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MINISTRY OF CORPORATE AFFAIRS BRINGS PROVISIONS OF SPECIAL COURTS IN EFFECT

THE COMPANIES ACT, 2013 AMENDMENTS

Chapter XXVIII of the Companies Act, 2013 (hereinafter referred to as the "**Act**") deals with the concept of special courts to try the offences specified under the Act. The purpose for the establishment of such courts is to provide speedy trial, facilitation of corporate governance and stricter implementation of corporate law. However the provisions in the Act regarding the establishment of special courts are enabling provisions which confer the authority of designating special courts on the Central Government. The entire chapter for special courts was not effective on the date of enactment of the Act.

Section 1(3) of the Act provides that the provisions which have not come into force on the date of enactment of the Act shall be made effective on the date when the Central Government publishes a notification in the official gazette with regard to the same. The major focus of the provisions of special courts in the Act is with respect to the establishment, jurisdiction and procedure of the special courts. Section 439 and 442 to 446 was already notified by the Central Government in 2013 and 2014 respectively. Section 439 of the Act provides that every offence committed under the Act shall be non-cognizable and shall provide the procedure to be followed by the court before taking cognizance of such offences. Section 442 of the Act provides for the establishment of mediation and conciliation panel and the composition of such panel. Section 446 of the Act provides for the application of fines by the court for cost of the proceedings or any other expenses incurred by the other party towards the institution of the suit.

The remaining provisions of the chapter were notified by the Central Government vide notification dated 18th May, 2016 along with Section 2(29) under the Companies Act, 1956, the powers and privileges of public prosecutors were narrow as compared to the Companies Act, 2013. The provisions of the Companies Act, 2013, has been modified in order to confer wider powers on the public prosecutors and to override the provisions as contained under Cr. P.C.

Other provisions which were made effective by virtue of this notification are Section 435 to 438 and Section 440 of the Act. Therefore, in exercise of the powers conferred on the Central Government by virtue of this section, the governments via. its notification dated 18th May, 2016, established eight special courts. The courts as established by the government under this notification are as follows:

- Courts of Additional Special Judge, Anti-Corruption at Jammu and Srinagar were designated as the special court in the state of Jammu and Kashmir.
- Presiding Officers of Court No's. 37 and 58 of the City Civil and Sessions Court, Greater Mumbai, was designated as the special court in the state of Maharashtra.

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- Court of Principal District and Sessions Judge, Union territory of Dadra and Nagar Haveli at Silvassa, was designated as the special court in the Union Territories of Dadra and Nagar Haveli and Daman and Diu.
- Court of District Judge-1 and Additional Sessions Judge, Panaji was designated as the special court in the state of Goa.
- Court of Principal District and Sessions Judge, Ahmedabad (Rural), situated at Mirzapur, Ahmedabad was designated as the special court in the state of Gujarat.
- 9th Additional Sessions Judge, Gwalior Madhya Pradesh, was designated as the special court in the state of Madhya Pradesh.
- Court of Additional District and Session Judge, Port Blair, Andaman and Nicobar Islands was designated as the special court in the Union Territories of Andaman and Nicobar Islands.
- 2nd Special Court, Calcutta, was designated as the special court in the state of West Bengal.

The punishment that is provided in the notification is the minimum imprisonment of two years in terms of the procedure as laid down in Chapter XXVIII of the Act.

The effect of this notification and establishment of special courts shall be the speedy trial of the offences punishable under this Act and a stricter implementation of the Act for the benefit of the stakeholders.

RELAXATION OF FOREIGN DIRECT INVESTMENT NORMS

On 6th May, 2016, the Government of India announced via. Press Note No. 4 (2016 Series) the relaxation of foreign investment norms in India for Asset Reconstruction Companies ("**ARCs**") i.e. companies registered with the Reserve Bank of India ("**RBI**") under Section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ("**SARFAESI Act**"). Significant changes have been made in provisions related to persons who are resident outside India and have the ability to invest in the capital of ARCs registered with RBI via. automatic route for up to 100% (Hundred Percent) simplifying and enabling foreign investments in India.

Initial Position: Consolidated FDI Policy Circular of 2015 which got effective from 12th May, 2015, provided that investment amounts up to 49% (Forty Nine Percent) shall be allowed through the automatic route requiring no prior government permission and if above 49% (Forty Nine Percent), shall be permitted through the government route.

No sponsor was allowed to hold more than 50% (Fifty Percent) of the shareholding in an ARC either by way of Foreign Direct Investment ("**FDI**") or by routing it through a Foreign Institutional Investment ("**FIIs**") and Foreign Portfolio Investment ("**FPIs**") controlled by a single sponsor.

FIIs and FPIs were permitted to invest in the Security Receipts ("**SRs**") issued by ARCs registered with the RBI. FIIs/FPIs were permitted to invest up to 75%

(Seventy Percent) of each tranche of scheme of SRs. All investments were subject to provisions of Section 3(3)(f) of the SARFAESI Act.

Revised Position: Non-residents of India can now invest in the capital of ARCs registered with RBI, up to 100% (Hundred Percent) on the automatic route i.e. without any prior government permission.

The investment limit of a sponsor in the shareholding of an ARC and investment by institutional/ non-institutional investors shall now be governed by the provisions of SARFAESI Act, 2002 as amended from time to time. FIIs and FPIs shall be allowed up to 100% (Hundred Percent) of each tranche/portion in the SRs issued by the ARCs wherein earlier only 75% (Seventy Five Percent) was allowed. After the announcement of these changes the government also announced the proposal of new regulations and amendments in the SARFAESI Act to allow the promoter and sponsor of an ARC to hold up to 100% (Hundred Percent) stake in the ARC and permit non-institutional investors to invest in securitization receipts.

The government's step to relax the regulations, promotes foreign investments in India, as it simplifies, uncomplicates and eases the process of business development and investment for non-residents in India. This change has resulted into multiple prediction of a drastic increase in the flow of investments into the ARCs in the near future.

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The Insolvency and Bankruptcy Code, 2016: The Insolvency and Bankruptcy Code, 2016, received assent from the president on 28th May, 2016 and was published by Ministry of Law and Justice. Some key provisions of the code are:

- Consolidate and amend existing laws related to insolvency resolution and reorganization of corporate persons, partnership firms and individuals in a time bound manner.
- Setting up Insolvency and Bankruptcy Board of India ("**IBBI**") to regulate professionals, agencies and Information Utilities ("**IUs**") engaged in resolution of insolvencies of companies.
- Establishment of National Companies Law Tribunal ("**NCLT**") and Debt Recovery Tribunals ("**DRT**") as nodal adjudicating authorities for resolution of insolvency, liquidation and bankruptcy.

The code seeks to ensure time-bound settlement of insolvency, faster turnaround of businesses and create a unified data base of serial defaulters.

Krishi Kalyan Cess: Krishi Kalyan Cess ("**KKC**") came effective from 1st June, 2016, under chapter VI of the Finance Act, 2015. KKC is a cess which shall be implied and collected by the government as Service Tax on all taxable services at a rate of 0.05% of the worth of taxable services. This shall be calculated in the same way as Service Tax is calculated, and would be imposed on the same taxable value as Service Tax. KKC shall be calculated on the taxable value of the service presented and shall not be calculated on Service Tax.

Industries (Development and Regulation) Amendment Act, 2016: Industries (Development and Regulation)

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Amendment Act ("**IDRA Act**") came into force on 14th May, 2016 to insert Section 29E after 29D of the Industries (Development and Regulation) Act, 1951. Section 29E provides that any power exercised, or action taken or done or purported to have been taken or done, by the Central Government or by the State Government, shall always deemed to be (with retrospective effect), have been, for all the purpose validly taken or done or omitted by the authorities. This stands irrespective of any judgment, decree or order of any court, tribunal or other authority.

National Company Law Tribunal Notified and Company Law Board Dissolved: NCLT and National Company Law Appellate Tribunal ("**NCLAT**") have replaced Company Law Board ("**CLB**") as per notifications dated 1st June, 2016, issued by the Ministry of Corporate Affairs. NCLAT would be chaired by Justice SJ Mukhopadhaya, Judge (Retired), Supreme Court of India. Current chairman of CLB Justice MM Kumar will be the President of NCLT, which shall have eleven benches spread across India in all major cities. Functions of NCLT are not clear as yet, but it seems that the powers of CLB and other powers under the Act excluding reduction of capital, winding-up and compromise/arrangement shall be vested with NCLT.

Income Declaration Scheme for Domestic Black Money: Income Declaration Scheme ("**Scheme**") of the Union Finance Ministry is effective from the 1st June, 2016, and shall remain in force till 30th September, 2016 as a four month window for declaring black money. Under the Scheme declared income shall be taxed at the rate of 30% plus KKC of 25% on taxes payable and a penalty at the rate of 25% of the taxes payable. In other words, a total of 45% of the income declared under the scheme shall be taxed in accordance with the Scheme.

HDFC Bank Launches Smart-up for Startups: The Smart-Up launched by HDFC Bank is tailored to meet all the requirements of a start-up, offering banking and payment solutions, along with advisory and forex services. Smart-Up has been launched in association with Zone StartUp India ("**ZSI**"), a Mumbai based startup accelerator. The benefits of Smart-Up include:

- Enhanced transaction limit with no minimum balance requirement for first six months,
- Customized salary account offering coupled with best-in-class services and largest suite of product range,
- PayZapp for business which shall provide invoicing, delivery and collection solution and secure money transfer,
- Dedicated relationship manager for taking care of all banking needs as well as investment advisory,
- Recommendation of a chartered accountant for tax, regulatory and compliance issues,
- End to end support for all foreign trade and remittances services with respect to regulatory guidelines and special exchange rates.
- Opportunity to showcase products on Smart-Buy to over 32 million HDFC Bank customers.

The scheme by HDFC is a first of its kind solution tailored to meet all the requirements and banking needs of startup group of the country. This initiative is part of a larger effort by HDFC Bank to create an ecosystem to nurture the spirit of innovation and enterprise in the start-up space.

SEBI Tightens P-Notes Norms to Check Money Laundering: Market regulator Securities and Exchange Board of India ("**SEBI**") on 20th May, 2016, tightened the norms for investing in Participatory Notes ("**p-notes**"). The norms have been tightened with a view to check money laundering. It has been mandatory for p-note users to follow the provisions of the Prevention of Money Laundering Act, 2002. SEBI also tightened the due-diligence requirements for issuance and transfer of these instruments.

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