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Understanding cross border social security obligations

By **Kumar Panda**

Travel restrictions due to COVID-19 has resulted in employees temporarily working remotely from a different country other than their regular work location. Hence, under such circumstances, a situation arises as to whether an individual and the employer will be subjected to different social security obligations under scenarios where provision of services is provided remotely from home country. This article primarily deals with social security obligations under Indian law.

The International Labour Organisation defines 'Social Security' as the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner. With the rapid globalization in the last two decades, employees working abroad has become a common phenomenon. Often employees working in foreign country (host country) are required to comply with social security obligations of the host country but are unable to claim corresponding benefits due to non-fulfillment of minimum residence or contribution criteria.

To overcome the aforesaid issue, Indian government has entered into 20 social security agreements ('SSAs') with 19 countries, of which 18 are currently operational. SSAs in India have been evolving from 2008 onwards with first SSA coming into force with Belgium in 2009. Prior to 2008, there were bilateral economic partnership agreement (such as comprehensive economic co-operation agreement with Singapore) under which social security benefits were covered.

The SSAs are reciprocal agreements and are primarily aimed at providing employees an option to contribute in their home country while still working in a foreign location. SSAs primarily deal with the following concepts:

a) Equality: Equal treatment on par with the nationals of the host country;

b) Detachment: Provides exemption from paying social security obligations in the host country, provided, the employee is complying under the social security system of the home country;

c) Exportability of pension: A provision for payment of pension benefits to the employee choosing to reside in the territory of the home country directly without any reduction as also to a beneficiary choosing to reside in the territory of a third country; and

d) Totalization of benefits: The period of service rendered by an employee in the host country to be counted for the 'eligibility' of benefits.

However, not all the aforesaid concepts form part of every SSA and each SSA needs to be examined separately to understand the available benefits. To claim benefits under the SSA, a Certificate of Coverage (CoC) or detachment certificate is to be obtained by the employee from the home country and submit the same to the host country. In India, Employees Provident Fund

Organisation (EPFO) acts as the nodal agency for issuance of CoC or detachment certificates. The benefits under SSA can be availed for short term assignments ranging for a maximum of 4-6 years.

List of Countries with SSAs and recent developments:

India has SSAs with the following countries:

a) Europe: Belgium, Germany, Switzerland, Luxembourg, France, Sweden, Netherlands, Hungary, Finland, Czech Republic, Norway, Austria, Denmark and Portugal

b) Asia Pacific: Japan, South Korea, Australia

c) North America: Canada (excluding the province of Quebec), Canada (for province of Quebec)

d) South America: Brazil

Of the above, currently SSAs with Canada (for the province of Quebec) and Brazil are not operational. As per various news reports, the Indian government negotiations with China, Russia, South Africa, Thailand, Mexico, Peru, Cyprus, USA are in various stages.

Amendment to Employees Provident Fund Scheme ('EPFS 1952') and Employees' Pension Scheme, 1995 ('EPS 1995'):

Till the year 2008, EPFS 1952 and EPS 1995 did not deal with the status of International Workers ('IWs'). The Government of India, *vide* its notifications dated 01-10-2008 has introduced Para 83 to the EPFS 1952 and Para 43-A to the EPS 1995 creating special provisions in respect of IWs.

Accordingly, an IW is defined as:

a) an Indian employee having worked or going to work in a foreign country with which India ***has entered into a social security agreement*** and being eligible to avail the benefits under a social security programme of that country, by virtue of the eligibility gained or going to gain, under the said agreement; or

b) an employee other than an Indian employee, holding other than an Indian Passport, working for an establishment in India to which the EPF Act applies.

An 'excluded employee' in relation to an IW is defined as an:

a) IW, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India ***has entered into a social security agreement on reciprocity basis*** and enjoying the status of detached worker for the period and terms, as specified in such an agreement; or

b) IW, who is contributing to a social security programme of his country of origin, either as a citizen or resident, with whom India has entered into a bilateral comprehensive economic agreement containing a clause on social security prior to 01-10-2008, which specifically exempts natural persons of either country to contribute to the social security fund of the host country.

An IW who is not an excluded employee, is required to contribute and comply with EPFS 1952, EPS 1995 and other related contributions in India without claiming any exemption and without any upper wage limit. To note, the upper wage limit under EPFS 1952 for Indian employees is INR 15,000 per month.

An Indian employee qualifying the definition of IW can claim exemption from payment of social security obligations in the host country

upon submission of CoC. Whereas, an Indian employee working in a country with no SSA is required to comply with host country social security payment obligations while he/she may not be able to claim benefits due to shorter stay. An IW hailing from a country with SSA is not required to pay social security obligations in India provided a CoC or a detachment certificate is submitted to the EPFO.

Indian working abroad		
Host country status	**CoC Status**	**Contribution Requirement**
In a country with SSA	With valid CoC	Contribute in India as an IW; exempt from paying contributions in host country
	Without valid CoC	Contribute in host country as per host country laws
In a country with no SSA	No requirement	Contribute in host country as per host country laws

Foreign national working in India		
Foreign national status	**CoC status**	**Contribution requirement**
Hailing (as a citizen or resident) from country with SSA	With valid CoC	Not required to contribute in India
	Without valid CoC	Contribute in India as an IW
Hailing from country with no SSA	No requirement	Contribute in India as an IW

Similarly, foreign nationals working in India on temporary basis and hailing from countries with which India has entered into bilateral comprehensive economic agreement (CEA) prior to 01-10-2008 containing a clause on social security (example: Singapore) are also exempt from contributing in India.[1]

COVID-19 – Cross border social security payments in the times of COVID-19

Payment of social security obligations forms an important component in any employee salary structure. Such social security obligations can have a significant additional financial burden if not carefully evaluated while seconding employees on foreign assignments. Countries like Belgium, Germany, France, Luxemburg, and Denmark with which India has SSAs have clarified that the work from home scenarios arising out of COVID-19 would not be considered for determining the eligibility of payment of social security obligations.[2][3] Therefore, the Indian employees who are normally located in these countries but are now temporarily working from India would not be impacted. Indian employees who normally work from a foreign country with no SSA are required to comply with requirements issued by respective authorities in those countries.

Working for an establishment in India is the determining criteria for a foreign national to qualify as an IW or as an excluded employee. In the absence of any clarification from EPFO there exists an ambiguity at this point on the status of

[1] EPFO File No. IWU/7(14)2008/Singapore dated 14 March 2017
[2] https://www.ameli.fr/assure/actualites/covid-19-impact-sur-la-situation-des-travailleurs-frontaliers-expatries-detaches-pluriactifs
[3] https://campaigns.eranova.fgov.be/r-e33c933a58f482a1f5e94058dffccb5d5be5cda09d7b56ce

such foreign workers who are currently working remotely from their home country. However, it is expected that Indian EPF authorities will also take similar stand taken by their European counter parts on determining eligibility for payment of social security obligations in scenarios arising out of COVID-19.

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Notifications and Circulars

COVID-19 – Scope of Corporate Social Responsibility ('CSR') expanded: The Central Government *vide* Notification Nos. G.S.R. 525(E) and G.S.R. 526(E) dated 24-08-2020, has amended following CSR provisions under the Companies Act, 2013.

- *Substitution of entry (ix) of Schedule VII (Activities which may be included by companies in their CSR policies activities).* The following shall also be considered as a CSR activity:

  (a) Contribution to incubators or research and development projects in the field of, *inter alia*, science and medicine, funded by the Government or Public Sector Undertaking or any agency of Government; and

  (b) Contributions to public funded Universities, Department of Pharmaceuticals, Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH), Indian Council of Medical Research (ICMR) etc. engaged in promoting Sustainable Development Goals (SDGs).

- *Insertion of proviso to Rule 2(1)(e) of the Companies (CSR Policy) Rules, 2014:* Any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the conditions that (i) such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in aforesaid entry (ix) of Schedule VII to the Act and (ii) details of such activity shall be disclosed separately in the annual report on CSR included in the board report of the respective company.

SEBI – Relaxation from default recognition due to restructuring of debt: Securities and Exchange Board of India ('SEBI') has clarified that if the Credit Rating Agency ('CRA') is of the view that the restructuring by the lenders/ investors is solely due to COVID-19 related stress or under the RBI's resolution framework for COVID-19 related stress, the CRAs may not consider the same as a default event and/or recognize default. According to Circular SEBI/ HO/ MIRSD/ CRADT/ CIR/ P/ 2020/ 160, dated 31-08-2020, the relaxation has been extended till 31-12-2020.

Micro, Small and Medium Enterprises ('MSME') – Clarifications on investment, etc.: Reiterating a recent clarification by Ministry of Micro, Small and Medium Enterprises, the

Reserve Bank of India has clarified that the value of plant and machinery or equipment for all purposes of the Notification No. S.O. 2119(E) dated 26-06-2020 and for all the enterprises shall mean the Written Down Value (WDV) as at the end of the Financial Year as defined in the Income Tax Act, 1961 and not cost of acquisition or original price. RBI's earlier Circular dated 13-07-2017 stating that for computation of investment in plant and machinery, for the purpose of classification of an enterprise as Micro, Small or Medium, the purchase value of the plant and machinery is to be reckoned and not the book value (purchase value minus depreciation), has been now superseded on 21-08-2020. Further, according to the latest RBI Circular,

- Classification / re-classification of MSMEs is the statutory responsibility of the Government of India, Ministry of MSME.
- All lenders should obtain 'Udyam Registration Certificate' from the entrepreneurs.
- All enterprises registered till 30-06-2020, have to file new registration in the Udyam Registration Portal well before 31-03-2021.
- 'Udyam Registration Certificate' issued on self-declaration basis for enterprises exempted from filing GSTR and/or ITR returns will be valid for the time being, up to 31-03-2021.

Disclosure of debt and money market securities transactions – Time lag reduced: Details of debt and money market securities transacted (including inter scheme transfers) in schemes portfolio will now be required to be disclosed on daily basis with a time lag of 15 days, instead of 30 days. As per Circular No. SEBI/HO/IMD/DF4/CIR/P/2020/16, dated 01-09-2020 the disclosure must be in a comparable, downloadable (spreadsheet) and machine-readable format. The Circular also provides the revised format for reporting of all such transactions and would be effective from 01-10-2020.

Guidelines for Core Investment Companies revised: Based on the recommendations of the Working Group to Review the Regulatory and Supervisory Framework for Core Investment Companies (CICs), the RBI has revised the guidelines applicable for CICs. As per RBI Circular RBI/2020-21/24 DoR (NBFC) (PD) CC. No. 117/03.10.001/2020-21, dated 13-08-2020, the changes have been made in Master Direction on Core Investment Companies (Reserve Bank) Directions, 2016, under the following heads: (i) Definition of Adjusted Net worth ('ANW'), (ii) Group structure, (iii) Risk management, (Iv) Corporate governance and disclosure requirements, (v) Consolidation of Financial Statement ('CFS'), (vi) Exceptions to carrying other financial activity, (vii) Registration, (viii) Change in nomenclature, etc.

IBBI (Use of Caveats, Limitations, and Disclaimers in Valuation Reports) Guidelines, 2020 notified: Insolvency and Bankruptcy Board ('IBBI') has notified the IBBI (Use of Caveats, Limitations, and Disclaimers in Valuation Reports) Guidelines, 2020 which will be applicable in respect of valuation reports for valuations completed by Registered Valuers on or after 01-10-2020. These Guidelines provide guidance to the RVs in the use of caveats, limitations, and disclaimers in the interest of credibility of the valuation reports. These Guidelines, prepared in consultation with Registered Valuers Organisations, are divided into three sections. While the first section elaborates on the need for caveats, limitations, and disclaimers in a valuation report, the second section provides a guidance note on their use. It also lists the contents of the valuation report and

procedures involved in its preparation. The third section provides an illustrative list of caveats, limitations, and disclaimers for each asset class provided in the Companies (Registered Valuers and Valuation) Rules, 2017.

Grievance resolution between listed entities and proxy advisers – SEBI extends timeline for implementation of Circular: In view of the market conditions prevailing due to the COVID-19 pandemic and representations received from the registered proxy advisors, SEBI has extended the date of effect of the Grievance Resolution Circular from 01-09-2020 to 01-01-2021. It may be noted that *vide* its earlier Circular dated 04-08-2020, the SEBI had provided that in order to address the grievances of listed entities against proxy advisors, the listed entities can approach SEBI for resolution. Accordingly, the Grievance Resolution Circular provided that SEBI will examine grievances to assess non-compliance by proxy advisors with the provisions of code of conduct under the SEBI (Research Analyst) Regulations, 2014 and the procedural guidelines issued by SEBI for proxy advisors.

Ratio Decidendi

Home buyers cannot invoke insolvency proceedings for recovery of award under Real Estate (Regulation and Development) Act, 2016

Key points:

Declining withdrawal of insolvency application on basis of a settlement, the NCLAT has held that in a case where interests of majority of stakeholders are in serious jeopardy, it would be inappropriate to allow settlement with only two creditors. It also held that a 'decree-holder' under Real Estate (Regulation and Development) Act, 2016 would not fall within the class of creditors classified as 'Financial creditor' as the amount claimed under the decree is an adjudicated amount and not a debt disbursed against the consideration for the time value of money.

Brief facts:

Appellant, a Former Director and Shareholder of Corporate Debtor had filed an appeal against the order of admission of application under Section 7 of IBC filed by the Respondents, who claimed to be the Financial creditors. The Respondents had jointly booked a unit with the Corporate debtor. Corporate Debtor undertook to complete the construction and to deliver possession of the units to Respondents within two years from the date of commencement of construction on receipt of sanctioned plans from the Authority. However, even after lapse of five years, Corporate debtor neither completed the construction of units nor refunded the amount to the Respondents.

The Respondents obtained a Recovery Certificate issued by the Uttar Pradesh Real Estate Regulatory Authority ('UP RERA'). Later, the Respondents approached the Adjudicating Authority under IBC in the capacity of decree-holder against the default of the financial debt committed by the Corporate debtor on account of the non-payment of the principal amount along with penalty as decreed by the UP RERA. The

Adjudicating Authority passed the impugned order admitting the joint application of Respondents.

It was submitted on behalf of Respondents that the Appellant and Respondents have settled all their disputes in relation to specific unit and the allottees do not have any pending claims against Corporate Debtor *qua* the same. Respondents accordingly prayed for invoking Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 ('NCLAT Rules') to set aside the order of admission and terminate CIRP against the Corporate Debtor.

Observations of the Tribunal:

Whether this is a fit case for invoking Rule 11 of the NCLT Rules to allow the parties to settle the dispute?

The NCLAT held that allowing of withdrawal of application on the basis of such settlement which is not all-encompassing and being detrimental to the interests of other claimants including the allottees, numbering around 300 in the present case, would not be in consonance with the object of IBC and purpose of invoking of Rule 11 of the NCLAT Rules. It held that in a case where interests of the majority of stakeholders are in serious jeopardy, it would be inappropriate to allow settlement with only two creditors which may amount to perpetrating of injustice.

Whether application filed by Respondents under Section 7 of the IBC was not maintainable?

The NCLAT held that a 'decree-holder' is undoubtedly covered by the definition of 'Creditor' under Section 3(10) of the IBC but would not fall within the class of creditors classified as 'Financial Creditor' unless the debt was disbursed against the consideration for time value of money or falls within any of the clauses thereof as the definition of 'financial debt' is inclusive in character. It noted that the application of the Respondents was moved for execution/ recovery of the amount due under the Recovery Certificate and not for insolvency resolution of the Corporate Debtor. In effect, order(s), passed by the Adjudicating Authority appointing IRP, declaring moratorium, freezing of account, etc. were set aside. The application preferred under Section 7 of the IBC was dismissed.

[*Sushil Ansal* v. *Ashok Tripathi* and Ors. – Company Appeal (AT) (Insolvency) No. 452 of 2020), Judgment dated 14-08-2020, National Company Law Appellate Tribunal]

Procedural way out for removal of encumbrances under Section 57 of Transfer of Property Act, 1882

Key Points:

The Kerala High Court has explained the procedural way out for removal of an encumbrance from an immovable property under Section 57 of the Transfer of Property Act 1882 ('TPA'). It is noteworthy that an operative, substantive and procedural way out to facilitate the realisation of the intrinsic value of encumbered estates and other immovable properties within the annals of TPA is very rarely been invoked in court of law.

Brief Facts:

The appellant who is the petitioner on the files of Additional District Court, and the second respondent were siblings who had received certain extent of the property of their father through a registered partition deed in 1980 ('Partition Deed'). The Partition Deed contained a covenant that both the brothers must pay a sum of INR 500 each to their sister (who is the first respondent), within one year of the Partition Deed, failing which the first respondent was allowed to recover it, for which purpose, the said amounts would stand charged on the respective

properties of the appellant and the second respondent.

While the first respondent accepted the payment from the second respondent, she refused to accept payment from the appellant due to her personal reasons and as a result of which the property allotted to him under the Partition Deed (appellant's share of the property) was still burdened with this obligation. Appellant said that the obligation on the appellant's share of the property is more so an obligation because the stipulations in the Partition Deed make it incumbent on the first respondent to accept the amount of INR 500 and execute necessary receipt in the appellant's favour.

Section 57 of the TPA enables a party to the sale of an encumbered immovable property to apply to the court for a declaration that the said property is freed from such encumbrance on deposit of sums as may be adjudged by the court in accordance with the Section 57 of TPA and for issuance of a vesting order or an order of conveyance required to give effect to the sale.

In the first instance, the appellant had approached the District Court under Section 57 of TPA for effecting the sale free from any encumbrance. The District Court disallowed the appellant's plea for discharge of encumbrance on the appellant's share of the property holding it to be not maintainable.

Arguments advanced:

The appellant urged that even in the case of a sale conducted out of court, the jurisdiction of the statutorily competent court can be invoked by any party to it. He submitted that this is evident from the usage of the words '*or out of court*' in Section 57(a) of the TPA and thus asserted that the District Judge erred in issuing the impugned order.

The appellant prayed that since the amount of INR 500 was fixed and did not include any additional charges or interest, the sum must be treated as a capital sum, and the appellant should be allowed to invoke Section 57 of the TPA. The appellant prayed that the impugned order of the District Court be set aside, and the High Court permit him to deposit the amount of INR 500 favouring the first respondent and declare that the appellant's property is free of the said encumbrance.

The first respondent submitted that Section 57 of the TPA cannot be invoked except in the case of an immovable property and that it could not apply to out of court sales and the appellant must discharge the debt according to the provisions of Chapter IV of the TPA which deals with mortgages of immovable properties and charges. It was further submitted that the first respondent was not willing to accept the money due to deep-seated conflict with the appellant. The first respondent however did not challenge the validity or effectiveness of the Partition Deed and further admitted that the Partition Deed only charges the appellant's share of the property to the sum of INR 500 and nothing more.

Observations of the Court:

The Kerela High Court, while analyzing Section 57 of the TPA, described it as '*a very efficacious, substantive and procedural mechanism to facilitate the realization of the deserving and intrinsic value of encumbered estates and other immovable properties*'. After deliberating on how Section 57 of TPA has been adapted from Section 5 of the English Conveyancing and Law of Property Act, 1881 ('**English Act**') and the fact that there are hardly any reported precedents touching the Section 57 of TPA, in India, the High Court examined the various cases in which the English Courts have dealt with the similar provision in their jurisdiction.

The High Court elucidated that the object of Section 57 of TPA is to enable a sale to be effected and the property to be transferred to the purchaser so that the purchaser may get a full and complete title to it without causing too much of disturbance to the vested rights or other rights more than is required, since the purchase of land subject to an encumbrance is not usually a desirable investment.

Further, the High Court distinguished the role of the court in '*court sales'* in which the court can 'direct the payment' and the role of the court in '*out of court'* sales in which the court can 'allow payment', and finally concluded, that Section 57 of TPA is intended to facilitate sale out of court, as much as it is for sale by a court or in execution of a decree.

Additionally, the High Court struck down the erroneous interpretation by the District Court to the extent that the Section 57 can be invoked only after the sale is over and instead made it clear that assistance of the court can be sought even while the sale is proposed. Further, the Court set aside the impugned order of the District Court and permitted the appellant to deposit the amount of INR 500 to the first respondent, by depositing it in the District Court; in which event, the same will be entitled to be withdrawn by her. The High Court also declared that on such payment by the appellant, the appellant's share of the property will stand freed from the charge on it which was created in pursuance of the terms of the Partition Deed.

[*MP Varghese* v. *Annamma Yacob & Ors* – MFA No 47/2020, Judgment dated 05-08-2020, Kerela High Court]

News Nuggets

Creation of pledge of shares is not financial debt

National Company Law Appellate Tribunal ("NCLAT") has held that pledge of shares would not fall within the concept of guarantee and indemnity to bring it within the meaning of financial debt. Rejecting the appeal against dismissal of application for inclusion as financial creditor, the Appellate Tribunal observed that the creation of pledge of shares by the corporate debtor was in regard to the money lent to other companies. It held that since the appellant did not advance any money to the corporate debtor as a financial debt, it would not be coming within the purview of financial creditor of the corporate debtor. The NCLAT in the case *Vistara ITCL (India) Ltd. v. Dinkar Venkatasubramanian* [Order dated 24-08-2020] observed that a debt along with interest disbursed against time value of money constitute the basic ingredients of the 'financial debt'.

EMI moratorium – Intention of RBI is to protect a viable business from pandemic

While directing the bank to provide a moratorium of EMIs to the petitioner for the

period March to May 2020, the Karnataka High Court has also asked the bank to re-deposit all monies withdrawn towards EMIs for the said period, from the escrow account, back to the account of the petitioner. The Court observed that the intention of RBI in issuing the Circular and policy was to protect a viable business from the onslaught of the global pandemic, and that if the petitioner was prevented from utilizing the lease rentals towards funding its business, the entire business of the petitioner-company would collapse. The petitioner had earlier taken a term loan from the bank which was sanctioned against the future receivables of rent from the tenants of a property and wherein the entire rents were agreed to be deposited in an escrow account. The Court in the case *Subramanya Construction and Development Company Ltd. v. Union Bank of India* also observed that since the bank has withdrawn the amounts from the escrow account towards EMIs from the month of January 2020 till April 2020, question of classifying the petitioner-company as NPA, would not arise.

Insolvency – Acceptance of resolution plan after expiry of deadline is illegal

The NCLAT has held that the act of the Resolution Professional ('RP') in accepting the Resolution Plan after the expiry of the deadline for its submission is arbitrary, illegal and against the principle of natural justice. The Appellate Tribunal was also of the view that it cannot be treated as an act within the commercial wisdom of the Committee of Creditors ('CoC'). It noted that the two impugned resolution plans were accepted after expiry of the deadline for submission of Expression of Interest ('EOI') and without obtaining any CoC resolution and issuing notice for inviting EOI. It also noted that bids by other Resolution Applicants had already been opened at the time of submission of the two Resolution plans - one of out which was subsequently held to be successful. Noting that if the CoC took a commercial decision to extend the timeline, it should have done so by publishing a fresh notice in Form 'G' under Regulation 36A of the CIRP Regulations, the NCLAT in the case *Kotak Investment Advisors Ltd. v. Krishna Chamadia* held that the Resolution Professional and the CoC, under the guise of maximization of value, deviated from the norms prescribed under IBC and the Regulations, which vitiated the CIRP.

Arbitration – Courts in India have power to grant anti-arbitration injunction

Relying upon Supreme Court's decision in the case of *SBP & Co. v. Patel Engineering* [(2005) 8 SCC 618], the Calcutta High Court has held that courts in India do have the power to grant anti-arbitration injunctions against a foreign seated arbitration. It however reiterated that this power is to be used sparingly and with abundant caution. The High Court in the case of *Balasore Alloys Ltd. v. Medima Llc*, was of the view that it is only under the circumstances enumerated in and exhaustively discussed in the Supreme Court's decision in the case of *Modi Entertainment Network* [(2003) 4 SCC 341] the grant of an anti-arbitration injunction would be correct.

Insolvency – Advance payment is not operational debt

NCLAT has reiterated that amount paid as advance cannot be termed as 'operational debt' in the hands of the alleged corporate debtor. The Appellate Tribunal in this regard observed that the Respondent (creditor) had not supplied any goods or provided any services to the debtor. The creditor had paid an advance amount to the latter for supply of sugar and the debtor had failed to supply the

same. The NCLAT in the case *Andal Bonumalla v. Tomato Trading LLP* released the corporate debtor from the rigour of 'CIRP'.

Motor insurance claims cannot be rejected for not holding valid PUC certificate

Insurance Regulatory and Development Authority of India ('IRDAI'), *vide* its press release dated 28-08-2020, has clarified that not holding a valid Pollution Under Control ('PUC') certificate is not a valid reason for denying any claim under a motor insurance policy. The press release in this regard noted that there were some misleading media reports to the effect that if there is no valid PUC certificate at the time of accident, claim under a motor insurance policy is not payable. It may be noted that IRDAI had issued a circular on 06-07-2018 conveying the directive of the Supreme Court in the case *M.C. Mehta v. Union of India,* to all general insurance companies to ensure that the vehicle must have a valid PUC certificate at the time of renewal of motor vehicle insurance. This was also reiterated through another circular on 20-08-2020.

Record of default before Information Utility as a condition for filing application under IBC Section 7, not mandatory

A Single Judge Bench of the Calcutta High Court has struck down as *ultra vires* the NCLT Order which imposed a mandatory prescription on all financial creditors to submit certain financial information as a record of default before the Information Utility as a condition precedent for filing any new application under Section 7 of the IBC, 2016. The Court held that the impugned order falls foul as it seeks to limit the intent of the legislature to the submission of only one document. The Court in the case *Cygnus Investments and Finance Pvt. Ltd. v. Union of India* [Judgement dated 18-08-2020] also noted that the debt that is due to a financial creditor may be proved before the NCLT by any of the four classes of documents stated in Regulation 8(2)(b) of the CIRP, 20 IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or as the Supreme Court has observed in the case of *Swiss Ribbons (P) Ltd.*, all the eight classes of documents stated in Part-V to Form-1 appended with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Relaxation in classification of Approved Investment by insurers

IRDAI has permitted insurers to classify investments in preference shares and equity shares as part of Approved Investment if such shares have paid dividend for at least 2 years out of 3 consecutive years immediately preceding instead of for at least 2 consecutive years immediately preceding, as required under Regulations 3(a)(4) and 3(a)(5) of IRDAI (Investment) Regulations, 2016 for the period from 01-04-2020 to 31-03-2021. Circular dated21-08-2020 has been issued for the purpose.

Priority Sector Lending Guidelines revised

The RBI has issued Reserve Bank of India (Priority Sector Lending – Targets and Classification) Directions, 2020 ('PSL Master Directions'). The reviewed PSL Guidelines came into force on 04-09-2020 and enable better credit penetration to credit deficient areas, increase the lending to small and marginal sections and will boost credit to renewable energy, and health infrastructure.

According to the RBI press release dated 04-09-2020, some of the salient features of the revised PSL guidelines are:

- To address regional disparities in the flow of priority sector credit, higher weightage has been assigned to incremental priority sector credit in 'identified districts' where priority sector credit flow is comparatively low.
- The targets prescribed for "small and marginal farmers" and "weaker sections" are being increased in a phased manner.
- Higher credit limit has been specified for Farmers Producers Organisations (FPOs)/Farmers Producers Companies (FPCs) undertaking farming with assured marketing of their produce at a pre-determined price.
- Loan limits for renewable energy have been increased (doubled).
- For improvement of health infrastructure, credit limit for health infrastructure (including those under 'Ayushman Bharat') has been doubled.

RBI releases framework for authorisation of pan-India umbrella entity for retail payments

RBI has released the framework for authorisation of pan-India umbrella entity for retail payments. As per the framework, a new umbrella entity can set-up, manage and operate new payment system(s) in the retail space. The entity can be a 'for profit' or a 'Section 8 of the Companies Act, 2013' company. The umbrella entity shall have a minimum paid-up capital of INR 500 crore. The promoters / promoter groups shall upfront demonstrate capital contribution of not less than 10% i.e., INR 50 crore at the time of making an application for setting up of the umbrella entity. The balance capital shall be secured at the time of commencement of business / operations. Any entity holding more than 25% of the paid-up capital of the umbrella entity shall be deemed to be a promoter. The promoter / promoter group shareholding can be diluted to a minimum of 25% after 5 years of the commencement of business of the umbrella entity. A minimum net-worth of INR 300 crore shall always be maintained. Applications for the umbrella entity are required to be submitted till 26-02-2021.

SEBI fixes 31-03-2021 as date for re-lodgement of specified transfer requests shares

Taking note of the fact that under Regulation 40(1) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, transfer of securities held in physical mode has been discontinued with effect from 01-04-2019, the SEBI has clarified that transfer deeds lodged prior to deadline of 01-04-2019 and which were rejected or returned due to deficiency in the documents may be re-lodged with requisite documents. However, the Circular fixes 31-03-2021 as the cut-off date for re-lodgement of transfer deeds. Additionally, it has been clarified that shares that are relodged for transfer (including those requests that are pending with the listed company or registered Registrar and Share Transfer Agents, as on date) will henceforth, be issued only in demat mode. Circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/166, dated 07-09-2020 has been issued for the purpose.

Companies not required to attach extract of annual return with Board's report – Annual return to be placed on website of company

Ministry of Corporate Affairs has *vide* Notification dated 28-08-2020 notified the Companies (Management and Administration) Amendment Rules, 2020. Accordingly, the extract of Annual Return (in Form MGT 9) is not required to be enclosed with the Board Report, provided the web link of such return is disclosed in the Board Report in accordance with sub-section (3) of Section 92 of the Companies Act, 2013. According to Section 92(3) of Companies Act, "every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report". It may be noted that said Section 92(3) was substituted by Companies (Amendment) Act, 2017 and Notification was issued on 28-08-2020 to notify the date of coming into force of the amendment.

AGM for FY 2019-20 can be held till 31-12-2020

Ministry of Corporate Affairs *vide* General Order dated 08-09-2020 has extended the timeline for holding Annual General Meeting till 31-12-2020 for Financial Year 2019-20. The order states that MCA has issued directions to RoCs to issue orders without filing of formal application and payment of fee. Even applications already filed but not approved or rejected are also covered for this relief. The relief is in backdrop of situations arising out of COVID-19.

Insurance – Presence of COVID-19 and lockdown caused a direct 'physical loss' or direct 'physical damage'

The United States District Court for the Western District of Missouri has upheld the contention of the company, against the insurance company, that the presence of COVID-19 and the Closure Orders [lockdown] caused a direct 'physical loss' or direct 'physical damage' to their premises by denying use of and damaging the covered property. Insurance company's argument that the policies provided coverage only for income losses tied to physical damage to property, and not for economic loss caused by governmental or other efforts to protect the public from disease, was thus rejected. The Court in the case *Studio 417 v. Cincinnati Insurance Company* noted that many courts have recognized that even absent a physical alteration, a physical loss may occur when the property is uninhabitable or unusable for its intended purpose. It held that the Plaintiffs had adequately stated a claim for direct physical loss, firstly as when the Policies did not define a direct 'physical loss' the Court must rely on the plain and ordinary meaning of the phrase, and secondly because the Court must give meaning to all policy terms and harmonize them in order to accomplish the intention of the parties. The Court observed that the Policies provided coverage for 'accidental physical loss or accidental physical damage', and if 'physical loss' was interpreted to mean 'damage,' then one or the other would be superfluous.

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