

EDITORIAL COMMENTS

Insolvency and Bankruptcy Code 2016

The much awaited Insolvency and Bankruptcy Code, 2016 has finally been passed by Parliament thus bringing in a much needed reform in the Bankruptcy laws of the country. Though the code is yet to be notified, however the same has been assented by the President.

The legal framework for dealing with financial default in India has been a cause for major concern for quite some time now. It was generally felt that the same needs to be ramped up to come up to global standards especially after the globalization of the Indian economy post economic liberalization.

The civil recovery process under the general law and the recovery through the special tribunals under the special laws for banks and financial institutions also proved ineffective and time consuming. The industrial revival through special laws for sick companies also did not achieve the desired results. To add to the misery, the winding up process for companies under the Companies Act too proved equally ineffective. The Provincial Insolvency Laws dealing with individual insolvencies were no less inefficient being more than a century old.

A poor legal framework for credit recovery not only shook the confidence of the corporate investors as well as the lenders, it also hampered the growth and development of the new credit instruments and markets. A huge level of NPAs in the banking sector can be attributed, to a large extent, to the inefficient legal and institutional framework in the country to deal with credit defaults. Under such circumstances, it was but natural to review the existing legal and institutional framework and the new law is an attempt in the right direction.

Unlike the previous regime, the new law consolidates the legal framework relating to both corporate as well as non- corporate insolvencies into one single code. This would provide a greater clarity and consistency in the application of law. The law deals with both the revival as well as resolution of insolvencies through a timely and efficient manner. DRT and NCLT to act as the adjudicating authorities thus eliminating the cumbersome court process under the old law. The insolvencies to be executed through a newly developed set of professionals who would be regulated by a Insolvency and Bankruptcy Board of India. Specially developed Information Utilities would collect, collate, authenticate and disseminate financial information to be used in insolvency and bankruptcy proceedings.

The basic scheme of the new law is that in the event of a default on debts the control of the entity should shift from its management to a committee of creditors who, in turn, will evaluate the proposal for this revival from various stakeholders within a time period of 180 days to decide reviving the company or taking it to insolvency. This would ensure that the precious economic resources of the company are put to a productive alternative use without wastage of time which was a major concern under the previous regime. It is hoped that new law would be efficiently implemented to be a catalyst in the industrial and economic growth of the country.

R P Sharma
Chief Editor

VIEWS

DIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

INTRODUCTION:

One of the major areas of concern for Government is litigation in direct taxes. Government in order reduces the backlog of cases and to reduce the cost of handling such cases and to realize the dues pending due to such cases, government has introduced Direct Tax Dispute Resolution Scheme. The Finance Act 2016 has inserted a new chapter X titled as "The Direct Tax Dispute Resolution Scheme 2016. The scheme is all set to come into force from 1st June 2016.

The Scheme aims to reduce the pending litigations enabling the Government to realize revenue dues in an expeditious manner and to provide an alternative mechanism to resolve tax disputes.

The scheme envisages two types of disputes namely, 'specified tax' and 'tax arrears'.

"Specified Tax" means a tax dispute pending on 29-2-2016 which has arisen as a result of retrospective amendment. "Tax Arrears" means tax, interest and penalty in respect of which an appeal is pending for adjudication before the CIT(A) or CWT(A) under the Income Tax Act and Wealth Tax Act respectively, as on 29-02-2016

Mode of Operation of the Scheme:

a. A person who is opting for this scheme shall be required to make a declaration in the prescribed form and manner to the designated authority, who shall not be below the rank of commissioner of Income Tax.

b. Declaration shall be made on or before 01-06-2016 but before such date as may be notified.

c. If declaration relates to tax arrears, any appeal pending before CIT(A) or the CWT(A) as on 29-02-2016 shall be deemed to have been withdrawn.

d. If Declaration relates to specified tax, any appeal pending before the CIT(A) /CWT(A) or with Tribunal / High Court / Supreme Court shall be withdrawn by the declarant and proof of such withdrawal shall also have to be furnished.

Also the Declarant is required to furnish an undertaking, waiving the right, whether direct or indirect, to seek any claim in relation to the specified act which otherwise would be available under any law or statute or under any agreement.

IMMUNITY

A. Immunity pertaining to tax arrears.

- A. In case of disputed tax (as a result of assessment order) less than or equal to Rs. 10 lakhs, whole of the tax and interest till the date of assessment / reassessment along with whole of penalty.
- B. In case of disputed tax (as a result of assessment order) exceeds Rs 10 lakhs, whole of the tax and interest till the date of assessment / reassessment along with 25% of penalty leviable.

- C. If the pending appeal relates to penalty order, tax and interest payable on total income finally determined along with 25% penalty leviable.

B. Immunity pertaining to specified tax

Where the dispute relates to a retrospective amendment, whole of tax so determined along with whole of penalty.

- **Procedure**

1. Declarant to file declaration to the designated authority not below the rank of Commissioner in such form and verified in such manner as may be prescribed
2. The designated authority shall within 60 days from the date of receipt of declaration, determine the amount payable by the declarant
3. The declarant shall pay such sum within 30 days of passing such order and furnish a proof of such sum
4. Any amount paid in pursuance of declaration shall not be refundable

The order made under the scheme shall be final and conclusive and no appeal shall lie against such an order before any appellate authority.

NON-OPERATION OF THE SCHEME

The scheme shall not be applicable in the following cases :-

- In search and seizure cases
- In assessments relating to survey proceedings
- In relation to assessment year in which prosecution has been initiated on or before the making of declaration under the scheme
- undisclosed income in respect of any source or asset located abroad
- An assessment / reassessment on the basis of information received under the DTAA
- Persons notified under Special Courts Act, 1992.

CASE LAWS

1. Credit Suisse AG vs. Spice Jet Ltd. 2016 (Madras High Court)

It was held that ex parte winding up order cannot be passed against the company which is unable to defend its case due to non-appearance of its lawyer in time on hearing date.

2. Union of India vs. Financial Technologies (India) Ltd. 2016 CLB DELHI

It was held that merger proceedings and proceedings under section 388B of the Companies Act 1956 against the delinquent managerial person are independent proceedings and hence section 388B proceedings cannot be stayed just because merger proceedings are pending.

3. Messer Holdings Ltd. vs. Shyam Madanmohan Ruia 2016 Supreme Court

It was held that filing of multiple pleas against the transfer of shares and suppressing the facts is a classic example of abuse of judicial process and exemplary cost was to be imposed on the litigants.

4. Vineet Arya vs. Competition Commission of India (Commission) CAT New Delhi 2016

It was held that where appellants failed to produce documents to prove that respondent had abused its dominant position by inducing appellant to book flats in their project, respondent cannot be held responsible for anti-competitive trade practices.

5. Pan India Motors (P.) Ltd. Vs. Asset Reconstruction Company (India) Ltd. 2016 HIGH COURT OF BOMBAY

It was held that banks and financial institutions are free to move under Recovery of Debts Due to Banks And Financial Institutions Act or SARFAESI Act to secure their security interest as both are complementary.

6. Financial Software and Systems (P.) Ltd vs. Competition Commission of India 2016 HIGH COURT OF DELHI

It was held that where single judge discontinued interim relief granted to appellant on passing of final order by CCI, it could not be held as illegal.

7. VIL Ltd. Vs. Raibareilly Allahabad Highway (P.) Ltd. 2016 CLB-New Delhi

It was held that relief under section 186 of the companies act 1956 cannot be granted where it is not impracticable to call the meeting as the shareholders are very much present in the meeting and where they have expressed their willingness to attend the meeting.

8. A. Akthar Hussain Vs. K. Pappireddiyar 2016 Madras

It was held that security interest created in agricultural land is exempt from provisions of SARAESI ACT and hence cannot be enforced.

NOTIFICATIONS



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CFD/DIL3/CIR/P/2016/53

May 03, 2016

To

All Recognised Stock Exchanges

Dear Sir/Madam,

Sub: Procedure to deal with cases prior to April 01, 2014 involving offer / allotment of securities to more than 49 and up to 200 investors in a financial year.

1. SEBI, vide circular No. CIR/CFD/DIL3/18/2015 dated December 31, 2015, prescribed the procedure to deal with cases involving offer / allotment of securities to more than 49 and up to 200 persons.
2. Para 7 of the Circular provides for submission of a certificate from an independent peer reviewed practicing Chartered Accountant certifying compliance as prescribed in the circular.
3. It has now been decided that the certification as provided in Para 7 of the Circular dated December 31, 2015 may also be provided by an independent peer reviewed practicing Company Secretary.

The Stock Exchanges are advised to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on their websites.

Yours faithfully,

Narendra Rawat
Deputy General Manager
+91-22-26449383
narendrar@sebi.gov.in

(TO BE PUBLISHED IN PART IV OF THE DELHI GAZETTE EXTRAORDINARY)
GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI
DEPARTMENT OF TRADE AND TAXES
VYAPAR BHAWAN: I.P. ESTATE: NEW DELHI- 110 002

No. F3(643)/Policy/VAT/2016/157-169

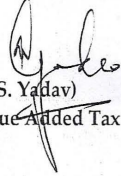
Dated: 03/05/2016

NOTIFICATION

In exercise of the powers conferred on me under the fourth proviso to sub-rule (3) of rule 28 of the Delhi Value Added Tax Rules, 2005 and in partial modification to notification No. F.3(643)/Policy/VAT/2016/1585-1597 dated 1st March, 2016, I, S. S. Yadav, Commissioner, Value Added Tax, Government of NCT of Delhi, do hereby direct that the requirement to furnish return with digital signatures in accordance with the provisions of the Information Technology Act, 2000 shall be for the tax period commencing from 1st April, 2016 and subsequent tax periods.

The rest of the contents of the said notification shall remain same.

This notification shall come into force with immediate effect.


(S. S. Yadav)

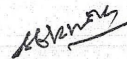
Commissioner, Value Added Tax

No. F. 3(643)/Policy/VAT/2016/157-169

Dated 03/05/2016

Copy forwarded for information and necessary action to:

1. The Principal Secretary (GAD), Govt. of NCT of Delhi, Delhi Sachivalaya, New Delhi one spare copy for publication in Delhi Gazette Part-IV (extraordinary) in today's date.
2. The Principal Secretary (Finance), Finance Department, Govt. of NCT of Delhi, Delhi Sachivalaya, New Delhi-02
3. The Principal Secretary to the Chief Minister, Govt. of NCT of Delhi, Delhi Sachivalaya, New Delhi-02
4. The Secretary to the Deputy Chief Minister, Govt. of NCT of Delhi, Delhi Sachivalaya, New Delhi-02
5. All Special/Addl./Joint Commissioners, Department of Trade & Taxes, New Delhi.
6. The Spl. Commissioner (PR), Department of Trade & Taxes, New Delhi to arrange to give wide publicity to this notification.
7. The Joint Commissioner (System), Department of Trade & Taxes, New Delhi to upload the notification on the website of the Department.
8. The Registrar, VAT Appellate Tribunal, Department of Trade and Taxes, New Delhi.
9. The Joint Director (IT), Department of Trade and Taxes, New Delhi.
10. All Asstt. Commissioners/AVATOs Department of Trade and Taxes, New Delhi through their Zonal Incharges.
11. The President/Secretary, Sales Tax Bar Association (Regd.), New Delhi
12. All dealers registered with the Department of Trade and Taxes, Department of Trade & Taxes, New Delhi
13. Guard File.


(S. K. Kamra)

Asstt. Commissioner (Policy)

27/8/EDD
3/5/16

Cabinet approves National Intellectual Property Rights Policy

“Creative India; Innovative India: रचनात्मक भारत; अभिनव भारत”

The Union Cabinet yesterday approved the National Intellectual Property Rights (IPR) Policy that will lay the future roadmap for intellectual property in India. The Policy recognises the abundance of creative and innovative energies that flow in India, and the need to tap into and channelise these energies towards a better and brighter future for all.

The National IPR Policy is a vision document that aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario. This policy shall weave in the strengths of the Government, research and development organizations, educational institutions, corporate entities including MSMEs, start-ups and other stakeholders in the creation of an innovation-conducive environment, which stimulates creativity and innovation across sectors, as also facilitates a stable, transparent and service-oriented IPR administration in the country.

The Policy recognizes that India has a well-established TRIPS-compliant legislative, administrative and judicial framework to safeguard IPRs, which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns. It reiterates India's commitment to the Doha Development Agenda and the TRIPS agreement.

While IPRs are becoming increasingly important in the global arena, there is a need to increase awareness on IPRs in India, be it regarding the IPRs owned by oneself or respect for others' IPRs. The importance of IPRs as a marketable financial asset and economic tool also needs to be recognised. For this, domestic IP filings, as also commercialization of patents granted, need to increase. Innovation and sub-optimal spending on R&D too are issues to be addressed.

The broad contours of the National IPR Policy are as follows:

Vision Statement: An India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

Mission Statement:

Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

Objectives:

The Policy lays down the following seven objectives:

- i. IPR Awareness: Outreach and Promotion - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
- ii. Generation of IPRs - To stimulate the generation of IPRs.
- iii. Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.
- iv. Administration and Management - To modernize and strengthen service-oriented IPR administration.
- v. Commercialization of IPRs - Get value for IPRs through commercialization.
- vi. Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- vii. Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

These objectives are sought to be achieved through detailed action points. The action by different Ministries/ Departments shall be monitored by DIPP which shall be the nodal department to coordinate, guide and oversee implementation and future development of IPRs in India.

The National Intellectual Property Rights (IPR) Policy will endeavor for a “Creative India; Innovative India: रचनात्मक भारत; अभिनव भारत”.

AKT/VBA/SH

**Reserve Bank of India
Foreign Exchange Department
Central Office
Mumbai – 400 001**

Notification No.FEMA.368/2016-RB

May 20, 2016

**Foreign Exchange Management (Transfer or Issue of Security by a Person
Resident outside India) (Seventh Amendment) Regulations, 2016**

In exercise of the powers conferred by clause (b) of sub-section (3) of Section 6 and Section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 ([Notification No. FEMA. 20/2000-RB dated 3rd May 2000](#)) namely:-:-

1. Short Title & Commencement

- (i) These Regulations may be called the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Seventh Amendment) Regulations, 2016.
- (ii) They shall come into force from the date of publication in the official Gazette.

2. New Regulation

In the Principal Regulations, after Regulation 10, the following shall be inserted, namely:-

“10A. In case of transfer of shares between a resident buyer and a non-resident seller or vice-versa, not more than twenty five per cent of the total consideration can be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement. For this purpose, if so agreed between the buyer and the seller, an escrow arrangement may be made between the buyer and the seller for an amount not more than twenty five per cent of the total consideration for a period not exceeding eighteen months from the date of the transfer agreement or if the total consideration is paid by the buyer to the seller, the seller may furnish an indemnity for an amount not more than twenty five per cent of the total consideration for a period not exceeding eighteen months from the date of the payment of the full consideration.

Provided the total consideration finally paid for the shares must be compliant with the applicable pricing guidelines.”

(Shekhar Bhatnagar)
Chief General Manager-in- Charge

Foot Note:-

The Principal Regulations were published in the Official Gazette vide G.S.R. No.406 (E) dated May 8, 2000 in Part II, Section 3, sub-Section (i) and subsequently amended as under:-

G.S.R.No. 158(E) dated 02.03.2001

G.S.R.No. 175(E) dated 13.03.2001

G.S.R.No. 182(E) dated 14.03.2001

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 23rd May, 2016

G.S.R. 540(E).—In exercise of the powers conferred under section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:—

1. Short title and commencement. - (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, for sub-rule (2), the following sub-rule shall be substituted, namely:—

“(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or alongwith any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :

Provided that- if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism”.

[F. No. 05/12/2016-CSR-Cell]

AMARDEEP SINGH BHATIA, Joint Secy.

Note.—The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide number G.S.R. 129(E)*, dated the 27th February, 2014 and were subsequently amended by notification number G.S.R. 644(E), dated the 12th September, 2014 and notification number G.S.R. 43(E), dated the 19th January, 2015.