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Corporate Brief

➤ Online filing system for Real Estate Investment Trusts (REITs) and Infrastructure Investments Trusts (InvITs)

SEBI has, in order to ease the operations for applying for registration, reporting and various compliances under SEBI (Real Estate Investment Trusts) Regulations, 2014 and SEBI (Infrastructure Investment Trusts) Regulations, 2014, introduced an online system for filing of REITs and InvITs. All the applications are to be submitted through an online process only, through SEBI Intermediary Portal [See SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/83, dated 24th July 2017]

➤ MCA constitutes GST Facilitation Cell

MCA, has constituted a GST Facilitation Cell ("The Cell") under Dr. Mohan Chutani, Economic Adviser, MCA. The Cell aims to ensure smooth and successful roll out of GST and will be in touch with all stakeholders as well as professional institutes and industry associations. [See MCA Office Memorandum dated 3rd July 2017]

➤ MCA constitutes Review Committees to review 10 year and above cases

MCA, after receiving reference from Hon'ble Minister of Law & Justice, Sh. Ravi Shankar Prasad in order to reduce arrears and backlog of cases in courts and review all pending cases in courts has initiated a Special Clearance Drive. For fulfilling the same, two review committees have been formed to review the cases under their jurisdiction. The Committees are free to invite official persons having acknowledged expertise in the field. [See MCA Order No. 16/37/2017- Legal, dated 25th July 2017]

➤ MCA amends Companies (Appointment and Qualification of Directors) Rules, 2014

MCA, has amended Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 which deals with appointment of independent directors by certain classes of public companies. As per the amended rules, the following classes of unlisted companies are required to appoint independent directors, under the rule: (i) joint venture; (ii) wholly owned subsidiary and (iii) dormant company shall be exempted from appointment of two independent directors. [See MCA Notices & Circulars dated 5th July 2017]

➤ SEBI provides for online system for Foreign Venture Capital Investors

SEBI, with a view to ease operations for registration, reporting and for various compliances under SEBI (Foreign Venture Capital Investors) Regulations, 2000, has introduced an online system for submitting of applications on the SEBI Intermediary Portal. This was made operational from 1st July 2017. [See SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2017/75 dated 6th July 2017]

➤ RBI to issue new currency notes of Rs. 20

RBI, will introduce a new batch of banknotes with inset letter "S", bearing the signature of Dr. Urjit R. Patel, Governor, RBI. The design will be similar in all aspects to the Rs. 20 banknotes in the same series issued earlier. RBI, further clarified that all banknotes issued in the past continue to be a legal tender. [See RBI PR dated 19th July 2017]

GST Brief

➤ At the stroke of the midnight hour, when the world sleeps, India awakes to life and freedom from multiple indirect taxes

The Goods and Services Tax, was launched at midnight on 30 June 2017 by the Prime Minister of India, Narendra Modi, in a historic midnight (30 June – 1 July) session of both the houses of parliament at the Central Hall of the Parliament. It has formulated a country-wide indirect tax that will replace various indirect taxes like Central Excise Duty, Service Tax, State Sales Tax, Octroi and Value Added Taxes levied by different states, creating a unified market across India. This system of taxation has two components – central GST which will be collected by the Central Government and state GST, controlled and collected by the State Government – that will be levied simultaneously on all transactions, except those exempted.

➤ *Exporters need not pay IGST if bond furnished*

Vide Customs Circular, if a bond or letter of undertaking is furnished, then they can be exempted from paying IGST at the time of exporting goods and services. Even where, the tax has been paid, then a refund can be claimed. [See C.B.E & C. Circular No. 2/2/2017- GST, dated 4th July 2017]

➤ *Government allows stickers with GST on unsold items*

Consumer Affairs Ministry, through its clarification allowed unsold prepackaged items, which have been manufactured before rollout of GST to have stickers with revised rates alongwith MRP. This will be in effect till 30th September 2017. [See Ministry of Consumer Affairs, Food and Public Distribution, Department of Consumer Affairs, Instruction No. WM- 10(31)/2017, dated 4th July 2017]

➤ *GST Council raises cess on cigarettes*

GST Council, in its meeting raised cess on cigarettes which had fallen under the GST Regime, which rolled out from 1st July 2017. Any reduction in tax incidence on mass assumptions would be welcome, the same is unacceptable on demerit good like cigarettes. [See Notification No. 3/2017- Compensation Cess (Rate), dated 18th July 2017]

➤ *Exemption from IGST to services imported by unit/developer in Special Economic Zone (SEZ) for authorized operators*

Central Government, in public interest and on recommendations by the GST Council, exempted services imported by a unit or developer in SEZ for authorized operations from the preview of IGST. [See Notification No. 18/2017- Integrated Tax (Rate), dated 5th July 2017]

➤ *Sale of old gold jewellery will not attract GST on exchange*

Finance Ministry, clarified that sale of old gold for consideration will not attract GST. Accordingly, sale of old jewellery by an individual won't attract provisions of section 9(4) of the GST Act and the jeweller will not be liable to pay tax under reverse charge mechanism on such purchase. [See <http://cbec.gov.in>]

RERA Brief

➤ *Clarification for project Registration Process*

Maharashtra Real Estate Regulatory Authority, has issued clarification regarding project registration under MahaRERA. The major issues on which the clarification was issued: (i) all documents should be legible and clear. Blur documents will not be accepted; (ii) declaration in Form B should be in the prescribed format. Promoters are not allowed to remove or add any clauses in the declaration; (iii) some fields in the application are mandatory, even if some information is not mandatory, then also maximum information should be provided. [See Circular No 06/2017, dated 17th July 2017]

➤ *Standard Operating Procedure for Updating Registered Projects*

Maharashtra Real Estate Regulatory Authority, has issued clarification regarding standard operating procedure for updating registered projects. Section 11(1) of the RERA, 2016 requires every promoter of registered real estate project to carry out one quarterly updates of registered project on the MahaRERA website. Rs. 500 will be taken as fee on an annual basis. Promoters should ensure that the projects are updated on a regular basis or atleast once in ninety days. If it is bought to the notice of MahaRERA that it is not updated, then strict action will be taken by MahaRERA. [See Circular No 08/2017, dated 17th July 2017]

➤ *States notify RERA rules, establish State Authority & launch websites*

The states/ UT's which have notified RERA rules are: Andaman & Nicobar Islands, Andhra Pradesh, Bihar, Chandigarh, Chhattisgarh, Dadra & Nagar Haveli, Daman & Diu, National Capital Territory of Delhi, Gujarat, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Odisha, Puducherry, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand, Haryana & Karnataka.

Andaman & Nicobar, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, Madhya Pradesh, Maharashtra

and Punjab have established Permanent Real Estate Authority. Whereas, Andhra Pradesh, Bihar, National Capital Territory of Delhi, Haryana, Jharkhand, Kerala, Puducherry, Rajasthan, Tamil Nadu, Telangana, Uttar Pradesh, Gujarat, Karnataka, Mizoram, Odhisha and Uttarakhand have established an Interim Real Estate Regulatory Authority as on date.

Meanwhile, only 9 states i.e. Gujarat, Tamil Nadu, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Kerala & Uttar Pradesh have their website functional.

Litigation Brief

➔ *Aftab Singh Versus Emaar MGF Land Limited and Another*

FACTS:

1. Homebuyers booked villas/flats/plots in residential projects getting developed by EMAAR MGF in Gurgaon/Mohali. Builder Buyers' Agreements were executed but the builder failed to deliver timely possession of the projects.
2. Consequently, homebuyers filed consumer complaint before the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) to seek—
 - ≡ delivery and possession of the villas/flats/plots; and/or
 - ≡ refund of the amounts deposited by the homebuyers along with the compensation.
3. In response, the Opposite Party filed an application under Section 8 of the Arbitration and Conciliation Act seeking that the parties be referred to Arbitration since there is an Arbitration Clause embedded in the Builder Buyers' Agreements.

ISSUE INVOLVED:

Whether the newly inserted sub-section (1) of Section 8 of the Arbitration Act mandates Consumer Forums, constituted under the Consumer Act, to refer the parties to Arbitration in terms of valid Arbitration Agreement?

SUBMISSIONS:

Counsel for the Complainants:

1. Section 8 of the Arbitration Act does not have an overriding effect on the provisions of Consumer Protection Act.
2. Section 3 of the Consumer Act states that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.
3. Also, the intention of the legislature is evident from the conspicuous absence of the words "*notwithstanding anything to the contrary in any law for the time being in force*" in the amended Section 8 of the Arbitration Act.

Counsel for the Opposite Party:

1. As per Section 8 of the Arbitration Act, a 'Judicial Authority' shall refer the parties to arbitration irrespective of any judgment, decree or order of Supreme Court or any Court, if there is a valid arbitration agreement between the parties.
2. The Supreme Court, in a catena of judgements, has held that the NCDRC is a "Judicial Authority" within the meaning of Section 8 of the Arbitration Act. Thus, on filing of an application under Section 8 of the Arbitration Act, the consumer forum(s) becomes a "Judicial Authority".

DECISION OF THE TRIBUNAL:

1. Adjudication of certain categories of proceedings is reserved by the legislature exclusively for public fora as a matter of public policy.
2. Therefore, where the cause/dispute falls under such category, the court will refuse to refer the parties to arbitration, under Section 8 of the Arbitration Act, even if the parties might have agreed upon arbitration as the forum for settlement of such disputes.
3. Therefore, the Hon'ble NCDRC rejected the arguments of the Opposite Party and held that an Arbitration Clause in such kind of agreements cannot circumscribe the jurisdiction of a Consumer Forum, notwithstanding the amendments made to Section 8 of the Arbitration Act.



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