

## Highlights

### Real Estate & Infrastructure update

- The Real Estate (Regulation & Development) Act, 2016.
- Status of State Real Estate Regulatory Rules and State Real Estate Authority
- Know Your Rights as a Homebuyer Under RERA

### Corporate Brief

- Prudential guidelines on Banks investment in units of REITs and INVITs \*
- Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017
- Corporate Voluntary Liquidation Process Regulations notified
- Centre allows direct foreign lending for infrastructure projects
- Cabinet approves setting up of SPV to operate government e-marketplace portal
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- Lok Sabha passes bill to make Excise, Customs Acts compliant with GST
- The Central Goods And Services Tax ACT, 2017
- Draft GST rules allow e-filing of appeals, digital accounts
- FAQs on GST

### Litigation Brief

- Indus Mobile Distribution Private Limited & ORS **Versus** Datawind Innovations Private Limited & ORS

## Real Estate & Infrastructure

- The government has notified remaining sections of The **Real Estate (Regulation & Development) Act, 2016**. Hence the Act in entire has come in force with effect from 1st May, 2017, requiring all developers to mandatorily register their Projects as per the provisions of the Act.
- Many states have notified their Real Estate Regulatory Rules and established the State Real Estate Regulatory Authority for initiating the process of registration of the Project, while rules and establishment of authority in other states are awaited. For detailed list of status of State Real Estate Regulatory Rules and State Real Estate Authority click on : <http://zeus.firm.in/know-duties-homebuyer-rera-sunil-tyagi/>
- To know more about the (i) Benefits, (ii) Duties and (iii) Rights as a homebuyer under RERA, please click on : <http://zeus.firm.in/articles-media/rera-act/>

## Corporate Brief

- **Prudential guidelines on Banks investment in units of REITs and INVITs**

**RBI** has decided to permit banks to participate in Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) within the overall ceiling of 20% of their net worth permitted for direct investment in shares, convertible bond, debentures, units of equity-oriented mutual funds and exposures to Venture Capital Funds (both registered and unregistered) subject to certain conditions, *inter alia* including the following: (i) Banks should put in

place a Board approved policy on exposures to REITs / INVITs which lays down an internal limit on such investments within the overall exposure limits in respect of the real estate sector and infrastructure sector; and (ii) Banks should not invest more than 10% of the unit capital of a REIT/ INVIT. [See *RBI Notification RBI/2016-17/280 dated April 18<sup>th</sup>, 2017*]

- **Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017**

**The Insolvency and Bankruptcy Board of India** notified the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017 (Regulations) on 31 March 2017, to take effect from 1<sup>st</sup> April 2017, which provide a broad framework for the registration and regulation of Information Utilities ('IU'). The Regulations seek to put in place robust information infrastructure for a sound insolvency and bankruptcy process under the Insolvency and Bankruptcy Code ('The Code'), intended to facilitate availability of relevant information and ensure time bound completion of the insolvency and bankruptcy process. The highlights of the code are: (a) The Regulations read with the Code provide that only public companies with a minimum net worth of INR 50,00,00,000 are eligible to be registered as IUs. (b) The Regulations provide for an in-principle approval to be obtained by any person seeking to establish an IU which shall be valid for a maximum period of one year. (c) IUs are required to provide core services and other services in accordance with the Code and services incidental to these services with the permission of the Board. (d) IUs are required to store all the information received in a facility located in India and should have high quality data storage systems to avoid loss/ corruption of data. [See *Ministry of Corporate Affairs, Acts & Rules, Insolvency and Bankruptcy Code, Regulations issued by IBBI dated March 31<sup>st</sup>, 2017*]

- **Corporate Voluntary Liquidation Process Regulations notified**

**Insolvency and Bankruptcy Board of India** has notified the Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017 ('The Regulations') providing a complete framework for the voluntary liquidation of any corporate person. The regulations *inter alia*, specify the manner and content of public announcement, receipt and verification of claims of stakeholders, appointment and remuneration of liquidator, powers and functions of the liquidator, reports and registers to be maintained, preserved and submitted by the liquidator, realization of assets and distribution of proceeds to stakeholders,

distribution of residual assets, and finally dissolution of corporate person. [See the Gazette of India, Notification issued by Insolvency and Bankruptcy Board of India, dated March 31<sup>st</sup>, 2017]

### Centre allows direct foreign lending for infrastructure projects

**Union Cabinet** has approved the policy guidelines to permit financially sound state government entities to borrow directly from bilateral ODA (Official Development Assistance) partners for implementation of vital infrastructure projects. The guidelines will facilitate State Government entities to directly borrow from the external bilateral funding agencies subject to fulfillment of certain conditions and all repayment of loans and interests to the funding agencies

Such direct borrowings by state entities would not be counted in the calculation of their respective fiscal deficits, under the states' Fiscal Responsibility and Budget Management (FRBM) laws. This marks a shift from the existing system in which state government entities are not allowed to borrow directly from external agencies, but the Central government receives external development assistance on behalf of the state governments for state sector projects. Also, a state government is allowed to borrow only to such an extent, that its fiscal deficit does not exceed the laid down limit of 3 percent of its gross state domestic product (GDP).

[See Press Information Bureau, Ministry of Finance, Government of India dated April 19<sup>th</sup>, 2017]

### Cabinet approves setting up of SPV to operate government e-marketplace portal

**The Union Cabinet** has given its approval for setting up of a Special Purpose Vehicle to be called Government e-Marketplace (GeM SPV) as the National Public Procurement Portal as section 8 company registered under the Companies Act, 2013. GeM SPV will provide an end-to-end online marketplace for Central and State Government Ministries / Departments, Central & State Public Sector Undertakings (CPSUs & SPSUs), autonomous institutions and local bodies, for procurement of common use goods & services in a transparent and efficient manner. Meanwhile, the Cabinet also decided that Directorate General of Supplies & Disposal (DGS&D) shall be wound up and cease its functions by 31st October, 2017. [See Press Information Bureau, Government of India, Cabinet dated April 12<sup>th</sup>, 2017]

### Business Reform Action Plan 2017 released

**DIPP**, in partnership with the World Bank Group, released the Business Reform Action Plan (BRAP) 2017 for implementation by States and Union Territories on 13.04.2017.

The BRAP includes 405 recommendations for reforms on regulatory processes, policies, practices and procedures spread across 12 reform areas, such as, labour regulations enablers, contract enforcement, registering property, inspection reform enablers, obtaining utility permits, paying taxes, access to information and transparency enablers and sector specific reforms spanning the lifecycle of a typical business.

DIPP will carry out a comprehensive business-to-government (B2G) feedback exercise this year whereby feedback will be taken from businesses on the quality of implementation of the reforms claimed by the States and UTs. For each State/UT, the scores will be aggregated over all the surveys conducted to yield an overall score for the State/UT. The feedback scores will be used to generate a ranking of States/UTs in terms of reform implementation.

[See Press Information Bureau, Government of India, Ministry of Commerce and Industry dated April 13<sup>th</sup>, 2017]

## GST News

**GST – CONCEPT & STATUS As on 5th April, 2017 – Ministry of Finance** has released a 'Concept and Status of GST' detailing the benefit of implementing GST in place of the current taxation norms. The 'Concept and Status' entails not only the genesis of the idea of GST but also explains the whole concept of GST, the procedure followed to bring GST into reality, the GST Council concluding with the Salient features and benefits of GST. [See Central Board of Excise and Customs, GST, My GST, – CONCEPT & STATUS dated 5th Apr 2017]

### Lok Sabha passes bill to make Excise, Customs Acts compliant with GST –

**Lok Sabha** has passed a bill to ensure continuance of levy of excise on petroleum products and abolition of cess on some other items following GST rollout from July 1. The Taxation Laws (Amendment) Bill, 2017 seeks to amend the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Finance Act, 2001 and the Finance Act, 2005. [See prsindia.org, Bill Track, Industry/Commerce/Finance, Taxation Laws (Amendment) Bill, 2017 dated 7th Apr 2017]

- ➡ **The Central Goods And Services Tax ACT, 2017 – the Ministry of Law and Justice** has published the Central Goods And Services Tax Act, 2017 ('The Act'). The Act provides for the levy of the Central Goods and Services Tax (CGST) by the Centre on the supply of goods and services within the boundary of a state. Under the Act Supply includes sale, transfer and lease made for a consideration to further a business. Tax rates of CGST will be recommended by the GST Council and this rate will not exceed 20%. The centre may exempt certain goods and services from the purview of GST through a notification on the basis of the recommendations of the GST Council. Every person who makes supply of goods and services and whose turnover exceeds Rs 20 lakh will have to register in every state where he conducts business. The turnover threshold is Rs 10 lakh for special category states. Every taxpayer shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Bill. The compliance rating score will be updated at periodic intervals and be placed in the public domain.

[Gazette of India, Acts, Central Goods And Services Tax Act, 2017 dated 12th Apr 2017]

- ➡ **Draft GST rules allow e-filing of appeals, digital accounts** **Central Board of Excise and Customs** has released the draft GDT Rules according to which businesses will now be permitted to keep accounts and records on their computers under the Goods and Services Tax (GST) as well as file online applications for advance rulings and appeals and revisions against tax orders. Once an entry is made in registers, accounts and documents, they cannot be erased or corrected without attestation and if the registers are in electronic form, a log of every deleted entry would have to be maintained. The CBEC had sought comments from the public and now these comments would be taken up for approval by the GST Council in its meeting on May 18 and 19. [See Central Board of Excise and Customs, GST, GST Laws and Rules, Draft GST Rules, Accounts and Records dated 20th Apr 2017]

➡ **FAQs on GST –**

**The Ministry of Finance** has come out with FAQs on Goods & Services Tax. Highlights of the FAQ are: (a) Separate Registrations within the State - Single registration shall be given against 1 (one) Permanent Account Number (PAN) and all the other branches within the state can be registered as additional places of business. However, the assessee has an option to register the business verticals separately. (b) Requirements for E-commerce Operators

and Suppliers - All e-commerce operators are required to obtain registration irrespective of the threshold exemptions prescribed for turnover. Any supplier which makes a supply through an e-commerce operator will also be required to obtain registration even if the turnover is less than the threshold specified. Separately, the concept of matching returns / statements for the e-commerce operator and the supplier has been introduced. (c) Refund of wrongly Paid IGST / CGST / SGST - If an assessee pays CGST & SGST / IGST by wrongly assuming a transaction to be intra-state / inter-state then the wrongly paid tax cannot be adjusted against the CGST & SGST / IGST liability that arises subsequently. However, a refund can be sought for the wrongly paid tax. (d) Sales Returns - In case of return of goods by the buyer within: (i) 6 months of the Appointed Date, or (ii) after an additional 2 months if the Commissioner allows. Such return shall not be treated as a supply. However, if the goods are not returned within the time specified, then GST would be payable on such a transaction.

[See Press Information Bureau, Government of India, Ministry of Finance dated April 25<sup>th</sup>, 2017]

## Litigation Brief

### FACTS:

1. The Appellant and Respondent had entered into an agreement, dated 25.10.2014. The agreement contained an arbitration clause, relevant portions of which is read as under:
 

"18. *Dispute Resolution Mechanism:*  
*Arbitration: ...Such arbitration shall be conducted at Mumbai, in English language...*"

"19. *All disputes & differences of any kind whatever arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of courts at Mumbai only.*"
2. Certain disputes arose between the Respondent and the Appellant, pursuant to which two Petitions one under Section 9 and other under Section 11 of the Arbitration and Conciliation Act, 1996, were filed before the High Court of Delhi contending that since no part of action arose in Mumbai, only the courts of Delhi, Chennai (to and from where the goods were supplied) and Amritsar (registered office of Respondent No.1) could have jurisdiction over the matter.

3. The Delhi High Court confirmed the interim order and appointed arbitrator, directing the arbitration to be conducted in Mumbai. The Court further held that said exclusive jurisdiction clause would not apply on facts, as the courts in Mumbai would have no jurisdiction at all. Thus, an Appeal was preferred by the Appellant to the Supreme Court against this Order of the Delhi High Court.

#### ISSUE INVOLVED:

Whether, when the seat of arbitration is Mumbai, an exclusive jurisdiction clause stating that the courts at Mumbai alone would have jurisdiction in respect of disputes arising under the agreement would oust all other courts including the High Court of Delhi, whose judgment is appealed against?

#### JUDGEMENT:

1. The Supreme Court set aside the decision of the Delhi High Court and held that a choice of seat for the arbitration must be a choice of forum for remedies seeking to attack the award, even when no cause of action arises at the place of

the seat. An agreement as to the seat of an arbitration is analogous to an exclusive jurisdiction clause.

2. Emphasis was supplied on the distinction between 'seat' and 'venue' of arbitration. Since the seat of arbitration was at Mumbai, the courts in Mumbai will alone have the exclusive jurisdiction over the matter, even if the cause of action arose at a place different than Mumbai.
3. The Supreme Court further held that under the law of arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to 'seat' is a concept by which a neutral venue can be chosen by the parties to an arbitration clause, even if such neutral venue may not have jurisdiction. Thus, in an international commercial arbitration, having a seat in India, hearings may be necessitated outside India. In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but it would not have the effect of changing the seat of arbitration which would remain in India, and hence will be subject to Indian laws.



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