

Highlights

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Corporate Brief

➔ Union Budget 2017-2018: Highlights

Finance Minister, Arun Jaitley tabled the Union Budget 2017-2018 on February 01, 2017. Highlights of the Union Budget 2017 are:

(a) Financial Sector: (i) Foreign Investment Promotion Board will be abolished and further liberalization of FDI policy is under consideration; (ii) An expert committee will be constituted to study and promote creation of an operational and legal framework to integrate spot market and derivatives market in the agricultural sector, for commodities trading; (iii) A mechanism to streamline institutional arrangements for resolution of disputes in infrastructure related construction contracts, PPP and public utility contracts will be introduced as an amendment to the Arbitration and Conciliation Act, 1996.

(b) Digital Economy: (i) A proposal to mandate all government receipts through digital means, beyond a prescribed limit, is under consideration; (ii) A proposal to create Payments Regulatory Board in the RBI by replacing the existing Board for regulation and supervision of payment and settlement systems is under observation; (iii) No transaction above Rs. 3 lakh would be permitted in cash subject to certain exceptions.

(c) Promoting Affordable Housing and Real Estate Sector: (i) Under the scheme for profit linked income tax, deduction for promotion of affordable housing carpet area instead of built up area of 30 and 60 sq. mtr. will be counted; (ii) The 30 sq. mtr. limit will apply only in case of municipal limits of 4 metropolitan cities while for the rest of the country including in the peripheral areas of metros, limit of 60 sq. mtr will apply; (iii) For builders for whom constructed buildings are stock-in-trade, tax on notional rental income will only apply after one year of the end of the year in which completion certificate is received; (iv) For joint development agreement signed for development of property, the liability to pay capital gain tax will arise in the year of the project is completed.

(d) Ease of Doing Business: (i) Threshold limit for audit of business entities who opt for presumptive income scheme increased from Rs. 1 crore to Rs. 2 crore. (ii) Commission payable to individual insurance agents will be exempt from the requirement of TDS subject to their filing a self declaration that their income is below taxable limit.

(e) Taxation: (i) A small size domestic company (total turnover / gross receipt in the previous year 2015-16 does not exceed Rs. 50 crore) will pay tax @25%; (ii) Transactions above Rs. 3 lakh should be permitted only by an account payee cheque / draft / use of electronic clearing system through a bank account; (iii) An individual / HUF shall be liable to deduct tax at source if payment of rent to resident exceeds Rs. 50,000 per month. The deductor will not be required to obtain TAN. [See Union Budget 2017-2018]

➔ MCA clarifies on closure of business of a foreign company in India

MCA has clarified that the provisions of winding up under the Companies Act, 2013 will also be applicable for closure of place of business of a foreign company in India as if it were a company incorporated in India, if such foreign company has issued prospectus or IDRs pursuant to the provisions of Chapter XXII of the Companies Act, 2013 which deals with the provisions related to companies incorporated outside India. [See MCA General Circular No. 01/2017 dated February 22nd, 2017]

➔ Financial Institutions permitted to invest in Masala bonds

RBI has permitted multilateral and regional financial institutions to invest in rupee denominated bonds (popularly known as 'masala bonds') issued by Indian entities, in order to provide more choices of investors to Indian entities issuing these bonds. [See A.P. (DIR Series) Circular No. 31 dated February 16th, 2017]

➔ RBI permits NRIs access to ETCD market

RBI has permitted NRIs access to the Exchange Traded Currency Derivatives ('ETCD') market to hedge currency risk arising out of their investments in India, with a view to enable additional hedging products for NRIs to hedge their investments in India. Currently NRIs are permitted to hedge their rupee currency risk through OTC transactions with AD banks. The access to ETCD will be subject to certain conditions *inter alia* including the following: (a) NRIs will designate an AD bank for the purpose of monitoring and reporting their combined positions in the OTC and ETCD segments. (b) The onus of ensuring the existence of the

underlying exposure rest with the NRI concerned. (c) The bank will consolidate the positions of the NRI on the exchanges as well as the OTC derivative contracts booked with the, and with other AD banks. [See A.P. (DIR Series) Circular No. 30 dated 02.02.2017]

➔ *SEBI permits FPIs invest in Unlisted Corporate Bonds*

SEBI has permitted Foreign Portfolio Investors (FPIs) to invest in the following instruments: (a) unlisted corporate debt securities in the form of non convertible debentures / bonds issued by public or private Indian companies; and (b) securitized debt instruments. Investment by FPIs in the unlisted corporate debt securities will be subject to minimum residual maturity of 3 years. [See SEBI Circular SEBI/ HO/ IMD/FPIC/CIR/P/2017/16 dated February 28, 2017]

➔ *Delegation of power for compounding of contravention*

RBI has delegated the power to compound the contravention for delay on filing the annual return on foreign liabilities and assets by all Indian companies which have received FDI in the previous years including current year, to Regional Offices. Accordingly applications for compounding the above contravention may be submitted by the concerned entities to the respective Regional Offices under whose jurisdiction they fall. For all other contraventions, applications may continue to be submitted to Foreign Exchange Department, 5th Floor, Amar Building, Sir. P.M.Road, Fort, Mumbai-400001. [See A.P. (DIR Series) Circular No. 29 dated February 02nd, 2017]

Litigation Brief

FACTS:

- ≡ The parties in the present case had entered into a partnership deed for carrying a hotel business and this partnership firm has been running a hotel with the name "Hotel Arunagiri". However, certain disputes arose out of the partnership deed between the parties/partners.
- ≡ Despite the partnership deed containing an arbitration clause, the Respondents filed a Civil Suit before the Trial Court (i) seeking a declaration that the Respondents, as partners are entitled to participate in the administration of

the said hotel; and (ii) a permanent injunction restraining the Appellant (one of the partner) from interfering with their right to participate in the administration of the said hotel.

- ≡ The Appellant moved an Application under Section 8 of the Arbitration and Conciliation Act, 1996, objecting the maintainability of the Suit on the ground that partnership deed contains arbitration clause and it is mandatory for the Court to refer the dispute to the Arbitrator. The Application was opposed by the Respondents submitting that since act of fraud were attributed to the Appellant, such serious allegations of fraud could not be referred to the Arbitrator.
- ≡ The Trial Court while dismissing the Application of the Appellant (which was reaffirmed by the Hon'ble High Court in Revision Petition filed by the Appellant) held that there were serious allegations as to fraud and malpractices committed by Appellant with respect to the finances of the partnership firm. Thus, the present Appeal before the Supreme Court.

ISSUE INVOLVED:

Whether mere allegation of fraud by one party against the other would be sufficient to exclude the subject matter of dispute from the arbitration?

JUDICIAL ANALYSIS:

- ≡ The Arbitration and Conciliation Act, 1996, does not make any provision excluding any category of disputes treating them as non-arbitrable.
- ≡ However, in certain pronouncements, the Court held that certain kind of disputes may not be capable of adjudication through the means of arbitration. Fraud is one such category where dispute would be considered as non-arbitrable. However, there is a difference between serious fraud and fraud simpliciter.

≡ In cases where the allegations of fraud are so serious and complicated, it becomes absolutely essential that such complex issues be decided only by the civil court on the appreciation of the voluminous evidence. Such cases should be treated as non-arbitrable. However, where there are allegations of fraud simpliciter and such allegations are merely alleged, the Court is of the opinion that it may not be necessary to nullify the effect of the arbitration agreement, as such issues can be determined by the Arbitral Tribunal.

≡ Therefore, mere allegations of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration. Otherwise, it may become a convenient mode of avoiding the process of arbitration by simply using the device of making allegations of fraud.

HELD:

In the present case, the allegation of fraud levelled by the Respondents that the Appellant had signed and issued a cheque of Rs.10,00,050/- of "Hotel Arunagiri" in favour of his son without the knowledge and consent of the other partners i.e. Respondents. This allegation of fraud is a mere matter of accounts and does not involve complex issue, which can be looked into and found out even by the Arbitrator. Thus, it is held that the allegations of purported fraud were not so serious and the Courts below, therefore, erred in rejecting the application of Appellant under Section 8 of the Act. The Appeal is allowed thereby relegating the parties to the Arbitration.



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