

Highlights

- The Medical Devices Rules, 2017 notified
- MCA amends the Companies (Incorporation) Rules, 2014
- Companies located in multi services Special Economic Zones are exempt from certain provisions of the Companies Act, 2013
- SEBI revises M&A norms
- Master Directions on Access Criteria for Payment Systems
- Service Charges in Restaurants not Mandatory
- Ardee Infrastructure Pvt. Ltd Versus Ms. Anuradha Bhati

Corporate Brief

➔ **The Medical Devices Rules, 2017 notified**

Ministry of Health and Family Welfare, Government of India has notified Medical Devices Rules, 2017 ('The Rules') under the Drugs and Cosmetics Act, 1940, which shall come into force with effect from January 01st, 2018. Highlights of the Rules are: (a) Under the Rules, medical devices are classified as per Global Harmonization Task Force practice, based on associated risks, into Class A (low risk), Class B (moderate low risk), Class C (moderate high risk) and Class D (high risk). (b) The manufacturers of medical devices will be required to meet risk proportionate regulatory requirements specified in the Rules which are based on best international practices. (c) A system of 'Third Party Conformity Assessment and Certification' through Notified Bodies is envisaged. The Notified Bodies will be accredited by the National Accreditation Board for Certification Bodies. These bodies will undertake verification and assessment of quality management system of medical device manufacturers of Class A and Class B category. (d) The manufacturing licenses for Class A medical devices will be granted without prior audit of manufacturing site. In such case, manufacturer will be required to do self certification of compliance, based on which the license will be issued. (e) Manufacture of Class A and Class B medical devices will be licensed by State Licensing Authorities concerned. Manufacture of class C and class D medical devices will be regulated by Central Licensing Authorities. (f) There will be requirement of periodic renewal of licenses and manufacturing and import license will remain valid till these are suspended or cancelled or surrendered. (g) The entire process from submission of application to grant of permission / license will be processed through online electronic platform. [See Notification F. No. X. 11035/374/2016-DFQC issued by Ministry of Health and Family Welfare dated 31.01.2017]

➔ **MCA amends the Companies (Incorporation) Rules, 2014**

MCA has amended the Companies (Incorporation) Rules, 2014 ('The Rules'). The amendments made in the Rules *inter*

alia include the following: (a) the Certificate of Incorporation issued by the Registrar will mention permanent account number of the company issued by the Income Tax department. [See MCA Notification F.No. 1/13/2013 CL-V-Part I-Vol.II dated January 25th, 2017]

➔ **IFSC Companies located in multi services Special Economic Zones are exempt from certain provisions of the Companies Act, 2013**

MCA has notified exemptions / amendments / relaxation of certain provisions of the Companies Act, 2013 to private companies which are licensed to operate by the RBI / SEBI / IRDAI located in an International Financial Services Centre ('IFSC') in an approved multi services Special Economic Zone set up under the Special Economic Zone Rules, 2006, i.e. Specified IFSC private company. The provisions of the Companies Act, 2013 for which the exemptions / amendments / relaxations have been made for Specified IFSC private companies *inter alia* include the following (a) Such companies can be formed only as a company limited by shares. (b) Such companies shall have a suffix "International Financial Service Company" or "IFSC" as part of its name. (c) Such companies shall state in its memorandum of association, its objects to do financial services activities as permitted under the Special Economic Zones, 2005. (d) Registered office of such companies shall be at the International Financial Services Centre located in the approved multi services SEZ where it is licensed to operate, at all times. The registered office of such companies may be changed from place to another within the International Financial Service Centre after passing resolution of the Board of Directors. (e) Such companies are permitted to convene their extraordinary general meeting at any place within or outside India, subject to consent of all the shareholders. (f) The requirement to conduct internal audit will be applicable only if their articles provide for the same. (g) The provisions pertaining to constitution of audit committee, nomination and remuneration committee and stakeholders committee. (h) Section 135 which pertains to Corporate Social Responsibility norms shall not be applicable to such companies for a period of 5 years from the date of commencement of their business. [See MCA Notification F.No. 3/1/2015-CL-I-(Part 1) dated January 04th, 2017]

➔ **SEBI revises M&A norms**

SEBI has revised and streamlined the regulatory framework governing scheme of arrangement. Highlights of the revisions *inter alia* include: (a) In case of merger of an unlisted company with a listed company, the unlisted

company will be required to comply with the requirement of disclosure of material information as specified in the format for abridged prospectus. (b) With the objective to have wider public shareholding, the revision has been made requiring that the holding of pre-scheme public shareholders of the listed entity and QIBs of the unlisted company, in the post scheme shareholding pattern of the merged company should not be less than 25%. (c) Unlisted company can be merged with a listed company if it is listed on a stock exchange having nationwide trading terminals. (d) To ensure larger participation of public shareholders, the requirement to obtain their approval through e-voting has been extended to the specified cases. (e) With a view to simplify the process, schemes which provide for merger of a wholly owned subsidiary with the parent company will not be required to be filed with SEBI. Such schemes will be filed with stock exchanges with limited disclosures. [See SEBI Print Release PR No. 5/2017 dated 14.01.2017]

➤ *Master Directions on Access Criteria for Payment Systems*

RBI has issued the 'Master Directions on access criteria for Payment Systems' ('The Directions') under the Payment and Settlement Systems Act, 2007, to provide framework for scheduled / licensed banks, primary dealers / authorized payment system providers enabling them to apply for membership for payment systems. Highlights of the Directions *inter alia* include: (a) There will be 2 sets of access criteria viz. centralized payment systems (such as RTGS, NEFT system) and decentralized payment systems. (b) The Directions also set out the guidelines for obtaining membership to centralized payment systems and decentralized payment system. (c) Once an entity is admitted as a member, it will generally continue to be a member so long as it is permitted to accept deposits or its participation in the payment system is not found to be detrimental to the smooth functioning of the product / system in any manner or its membership is not suspended / revoked / terminated. [See *Master Direction DPSS.CO.OD.No. 1846/04.04.009/2016-17 dated 17th January, 2017*]

➤ *Service Charges in Restaurants not Mandatory*

Ministry of Consumer Affairs, Food & Public Distribution has clarified that restaurants billing 'service charges' in addition to taxes is optional and the consumer has discretion to pay 'service charge' or not. The move came in the wake of a number of complaints that hotels and restaurants are following the practice of charging 'service charge' in the range of 5-20% in lieu of tips, which a

consumer is forced to pay. The Department of Consumer Affairs has asked the State Governments to sensitize the companies, hotels and restaurants in the states regarding the provisions of the Consumer Protection Act, 1986, and also to advise the hotels/ restaurants to disseminate information through display at the appropriate place in the hotels/ restaurants that the 'service charges' are discretionary / voluntary and a consumer dissatisfied with the dining experience he / she can have it waived off. [See *Print Release issued by Press Information Bureau, Government of India, Ministry of Consumer Affairs, Food and Public Distribution on 02.01.2017*]

Litigation Brief

➤ *ARDEE INFRASTRUCTURE PVT. LTD VERSUS MS. ANURADHA BHATI*

The present case is a land mark Judgment by the Hon'ble High Court of Delhi on the issue whether the amended provisions of Sections 34 and 36 of the Arbitration and Conciliation Act would apply, where the arbitration proceedings commenced under the old Act?

FACTS

- ≡ The Appellant challenged the common Order, dated 31.05.2016 arising out of Petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ("said Act"). Vide the impugned order, the Appellants were directed to deposit a sum of Rs.2.70 crores without prejudice to the rights and contentions of the parties and subject to the deposit being made, it was directed that notice may be treated as issued to the Respondents on the objections filed by the Petitioners/ Appellants under Section 34 of the said Act.
- ≡ In the present case, the arbitral proceedings commenced on 07.06.2011 and accordingly, the Arbitral Award was passed on 13.10.2015. Being aggrieved by the Arbitral Award, the Appellants filed objections under Section 34 of the Act, challenging the Arbitral Award on 04.01.2016.

PROCEEDINGS

- ≡ The main controversy is with regard to applicability of amended provisions of the said Act as amended with effect from 23.10.2015 by the Arbitration and Conciliation (Amendment) Act, 2015 ("Amending Act"). Further, whether the Appellants would be entitled to an

automatic stay on Enforcement of Arbitral Award under Section 36 of the said Act?

- ≡ To resolve the controversy the Hon'ble High Court of Delhi deeply examined Section 26 of the Amending Act. It was pointed out that Section 26 is comprised of two parts. The First Part stipulates that nothing contained in the Amending Act shall apply to the arbitral proceedings commenced in accordance with the provisions of Section 21 of the Principal Act (said Act) before the commencement of the Amending Act (-i.e., on 23.10.2015), unless of course, the parties otherwise agree. The Second Part makes it clear that the Amending Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of the Amending Act.
- ≡ It was observed by the Hon'ble Court that if "to the arbitral proceedings" as used in the first part of Section 26 is restricted to only arbitral proceedings before the arbitrator then it would be clear that those situations, where arbitral proceedings commenced prior to 23.10.2015, but were not pending before the arbitrator, would have no reference either in the first part or the second part of Section 26 of the Amending Act.
- ≡ It was further observed by Hon'ble Court that the right to have the Arbitral Award enforced (which also comprises of the negative right of the award debtor to not have it enforced till his Objections under Section 34 of the said Act are heard and decided) is certainly an accrued right. Given the fact that the amended Section 36 takes away the right of an automatic stay of enforcement of an Arbitral Award, it is clear that the amendment introduced in Section 36 by virtue of the Amending Act would definitely impinge upon the accrued right of the party against whom the Arbitral Award is given after the arbitral proceedings have been held under the un-amended provisions. Since an accrued right is affected, unless a contrary intention appears in the amending statute, the amendments would have to be treated as prospective in operation.

Accordingly, the Hon'ble Court concluded by holding that the amended provisions pertaining to categories where the arbitral proceedings were initiated before 23.10.2015 and the Arbitral Award was also passed prior to 23.10.2015, would apply only if they were merely procedural and did not affect any accrued right. It was further held that the amendment to Sections 34 and 36, which pertain to the enforceability of an Arbitral Award, certainly affect the accrued rights of the parties and accordingly, the Objections filed by the Appellants under Section 34 of the said Act would have to be considered under the un-amended provisions of the Arbitration Act and consequently, the Appellants would be entitled to automatic stay.



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