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-LAW IN ACTION



Legal Updates

The Supreme Court vide its judgment dated 11.01.2021 in *N.N. Global Merchantile Pvt. Ltd. vs Indo Unioque Flame Ltd. & Ors C.A. No. 3802 of 2020*, holds that non-payment of stamp duty on the commercial contract does not makes the arbitration agreement invalid.

One of the key issues raised in matter was whether an arbitration agreement will still remain enforceable, even if the work order is unstamped and un-enforceable under the Stamp Act, 1958. The Supreme Court on this account held that since the arbitration agreement is an independent agreement between the parties and is not chargeable to payment of stamp duty, the non-payment of stamp duty on the commercial contract, would not invalidate the arbitration clause, or render it un-enforceable, since it has an independent existence of its own.

The Supreme Court further observed that the view taken by the High Court on the issue of separability of the arbitration clause on the registration of the substantive contract, ought to have taken same approach while considering the provisions of the Stamp Act, 1958. On this account the Supreme Court further held that the non-payment of stamp duty on the substantive contract would not invalidate even the main contract. It is a deficiency which is curable on the payment of the requisite Stamp Duty.

Accordingly, the Supreme Court overruled its earlier judgment in *SMS Tea Estates Pvt. Ltd. v. M/s. Chandmari Tea Co. Pvt. Ltd.*, (2011) 14 SCC 66 and held that non-payment of Stamp Duty on the substantive contract will not make the arbitration agreement invalid.

Supreme Court holds that non-payment of stamp duty on a commercial contract does not makes the arbitration clause invalidate



The Supreme Court vide its judgement dated 19.01.2021 in *Manish Kumar v Union of India and others W.P. (Civil) No. 26 of 2020* upheld the constitutional validity of Sections 3, 4 and 10 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 (“**IBC Amendment Act**”).

Section 3 of the IBC Amendment Act inserted certain provisos to Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC 2016**”), wherein, it was clarified that if any insolvency proceedings are intended to be initiated in case of any real estate projects, joint petition by at least one hundred real estate allottees or ten percentage of the total number of allottees, whichever is lesser, is required to be filed. Section 4 of the IBC Amendment Act inserted explanation to Section 11 of IBC 2016, wherein, it was clarified that nothing mentioned in the said section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor. Further, the Section 10 of the IBC Amendment Act added a new provision to the IBC 2016 i.e., Section 32A, whereunder, the liability of a corporate debtor would cease to exist on the date a resolution plan gets approved and new management takes over the corporate debtor. As per Section 1(2) of the IBC Amendment Act, the said amended provisions to the IBC 2016 were to come into force retrospectively from 28.12.2019, which in other way effected the pending applications.

The petitioners challenged the said provisions to the IBC Amendment Act to be arbitrary and discriminatory, amounting to illegal classification. The Supreme Court rejected the Writ Petition filed by the Petitioner and accordingly upheld the constitutional validity of Section 3, 4 and 10 of the IBC Amendment Act.

The Insolvency and Bankruptcy Board of India (“**IBBI**”) on 14.01.2021 notified the Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2021 (“**IBBI Amendment Regulations**”), whereunder, it amended certain provisions of the Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (“**IBBI Regulations 2016**”). The salient features of the IBBI Amendment Regulations are as follows:

- (a) The governing board shall self-evaluate its performance in a financial year within three months of the closure of the year and the insolvency professional shall publish the self-evaluation report as submitted by governing board, on its website.
- (b) An insolvency professional shall designate or appoint a compliance officer who shall be responsible for ensuring compliance with the provisions of the IBC and its regulations, circulars, guidelines, and directions issued by the appropriate authority. In case of any non-compliance by the insolvency professional, the compliance officer shall immediately and independently report directly to the board. The compliance officer shall submit an annual compliance certificate to the board verifying the compliance of IBC and its regulations, circulars, guidelines, and directions undertaken by the insolvency professional.

The Ministry of Corporate Affairs (“**MCA**”) vide a general circular no. 03/2021 dated 15.01.2021 has announced scheme for condonation of delay for companies restored by National Company Law Tribunal (“**NCLT**”) between 01.12.2020 to 31.12.2020. The objective of the scheme passed by MCA is to provide waiver of additional fees and the benefit of filing overdue forms for companies restored by NCLT between 01.12.2020 to 31.12.2020. The salient features of the scheme are as follows:

- (a) **Duration of the Scheme:** The scheme shall be effective from 01.02.2021 and the last date of filing any overdue e- forms under the scheme by such companies shall be 21.03.2021.
- (b) **Forms for which the scheme shall be applicable:** The scheme shall be applicable for filing of all e-forms other than e-form SH-7 (For any increase in authorized share capital) and Charge related e-forms (CHG-1, CHG-4, CHG-8 and CHG-9).
- (c) **Applicable Fees:** Normal filing fees under the Companies (Registration Offices and Fees) Rules, 2014 shall be charged on the date of filing and no additional fees shall be payable for the forms for which the scheme is applicable.

Supreme Court upholds constitutional validity of Sections 3, 4 & 10 of IBC Amendment Act 2020

Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2021

Scheme for condonation of delay for companies restored on the Register of Companies between 01.12.2020 and 31.12.2020

Clarification on holding of Annual General Meeting through Video Conferencing or through any other Audio-Visual Means

The MCA in continuation of its general circular no. 20/2020 dated 05.05.2020 has decided to allow companies whose Annual General Meetings (“AGMs”) were due to be held in the year 2020, or become due in the year 2021, to conduct their AGMs on or before 31.12.2021, in accordance with the requirements provided under the earlier circulars.

It further clarifies that the additional time allowed by the MCA vide its circulars shall not be construed / interpreted as an extension to time period as provided under the Companies Act, 2013, for holding of AGMs by the companies and the companies which have failed to adhere to the relevant timelines shall remain subject to penal consequences as provided under the Companies Act, 2013.

Clarification on spending of Corporate Social Responsibility funds for awareness and public outreach on COVID-19 vaccination programs

The MCA vide its general circular no. 01/2021 dated 13.01.2021 issued a clarification whereby it has been clarified that spending of Corporate Social Responsibility (“CSR”) funds for carrying out awareness campaigns/programs or public outreach campaigns on COVID-19 vaccination program is an eligible CSR activity under item no. (i), (ii) and (xii) of schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education and disaster management activity.

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