

Highlights

- MCA amends related party transactions, audit committee meeting norms etc.
- Relaxation in FDI requirements proposed by central government to encourage smart cities development
- MCA announces Company Law Settlement Scheme.
- SEBI (Real Estate Investment Trust) Regulations, 2014 and SEBI (Infrastructure Investment Trust) Regulations, 2014 approved.
- Draft Forward Contracts (Regulation) (Intermediaries) Rules, 2014 released
- Monitoring of Corporate Governance norms
- M/s DLF Limited Vs. Belaire Owners Association
- Supreme Court holds that situs of Drawee Bank shall be the sole factor to determine territorial jurisdiction of Courts to entertain Complaints under Section 138 of the Negotiable Instruments Act 1881
- Delhi High Court quashed a CBEC Circular providing unfettered power to the Audit Party of the Service Tax Department to call for records of the registered assesseees.

Corporate Brief

➤ MCA amends related party transaction provisions, audit committee meeting norms etc.

MCA has made changes in Companies (Meetings of Board and its Powers) Rules, 2014 (Company Rules) which inter alia includes the following:

- (a) Sub-rule 3(i) of Rule 15 of Company Rules, which provided that for the purposes of first proviso to sub-section (1) of section 188, a company having paid up share capital of ten crore rupees or more shall not enter into a contract or arrangement with any related party except with the prior approval of the company by a special resolution, has been removed.
- Further, Sub-rule 3(ii)(a) of Rule 15, now substituted as Sub-rule 3(a), of Company Rules has been amended. The amended rules provide that for the purposes of first proviso to sub-section (1) of section 188, a company shall not enter into a transaction(s) except with prior approval of the company by a special resolution, where the transaction(s) to be entered into as contract with respect to (i) sale, purchase or supply of any goods or materials, directly or through appointment of agents, exceeds 10% of the turnover or Rs. 100 crore, whichever is lower; (ii) selling or otherwise disposing of property, directly or through appointment of agents, exceeds 10% of the net worth or Rs. 100 crore whichever is lower; (iii) leasing of property exceeds 10% of the net worth, 10% of the turnover or Rs. 100 crore, whichever is lower; (iv) availing or rendering of services, directly or through appointment of agents, exceeds 10% of the turnover or Rs. 50 crore, whichever is lower. MCA has also clarified that the limits as specified above shall apply for transactions taken together with previous transactions, if any, during a financial year; [See MCA Notification F. No. 1/32/2013-CL-V-Part dated August 14, 2014]

- (b) **MCA** has also amended clause (iv) of Rule 4 of Company Rules. Consequently, audit committee meetings for 'consideration of financial statements including consolidated financial statements' cannot be conducted through video conferencing or other audio visual means. Earlier, this provision was applicable for 'consideration of account'. [See MCA Notification F. No. 1/32/2013-CL-V-Part, dated August 14, 2014]

➤ Relaxation in FDI requirements proposed by central government to encourage smart cities development

With a vision of developing 100 smart cities in India as satellite towns of larger cities and by modernizing existing cities, central government proposed an allocation of Rs. 7060 Cr in this financial year. To encourage development of smart cities, government has also proposed to relax the FDI requirements reducing built-up area conditions from 50,000 square meters to 20,000 square meters and minimum capital conditions from USD 10 million to USD 5 million with a three year post completion lock-in.

➤ MCA announces Company Law Settlement Scheme

MCA has introduced 'Company Law Settlement Scheme 2014' for condoning the delay in filing Annual Return and Financial Statements as required under section 92 and 137 of Companies Act 2013, respectively, with the registrar, granting immunity for prosecution and charging a reduced additional fee of 25% of the actual additional fee payable under the Act read with Companies (Registration Offices and Fee) Rules, 2014 for late filing of the documents. The scheme is in force for two months from August 15th, 2014 to October 15th, 2014. The scheme has also provided an opportunity to inactive companies to get their companies declared as 'dormant companies' by filing a simple application with reduced fees. [See General Circular No. 34/2014 dated August 12, 2014]

➤ SEBI (Real Estate Infrastructure Investment Trust) Regulations, 2014 and SEBI (Infrastructure Investment Trust) Regulations, 2014 approved.

SEBI has approved regulations for Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (InvITs) in a view to provide a framework for registration and regulation of REITs and InvITs.

Salient features of REITs.

- REIT shall be set up as a trust having parties such as Trustee, Sponsor and Manager.
- REITs shall invest in commercial real estate assets.
- On registration, funds shall be raised through an initial offer with a minimum issue size of Rs 250 crore. Value of the assets owned/proposed to be owned by REITs making initial offer shall not be less than Rs 500 crore.
- Subsequent funds may be raised through follow-on offer, right issue, qualified institutional placement etc.
- Units of REITs are to be mandatorily listed on a recognized stock exchange.

- Trading lot for such units shall be Rs. 1 Lakh. Salient features of InvITs.
- InvITs are to be set up a trust having parties such as trustee, sponsor, investment manager and project manager.
- InvITs shall invest in infrastructure projects.
- InvIT proposing to invest at least 80% of the value of the assets in the completed and revenue generating infrastructure assets shall raise funds only through public issue of units having minimum subscription size of Rs. 10 Lakhs and trading lot of Rs. 5 lakhs.
- Listing shall be mandatory for both publicly offered and privately placed InvITs.

[See SEBI Press Release PR No. 89/2014 dated August 10, 2014]

➤ *Draft Forward Contracts (Regulation) (Intermediaries) Rules, 2014 released*

Ministry of Finance, in the process of strengthening the regulatory framework of the commodity derivative markets, have sought public comments on draft of Forward Contracts (Regulation) (Intermediaries) Rules, 2014.

[See Press Information Bureau, Government of India, press release, dated August 20, 2014]

➤ *Monitoring of Corporate Governance norms*

SEBI advised stock exchanges to tighten their monitoring framework to monitor and review the compliance of corporate governance norms, laid down in revised clause 49 of listing agreement, by listed companies.

[See SEBI Circular CIR/CFD/DIL/4/2014 dated August 01, 2014]

Litigation Brief

➤ *M/s DLF Limited Vs. Belaire Owners Association*

The Competition Appellate Tribunal (COMPAT) in this case upheld the penalty of Rs.630 Crores levied by Competition Commission of India (CCI) on DLF holding that DLF has abused its dominant position in the relevant market. Affirming the decision of CCI in this regard COMPAT observed that "We cannot expect a leading player like DLF to go in this fashion. After all as a dominant player in the DLF market, it has a special duty to be within the four corners of the law... An abuse of dominance whether it is on one count or on many remains an abuse and therefore it must be dealt with iron hands."

COMPAT set at rest the following issues:

- What is the relevant market?
- Whether the Appellant (i.e. DLF) had a dominant position?
- Whether the Appellant abused its dominant position?

COMPAT endorsed the view of CCI that the Appellant was providing services relating to the construction and it amounted to service in the sphere of real estate business and

as such on that count held that the CCI had the jurisdiction to consider the effect of real estate services under Section 4 of the Act.

Further, COMPAT has set aside the modifications to the apartment buyers agreement as suggested by CCI on the grounds that if any acts are to be made in pursuance of the agreements (clauses of which became illegal after the advent of the Act) then under the provisions of the Act the actions of the builder would be invalid and not the provisions of agreement.

COMPAT has stated that the Act does not provide for amending and re-writing the agreements particularly when the agreements are in existence prior to promulgation of Sections 3 and 4 of the Act.

Other highlights of the decision of COMPAT are as under:

- Though the apartment buyers agreement authorizes DLF to increase the number of floors by constructing additional floors but the imposition of additional construction by addition of floors on the apartments of the allottees without any intimation and consent of the allottees amounts to abuse of dominant position.
- Increase in number of floors without timely intimation to the allottees lead to increase in super area by more than 5% and decrease in common area by more than 5% which is breach of the terms of the apartment buyers agreement.
- The arbitrary and one-sided increase in holding charges by DLF is the abuse of dominant position by DLF.

➤ *Supreme Court holds that situs of Drawee Bank shall be the sole factor to determine territorial jurisdiction of Courts to entertain Complaints under Section 138 of the Negotiable Instruments Act 1881.*

The Hon'ble Supreme Court in a recent landmark pronouncement in **Dashrath Rupsingh Rathod v. State of Maharashtra and another (Judgment, dated 01.08.2014)**, has held that only the Court within whose jurisdiction, the drawee bank, i.e. the bank on which the Cheque is drawn, is situated, shall have territorial jurisdiction to entertain a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 ("Act").

The Hon'ble Court has held that the offence under Section 138 of the Act is complete as soon as the Cheque is dishonored, and the Provisios to Section 138, providing for issuance of Demand Notice and procedure for filing of Complaint, merely defers the prosecution of the Accused, till the cause of action arises in favour of the Complainant and against the Accused.

It is also pertinent to note that the Hon'ble Court has consciously disallowed the request for non-application of ratio decidendi of this Judgment to the already pending Complaints, although it has carved out an exception for those cases which have reached the stage of Evidence, in as much as the Judgment would not apply to such cases.

Due to such retrospective application of this Judgment, a somewhat chaotic situation has ensued in the Lower Courts of the Country, inasmuch thousands of the Complaints are being returned to be filed afresh in the competent Court. However, this Judgment may also have a positive impact in as much as it has brought a certainty on the issue of territorial jurisdiction which has long been debated upon, and in many situations abused.

➤ *Delhi High Court quashed a CBEC Circular providing unfettered power to the Audit Party of the Service Tax Department to call for records of the registered assessees.*

The Division Bench of the Hon'ble Delhi High Court in a landmark pronouncement in ***Travelite (India) v. Union of India and others (Judgment, dated 04.08.2014)***, has quashed a CBEC Circular No. F.No. 137/26/2007-CX.4, dated 1.1.2008 ("said Circular"), which sought to provide unfettered power to the Audit Party of the Service Tax Department under Rule 5A(2) of the Service Tax Rules, 1993, to call for records of the assessee, for the purposes of conducting audit in order to safeguard the interest of the Revenue.

In the said case, the Assessee-Petitioner had challenged a Department's Letter, seeking production of certain documents for scrutiny by the Audit Party. The Petitioner had contended that under the Finance Act, 1994 ("Act"), the Department can only call for records for the purposes of scrutiny by the Audit Party under special circumstances prescribed under Section 72A of the Act.

The Hon'ble High Court, while upholding the contention of the Petitioner, held that the satisfaction of the Commissioner of the special circumstances, namely the assessee has filed a wrong declaration, or has availed wrongful credit of duty, or has operations in multiple locations, have to be established before such power is exercised. The Hon'ble Court has observed that the said mandatory conditions cannot be circumvented by way of the Impugned Circular.

The present Judgment is a welcome move towards curbing the high-handedness of the officials of the Department and would go a long way in protecting the rights of the bonafide assessee.

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