Highlights

- MCA amends the Companies (Accounts) Rules, 2014
- MCA amends the Companies (Corporate Social Responsibility) Rules, 2014
- RBI clarifies on non-resident guarantee for non-funded based facilities between two resident entities
- RBI amends External Commercial Borrowings norms
- Land Acquisition Ordinance gets President's Approval
- Ministry of Commerce and Industry relaxes Special Economic Zones norms
- Amendment in Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000
- Award on interest on interest pendent lite

Corporate Brief

MCA amends the Companies (Accounts) Rules, 2014

MCA has amended the Companies (Accounts) Rules, 2014. Highlights of the amendments are as follows: (a) Rule 2A has been inserted in the Companies (Accounts) Rules, 2014 to provide that if Board of Directors of a Company decides to keep books of accounts and other relevant papers at a place other than the Company's Registered Office under first proviso to sub-section (1) of section 128 of the Companies Act, 2013, notice in writing regarding address at which books of accounts are kept shall be filed with Registrar of Companies in Form AOC-5; (b) Fourth proviso to Rule 6 has also been inserted to provide that nothing in Rule 6 shall apply in respect of consolidation of financial statements by a company having subsidiary or subsidiaries incorporated outside India only for the financial year commencing on or after 1st April, 2014. *[See MCA Notification F.No. 1/19/2013-CL-V-Part dated January 16, 2015]*

MCA amends the Companies (Corporate Social Responsibility) Rules, 2014

MCA has amended the Companies (Corporate Social Responsibility) Rules, 2014 to provide that Board of a Company may also decide to undertake its Corporate Social Responsibilities ('CSR') activities through a Section 8 company established by the company itself, singly or alongwith its holding, subsidiary or associate companies or with any other company or holding, subsidiary or associate company of such other company or otherwise. Earlier Company was permitted to undertake its CSR activities through a company established under section 8 of the Act only if it was established by the company itself or its holding, subsidiary or associate company. *[See MCA Notification F.No. 1/18/2013-CL-V-Part dated January 19, 2015]*

RBI clarifies on non-resident guarantee for non-funded based facilities between two resident entities

RBI has clarified that residents that are subsidiaries of multinational companies can also hedge their foreign currency exposure through permissible derivative contracts executed with an AD Category – I bank in India on the strength of guarantee of its non-resident group entity. *[See A.P.(Dir Series) Circular No. 56 dated January 6, 2015]*

RBI amends External Commercial Borrowings norms

1. RBI has amended the External Commercial Borrowings (ECB) norms expanding the options of securities that consolidated creation of charge over securities for ECB. AD Category-I banks are permitted to create charge on immovable assets, movable assets, financial securities and issue of corporate and/or personal guarantees in favour of overseas lender/security trustee, to secure the ECB raised/ to be raised by the borrower, subject to the following conditions: (a) The underlying ECB is in compliance with the extant ECB guidelines, (ii) There exists a security clause in the Loan Agreement requiring the ECB borrower to create charge, in favour of overseas lender/security trustee, on immovable assets/movable assets/ financial securities/issuance of corporate and/or personal guarantee, and (iii) No objection certificate, wherever necessary, from the existing lenders in India has been obtained. *[See A.P.(Dir Series) Circular No. 55 dated January 1, 2015]*

2. RBI has simplified the procedure for rescheduling/restructuring of ECB and delegated the following powers to AD Category-I Banks: (1) Power to allow changes/modifications in the draw-down and repayment schedules of the ECB, reduction in the amount of ECB and increase in all-in-cost of ECB, irrespective of the number of occasions; (2) Power to permit changes in the name of the lender of ECB; and (3) Power to permit transfer of the ECB from one company to another in case of re-organisation at the borrower's level in the form of merger/ demerger/ amalgamation/ acquisition.

[See RBI A.P. (DIR Series) Circular No. 64 dated January 23, 2015]

Land Acquisition Ordinance gets President's Approval

Ordinance to amend the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act) gets President's assent. Highlights of the amendments are: (a) Definition of 'public purposes' has been amended to include private hospitals and private educational institutions as a part of infrastructure projects under its purview. Consequently, provisions of the Act relating to land acquisition, compensation, rehabilitation and resettlement shall be applicable if appropriate government acquires land even for such purposes. (b) Rule 10A has been inserted to empower appropriate government to exempt, by notification, any of the following projects from application of the provisions of Chapter II and Chapter III of the Act, namely, projects that are vital to national security or defence of India, rural infrastructure, affordable housing, industrial corridors and infrastructure and social infrastructure projects. Chapter II of the Act deals with determination of social impact and public purpose, and Chapter III of the Act deals with provisions related to safeguard food security; (c) Projects stated in Rule 10A have also been excluded from obtaining consent from affected families, required under first proviso to Section 2(2) of the Act; (d) Under the Act, if land acquired remained unutilized for a period of five years, it had to be returned to the original owner. The Ordinance has amended the time period to be five years, or any period specified for setting up of any project, whichever is later. *[See The Gazette of India, Ministry of Law and Justice, Legislative Department, No. 9 of 2014 dated December 31, 2014]*

Ministry of Commerce and Industry relaxes Special Economic Zone norms

Ministry of Commerce and Industry has amended the Special Economic Zone Rules, 2006. Highlights of the amendments are: (1) Non-processing area has been bifurcated into two categories. (i) Area where the social or commercial infrastructure and other facilities are permitted to be used by both the Special Economic Zone (SEZ) and Domestic Tariff Area (DTA) entities. (ii) Area where the social or commercial infrastructure and other facilities are permitted to be used only by Special Economic Zone (SEZ). (2) In the first category, no exemptions, concessions or drawback shall be admissible for creation of such infrastructure. (3) Category II shall be physically segregated from the DTA, non-processing area

specified in Category I and the processing area of the SEZ and the infrastructure for this part of non-processing area shall be eligible for exemptions, concessions and drawback. (4) An application in a specified format shall be submitted to the Development Commissioner indicating the portion of non-processing area where social or commercial infrastructure and other facilities are proposed to be used by both SEZ and DTA, accompanied with a copy of Infrastructure Plan and No-Objection Certificate from the State Government. (5) Area restrictions for the duty paid dual use non-processing area in the SEZ shall be- (a) for housing- not more than 25% of non-processing area, (b) for commercial- not more than 10% of non-processing area, (c) for open area and circulation area- not less than 45% of non-processing area, and (d) for social and institutional infrastructure including schools, colleges, socio-cultural centres etc. in the remaining area. (6) Floor Area Ratio or Floor Space Index shall conform to the norms of the concerned local authorities. *[See Ministry of Commerce and Industry, Notification F.No. C.1/2/2014-SEZ dated January 2, 2015]*

➲ *Amendment in Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000*

SEBI has amended the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000 by substituting the definition of 'Venture Capital Undertaking'. The amended definition provides that Venture Capital Undertaking means 'domestic company' (a) which is not listed on a recognized stock exchange in India at the time of making investment; and (b) which is engaged in the business for providing services, production or manufacture of article or things and does not include the following activities or sectors: (i) non-banking financial companies, other than Core Investment Companies in the infrastructure sector, Asset Finance Companies and Infrastructure Finance Companies registered with RBI; (ii) gold financing, (iii) activities not permitted under industrial policy of Government of India; (iv) any other activity which may be specified by the Board in consultation with Government of India from time to time. *[See SEBI Notification No. LAD-NRO/GN/2014-15/20/1972 dated December 30th, 2014]*

Litigation Brief

➲ *Award of interest on interest pendent lite*

In a recent judgment of M/s Hder Consulting (UK) Ltd. v. Governor State of Orissa through Chief Engineer, the Supreme Court has settled the much debated issue of whether the post-award interest can be awarded by an arbitral tribunal on *pendent-lite* interest under Section 31(7) of the Arbitration and Conciliation Act, 1996 (**"Act"**).

Section 31(7) of the Act, comprises of two parts: (i) the first part deals with pre-award interest i.e. interest from the date on which the cause of action has arisen till the date on which the award is made; and (ii) the second part deals with the post award interest i.e. interest which may be awarded by the Arbitral Tribunal on the whole or any part of the award and for the whole or any period from the date of the award till the date of payment.

The debate was on the issue whether the award of interest under the second part could be the interest awarded under the first part. Effectively, the debate was understood as whether "interest on interest" could be awarded.

The Hon'ble Supreme Court held as under:

1. Section 31(7) of the Act reflects that the term "sum" would include interest for the pre-award period awarded by the Arbitral Tribunal. Only if no interest is awarded, would "sum" comprise of only the principal amount;

2. At the post-award stage, the Arbitral award, as held above, is made in respect of a "sum" which includes the interest. Section 31(7)(b) of the Act states, "sum directed to be paid by an arbitral award" and does not have any words such as interest, principle, etc. The plain terms have to be interpreted without any additions. Thus, the usage of the term "interest on interest" seems inaccurate;

3. Therefore, any post award interest granted by the Tribunal under Section 31(7)(b) is on the "sum" to be paid by an arbitral award in total and a bifurcation of the sum as interest or principle may not be proper.

The decision of this case has been derived from the basic rules of interpretation of the provisions. The said judgment would encourage the parties to avoid unnecessary delays or prolonging of proceedings during the course of arbitration. Further, during the post-award stage, there would be a vast reduction in frivolous challenges to the enforcement of awards, since the parties would be paying heavy interest over the enlarged amount of claims.

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