



Devadhaantu Insights – April 2021

Dear Reader,

Greetings!

We are happy to present the Devadhaantu Insights highlighting important legislative updates in direct taxes and regulatory updates in SEBI, IBC, FEMA and Corporate laws.

We hope that we are able to provide an insight into various updates that you would find to be informative as well as useful. For any deeper discussion as to how the updates covered in this document could affect your transactions, please do not hesitate to contact Devadhaantu.

Happy Reading!

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Thank You

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DIRECT TAX UPDATES

APRIL 2021



Direct tax updates (1/5)

Excess of net assets taken over by the amalgamated company against issue of its shares at face value towards consideration for amalgamation cannot be taxed under section 56(2)(viib) of the ITA

Assessee Company had entered into an arrangement for Scheme of Amalgamation with the transferor company, which was approved by High Court of Gujarat ('Merger'). Pursuant to Merger, all the assets and liabilities of a transferor company were taken over by assessee company, as a consideration to which equity shares were issued to the shareholders of the transferor company at its face value. Difference between net asset value (i.e. INR 54.21 crs) and consideration (INR 15 crs) equivalent to INR 39.21 crs was credited to capital reserve by assessee company.

During the scrutiny proceedings, AO computed the total fair market value of shares issued on Merger at INR 6.81 per share as per Rule 11UA of the IT Rules, 1962 amounting in aggregate to INR 10.21 crs. Thus, revised difference between net assets and consideration was computed at INR 44 crs and added to the income of assessee company under section 56(2)(viib) of the ITA. Upon appeal to first appellate authority, addition made by AO was deleted. Upon further appeal by revenue to ITAT, revenue's appeal was dismissed as it was noted that,

- the intent of section 56(2)(viib) of the ITA is to impose tax on deemed income only in case of issue of shares at premium and where such share premium exceeds FMV of shares issued. In the instant case, shares were issued at face value;
- Relying on Apex Court's judgement in case of Mother India Refrigerator Private Limited, the ITAT held that a deeming fiction cannot be stretched beyond its purpose and import another fiction in it;
- Provisions of Section 56(2)(viib) of the ITA contemplate 'receipt' of the consideration for the shares from a resident person. Thus, it emphasis on bilateral arrangements. In case of merger, 3 parties are involved, i.e. the Transferor Company, the Transferee Company and Shareholders of Transferor Company. Thus application of section 56(2)(viib) of the ITA on merger arrangement fails.
- Merger arrangement creates obligation on the transferee company to discharge consideration and issue of shares is result of discharge of such consideration. Whereas, section 56(2)(viib) of the ITA does not create any such obligation.



Direct tax updates (2/5)

Non- applicability of TDS deduction on license fees payable to foreign entities in case of disclosure of documents by such foreign entity¹

Assessee was engaged in the business of distributing live screen/flash services on mobile through telecom operators. The Assessee's live screen platform enabled operators, marketers and advertisers to monetize their mobile users.

During assessment proceedings, AO observed that assessee had paid an amount as license fees to Celltick Technologies Ltd, Israel pursuant to the agreement entered into by them. It was observed by AO that assessee was a non-exclusive distributor of the licensed system in the Indian subcontinent territory and it was responsible for marketing and distributing the system and installing the system on client infrastructure. Assessee withheld tax at the rate of 10% on the amount of license fees paid from April 2013 to August 2013. For the remaining months assessee had not deducted tax at source which amounted to ₹ 6,98,38,225/- when assessee was asked to show cause why the amount on which tax was not deducted at source should not be disallowed under section 40(a)(i). Assessee submitted that as per the provisions of section 195, assessee was responsible to deduct tax only on those income which was chargeable to tax in India and income of service provider was not chargeable to tax for the reason that the service provider was a tax resident in Israel and was eligible to claim the benefit of Indo – Israel treaty and the article 7 of the treaty was applicable to the service provider. AO rejected the contention of assessee and invoked the provisions of section 40(a)(i) and disallowed expense deduction. Aggrieved by the order of AO, assessee filed appeal to first appellate authority, where order of AO was upheld.

On further appeal to ITAT, it was held that the assessee cannot be considered as 'assessee-in-default' as service provider had already furnished certificate from a chartered accountant, return of income and computation of income under section 139. Further, considering provisions of section 201(1) of the ITA, the income of the service provider was not chargeable to tax in India as per the decision of the co-ordinate bench. Thus, the income of the service provider was not taxable in India and assessee had already filed the relevant information u/s 201(1) which showed that assessee could not be regarded as 'assessee-in-default'.

¹ Celltick Mobile Media (India) Pvt. Ltd Vs DCIT (ITAT Mumbai) [ITA No. 1673/Mum/2020]



Direct tax updates (3/5)

Changes in Tax Audit Report (TAR) to be effective for AY 2021-22

SN	Particulars	Existing provision / clause	Amended provision / clause
1	Revision of TAR (insertion of Rule 6G(3))	-	Assessee can file revised TAR before the end of the assessment year if payment is made by him / her after furnishing of TAR which requires recalculation of disallowance u/s. 40 and Sec 43B.
2	Clause 8A of Part A reframed	Assessee opting for Sec 115BA / 115BAA / 115BAB	Assessee opting for Sec 115BA / 115BAA / 115BAB / 115BAC / 115BAD
3	Clause 17 of Part B Details of land or building transferred for less than stamp duty value	-	<u>Additional detail required</u> Whether safe harbour limit is applicable to transfer / receipt of Land or Building a. under 2 nd proviso 43CA(1) in case of stock in Trade b. under 4 th proviso to Sec 56(2)(x) in case of Capital asset.
4	Clause 18 – Schedule of Fixed Assets and Depreciation	(ca) Adjustment to WDV u/s. 115AA (Applicable to AY 2020-21 only) (cb) Adjusted WDV	(ca) Adjustment to WDV u/s. 115AC/ 115BAD (Applicable to AY 2021-22 only) (cb) Adjustment to WDV of Intangible assets due to excluding value of Goodwill (cc) Adjusted WDV
5	Clause 32 – brought forward losses or depreciation allowance	All losses / allowance not allowed under Section 115BAA Amount adjusted on withdrawal of additional depreciation opting for section 115BAA	All losses / allowance not allowed under Section 115BAA / 115BAC / 115BAD Amount adjusted on withdrawal of additional depreciation opting for section 115BAC / 115BAD (for Assessment year 2021-22 only)
6	Clause 36 – Details of Dividend distributed	-	said Clause omitted



Direct tax updates (4/5)

Renewal / Registration of Trust, Society or institutions for claiming exemption u/s. 11 or 12 and Sec 80G

All the existing Trust, Society or Institutions are required to apply for renewal and all the new Trust, Society or Institutions are required to register u/s. 12AB and u/s. 80G under the prescribed form (Form 10A or 10AB, as the case may be) from 1st April, 2021 but before 30th June, 2021.

Reporting of Dividend in Statement of Financial Transactions (SFT) (Notification no. 1 of 2021 dated 20th April, 2021)

All the existing Trust, Society or Institutions are required to apply for renewal and all the new Trust, Society or Institutions are required to register u/s. 12AB and u/s. 80G under the prescribed form (Form 10A or 10AB, as the case may be) from 1st April, 2021 but before 30th June, 2021.

Sr No.	Heading	Particulars
1	Nature of Transaction	Dividend distributed and paid during the financial year
2	Who shall report	All companies paying dividend
3	Section and Rule	Sec 285BA read with Rule 114E
4	Due date of filing SFT return	31 st May immediately following the financial year
5	Purpose	Prefilling the return of income

Reporting of Interest in Statement of Financial Transactions (SFT) (Notification no. 2 of 2021 dated 20th April, 2021)

Sr. No.	Heading	Particulars
1	Nature of Transaction	Interest income paid / credited during the financial year
2	Who shall report	a. Banks, banking company, cooperative bank to which Banking Regulation Act, 1949 apply b. Post Master General c. NBFC registered u/s. 45-IA of RBI Act, 1934 who hold or accept deposit from public
3	Section and Rule	Sec 285BA read with Rule 114E
4	Due date of filing SFT return	31 st May immediately following the financial year
5	Purpose	Prefilling the return of income



Direct tax updates (5/5)

Extension of various time barring due dates [Notification No. S.O. 966(E) dated 27th February, 2021]

The CBDT has extended the due dates of various time barring dates by way of a notification No. 38 and 39 of 2021 dated 27th April, 2021. The extension of the due dates has been given below:

SN	Particulars	Existing Due Date (either under Act or by of notification)	Extended Due Date
1	Passing of an assessment or reassessment order wherein the time limit provided under Sec 153 or Sec 153B		
	a. Cases covered by various extensions	30 th April, 2021	30 th June, 2021
	b. Cases not covered by various extensions	31 st March, 2021	30 th September, 2021*
2	Passing of an order consequent to direction of DRP u/s. 144C(13)	30 th April, 2021	30 th June, 2021
3	Issuance of notice u/s. 148 for reopening assessment where income has escaped assessment	30 th April, 2021	30 th June, 2021
4	Intimation of processing of Equalisation Levy u/s. 168	30 th April, 2021	30 th June, 2021
5	Amount payable under Direct Tax Vivad Se Vishwas Act, 2020 without any additional amount**	30 th April, 2021	30 th June, 2021

RESERVE BANK OF INDIA ('RBI') UPDATES

APRIL 2021



RBI Regulatory updates (1/3)

Statutory Due Dates for FY 2021-22:

Every company / LLP is required to file various forms, returns and documents with the Reserve Bank of India. We have provided a gist of standard statutory filings for FY 2021-2022 along with timelines below for quick reference.

For Company			
Sl. No	Particulars	Type of Return	Filing due date
1.	Reporting of receipt of deposits or exempted deposits as on Mar 31	Form DPT 3 – Annual Return	June 30
2.	Report foreign liabilities and assets with RBI based on unaudited / audited financials	FLAIR with RBI	July 15,
3.	Reporting of revised foreign liabilities and assets with RBI based on audited financials.	Revised FLAIR with RBI (if applicable)	September 30
For Limited Liability Company			
Sl. No	Particulars	Type of Return	Filing due date
1.	Report foreign liabilities and assets with RBI based on unaudited / audited financials	FLAIR with RBI	July 15,
2.	Reporting of revised foreign liabilities and assets with RBI based on audited financials.	Revised FLAIR with RBI (if applicable)	September 30



RBI Regulatory updates (2/3)

Constitution on functioning of Asset Reconstruction Company ('ARC')

As announced during Union Budget 2021, RBI, vide Press Release dated April 19, 2021, notifies constitution of a Committee on functioning of ARCs and to review regulatory guidelines applicable to them.

The Committee to undertake a comprehensive review of the working of ARCs in the financial sector ecosystem and recommend suitable measures for enabling such entities to meet the growing requirements of the financial sector.

The action points to be covered by the Committee will be as under:

- Review of existing legal and regulatory framework applicable to ARCs and recommend measures to improve efficacy of ARCs;
- Review of role of ARCs in resolution of stressed assets including under Insolvency & Bankruptcy Code ("IBC"), 2016;
- Suggestions for improving liquidity in and trading of security receipts;
- Review of business models of the ARCs;
- Any other matter relevant to the functioning, transparency and governance of ARCs.

The Committee will submit its report within three months from the date of its first meeting. Department of Regulation, Reserve Bank of India would be providing the necessary secretarial support to the Committee.



RBI Regulatory updates (3/3)

Relaxations in the period of parking of unutilized proceeds of External Commercial Borrowings ('ECB') in term deposits

RBI, vide Circular dated April 07, 2021, provides relaxations to the period of parking of unutilized proceeds of ECB in term deposits with AD Category-I banks from existing limit of 12 months only to more than 12 months for unutilized ECB proceeds drawn down on or before March 01, 2020, to be allowed to hold upto March 1, 2022. This relaxation has been provided in light of requests received from various stakeholders as a one time relaxation.

All other provisions of the ECB policy remain unchanged. AD Category-I banks have been directed to bring the contents of this circular to the notice of their constituents/ customers.

RBI specifies Category I Alternative Investment Funds (AIFs) set up as trust and registered with SEBI under SEBI (Alternative Investment Fund) Regulations, 2012, as 'qualified buyers'

The Reserve Bank of India, in exercise of the powers conferred by the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has specified Category I Alternative Investment Funds ("AIFs") set up as trust and registered with Securities and Exchange Board of India under Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, as 'qualified buyers', subject to the following conditions:

- The AIF which has invested in an asset reconstruction company ("ARC") shall not invest in the security receipts issued by that ARC;
- The AIF shall not invest in the security receipts issued on the underlying loans of any of its associate or group company;
- The AIF shall not invest in the security receipts backed by non-performing assets of banks which hold equity of more than 10% in that AIF.

INSOLVENCY AND RESOLUTION UPDATES

APRIL 2021



IBC - Regulatory updates (1/2)

Supreme Court rules that tax dues not forming part of resolution plan cannot be recovered by Government¹

In the case under consideration, the issue for consideration before Supreme Court was whether tax dues not forming part of resolution plan under Insolvency and Bankruptcy Code, 2016 ('IBC') can be recovered by the Government. Key observations of the Supreme Court –

- Section 31(1) of IBC which provides that resolution plan is binding on the Corporate Debtor, its employees, members, creditors and other stakeholders was amended to include Government
- The said amendment is clarificatory in nature – Even in absence of such amendment, Government would be covered within the ambit of creditors / other stakeholders
- Finance Minister in her speech had mentioned that –
 - The Government will not make any further claim after resolution plan is approved
 - No criminal proceedings will be initiated against successful resolution applicant; it is the previous promoters who shall be proceeded against
- Basis the above, Supreme Court has held in favour of the Corporate Debtor (taxpayer) as under –
 - Once a resolution plan is duly sanctioned under IBC, the claims provided in the resolution plan shall stand frozen and will be binding on the Corporate Debtor and all stakeholders including the Central Government, any State Government or any local authority
 - All tax dues which are not a part of resolution plan, shall stand extinguished
 - No person will be entitled to initiate or continue any proceedings in respect of a claim not forming part of resolution plan



IBC - Regulatory updates (2/2)

Central Government amends Section 4 of the Insolvency and Bankruptcy Code, 2016 relating to minimum amount of default for matters relating to pre-packaged insolvency resolution process of corporate debtor

In Section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (3 of 2021) relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is INR 1,00,000/- (Indian Rupees One Lakh only), the Central Government hereby specifies INR 10,00,000/- (Indian Rupees Ten Lakh only) in variation from the earlier INR 1,00,000/- (Indian Rupees One Lakh only) as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtor under Chapter III-A of the Code relating to making an application for initiating pre-packaged insolvency resolution process with respect to a corporate debtor classified as a micro, small or medium enterprise (MSME) under sub-section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

The Insolvency and Bankruptcy Board of India notified the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 (“PPIRP Regulations”) to enable operationalization of Pre-packaged Insolvency Resolution Process (“PPIRP”)

Rule 4(1) relating to filing of application states that a corporate applicant shall make an application for initiating PPIRP under sub-section (1) of Section 54C of the Code relating to application to initiate PPIRP in Form 1, accompanied with affidavit, documents or records as referred in Annexures to the notification therein, in electronic form, along with a fee of INR 15,000/- (Indian Rupees Fifteen Thousand only). Provided that in case, electronic facility is not available for filing such application, the application and the accompanying documents may be filed in physical form, and wherever the accompanying documents are bulky, the same may be submitted in scanned portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.

The corporate applicant under sub-rule (1) of Rule 4 mentioned above shall serve a copy of the application to the Board by registered post or speed post or by hand or by electronic means, before filing it with the Adjudicating Authority.

SEBI REGULATORY UPDATES

APRIL 2021



SEBI Regulatory updates (1/3)

SEBI imposes penalty on promoters of Reliance Industries Ltd for not making public announcement u. T/O code

SEBI conducted an investigation against the irregularities in compliance with SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (“Takeover Regulations”) relating to issuance of 12 crore equity shares in January 2000 by Reliance Industries Limited (“RIL”) pursuant to the exercise of option on warrants attached with certain Non - Convertible Secured Redeemable Debentures (“NCD”).

It was alleged that RIL promoters together with Person Acting in Concert (PACs) have violated the provisions regulation 11(1) of Takeover Regulations. SEBI appointed Adjudicating Officer (AO) to inquire into aforesaid alleged violations against the RIL and PACs (‘Noticees’) and issued Show Cause Notice (SCN). In response to the SCN, Noticee submitted that the initiation of adjudication proceedings by the SEBI, is unreasonable, time barred and the show-cause notice ought to be set aside; the principal charge against the Noticee is ex-facie patently erroneous as Section 15H of the SEBI Act does not apply; the SCN seeks to impose greater penalties than those applicable on the date of the alleged violation; and requested not to pass any order in relation to this interim application or on the merits of the SCN or otherwise proceed in the captioned matter without granting an opportunity of personal hearing.

SEBI noted that the violation is a disobedience of the statutory provisions by which the acquisition of securities giving the Noticees enhanced control by the exercise of voting rights, etc. and these are violations which are continuing so long as the voting rights are acquired in violation of the letter and spirit of the law. Since the promoters and PACs have not made any public announcement for acquiring the impugned shares, hence the Noticees have not been complied with Regulation 11(1) of the Takeover Regulations.

SEBI further note that Noticees deprived the shareholders of their statutory rights/opportunity to exit from the company by not making public announcement and impose penalty of INR 25,00,00,000/- (INR Twenty-Five Crore Only) on Mr. Mukesh Ambani, Anil Ambani, Nita Ambani, Tina Ambani and other family members.



SEBI Regulatory updates (2/3)

SEBI extends relaxations with respect to procedural matters related to Issues and Listing pertaining to Rights Issue vide Circular dated April 22, 2021

Last year, in light of pandemic, SEBI, vide Circular dated May 6, 2020, had granted one time relaxations from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening up to July 31, 2020. Further, in light of the representations received from various market participants, vide SEBI Circular dated July 24, 2020, the validity of these relaxations were further extended for Rights Issues opening up to December 31, 2020.

Also, vide SEBI Circular dated January 19, 2021, the relaxation mentioned in point (iv) of the SEBI Circular No. dated May 6, 2020 relating to an application for a rights issue being made only through Applications secured by Blocked Amount (“ASBA”) facility, was further extended for Rights Issues opening up to March 31, 2021.

Now, considering second covid wave, to ease and facilitate investors, the relaxation mentioned in point (iv) of the SEBI Circular dated May 6, 2020, is further extended and shall be applicable for Rights Issues opening up to September 30, 2021, provided that the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the SEBI Circular dated May 06, 2020 relating to obligations of Issuer along with Lead Merchant Banker.

In respect to mechanism and compliance requirements at point (iv) and (v) of the SEBI Circular dated May 6, 2020, the issuer along with Lead Manager(s), Registrar, and other recognized intermediaries (as incorporated in the mechanism) have also been directed to ensure the following:

- Refund for un-allotted / partial allotted application shall be completed on or before T+1 day (T: Basis of allotment day);
- Registrar to the issue, shall ensure that all data with respect to refund instructions is error free to avoid any technical rejections. Further, in case of any technical rejection of refund instruction, same shall be addressed promptly.



SEBI Regulatory updates (3/3)

SEBI imposed penalty for not complying with the disclosure requirements under SEBI (Prohibition of Insider Trading) Regulations, 2015 in relation to ESOP received and sold by him

SEBI imposed penalty of INR 1,00,000 (INR One Lakh) on Victor Peter Christopher (“Noticee”) an employee of ITC limited (“ITC”) for not complying with the disclosure requirements of Regulation 7(2)(a) read with Regulation 7(2)(b) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”).

SEBI observed that Noticee was allotted Employee Stock Options by ITC and the Noticee had exercised his options and equity shares was allotted by ITC. Subsequently, the Noticee sold the shares. Further, Noticee also traded in the scrip of ITC in the derivative segment. SEBI Noted that, Noticee failed to disclose details of his transactions in time and made subsequent belated disclosures. SEBI further noted that, Noticee already faced great deal of suffering due to ignorance of law. Hence, penalty imposed is commensurate with the violation on the part of the Noticee.

Adjudication Order No.: Order/PM/SM/2021-22/11381

SEBI grant exemption to acquirers from complying with the requirement of open offer for undertaking non-commercial transactions in the nature of family reorganization

Madhushree Private Trust and Pawan Private Trust (together called as Proposed Acquirers) filed an application seeking exemption from the applicability of regulations 3 and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“Takeover Regulations, 2011”) to the SEBI. Proposed acquirers submits that, the proposed acquisitions are in furtherance to an internal reorganization within the Promoter Family and intended to streamline succession and promote welfare of Promoter Family. The proposed direct and indirect acquisitions would be non-commercial transactions which would not affect or prejudice the interests of the public shareholders of the Target Company in any manner. After considering the facts and circumstances, SEBI grant exemption to the proposed acquirers from complying with the requirement of regulations 3(1) and 4 the Takeover Regulations, 2011 with respect to direct acquisitions in the Kaveri Seed Company Limited (Target Company) subject to the conditions prescribed in the order. **SEBI stated that, the exemption granted is limited to the requirements of making open offer under the Takeover Regulations, 2011 and not in any other requirements under the SEBI regulations.**

CORPORATE LAW UPDATES

APRIL 2021



Corporate Law - Regulatory updates (1/4)

Statutory Due Dates for FY 2021-22

Every company / LLP is required to file various forms, returns and documents with the Registrar of Companies. We have provided a gist of standard statutory filings for FY 2021-2022 along with timelines below for quick reference.

For Company (1/2)			
Sr. No	Particulars	Type of Return	Filing due date
1.	Disclosure of significant beneficial ownership	Form BEN 2	Within 30 days from receipt of form BEN1
2.	Reporting of any outstanding dues to micro or small enterprises supplies during Oct 1 – Mar 31	Form MSME I	April 30
3.	Reconciliation of Share Capital Audit Report for Oct 1 to Mar 31 – for all unlisted Public Companies (including private companies which are subsidiary of public company)	Form PAS-6	Within 60 days of half year i.e. on or before May 30
4.	Directors holding active DIN as of Mar 31 st	Form DIR 3 – KYC or DIR-3 KYC WEB	On or before Sep 30
5.	Annual financial statement of company	Annual filings (Form AOC-4)	30 days from the date of AGM but not beyond Oct 30 for filing audited financials
6.	Annual return of Company	Annual filings (Form MGT-7)	60 days from the date of AGM but not beyond Nov 30 for filing annual return
7.	Appointment of Auditor	ADT-1	Within 15 days of AGM;



Corporate Law - Regulatory updates (1/4)

For Company (2/2)

Sl. No	Particulars	Type of Return	Filing due date
8.	Filling of resolution post AGM	MGT – 14	within 30 days from date of AGM
9.	Appointment / resignation of directors	DIR 12	within 30 days from date of AGM
10.	Reporting of any outstanding dues to micro or small enterprises supplies during Apr 1 to Sept 30	Form MSME I	October 31
11.	Reconciliation of Share Capital Audit Report for Apr 1 to Sep 31 – for all unlisted Public Companies (including private companies which are subsidiary of public company)	Form PAS-6	Within 60 days of half year i.e. on or before Nov 30

For Limited Liability Partnership

Sl. No	Particulars	Type of Return	Filing due date
1.	Annual return of LLP	Form 11	May 30
2.	Designated Partner holding active DIN as of Mar 31 st	Form DIR 3 – KYC or DIR-3 KYC WEB	On or before Sep 30
3.	Statement of Accounts and Solvency	Form 8	On or before Oct 30

Corporate Law - Regulatory updates (2/4)



Ministry of Corporate Affairs ('MCA') clarification funds used for makeshift hospitals and temporary COVID care facility as CSR activity

MCA, vide General Circular No 05/2021 dated April 22, 2021, issues clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities as an eligible CSR activity. Further it has been stated that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities' would fall under the category of promotion of health care, including preventive health care, and, disaster management respectively.

The companies have been directed to undertake the aforesaid activities in consultation with State Governments subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by the Ministry from time to time.

Devadhaantu Comments:

The clarification would provide much needed aid to hospitals and Covid care facilities, in light of second corona wave.



Corporate Law - Regulatory updates (3/4)

NCLAT set aside the order of the NCLT, Ahmedabad Bench and allowed dispensation with the meetings of the Equity shareholder, Secured and Unsecured Creditors of the Appellant Company

An application was filed for the merger of by Ambuja Cements Limited (Appellant Company) and DIRK India Private Limited, wholly owned subsidiary (WOS) of Appellant Company, for the scheme of merger by absorption under section 230 for approval of the NCLT, Ahmedabad bench. During the application admission proceedings for the merger, dispensation was sought by the Appellant Company from holding of the meeting of equity shareholders and creditors. However, NCLT, Ahmedabad bench rejected the dispensation of meeting of equity shareholders and creditors stating that DIRK India Private Limited, being Transferor Company, has large number of shareholders and creditors and none of them have filed their consent and no objection towards the scheme of merger/amalgamation.

Aggrieved by the order of NCLT, Appellant filed appeal to NCLAT. Learned council submitted that the Equity Shares of the Transferor Company are not listed on any Stock Exchange, the entire Share Capital of the Transferor Company is held by the Appellant Company. The Transferor Company is a 100% a subsidiary of the Appellant Company. The Learned Counsel also relied upon the Judgement of Mahaamba Investments Limited Vs. IDI Limited, wherein the Hon'ble High Court of Bombay held that filing of separate Petition by the transferee company is not necessary. The Learned Counsel for the Appellant relied upon the Judgment and submitted that since the Transferor Company had already filed an Application before the Hon'ble NCLT, Mumbai and the Hon'ble NCLT, Mumbai allowed the Application by dispensing with the meeting of shareholders and creditors. Further, the Learned Counsel for the Appellant submitted that the quorum which passed the order in Vodafone Idea Limited.' is the same quorum which passed the impugned order. It is apparent that, the facts are similar in both the cases, but the NCLT Ahmedabad Bench did not follow its own order passed in Vodafone Idea Limited and it is contrary to the Principles of Judicial Discipline.

Upon consideration of the facts of both cases, NCLAT, Principal Bench, New Delhi ('NCLAT') is of view that NCLT Ahmedabad Bench should have taken into consideration its own order passed in 'Vodafone Idea Limited.', Wherein similar facts are involved in both the cases. Therefore, NCLAT set aside the order of the NCLT, Ahmedabad Bench and dispensed with the meetings of the Equity shareholder, Secured and Unsecured Creditors of the Appellant Company. The matter is remanded back to the NCLT for further Consideration.

Corporate Law - Regulatory updates (4/4)



LLP is legal entity and can enter into partnership arrangement with an Individual and other persons¹

Petitioner claims to be the designated partner of Sleeplock LLP which is a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (for short “LLP Act”). The Sleeplock LLP formed a partnership firm along with one Gourav Raj in the name and style of M/s.Morning Owl Sleep Solutions to carry out business. A partnership deed was executed and was submitted for registration before the Registrar of Firms, which was rejected on the ground that LLP cannot be a partner of a firm. Aggrieved by the rejection, petitioner filed appeal to Kerala High Court to consider whether LLP can be treated as a person which can be permitted to form a partnership with an individual.

The learned Counsel for the petitioner relied on the judgment of this Court in M.M.Pulimood² in support of his contention that the rejection is illegal. In this case, court was considering a case where a partnership deed was executed with a Private Limited Company, incorporated by the Registrar of Companies, as one of the partners. After analyzing the provisions contained in Section 4 of the Partnership Act as well as the definition of person in Section 3 (42) of the General Clauses Act, this Court found that there was no impediment in executing a partnership with a Private Limited Company incorporated under the Companies Act which comes under the definition of Person.

It was observed by the hon’ble High Court that the liability of partners of LLP and liability of the LLP as a partner under the Partnership Act would be different. The liability of partners in an LLP cannot have any relevance when the LLP itself becomes a partner, when it would be bound by the provisions in the Partnership Act. The liability of the LLP would be as in the case a company which joins a firm after entering into a partnership. In this case the partnership deed was executed between an individual and an LLP which is a body corporate having a legal entity and coming within the definition of “person”. The individual liability of the partners of LLP would not be relevant when the LLP itself would have liability independent of the liability of the partners. Therefore, the difference in the provisions under the Partnership Act relating to liability of the firm or the individual partners would not stand in the way of constitution of a partnership with an LLP. Thus, order of Registrar of Firms was set aside relying on M M Pulimood’s case considering LLP as a separate legal person to become partner in a partnership firm.

¹ Jayamma Xavier Vs Registrar of Firms [WP (C). No. 25741 of 2020(P) (Kerala High Court)]

² M.M.Pulimood vs. Registrar of Firm [1984 KLT 420 (Kerala High Court)]

IFSC UPDATES

APRIL 2021



IFSC - Regulatory updates (1/1)

IFSCA issues International Financial Services Centres Authority (Market Infrastructure Institutions) Regulations, 2021 vide Gazette Notification dated April 12, 2021

In Order to conduct, organize or assist in organizing any stock exchange, clearing corporation or depository in an International Financial Services Centres (“IFSC”) such persons will be required to be recognized under this regulation and shall also have to comply with these regulations.

Any Market infrastructure institution (“MII”) seeking recognition in an IFSC shall have to be a company incorporated in an IFSC in compliance with the shareholding requirements prescribed under these regulations.

The Regulations outline details pertaining to the following aspects:

- Requirements for Grant of Recognition;
- Regulatory Fees to be paid;
- Net Worth Requirements;
- Monitoring and Disclosure of shareholding;
- Listing of MII’s;
- Fit and proper requirements for s directors, key management personnel and shareholders of a recognized market infrastructure institution;
- Committees and Segregation of Regulatory Departments;
- Final Grant of Recognition;
- Renewal and Withdrawal of Recognition;
- Shareholding Requirements;
- Governance norms for MII’s;
- Code of Conduct for directors and key management personnel;
- General obligations of a Recognized Stock Exchange and a Recognized Clearing Corporation;
- General obligations of a Recognized Depository;