



JULY 2018

MDP LEGAL UPDATES

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MDP **HIGHLIGHTS**

MDP & PARTNERS SUCCESSFULLY REPRESENTED ASSOCIATION OF BROKERS BEFORE THE SECURITIES APPELLATE TRIBUNAL IN CHALLENGING THE NSE CIRCULAR ON STT FOR PHYSICALLY-SETTLED CONTRACTS IN THE F&O SEGMENT

The NSE had shifted 46 F&O stocks (from July contracts) under the physical delivery group pursuant to SEBI's Circular dated April 11, 2018 regarding physical settlement in the derivatives segment in a phased manner. The NSE by its Circular dated July 17, 2018 had directed all its members in the Equity Derivative segment to collect Securities Transaction Tax ("STT") on physical settlement of stock derivatives at the rate of 0.10%, as applicable in the case of settlement by actual delivery in the cash segment. The tax should be on the settlement price to be paid by the purchaser on the Futures Contracts which are settled by way of physical delivery.

Mr. Nishit Dhruva (Managing Partner), Mr. Pranav N. Jain (Partner) and Mr. Chirag Bhavsar (Senior Associate) acted as Legal Advisors and represented the Association of National Exchanges Members of India ("ANMI") before the Securities Appellate Tribunal ("SAT") in challenging the said NSE Circular of July 17, 2018 inter alia on the grounds that there is complete ambiguity regarding the rate of STT to be levied on physical settlement of stock derivatives and the caveat given in the said NSE circular is impractical for the Members to implement. Further that unless, the Parliament passes a further law for levy of STT relating to contracts in F&O that results in delivery, there is no mandate for collection of the same by the Intermediary from the Client or the Exchange from the Intermediary.

The SAT concurs with the brokers on the ambiguity regarding the levy of STT the said NSE Circular has generated and the potential adverse effect it would have on the securities market and requested CBDT in the interest of justice to consider the matter on top priority and provide clarity. Further, the SAT has granted liberty to approach the appropriate forum urgently for seeking remedy against the impugned circular of the NSE.

**MDP & PARTNERS ACTED AS LENDERS' LEGAL COUNSEL ("LLC")
FOR BANK OF BARODA IN EXECUTION OF SUPPLEMENTAL
DOCUMENTS TO THE EXISTING LOAN AGREEMENTS, SECURITY
DOCUMENTS AND ANCILLARY DOCUMENTS EXECUTED BY AND
BETWEEN ONE OF THE PREMIER FLIGHT CARRIER OF INDIA AND
BANK OF BARODA.**

Mr. Malav Virani (Partner) and Mr. Chirag Bhavsar (Senior Associate) of MDP & Partners, acted as sole Legal Advisor for both the Borrower and the Lender to enter into Supplemental Documents to the existing Loan Agreements, Security Documents and ancillary documents executed by and between the Borrower, Security Provider and the Lender in respect of Rollover of the existing Short Term Loan -1 of INR 2175.00 Crores and Short Term Loan-2 of INR 1,000.00 Crores sanctioned by Lender to record the terms and conditions of the revised Sanction Letter.

**MDP REPRESENTS VARIOUS FLAT PURCHASERS IN A PROJECT
BEING CONSTRUCTED BY THE RNA GROUP OF BUILDERS**

Various flat purchasers of RNA Project namely 'RNA Continental' situated at Chembur had initially filed a Suit for the various breaches committed by the Builders i.e. RNA which resulted in filing Consent Terms whereby RNA agreed to complete the work in a particular timeframe. However, RNA committed default as a result of which the flat purchasers filed proceedings which came up before Justice S.J. Kathawalla on 26th July 2018 and 27th July 2018 when the Directors/ Management of RNA were called upon to submit an Affidavit inter alia stating the time frame within which the work shall be completed.

The flat purchasers were represented by Counsel Dr. Birendra Saraf and Mr. Rohan Savant alongwith Mr. Nishit Dhruva (Managing Partner), Mr. Prakash Shinde and Ms. Swati Deshpande (Partners) and Mr. Rohan Agrawal (Associate) of MDP & Partners.

**MDP REPRESENTS ANDHRA BANK IN PROCEEDINGS AGAINST
PROVOGUE (INDIA) LIMITED UNDER THE INSOLVENCY AND
BANKRUPTCY CODE 2016**

Andhra Bank filed a Petition under Section 7 of the Insolvency and Bankruptcy Code 2016 against Provogue (India) Limited seeking the initiation of a Corporate Insolvency Resolution Process since Provogue was unable to repay the financial facilities availed by it amounting to the tune of about Rs. 87 crores. The National Company Law Tribunal, Mumbai Bench, has passed an order whereby Provogue has been directed to undergo a corporate insolvency resolution process and a moratorium has been declared.

Andhra Bank was represented by Mr. Nishit Dhruva (Managing Partner), Mr. A.K. Mishra (Senior Partner), Mr. Prakash Shinde (Partner) and Mr. Rohan Agrawal and Mr. Darshit Dave (Associates) of MDP & Partners.

**MDP & PARTNERS REPRESENTED ONGC IN WRIT PETITION FILED
BY RNEL**

Mr. Nishit Dhruva (Managing Partner), Mr. Prakash Shinde and Ms. Swati Deshpande (Partners) and Ms. Khushbu Chhajed (Senior Associate) of MDP & Partners represented Oil and Natural Gas Corporation (“ONGC”) in the proceedings filed by Reliance Naval and Engineering Limited (“RNEL”) in a Writ Petition filed by RNEL challenging the termination and invocation of Bank Guarantee by ONGC amounting to more than Rs.500 Crores. The said Writ Petition came up before the Division Bench of Justice R.M. Borde and Justice V.M. Deshpande and has been adjourned to 13/08/2018.

RNEL was represented by Mulla & Mulla & Craigie Blunt & Caroe in the above proceedings.

**MDP & PARTNERS ADVISED AND ACTED FOR AXIS FINANCE
LIMITED WITH THE LOAN DOCUMENTATION FOR THE TERM LOAN
FACILITY AND DROPLINE LINE OF CREDIT AVAILED BY A REAL
ESTATE COMPANY**

Mr. Malav Virani (Partner), Mr. Chirag Bhavsar (Senior Associate) and Mr. Sunay Kargatia (Associate) of MDP & Partners, acted as the sole legal advisor for both the Borrower and the Lender (AXIS Finance Limited) and drafted the loan documentation and ancillary documents and carried out the due diligence of the properties of the Borrower being offered as security, in respect of a term loan and dropline line of credit of Rs. 175,00,00,000/- availed by the Borrower.

NCLT ORDERS NO LEGAL BAR ON INDIAN COMPANY MERGING WITH INDIAN LLP

In the Judgment delivered on June 11, 2008, in the matter of scheme of Amalgamation between **M/s Real Image LLP with M/s Qube Cinema Technologies Private Limited and Their Respective Partners, Shareholders and Creditors**, a Joint Company petition was filed under Section 230 to 232 of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and National Company tribunal Rules, 2016.

The instant petition pertains to the proposed Scheme of Amalgamation by virtue of which M/s Qube Cinema Technologies Private Limited as going concern. Both the Transferor LLP and Transferee Company are engaged in the business of establishing and acquiring Audio and Video Laboratories for Recording, Mixing, Editing, Computer Graphics and Special Effects for Films, Television, Video and Radio Productions etc., it is concluded that the legislative intention behind enacting both the LLP act 2008 and the Companies Act 2013 is to facilitate the ease of doing business and create a desirable business and create a desirable business atmosphere for companies and LLPs and Companies Act 1956 but there is no specific provision in the Companies Act 2013. Therefore, this is the clear case of casus omissus. If the intention of the parliament is to permit a foreign LLP to merge with an Indian Company, then it would be wrong to presume that the Act prohibits a merger of an Indian LLP with an Indian Company. Thus, there does not appear any express legal bar to allow/sanction merger of an Indian LLP with an Indian Company. There is no additional requirement for any modification and the said Scheme of Amalgamation appears to be fair and reasonable and does not violate any provisions of law. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of Amalgamation annexed with the Petition is hereby sanctioned which shall be binding on the partner, shareholder, creditors and employees of the Companies. The Scheme shall become effective from the date on which the certified copy of this order sanctioning the scheme is filed with the ROC, Chennai. While approving the Scheme as above, it is clarified that this Order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law. The Transferee Company is directed to file the amended MOA and AOA with the ROC, Chennai for his records. The Companies to the said Scheme or other person interested shall be at liberty to apply to this bench for any direction that may be necessary with regard to the working of the said Scheme.

MAHARERA ISSUES STANDARD OPERATION PROCEDURE FOR HANDLING COMPLAINTS

The following are the important points :-

- ⇒ Complainant to file complaint online through MAHARERA portal.
- ⇒ Once complaint is received online on payment of requisite fees, it is assigned automatically to Chairperson, Member 1 or Member 2.
- ⇒ Legal Wing of MAHARERA shall schedule first hearing date and communicate to the parties. After hearing, ruling of the authority shall be uploaded and mailed to the parties.
- ⇒ In case, hearing is adjourned, step 3 and 4 shall be repeated.

Source information on projects which ought to have been registered but not registered :-

1. Informant to submit details of projects through MAHARERA portal.
2. Once application is received online, it is assigned automatically to Technical Officers.
3. Following this the Technical Wing shall take following steps –
 - ⇒ If the project is already registered or under registration or Occupation Certificate has been received or project is exempted from Registration Act, then the application shall be closed.
 - ⇒ If the project should have been registered but not registered, then hearing shall be scheduled in front of authority for appropriate penalty and action.
 - ⇒ If the project prima facie does not have the appropriate approvals of the concerned planning authorities then the planning / public authorities shall be intimated to take appropriate action.

THE KEY HIGHLIGHTS OF THE INSOLVENCY AND BANKRUPTCY CODE (SECOND AMENDMENT) BILL, 2018

The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018 was introduced on July 23, 2018 by the Minister of Finance and Corporate Affairs, Mr. Piyush Goyal. The Bill amends the Insolvency and Bankruptcy Code, 2016, and replaces the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 that was promulgated on June 6, 2018. The Code provides a time-bound process for resolving insolvency in companies and among individuals. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt.

Key Highlights are as follows:

- ⇒ Representative of financial creditors
- ⇒ Voting threshold of Committee of Creditors
- ⇒ Ineligibility to be a resolution applicant
- ⇒ Applicability of the Code to Micro, Small and Medium Enterprises (MSMEs)
- ⇒ Corporate resolution
- ⇒ Withdrawal of admitted applications
- ⇒ Implementation of resolution plans

Specific Relief Amendment Bill Making Specific Performance of Contract Compulsorily Enforceable

The Parliament has passed the Specific Relief (Amendment) Bill 2018, proposing to bring significant amendments to Specific Relief Act 1963. On July 23, the Rajya Sabha passed Amendment Bill, which was passed by the Lok Sabha on March 15, 2018.

One of the major features of the amendment is that it takes away the discretionary power of courts in ordering specific performance of contract, by stating that specific performance of contract should be compulsorily enforced by the Court. As per Section 10 of the Act (as it stood before amendment) specific performance of contract ‘may’ be enforced by the Court in its discretion. As a result of wide discretionary powers, the courts often award damages for breach of contract as a general rule and grant specific performance as an exception. As per the present scheme of the Act, to obtain a decree of specific performance, the plaintiff has to appeal to the discretionary powers of the Court on the basis of grounds in Section 20. Section 20 (as it stood before amendment) states that the jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so. This Section 20 has been totally done away with by the amendment, by substituting it with another provision.

The amendment wholly substitutes Section 10 by stating that specific performance of a contract shall be enforced by the court. Similar discretionary power of Courts as per Section 11 in granting specific performance in relation to trusts is also taken away by the amendment, by making it compulsory even for trusts.

The effect of the amendment will be that the plaintiff can seek specific performance of contract as a matter of course, without having to prove special circumstances.

Also, Section 21, which had earlier stated that “in a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance” has been amended by substituting the words “either in addition to, or in substitution of” with “in addition to”.

The other noteworthy features of the amendment bill are as follows:

- ⇒ Substituted performance.
- ⇒ No need to plead readiness and willingness to perform contractual obligations
- ⇒ Infrastructure Projects
- ⇒ Special Courts for infrastructure projects.
- ⇒ Fixing time limit of twelve months for case disposal.
- ⇒ Power of court to engage experts.

**PERMANENT CUSTODY OF CHILDREN CANNOT BE
ORDERED IN PROCEEDINGS UNDER DOMESTIC
VIOLENCE ACT**

The learned Judicial Magistrate, First Class, (Court No.6), Jalgaon in Criminal Misc. Application No.563 of 2011, directing Applicant No.1 to pay maintenance to Respondent No.1 at the rate of Rs.2000/- p.m. and further directing him to place the minor children namely Kalyani and Kunal, who were aged about 7 1/2 years and 4 1/2 years respectively in the year 2011, in the custody of Respondent No.1 during summer vacations until they attain the age of majority and also to make necessary arrangements to facilitate Respondent No.1 to meet her minor children during other holidays.

Court's Observations: It is, thus, clear that the custody of children under Section 21 of the Act is temporary and the order for custody can be passed during the pendency of the application under Section 12 of the Act before the Magistrate. As per Section 21 of the Act, the Magistrate may grant temporary custody of any child or children to the aggrieved persons at any stage of hearing of the application for protection order or for any other relief under this Act. Thus, the application under Section 21 of the Act has to be filed in such pending proceedings. It follows that there cannot be independent application seeking the relief of temporary custody simpliciter. Likewise, the expression "temporary custody" cannot be interpreted to mean "permanent custody".

The aggrieved person can get permanent reliefs under Sections 18, 19 and 20 of the Act. No such permanent relief was contemplated by the Legislature in the matter of custody of children vide Section 21 of the Act. Therefore, no provision has been made for filing independent application for custody of child or children. It is only when an application for protection order or for any other relief under this Act is pending, at any stage of hearing of such application, the aggrieved person has been given right to seek temporary custody of the child or children. The relief in respect of permanent arrangement for custody of child or children, which would have force even after disposal of the application for protection order or other reliefs, cannot be said to be contemplated by the Legislature, while framing Section 21 of the Act.

THE KEY HIGHLIGHT OF THE MUMBAI MUNICIPAL CORPORATION ACT, (SECOND AMENDMENT) BILL, 2018

Additional Stamp Duty on certain transfers of immovable properties –

“Without prejudice to the provisions of this Act, the stamp duty leviable under the Maharashtra Stamp Act, on the instruments of sale, gift and usufructuary mortgage, respectively, of immovable property shall, in the case of any such instrument relating to immovable property situated in the area of Brihan Mumbai Municipal Corporation in which one or more Vital Important Urban Transport Projects and executed on or after such date as may be specified by the State Government, by notification in the Official Gazette, be increased by a surcharge at the rate of one per cent., in case of instrument of sale or gift, on the value of the property so situated and in case of an instrument of usufructuary mortgage, on the amount secured by the instrument as set forth in the instrument and shall be collected accordingly under the said Act.”

**REVISION OF MONETARY LIMITS FOR FILING OF
APPEALS BY THE DEPARTMENT BEFORE INCOME TAX
APPELLATE TRIBUNAL, HIGH COURTS AND SLPS/
APPEALS BEFORE SUPREME COURT – MEASURES FOR
REDUCING LITIGATION**

Appeals/SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder :

Sr .N	Appeals/SLPs in Income – Tax	Monetary Limits
1.	Before Appellate Tribunal	20,00,000
2.	Before High Court	50,00,000
3.	Before Supreme Court	1,00,00,000

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