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About

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About

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CORPORATE LAWS



SECURITIES AND EXCHANGE BOARD OF INDIA (STOCK BROKERS) (AMENDMENT) REGULATIONS, 2021

Securities and Exchange Board vide the notification dated 30th March 2021 the following regulations to amend the Securities and Exchange Board of India (Stock Brokers) Regulations, 1992 were made. These regulations may be called the Securities and Exchange Board of India (Stock Brokers) (Amendment) Regulations, 2021 and shall come into force on the date of their publication in the Official Gazette.

Regulation 2

In sub-regulation (1) after Clause (h) the following shall be inserted namely-

“(i) “Underwriter” means a person who engages in the business of underwriting

of an issue of securities of a body corporate.

(j) “Underwriting” means an agreement to subscribe to or procure subscription for securities, issued or offered for sale, remaining unsubscribed.

(k) “Issue” means an offer of sale or purchase of securities by any body corporate, or by any other person or group of persons on its or his or their behalf, as the case may be, to or from the public, or the holders of securities of such body corporate or person or group of persons through a merchant banker.

Regulation 3

(4) Every stock broker holding a valid certificate of registration shall be entitled to act as an underwriter.

Regulation 9

(i) after Clause (g), the following shall be inserted, namely, -

h. Every stock broker who acts as an underwriter shall enter into a valid agreement with the body corporate on whose behalf it is acting as underwriter and shall abide by the regulations made under the Act in respect of the activities carried on by it as underwriter.

i. Every Stock Broker shall be entitled to act as an underwriter only out of his own net worth/funds as may be prescribed from time to time.

Regulation 17

(i) after sub-regulation (3), the following shall be inserted, namely, -

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“(4) (1) Subject to the provisions of any other law, every Stock Broker acting as an underwriter shall keep and maintain the following books of account and documents, namely: —

- (a) In relation to an underwriter being a body corporate—
 - (i) a copy of the balance sheet and profit and loss account as at the end of each accounting period;
 - (ii) a copy of the auditor’s report on the accounts for that period;
 - (b) In relation to an underwriter not being a body corporate—
 - (i) records in respect of all sums of money received and expended by them and the
 - (ii) matters in respect of which the receipt and expenditure take place; and their assets and liabilities.
- (2) Every Stock Broker acting as an underwriter shall also maintain the following records with respect to—
- a) details of all agreements
 - b) total amount of securities of each body corporate subscribed to in pursuance of an agreement
 - c) such other records as may be specified by the Board for underwriting.

Agreement with clients

Every stock broker acting as an underwriter shall enter into an agreement with each body corporate on whose behalf he is acting as underwriter and the said agreement shall, amongst other things, provide for the following, namely: —

- a) the period for which the agreement shall be in force;
- b) the allocation of duties and responsibilities between the underwriter and the client
- c) the amount of underwriting obligations;
- d) the period, within which the underwriter has to subscribe to the issue after being intimated by or on behalf of such body corporate;
- e) the amount of commission or brokerage payable to the underwriter;
- f) details of arrangements, if any, made by the underwriter for fulfilling the underwriting obligations.

General responsibilities of a Stock Broker as an underwriter

- a) Every Stock Broker acting as an underwriter shall not derive any direct or indirect benefit from underwriting the issue other than the commission or brokerage payable under an agreement for underwriting.
- b) The total underwriting obligations under all the agreements shall not exceed twenty times the net worth.

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- c) Every Stock Broker acting as an underwriter, in the event of being called upon to subscribe for securities of a body corporate pursuant to an agreement shall subscribe to such securities within 45 days of the receipt of such intimation from such body corporate. A Stock Broker shall not make any statement, either oral or written, which would misrepresent—
- a. the services that the underwriter is capable of performing for its client, or has rendered to any other issuer company;
 - b. his underwriting commitment.
1. A Stock Broker shall avoid conflict of interest and make adequate disclosure of his interest.
 2. A Stock Broker shall put in place a mechanism to resolve any conflict of interest situation that may arise in the conduct of business or where any conflict of interest arises, shall take reasonable steps to resolve the same in an equitable manner.
 3. A Stock Broker shall make appropriate disclosure to the client of its possible source or potential areas of conflict of duties and interest while acting as underwriter which would impair its ability to render fair, objective and unbiased services.
 4. A Stock Broker shall not divulge to other issuer, press or any party any confidential information about its issuer company, which has come to his knowledge and deal in securities of any issuer company without making disclosure to the Board and also to the Board of directors of the issuer company.
 5. A Stock Broker shall ensure that any change in registration status/any penal action taken by board or any material change in financials which may adversely affect the interests of clients/investors is promptly informed to the clients and any business remaining outstanding is transferred to another registered person in accordance with any instructions of the affected clients/investors.
 6. (a) A Stock Broker or any of his employees shall not render, directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including its long or short position in the said security has been made, while rendering such advice.
(b) In case, an employee of a Stock Broker is rendering such advice, the Stock Broker shall ensure that he shall disclose its interest, the interest of dependent family members and that of the employer including their long or short position in the said security, while rendering such advice.
 7. A Stock Broker or any of the directors, partners or manager having the management of the whole or substantially the whole affairs of the business,

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shall not either through its account or their respective accounts or through their associates or family members, relatives or friends indulge in any insider trading.

8. A Stock Broker acting as an underwriter shall not indulge in any unfair competition, which is likely to be harmful to the interest of other entities acting as underwriters carrying on the business of underwriting or likely to place such other underwriters in a dis-advantageous position in relation to the underwriter while competing for, or carrying out any assignment.
9. An underwriter shall not be party to or instrumental for—
 - a) creation of false market;
 - b) price rigging or manipulation; or
 - c) passing of unpublished price sensitive information in respect of securities which are listed or proposed to be listed in any stock exchange to any person or intermediary.

#Source: [Click here to read more](#)

CORPORATE LAWS



CHANGE IN CONTROL: TRANSFER OF SHAREHOLDINGS AMONG IMMEDIATE RELATIVES AND TRANSMISSION OF SHAREHOLDINGS AND THEIR EFFECT ON CHANGE IN CONTROL

On 25th March 2021 SEBI issued a Circular to further clarify its Circular dated 2nd August, 2011 addressed to stock exchanges/ depositories and intermediaries which specified the procedure for seeking prior approval for change in control from SEBI. In this regard, following is clarified with respect to transfer of shareholding among immediate relatives and transmission of shareholding:

Transfer /transmission of shareholding in case of unlisted body corporate intermediary:

Change in shareholding of the intermediary will not be construed as change in control in the following cases:

- a. Transfer of shareholding among immediate relatives shall not result into change in control. Immediate relative shall be construed as defined under Regulation 2(I) of SEBI SAST Regulations which inter-alia includes any spouse of that person, or any parent, brother, sister or child of the person or of the spouse;
- b. Transfer of shareholding by way of transmission to immediate relative or not, shall not result into change in control.

Transfer /transmission of shareholding in case of a proprietary firm type intermediary:

In case of a proprietary concern, the transfer or bequeathing of the business/capital by way of transmission to another person is a change in the legal formation or ownership and hence such transmission or transfer shall be considered as change in control. The legal heir / transferee in such cases is required to obtain prior approval and thereafter fresh registration shall be obtained in the name legal heir/transferee.

Transfer /transmission of ownership interest in case of partnership firm type intermediary:

a. Transfer of ownership interest in case of partnership firm:

Transfer amongst the partners shall not be construed to be change in control. Where the partnership firm consists of two partners only, the same would stand as dissolved upon the death of one of the partners. However, if a new partner is inducted in the firm, then the same would be considered as a change in control, requiring fresh registration and prior approval of SEBI.

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b. Transmission of ownership interest in case of partnership firm:

Where the partnership deed contains a clause that in case of death of a partner, the legal heir(s) of deceased partner be admitted, then the legal heir(s) may become the partner (s) of the partnership firm. In such scenario the partnership firm is reconstituted. Bequeathing of partnership right to legal heir(s) by way of transmission shall not be considered as change in control.

Incoming entities/ shareholders becoming part of controlling interest in the intermediary pursuant to transfer of shares from immediate relative / transmission of shares (immediate relative or not), need to satisfy the fit and proper person criteria stipulated in Schedule II of SEBI (Intermediaries) Regulations, 2008

#Source: [Click here to read more](#)

TAX LAWS



INCOME-TAX (6TH AMENDMENT) RULES, 2021

The Central Board of Direct Taxes (CBDT) on 26th March, 2021 has issued the Income-tax (6th Amendment) Rules, 2021 to further amend the Income-tax Rules, 1962. They shall come into effect from 1st April, 2021.

The following amendments have been made:

Rule 2C, which specifies the application for the purpose of grant of approval of a fund or trust, has been substituted, namely:

“Application for the purpose of grant of approval of a fund or trust or institution or university or any hospital or other medical institution under clause (i) or clause (ii) or clause (iii) or clause (iv) of first proviso to clause (23C) of Section 10. (1) An application under clause (i) or clause (ii) or clause (iii) or clause (iv) of first proviso to clause (23C) of Section 10 for the grant of approval of a fund or trust or institution, or university or other educational institution or any hospital or other medical institution (hereinafter referred to as 'the applicant') shall be made in the following Form, namely:

- i) Form No. 10A in case of application under clause (i) or clause (iv) of first proviso to clause (23C) of Section 10 to the Principal Commissioner or Commissioner authorized by the Board.
- ii) Form No. 10AB in case of application under clause (ii) or clause (iii) of first proviso to clause (23C) of Section 10 to the Principal Commissioner or Commissioner under the said proviso.

Rule 5CA, which specifies the intimation under the fifth proviso to sub-section (1) of Section 35, has been inserted, namely:

“An intimation under fifth proviso to sub-section (1) of Section 35 by a research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of said sub-section (hereinafter referred to as 'the applicant') shall be made in Form No.10A to the Principal Commissioner or Commissioner authorized by the Board.

The application under sub-rule (1) shall be accompanied by the following documents, as required by Form No.10A, namely:

- i) where the applicant is created or established under an instrument, self-certified copy of the instrument.

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- ii) where the applicant created or established otherwise than under an instrument, self-certified copy of the document evidencing the creation or establishment of the applicant.
- iii) self-certified copy of registration with Registrar of Companies or Registrar of Firms and Societies or Registrar of Public Trusts or other registration document, as the case may be.
- iv) self-certified copy of registration under Foreign Contribution (Regulation) Act, 2010 if the applicant is registered under such Act.
- v) self-certified copy of existing Notification granting approval under Section 35.

Rule 11 AA, which specifies the requirement for approval of institution of fund under clause (vi) of sub-section (5) of Section 80G, has been inserted, namely:

“An application for approval under clause (vi) of sub-section (5) of Section 80G, the institution or fund (hereinafter referred to as 'the applicant') shall be made in the following Form, namely:

- i) Form No. 10A in case of application under clause (i) or clause (iv) of first proviso to subsection (5) of Section 80G to the Principal Commissioner or Commissioner authorized by the Board.
- ii) Form No. 10AB in case of application under clause (ii) or clause (ii) of first proviso to subsection (5) of Section 80G to the Principal Commissioner or Commissioner authorized under the said proviso.

Rule 17A, which specifies application for registration of charitable or religious trusts etc, has been substituted, namely:

“An application under sub-clause (i) or sub-clause(ii) or sub-clause(iii) or sub-clause(iv) or sub-clause(v) or sub-clause(vi) of clause (ac)of sub-section (1) of Section 12A for registration of a charitable or religious trust or institution (hereinafter referred to as 'the applicant') shall be made in the following Form, namely:

- i) Form No. 10A in case of application under sub-clause (i) or (vi) of clause (ac) of sub-section (1) of Section 12A to the Principal Commissioner or Commissioner authorized by the Board.
- ii) Form No. 10AB in case of application under sub-clause (ii) or (iii) or (iv) or (v) of clause (ac) of sub-section (1) of Section 12A to the Principal Commissioner or Commissioner under the said clause.

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Rule 18AB, which specifies the furnishing of statement of particulars, has been inserted, namely:

“For the purpose of clause (viii) of sub-section (5) of Section 80G and clause (i) to sub-section (1A) of Section 35, the prescribed authority shall be the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) as the case may be.

Statement of particulars required to be furnished by any research association, university, college or other institution or company or fund under clause (viii) of sub-section (5) of Section 80G or under clause (i) to sub-section (1A) of Section 35 shall be furnished in respect of each financial year, beginning with the financial year 2021-2022, in Form No. 10BD and shall be verified in the manner indicated therein.”

#Source: [Click here to read more](#)

TAX LAWS



INCOME-TAX (10TH AMENDMENT) RULES, 2021

The Ministry of Finance vide its notification dated 15th April, 2021 issues the Income-tax (10th Amendment) Rules, 2021.

In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules), in rule 2DB, -

(i) after clause (iii), the following proviso shall be inserted, namely: -

“Provided that the provisions of clause (iii) shall not apply to any payment made to creditors or depositors for loan taken or borrowing for the purposes other than for making investment in India;”;

(ii) clause (iv) shall be omitted;

(iii) after clause (vi), the following Explanation shall be inserted, namely: -

‘Explanation: For the purposes of this rule, "loan and borrowing" shall have the same meaning as assigned to it in sub-clause (b) of clause (ii) of Explanation 2 to clause (23FE) of Section 10.’.

In the principal rules, in rule 2DC, in sub-rule (1), for the word “Explanation”, the word and figure “Explanation 1” shall be substituted.

In the principal rules, in the APPENDIX II, for Form No. 10BBA shall be substituted with a new one.

#Source: [click here to read more](#)

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CODE ON WAGES (GUJARAT) RULES 2021

Through the notification dated 31st March 2021 the Labour and Employment department of Gujarat proposed its draft rules on the Code on Wages 2019. Here are the key features of the rules.

These rules may be called the Code on wages (Gujarat) Rules 2021 and extends to the State of Gujarat.

Minimum wage

Manner of calculating minimum rate of wages

Minimum wages shall be fixed on daily basis keeping in view the following criteria:

1. The standard of working class family which includes a spouse and two children apart from the running worker an equivalent of three adult consumption units.
2. Net intake of 2700 calories per day per consumption unit.
3. Cloth per year standard working class family.
4. Housing rent expenditure to constitute 10% of food and clothing expenditure
5. Expenditure for children's education medical requirement recreation etc.

Norms for fixation of minimum rate of wages While fixing the minimum rate of wages the State Government shall divide the concerned geographical area into three categories 1. Metropolitan Area 2. Non-Metropolitan area 3. Rural area The Government shall constitute a technical committee to advise the Government.

Time interval for revision of dearness allowance.

Low cost of living allowance and the cash value of concession in respect of essential commodities as at conception date shall be computed before 1st of April and then the 1st of November in every year to revise the due allowances payable to the employee.

Number of hours of work which constitute a normal working day.

The normal working day shall be 8 hours of work and one more hour for intervals which in total shall not exceed one.

One weekly day of rest. An employee shall be allowed a day of rest every week which ordinarily shall be a Sunday but the employer may fix any other day of the week as the rest day for any employee a class of employees.

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Night shifts

When an employee is in unemployment, works on a ship which extends beyond midnight then a rest for the whole day which means a period of 24 consecutive hours shall be provided.

Payment of wages

Recovery

When the total deduction authorized exceeds 50% of the wages of an employee, it shall be carried forward and recovered from the wages of succeeding period or wait periods as the case may be.

Authority

The Assistant Commissioner of Labour shall be the authority.

Procedures

The employer shall give an intimation in writing specifying detailed particulars for obtaining the approval of the imposition of fine to the Assistant Commissioner of Labour who shall before granting the approval give an opportunity of being heard to the employee and employer concerned.

Intimation of deduction

When an employer makes any deduction, he shall make intimation of such reductions to the Inspector cum facilitator having jurisdiction within 10 days from the date of such deduction explaining there in the reason of such deduction.

State Advisory Board

Constitution of the Board

- Chairperson
- One Member of assembly
- Two member each of whom shall be professional in the field of wages and Labour related issues
- One member who is or has been a presiding officer of an industrial Tribunal constituted by the State Government under Section 7A of The Industrial Disputes Act, 1947.

Payment of dues claims etc

Where any amount payable to an employee under the Code is due after his death on account of his whereabouts not being known and the amount could not be paid to the nominee of the employee until the expiry of three months from the date

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the amount has become payable in such a manner shall be deposited by the employer with the Labour Welfare Commissioner or Assistant Commissioner of Labour having jurisdiction.

Where any amount payable to an employee under this Code remains undispersed because either no nomination has been made by such employee or other reasons, such amounts could not be paid to the nominee of employee until the expiry of 6 months from the date the amount has become payable. All such amount shall be deposited by the employer with The Labour Welfare Commissioner or Assistant Commissioner of Labour having jurisdiction.

The form, register and wage slip

A single application may be filed along with documents specified in Form II.

All fines and all realization there off shall be recorded in a register which is to be kept by the employer in Form I.

Every employer shall issue wage slip electronically or otherwise to the Employees in Form V.

Timely payment of wages

Where the employees are employed in an establishment through Contractor then the company or Association or any other person who is the proprietor of the establishment shall pay to the Contractor the amount payable to him or as the case may be before the date of payment of wages so that payment of wages to the employee shall be made positively in accordance with the provisions.

Responsibility for payment of minimum bonus

Where in an establishment employees are employed through Contractor and the Contractor fails to pay minimum bonus to them then the company or former Association or other person as referred, on the written information of such failure given by the employees or any Registered Trade Union or Unions of which the employees are a member upon confirming such failures pay such minimum bonus to the employee.

#Source: [Click here to read more](#)

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AMENDMENTS TO THE TAMIL NADU FACTORIES RULES, 1950

The Labour Employment Department of State of Tamil Nadu vide its notification dated 24th March, 2021 has made amendments to the Tamil Nadu Factories Rules, 1950.

In Rule 88, in sub-rule (2), for the expression "fifteen paise", the expression "five rupees" shall be substituted;

Maintenance of Muster Roll and Registers -

1. The Manager of every factory shall maintain a muster roll of all the workers employed in the factory in Form No. 25 and entries shall be made at the commencement of each period of work.
2. The Manager shall make it such that the muster-roll is readily available for inspection to the inspector at all times during working hours or when any work is being carried on in the factory and it shall be preserved for a period of three years after the last entry.
3. The Register of adult workers and young persons in Form No. 12, Register of leave with wages in Form No. 15 and the muster roll and Register of compensatory holidays in Form No. 25 shall be considered to serve the purposes of the Registers and muster roll specified hereunder, namely:
 - (i) Register of Employment of Contract Labour in Form XXVI as per Rule 75, Register of Wages in Form XXVII as per clause (a) of sub-rule (1) of Rule 78 and Register of Advances, Deductions for Damage or Loss and Fines in Form XXIX as per clause (d) of sub-rule (1) of Rule 78 of the Tamil Nadu Contract Labour (Regulation and Abolition) Rules, 1975;
 - (ii) Register of Workmen employed by Contractor in Form XIII as per Rule 49, Muster Roll Register in Form XVII as per clause (a) of sub-rule (2) of Rule 52, Register of Wages in Form XVIII as per clause (a) of sub-rule (2) of Rule 52, Register of Deductions for Damage or Loss in Form XIX as per clause (c) of sub-rule (2) of Rule 52, Register of Fines in Form XX as per clause (c) of sub-rule (2) of Rule 52, Register of Advances in Form XXI as per clause (c) of sub-rule (2) of Rule 52 and Register of Overtime in Form XXII as per clause (d) of sub-rule (2) of Rule 52 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) (Tamil Nadu) Rules, 1983;
 - (iii) Register of Fines in Form I as per Rule 3, Register of Deductions for Damage or Loss caused to the employer by the neglect or default of the employed persons in Form II as per Rule 4 and Register of Advances

- made to employed persons in Form III as per Rule 17 of the Tamil Nadu Payment of Wages Rules, 1937;
- (iv) Register of Fines in Form I as per sub-rule (4) of Rule 21, Register of Deductions for Damage or Loss caused to the employer by the neglect or default of the employed person in Form II as per sub-rule (4) of Rule 21, Overtime Register for Workers in Form IV as per sub-rule (2) of Rule 26, Muster Roll in Form V as per sub-rule (5) of Rule 27 and Register of Employees in Form XI as per sub-rule (6) of Rule 27 of the Minimum Wages (Tamil Nadu) Rules, 1953;
 - (v) Muster Roll in Form A as per sub-rule (1) of Rule 3 of the Tamil Nadu Maternity Benefit Rules, 1967;
 - (vi) Register of National, Festival and Special Holidays in Form VI as per sub-rule (1) of Rule 7 of the Tamil Nadu Industrial Establishments (National, Festival and Special Holidays) Rules, 1959;
 - (vii) Register of Workmen in Form I as per sub-rule (1) of Rule 6 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Rules, 1981;
 - (viii) Register of employees placed under suspension in Form No.1 as per Rule 3 of the Tamil Nadu Payment of Subsistence Allowance Rules, 1981;
 - (ix) Register of Wages in Form B, Register of Fines and Unpaid Accumulations in Form C as per Rule 29 of the Tamil Nadu Labour Welfare Fund Rules, 1973.";

Form No. 12, Form No. 15 and Form No. 25, shall be substituted.

#Source: [Click here to read more](#)

JUDICIAL INSIGHT



JUDICIAL INSIGHT

ADJUDICATING AUTHORITY CANNOT TRESPASS INTO THE 'COMMERCIAL WISDOM' OF THE 'COMMITTEE OF CREDITORS'

The 'Appellant'/Successful Resolution Applicant has filed the present 'Appeal' being dissatisfied with the order dated 24.02.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) in IA No. 1094 /2020 in CP No. 153/7/HDB/2019 (filed by the 'Appellant/Applicant/Resolution Professional') under Section 36 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39 (4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Earlier, while passing the impugned order dated the Adjudicating Authority (National Company Law Tribunal, Hyderabad Bench, Hyderabad) had among other things observed the following:

The Resolution Professional has compared both the Resolution Plan submitted by M/s. KALS Group and Mr. Chava Suresh Babu. M/s. KALS Group has scored in terms of faster payment of the amount for resolving the Corporate Debtor. Taking into consideration the almost similarly placed resolution plans and claims and counter claims made by both the Resolution Applicants, the Tribunal was of the view that there is a need for further pursuance of the Resolution Plan and with the very hope that the Corporate Debtor may fetch better value that what has been offered by the Resolution Applicants. In this case, even though the resolution plan of M/s. KALS Group has been approved with 100% voting in favour of it by the COC, in view of very meagre difference between both the Resolution Plans.

The Tribunal directed the COC to take fresh bids from the existing two Resolution Applicants and submit a fresh resolution plan within a period of one month.

The grievance of the Appellant is that its plan was approved with an overwhelming 100% of votes and there was no reason commercially or in Law for rejection of its plan by the 'Adjudicating Authority'. In short, the Adjudicating Authority had revived a Stale Resolution Plan and directed a fresh bid to be conducted while passing the impugned order.

CONTENTIONS

The Appellants Contented that the Adjudicating Authority had committed an error in considering the fact that the Resolution Plan' of the 'unsuccessful Resolution Applicants' were rejected by the 'Committee of Creditors'. Upon satisfaction that

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the 'Sanctioned Plan' was compliant with the requirements of Section 30(2) of the Insolvency & Bankruptcy Code, 2016, the Adjudicating Authority was duty bound to sanction the 'Resolution Plan' of the Appellant and in fact, had exceeded its jurisdiction by issuing directions in the 'impugned order' to 'rebid' in an endeavor to maximize the value.

Appellant takes a stand that an 'Adjudicating Authority' cannot trespass into the Commercial Wisdom' of the 'Committee of Creditors' and indeed, has a restricted power, of course, within the four corners of Section 30(2) of the Insolvency & Bankruptcy Code, 2016.

The Learned Counsel for the Respondent points out that the Adjudicating Authority had contradicted its own previous orders. Therefore, a plea is taken on the side of the Respondent that the impugned order is untenable in Law.

OBSERVATIONS OF THE TRIBUNAL

On a careful consideration of the submissions advanced on either side, the 'Tribunal' after going through the impugned order directing the Committee of Creditors to take fresh bids from the existing two Resolution Applicants to submit a Resolution Plan for its consideration within a period one month concluded that it is clearly unsustainable.

HELD

The Instant Company Appeal is allowed and the 'Adjudicating Authority' (National Company Law Tribunal, Bench-I, Hyderabad) is to approve the 'Resolution Plan' approved by the "Committee of Creditors' with 100% voting in favour of 'KALS Group'

Source: *Company Appeal (AT) (CH) (Insolvency)No. 23 of 2021, dated 19th April, 2021*

M/s Renganayaki Agencies v. Sreenivasa Rao Ravinuthala

JUDICIAL INSIGHT



ONCE THE SEAT OF ARBITRATION IS REPLACED BY MUTUAL AGREEMENT THE VENUE IN THE ARBITRATION CLAUSE IS NOT TO BE CONSIDERED

The present appeal arises out of the impugned judgment dated 9th October, 2019 passed by the High Court of Gujarat at Ahmedabad in which Special Civil Application No. 9536 of 2019 filed by the appellant, Inox Renewables Ltd. [“Appellant”] against the order dated 25th April, 2019 passed by the Commercial Court, Ahmedabad was dismissed, holding that the courts at Jaipur, Rajasthan would be the courts in which the Section 34 petition could be filed.

Brief facts

A purchase order dated 28th January, 2012 was entered into between M/s Gujarat Fluorochemicals Ltd. and the respondent herein, Jayesh Electricals Ltd. for the manufacture and supply of power transformers at wind farms.

The arbitration agreement stated that their venue of arbitration would be Jaipur.

A slump sale of the entire business of GFL took place in favour of the Appellant. This took place by way of a business transfer agreement dated 30th March, 2012 executed between the Appellant and GFL to which the Respondent was not a party. Clause 9.11 and 9.12 of this business transfer agreement designated Vadodara as the seat of the arbitration between the parties, vesting the courts at Vadodara with exclusive jurisdiction qua disputes arising out of the agreement.

The arbitration award was passed in favour of Jayesh Electricals and the same was challenged by Inox before a Commercial Court at Ahmedabad under Section 34 of the Act. The appeal was dismissed by Ahmedabad Court holding that exclusive jurisdiction is vested with Vadodara Court according to the business transfer agreement.

Inox further challenged this before the Gujarat High Court. The High Court affirmed that the Ahmedabad Court had no jurisdiction to deal with the appeal. However, the High Court also observed that it was the court at Jaipur which had jurisdiction, instead of Vadodara Court.

Inox made a further appeal to the Supreme Court against the High Court decision.

The Supreme Court observed that the learned arbitrator has recorded that by mutual agreement, Jaipur as a “venue” has gone and has been replaced by Ahmedabad. As clause of the Purchase Order must be read as a whole, it is not possible to accept the submission of Shri Malkan that the jurisdiction of Courts in

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Rajasthan is independent of the venue being at Jaipur. The two clauses must be read together as the Courts in Rajasthan have been vested with jurisdiction only because the seat of arbitration was to be at Jaipur. Once the seat of arbitration is replaced by mutual agreement to be at Ahmedabad, the Courts at Rajasthan are no longer vested with jurisdiction as exclusive jurisdiction is now vested in the Courts at Ahmedabad, given the change in the seat of arbitration.

Held

For all these reasons, it is clear that the impugned judgment cannot stand and is set aside. The parties are now referred to the courts at Ahmedabad for the resolution of the Section 34 petition.

Source: CIVIL APPEAL NO. 1556 OF 2021, April 13, 2021.

M/S. INOX RENEWABLES LTD. VERSUS JAYESH ELECTRICALS LTD.

Contact Us

Head Quarters:

#75, 3rd Cross, 17th Main,
2nd Block, Koramangala,
Bengaluru - 560034

Ph: +91 8040912427

Email: info@ricago.com

Website: www.ricago.com

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