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GRC Bulletin

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About

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CORPORATE LAWS

SEBI ISSUES MASTER CIRCULAR ON INVESTOR GRIEVANCE REDRESSAL THROUGH SCORES PLATFORM, 2022

The Securities and Exchange Board of India has recently notified a master circular on the redressal of investor grievances through the SEBI Complaints Redress System (SCORES) platform. SCORES is a centralized web based complaints redress system launched by SEBI in June 2011 to provide an administrative platform for aggrieved investors for resolving their grievances in relation to securities market.

Key features of the aforementioned Master Circular are as follows-

1. **Filing a Complaint**: There are Investor Associations (IAs) and SEBIs toll free number to assist in filing a complaint. The complainants are required to register themselves on SCORES. They are given a unique user ID and password if they register successfully.

2. **Direct Complaint:** SCORES can be used to submit the grievance directly to the concerned entity. This is known as a direct complaint and if it is not redressed within 30 days, the SEBI shall interfere and the complaint will be registered on SCORES.

3. **Time Limit:** The complaint should be lodged on SCORES within one year from the date of cause of action otherwise SEBI can reject that complaint.

4. **One Time Review:** SCORES also provide for an option of One Time Review to the complainants in case he is not satisfied with the grievance resolution. The request for the review to be made within 15 days from the date of closure of the complaint.

5. **Limitations:** The following types of complaints shall not be dealt through SCORES-
    i. Complaints against companies which are unlisted/delisted and companies on Dissemination Board of Stock Exchanges (except complaints on valuation of securities).
    ii. Complaints relating to cases pending in a court or subject matter of quasi-judicial proceedings, etc.
    iii. Complaints falling under the purview of other regulatory bodies such as Reserve Bank of India, (RBI), Insurance Regulatory and

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Development Authority of India (IRDAI), Pension Fund Regulatory and Development Authority of India (PFRDAI), Competition Commission of India (CCI), or complaints falling under the purview of other ministries.

iv. Complaints against a company under resolution under the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).

v. Complaints against the companies where the name of company is struck off from Register of Companies (RoC) or a vanishing company as published by MCA.

vi. Liquidated Companies or companies under liquidation.

6. **SCORES Authentication for intermediaries and MIIs:** The intermediaries and MIIs needs to be registered with the SCORES platform**.** Except Stock Brokers and Depository Participants, all intermediaries and MIIs are required to obtain SCORES authentication.

7. **SCORES Authentication for companies intending to list their securities on SEBI recognized stock exchanges:** All "companies intending to list their securities on SEBI recognized stock exchanges" can obtain SCORES credentials. A declaration needs to be made by a company in this regard.

8. **Complaints against Listed Companies:** These complaints can be processed by Registrar to Issue or Share Transfer Agent, and case of failure on their part, it shall be considered a failure of listed company in furnishing information to SEBI and non redressal of the complaint.

9. **Handling of complaints by stock exchanges against certain listed companies:** Upon receiving a complaint through SCORES, the Designated Stock Exchange (DSE) shall take up the complaint with the company. The Company has to submit an Action Taken Report in 30 days to the DSE, and in case of failure by the company, a reminder shall be issued by the DSE giving another 30 days to the company for redressing the grievances.

10. **Action for failure to redress investor complaints by such listed companies:** A fine will be levied by DSE of Rs. 1000 per day per complaint on the listed company. The fine is to be paid within 15 days of notice otherwise notice shall be issued promoters and if promoters also fail to submit an Action Taken Report within 10 days, the

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depositories shall freeze their Demat Account. When all the options are exhausted and pending complaint are more than 20 or exceeding 20 Lakhs in value, then the stock exchanges shall forward all the complaints against such listed companies to SEBI through SCOREs.

11. **Action after redressal of investor grievance by such listed companies:**
    - Company will be treated as compliant if it has redressed the complaints and has paid the levied fines
    - The promoters demat account shall will unfreeze provided the accrued fines are also paid.

12. **Miscellaneous provisions**
    - The Investors Grievances Redressal Mechanism shall be reviewed by all listed companies, intermediaries and MIIs from time to time.
    - A complaint shall be treated as resolved/disposed/closed only when SEBI disposes/closes the complaint in SCORES.
    - If the listed company, intermediary or MII has failed to obtain the SCORES user ID and password, it would be deemed as non-redressal of investor grievances.
    - If listed companies, intermediaries and MII have failed to file ATR on SCORES within the stipulated timelines, it shall not only be considered as a non redressal but also as a as failure to furnish information to SEBI.

#Source: Click here for more details

CORPORATE LAWS

SEBI NOTIFIES SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (SIXTH AMENDMENT) REGULATIONS, 2022

On 15th November, 2022, Securities & Exchange Board of India (SEBI) notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022 which brought in the following changes

1. **Regulation 25 (2A) -**The regulation earlier provided to pass a special resolution for appointment or removal of independent director. Now even if special resolution fails, simple majority is sufficient for appointment or removal of the independent director.

2. **Regulation 32-** The listed entities have to submit a quarterly statement of any deviations or variations that might have occurred in using the proceeds of an issue to stock exchanges. Before the amendment, such disclosures were required only in funds raised by in public, rights and preferential issues. But with the amendment, listed companies are now mandated to submit such statements for funds raised from Qualified Institutional Placements also.

3. **Regulation 52 (1) -**The SEBI now directs that the listed entity submits un-audited or audited quarterly and year to date standalone financial results within 60 days from the end of the quarter to the recognized stock exchange, for the last quarter of the financial year.

4. **Regulation 52 (2) -** The SEBI now mandates submission of un-audited financial results along with the limited review report issued by the CAG or an auditor appointed by the CAG or a Practicing Chartered Accountant, to the stock exchange within 60 days from the end of every financial year. The financial results, audited by the CAG should be submitted to the stock exchange within 9 months from the end of every financial year.

5. **Regulation 52 (2A) -** With the amendment, SEBI mandatorily requires for listed entity to submit a statement of assets and liabilities and statement of cash flows on a half yearly basis along with the financial results.

6. **Regulation 52 (4) -** Multiple ratios that assists true and fair comparative view to investors should be disclosed. The new amendment has omitted some sectoral equivalent ratios.

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7. **Regulation 52 (7)-** With the amendment, the statement of utilization of fund are now to be a part of quarterly report itself and to also be in a format as prescribed by the board.

8. **Regulation 52 (8) –** The minor error in the writing of Regulation has been now rectified by substituting Statement with Line Items.

9. **Regulation 59 –**Regulation 59A has been introduced in the SEBI (LODR) Regulations, 2015 for the listed entity that has listed nonconvertible debt securities or non-convertible redeemable preference shares, intends to undertake a scheme of arrangement or is involved in a scheme of arrangement under sections 230-234 and section 66 of the Companies Act, 2013. Earlier only Regulation 37 was describing about the Scheme of Arrangements.

10. **Regulation 61A –**With amendment, the Listed Entities that are not company as per Companies Act, shall transfer any amount in the escrow account that remains unclaimed for seven years shall be transferred to the Investor Protection and Education Fund.

11. **Fee for Draft Scheme of Arrangement** Fees for entity with listed specified securities, or listed specified securities and listed nonconvertible debt securities or non-convertible redeemable preference shares, shall be at the rate of 0.1% of the paid-up share capital of the listed/ transferee/ resulting company, whichever is higher but shall not exceed Rs. 5 lakhs.

#Source: Click here for more details

CORPORATE LAWS

MCA NOTIFIES THE COMPANIES (REGISTERED VALUERS AND VALUATION) AMENDMENT RULES, 2022

The Ministry of Corporate Affairs (MCA) on November 21, 2022 has issued the Companies (Registered Valuers and Valuation) Amendment Rules, 2022.

Following are the key highlights of the Amendment-

1. The Resolution Professional shall appoint a Registered Valuer within a week of his appointment.
2. The Registered Valuer shall comply with the internationally accepted valuation standards or the valuation standards adopted by any registered valuers organisation
3. A partnership entity or company shall be ineligible to be a Registered Valuer if it is not a member of Registered Valuer Organisation (RVO) provided it shall not be the member of more than one RVO at a time.
4. The partnership entity or company, already registered as valuers as on the date of the commencement of these rules shall comply with these rules within 6 months from the date of commencement.
5. New rules 7A and 14A has been inserted which provides for intimation of changes to the authority. As per Rule 7A, a registered valuer shall intimate the authority any changes in the personal details, or any modification in the composition of partners or directors, or any modification in any clause of the partnership agreement or Memorandum of Association, which may affect registration of registered valuer, after paying the prescribed fees.
6. As per Rule 14A, a RVO shall intimate the authority for change in composition of its governing board, or its committees or appellate panel, or other details, after payment of fee as per the Table II in Annexure V.
7. It is further clarified that a member functioning as a whole-time director in the company registered as valuer shall not be treated as taking up employment for the purpose of this provision.
8. The notification also states that in the case of asset classes namely, the 'plant and machinery' and 'land and building', the corresponding relevant nomenclature for the branches of the engineering and technology of graduate and post-graduate courses referred to in the notification number F. No. 27/RIFD/Pay/01/2017-18, dated April 28, 2017, issued by the All India Council for Technical Education, shall also be considered.

#Source: Click here for more details

TAX LAWS

CBDT RELEASES EXPLANATORY NOTES TO THE FINANCE ACT, 2022

The Central Board of Direct Taxes, India vide Circular No. 23/2022 dated 3 November 2022 has released the explanatory notes to the provisions of Finance Act, 2022. The same describes the reasons for the direct tax amendments made by the Finance Act, 2022.

These CBDT Notes contain extensive explanations for of all the revised sections and the newly introduced provisions in the Income Tax Act and Rules, that will be generally relevant for the Financial Year 2022–23 and Assessment Year 2023–24.

Furthermore, CBDT has also provided the income tax rates for Assessment Year 2023–24, as well as the rates at which tax must be deducted at source and advance tax must be paid for the fiscal year 2022–23.

The under mentioned sections of Income Tax Act, 1961 have been amended by the Finance Act 2022:

Sections	Particulars
2	Definitions
10	Incomes not included in total income
11	Income from property held for charitable or religious purposes.
12A	Conditions for applicability of sections 11 and 12
12AB	Procedure for fresh registration
13	Section 11 not to apply in certain cases
14A	Expenditure incurred in relation to income not includible in total income
17	“Salary”, “perquisite” and “profits in lieu of salary” defined
35	Expenditure on scientific research
37	General
40	Amounts not deductible
43B	Certain deductions to be only on actual payment

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50	Special provision for cost of acquisition in case of depreciable asset
56	Income from other sources
68	Cash credits
79	Carry forward and set off of losses in case of certain companies
79A	No set off of losses consequent to search, requisition and survey
80CCD	Deduction in respect of contribution to pension scheme of Central Government
80DD	Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability
80-IAC	Special provision in respect of specified business
80LA	Deductions in respect of certain incomes of OBUs/ IFSCs
92CA	Reference to TPO
94	Avoidance of tax by certain transactions in securities
115BAB	Tax on income of new manufacturing domestic companies
115BBD	Tax on certain dividends received from foreign companies
115BBH	Tax on Income from VDA
115BBI	Specified income of certain institutions
115JC	Special provisions for payment of tax by certain persons other than a company
115JF	Interpretation in this Chapter (Chapter XII-BA)
115TE	Tax on accreted income
115TD	Interest payable for non-payment of tax by trust or institution
115TF	When trust or institution is deemed to be assessee in default
119	Instructions to subordinate authorities
132	Search and seizure
132B	Application of seized or requisitioned assets
133A	Power of survey

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139	Income Tax Return (ITR)
140B	Tax on updated ITR
143	Assessment
144	Best Judgment Assessment
144B	Faceless Assessment
144C	Reference to DRP
148	Issue of notice where income has escaped assessment
148A	Conducting inquiry, providing opportunity before issue of notice u/s 148
148B	Prior approval for assessment, reassessment or recomputation in certain cases.
149	Time limit for notice
153	Time limit for completion of assessment/ reassessment/ recomputation
153B	Time limit for completion of assessment u/s 153A
155	Other amendments
156A	Modification and revision of notice in certain cases.
158AA	Procedure when an identical question of law is pending before Supreme Court in an appeal by revenue
158AB	Procedure where an identical question of law is pending before High Courts or Supreme Court
170	Succession to business otherwise than on death
170A	Effect of order of Tribunal or Court in respect of Business Reorganisation
179	Liability of directors of private company
194-IA	Payment on transfer of certain immovable property other than agricultural land
194-IB	Payment of rent by certain individuals or HUF
194R	Deduction of tax on benefit or perquisite in respect of business or a profession

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194S	Payment on transfer of VDA
201	Consequences of failure to deduct or pay tax
206AB	Special provision for TDS for non-filers of ITR
206C	Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.
206CCA	Special provision for TCS for non-filers of ITR
234A	Interest for defaults in furnishing ITR
234B	Interest for defaults in advance tax payments
239A	Refund for denying liability to deduct tax in certain cases
245MA	DRC
246A	Appealable orders before CIT (Appeals)
248	Appeal by a person denying liability to deduct tax in certain cases
253	Appeals to the ITAT
255	Procedure of ITAT
263	Revision of orders prejudicial to revenue
271AAB	Penalty where search has been initiated
271AAC	Penalty in respect of certain income
271AAD	Penalty for false entry, etc., in books of account
271AAE	Benefits to related persons
271C	Penalty for TDS failure
272A	Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.
276AB	Failure to comply with the provisions of sections 269UC, 269UE and 269UL
276B	Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B
276CC	Failure to furnish ITR
278A	Punishment for second and subsequent offences

TAX LAWS

278AA	Punishment not to be imposed in certain cases
285B	Submission of statements by producers of cinematograph films or persons engaged in specified activity

Highlights of the Amendments to Finance Bill, 2022 are as follows-

1. Deduction of cess and surcharge in previous years will now deemed to be as an under reported income and may attract penalty. The Tax Officer is empowered to pass the necessary rectification order. The time limit of four years is given to process such rectification. However, no penalty is to be levied if a suo-moto application is made by the taxpayer for re-computation of income, without claiming deduction for surcharge or cess within the prescribed time.
2. The Finance Bill proposed a new scheme to tax income arising on the transfer of Virtual Digital Asset (VDA). The tax in such a case is to be considered at 30%, without any deduction, except the cost of acquisition. The losses on VDA cannot be set off against income under any provisions of the Act, including that from other VDA. It is also proposed to include VDA for purposes of transfer.
3. The taxpayer can file an updated return of income within 24 months from the end of the relevant assessment year on payment of additional tax. It is now proposed that a taxpayer can also furnish an updated return for its return of loss within the stipulated time. Furthermore, the taxpayer would also be required to update the returns for all the subsequent periods where the income is impacted due to updating loss returns for the applicable year.
4. The Finance Bill has extended the time limit for completing the assessment proceedings for the Assessment Year (AY) 2020-21 to 30 September 2022.
5. A new section was inserted to reduce the quantum of pending litigations. Tax authorities were mandated not to file appeals in respect of identical questions of law pending before the High Court or Supreme Court and to give effect to the above section, new timelines with respect to filing of appeals or application for deferment of appeal have been made.
6. The definition of ‘books or books of account’ will now also include documents kept in electronic or digital form or as printouts of data stored in such electronic or digital form.
7. The proceedings made on the predecessor during the pendency of business reorganization will remain valid and be deemed to have been made on the successor.

TAX LAWS

8. The CBDT has been empowered to issue guidelines to remove difficulties in implementation of the said provisions with certain approvals.

#Source: Click here for more details

GENERAL LAWS

MoEFCC NOTIFIES THE E-WASTE (MANAGEMENT) RULES, 2022

The Ministry of Environment, forest and climate change recently published the E-Waste (Management) Rules, 2022 which shall come into force from the 1st day of April, 2023.

'E-waste' is defined under the E-Waste (Management) Rules, 2022 as electrical and electronic equipment, including solar photo-voltaic modules or panels or cells, whole or in part discarded as waste, as well as rejects from manufacturing, refurbishment and repair processes;

These rules shall apply to every manufacturer, producer refurbisher, dismantler and recycler involved in manufacture, sale, transfer, purchase, refurbishing, dismantling, recycling and processing of e-waste or electrical and electronic equipment including their components, consumables, parts and spares which make the product operational.

These rules shall not be applicable to the following-

- waste batteries as covered under the Battery Waste Management Rules, 2022,
- packaging plastics as covered under the Plastic Waste Management Rules, 2016,
- micro enterprise as defined in the Micro, Small and Medium Enterprises Development Act, 2006 and
- radio-active wastes as covered under the provisions of the Atomic Energy Act, 1962.

Following are the key features of the E-Waste (Management) Rules-

1. **Registration:** The entities can register on the portal under following categories:
    a. manufacturer;
    b. producer;
    c. refurbisher; or
    d. recycler.

    All the entities are required to register on the portal and in case they fall under more than one category, separate registrations are required. The Central Pollution Control Board shall charge registration fees and maintenance charges based on the e-waste generation.

2. **Responsibilities:** The Rules also provide certain responsibilities to all the entities; manufacturers, producers, refurbishers, recyclers and bulk

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consumers. The State Government or the Union territory shall ensure allocation of industrial space or shed for dismantling and recycling the e-waste.

3. **Storage of E-waste-** E-waste will be stored by the entities for not more than 180 days extended up to 365 days in case the storage is specifically required for recycling or reuse. The entities shall also maintain a record of all sale, transfers and storage of e-waste.

4. **Solar photo-voltaic modules or panels or cells-** Every manufacturer and producer of solar photo-voltaic modules or panels or cells shall ensure registration on the portal. The store solar photo-voltaic modules or panels or cells waste generated up to the year 2034- 2035 is also required to be stored. All the compliances and standards as laid down by the Pollution Board shall be adhered to strictly.

5. **Extended Producer Responsibility Regime. –** (1) All producers shall fulfill their extended producer responsibility obligations such as generating an extended producer responsibility certificate generation to recyclers and refurbishers on fulfilling certain criteria. A producer may also purchase extended producer responsibility certificates limited to its extended producer responsibility liability of current year and any leftover liability of preceding years plus 5 per cent of the current year liability.

6. **Electrical and electronic equipment and their components or consumables or parts or spares.** – Every producer of electrical and electronic equipment and their components or consumables or parts or spares to ensure that, new electrical and electronic equipment and their components or consumables or parts or spares do not contain Lead, Mercury, Cadmium, Hexavalent Chromium, polybrominated biphenyls and polybrominated biphenyl ethers beyond a maximum concentration value of 0.1 per cent by weight in homogenous materials for lead, mercury, hexavalent chromium, polybrominated biphenyls and polybrominated biphenyl ethers and of 0.01 per cent by weight in homogenous materials for cadmium.

7. **Appeals. -**Any person aggrieved by an order Central Pollution Control Board can file an appeal to the Additional Secretary or Joint Secretary, Ministry of Environment, Forest and Climate Change within a period of thirty days from the date on which the order is communicated to him. The Appellate Authority may entertain the appeal after expiry of the said

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period of thirty days if it is satisfied that there was a sufficient cause that prevented from filing the appeal in time.

8. **Environmental Compensation.** - (1) The Central Pollution Control Board shall lay down guidelines for imposition and collection of environmental compensation on any entity in case of violation of any of the provision under these rules.

9. **Steering Committee.** - There shall be a Steering Committee and it shall be responsible for overall implementation, monitoring and supervision of these rules and it shall also decide upon the disputes arisen from time to time and on representations received in this regard. The steering committee shall review and revise the guidelines or extended producer responsibility and take all such measures as it deems necessary for proper implementation of provisions of these rules.

10. **Miscellaneous Provisions-**

- The Central Pollution Control Board shall submit an annual report to the Ministry of Environment, Forest and Climate Change regarding status of implementation of the e-waste management rules within one month of the end of the financial year.
- Transportation of waste generated from manufacturing or recycling destined for final disposal to a treatment, storage and disposal facility shall follow the provisions under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
- In case an accident occurs at the facility processing e-waste or during transportation of e-waste, the concerned authority is required to report about it immediately to the concerned State Pollution Control Board through telephone and e-mail.
- The Central Pollution Control Board by itself or through a designated agency shall verify compliance of these rules through random inspection and periodic audit and will also take action against any violations of the provisions of these rules.

#Source: Click here for more details

LABOUR LAWS

GOVERNMENT OF ANDHRA PRADESH ALLOWS RETAIL ENTERPRISES TO KEEP OPEN EVERYDAY OF THE YEAR FOR A PERIOD OF FIVE YEARS

The Government of Andhra Pradesh has exempted the retail enterprises from Sections 7, 9, 12, 23, 31 and 37 of the Andhra Pradesh Shops and Establishments Act, 1988. It now allows the retail enterprises to be opened throughout the year for the period of 5 years from the date of this notification. The government has laid down certain conditions for implementation of the notification which are as follows-

1. Retail enterprise means a “shop” as defined under section 2 (21) of the A.P. Shops and Establishments Act, 1988.
2. The Retail enterprises are allowed to stay open every day of the year on a condition that the employees are given compensatory and compulsory weekly holidays on a preferential basis. Any kind of benefits, whether monetary or not should not be deducted.
3. The monthly holidays to be listed on notice board in advance.
4. Working hours to be of maximum 8 hours per day and 48 hours weekly. Manpower deployment details are required to be added to the application for registration by the employer.
5. Record of overtime to be maintained separately in wages register.
6. Rate of overtime wages shall be twice the ordinary rate of wages.
7. The employees working on a national, festival or other holiday shall be given a compensatory holiday within 30 days from the date of such holiday. They shall also be paid wages twice the ordinary rate of wages for work on a holiday.
8. Retail enterprises shall be allowed to operate between 6 AM and 11 PM IST, provided employees work in a minimum of two shifts with a minimum of one hour changeover period.
9. The employer is directed to furnish the shift-wise employee details specifying weekly holiday for each of the employees.
10. Employment of women shall be permitted in all shifts, subject to safety and secure working environment. The employer shall secure conveyance from workplace to place of her residence. The employer shall be solely responsible for ensuring that the women employees reach their place of residence.
11. Retail enterprises are allowed to offer part-time employment provided the working hours for part time employees are expressly specified. Minimum per hour wage rate shall be proportionately determined in accordance with minimum monthly wage rate

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specified under Minimum Wages Act.

12. Retail unit cannot engage more than 25% of its employees as part time employees provided the retail enterprises are strictly adhering to the laws regarding child labour and other similar applicable laws.
13. Wages and any other remuneration of all employees shall be remitted in their respective bank accounts only.
14. All employees will be provided with appointment letters and a copy shall be furnished online to the Inspector having jurisdiction.
15. EPF & ESI contributions of both employee as well as employer shall be remitted every month.
16. Retail enterprises are allowed to maintain record like wages register, muster roll in respect of the employees in electronic form which shall be accessible online to the inspector under the Act.

#Source: Click here for more details

JUDICIAL INSIGHT

INVALID APPOINTMENT PROCEDURE DOES NOT RENDER ENTIRE ARBITRATION CLAUSE AS INVALID- DELHI HIGH COURT

Factual Background-

1. The parties entered into an agreement dated 01.02.2011.
2. Letter of award dated 17.12.2010 was governed by General Conditions of Contract (GCC) and related to setting up of a township for Respondent's project.
3. Clause 56 of GCC provided for resolution of dispute by way of arbitration. It also provided that only the General Manager could act as or appoint the arbitrator otherwise the dispute would not be referred to arbitration.
4. Certain dispute arose between the parties, accordingly, the petitioner issued the notice of arbitration dated 17.12.2020; whereupon Respondent furnished its reply dated 11.12.2020 (filed on 05.02.2021); to which petitioner also filed a rejoinder dated 26.02.2021.
5. On failure of the parties to agree upon the name of the arbitrator, the petitioner filed an application under Section 11 of the A&C Act.

Issue-

1. Whether the arbitrator should be appointed in accordance with the GCC after the 2015 Amendment?

Petitioner Submissions-

The petitioner sought the appointment of the arbitrator on the following grounds:

- Clause 56 of GCC provides for appointment of arbitrator only by General Manager and by virtue of 2015 amendment act and Section 12(5), the clause 56 is rendered invalid, thus, the Court should appoint the arbitrator.
- The invalidity of the procedure for the appointment of arbitrator would not render the entire arbitration clause ineffective.
- The notice of arbitration is given after the 2015 amendment came into force, therefore, Section 12(5) would apply to the present controversy.
- The notice of arbitration is issued in relation to disputes that have arisen subsequent to the earlier notice of arbitration (2014) and since

the project is still on-going, the claims relate to a subsequent period and the cause of action for such subsequent claims has arisen after the earlier notice and the claims are not barred by time.

Respondent Submissions-

The respondent objected to the maintainability of the petition on the following grounds:

- Clause 56 of GCC stipulates a condition that only the General Manager of the respondent could either himself act as an arbitrator or appoint the arbitrator for the parties otherwise the dispute would not be referred to arbitration.
- As it is expressly provided that the matter would not be referred to arbitration in case the General Manager of Respondent neither act as an arbitrator nor appoint the arbitrator, therefore, the entire arbitration clause does not survive.
- The claims of the petitioner are barred by limitation as they relate to the year 2014 and the notice of arbitration was not given until last month of 2020.
- The notice of arbitration is also inadequate and does not specify the quantum of dispute therefore, the same would not amount to a valid invocation of arbitral proceedings.

Analysis by the Court

The Court held that merely because the procedure for the appointment of the arbitrator has become invalid due to 2015 amendment act, the same would not render the entire arbitration clause invalid.

The Court held that there are several elements present in an arbitration clause such as procedure for appointment of arbitrator, law of arbitration, law of contract, seat and venue, excepted matters, liability of costs, etc., however, the core element remains the consent of the parties to refer the dispute to arbitration, therefore, merely because one element has become invalid, it would not make the entire clause ineffective and the invalid clause can be easily severed.

Regarding the objection of the limitation of the claims, it was held that the petitioner has sought arbitration only for the claims that have arisen subsequent to the earlier arbitration and a mere allegation as to the claims

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being time barred would not restrict the Court from appointing an arbitrator. This issue of limitation should be decided by the arbitrator.

The Court also observed that the arbitration clause that provided arbitration only if the General Manager of respondent could act as or appoint the arbitrator is not tenable in law. The Court remarked it as 'my way or the highway' approach and same is not acceptable in law.

The Court held that arbitration clauses are not to be invalidated unless there is a compelling basis to do so and the arbitration should be encouraged as an alternative mode of dispute resolution.

Accordingly, it allowed the application and appointed the arbitrator.

Case Name- ***Ram Kripal Singh Construction Pvt. Ltd. v. NTPC, 2022***

JUDICIAL INSIGHT

LEAVE TRAVEL CONCESSION IS FOR TRAVEL WITHIN INDIA; TDS TO BE DEDUCTED FROM LTC OF FOREIGN VISIT IS INVOLVED

Facts of the case

An appeal was filed against a Delhi High Court decision that stated the sum paid to SBI workers for their Leave Travel Concession (LTC) claims was not eligible for the exemption because the employees had travelled abroad, which is against the law.

Issue of the case

The question which has fallen for our consideration is whether the appellant was in default for not deducting tax at source while releasing payments to its employees as Leave Travel Concession (LTC).

Observation of the Court

1. LTC is a payment made to an employee which is exempted as 'income' and hence under normal circumstances, there should be no question of TDS on this payment.
   All the same, LTC has to be availed by an employee within certain limitations, prescribed by the law. Firstly, the travel must be done from one designated place in India to another designated place within India. In other words, LTC is not for a foreign travel.
   Secondly, LTC is given for the shortest route between these two places. Admittedly, the employees of SBI in the present case, had done their travel not just within India but their journey involved a foreign leg as well. It was also not the shortest route, consequently, according to the Revenue this was not a travel from a designated place within India to another designated place in India and thus it was in violation of the statutory provisions and hence the payment made to its employees by the Bank could not be exempted, and the Bank ought to have deducted Tax at source, while making this payment.

2. The appellant on the other hand through its counsel senior advocate Shri K.V. Vishwanathan, would argue that though the travel made by its employees under LTC did involve a foreign leg and admittedly a circuitous route as opposed to the shortest route was taken, yet two things go in the favour of the employees. Firstly, the employees of the appellant did travel from one designated place in India to another place within India (though in their travel itinerary a foreign country was also involved), and

secondly the payments which were actually made to these employees was for the shortest route of their travel between two designated places within India. In other words, no payment was made for foreign travel though a foreign leg was a part of the itinerary undertaken by these employees.

3. The above reasons given by the appellant-bank however, has not found favour either with the Assistant Commissioner of Income Tax or with the Commissioner of Income Tax (Appeals) or even the High Court. After examining the matter our considered opinion is that the view taken by the Delhi High Court and the Tribunal and even by the revenue in its initiation of proceedings cannot be faulted. The appellant whom we shall refer to as the 'assessee-employer' ought to have deducted tax at source.

4. Let us first take Section 192(1) of the Act which casts a statutory duty on the employer to deduct Tax at source from the salary of its employee "192(1) Any person responsible for paying any income chargeable under the head "Salaries" shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year." The consequences of failure to deduct tax at source when it is due, is given in Section 201.

5. The appellant before us is a Public Sector Bank, namely, State Bank of India (SBI). The Revenue has held the appellant to be an "assessee in default", for not deducting the tax at source of its employees.

6. The Assessing Officer identified two infractions of the LTC Rules

   (a) The employee did not travel only to a domestic destination but to a foreign country as well
   (b) The employees had admittedly not taken the shortest possible route between the two destinations thus the Applicant was held to be an assessee in default by the Assessing Officer. The travel undertaken by the employees as LTC was hence in violation of Section 10(5) of the Act read with Rule 2B of the Income Tax Rules, 1962, both of which have been reproduced above. The order of the Assessing Officer was challenged before CIT (A), which was dismissed and so was their appeal before the Income Tax Appellate Tribunal.

JUDICIAL INSIGHT

7. The Delhi High Court vide its order dated 13.01.2020 dismissed the appeal holding that there was no substantial question of law in the Appeal. It was held that the amount received by the employees of the assessee employer towards their LTC claims is not liable for the exemption as these employees had visited foreign countries which is not permissible under the law.

8. The provisions of law discussed above prescribe that the air fare between the two points, within India will be given and the LTC which will be given will be of the shortest route between these two places, which have to be within India. A conjoint reading of the provisions discussed herein with the facts of this case cannot sustain the argument of the appellant that the travel of its employees was within India and no payments were made for any foreign leg involved.

9. The aforementioned order passed by the CIT(A) has rightly held that the obligation of deducting tax is distinct from payment of tax. The appellant cannot claim ignorance about the travel plans of its employees as during settlement of LTC Bills the complete facts are available before the assessee about the details of their employees' travels. Therefore, it cannot be a case of bonafide mistake, as all the relevant facts were before the Assessee employer and he was therefore fully in a position to calculate the 'estimated income' of its employees.

Decision Held:

The court dismissed the appeal filed by State Bank of India against the Delhi High Court Judgement which held that the amount received by the SBI employees towards their LTC claims is not liable for the exemption as these employees had visited foreign. No LTC exemption will be allowed for international travel under Section 10(5) of the IT Act, 1961, and employers are required to deduct TDS on LTC paid in accordance with Section 192 of the Income Tax Act, 1961.

Case Name: ***State Bank Of India vs Assistant Commissioner Of Income tax, CIVIL APPEAL NO. 8181 OF 2022***

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