



CODE ON WAGES 2019 - A STEP TOWARDS CODIFYING AND SIMPLIFYING STATUTES PERTAINING TO WAGE AND BONUS

❖ INTRODUCTION

Recently, the Parliament of India passed the Code on Wages Bill which received the President's Assent on 8th August, 2019. The Code on Wages, 2019 (the "Code") proposes to consolidate multiple central labour laws i.e., *the Payment of Wages Act, 1936; the Minimum Wages Act, 1948; the Equal Remuneration Act, 1976; and the Payment of Bonus Act, 1965.*

The Code aims to include relevant provisions of the previous laws pertaining to wages of the workers, its payment and bonus and equal remuneration for men and women.

According to the Code, a tripartite committee comprising representatives of employers, trade unions, and the appropriate State Government would fix the minimum wages for workers throughout the country. The committee would also ensure that there is no discrimination between *men, women and transgender* for receiving wages.

❖ KEY PROVISIONS OF THE CODE ON WAGES, 2019 AND ITS IMPLICATIONS

Coverage and Applicability:

The Code applies to employees in both the organized as well as un-organized sector. The provisions relating to payment of wages under the Code will extend to all employees irrespective of their wage ceiling and type of employment whereas the acts *namely*, the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936 applied only to scheduled employments and employees who draw monthly wages of up to Rs. 24,000/- in certain specified establishments and factories respectively.

Definition of Wage - Earlier, there were multiple definitions of wages in various Central and State legislations but this Code simplifies the definition of wages so as to reduce the complexity. The fixation of

the minimum wage will primarily be based on difficulty of job, geography and skills.

Uniformity in Coverage and Payment - The Code covers all employees in both the organized as well as unorganized sectors which will allow them to get minimum wages, as well as timely payment of wages. The Code helps the workers who are engaged in unorganized sectors where there is no guarantee of minimum wage as well as timely payment of wages.

State Wages to be equal or higher than the National Floor Rates - The Code lays down certain provisions in which the Government will set the national floor rates for wages and minimum wage in certain sectors, *namely*, mining and railways. The appropriate State Government will be responsible for fixing the minimum wages for their States, which, in any case, cannot be lower than that of the national floor wage rates set by the Central Government. However, it is up to the Central Government to set the different minimum wages for different parts of the country. Further, the Code also states that the minimum wages must be revised and reviewed by the Central or State Governments at an interval of not more than five (5) years.

Fewer Factors to determine Minimum Wage - Earlier, laws fixing minimum wages were based on multiple factors, ranging from the level of skill set to the type of employment. Whereas, the new Code significantly lowers the factors to determine minimum wages and now focuses on fixation of the minimum wage upon levels of difficulty of job and skill set.

Gender discrimination - The Code prohibits gender discrimination with respect to wages and recruitment of employees for work of similar nature.

Advisory Boards - The Central and State Governments shall constitute advisory boards to advise the respective governments on various issues pertaining to workers. The Central Advisory Board will comprise of 5 representatives from State Governments, employers, employees and independent persons. State Advisory



Boards will consist of employers, employees, and independent persons. It is mandatory that one-third of the total members on both the Central and State Boards should be women.

Determination of Bonus - All workers or employees will be entitled to an annual bonus of at least 8.33% of his/ her wage or Rs. 100/-, whichever is higher. Further, in case the wage of an employee does not exceed a specific monthly amount, they shall be entitled to receive a maximum bonus of 20% of their annual wage. In addition to the bonus, the employer will distribute a part of the gross profits amongst the employees in proportion to the annual wages of an employee, subject to a maximum of twenty per cent of such wages.

Deductions - Under the Code, an employee's wages may be deducted on certain grounds including, absence from duty, fines and recovery of advances given to the employee *et al.* If the deductions exceed 50% of the employee's total wages, then the excess may be recovered in the prescribed manner.

Right to be Heard – The Code lays down that the employer cannot impose fine on employee until such employee has been given an opportunity of showing cause against the fine proposed to be imposed. In case of violation of provisions of the Code, employer is given an opportunity to rectify the non-compliance within a specified time period.

Inspection Regimes - To ensure the compliance is carried on strictly, certain changes have been introduced in inspection regime such as jurisdiction-free inspections, web-based random computerized inspection scheme and calling for information electronically, which

will not only ensure speedy compliance but also ensure timely management.

Limitation Period - The limitation period has been increased to 3 years as against the previous period for filing claims such as for minimum wages, bonus, and equal remuneration.

Offences - The Code lays down certain provisions relating to penalties for offences committed by an employer in contravention of any provision of the Code. Penalties shall vary depending on the nature of offence, with the maximum fine of up to Rs.1,00,000/- along with the imprisonment for 3 months.

❖ CONCLUSION

It is concluded that the Code shall benefit the fifty crore workers across the country by consolidating the provisions for minimum wage, their timely payment, provisions for bonus, stricter inspections, overtime payment, etc.

In addition to these benefits, the merging of labour laws will remove the complexity of definitions and authorities, which will not only help the labour authorities to enforce the laws in a better way but will also help in the sustenance of the employees. This change is definitely a great step towards codifying and simplifying statutes pertaining to wage and bonus which will bring transparency and accountability in the labour law system of the Country.

AN ANALYSIS OF THE CONSUMER PROTECTION ACT, 2019

❖ INTRODUCTION

The Consumer Protection Act, 2019 (the 'Act') is a long-awaited overhaul of the three decade old Consumer Protection Act, 1986. The Act received Presidential assent on 9th August 2019, thereby amending the consumer protection framework to match with the

striking changes of business models and consumer expectations which have transpired over the time.

❖ NEED FOR A NEW FRAMEWORK- NEW PROBLEMS, NEW REMEDIES

The last three decades has seen tremendous changes in the light of dynamically changing socio-economic developments and transition from traditional forms of



business to telemarketing, direct selling, multilevel marketing and e-commerce, thereby making consumers more susceptible to exploitation and unfair trade practices. Neither the Consumer Protection Act, 1986, nor the guidelines and circulars issued by the Consumer Ministry from time to time could address these emerging issues.

Therefore, there was a need to enact a new legislation to address the new set of challenges faced by the consumers and tighten the existing rules to further safeguard consumer rights in the digital age.

❖ KEY HIGHLIGHTS

- **Definition of Consumer:** The new Act has broadened the definition of the term “Consumer” to include any person who buys any goods, or hires or avails services, through offline or online transactions, electronic means, teleshopping, direct selling or multi-level marketing, thereby bringing e-commerce activities under the purview of the Act and protecting the interests of buyers who buy goods and avail services on e-commerce platforms.
- **Definition of goods:** The definition of “goods” has been amended in the Act to include “food” as defined in the Food Safety and Standards Act, 2006. This inclusion had brought the increasingly popular food delivery platforms within the ambit of the Act.
- **Rights of consumers:** The Act identified 6 consumer rights, *namely*, the right to: (i) be protected against marketing of goods and services which are hazardous to life and property; (ii) be informed of the quality, quantity, potency, purity, standard and price of goods or services; (iii) be assured of access to a variety of goods or services at competitive prices; (iv) right to be heard and be assured that consumer’s interests will receive due consideration (v) seek redressal against unfair or restrictive trade practice and (vi) right to consumer awareness.
- **Unfair Trade Practices:** The Act has introduced a specific and detailed definition of “*Unfair Trade Practices*”, including falsely representing the standard of goods or services, giving false or misleading facts

disparaging the goods, services or trade of another person and sharing personal information given by the consumer in confidence, unless such disclosure is made in accordance with the provisions of law.

- **Product Liability:** The Act has also introduced the concept of “*Product Liability*”, wherein the product manufacturer or product seller, of any product or service, are made responsible to compensate for any harm caused to a consumer by defective products manufactured or sold, or by deficiency in services.
- **Establishment of Central Consumer Protection Authority:** The Act has proposed the establishment of a regulatory authority known as the Central Consumer Protection Authority (‘CCPA’) to protect, promote and enforce rights of the consumers. The CCPA will regulate matters related to violation of consumer rights, unfair trade practices, and misleading advertisement and will have an investigation wing, to conduct inquiry or investigation into violations of the Act.
- **Filing of Complaints:** The Act provides a facile process for the consumers to file complaints with the jurisdictional consumer forum located at the place of residence or work of the consumer as opposed to the earlier practice of filing it at the place of purchase or where the seller has its registered address. The Act has also introduced provisions for consumers to file complaints online by way of an electronic form and for hearing and/or examining parties through video-conferencing.
- **Enhancement of Pecuniary Jurisdiction:** The pecuniary limits of the consumer protection forums have been revised under the Act. The district forum can now entertain consumer complaints where the value of goods or services paid does not exceed Rupees One Crore. The State Commission can entertain disputes where such value exceeds Rupees One Crore but does not exceed Rupees One Hundred Crores, and the National Commission can exercise jurisdiction where such value exceeds Rupees One Hundred Crores.
- **Penalties for Misleading Advertisements:** The CCPA may impose a penalty of up to Rs. 10,00,000/- on a manufacturer or an endorser, for a false or misleading



advertisement or sentence them to imprisonment for up to 2 years for the same. The fixation of liability on endorsers is a welcome move in view of various incidents in the past, wherein consumers have been conned as a result of the endorsements of goods and services especially done by celebrities acting as brand ambassadors.

- **Provision for Alternate Dispute Resolution:** The Act provides for mediation as an Alternate Dispute Resolution mechanism, for the speedier resolution of disputes and to reduce the burden of consumer forum.

MCA CIRCULAR DATED 21ST AUGUST 2019: END OF “APPOINTED DATE” SAGA

❖ INTRODUCTION

The issues relating to the compromises, arrangements and amalgamations of the companies are governed in detail by Chapter XV of the Companies Act, 2013 (“Act”), however, there have been various conflicts and confusions with regard to certain provisions. Section 232 of the Act, lays down the procedure for mergers and amalgamation of the companies wherein sub-section (6) of the provision makes it mandatory for providing an appointed date from which such amalgamation and merger shall be effective. At the outset, there have been various queries raised by the companies and stakeholders pertaining to the interpretation of the “appointed date” in the aforesaid provision.

As a result of the continuous queries with regard to this provision of the Act, the Ministry of Corporate Affairs (“MCA”) on 21st August 2019 issued a General Circular bearing No. 09/2019 (“Circular”) providing clarifications under Section 232 (6) of the Companies Act, 2013 for its better implementation and usage by the companies. This present Circular came to the relief to all the transferor and transferee companies and its creditors and other stakeholders.

❖ BACKGROUND AND INTERPRETATION OF APPOINTED DATE

The scheme for arrangements *namely*, compromise, amalgamation, merger and arrangement among the

❖ CONCLUSION

Consumerism is a growing phenomenon in India, and the Act has attempted to strengthen the consumer protection regime in India. The Act has also introduced various leading edge concepts for consumer protection and leveraged the responsibilities of manufacturers and sellers of goods, service providers as well as endorsers. The Act is a welcome move for augmentation of consumer laws in India.

companies are governed under the provisions of the Sections 230 to 232 of the Act.

Amongst the aforesaid provisions, Section 232 of the Act lays down the procedure for implementing the scheme for reconstruction of the companies involving merger, amalgamation and division of the companies.

This provision of the Act lays down a detailed procedure for National Company Law Tribunal (“NCLT”) to sanction an application under Section 230 with regard to a compromise or an arrangement between the companies. The second proviso of the sub-section (3) of Section 232 states that no compromise or arrangement scheme shall be sanctioned by the NCLT unless the certificate from the company’s auditor is issued to the effect that such scheme is in conformity with the accounting standards prescribed under Section 133 of the Act has been filed with the NCLT.

Rules 18 to 24 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 also lays down the application and direction for the implementation of the procedure of compromise as laid down under Section 232 of the Act.

Sub-section (6) of Section 232 of the Act states that a scheme of reconstruction filed before the NCLT under Sections 230 to 232: “...shall clearly indicate an **appointed date** from which it shall be effective and the



scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.”

The MCA on 16th February 2015 notified the Companies (Indian Accounting Standards) Rules, 2015 vide Notification bearing No. G.S.R. 111 (E) in the exercise of the powers conferred under Section 133 of Act read with Section 469 of the Act laid down the standards of accounting to be followed by the Companies.

The Ind AS 103 of the aforesaid Accounting Standards dealing with business combinations lays down the recognition, principles and requirements for a reporting entity to provide its financial statements about the business combinations and its effects.

The aforesaid Ind AS 103 guides on the determination of the acquisition date and states that: *“the acquirer shall identify the acquisition date, which is the date on which it obtains control of the acquiree.”*

It explains that the acquisition date is the date on which the acquirer obtains the control of the acquiree upon the completion of all the terms and conditions prescribed in the document or the Scheme under Section 230 to Section 232 of the Act. Such date is called the closing date and further states that the acquirer might obtain control on a date that is either earlier or later than the closing date.

Further, the language of Section 232 (6) of the Act caused confusion among the companies. In the event the companies were unable to mention a specific calendar date as the ‘appointed date’, specific objections were raised on the same. Accordingly, in order to comply with the aforesaid provisions of the Act and the Accounting Standards, the companies had been defining the *appointed date as effective date*.

Subsequently, the clarification in the aforesaid issue of the ‘appointed date’ got triggered in the recent Demerger Scheme of the *Century Textiles and Industries Limited and UltraTech Cement Limited* before the Learned NCLT, Mumbai Bench¹.

In the aforesaid Demerger Scheme, the Regional Director raised an objection in its Report dated 2nd May 2019 wherein it stated that:

“It is submitted that the Appointed Date is not specifically specified in the scheme. Both Appointed Date & Effective Dates are prospective. That as per Part – I Definitions & Share Capital Clause 1.1 of the Scheme the Appointed Date means the Effective Date..”

In the aforesaid matter, the Bench made a contrary view and observed that per Section 232 (6), the scheme was to be revised to the extent to provide a specific calendar date as appointed date.

Therefore, it was difficult for the companies undergoing the Scheme under the aforesaid provisions, to determine such acquisition date or the appointed date as per the aforesaid interpretation of Section 232 (6) of the Act and in accordance with the Ind AS 103. Subsequently, several queries were raised to MCA regarding the determination of the appointed date and its alignment with such aforesaid diverse interpretation of the provision.

❖ KEY HIGHLIGHTS OF THE CIRCULAR

MCA had relied upon judicial precedents, *namely*, (1) *Marshall Sons & Co. India Ltd. vs. ITO*² and (2) *Equitas Housing Finance Limited and Equitas Micro Finance Limited with Equitas Finance Limited*³ in the said Circular thereby giving the detailed clarifications with respect to the interpretation of the ‘appointed date’.

The clarifications are as follows:

1. **Specific Calendar Date or Event:** The ‘appointed date’ may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by authority or fulfillment of any condition precedent of the parties *et al.*
2. **Acquisition Date:** The ‘appointed date’ shall also be deemed to be ‘acquisition date’ and date of

² 1223 ITR 8091

³ C.P. Nos. 119 to 121 of 2016

¹ Company Scheme Petition No. 4236 of 2018.



transfer of control for the purpose of confirming to the Accounting Standards.

3. **To precede the Date of Filing:** The appointed date chosen as a specific calendar date may precede the date of filing of the application for the scheme of merger/ amalgamation in the NCLT.
4. **Justification required:** In the event, the appointed date is significantly ante-dated beyond one year from the date of filing, the justification for the same shall be mentioned in the scheme and it should not be against the public interest.
5. **Occurrence of an event:** In case the effectiveness of the proposed scheme is based on occurrence of a triggered event, then the same shall be indicated in the scheme. In case, the event based date is subsequent to the date of filing the order with concerned Registrar of Companies (“**ROC**”) under Section 232 (5) of the Act, then an intimation of the same shall be filed with the ROC within 30 days of such scheme coming into force.

❖ CONCLUSION

In light of the above explanations, it is concluded that in spite of the *detailed* clarification, the Circular has failed to ascertain and acknowledge certain situations such as, when the ‘appointed date’ falls after the date of filing the application with NCLT. Also, MCA in the Circular used the word ‘*may*’ and the authorities shall thereby reject the applications with appointed date after the date of filing. However, the analogy wherein the event based dates are prospective in nature and are post filing of applications, comes as counter to the said observation.

Therefore, MCA has provided clarity with regard to the proper implementation of the provisions for compromise and arrangements in the Act. However, certain provisions of the Act need to be properly interpreted and implemented in accordance with the guidelines laid down in the Circular.

LEX REVISORS

1. Relaxation of the ‘stringent’ FDI Norms

The Union Cabinet has relaxed the Foreign Direct Investment norms of India (“**FDI Norms**”) in order to improve growth and encourage the investment in the Country with respect to contract manufacturing and the key highlights of the FDI Norms and the details can be referred in the link herein below:–

<https://www.linkedin.com/posts/universal-legal-the-chugh-firm-newsalert-foreigndirectinvestments-iculnews-activity-6573070390346780674-vMqJ>

2. Model Tenancy Act, 2019 – Striking a Balance

The draft Model Tenancy Act, 2019 (the “**Draft Act**”) aims to balance the rights and the interests of both the owners and the tenants. The Draft Act also regulates the rental housing by a market-oriented approach. Section 11 caps the security deposits at two (2) months’ rent in case of the residential properties and one (1) month’s rent in case of non- residential properties. Further, Section 9

provides that owner shall provide a three (3) months notice before revised rent becomes due and in the event the tenant fails to provide notice for termination of tenancy, it shall be deemed that the tenant has accepted the proposed revised rent. Additionally, it provides provisions with regard to the submission of tenancy agreement with the Rent Authority, repossession of the premises by the landowners.

[For details refer to –

<http://mohua.gov.in/cms/TheDraftModalTenancyAct.php>]

3. The Banning of Unregulated Deposit Schemes Bill, 2019

The Bill provides a detailed mechanism to ban unregulated deposit schemes and protect the interests of depositors. The Bill seeks to amend three laws, *i.e.*, (1) the Reserve Bank of India Act, 1934, (2) the Securities and Exchange Board of India Act, 1992, and (3) the Multi-State Co-operative Societies Act, 2002. The key



highlights and the details of the said Bill can be referred in the link herein below:-

https://www.linkedin.com/posts/universal-legal-the-chugh-firm_icul-legalupdates-newsalert-activity-6568059120916754432-IPif

4. NCLT has the Power to dispense with Meeting of Shareholders and Creditors in a Scheme of Arrangement/ Amalgamations [DLF IV Commercial Developers Limited & Ors., CA (AT) No. 180 of 2019].

In the aforesaid landmark judgement, National Company Law Appellate Tribunal (“NCLAT”), has quashed the order of National Company Law Tribunal (“NCLT”) dated 7th June 2019, wherein NCLT had refused to give dispensations of certain meetings of shareholders and unsecured creditors of Applicant Companies and held that such dispensations are not permissible under Sections 230-232 of Companies Act, 2013. The NCLAT has remanded the matter for fresh consideration for first joint motion application to be preferred by the Applicants/ Appellants and further held that NCLT is required to apply its mind in accordance with the judicial precedents.

[For more details refer to – <https://nclat.nic.in/Useradmin/upload/20750316595d5a646a8c658.pdf>]

5. NCLT, Delhi initiates Insolvency Proceedings against Builder based on the petition filed by homebuyers [Mr. Sunil Handa and Ors. Versus Today Homes Noida India Limited, CP No. IB- 923 (PB/ 2018)].

In the aforesaid matter, the builder, Today Homes Noida India Ltd. entered into a Flat Buyers Agreement dated 29th March 2012 with Financial Creditors /Allottees for allotment of flats in Ridge Residency residential housing project at Sector - 135, Noida and paid 90% of the purchase value of the flats. The possession of the said flats was to be delivered by the builder within the period of 30 months with a further grace period of 120 days *i.e., latest by 2016* but till date they neither received possession nor been refunded the amount already paid or paid compensation @ Rs 5.00 per square feet per month for the area of each unit. Therefore, the aforesaid group of ‘homebuyers’ filed an insolvency petition against the said builder stating, since the failure of the builder to deliver

the agreed possession of the flats after the elapse of the stipulated period, a default has been committed by the builder. NCLT, Delhi admitted the insolvency petition on 20th August 2019 and held that the “*extension of project completion under RERA could not absolve real estate firm of its duties to the allottees as provisions of IBC would override that of RERA and secondly Homebuyers were not party to such transaction.*”

[For more details refer to – http://www.todayhomes.co.in/pdf/SunilHandaAndOrs.Vs.TodayHomesNoidaPvtLtd_order.pdf]

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