

Highlights

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Corporate Brief

➔ *Government issues draft rules for digital transactions made through prepaid payment instruments*

Ministry of Electronics and Information Technology, Government of India, has issued draft 'Information Technology (Security of Prepaid Payment Instruments) Rules, 2017' with a view to ensure adequate integrity, security and confidentiality of electronic payments effected through prepaid payment instruments. Highlights of the draft rules are: (a) Every e-PPI issuer will be required to develop an information security policy for security of the payment systems operated by it. (b) Every e-PPI issuer will be required to have in place and publish on its website and mobile applications the privacy policy and the terms and conditions for use of the payment systems operated by it in simple language, capable of being understood by a reasonable person. (c) Every e-PPI issuer will be required to carry out risk assessment to identify and assess the risks associated with the security of the payment systems operated by it. (d) The financial data of the customer shall be deemed to be sensitive personal data or information for the purpose of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 and every e-PPI issuer will be required to maintain and implement the practices and procedures prescribed in those rules.

➔ *Cabinet approves GST Bills*

The Union Cabinet, chaired by the Prime Minister Shri Narendra Modi, has approved the CGST Bill, IGST Bill, UTGST Bill and the Compensation Bill. The CGST Bill makes provisions for levy and collection of tax on intra-state supply of goods or services for both by the Central Government. The IGST Bill makes provisions for levy on collection of tax on inter-state supply of goods or services or both by the Central Government. The UTGST Bill makes provisions for levy on collection of tax on intra-UT supply

of goods and services in the Union Territories without legislature. The Compensation Bill provides for compensation to the states for loss of revenue arising on account of implementation of the goods and services tax for a period of five years as per section 18 of the Constitution (One Hundred and First Amendment) Act, 2016. [See Press Information Bureau, Government of India, Cabinet dated March 20th, 2017]

➔ *Guidelines on Insurance e-commerce issued*

Insurance Regulatory and Development Authority of India has issued guidelines on Insurance e-commerce, to promote e-commerce in insurance space which is expected to lower the cost of transacting insurance business and bring higher efficiencies and greater reach. Highlights of the guidelines are: (a) Person desiring to set up an ISNP (Insurance Self-Network Platform) for undertaking Insurance e-commerce activities in India should make an application for obtaining permission from IRDAI. The application should be accompanied with a non-refundable fees of Rs. 10,000 (plus taxes). (b) Existing ISNPs- Insurers and Insurance Intermediaries who already have set-up their own ISNP's or insurance portals for selling and servicing insurance products may continue to operate these platforms / portals. Such ISNPs- Insurers and Insurance Intermediaries will have to comply with the requirements of these guidelines within a period of three months and obtain necessary permission from IRDAI. (c) An ISNP granted permission needs to maintain, at all times, (i) integrity of the automatic data processing system, (ii) privacy of data, and (iii) adequate internal mechanism for reviewing, monitoring and evaluating its control, systems, procedures and safeguards. (d) A review of the controls, systems, procedures and safeguards put in place by the ISNP, needs to be carried out, atleast once a year, by an external certified information system auditor or Chartered Accountants with DISA qualification or CERT-IN expert at their cost. [Guidelines on Insurance E-Commerce issued by IRDAI dated March 9th, 2017]

➔ *Government notifies new Trademark Rules to simplify application filing*

Ministry of Commerce and Industry, Government of India has notified the new Trademark Rules, 2017 to streamline and simplify the process of trademark application filing, replacing the erstwhile Trademark Rules, 2002. Highlights of the new Trademark Rules, 2017 are: (a) The Trademark Rules, 2017 have specified the applicants for the purpose of the Trademark application into the following

categories- Individuals / Startups / Small Enterprises and Others. (b) The number of Trade Mark forms has been reduced from 74 to 8. (c) The fees for filing trademark have been increased to Rs. 5,000 for individuals, start-ups and small enterprises and Rs. 10,000 for others from the fee of Rs. 4,000. (d) To promote e-filing of trademark applications, the fee for online filing has been kept at 10% lower than that for physical filing. (e) Application for renewal of registration of a trademark may be filed within one year before the expiration of the registration of the trademark under Form TM-R with the prescribed fee. Earlier, the application for renewal could be filed only six months prior to the expiration of the trademark.

➤ **SEBI streamlines 'Scheme of Arrangement' rules for listed firms**

SEBI has, in consultation with the stock exchanges and market participants, decided to revise the regulatory framework for schemes of arrangement for listed firms. Highlights of the amendments are: (a) The listed entity will be required to provide its shareholders with more information pertaining to unlisted entity with which it proposed to enter into a scheme of arrangement. (b) Applicable information pertaining to the unlisted entity will now be required to be provided in the same format prescribed for issuing an abridged prospectus in Part D of Schedule VIII of the SEBI ICDR Regulations, as part of the explanatory statement of the notice that would be sent to the shareholders for passing of the resolution to approve the scheme of arrangement. (c) The disclosures made under this provision would be disclosed on the websites of the stock exchanges where the shares of the listed entity are listed. (d) The accuracy and adequacy of the disclosures made therein would have to be certified by a registered merchant bank after conducting due diligence on the unlisted entity. [See SEBI Circular CFD/DIL3/CIR/2017/21 dated March 10th 2017]

➤ **SEBI reviewed advertisement guidelines of mutual funds**

SEBI has reviewed the advertisement guidelines of mutual funds, with an objective to disclose mutual fund scheme's performance related information in a more effective and simple manner in advertisement. While reviewing the advertisement guidelines, SEBI has permitted celebrity endorsements of mutual funds at industry level for the purpose of increasing awareness of mutual funds as a financial product category, subject to certain conditions *inter alia* including the following: (a) Such celebrity endorsements should not promote a scheme of particular mutual fund or be used as a branding exercise of a mutual

fund house/ AMC. (b) Prior approval of SEBI will be required for issuance of any endorsement of mutual funds, which features a celebrity. [See SEBI Circular CIT/IMD/DF/23/2017 dated March 15, 2017]

➤ **SEBI directs stock brokers and DPs to redress complaints within 15 days**

With a view to make complaint redressal mechanism through SCORES (SEBI Compliants Redress System) more efficient, SEBI has directed all stock brokers and DPs to address / redress the complaint within a period of 15 days from the receipt of the complaint. Additional information, if required, should be sought from the complainant within 7 days from the receipt of the complaint. [See SEBI circular SEBI/HO/MIRSD/MIRSD6/CIR/P/2017/20 dated March 10th, 2017]

➤ **Disclosures relating to Regulatory Orders and Arbitration Matters on websites of Clearing Corporations**

SEBI has decided that, in order to improve transparency in disclosing the regulatory orders and arbitration awards issued by clearing corporations, all regulatory orders (orders against clearing members and arbitration / appellate awards by arbitrators) need to be made available to investors. Accordingly, the Clearing Corporations will post all regulatory orders and arbitration awards issued since June 20, 2012, on their websites. Further, all regulatory orders and arbitration / appellate awards as and when issued by Clearing Corporations will also be posted on their websites immediately. [See SEBI Circular No. dated March 16th, 2017]

Litigation Brief

➤ **Centrotrade Minerals and Metal Inc. Vs. Hindustan Copper Limited**

FACTS:

- ≡ The Appeals have been referred to a Bench of three Judges in view of the difference of opinion between the two Learned Judges of the Hon'ble Supreme Court of India
- ≡ The relevant facts of the case are that the parties had entered into a contract and some disputes and differences arose between them. The contract contained arbitration clause, which read as under:

"14. Arbitration. – All disputes or differences whatsoever arising between the parties out of, or relating to, the construction, meaning and operation or effect of the contract or the breach thereof shall be settled by arbitration in India through the arbitration panel of the Indian Council of Arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration.

If either party is in disagreement with the arbitration result in India, either party will have the right to appeal to a second arbitration in London, UK in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce in effect on the date hereof and the result of this second arbitration will be binding on both the parties. Judgment upon the award may be entered in any court in Jurisdiction.

- ≡ The Appellant invoked the arbitration clause and the Indian Council of Arbitration appointed an arbitrator. The Arbitrator gave a NIL award, aggrieved by which the Appellant invoked the second part of the arbitration clause and the arbitrator in London gave an award in favour of the Appellant.

ISSUE INVOLVED

Whether a settlement of disputes or differences through a two-tier arbitration procedure as provided for in clause 14 of the contract between the parties is permissible under the laws of India.

JUDGMENT

- ≡ Party autonomy is virtually the backbone of arbitrations. The parties to an arbitration agreement have the autonomy to decide not only the procedural law to be followed but also the substantive law. The contracting parties have liberty to choose jurisdiction of the arbitral tribunal. In the present case, the parties voluntarily agreed on a two-tier arbitration system through Clause 14 of the agreement.
- ≡ Further, the Supreme Court of India confirmed that the two-tier arbitration does not violate the fundamental or public policy of India.
- ≡ It was also observed by the Supreme Court of India that there is nothing in the Arbitration and Conciliation Act, 1996, that prohibits the contracting parties from agreeing upon a second instance or appellant arbitration, either explicitly or implicitly.

- ≡ Thus, it was held by the Supreme Court of India that they did not find anything fundamentally objectionable in the parties preferring and accepting the two-tier arbitration system.

The present judgment is a landmark judgment bringing into two-tier arbitration system in India, which could be beneficial to foreign players indulge in business in India as well as give an impetus to Indian commercial laws being in tandem with International laws.



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