

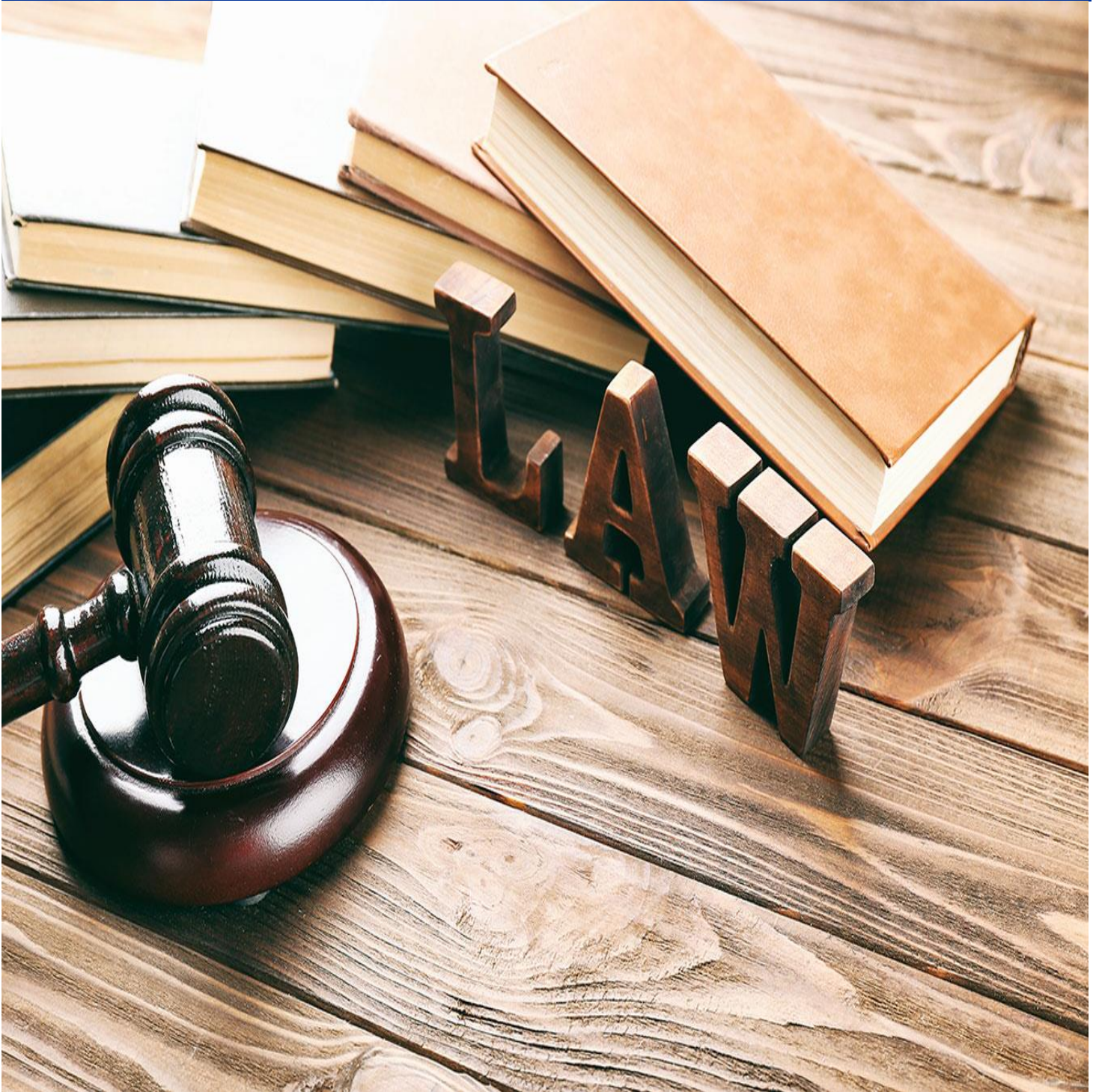


VAIBHAV  
GUPTA ASSOCIATES

# Newsletter

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January & February, 2021



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## MESSAGE FROM THE MANAGING PARTNER

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### **SUCCESS IS NOTHING MORE THAN A FEW SIMPLE DISCIPLINES, PRACTICED EVERY DAY.**

Plenty of opinions are what one may get in the lifetime, when one tries to make on its own but what makes difference in the process is who is beside you, affirming your each step with caution and strength. And, here we are to join you in this process with our professional aide. We ensure our presence at each step that you take and every challenge that you undertake or might face, filling you with assurances that this guided platform may lead you towards.

The Coronavirus flare-up and across the country lockdown to control spreading of contaminations have altogether affected monetary exercises. The New Year 2021 has brought new hopes in the life and business. Government of India has brought Budget-2021 with a boost to businesses and people at large.

Because of the phenomenal lockdown circumstance winning in the nation, government across the Centre and States have introduced various Ease of Doing Business Reforms as a part of the stimulus package.

Through this Newsletter we bring you the latest amendments and updates together with latest case laws. Also your able suggestions are always invited so that we can further improve the Newsletter.

*Vaibhav Gupta*

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### Insolvency and Bankruptcy Code, 2016

- **Pre-pack Insolvency**

The Ministry of Corporate Affairs has invited public comments and suggestions on a proposed pre-packaged insolvency resolution process under the bankruptcy code last week. The government has invited suggestions to the draft regulation latest by January 22, 2021, after which the regulation is widely expected to be firmed up.

The sub-committee of the Insolvency Law Committee (ILC), constituted by the government in June last year, designed a pre-pack framework with the basic structure of the Insolvency and Bankruptcy Code (IBC), and submitted its report in October.

“With considerable learning and maturity of the ecosystem, and a reasonably fair debtor-creditor relationship in place, the ground seems ready to experiment new options for resolution of stress under the Code in furtherance of its objectives,” the sub-committee noted in its report which has now been made public.

**Key recommendations of sub-committee of ILC**

- (i) Pre-packed insolvency resolution process (PPIRP) framework to be within the basic structure of the insolvency code as an additional option for a resolution that blends both formal and informal options. It can be brought in quickly via an Ordinance.
- (ii) PPIRP would pursue the same objectives as the IBC, with checks and balances to prevent any abuse.
- (iii) Implementation of PPIRP may be phased, starting with defaults from Rs 1 lakh to Rs 1 crore, and then expanded to defaults of over Rs 1 crore.
- (iv) Pre-packs in case of pre-default can be considered if 75% of creditors consent
- (v) The corporate debtor (CD) can initiate pre-pack with the consent of a simple majority of (a) unrelated FCs (b) its shareholders. No two proceedings - pre-pack and CIRP - shall run in parallel. There shall be a cooling-off that a pre-pack cannot be initiated within three years of closure of another pre-pack.
- (vi) Corporate debtor to remain in control and possession of current promoters and management during the pre-pack process.
- (vii) Moratorium under Section 12 to be available from the pre-pack commencement date till closure or termination of the process, but won't cover essential or critical services.
- (viii) CoC to take decisions with the approval of the required majority of votes, but the decision to liquidate would require approval by 75% of the voting share. There will, however, be no liquidation where pre-pack was initiated for pre-default stress, default below the threshold for initiation of CIRP and COVID-19 defaults.
- (ix) Section 29A of the IBC, which prohibits promoters of defaulting firms from participating in the process to continue in the case of PPIRP.
- (x) The resolution value need not necessarily be higher than the realisable value.
- (xi) The pre-pack should allow 90 days for market participants to submit the resolution plan to the adjudicating authority, and 30 days thereafter for the authority to approve or reject it.
- (xii) The resolution plan approved by the adjudicating authority will be binding on everyone.

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### Corporate Law-Updates

- **The Companies (Specification of Definitions Details) Amendment Rules, 2021**

The Ministry of Corporate Affairs (MCA) has on 01.02.2021 notified the Companies (Specification of Definitions Details) Amendment Rules, 2021 to further amend the Companies (Specification of Definitions Details) Rules, 2014.

The following amendment has been made:

A Clause 2 (1) (t) has been inserted in Rule 2 which specify the definitions as under:-

“For the definition of “small company”, the paid up capital and turnover of the small company shall not exceed Rupees 2 crores and Rupees 20 crores respectively.”

- The Companies (Compromise, Arrangements and Amalgamation) Amendment Rules, 2021**  
 On February 01, 2021, the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 came into effect in order to amend Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.  
 The amendment modifies Section 25 dealing with Merger or Amalgamation of certain companies and inserts a new clause providing a scheme of merger or amalgamation under Section 233 of the Act which may be entered into between any of the following class of companies:-
  - two or more start-up companies; or
  - one or more start-up company with one or more small company.
 The amendment also provides an explanation to the Rule defining the term “start-up company” as a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.
- MCA initiates Decriminalisation of LLP Act**  
 Offences involving minor and technical violations of the Limited Liability Partnership (LLP) Act must be decriminalized and LLPs should have more flexibility in their borrowing decisions, an expert committee headed by corporate affairs ministry secretary Rajesh Verma said.  
 The report released on Monday said 12 offences must be decriminalized and brought under an in-house adjudication mechanism instead of the National Company Law Tribunal (NCLT). However, one offence—non-compliance of tribunal orders—should be omitted to avoid duplication. The changes are expected to encourage compliance and promote a congenial business climate, it said.

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## Taxation

- Faceless (Assessment) Scheme, 2021**

**CBDT amends Faceless Assessment Scheme, 2019 vide Faceless Assessment (1st Amendment) Scheme, 2021 and specified the procedure for Assessment under Faceless Assessment Scheme, 2019. Notification No. 6/2021-Income Tax Dated: 17th February, 2021.**

MINISTRY OF FINANCE  
 (Department of Revenue)  
 (CENTRAL BOARD OF DIRECT TAXES)  
 New Delhi

Notification No. 6/2021-Income Tax  
 Dated: 17th February, 2021

S.O. 741(E).—In exercise of the powers conferred by sub-section (3A) of section 143 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following further amendments in the Faceless Assessment Scheme, 2019, namely:

- Short title and commencement.—(1) The Scheme may be called the Faceless Assessment (1st Amendment) Scheme, 2021.  
 (2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Faceless Assessment Scheme, 2019 (hereinafter referred to as the said Scheme), in sub-paragraph (1) of paragraph 2,

(i) in clause (x) for the words “e-mail account”, the words “registered e-mail account” shall be substituted;

(ii) after clause (xii), the following clause shall be inserted, namely:—

‘(xiiia) “Dispute Resolution Panel” shall have the same meaning as assigned to in clause (a) of sub-section (15) of section 144C of the Act;’

(iii) after clause (xv), the following clause shall be inserted, namely:

‘(xvva) “eligible assessee” shall have the same meaning as assigned to in clause (b) of subsection (15) of section 144C of the Act;’

(iv) in clause (xxiv), for the words “video telephony”, the words “video conferencing or video telephony” shall be substituted.

(2) In the said Scheme, for sub-paragraph (1) of paragraph 5, the following sub-paragraph shall be substituted, namely,

“(1) The assessment under this Scheme shall be made as per the following procedure, namely:-

(i) the National e-Assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143 of the Act;

- (ii) the assessee may, within fifteen days from the date of receipt of notice referred to in clause (i), file his response to the National e-Assessment Centre;
- (iii) where the assessee –
- (a) has furnished his return of income under section 139 of the Act in response to a notice issued under sub-section (1) of section 142 of the Act and a notice under sub-section (2) of section 143 of the Act has been issued by the Assessing Officer or the prescribed income-tax authority, as the case may be; or
- (b) has not furnished his return of income in response to a notice issued under subsection (1) of section 142 of the Act by the Assessing Officer; or
- (c) has not furnished his return of income under sub-section (1) of section 148 of the Act and a notice under sub-section (1) of section 142 of the Act has been issued by the Assessing Officer, The National e-Assessment Centre shall intimate the assessee that assessment in his case shall be completed under this Scheme.
- (iv) the National e-Assessment Centre shall assign the case selected for the purposes of e-assessment under this Scheme to a specific assessment unit in any one Regional e-Assessment Centre through an automated allocation system;
- (v) where a case is assigned to the assessment unit, it may make a request to the National e-Assessment Centre for –
- (a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;
- (b) conducting of certain enquiry or verification by verification unit; and (c) seeking technical assistance from the technical unit;
- (vi) where a request for obtaining further information, document or evidence from the assessee or any other person has been made by the assessment unit, the National e-Assessment Centre shall issue appropriate notice or requisition to such assessee or person, specifying a time therein, for submitting such information, documents or evidence;
- (vii) the assessee or any other person, as the case may be, shall file his response to the notice referred to in clause (vi), within the time specified therein or such extended time as may be allowed on the basis of an application in this regard, to the National e-Assessment Centre;
- (viii) where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request shall be assigned by the National e-Assessment Centre to a verification unit in any one Regional e-Assessment Centre through an automated allocation system;
- (ix) where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National e-Assessment Centre to a technical unit in any one Regional e-Assessment Centre through an automated allocation system;
- (x) the National e-Assessment Centre shall send the report received from the verification unit or the technical unit, based on the request referred to in clause (viii) or (ix) to the concerned assessment unit;
- (xi) where the assessee fails to comply with the notice referred to in clause (vi) or notice issued under sub-section (1), or with a direction issued under sub-section (2A), of section 142 of the Act, the National e-Assessment Centre shall serve upon such assessee a notice under section 144 of the Act giving him an opportunity to show-cause, on a date and time to be specified in the notice, why the assessment in his case should not be completed to the best of its judgment;
- (xii) the assessee shall, within the time specified in the notice referred to in clause (xi) or such time as may be extended on the basis of an application in this behalf, file his response to the National e-Assessment Centre;
- (xiii) where the assessee fails to file response to the notice referred to in clause (xi) within the time specified therein or within the extended time, if any, the National e-Assessment Centre shall intimate such failure to the assessment unit;
- (xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xiii) is received from the National e-Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to such income or sum, and send a copy of such order to the National e-Assessment Centre;
- (xv) the assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any;
- (xvi) the National e-Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to
- (a) finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or
- (b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or

(c) assign the draft assessment order to a review unit in any one Regional e-Assessment Centre, through an automated allocation system, for conducting review of such order;

(xvii) the review unit shall conduct review of the draft assessment order, referred to it by the National e-Assessment Centre, whereupon it may decide to

(a) concur with the draft assessment order and intimate the National e-Assessment Centre about such concurrence; or

(b) suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National e-Assessment Centre;

(xviii) the National e-Assessment Centre shall, upon receiving concurrence of the review unit, follow the procedure laid down in sub-clause (a) or sub-clause (b) of clause (xvi), as the case may be;

(xix) the National e-Assessment Centre shall, upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has prepared the draft assessment order, through an automated allocation system;

(xx) the assessment unit shall, after considering the variations suggested by the review unit, send the final draft assessment order to the National e-Assessment Centre;

(xxi) the National e-Assessment Centre shall, upon receiving final draft assessment order follow the procedure laid down in sub-clause (a) or sub-clause (b) of clause (xvi), as the case may be;

(xxii) the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub-clause (b) of clause (xvi), furnish his response to the National e-Assessment Centre on or before the date and time specified in the notice or within such time as may be extended on the basis of an application in this behalf;

(xxiii) the National e-Assessment Centre shall, –

(a) where no response to the show-cause notice as per clause (xxii) is received,

(A) in a case where the draft assessment order or the final draft assessment order is in respect of an eligible assessee and proposes to make any variation which is prejudicial to the interest of such assessee, forward the draft assessment order or final draft assessment order to such assessee; or

(B) in any other case, finalise the assessment as per the draft assessment order or the final draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, upon the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in any other case, send the response furnished by the assessee to the assessment unit;

(xxiv) the assessment unit shall, after taking into account the response furnished by the assessee, as referred to in sub-clause (b) of clause (xxiii), make a revised draft assessment order and send it to the National e-Assessment Centre;

(xxv) The National e-Assessment Centre shall, upon receiving the revised draft assessment order, –

(a) in case the variations proposed in the revised draft assessment order are not prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, and

(A) in case the revised draft assessment order is in respect of an eligible assessee and there is any variation prejudicial to the interest of such assessee proposed in draft assessment order or the final draft assessment order, forward such revised draft assessment order to such assessee;

(B) in any other case, finalise the assessment as per the revised draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, upon the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(b) in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him to show-cause as to why the proposed variation should not be made;

(xxvi) The procedure laid down in clauses (xxiii), (xxiv) and (xxv) shall apply mutatis mutandis to the notice referred to in sub-clause (b) of clause (xxv);

(xxvii) where the draft assessment order or final draft assessment order or revised draft assessment order is forwarded to the eligible assessee as per item A of sub-clause (a) of clause (xxiii) or item A of sub-clause (a) of clause (xxv), such assessee shall, within the period specified in sub-section (2) of section 144C of the Act, file his acceptance of the variations to the National e-Assessment Centre;

(xxviii) the National e-Assessment Centre shall, -

(a) upon receipt of acceptance as per clause (xxvii); or

(b) if no objections are received from the eligible assessee within the period specified in sub-section (2) of section 144C of the Act, finalise the assessment within the time allowed under sub-section (4) of section 144C of the Act and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxix) where the eligible assessee files his objections with the Dispute Resolution Panel, the National e-Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C of the Act, forward such directions to the concerned assessment unit;

(xxx) the assessment unit shall in conformity of the directions issued by the Dispute Resolution panel under sub-section (5) of section 144C of the Act prepare a draft assessment order in accordance with

sub-section (13) of section 144C of the Act and send a copy of such order to the National e-Assessment Centre;

(xxx) the National e-Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C of the Act and serve a copy of such order and notice for initiating penalty proceedings, if any, upon the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxxii) The National e-Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.”

(3) In the said Scheme, in sub-paragraph (2) of paragraph (11),-

(i) in the first line, for the word “modification”, the word “variation” shall be substituted;

(ii) in the first and third line, for the words “draft assessment order”, the words “ or final draft assessment order or revised draft assessment order” shall be substituted.

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## ARBITRATION AND CONCILIATION

### **VIDYA DROLIA VS. DURGA TRADING CORPORATION, 2021 (1) RCR (CIVIL) 345**

A. Arbitration and Conciliation Act, 1996 Sections 8 and 11 Transfer of Property Act, 1882 Section 106, 111, 114 and 114A Tenancy dispute - Arbitrability - Landlord-tenant disputes governed by Transfer of Property Act are arbitrable as they are not actions in rem but pertain to subordinate rights in personam that arise from rights in rem - Such actions normally would not affect third-party rights or have erga omnes effect or require centralised adjudication - Landlord-tenant disputes do not relate to inalienable and sovereign functions of State - Provisions of Transfer of Property Act do not expressly or by necessary implication bar arbitration - Transfer of Property Act, like all other Acts, has public purpose, that is, to regulate landlord tenant relationships and arbitrator would be bound by provisions, including provisions which enure and protect tenants - However, landlord-tenant disputes covered and governed by rent control legislation would not be arbitrable when specific court or forum has been given exclusive jurisdiction to apply and decide special rights and obligations - Ratio laid down in Himangni Enterprises v. Kamaljeet Singh Ahluwalia overruled.

B. Arbitration and Conciliation Act, 1996 Section 7 Contract Act, 1872 Section 10 Arbitral agreement - Legality - In order to be enforceable Arbitration Agreement should satisfy mandate of section 10 of Contract Act, in addition to satisfying other requirements stipulated in section 7 of Arbitration Act - Arbitration agreement that is not enforceable in law is void and not legally valid.

C. Arbitration and Conciliation Act, 1996 Section 7 Arbitration agreement - Legal relationship - Arbitration agreement should be in respect of disputes arising from defined legal relationship, whether contractual or not - Legal relationship means relationship which gives rise to legal obligations and duties and, therefore, confers right - These rights may be contractual or even non-contractual - Non-contractual disputes would require separate or submission arbitration agreement based on cause of action arising in tort, restitution, breach of statutory duty or some other non-contractual cause of action.

D. Arbitration and Conciliation Act, 1996 Sections 7, 8 and 11 Arbitral dispute - Jurisdiction - Arbitration being matter of contract, parties are entitled to fix boundaries as to confer and limit jurisdiction and legal authority of arbitrator - Issue of scope of arbitrator's jurisdiction invariably arises when disputes that are arbitrable are enumerated or arbitration agreement provides for exclusions as in case of 'excepted matters' - Arbitration agreement may be valid, but arbitral tribunal in view of will of parties expressed in arbitration agreement, may not have jurisdiction to adjudicate dispute - Will of parties as to scope of arbitration is subjective act and personal to parties.

E. Arbitration and Conciliation Act, 1996 Sections 8 and 11 Nonarbitrable claim and non-arbitrable subject matter - There is difference between non-arbitrable claim and non-arbitrable subject matter - Former may arise on account of scope of arbitration agreement and also when claim is not capable of being resolved through arbitration - Generally non-arbitrability of subject matter would relate to non-arbitrability in law.

F. Arbitration and Conciliation Act, 1996 Sections 8 and 11 When arbitral agreement is not arbitral - Test - Fourfold test for determining when subject matter of dispute in arbitration agreement is not arbitrable -

- (1) when cause of action and subject matter of the dispute relates to actions in rem, that do not pertain to subordinate rights in personam that arise from rights in rem.
- (2) when cause of action and subject matter of the dispute affects third party rights; have erga omnes effect; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;
- (3) when cause of action and subject matter of the dispute relates to inalienable sovereign and public interest functions of the State and hence mutual adjudication would be unenforceable; and
- (4) when the subject-matter of the dispute is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

G. Arbitration and Conciliation Act, 1996 Sections 8, 11 and 16 Issue of non-arbitrability - Authority to decide - Expression 'existence of arbitration agreement' would include aspect of validity of arbitration agreement - Court at referral stage would test validity of arbitration agreement - In cases of debatable and disputable facts, and good reasonable arguable case, etc., court would force parties to abide by arbitration agreement as arbitral tribunal has primary jurisdiction and authority to decide disputes including question of jurisdiction and non-arbitrability.

H. Arbitration and Conciliation Act, 1996 Section 7 Arbitration agreement - Arbitration is creature of consensus - It is completely dependent on party autonomy and intention expressed in agreement - Contract, having multiple clauses including arbitration agreements, can be divided into two parts - Clauses relating to commercial relationship, i.e., obligations and duties of each party, can be referred to as 'main contract' - Arbitration agreement so to say is separate contract in itself.



I. Arbitration and Conciliation Act, 1996 Sections 8 and 11 Reference of dispute to arbitrator - Reference power under Section 11 of Act is judicial and not administrative - There was wide discretion for judicial interference at stage of reference under Section 11 of Act, prior to Arbitration Amendment Act of 2015 - Amendment in 2015 was brought into force to limit power of judicial interference under Section 11 of Act - Court has to refer matter to arbitration or to appoint arbitrator, as case may be, unless party has established prima facie case of nonexistence of valid arbitration agreement.

J. Arbitration and Conciliation Act, 1996 Sections 8 and 11 Arbitrability of issue - Analysis - Arbitrability finds close nexus with validity of arbitration agreement - However, unique nature of arbitration agreement, which is bundle of contractual and jurisdictional elements need to be observed - Even if Tribunal comes to understanding that there exists valid arbitration agreement, still it does not mean that certain subject matters are arbitrable per se - This distinction is required to be kept in mind.

K. Arbitration and Conciliation Act, 1996 Sections 8 Reference of Arbitral dispute - Courts, while analyzing case under Section 8, may choose to identify issues which require adjudication pertaining to validity of arbitration agreement - If Court cannot rule on invalidity of arbitration agreement on prima facie basis, then Court should stop any further analysis and simply refer all issues to arbitration to be settled.

## INSOLVENCY AND BANKRUPTCY CODE, 2016

### GOURI SHANKAR VS. PUNJAB NATIONAL BANK, 2020 AIR (CALCUTTA) 90

A. Insolvency and Bankruptcy Code, 2016 Section 6 Contract Act, 1872 Sections 135, 139 and 145 Insolvency resolution process - Right to apply for insolvency does not arise out of contract between parties - It is statutory right - Code specifies persons who may initiate Corporate Insolvency Resolution process in respect of corporate debtor who are financial creditor, operational creditor or corporate debtor itself.

B. Insolvency and Bankruptcy Code, 2016 Sections 7 and 14 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 Section 13(2) Contract Act, 1872 Sections 135, 139 and 145 Debt - Guarantee - Liability of guarantor of debt of corporate debtor - Does not stand extinguished upon Insolvency Resolution Plan in respect of corporate debtor, being approved by adjudicating authority under Code.

C. Insolvency and Bankruptcy Code, 2016 Sections 7 and 14 Insolvency resolution process - When financial creditor approaches Adjudicating Authority for initiation of Corporate Insolvency Resolution process in respect of corporate debtor, financial creditor is trying to recover defaulted amount from corporate debtor - It cannot be said that, financial creditor when it applies under section 7 of the Code of 2016, does so with view to enter into any compromise or composition with corporate debtor in respect of claim.

## INCOME TAX ACT

### UNION OF INDIA AND OTHERS VS. EXIDE INDUSTRIES LIMITED & ANOTHER, CIVIL APPEAL NO. 3545 OF 2009, D.O.D.- 24.04.2020

A. Constitution of India, 1950, Article 14 - Income Tax Act, 1961, Section 43B(f) - Leave encashment paid by assessee to employee - Deduction - Validity - Assessee being liable to pay income tax upon profits and gains of their business, found themselves aggrieved with inclusion of clause (f) in Section 43B - Section 43B bears heading "certain deductions to be only on actual payment" - Leave encashment scheme envisages payment of certain amount to employees in lieu of their unused paid leaves in year - Employer seeking deduction from tax liability in advance, in name of discharging liability of leave encashment, without actually extending such payment to employee as and when time for payment arises may lead to abhorrent consequences - When time for such payment arises upon retirement of employee, employer may simply refuse to pay - Concomitantly, it would entail in double benefit to employer - It is said mischief clause (f) seeks to subjugate - Thrust of provision is not to control timing of payment, rather, it is strictly targeted to control timing of claiming deduction in name of such liability - Clause f of Section 43B constitutionally valid.

B. Constitution of India, 1950, Articles 13 and 14 - Income Tax Act, 1961, Section 43B(f) - Leave encashment paid by assessee to employee - Deduction - Validity - In testing constitutional validity of provision Court is to inspect existence of enacting power - Once such power is found to be present, next examination is to ascertain whether enacted provision impinges upon any right enshrined in Part III of Constitution - Process of examining validity of duly enacted provision, as envisaged under Article 13 of Constitution, is premised on these two steps.

C. Constitution of India, 1950, Articles 13 and 14 - Income Tax Act, 1961, Section 43B(f) - Leave encashment paid by assessee to employee - Deduction - Validity - Nondisclosure of objects and reasons per se - Not to impinge upon constitutionality of provision unless provision is ambiguous and possible interpretation violate Part III of Constitution - In absence of any finding of any constitutional infirmity in provision, Court not empowered to invalidate provision - To hold provision as violative of Constitution on account of failure of

legislature to state objects and reasons would amount to indirect scrutiny of motives of legislature behind enactment.

D. Constitution of India, 1950, Articles 13 and 14 - Income Tax Act, 1961, Section 43B(f) - Leave encashment paid by assessee to employee - Deduction - Validity - Merely because liability has been held to be present liability qualifying for instant deduction in terms of applicable provisions at relevant time - Does not ipso facto signify that deduction against such liability cannot be regulated by law made by Parliament prospectively - In matter of statutory deductions, it is open to legislature to withdraw same prospectively - Once Finance Act, 2001 was duly passed by Parliament inserting clause (f) in Section 43B with prospective effect, deduction against liability of leave encashment stood regulated in manner so prescribed - Liability of leave encashment continues to be present liability as per mercantile system of accounting.

### **NEW DELHI TELEVISION LTD. VS. DEPUTY COMMISSIONER OF INCOME TAX, CIVIL APPEAL NO. 1008 OF 2020**

A. Income Tax Act, 1961 Section 143 - Undisclosed income - Reopening of assessment - Reason to believe - At stage of issuance of notice for reopening assessment, assessing officer is to only form prima facie view that certain income has escaped assessment - Material disclosed in assessment proceedings for subsequent years sufficient to form such view.

B. Income Tax Act, 1961 Sections 143 and 147 - Undisclosed income - Reopening of assessment - Non-disclosure of material facts by assessee - Before original assessment order was passed assessing officer was aware of entities which had subscribed to convertible bonds - Assessee disclosed all primary facts necessary for assessment of its case to assessing officer and it was not required to give any further assistance to assessing officer by disclosure of other facts - Revenue could take benefit of extended period of limitation of 6 years for initiating proceedings only be done if revenue could show that assessee had failed to disclose fully and truly all material facts necessary for its assessment.

C. Income Tax Act, 1961 Sections 148 and 149 - Reopening of assessment - Notice - Opportunity of hearing - Reasons communicated to assessee mention 'reason to believe' and non-disclosure of material facts by assessee - No case set up in relation to second proviso of Section 147 either in notice or even in reasons supplied with regard to notice - It is only while rejecting objections of assessee that reference has been made to second proviso in order of disposal of objections - If revenue is to rely upon second proviso and wanted to urge that limitation of 16 years would apply, then in notice or at least in reasons in support of notice, assessee should have been put to notice that revenue relies upon second proviso - Assessee could not be taken by surprise at stage of rejection of its objections - Appeal allowed.

## **CONSUMER PROTECTION ACT**

### **BAJAJ ALLIANCE GENERAL INSURANCE CO. LTD. VS. THE STATE OF MADHYA PRADESH, CIVIL APPEAL NO. 2366-67 OF 2020**

A. Consumer Protection Act, 1986, Section 23 - Transit Marine Insurance Policy - Deficiency in service - Respondent purchased "Transit Marine Insurance Policy" from appellant to cover transportation of Helicopter from Langley, Canada to Bhopal, India - Helicopter reached Delhi - Helicopter was transported in knocked down state by air - It cleared customs and on same day, respondent after taking possession of cargo shifted it to hangar at New Delhi - At time of customs clearance, no damage was reported - It was when helicopter was inspected by representative of manufacturer damage was reported to window of crew door of helicopter - No other damage was evident - Specific act of unpacking cargo at New Delhi in furtherance of purpose of assembling it for flight to Bhopal indicated that transportation of cargo in knocked down state had come to end - Act of unpacking helicopter for purpose of assembling it is unrelated to usual or ordinary method of pursuing transportation of cargo insured - Policy covered only those risks that were associated with transportation of helicopter - Damage occurred to tail boom in hangar not covered by policy.

B. "In the ordinary course of transit" - Meaning of expression - In context of policy, words "in transit" do not require transportation of consignment in single trip from commencement to final destination - It includes those interruptions in motion that are incidental to or in furtherance of conveyance or transportation of consignment - Words of policy ought to be construed so as to conform to usual and ordinary method of pursuing venture or operation - Question of what does and does not constitute deviation in furtherance of conveyance of goods is question of fact that must be determined by both intent of policy and actions of parties - Words used in policy must be construed in their commercial setting having regard to purpose of policy.

## **LABOUR LAWS**

### **SUSHILABEN INDRAVANDA GANDHI AND ANOTHER VS. THE NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS, CIVIL APPEAL NO. 2235 OF 2020**

A. Workmen's Compensation Act, 1923, Section 2(s) - Contract of service and contract for service - Test - In contract for service master can order or require what is to be done - In case of contract of service, master can not only order or require what is to be done, but also how it shall be done - Master had right to control method

of doing work - Factors which make contract one for service outweigh factors which would point in opposite direction - Intention of parties is to be gathered from terms of contract.

B. Workmen's Compensation Act, 1923, Section 2(s) - Employment - Test - Control of employer' test in sense of controlling not just work that is given but manner in which it is to be done - Breaks down when it comes to professionals who may be employed.

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