

Highlights

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- Pegasus Assets Reconstruction Private Limited **VS.** Haryana Concast Limited and Another

Corporate Brief

➤ *Withdrawal of legal tender character of specified bank notes*

Government of India has withdrawn the legal tender character of the existing and any older series banknotes in the denominations of Rs. 500 and Rs. 1000 from midnight of November 08, 2016. A new series of bank notes called Mahatma Gandhi (new) series having different size and design, has been issued. Bank branches have been the primary agencies through which the members of public and other entities are exchanging the specified bank notes for bank notes in other valid denominations or depositing the specified bank notes for crediting to their accounts, upto and including the December 30, 2016. [See *RBI Notification No. RBI/2016-17/111 dated November 03, 2016*]

➤ *Amendments in Benami Transaction (Prohibition) Act, 1988*

The Benami Transactions (Prohibition) Act, 1988 ('The Act') has been amended. Highlights of the amendments *inter alia* include the following: (a) the definition of Benami transaction has been elaborated and extended to *inter alia* include transactions or an arrangement (i) where a property is held by a person for immediate or future benefit, direct or indirect, of a person who has provided the consideration for such property; (ii) in respect of a property carried out in a fictitious name; (iii) in respect of a property where the owner of the property is not aware of or denies the knowledge of such ownership, or (iv) in respect of a property where the person providing the consideration is not traceable or is fictitious. Earlier only 'transaction in which property is transferred to one person for a consideration paid or provided by another person' was included under the ambit of benami transaction. (b) Punishment for Benami transaction has been revised to imprisonment for a term not less than one year, which may extend to seven years and fine which could extend upto 25% of the fair market value of the property. Earlier punishment for benami transactions was imprisonment for a term which may extend to 3 years or fine or with both. (c) The act of giving false information to any

authority under the Act or furnishing false document in any proceedings under the Act, has also been made a punishable offence. Such person will be punishable for imprisonment for a term not less than 6 months which may extend to 5 years and fine upto 10% of the fair market value of the property. (c) Four layer institution has been set up for the implementation of the Act which includes, Initiating Officer, Approving Authority, Administrator, and Adjudicating Authority. (d) A new chapter with respect to Special Courts has been inserted in the Act. As per the amendments, Central Government will have power to designate one or more Courts of Session as Special Court, which will deal with the offences punishable under this Act. [See *The Gazette of India, the Benami Transactions (Prohibition) Amendment Act, 2016 dated August 11, 2016*]

➤ *Funding of Research, Workshops & Studies etc. under CDM Plan Scheme*

MCA has invited research proposals with the primary objective of "Funding Research and Studies, Workshops and Conferences etc." which is conceived as a component part of a Central Sector Plans scheme titled, "Corporate Data Management" proposed to be implemented by MCA. The main focus of this scheme is to utilize the wealth of data available with the MCA by way of sponsoring such research, studies etc. in areas related to corporate growth in overall Macroeconomics perspective. MCA has also annexed detailed guidelines for funding 'Research and Studies, Workshops and Conferences etc. The research proposals are to be submitted on or before 25.11.2016. [See *MCA Notification F.No. 1/5/2013 CL-V dated September 12th, 2016*]

➤ *Revision in fees for filing forms related to DIN*

MCA has amended the Companies (Registration Offices & Fees) Rules, 2014 to revise the fees payable for filing application for allotment of Director Identification Number ('DIN') with ROC, from zero to Rs. 500/- in case of one person companies and small companies. MCA has also prescribed fees for filing application for surrendering DIN as Rs. 1000/-. [MCA Notification [F. No. 01/16/2013 CL-V (Pt-I) dated 7th November, 2016]

➤ *District & Sessions Court, Shillong to be Designated as Special Court*

MCA in order to provide speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013, has designated the District & Sessions Court, Shillong as a Special Court having jurisdiction for the State of Meghalaya.

[MCA Notification [F. No. 01/12/2009-CL-I (Vol.IV) dated 17th November, 2016]

➤ **Issue of Pre-Paid Instruments to Foreign Tourists**

RBI has taken a number of steps to facilitate ease to foreign tourists visiting India during this dynamic time of Demonetization. In order to avoid inconvenience to foreign tourists, RBI has directed Authorized Persons to issue them Pre Paid instruments.

RBI has declared that passport may be treated as a valid document for issuance of the Pre-Paid instruments. [RBI/2016-17/127 A.P. (DIR Series) Circular No. 17 dated 11th November, 2016.]

➤ **Continuation of Legal tender character of the existing banknotes for foreign tourist for specified transactions**

RBI has, to grant some relief to the foreign citizens visiting India during the current scenario of demonization, announced that the older series banknotes in the denomination of Rs. 500 and Rs. 1000 ('specified notes') will continue to be legal tender until November 11, 2016 *inter alia* for the following transactions: (a) at international airports, for arriving and departing passengers, who possesses specified notes, not exceeding the value of Rs. 5000 to exchange them for notes which are legal tender, and (b) for foreign tourists, to exchange foreign currency / specified notes, the into legal tender not exceeding the value of Rs. 5000. Further RBI has announced that foreign citizen holding a foreign passport can exchange Rs. 5000 per week till December 15, 2016.

[RBI/2016-17/113 A.P. (DIR Series) Circular No. 16 dated 9th November, 2016 and RBI/2016-17/157 A.P. (DIR Series) Circular No.20 dated 25th November, 2016.]

➤ **Investment by Foreign Portfolio Investors (FPI) in corporate debt securities**

RBI has decided to expand the investment basket of eligible instruments for investment by foreign portfolio investors (FPIs) for corporate route to include the following: (a) FPIs will now be allowed to invest in unlisted corporate debt instruments in the form of non-convertible debentures / bonds issued by public or private companies. However minimum residual maturity of such instruments should be three years. Further RBI has provided that issuers cannot use these funds for investment in real estate business, the capital market and in purchase of land; and (b) specified securitized debt instruments.

Investments by FPI's in the unlisted corporate debt securities & securitized debt instruments shall not exceed Rs. 35,000 crore within the prescribed investment limit for corporate bond, at present being Rs. 2,44,323 crore. All such directions will be reviewed after a period of one year. Foreign Portfolio Investors ('FPI') are allowed to invest only in listed or to be listed debt securities. Investment in unlisted debt securities is permitted only in case of companies in the infrastructure sector.

[RBI/2016-17/138 A.P. (DIR Series) Circular No.19 dated 17th November, 2016.]

➤ **RBI provides clarification on hedging in External Borrowings (ECB)**

RBI has provided clarity on the direction on hedging in the ECB framework to bring uniformity in the hedging practices in the market to effectively address currency risk at the a systematic level. The clarifications *inter alia* include: 1) The ECB borrower will be required to cover both principal as well as coupon payments through financial hedges which should start from the time of each exposure. 2) Minimum tenure of one year of financial hedge would be required with periodic rollover ensuring that the exposure on account of ECB is not unhedged at any point during the currency of ECB. 3) Natural hedge, in lieu of financial hedge, will be considered only to the extent of offsetting projected cash flows / revenues in matching currency.net of all other projected outflows. 4) The designated AD Category-I bank will be having the responsibility of verifying that 100% hedging requirement is met. [RBI/2016-17/110 A.P. (DIR Series) Circular No. 15 dated 7th November, 2016]

➤ **Issuance of Rupee Denominated Bonds overseas by Indian Banks**

RBI, with a view to develop market of rupee denominated bonds overseas and also to provide an additional avenue for Indian banks to raise capital / long term funds, has decided to allow banks to issue (a) perpetual debt instruments qualifying and debt capital instruments, by way of rupee-denominated bonds, and (b) long term rupee denominated bonds overseas for financial infrastructure and affordable housing. [RBI/2016-17/107 A.P. (DIR Series) Circular No. 14 dated 3rd November,2016.]

➤ **Simple process for opening FPI Account**

SEBI has, to further ease the PAN verification process at the time of account opening of FPIs, decided that intermediaries can verify PAN of FPIs online from the authorized website of Income Tax Department while opening FPI accounts. However FPIs need to provide the copy of PAN card to their intermediaries within 60 days of account opening or before remitting funds out of India, whichever is earlier.

Litigation Brief

➡ *Pegasus Assets Reconstruction Private Limited Versus Haryana Concast Limited and Another*

The matter under consideration before the Hon'ble Supreme Court of India was with regard to a conflict between the Securitisation Act, 2002 on one hand and the Companies Act, 1956 on the other.

A specific conflict was identified between two different High Courts, namely, Punjab and Haryana High Court and Delhi High Court.

The Hon'ble Punjab and Haryana High Court, in the case of Pegasus Assets Reconstruction Private Limited v/s Haryana Concast Limited, held that the Company Court was entitled to place certain fetters, while allowing the Pegasus to exercise its powers as a secured creditor under the SARFAESI Act and proceed with the sale of the secured assets.

On the contrary, the Hon'ble Delhi High Court in the other case involving Megnstar Telecommunications Private Limited which is also an appeal on the same batch of matters before the Supreme Court, had taken an opposite view by holding that the Companies Act cannot be used to put any fetters on the sale of secured creditors because a secured creditor under Section 13 of the SARFAESI Act has been granted a right to enforce the security interest "without the intervention of the court or tribunal".

With these two conflicting views from two different High Courts, the Supreme Court has to decide whether a Company Court directing or through an Official Liquidator, can wield any control in respect of sale of a secured asset by a secured creditor in exercise of powers available to such creditor under the SARFAESI Act, 2002.

The Hon'ble Supreme Court while upholding the judgment passed by the Hon'ble Delhi High Court, held that:

- ≡ Section 9 and 13 of the SARFAESI Act provides that for enforcement of its security interest, a secured creditor has been not only vested with powers to do so without the

intervention of the Court or Tribunal but detailed procedure has also been prescribed to take case of various eventualities.

- ≡ The required provisions of the Companies Act have been incorporated in the SARFAESI Act for harmonizing this Act with the Companies Act in respect of dues of workmen and their protection under Section 529 and 529-A of the Companies Act.
- ≡ Various provisions of the SARFAESI Act consist of non-obstante clause (notwithstanding), which indicate that it is a complete code.

Thus, there is no plausible reason to take recourse to any provisions of the Companies Act and permit interference in proceedings under SARFAESI Act either by Company Judge/Court or Liquidator.



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