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GRC Bulletin
May 2023

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RBI MASTER CIRCULAR ON ASSET RECONSTRUCTION COMPANIES (ARC)

RBI issues Master Circular on Asset Reconstruction Companies on 3rd April 2023 which is applicable to ARCs registered with the RBI u/s 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

The following key guidelines mentioned in the Master Circular –

- i. **Registration** – ARCs shall apply for registration in accordance to section 3 of the Act and can commence business within six months from the date of grant of the Certificate of Registration.
- ii. **Net Owned Fund (NOF)** – Shall be minimum of Rs. 300 crore on an ongoing basis with effect from October 11, 2022.
- iii. ARCs shall commence only the securitisation and asset reconstruction activities and the functions provided for in Section 10 of the Act.
- iv. **Asset Reconstructions includes the followings:**
 - Acquisition of Financial Assets
 - Permission to acquire financial asset from other ARCs
 - Acquisition of financial assets by ARCs from sponsors and lenders
 - Measures of Asset Reconstruction
 - Plan for realisation of financial assets
- v. **Securitization includes the following –**
 - Issue of SRs - An ARC shall give effect to the provisions of Sections 7(1) and 7(2) of the Act through one or more trusts set up exclusively for the purpose.
 - Investment in SRs issued by the trusts floated by ARC – either a minimum 15% of the transferor’s investment in the SR or 2.5% of the total SRs issued, whichever is higher, of each class of SRs issued by them under each scheme on an ongoing basis till the redemption of all the SRs issued under such scheme.
 - Restructuring Support Finance utilize a part of funds raised under a scheme from the QBs for restructuring of financial assets acquired under the relative scheme.
 - Disclosures
- vi. **Requirement as to capital adequacy** - Every ARC shall maintain, on an ongoing basis, a capital adequacy ratio, which shall not be less than fifteen percent of its total risk weighted assets.

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- vii. **Deployment of Funds** - The ARC, may as a sponsor and for the purpose of establishing a joint venture, invest in the equity share capital of ARC formed for the purpose of asset reconstruction.
- viii. Asset Classification includes classification of assets under Standard assets and NPA.
- ix. **Income Recognition** –
 - Yield on SRs should be recognised only after the full redemption of the entire principal amount of SRs. This will be effective from the accounting year 2014-15.
 - Upside income should be recognized only after full redemption of SRs. This will be effective from the accounting year 2014-15.
 - Management fees should be calculated and charged as a percentage of the NAV calculated at the lower end of the range of the Recovery Rating specified by the Credit Rating Agency (CRA) provided that the same is not more than the acquisition value of the underlying asset.
- x. **Internal Audit** - Every ARC shall put in place an effective Internal Control System providing for periodical checks and review of the asset acquisition procedures and asset reconstruction measures followed by the company.
- xi. **Reporting to Indian Banks' Association (IBA)** – The ARCs shall report to IBA the details of Chartered Accountants, Advocates and Valuers (who have committed serious irregularities in the course of rendering their professional services) for including in the IBA database of Third Party Entities involved in fraud.
- xii. **Fair Practices Code** - In order to achieve the highest standards of transparency and fairness in dealing with stakeholders, ARCs are advised to put in place Fair Practices Code (FPC) duly approved by their Board.

#Source: [Click Here for more details](#)

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SEBI - OPERATIONAL CIRCULAR FOR DEBENTURE TRUSTEES

Debenture Trustees are regulated under the provisions of Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 ('DT Regulations'). This single operational circular has been prepared by consolidating all applicable circulars to remove inconsistencies and repetitions through consequent changes.

Terms of Registration

- The SEBI Intermediary Portal is available at <https://siportal.sebi.gov.in> for SEBI registered intermediaries including Debenture Trustees to submit registration applications online.
- SEBI has enabled digital mode of payment (RTGS/NEFT/IMPS etc.) for fees/ penalties/ remittance/ other payments etc.
- Debenture Trustee is required to obtain prior approval of SEBI in case of change in control. With a view to expedite the process of granting prior approval, SEBI has adopted a 'single window clearance at SEBI', for the Debenture Trustees in case of their having multiple registrations with SEBI.
- If a Debenture Trustee wishes to surrender the certificate of registration voluntarily, it shall transfer, wherever relevant, its existing business/client accounts to another SEBI registered Debenture Trustee, before making such request to SEBI in the format specified in Annex-IA.

Due Diligence by Debenture Trustees

- A Debenture Trustee shall ensure compliance with the provisions of the regulations 13 and 13A of DT Regulations with regard to being appointed as a Debenture Trustee in relation to an issue.
- Creation of encumbrance on the securities for securing the listed debt securities shall be through the depository system only in accordance with the Depositories Act, 1996, the SEBI (Depositories and Participants) Regulations, 2018, Depository bye laws and other applicable regulations and circulars.

Security and Covenant Monitoring System

- In order to strengthen the process of security creation, monitoring of security created, monitoring of security cover and covenants of the debt

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securities, a platform for ‘Security and Covenant Monitoring System’ (‘system’) hosted by Depositories has been introduced.

- The system shall be used for recording and monitoring of the security created and monitoring of covenants of debt securities. The system shall, inter alia, capture: the process of creation of security (viz. due diligence, charge creation etc.), continuous monitoring of covenants by Debenture Trustees (as applicable) and credit rating of the debt securities by the Credit Rating Agencies (CRAs).

Recovery Expenses Fund

- In order to enable the Debenture Trustee to take prompt action for enforcement/legal proceedings in case of ‘default’ in listed debt securities, a ‘Recovery Expense Fund’ (REF) shall be created which shall be used in the manner as decided in the meeting of the holders of debt securities.
- In the event of default, the Debenture Trustee/ Lead Debenture Trustee shall obtain the consent of holders of debt securities for enforcement/legal proceedings and shall inform the same to the Designated Stock Exchange. The Designated Stock Exchange shall release the amount lying in the REF to the Debenture Trustee/ Lead Debenture Trustee within five working days of receipt of such intimation.

Provisions relating Debenture Trust Deed, Sharing and Dissemination of Information by Debenture Trustee

- Certain clauses that are included in the trust deed, limit or extinguish the obligations of Debenture Trustee in relation to any rights or interests of holders of debt securities or are in conflict with the provisions of the DT Regulations. Such clauses in the existing or new debenture trust deed shall not be applicable and shall stand null and void.

Redress of Investors’ Grievances

- The primary obligation on resolution of complaints is that of the issuer. The dispute resolution mechanism administered by stock exchanges covers such listed companies and the holders of debt securities.

This Operational Circular shall come into force from 1st April, 2023.

#Source: [Click Here for more details](#)

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FOREIGN TRADE POLICY 2023

In exercise of powers conferred by Section 5 of the Foreign Trade (Development & Regulation) Act, 1992, the Central Government hereby notifies the Foreign Trade Policy, 2023 (FTP 2023).

This Foreign Trade Policy shall come into force with effect from 1st April, 2023.

The following are the key provisions –

Chapter – 1 (Legal Framework and Trade Facilitation)

- i. **Transitional Arrangements** - Any License/ Authorisation/ Certificate/ Scrip/ instrument bestowing financial or fiscal benefit issued before commencement of FTP 2023 shall continue to be valid for the purpose and duration for which it was issued.
- ii. **National Committee on Trade Facilitation (NCTF)** - India has ratified the World Trade Organization's Trade Facilitation Agreement (TFA) in April 2016. To facilitate coordination and implementation of the TFA provisions, an inter-ministerial body i.e. National Committee on Trade Facilitation (NCTF) has been constituted. It aims to achieve - improvement in Ease of Doing Business through reduction in transaction cost and time, reduction in cargo release time, a paperless regulatory environment, a transparent and predictable legal regime and improved investment climate through better infrastructure.
- iii. **Free passage of Export Consignment** - Consignments of items meant for exports shall not be withheld/ delayed for any reason by any agency of Central/ State Government. In case of any doubt, authorities concerned may ask for an undertaking from exporter and release such consignment.
- iv. **No seizure of export related Stock** - No seizure shall be made by any agency so as to disrupt manufacturing activity and delivery schedule of exports. In exceptional cases, concerned agency may seize the stock on the basis of prima facie evidence of serious irregularity. However, such seizure should be lifted within 7 days unless the irregularities are substantiated.
- v. **Export of perishable agricultural products** - To reduce transaction and handling costs, a single window system to facilitate export of perishable agricultural produce is being facilitated through Agricultural and Processed Food Products Export Development Authority (APEDA).
- vi. **Online facilities** –
 - DGFT Online Customer Portal
 - Issue of e-IEC (Electronic-Importer Exporter Code)

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- Online facility for e-RCMC/RC Related Processes
- Online facility for e-Certificate of Origin (e-CoO)
- Online facility to file Quality Control and Trade Disputes (QCTD)
- Trade Data and Statistics
- 24 X 7 Helpdesk Facility

- vii. **Electronic record of export proceeds through eBRC & EDPMS** - e-BRC (Electronic Bank Realisation Certificate) has enabled DGFT to capture details of realisation of export proceeds directly from the Banks through secured electronic mode. RBI has also developed a comprehensive IT-based system called Export Data Processing and Monitoring System (EDPMS) for monitoring of export of goods and software and facilitating AD banks to report various returns through a single platform.
- viii. **Status Holder Certification** - The objective behind certifying certain exporter firms as “Status Holder” is to recognize such exporter firms as business leaders who have excelled in international trade and have successfully contributed to country’s foreign trade.

Chapter-2 (General provisions regarding Imports and Exports)

- i. **Policy regarding import /Exports of goods** - Exports and Imports shall be ‘Free’ except when regulated by way of ‘Prohibition’, ‘Restriction’ or ‘Exclusive trading through State Trading Enterprises (STEs)’ as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of ‘Prohibited’, ‘Restricted’, and STE items can be viewed under ‘Regulatory Updates’ at <https://dgft.gov.in>
- ii. **Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports** - ITC(HS) is a compilation of codes for all merchandise / goods for export/ import. Goods are classified based on their group or sub-group at 2/4/6/8 digits.
- iii. **Compliance of Imports with Domestic Laws** - Domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ environmental/safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.
- iv. **Importer-Exporter Code (IEC)** - An IEC is a 10-character alpha-numeric number allotted to an entity (firm/company/LLP etc.) and is mandatory for undertaking any export/import activities.
- v. **Mandatory documents for export/import of goods from/into India** -
- (a) Mandatory documents required for export of goods from India:
 1. Bill of Lading/ Airway Bill/ Lorry Receipt/ Railway Receipt/Postal Receipt.
 2. Commercial Invoice cum Packing List.

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3. Shipping Bill/Bill of Export/ Postal Bill of Export.
- (b) Mandatory documents required for import of goods into India:
1. Bill of Lading/Airway Bill/Lorry Receipt/ Railway Receipt/Postal Receipt in form CN-22 or CN 23 as the case may be.
 2. Commercial Invoice cum Packing List.
 3. Bill of Entry.
- (c) For export or import of specific goods or category of goods, which are subject to any restrictions/policy conditions or require NOC or product specific compliances under any statute, the regulatory authority concerned may notify additional documents for purposes of export or import.
- (d) In specific cases of export or import, the regulatory authority concerned may electronically or in writing seek additional documents or information, as deemed necessary to ensure legal compliance.
- vi. **Penal action and placing of an entity in Denied Entity List (DEL)** - If an Authorisation holder violates any condition of such Authorisation or fails to fulfill export obligation or fails to deposit the requisite amount within the period specified in demand notice issued by Department of Revenue and /or DGFT, he shall be liable for action in accordance with FT(D&R) Act, the Rules and Orders made there under, FTP and any other law for time being in force.

#Source: [Click Here for more details](#)

TAX LAWS



MAHARASHTRA SETTLEMENT OF ARREARS OF TAX, INTEREST, PENALTY OR LATE FEE ACT, 2023

The Government of Maharashtra notifies Maharashtra Settlement of Arrears of Tax, Interest, Penalty or Late Fee Act, 2023.

It aims to provide for settlement of arrears of tax, interest, penalty or late fee which were levied, payable or imposed, respectively, under various Acts administered by the Goods and Services Tax Department and for the matters connected therewith or incidental thereto.

This Act shall come into force on the 1st May 2023.

The following are the key provisions under the Act –

1. **Designated Authority** - The Commissioner of State Tax shall be the Commissioner for the purposes of this Act. The officers specified in sub-section (2) of section 10 of the Value Added Tax Act or, as the case may be, under section 3 of the Goods and Services Tax Act, shall be the designated authorities for the purposes of this Act. The Commissioner may, by notification published in the Official Gazette, delegate his powers to the designated authorities and such designated authorities shall, within their jurisdiction, exercise the powers over such area or areas, as notified, from time to time, under section 10 of the Value Added Tax Act or, as the case may be, under sub-section (2) of section 4 and section 5 of the Goods and Services Tax Act.
2. **Eligibility for settlement** - Subject to the other provisions of this Act, an applicant, whether registered or not under the Relevant Act, shall be eligible to make an application for settlement of arrears of tax, interest, penalty or late fee in respect of the specified period, whether such arrears are disputed in appeal under the Relevant Act or not.
3. **Cases litigated by State also eligible for settlement** - Where the Goods and Services Tax Department has filed reference or an appeal before the Maharashtra Sales Tax Tribunal or the Courts, the demands disputed by the said Department including tax, interest, penalty or late fee may be considered for the settlement of arrears by the applicant and the application for settlement may be filed accordingly. In such cases, once the amount disputed by the said Department is settled under this Act, there shall be no refund or adjustment of the amount so paid or there shall be no recovery of the waiver already granted under this Act.
4. **Adjustment and determination of arrears of tax, interest, penalty or late fee, if any, eligible for settlement** - Any payment made in respect of a

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statutory order either in the appeal or otherwise, on or before the 30th April 2023, shall first be adjusted towards the amount of un-disputed tax and then disputed tax, thereafter, towards the interest and the balance amount remaining unadjusted, shall then be adjusted towards the penalty and the late fee, sequentially. After adjustment of the amount as specified in clause (a), only the amount remaining outstanding for the specified period, if any, as on the 1st May 2023 or any demand raised for the specified period by any statutory order during the period from 1st May 2023 to 31st October 2023, shall be considered for the settlement under this Act.

5. **Options and duration for payment of requisite amount** - The requisite amount shall be paid under One Time Payment option: Provided that, in case the arrears are in excess of rupees fifty lakh, then the applicant may opt to pay the requisite amount under Instalment option. The duration for the payment of requisite amount and the submission of application under this Act shall be as given in the form of a Table in the Act.
6. **Application for settlement of arrears** - The applicant shall make a separate application for each class of arrears given in clause (d) of sub-section (1) of section 2, under the Relevant Act, separately for each financial year, on or before the last date specified in clause (a) of the Table given in sub-section (2) of section 10.
7. **Order of settlement** - If the designated authority is satisfied that the applicant has paid the requisite amount determined in accordance with sections 8 and 9, it shall pass an order and provide the copy of the said order to the applicant within three months from the last date specified for payment of requisite amount under One Time Payment option or the date specified for payment of last instalment of the requisite amount under Instalment option.

#Source: [Click Here for more details](#)

GENERAL LAWS



ADVISORY ON HEAT-WAVE AND PREPARATORY ACTION FOR HEAT-WAVE SEASON-2023

The Ministry of Labour and Employment, Government of India through D.O. no. Z-16025/20/2023-ISH.II dated April 17, 2023 has directed the State Government to take steps for management and mitigation of adverse effects of extreme hot weather.

The following necessary instructions / directions as informed by Ministry of Labour & Employment, Government of India may be issued to the occupiers/employers/construction companies/industries:

- a) Re-scheduling of working hours for employees/workers in different sectors.
- b) Ensuring necessary arrangements to regulate piece rate and requirement/ urgency for undertaking physical work during summer.
- c) Ensuring adequate drinking water facilities at work places.
- d) Making provision for emergency ice packs and heat illness prevention material to construction workers.
- e) Coordinating with Health Department to ensure regular health check-up of the workers.
- f) Ensuring adherence to Health Advisory issued by M/ o Heath & Family Welfare for Employers and Workers.
- g) It is further mentioned that special attention also needs to be paid to construction workers, and brick kiln workers. For awareness of daily wage/casual workers, information dissemination in respect of above guidelines may also be undertaken at the Labour Chowks.

Further, as mentioned in point no "(f)" above, the Health advisory/Instructions issued by M/o Heath & Family Welfare for Employers and Workers for the employers and workers are given as below:

- i. Provide cool drinking water at work place and remind them to drink a cup of water every 20 minutes or more frequently to stay hydrated.
- ii. Caution workers to avoid direct sunlight.
- iii. Provide shaded work area for workers. Temporary shelter can be created at work site.
- iv. Schedule strenuous and outdoor jobs to cooler times of the day i.e., morning and evening hours.
- v. Increase the frequency and length of rest breaks for outdoor activities- at least every 5 minutes after 1 hour of labour work.

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- vi. Listen to Radio; watch TV; read Newspaper for local weather news and act accordingly. Get the latest update of weather on India Meteorological Department (IMD) website at <https://mausam.imd.gov.in/>
- vii. Assign additional workers or slow down the pace of work. VIII. Make sure everyone is properly acclimatized: it takes weeks to acclimatize to a hotter climate. Do not work for more than three hours in one day for the first five days of work. Gradually increase the amount and time of work.
- viii. Train workers to recognize factors which may increase the risk of developing a heat related illness and the signs and symptoms of heat stress and start a "buddy system" since people are not likely to notice their own symptoms.
- ix. Trained First Aid providers should be available and an emergency response plan should be in place in the event of a heat-related illness.
- x. Pregnant workers and workers with a medical condition or those taking certain medications should discuss with their physicians about working in the heat.
- xi. If working outdoors wear light-coloured clothing preferably long sleeve shirt and pants and cover the head to prevent exposure to direct sunlight.
- xii. Distribute informational pamphlets and organize training for employers and workers regarding health impacts of extreme heat and recommendations to protect themselves during high temperatures.

#Source: [Click Here for more details](#)

GENERAL LAWS



MEGHALAYA EPIDEMIC DISEASES MALARIA REGULATION, 2023

The Government of Meghalaya notifies The Meghalaya Epidemic Diseases Malaria Regulation, 2023.

This comes into force from the date of its publication, i.e., **April 11, 2023**.

This is applicable to the whole State.

Powers and Functions of the Inspecting Officers -

1. May enter any premises for fever surveillance, treatment, anti-larval measures, fogging or spray.
2. Can authorise other person of his team to carry out the aforementioned activities.
3. May put any question to ascertain whether there is any reason to believe or suspect that a person may be suffering from malaria and that person shall give answer to him.
4. The officer may direct the person infected with malaria to give his blood sample for examination and to take treatment.
5. May order any premises to be sprayed with insecticides or enter domestic water collection to be treated with Larvicides.

Preparation of Blood Slides for each fever cases reported –

1. The doctors in Government Health institutions and the registered medical private practitioners of private hospitals or clinics are required to get the blood slides prepared for each fever case reported besides the presently adopted procedures of Rapid Diagnostic Test (RDT) antigen based only.
2. A patient can be declared positive for malaria only on the basis of Microscopy result or RDT performed in areas where microscopy centre is not available. The information of positive case of Malaria should be sent to the nearest Government Health Institution after diagnosis.
3. The Blood slides of the positive cases shall also be submitted to the representative of the Department of Health & Family Welfare within seven days.
4. The officials as mentioned in sub-regulation (1) above should ensure the complete Radical Treatment of Malaria positive cases with Chloroquine/ACT along with Primaquine as per the Drug Policy of Malaria issued by the Government of India and Government of Meghalaya from time to time.

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Declaring as case of clinical or suspected Malaria until and unless confirmed by Microscopic examinations: The patient while presenting symptoms of malaria is negative for malaria by RDT and Microscopy or Microscopy is not done due to any reason, will be considered a case of Clinical or Suspected Malaria. Such case can be given full course of treatment with Chloroquine (25mg/kg BW divided over 3 days) except Primaquine and once diagnosed will be treated appropriately.

Responsibilities –

1. **Responsibility of the State Medical Department:** The role and responsibility of the designated Officers and Staff of the State Medical Department will be as indicated in serial No. 3.
2. **Responsibility of the Director of Health Services-** Deputy Director of Health Services (Malaria)-Cum-State Programme Officer, NVBDCP, Meghalaya of the Directorate of Health services is the overall in-charge designated to look after the Malaria Programme under the **National Framework For Malaria Elimination Programme (NFMEP), Government of India (2016-2030) having the goal to eliminate malaria from the Country by 2027**, whose responsibility is compilation/analysis of the disease (Malaria) prevalent and to suggest upon the strategies to control/intervention measures. He/She will be in touch with the Directorate, NVBDCP, Delhi and the Directorate of Health Services (MI), Shillong upon the Malaria situation in the State.
3. **Responsibility of the District Medical & Health Officer-** At the District Level the District Medical & Health Officer is the overall in-charge of the Malaria Programme and is assisted by the office of the District Malaria Officer who then report to the State Programme Officer.
4. **Responsibility of registered Doctors-** Every Registered Doctor is to report the disease (Malaria) prevalent to the designated authority, i.e., District Malaria Office every month, for this a reporting format is already in place at the facilities (M1, M2, M3 & M4).
5. **Responsibility of Hospitals-** Every hospital (Public & Private) where Malaria is diagnosed and treatment given is to report to the designated District Malaria Officer every month in the reporting format provided under the programme (M4 Format).
6. **Responsibility of registered Laboratories and Clinics-** It is mandatory for all the registered Laboratories and Clinics to report to the District Malaria Office in the Lab format provided under the Programme.

#Source: [Click Here for more details](#)

JUDICIAL INSIGHT



JUDICIAL INSIGHT

APPLICABLE THRESHOLD UNDER SECTION 9 OF IBC IS DETERMINED FROM THE DATE OF FILING AND NOT THE DATE OF REGISTRATION OF THE PETITION

FACTS

In 2019, Royal Manpower Services ("Operational Creditor") filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking to start the Corporate Insolvency Resolution Process ("CIRP") against Faridabad Autocomp System Pvt. Ltd ("Corporate Debtor").

At the time of filing, the minimum default amount required under IBC was Rs. 1 Lakh. However, the petition was registered on 20.07.2021. In the meantime, Section 4 of IBC was amended, and from 24.03.2020 onwards, the minimum default threshold to file a petition under IBC was increased from Rs. 1 Lakh to Rs. 1 Crore. On 06.01.2023, the NCLT rejected the Section 9 petition, stating that the default amount is less than Rs. 1 Crore and the petition does not meet the revised minimum threshold requirement under IBC. The Operational Creditor has filed an appeal before the NCLAT.

Arguments by the parties –

The Appellant relied on the affidavit filed in compliance to the order dated 07.04.2022 passed by the Adjudicating Authority which stated the counsel of the Applicant inter alia submitted that the matter was filed way back in October 2019, which however, came to be registered in 2021. The counsel further submitted that his submissions are supported with the judgments passed by Hon'ble Appellate Authority and Hon'ble Apex Court. Accordingly, the counsel was directed to submit the judgments being relied upon.

The Respondent counsel does not dispute about the filing of the application in 2019, however, he submits that there is delay in the application and there was pre-existing disputes.

HELD

The Bench observed that the revised threshold limit of Rs. 1 Crore was not applicable to the Operational Creditor's petition since the same was filed in 2019 and subsequent registration of application will not change the date of filing. Hence, on the date of filing of the application, the threshold which was to be fulfilled by the Operational Creditor was Rupees One Lakh only. The Bench

set aside the order of dismissal dated 06.01.2023 and revived the petition under Section 9 of IBC, to be heard and decided in accordance with law by the NCLT. The Parties were directed to file the copy of this order before the Adjudicating Authority within a week.

Case Name : Royal Manpower Service vs Faridabad Autocomp System Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 370 of 2023 & I.A. No. 1245 of 2023, NCLT Principal Bench, New Delhi) order dated 06.04.2023

JUDICIAL INSIGHT



SAME ACTIVITY CAN BE TAXED AS 'GOODS' AND 'SERVICES' PROVIDED THE CONTRACT IS INDIVISIBLE AND ON THE ASPECT OF SERVICES THERE MAY BE LEVY OF SERVICE TAX

FACTS

The "Respondent" Suzlon Energy Ltd. is Wind Turbine Generators (WTG) manufacturer. The Respondent entered into a "product development and purchase agreement" with M/s Suzlon Energy GmbH (M/s SEG), its sister firm in Germany to be utilized strictly for the manufacturing of WTG in India.

M/s SEG converted the designs to a blueprint on paper and shipped them to India. When sending the designs to India the respondent submitted a bill of entry with the customs authorities, classifying them as "Paper" and claiming the "Nil" rate of custom tax. The Respondent argued that because the designs and drawings it acquired through customs by filing the bill of entry were "goods" rather than "services" it was exempted from paying the service tax.

While the audit was going on, it was discovered that the service tax on "Engineering Design & Drawings" of several models utilized in the manufacturing of WTG, that were classified under the category of "Design Services" from June 2007 to September 2010, were not paid by the Respondent.

On March 25, 2012, the "Appellant", the Commissioner of Customs, Central Excise & Service Tax held the Respondent accountable for the payment of service tax as "design services" on importing several models of "Engineering Design & Drawings" for the objective of production of Wind Turbine Generator (WTG), as defined under section 65(35b) r/w section 65(105) (zzzzd) of the Finance Act, 1994. The Appellant also imposed an interest and a fine on the Respondent.

When the Respondent filed for an appeal, the Custom Excise and Service Tax Appellate Tribunal ("CESTAT") overturned the Appellant's ruling for the payment of service tax. CESTAT determined that "design and drawings" are "goods" rather than "services". It was also found that because the taxing of commodities and services are mutually and clearly defined levies, the same action cannot be taxed as both goods and services. The Appellant appealed the CESTAT ruling to the supreme court.

ISSUE

Is a custom-made design imported on a blueprint considered a "good" and therefore be exempted from service tax under the heading design services?

SUPREME COURT VERDICT

The Supreme Court was considering the service tax demand for the period of June 2007 to September 2010 when the Respondent Suzlon received design services from its sister firm it was imported on paper and was believed to be goods under the Customs Act, it was not subject to service tax payment. Following BSNL's case, the Department declared that when goods and services are imported under a composite agreement, the intention of the parties must be considered as to whether the party intended to transfer both goods and as well as services, either individually or in a separate manner, or a composite manner. Various instances were given, such as a painter specifically painting on a canvas as per directions, and a hospital supplying a stent while conducting a heart operation, and it was, therefore held that the declaration in the bill of entry as goods and acceptance under customs cannot be determinative of the transaction and the import of design and drawings on paper was an import of service that is accountable for service tax under the applicable provisions.

Case Name : Commissioner Of Customs, Central Excise & Service Tax Vs. M/S Suzlon Energy (Civil Appeal nos. 11400-11401/2018, Supreme Court of India) dated April 10, 2023

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