laid down and established the primary role of the CoC which is one of key facets of the IBC.

[1] *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. (Civil Appeal No. 8766-67 Of 2019).*

[2] *K. Sashidhar v. Indian Overseas Bank 2019 SCC Online SC 257*

[3] *Supra Note 1 at para 56*