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Issuance and transfer of securities – Stamping requirements

By **Sudish Sharma and Sonali Srivastava**

The Central Government through the Finance Act, 2019 ('**Finance Act**') has introduced various amendments to the Indian Stamp Act, 1899 ('**Stamp Act**'). While the amendments to Stamp Act were initially scheduled to come into force on 9 January 2020, however, the Ministry of Finance postponed the effective date of the amendments to 1 July 2020.

With an intent to bring uniformity in rates of stamp duty on both issuance and transfer of securities, whether in physical or dematerialized mode, the Central Government also introduced the Indian Stamp (Collection of Stamp-Duty through Stock Exchanges, Clearing Corporations and Depositories) Rules, 2019 ('**Stamp Rules**'). Collectively, the amendments to the Stamp Act and Stamp Rules, are aimed at simplifying the levy and collection of stamp duty by the States in India.

Authority to determine rate of stamp duty

- Pursuant to the provisions of Schedule 7 of the Constitution of India, the Central Government and State Government have been granted with the power to legislate laws upon items mentioned in the Union list, State list and Concurrent list.
- Entry 91 of the Union List enables the Central Government to prescribe rate of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, **transfer of shares**, debentures, proxies and receipts.
- Further, Entry 63 of the State List enable the State Government to prescribe rate of stamp duty for matter other than those mentioned in the Union list.

Stamp duty on issuance of shares

- The Finance Act has laid down a uniform stamp duty of 0.005% on issuance of securities other than debentures. This has been outlined in Schedule I of the Stamp Act.
- In this regard, it be noted that it needs to be seen as to how the rate of stamp duty will be applicable on issuance of shares as prescribed by the Finance Act considering that the same is specifically not a subject matter of Union List.

Introduction of certain new provisions

- The Finance Act has *inter alia* introduced two major sections i.e. Section 9A and Section 9B in the Stamp Act.
- The provisions of Section 9A of the Stamp Act provides that stamp duty paid on issuance and transfer of securities through depository and stock exchange shall now be collected on behalf of the State Government and no stamp duty shall be charged or collected by the State Government in cases of sale, transfer and

issue of securities through a stock exchange or depositories and stamp duty on such issuance and transfer of securities shall be payable at the rate specified in Schedule I.

- Further, Section 9B lays down that a stamp duty on issue or transfer of securities otherwise than through a stock exchange or depository, shall be payable at the rate specified in Schedule I.
- In the aforesaid provision of Section 9A and 9B, it is pertinent to note that in case of transfer of securities, stamp duty is liable to be paid on the consideration amount for which such transfer is effectuated.

Gift of shares

- The advent of amendment to Stamp Act has led to an impactful change in transfer of shares. Erstwhile Article 62 of the Schedule I of the Stamp Act provided that in transfer of shares in a company (whether with or without consideration), a stamp duty of twenty-five paise for every hundred rupees or part thereof of the value of the share shall be imposed (effectively, 0.25%). This provision has now been omitted pursuant to the amendment to Stamp Act.
- Under the erstwhile Article 62 of the Schedule I, stamp duty was payable irrespective of whether there was consideration or not with respect to transfer of shares. This position seems to have changed since there is a change in the language employed now as it is chargeable on the consideration amount specified in the instrument.
- Pursuant to the amendment to Stamp Act proposed through the Finance Act, no stamp duty shall be levied in cases where no consideration amount is stated on the instrument, such as gift.
- To clarify this position the Frequently Asked Questions (FAQs) issued by the Department of Economic Affairs on Stamp Act and Stamp Rules also clearly lay down that no stamp duty will be charged on off-market transfer of securities without consideration such as on gift.

Conclusion

With respect to transfer of shares where no consideration amount is involved, a cost-effective mechanism has been introduced by the Central Government since such transfer does not attract stamp duty. Accordingly, the possibility of availing benefit of this can be explored in transactions involving transfer of shares such as gift of shares which may be pursuant to family arrangement or part of larger re-structuring exercise *inter-se* the promoters.

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Notifications and Circulars

Filling of list of creditors under Regulation 13(2)(ca) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations: Insolvency & Bankruptcy Board of India ('**IBBI**') has made available an electronic platform at www.ibbi.gov.in for filing of list of creditors as well as updating it. The main objective behind the electronic platform is to ensure transparency for the stakeholders as the list of creditors will be available for dissemination on the website of IBBI. Circular No. IBBI/CIRP/36/2020, dated 27 November 2020 issued for this purpose notes that the Interim Resolution Professional ('**IRP**')/ Resolution Professional ('**RP**') is required to verify every claim as on the date of commencement of insolvency proceedings and thereafter maintain a list of creditors, along with the details specified, and maintain the same under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('**CIRP Regulations**'). Further, Regulation 13(2)(ca) of the CIRP Regulations require the IRP/ RP to file a list of creditors on the electronic platform of the IBBI.

Assignment or transfer of debt or not readily realisable asset – IBBI (Liquidation Process) Regulations, 2016 amended: The IBBI *vide* Notification No. IBBI/2020-21/GN/REG067, dated 13 November 2020 has amended the IBBI (Liquidation Process) Regulations, 2016. The amendment provides the creditor with the right to assign or transfer the debt due to him to any other person during the liquidation process. In such situations, the liquidator will accordingly modify the list of stakeholders. Regulation 30A has been inserted for this purpose. Further, the new Regulation 37A enables the liquidator to assign or transfer a 'Not Readily Realisable Asset' ('**NRRA**') through a transparent process, in consultation with the stakeholder's consultation committee. For this purpose, NRRA means any asset included in the liquidation estate which could not be sold through available options and will include contingent or disputed assets and assets underlying proceedings for preferential, undervalued, extortionate credit and fraudulent transactions referred to in Sections 43 to 51 and Section 66 of the Insolvency and Bankruptcy Code, 2016.

Furnishing of record/evidence of default and intimation of formulae for debt payment – IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 amended: The IBBI has *vide* Notification No. IBBI/2020-21/GN/REG 066, dated 13 November 2020 amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. As per new Regulation 2A, the financial creditor, at the time of making an application, may furnish either of the following records of default:

a) Certified copy of entries in the relevant account in the bankers' book, or

b) An order of a court or tribunal that has adjudicated upon the non-payment of a debt, where the period of appeal against such order has expired.

Further, as per new Regulation 39(5A), for every corporate insolvency process, ongoing or commencing from the date of this amendment, the resolution professional will intimate each claimant regarding the principle or formulae decided upon for payment of debts under the resolution plan within 15 days of such resolution plan being approved by the relevant Adjudicating Authority.

Payments for public issue of debt securities by UPI: The SEBI *vide* Circular No. SEBI/HO/DDHS/CIR/P/2020/233, dated 23 November 2020 has introduced Unified Payments Interface ('**UPI**') as a mode of making payment for public issue of debt securities under certain specific regulations. Thus, investors shall have the option to apply for public issue of debt securities through an app/web interface of stock exchanges and can block funds through UPI mechanism for a value of up to INR 2 lakh. This circular will apply to public issue of securities, under the specific regulations, which are opened on or after 1 January 2021. The details of the investor will be validated by stock exchanges and depositories. A list of other requirements which the intermediaries must follow are also chalked out in the circular.

Schemes of arrangement by listed entities – SEBI revises earlier circular to streamline processing of draft schemes: SEBI has issued Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/215, dated 3 November 2020 to streamline the processing of draft schemes that are filed with the stock exchange. Key changes include amendments in the content of the Audit Committee report to provide more details of the arrangement proposed and an additional requirement for the committee of Independent Directors to provide a report stating that the scheme is not detrimental to the shareholders of the entity. These amendments are aimed at ensuring that the recognized stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed entity is in compliance with SEBI Act, 1992 and the rules, regulations and circulars issued thereunder. The circular shall be applicable for all schemes filed with stock exchanges after 17 November 2020.

Co-lending by banks and NBFCs to priority sector: The RBI *vide* Circular No. RBI/2020-21/63, dated 5 November 2020 has introduced a new regulatory framework for co-lending in case of priority sector loans by banks and NBFCs. The revised framework, called the 'Co-Lending Model' ('**CLM**') will improve flow of credit to the underserved sector of the economy and make funds available to the ultimate beneficiary at an affordable cost. In terms of the CLM, banks will be permitted to co-lend with all registered NBFCs (including HFCs) based on a prior agreement. A master agreement may be entered into between the two partner institutions which will include the terms and conditions of the arrangement, the specific product lines and areas of operation and the criteria for selection of partner institutions.

FEMA – Discontinuation of returns/ reports under Foreign Exchange Management Act, 1999: The RBI *vide* Circular No. RBI/2020-21/66, A.P. (DIR Series) Circular No. 5 dated 13 November 2020 has discontinued certain returns/ reports as required to be filed under the Foreign Exchange Management Act, 1999 with immediate effect. This has been done with a view to improve the ease of doing business and to reduce the cost of compliance. A total of 17 returns/reports have been discontinued which *inter alia* include report on extension of project office/liaison office and ADR/GDR Movement Report – two-way fungibility.

Ratio Decidendi

Complaint filed before Consumer Fora against builder is not barred by RERA

The Supreme Court has held that the Real Estate (Regulation and Development) Act, 2016 ('**RERA Act**') does not bar the initiation of 'consumer complaints' by the apartment allottees against builders under the extant consumer protection laws.

Brief Facts:

The appellant launched a Housing Scheme ('**Project**') wherein all the original complainants booked their respective apartments by paying the booking amount and thereafter executed Builder Buyer Agreements. The lead original complainant paid more than 75% of the total amount over a period of time. However, even after the agreed period of four years (approximately) there were no signs of the Project getting completed. Pursuant to the above, relevant consumer cases were filed with the National Consumer Dispute Redressal Commission ('**Commission**') against the builder for deficiency in rendering service. The Commission granted relief to the complainants and directed the Appellant to refund the amounts deposited by the complainants (allottees) along with an interest at the rate of 9% per annum from the date of deposit till the date of realisation along with costs. Being aggrieved with the order passed by the Commission, the appellant challenged the same in the Supreme Court.

Submissions by the Appellant:

- The complainants were not 'consumers' within the meaning of the Consumer Protection Act, 1986 ('**CP Act**') as the apartments were booked merely for profit motive.
- Once the RERA Act came into force, all questions relating to the construction and completion of the Project would be under the exclusive control and jurisdiction of the authorities under the RERA Act. The Commission, therefore, ought not to have entertained the complaints. Therefore, Commission had no jurisdiction.
- Since the registration of the Project under the RERA Act and rules framed thereunder was valid till December 2020, the order passed by the Commission be set aside and instead the complainants be granted interest at the rate of 10.75% per annum on the amounts deposited; whereby the Project would be completed without putting the Appellant under any financial strain.

Submissions by the Respondents:

- All the complainants had purchased only one residential apartment each for self-use. Moreover, the issue whether the complainants satisfied the requirements of being 'consumers' under the provisions of the CP Act was rightly decided in favour of the complainants.
- At no stage, any plea was taken before the Commission that the Project was registered under the RERA Act or about the effect of the RERA Act. No such plea was taken even in the appeal memo. Thus, it would not be open to the Appellant to raise any submissions about the applicability of the RERA Act at this stage of the matter.
- Additionally, the remedy afforded by the CP Act would be an additional remedy to a consumer and said legal position remained unchanged even after the enactment of the RERA Act.

Decision:

- The Court noticed that an allottee placed in similar circumstances to that of the complainants could have initiated following proceedings before the RERA Act came into force:
  i. If he satisfied the requirements of being a 'consumer' under the CP Act, he could have initiated proceedings under the CP Act in addition to normal civil remedies;
  ii. However, if he did not qualify as a 'consumer' under the CP Act, he could initiate and avail only normal civil remedies;
  iii. If the agreement with the developer or the builder provided for arbitration –
    - In cases covered under Clause ii above, he could initiate or could be called upon to invoke the remedies in arbitration, and
    - In cases covered under Clause i above, in accordance with the law laid down in *Emaar MGF Ltd and Anr* v. *Aftab Singh* [(2019) 12 SCC 751], he could still choose to proceed under the CP Act.
- As per Section 79 of the RERA Act, an allottee described in category ii above, would stand barred from invoking the jurisdiction of civil court. The Court further relied on yet another judgment[1] and held that initiation of proceeding in the Commission shall not be considered to be an initiation of proceeding in the civil court. It held that Section 79 of the RERA Act does not in any way bar the Commission or any other forum under the provision of the CP Act to entertain any complaint. Further, Section 18 of the RERA Act itself specifies that the remedy under the said Section is 'without prejudice to any other remedy available'. It held that the parliamentary intent was clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act.
- The Apex Court noted that the remedies available under the provisions of the CP Act are additional remedies over and above the other remedies including those made available under any special statutes. Further, the availability of an alternate remedy was no bar in entertaining a complaint under the CP Act.
- Merely, because the registration of the Project under the RERA Act was valid until the month of December 2020, it does not mean that the entitlement of the concerned allottees to maintain an action stands deferred.
- Lastly, the Court observed that Section 100 of the Consumer Protection Act, 2019 ('**New Act**') is akin to Section 3 of the CP Act (now repealed). Thus, Section 100 of the New Act is enacted with an intent to secure the remedies under the New Act dealing with protection of the interests of Consumers, even after the RERA Act was brought into force.

Resultantly, all the submissions made by the appellant were dismissed affirming the stand taken by the Commission. Relevant costs were also imposed on the appellant. It is pertinent to note here that the Apex Court did not deliberate upon the simultaneous initiation of proceedings under the CP Act and the RERA Act.

[*Imperia Structures Limited* v. *Anil Patni and Another* – Judgment dated 2 November 2020 in Civil Appeal No. 3581-3591 of 2020, Supreme Court of India]

[1] (2009) 9 SCC 221

Time limit under Section 14 of SARFAESI Act is directory in nature

The three-judge bench of the Supreme Court of India has held that Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('**SARFAESI Act**') which mandates the District Magistrate ('**DM**') to secure the possession of a secured asset within a specific timeframe is directory in nature.

The present appeal examined an order passed by the Division Bench of the Kerala High Court, whereby it held that Section 14 of the SARFAESI Act which mandated the DM to deliver the possession of a secured asset within thirty days, extendable to an aggregate of sixty days upon reasons recorded in writing, is a directory provision.

Submissions:

- The proviso to Section 14 of the SARFAESI Act mandating the DM to record reasons, if the order is not passed in thirty days, in order to avail an extended period of a total sixty days, shows that the provision is mandatory.
- The proviso in Section 14 uses the term 'shall' which implies that the time limit provided in the said section is unambiguous and by corollary, the provision is mandatory. Failure to act within the time frame as provided under the SARFAESI Act shall abate the proceedings in front of the DM.

Decision:

- The Apex Court observed that it was a well settled rule of interpretation of statutes that the word 'shall' used in a statute, does not necessarily mean that in every case it is mandatory. It also observed that when a statute uses the word 'shall', *prima facie*, it is mandatory, but it is up to the courts to ascertain the real intention of the legislators, while drafting such statute, by carefully examining the whole scope of such statute.
- The Apex Court observed that keeping in mind the objective of the SARFAESI Act, the time limit to take action by the DM has been fixed to impress upon the authority to take possession of the secured assets. However, the inability of the DM to take any action within the specified time limit does not render him *functus officio*.
- Section 14 of the SARFAESI Act is not to be interpreted literally without considering the object and purpose of the SARFAESI Act. The time limit is to instil a confidence in the creditors that the DM will make an attempt to deliver the possession of the asset. If any other interpretation is placed upon the language of Section 14, it would defeat the purpose of the SARFAESI Act itself. Thus, the inability of the DM to handover the possession of the asset does not release him from the duty of facilitating the delivery of possession at the earliest.
- The order passed by the Division Bench of the Kerala High Court was upheld.

[*C. Bright* v. *The District Collector and Others* – Judgment dated 5 November 2020 in Civil Appeal No. 3441 of 2020, Supreme Court of India]

Insolvency – No locus standi of unsuccessful resolution applicant

The National Company Law Appellate Tribunal ('**NCLAT**') has held that once an unsuccessful resolution applicant (appellant) is out of the fray, it has no *locus standi* to call in question any

action of the stakeholders *qua* implementation of the approved Resolution Plan. It also held that such person cannot claim any prejudice on the pretext that any of the actions post approval of the Resolution Plan has affected the prospects of it being a successful resolution applicant.

Brief Facts:

The appellant submitted its resolution plan to the committee of creditors of JEKPL Pvt Ltd ('**corporate debtor**'), which was rejected on the ground that the appellant could not provide for lump sum time bound payment within 30 days of the approval of the resolution plan, which was a condition for the approval of a resolution plan. The Committee of Creditors approved another resolution plan for the company which adhered to the said condition. As the successful resolution applicant did not implement the resolution plan within due time, the appellant challenged the implementation of the resolution plan as being detrimental to its interest in the National Company Law Tribunal, Allahabad Bench. The said bench declined to accede to the prayers of appellant and directed implementation of the plan on or before the new extended date. This led to the present appeal before the NCLAT.

Submissions:

The erstwhile Committee of Creditors of the corporate debtor in connivance with the successful resolution applicant re-negotiated a fresh resolution plan and the application of the committee of creditors under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 filed before the Adjudicating Authority was not maintainable as the Committee of Creditors had become *functus officio* after approval of the resolution plan.

Decision:

- If the terms of the approved resolution plan have been amended to facilitate its implementation and the committee of the creditors comprising of the creditors as stakeholders has not objected to same on account of hardship due to prevailing circumstances, the Appellant cannot be allowed to file such claims.
- It was held that the Appellant had no *locus standi* to maintain that the change in terms of the resolution plan in relation to its implementation has jeopardized the legal rights of the appellant with respect to the consideration of its resolution plan which was earlier rejected. Thus, the appeal was dismissed.

[*Hindustan Oil Exploration Company* v. *Erstwhile Committee of Creditors JEKPL Pvt. Ltd. & Others* – Order dated 17 November 2020 in Company Appeal (AT) (Insolvency) No. 969 of 2020, NCLAT]

News Nuggets

Arbitration – Two Indian parties can choose a foreign law as the law governing arbitration

Observing that an arbitration agreement between the parties is an agreement independent of the substantive contract and the parties can choose a different governing law for the arbitration, the Delhi High Court has reiterated that two Indian parties can choose a foreign law as the law governing arbitration. It also held that the same is true even if by a different clause of the contract the substantive law of the contract was Indian law and the parties had agreed to exclusive jurisdiction of the Courts at Delhi. The Court rejected the contention of the plaintiff that since the parties were Indian, contract was entered into in India and the performance was also in India, the two Indian parties cannot avoid the Indian law by choosing a foreign seat of arbitration and a specific foreign system of law. The High Court in the case *Dholi Spintex Pvt. Ltd.* v. *Louis Dreyfus Company India Pvt. Ltd.* [Decision dated 24 November 2020] also agreed with the defendant that there was a foreign element to the agreement between the parties since there was a high seas sale agreement.

Application for initiation of CIRP for default committed before 25 March 2020 but filed before 5 June 2020, maintainable

The NCLAT has held that an application for initiation of CIRP of a corporate debtor in respect of default committed before 25 March 2020 but filed before 5 June 2020, i.e. the date on which Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 came into force, would be maintainable. The Appellate Tribunal was of the view that the bar under newly inserted Section 10A of the Insolvency and Bankruptcy Code, 2015 operates in respect of default arising on or after 25 March, 2020 and not before such date. The Tribunal in the case *Ramesh Kymal* v. *Siemens Gamesa Renewable Power Pvt. Ltd.* [Order dated 19 October 2020] noted that an eligible applicant could, by no stretch of imagination, have had the foresight of Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 being promulgated.

Transfer of winding up proceedings from High Court to NCLT on application of financial creditor not party to proceedings before Court, permissible

Observing that the proceedings for winding up of a company are actually proceedings in *rem* to which the entire body of creditors is a party, the Supreme Court of India has held that the words 'party or parties' appearing in 5th proviso to Section 434(1)(c) of the Companies Act, 2013 would take within its fold any creditor of the company in liquidation. The contention that the word 'party' would mean only the single petitioning creditor or the company of the official liquidator, was thus rejected. The 5th proviso provides for filing of application in the Court for transfer of proceedings relating to winding up of companies, from the Court to the NCLT. The Apex Court in the case *Kaledonia Jute and Fibres Pvt. Ltd.* v. *Axis Nirman and Industries Ltd.* [Judgement dated 19 November 2020] also observed that the restriction under Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016 relating to stage at which a transfer could be ordered, is not applicable to

the case of transfer covered under the said 5th proviso. Earlier, the Allahabad High Court had rejected the petition filed by a financial creditor who was not part of the winding up proceedings before the Court, for transfer of proceedings to NCLT.

Arbitration – Order under Section 9 appealable under Arbitration 13(1) of Commercial Courts Act

The Kerala High Court has held that an order under Section 9 of the Arbitration and Conciliation Act, 1996 (providing for interim measures by Court) passed by a Commercial Court below the level of a District Court is appealable under Section 13(1) of the Commercial Courts Act, 2015. It observed that an appeal against an order passed by a Commercial Court is not barred under Section 8 of the Commercial Courts Act. The Court in the case *Pranathmaka Ayurvedics Pvt. Ltd.* v. *Cocosath Health Products* [Judgement dated 24 November 2020] also noted that Section 13(1) merely provides the forum of filing appeals and the parameters of Section 37(1) of the Arbitration and Conciliation Act have to looked into in order to determine whether an appeal against an order under Section 9 is maintainable.

Personal hearing not mandatory while considering exemption from SEBI (Share Based Employee Benefits) Regulations

Securities and Exchange Board of India ('**SEBI**') is not obliged to grant a personal hearing while considering an exemption application under the SEBI (Share Based Employee Benefits) Regulations, 2014. While holding so, the Bombay High Court did not find any merit in the consequence-based argument that since consequences would flow from the rejection of the exemption under Regulation 29 of the said Regulations, a personal hearing must be mandated. The High Court also rejected the contention that right of personal hearing must follow because the power under Regulation 29 is a quasi-judicial power. It noted that the grant of exemption is a matter of exception from the general rule contained under the Regulations and that refusal to grant an exemption is not the origin of liability. The Court in the case *JK Paper Limited* v. *SEBI* [Judgement dated 6 October 2020] also observed that requirement of compliance with the principle of natural justice can vary in different situations and conditions.

Online gaming involving betting banned in Tamil Nadu

The Governor of Tamil Nadu has on 20 November 2020 promulgated the Tamil Nadu Gaming and Police Laws (Amendment) Ordinance, 2020 which amends the Tamil Nadu Gaming Act, 1930 and extends its territorial scope over the entire state of Tamil Nadu. The Ordinance bans online gaming involving betting and imposes a fine of Rs. 5,000 and imprisonment of six months on people who are found to be gaming. This comes in the backdrop of observations made by the State Government that due to online gaming, innocent people, youngsters mainly, are being cheated and some even commit suicide. It may be noted that the Ordinance not imposes a blanket ban on online games, and online games involving mere skill are exempt from the restrictions as provided under the amended Tamil Nadu Gaming Act.

WhatsApp given approval to go live on UPI

The National Payments Corporation of India ('**NPCI**'), which is an umbrella organization for operating retail payments and settlement systems in India, has on 5 November 2020 given its approval for WhatsApp to 'Go Live' on UPI in the multi-bank model. The NPCI also

gave permission for WhatsApp to expand its UPI userbase in a graded manner starting with a maximum of twenty million users in UPI. WhatsApp has been running the beta version of WhatsApp Pay since 2018 with one million users. The NPCI in a separate statement also announced a cap of 30% of the total volume of transactions processed in UPI, which will be applicable on all Third-Party App Providers with effect from 1 January 2021.

Foreign law firms cannot open liaison offices in India

The RBI has issued a notification on 23 November 2020, directing banks not to grant fresh permissions/ renew permissions to any foreign law firm for opening a liaison office in India. The notification referred to the case of *Bar Council of India* v. *A. K. Balaji & Ors* in which the Supreme Court had held that only advocates enrolled under the Advocates Act are entitled to practice the profession of law in India and that foreign lawyers/ law firms cannot practice law in India.

Inclusion of lottery under GST is legally valid: Supreme Court

The Supreme Court has upheld the validity of imposition of Goods and Services Tax ('GST') on lottery tickets and the prize money. The case revolved around a challenge to the inclusion of lottery money under the GST regime by a private lottery company. The Court observed that under the GST regime, 'goods' is defined in an inclusive manner to include actionable claims such as betting, gambling and lottery. It noted that activities such as lottery and gambling have been the subject of regulation including taxation for the last several decades. The Apex Court in its decision in the case of *Skill Lotto Solutions Pvt. Ltd.* v. *Union of India & Ors.* [Judgement dated 3 December 2020] rejected the argument that the Central Government had wrongly classified lottery as 'goods'. It was of the view that the inclusion of actionable claim in definition 'goods' is not contrary to the legal meaning of goods and is neither illegal nor unconstitutional.

Supreme Court upholds validity of Tribunal Rules 2020 with modifications

The Supreme Court has upheld the validity of the Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020 ('**Tribunal Rules 2020**') with some modifications. The Court issued extensive directions in relation to selection, appointment, tenure, conditions of service, *inter alia,* in relation to various Tribunals to ensure that these Tribunals do not function as another department under the control of the 'Executive'. The Apex Court in the case of *Madras Bar Association* v. *Union of India* [Judgement dated 27 November 2020] also ordered the constitution of a National Tribunals Commission to supervise the appointments to and functioning of Tribunals.

Online news services and OTT platforms to be regulated

The Cabinet Secretariat has *vide* Notification No. S.O. 4040(E), dated 9 November 2020 amended the Government of India (Allocation of Business) Rules, 1961 ('**Rules**') by introducing two new entries in the Second Schedule of the Rules – (i) Films and Audio-Visual programmes made available by online content providers and (ii) News and current affairs content on online platforms, under the purview of the Ministry of Information and Broadcasting ('**I&B Ministry**'), with immediate effect. This allows the I&B Ministry to formulate

and regulate policies for online news services and other online content providers including Over The Top (OTT) platforms. This notification seeks to address a lacuna of regulations governing online content unlike other kinds of media such as the print media which is regulated by the Press Council of India and films which are regulated by the Central Board of Film Certification (CBFC). It remains to be seen how the I&B Ministry will choose to regulate the online content providers.

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