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LEX NOVUS
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GURUGRAM ▪ MUMBAI

July - September 2018

EDITORIAL

On behalf of the entire team of SB Partners, here's wishing you a very Happy Diwali!

In the last three months we saw numerous changes in the areas of Banking and Finance, Capital Markets and Corporate Laws, Foreign Exchange and Insolvency and Bankruptcy Laws of India.

The process of '*Private Placement of Securities*' under the Companies Act, 2013 ("**Act**") was simplified by removal of various compliances like filing of Form PAS-4 and PAS-5 with ROC, passing of a shareholder's resolution for NCD issuance provided that the amount to be raised does not exceed the borrowing limit specified under Section 180(1)(c) of the Act and likewise.

Securities and Exchange Board of India ("**SEBI**") realigned the SEBI (Issue of Capital and Disclosure Requirements) Regulations with the recent developments in the security market and other currently applicable laws. SEBI also streamlined the process of public issue of debt securities, Non-Convertible Redeemable Preference Shares and Securitized Debt Instruments, given under various SEBI regulations.

In addition to the foregoing, this issue of '*Lex Novus*' also focuses on other key regulatory developments in the field of Insolvency and Bankruptcy Laws. The Insolvency and Bankruptcy Board of India passed the IBC Amendment which replaced the IBC Ordinance. IBBI also simplified the Insolvency Resolution Process for Corporate Persons and made it more creditor friendly by inserting a provision for appointment of representatives for different classes of creditors.

We hope you find this edition of *Lex Novus* informative and insightful.

IN THE NEWS

RBI GUIDELINES

- **EXTERNAL COMMERCIAL BORROWINGS POLICY LIBERALISED**

Reserve Bank of India ("**RBI**") has released a circular on September 19, 2018 in order to liberalise some aspects of the External Commercial Borrowings ("**ECB**") policy which is as follows.

a ***ECBs by companies in manufacturing sector:*** As per the earlier norms, eligible borrowers were allowed to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 3 years. It has been decided to allow eligible ECB borrowers who are into manufacturing sector to raise ECB up to USD 50 million or its equivalent with minimum average maturity period of 1 year.

b ***Underwriting and market making by Indian banks for Rupee Denominated Bonds (RDB) issued overseas:*** Earlier, Indian banks were allowed to act as arranger and underwriter for RDBs issued overseas and in case of underwriting an issue, their holding could have not been more than 5 % of the issue size after 6 months of issue. It has now been decided to permit Indian banks to participate as arrangers/underwriters/market makers/traders in RDBs issued overseas subject to applicable and existing prudential norms.

INSOLVENCY AND BANKRUPTCY LAWS

- **CORPORATE INSOLVENCY RESOLUTION PROCESS SIMPLIFIED - WITHDRAWAL OF CIRP APPLICATION PERMITTED; POWERS & ROLE OF RP CLARIFIED FURTHER**

Insolvency and Bankruptcy Board of India ("**IBBI**") has amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**Regulations**") for the third time this year. Some of the new provisions brought in force by the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018 ("**Amendment Regulations**") are as follows:

(a) The Amendment Regulations provide that in case a corporate debtor has classes of creditors (each class containingat least 10 creditors) then the resolution professional ("**RP**") shall offer to every creditor of the class, a choice of 3 persons to act as the authorised representative of that class. The person, who is the choice of the highest number of creditors in a particular class, shall be appointed as the authorised representative of that class. The voting share of each creditor in this process shall be in proportion to the financial debt owed to him which includes an interest rate of 8% per annum unless a different rate has been agreed between the parties.

(b) An application to withdrawthe corporate insolvency resolution process, may be submitted to the RP along with a bank guarantee towards estimated cost incurred under the process. The committee of creditors ("**CoC**") shall consider the application within seven days of receipt of it. If the application is approved by the CoC, the RP shall submit the application to the Adjudicating Authority on behalf of the applicant, within 3 days of such approval.

(c) A meeting of the CoC shall be called by giving at least 5 days' notice in writing to every participant. The CoC, however, has the power to reduce the notice period from 5 days to 24 hours. The authorised representative shall circulate the agenda to creditors in a class and announce the period of voting at least 24 hours before the period of voting starts and keep the voting window open for at least 12 hours.

(d) The RP shall form an opinion whether the corporate debtor has been subjected to certain transactions (preferential / undervalued / extortionate / fraudulent) by 75th day and make a determination of the same by 115th day after the commencement of insolvency. Where the RP makes such a determination, he shall apply to the Adjudicating Authority for appropriate relief before ending of 135th day after the commencement of insolvency.

(e) The RP shall publish an invitation for expression of interest ("**EoI**") by the 75th day from the insolvency commencement date. The invitation shall specify the last date for submission of EoIalong with other details. Any EoI received after the specified time shall be rejected. The resolution professional shall conduct due diligence based on material on record and issue a provisional list of prospective resolution applicants within 10 days of the last date of submission of EoI. On considering objections to the provisional list, the resolution professional shall issue the final list of prospective resolution applicants, within 10 days of the last date for receipt of objections.

(f) The RP shall issue the information memorandum, the evaluation matrix and the Request for Resolution Plans ("**RFRP**") to the prospective resolution applicants and allow at least 30 days for submission of resolution plans. After submission of resolution plans by the resolution applicants, the CoC shall evaluate them as per the evaluation matrix to identify the best resolution plan and may approve it with the required majority. If approved by the CoC, the RP shall submit that resolution plan to the Adjudicating Authority at least 15 days before completion of the maximum period determined for completion of corporate insolvency resolution process, along with a compliance certificate.

(g) The Amendment Regulations also provide for a model timeline of the corporate insolvency resolution process assuming that the interim resolution professional is appointed on the date of commencement of the process and the total time to be taken by him will be 180 days.

• INSOLVENCY AND BANKRUPTCY CODE AMENDED IN LINE WITH THE LAPSED INSOLVENCY AND BANKRUPTCY ORDINANCE

The Government passed the Insolvency and Bankruptcy Code (Second Amendment) Act, ("**Amendment**") to amend the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). The Amendment Act is passed practically on the lines of IBC Ordinance, 2018 ("**Ordinance**") and has replaced it. The key changes are as follows:

(a) As it was done by the Ordinance, the Amendment also provides a significant relief to '*home buyers*' by recognizing their status as '*financial creditors*'. This would give them due representation in the Committee of Creditors and make

them an integral part of the decision-making process. It will also enable home buyers to initiate corporate insolvency resolution process against errant developers.

(b) With a view to encourage resolution as opposed to liquidation, the voting threshold has been brought down to 66% (Sixty-Six Percent) from 75% (Seventy-Five Percent) for all major decisions such as approval of resolution plan, extension of CIRP period, etc. Further, in order to facilitate the corporate debtor to continue as a going concern during the CIRP, the voting threshold for routine decisions has been reduced to 51% (Fifty-One Percent).

(c) The Amendment also provides that a promotor of Micro, Small and Medium Sector Enterprises ("**MSME**") is not disqualified to bid for its enterprise undergoing Corporate Insolvency Resolution Process ("**CIRP**") provided that it is not a wilful defaulter and does not attract other disqualifications related to default. Further, Central Government has been empowered to allow further exemptions or modifications with respect to the MSME Sector, if required, in public interest.

(d) However, the Amendment has introduced a strict procedure for withdrawing a case after its admission under the Code. Henceforth, such withdrawal would be permissible only with the approval of the Committee of Creditors with 90% (Ninety Percent) of the voting share. Furthermore, such withdrawal will only be permissible before publication of notice inviting Expressions of Interest.

(e) Prior to the Amendment, self-filing of an application for initiation of CIRP was decided by the directors of the Corporate Debtor themselves by passing a board resolution. After this Amendment, filing of such an application requires a Special Resolution passed by the shareholders of the Corporate Debtor.

(f) The Amendment also provides for a mechanism to allow participation of security holders, deposit holders and all other classes of financial creditors that exceed a certain number, in meetings of the Committee of Creditors, through authorized representation.

(g) The existing Section regarding eligibility for becoming a resolution applicant has also been amended to exempt financial entities from being disqualified on account of holding non-performing assets ("**NPA**"). A resolution applicant holding an NPA by virtue of acquiring it in the past under the Code has been provided with a 3 (Three)-year cooling-off period, from the date of such acquisition. In other words, such NPA shall not disqualify the resolution applicant during the currency of the 3 (Three)-year grace period. Considering the wide range of disqualifications contained in this section, the Ordinance provides that the resolution applicant shall submit an affidavit certifying its eligibility to bid. The Ordinance also provides for a minimum 1 (One)-year grace period for the successful resolution applicant to fulfil various statutory obligations required under different laws.

(h) The other changes brought about by the Amendment include non-applicability of moratorium period to enforcement of guarantee, introducing the requirement of special resolution for corporate debtors to themselves trigger insolvency resolution under the Code, liberalizing terms and conditions of interim finance to facilitate financing of corporate debtor during CIRP period, and giving the IBBI a specific development role along with powers to levy fees in respect of services rendered.

CAPITAL MARKETS

• PROCESS AND PROCEDURE FOR BUY-BACK OF SECURITIES SIMPLIFIED

The Securities and Exchange Board of India ("**SEBI**") on September 11, 2018 released SEBI (Buy-Back of Securities) Regulations, 2018 ("**Regulations**") in order to regulate the buy-back of shares or other specified securities of a company.

Following are the major highlights of the Regulations:

(a) The maximum limit of any buy-back of securities (which includes employees' stock option or other notified securities) shall be 25% or less of the aggregate of paid-up capital and free reserves of the company. Also, the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back shall not be more than twice the

paid-up capital and free reserves. All shares or other specified securities for buy-back shall be fully paid-up.

(b) The Regulations contain a requirement to make public announcement for the offer to buy-back securitieswithin 2 working days after declaration of postal ballot results. The Regulations also contain the draft letter of offer which is needed to be furnished within 5 working days of the public announcements.

(c) An explanation for 'free reserves' in-line with Companies Act, 2013 is also the part of the Regulations. The buyback period has also been defined as the time between date of authorisation for buyback by a company's board of directors and the date on which the payment is made to shareholders who have accepted the offer.

(d) The Regulations further prescribes for general obligations for company for buy back procedure as well.A company can undertake buyback of shares out of its free reserves (including securities premium account). However, buy-backs cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(e) It has also been provided that the company shall not authorise any buy-back (whether by way of tender offer or from open market or odd lot or book-building process) unless the buy-back is authorised by the company's articles and a special resolution has been passed at a general meeting of the company authorising such buy-back. It is also to be noted that every buy-back must be completed within a period of 1 year from the date of passing of such resolution.

(f) The buy-back shall be made only on stock exchanges having nationwide trading terminals.

- **SEBI (LODR) REGULATIONS NOW APPLICABLE TO SECURITY RECEIPTS**

SEBI released the SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2018 ("**Amendment Regulations**") in order to amend the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Regulations**"). The changes brought by the Amendment Regulations are as follows:

(a) Security Receipts has been added under the definition of 'designated securities' implying that the Regulations will apply on security receipts as well.

(b) All the references towards SEBI (Public Offer and Listing of Securitised Debt Instruments) Regulations, 2008 in the Regulations has been changed into references towards SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008.

(c) A new 'Chapter VIIIA' has been added to list out 'Obligations of Listed Entity which has listed its Security Receipts'. The newly added chapter contains provisions in relation to intimations and disclosures by listed entity which are to be done to stock exchanges, provisions relating to valuation and rating of security receipts, terms of security receipts and other provisions likewise.

(d) A new 'Part E' to Schedule III of the regulations have also been added which list down all the disclosures which are to be made by the listed entity.

- **OVERSEAS INVESTMENT LIMITS OF AIFS AND VCFS INCREASED**

SEBI issued a circular on July 03, 2018 ("**Circular**") dealing with Overseas Investment by Alternative Investment Funds ("**AIFs**") and Venture Capital Funds ("**VCFs**"). Vide the Circular, the limit of overseas investment by AIFs and VCFs has been extended from USD 500 million to USD 700 million.

The Circular also mentions following disclosures which are to be done by AIFs / VCFs in order to monitor the utilization of overseas investment limits:

(a) AIFs/ VCFs shall report the utilization of the overseas limits within 5 working days of such utilization on SEBI intermediary portal (https://siportal.sebi.gov.in); and

(b) In case an AIF / VCF has not utilized the overseas limit or a part of it, granted to them within a period of 6 months from the date of SEBI approval ("validity period"), the same shall be reported within 2 working days after expiry of the validity period.

- **TIMELINE TO RESTORE 'MINIMUM PUBLIC SHAREHOLDING' IN LISTED COMPANIES SPECIFIED**

Securities Contracts (Regulation) Rules, 1957 ("**Rules**") has been amended by SEBI by passing Securities Contracts (Regulation) (Amendment) Rules, 2018 ("**Amendment Rules**") on July 24, 2018.

As per the Amendment Rules,when the public shareholding in a listed company falls below 25%due toimplementation of the resolution plan approved under Insolvency and Bankruptcy Code,2016, such company shall bring back the public shareholding to 25% within amaximum period of 3 years from the date of such fall.

The Amendment Rules also provide that if the public shareholding falls below 10%, the same shall be increased to at least 10%, within a maximum period of 18 months from the date of such fall.

- **PROCESS OF 'PUBLIC ISSUE' OF SECURITIES UNDER VARIOUS SEBI REGULATIONS STREAMLINED**

SEBI has issued a circular on August 16, 2018 ("**Circular**") in order to streamline the process of public issue of debt securities, Non-Convertible Redeemable Preference Shares ("**NCRPS**") and Securitized Debt Instruments ("**SDI**") under SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of NCRDS) Regulations, 2013, SEBI (Public Offer and Listing of SDI) Regulations, 2008 and SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations, 2015.

The streamlined process, as laid down in the Circular is as follows:

(a) All the investors applying in a public issue shall use only Application Supported by Blocked Amount facility for making payment (i.e. writing their bank account numbers and authorising the banks to make payment in case of allotment by signing the application forms) and shall submit a completed form to Self-Certified Syndicate Banks ("**SCSBs**"), with whom the bank account to be blocked is maintained or any of the approved intermediaries.

(b) The SCSBs or the approved intermediaries are required to give an acknowledgement to the investors after accepting the application form. After accepting the forms, the SCSBs are also required to capture and upload details of the form in the electronic bidding system and begin blocking of funds available in the bank account specified in the form.

(c) The Stock exchange shall validate the electronic bid details uploaded by the SCSBs or approved intermediaries with depository's records and bring the inconsistencies to the notice of SCSBs or intermediaries concerned, for rectification and re-submission within the specified time specified.

(d) The time taken for listing after the closure of the issue has been reduced to 6 working days as against the previous requirement of 12 working days.

- **SEBI TAKEOVER REGULATIONS AMENDED IN LINE WITH COMPANIES ACT; FUGITIVE ECONOMIC OFFENDERS PROHIBITED TO MAKE A PUBLIC ANNOUNCEMENT**

SEBI has amended the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 on September 11, 2018 ("**Regulations**") by passing the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018 ("**Amendment Regulations**").

The changes made by the Amendment Regulations are as follows:

(a) The definitions of fugitive economic offender, listing regulations and postal ballot has been added in the Regulations.

(b) As per the Regulations, if the acquirer makes a public announcement of an 'open offer' for acquiring shares of a target company, he maydelist the company in accordance withSEBI (Delisting of Equity Shares) Regulations, 2009. As per

the Amendment Regulations, in the event of failure of the delisting offer made by the acquirer, the obligations under the open offer shall be fulfilled by the acquirer in the following manner.

(i) The acquirer has to file with SEBI, a draft of the open offerletter as specified, within 5 working days from the date of announcement made by the acquirer of such failure.

(ii) The offer price will be increased at the rate of 10% p.a. for the period between the scheduled date of payment of consideration to the shareholders and the actual date of such payment.

(c) Fugitive economic offenders are not allowed to make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly under the Amendment Regulations.

(d) The time given to acquirers to make revisions in their previously made offers has been decreased from 3 working days to 1 working day.

(e) There have been made universal changes in the Regulations to bring them in compliance with Companies Act, 2013 instead of Companies Act, 1956.

- **SEBI (ICDR) REGULATIONS SIMPLIFIED ON BASIS OF OFFERING OF SECURITIES**

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**Old ICDR Regulations**") were notified in the year 2009. Due to the need to review and realign the Old ICDR Regulations with the recent developments in the security market and to bring the Regulations in alignment with other currently applicable laws, SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 were released on September 11, 2018 ("**ICDR Regulations**").

The key changes brought by ICDR Regulations in Old ICDR Regulations are as follows:

(a) All the chapters in ICDR Regulations have been categorized on the basis of the type of offering (initial public offering, rights issue, further public offer, preferential issue, qualified institutional placement and so on) so that all relevant information pertaining to a particular type of offering are available at one place;

(b) The procedural requirements have been specified through Schedules separately;

(c) The provisions of Companies Act, 1956 (wherever applicable), Companies Act, 2013, SEBI (Substantial Acquisition & Substantial Takeover) Regulations, 2011, SEBI (Share Based Employee Benefits) Regulations, 2014 have been suitably incorporated.

(d) Various informal guidance /interpretative letters/ frequently asked questions/ circulars regarding interpretation of various provisions of the regulations issued by SEBI from time to time have been suitably incorporated.

(e) Some of the changes specifically related to rights issue are mentioned below:

(i) The applicability requirement of the regulations has been increased from the rights issue ofRs. 50 lakhs to rights issue of Rs. 10 crores.

(ii) Definition of Draft letter of offer inserted.

(iii) In the case of Issue of warrants, the flexibility to attach more than one specified security has been provided.

(iv) Only Applications Supported by Blocked Amount facility are permitted to be made in usual cases.

(v) The need to file Draft letter of offer is done away with in case of Fast Track Issue.

CORPORATE LAWS

- **CONDITIONS FOR APPOINTMENT KEY MANAGERIAL PERSONS SPECIFIED**

The Ministry of Corporate Affairs ("**MCA**") has amended Schedule V of the Companies Act, 2013 ("**Act**") via notification dated September 12, 2018 ("**Amendment Notification**") which deals with conditions which are to be fulfilled for the appointment of a managing or whole-time director or a manager ("**Key Managerial Person**") without the approval of the Central Government. Following are some major changes:

(a) No person shall be eligible for appointment as a Key Managerial Person if he/she has been convicted of an offence under the Insolvency and Bankruptcy Code, 2016, the Goods and Services Tax Act, 2017 and the Fugitive Economic Offenders Act, 2018.

(b) Prior to Amendment Notification, a person was not allowed to be appointed as a Key Managerial Person if he/she was already appointed as a Key Managerial Person in more than one company and if he draws remuneration from one or more companies subject to the ceiling provided in the Act. This restriction has been removed after the amendment.

(c) The shareholders of a company making no profit or inadequate profit have been given the power to decide whether to give remuneration to the Key Managerial Persons in excess of the limits prescribed by the Act. Further, in case of default by the company in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor (collectively the creditors), the prior approval of such creditors has to be obtained by the company before obtaining the approval of the shareholders.

• NORMS FOR PRIVATE PLACEMENT OF SECURITIES SIMPLIFIED

The MCA made major changes in the Companies (Prospectus and Allotment of Securities) Rules, 2014 ("**PAS Rules**") twice on August 07, 2018 and September 10, 2018 ("**Amendment Rules**").

The Amendment Rules substituted Rule 14 which relates to the 'Private Placement of Securities' and have given clarity in relation to group of persons who can be proposed allottees in the preferential allotment that they must be 'identified by the board of directors of the issuer'.

Some of the other substantive changes are set out below:

(a) No right of renunciation being available under PAS-4 and no requirement of disclosure and maintaining of records of bank accounts by the issuer where consideration for the private placement is consideration other than cash.

(b) The issuers cannot utilise the monies raised through private placement until the return of allotment is filed with the RoC. The return has to be filed within 15 days, as opposed to 30 days in the old PAS Rules. In case of failure to do the filing within 15 days, the promoters and directors of the issuer can be made liable to pay Rs. 1,000 for each day during which the default continues upto a maximum of Rs. 25 lakhs.Further, the Amendment Rules also require that PAS-4 shall be issued only after the filing of board and shareholders' resolution with the RoC.

(c) Earlier, issuers were required to file Form PAS-4 and Form PAS-5 with the RoC and SEBI (in case of listed issuers). The Amendment Rules dropped this filing requirement.

(d) An issuer is allowed to make more than one issue of securities to "such class of identified persons as may be prescribed". The specification on what would constitute "such class of identified persons as may be prescribed" is awaited. Earlier it was a blanket ban on commencement of another private placement until completion, withdrawal or abandonment of an on-going preferential issue.

(e) No need to disclose in the explanatory statements annexed to notice of shareholders' meeting,the details of persons to whom preferential allotment has been made during the year. There is also a relief from disclosing the post issue shareholding pattern.

(f) The requirement of investment size of minimum Rs. 20,000/- of face value of the securities per person has been scrapped.

(g) Earlier, a shareholders' resolution was required to be passed once a year for private placement of NCDs during

that year. The Amendment Rules permit private placement of NCDs pursuant to board resolution, without obtaining shareholders' resolution so long as the proposed amount to be raised does not exceed the borrowing limit specified under Section 180(1)(c) of the Companies Act, 2013.

(h) The Amendment Rules have provided elaborate disclosure requirements in PAS-4 such as:

(i) Name of the allottee, father's name, complete address, phone number, e-mail, PAN and bank account details;

(ii) default in annual filing under the Companies Act;

(iii) intention of promoters, directors and key managerial personnel to subscribe to the offer (not applicable for NCD issuance);

(iv) proposed time within which the allotment shall be completed;

(v) name of the proposed allottees and the percentage of post private placement capital that may be held by them (not applicable for NCD issuance);

(vi) change in control in the issuer company, if any, that would occur consequent to the private placement;

(vii) justification for the allotment proposed to be made for consideration other than cash together with the valuation report of the registered valuer;

(viii) details of significant and material orders passed by the regulators, courts and tribunals impacting the going concern status of the company and its future operations;

(ix) pre-issue and post-issue shareholding pattern of the issuer in the format prescribed which includes details such as number of shares and percentage of shareholding; and

(x) mode of payment for subscription.

(i) It has been made mandatory for unlisted public companies to issue securities in dematerialized form. Such unlisted public companies shall also have to ensure that all their existing securities have been converted into dematerialised form.

• DEADLINE FOR FILING FOR SATISFACTION OF CHARGE EXTENDED

MCA has passed the Companies (Registration of Charges) Amendment Rules, 2018 ("**Amendment Rules**") to amend the erstwhile Companies (Registration of Charges) Rules, 2014.

The Amendment Rules have extended the deadline to do the filing for satisfaction of charge with RoC from 30 days to 300 days. Also, earlier such a filing was done only by the company on whose assets the charge was created but after the Amendment Rules, this filing can also be done by the charge holder.

• VARIOUS SECTIONS OF COMPANIES (AMENDMENT) ACT, 2017 NOTIFIED

MCA has notified various sections of Companies (Amendment) Act, 2017. The major changes effected by the notified sections are as follows:

(a) While incorporating a company, a *'declaration'* instead of an *'affidavit'* is required as per Section 7, to be filed from each of the subscribers to the memorandum and the first directors that he is not convicted of any offence, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty under this Act or any previous company law during the preceding five years and that all the documents filed with the RoC for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief.

(b) The window of establishing the registered office of the company as per Section 12 has been extended from 15 days

to 30 days and the time period for intimation to RoC in relation to change of registered office has also been increased from 15 days to 30 days.

(c) New Section 42 which relates to 'offer or invitation for subscription of securities on private placement' came into force implementing some major changes including scrapping the requirement of filing form PAS-4 and PAS-5 with RoC, no renunciation right with private placement offer cum application, no use of application money until filing of return of allotment with RoC under 15 days, penalty for not filing return of allotment which is Rs. 1,000/- for each day during which such default continues upto a maximum of Rs. 25 lakhs and filing for board and shareholders' resolution with RoC before issuing of PAS-4.

(d) The sum which is to be deposited in the deposit repayment reserve account as per Section 73, has been increased from 15% to 20% of the total deposit accepted by the company from its members and the requirement of providing deposit insurance has been scrapped.

(e) The date of repaying the deposits accepted by a company before the commencement of the Act, mentioned in Section 74, has been extended from 1 year to 3 years from commencement of the Act or on or before expiry of the period for which the deposits were accepted, whichever is earlier.

(f) The explanation of beneficial interest in shares has been added in Section 89 which includes direct or indirect right or entitlement of a person to exercise any of the rights attached to such shares or to receive any dividend or other distribution in respect of such shares.

(g) The requirement of declarationof beneficial interest to the company by the share holders holding beneficial interest of more than 25% in a company has been added under Section 90 of the Act. The company is also required to maintain a register of such declarations which shall be updated by the company from time to time. The companies are also required to file a return of significant beneficial owners (holding more than 25% beneficial interst or such other percentage as may be prescribed) of the company to the RoC.

(h) The appointment of a person of more than 70 years of age as a key managerial person in the company under Section 196 of the Act can be done even if no special resolution is passed for the same. However, it should be noted that this can be done only if votes casted in favour of the motion exceed the votes casted against the motion and only if the Central Government is satisfied that such appointment is most beneficial to the company.

(i) Section 200 of the Act has been amended to remove the requirement of approval of Central Government to fix the appointment or remuneration of managing director under section 196 and 197 where the company has inadequate or no profits. Now such remuneration of appointment can be fixed by the company itself.

(j) Section 366 has been amended to reduce the minimum no. of members from 7 to 2 in case of an unlimited company, or a company limited by shares, or a company limited by guarantee. It has also been added that a company with less than 7 members shall be registered as a private company.

IN THE COURTS

- ### FOREIGN AWARDS ARE NOT REQUIRED TO BE STAMPED UNDER THE INDIAN STAMP ACT, 1899 AS A PRE-CONDITION TO THEIR ENFORCEABILITY IN INDIA

In the case of M/s Shriram EPC Limited vs. Rioglass Solar SA, the Supreme Court of India ("**Supreme Court**") held that foreign awards sought to be enforced in India are not required to be stamped as an 'award' under the Indian Stamp Act, 1899, as a pre-condition to their enforceability under the Arbitration and Conciliation Act, 1996.

FACTS

Certain contractual disputes having arisen between M/s Shriram EPC Limited ("**Appellant**") and Rioglass Solar SA

("**Respondent**"), such disputes were referred to arbitration under the auspices of the International Chamber of Commerce. An ICC Arbitral Award was delivered against the Appellant in London.

Thereafter, the Respondent filed a petition with the High Court of Judicature at Madras ("**High Court**") for the purpose of enforcing the said Arbitral Award, under Section 48 (*Conditions for Enforcement of Foreign Awards*) and Section 49 (*Enforcement of Foreign Awards*) of the Arbitration and Conciliation Act, 1996.

The High Court ruled in favour of the Respondent on several grounds, and allowed the petition for the enforcement of the foreign award. Thereafter, the Appellant approached the Supreme Court by way of a special leave petition for the judgement of the Supreme Court on the limited ground of whether a foreign award that has not been stamped under the Indian Stamp Act, 1899 can be enforced under the said Sections 48 and 49 of the Arbitration and Conciliation Act, 1996.

ISSUE

Whether a foreign award that has not been stamped as an 'award' under Item No. 12 of Schedule I of the Indian Stamp Act, 1899 can be enforced under Section 48 and Section 49 of the Arbitration and Conciliation Act, 1996?

JUDGEMENT

The Supreme Court observed that the main bone of contention in the present appeal was whether the expression 'award' under Item No. 12 of Schedule I of the Indian Stamp Act, 1899 would include a foreign award.

In order to determine this question, the Supreme Court observed that in 1899, the law relating to arbitration was contained in the Code of Civil Procedure, 1882 and the Indian Arbitration Act, 1899, both of which were restricted in their application to what was then 'British India'. Therefore, the Supreme Court observed that, the only 'award' that could have been referred to in the Indian Stamp Act, 1899 was an award that was made in the territory of British India. Awards that may have been passed in foreign countries, and in the various princely states then in existence, would have been 'foreign awards' not governed by either of the aforesaid laws. If any such foreign award were to be enforced by means of a suit in British India, it would not be covered by the expression 'award' contained in Item 12 of Schedule I of the Indian Stamp Act, 1899.

The Supreme Court observed that this position continued even under the Code of Civil Procedure 1908, and thereafter under the Arbitration Act, 1940, which were restricted in their application to domestic awards. Foreign awards were governed by the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The present Arbitration and Conciliation Act, 1996, which repealed and consolidated the earlier laws on arbitration, continued with this position as well.

Thus, the expression 'award' under Item No. 12 of Schedule I of the Indian Stamp Act, 1899 has remained unchanged till date, was right from its very inception restricted to 'domestic award', and was never interpreted or amended to include 'foreign award'.Consequently, a foreign award, not being includible in Schedule I of the Indian Stamp Act, 1899, is not liable for stamp duty.

Further, the Supreme Court observed that the Indian Stamp Act, 1899 being a fiscal statute, it must be interpreted literally. Any ambiguity in the said statute would be construed so as to ensure to the benefit of the assessee who has to pay stamp duty.

Therefore, the Supreme Court accordingly dismissed the appeal of the Appellant and upheld the ruling of the High Court in favour of the Respondent.