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MONTHLY NEWSLETTER

MAY 2021

EXPEDITIOUS TRIAL OF CHEQUE DISHONOUR CASES – SUPREME COURT TAKES MATTER INTO ITS OWN HANDS

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INTRODUCTION

Chapter XVII of the Negotiable Instruments Act, 1881 ("NI Act"), containing Sections 138-147, deals with the concept of dishonour of cheques. Section 138 of the NI Act *inter-alia* provides that the dishonour of cheques by banks due to insufficiency of funds or pre-existing agreements with the drawer, is a punishable offence. [1]

The Supreme Court of India ("SC") noted a disturbing trend in cases concerning dishonour of cheques. It was observed that a substantial number of such cases remained pending for years at a time, at various levels of judiciary. To ascertain the reasons for such undue delay, a Division Bench of the SC directed the registry to register a *suo moto* writ petition titled "Expeditious Trial of Cases under Section 138 of N.I. Act 1881"[2]. Amici Curiae were appointed for assisting the SC in addressing this issue[3]. Notice was also issued to all the High Courts ("HCs"), Reserve Bank of India, National Legal Services Authority, and all other concerned parties.

A preliminary report was submitted by the Amici Curiae, which identified several issues causing delay in disposal of the complaints under Section 138 of the NI Act [4]. Accordingly, a constitutional bench consisting of five judges was formed to address these issues. The SC on 16.04.2021, decided to deal with some of the recommendations (discussed below) made by the Amici Curiae, and to form a committee headed by Hon'ble Mr. Justice R.C. Chavan ("Committee"), to consider the suggestions put forward by the Amici Curiae which were not dealt with by the SC directly[5]. The Committee was formed on 10.03.2021 and has yet to submit its report.

In this piece, each of the issues which were dealt with by the SC will be explored, and the expected impact of such decisions will be gauged.

ABOUT THE FIRM

AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies. We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

CONVERSION OF SUMMARY TRIALS TO SUMMONS TRIAL

Section 143 of the NI Act provides that all offences pertaining to dishonour of cheques must be tried summarily, in accordance with Sections 262 to 265 of the Code of Criminal Procedure, 1973 ("Code")[6]. However, the second proviso to Section 143 of the NI Act allows the conversion of a summary trial into summons trial by the magistrate when:

- a sentence of imprisonment exceeding 1 year may have to be passed; or
- it is undesirable to try the case summarily, for any other reason.

Section 143 of NI Act requires the magistrate to hear the parties on this issue and to make an order for converting a summary trial into a summons trial.

1) Amici Curiae's suggestion: The Amici Curiae reported that in most cheque dishonour cases, summary trials were being converted into summons trials in a mechanical manner, and often without recording the reasons for such conversion. The Amici Curiae argued that the aforementioned practice defeated the purpose of Section 143 of the NI Act.

Suggestion: That HCs ought to issue a set of practice directions to trial courts, making it mandatory for trial courts to record cogent reasons before converting a summary trial into summons trial.

2) SC's verdict: The SC observed that Section 143 of the NI Act was inserted into the NI Act in 2002 with the primary purpose of speeding up trials under Section 138 of the NI Act. The SC further observed that though the magistrates have a discretion to convert a summary trial into summons trial, such discretion is meant to be exercised with due care and caution, and only after justifying such conversion with a reasoned order. The SC accepted the Amici Curiae's suggestion, and stated that HCs may issue practice directions to trial courts for recording reasons before converting a trial under Section 138 of the NI Act from a summary trial to a summons trial.

3) Observation: In a summary trial, it is sufficient for the magistrate to record the substance of the evidence and deliver a judgment, containing a brief statement of reasons for such judgment[7]. Thus, it is axiomatic that if most trials under Section 138 of the NI Act are tried summarily, the disposal of said trials would take place at a much faster pace.

However, the mechanical manner of conversion of the summary trials to summons trials has hindered the speed of disposal of cheque dishonour cases.

Section 143(1) of the NI Act requires a magistrate to record reasons on the basis of which he considers a case to be "undesirable" to be tried summarily. However, the courts have thus far not been following the letter and spirit of the Section 143(1) of the NI Act. Therefore, the SC has directed HCs to issue practice directions to ensure that the said proviso of the NI Act is strictly followed and not rendered otiose and nugatory.

REQUIREMENT OF INQUIRY BEFORE ISSUANCE OF PROCESS

Section 204 of the Code *inter-alia* provides that if a magistrate feels that there is sufficient ground for proceedings in either a summons or a warrant case, he/she may issue a summons or a warrant for the accused. This is known as issue of process. However, Section 202(1) of the Code *inter-alia* requires that prior to issue of process, a magistrate may conduct an inquiry to ascertain

whether sufficient grounds exist for proceeding against the accused. Such pre-issue of process inquiry must be mandatorily conducted only if the following conditions are fulfilled:

- The magistrate has received a complaint of an offence of which he/she is authorized to take cognizance of; and
- The accused resides in a place beyond the jurisdiction of such magistrate.

It is settled law that conducting an inquiry before issuance of process, in cases where the accused resides beyond the jurisdiction of the court, is a mandatory requirement and cannot be dispensed with[8].

1) Amici Curiae's suggestion: The Amici Curiae reported that there had been conflicting views of HCs on whether the requirement of pre-summons inquiry was applicable to Section 138 of the NI Act. This question was even observed by the *SC in K.S. Joseph v. Philips Carbon Black Ltd and Another* [9], but was left unanswered and open.

Suggestion: The Amici Curiae observed that the law in this regard was settled, and there was no legal provision which exempted proceedings under Section 138 of the NI Act from the mandatory requirement under Section 202(1) of the Code.

2) SC's verdict: The SC was in agreement with the Amici Curiae's observation, and held that such pre-summons inquiry is mandatory when the accused resides outside the territorial jurisdiction of the court.

3) Observation: The mandatory requirement of conducting an inquiry to ascertain the presence of sufficient grounds for proceeding, prior to issuance of summons, ensures that frivolous complaints are weeded out at the pre-trial stage itself. Magistrates shall be able to identify those complaints which do not meet the mandatory requirements of Section 138 of the NI Act. This will certainly ensure that only genuine cases of dishonour of cheque are pursued, and may reduce the backlog of such cases in courts. Since this is already a mandatory statutory requirement, and the SC has merely clarified the applicability of such requirement of Section 138 of the NI Act, the implementation of this mechanism should not be an issue. The observations of the SC have overruled several decisions passed by various HCs [10] which have held that a magistrate is not mandatorily required to comply with the provisions of Section 202(1) of the Code before issuing summons to an accused under Section 138 of the NI Act.

REQUIREMENT TO TAKE EVIDENCE ON OATH

Section 202(2) of the Code *inter-alia* provides that in a pre-summons inquiry under Section 202(1) of the Code, the magistrate may examine witnesses on oath. Section 145 of the NI Act provides that, notwithstanding anything contained in the Code, the evidence of the complainant may be taken on affidavit. It further provides that any person giving affidavit may be examined by the court if it deems fit, on an application made to that effect by the prosecution or the accused.

1) Amici Curiae's suggestion: The Amici Curiae observed there was no specific provision under Section 145 of the NI Act that provided for the taking of evidence of witnesses other than the complainant on affidavit.

Suggestion: In cases under Section 138 of the NI Act, evidence of any witness

should be permitted to be taken on affidavit. The Amici Curiae further recommended that witnesses should be examined personally by the magistrate only in exceptional cases.

2) SC's verdict: The SC recognised that Section 145 was inserted into the NI Act in 2003 with the intention of expediting the trial of cases under Section 138 of the NI Act. The SC observed that if a complainant is allowed to give evidence on affidavit in cheque dishonour cases, other witnesses should also be allowed to give evidence on affidavit. Accordingly, the SC held that Section 202(2) of the Code is inapplicable to cases under Section 138 of the NI Act, and that evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. It was also held that to determine the sufficiency of grounds before issue of process under Section 202 of the Code, the magistrate may examine documents, rather than examining witnesses.

3) Observation: It was observed by the SC that there was no provision under the NI Act providing for examination of witnesses on affidavit in cheque dishonour cases. Therefore, the SC's abovementioned interpretation was a case of judicial activism, based on policy considerations.

The recording of evidence of witnesses on affidavit, rather than on oath, would save time of the court, and make disposal of cases under Section 138 of the NI Act a relatively quicker affair.

JOINDER OF CHARGES

Section 219 of the Code *inter-alia* provides that a person accused of committing multiple offences of the same kind within a space of 12 months, may be tried for a maximum of three such offences at a single trial. Section 220 of the Code *inter-alia* provides that a person accused of committing multiple offences in a series of acts, considered to be part of the same transaction, may be tried for all such offences at a single trial.

1) Amici Curiae's suggestion: The Amici Curiae observed that Section 219 of the Code only provides for the trial of three similar offences at a single trial. However, the Amici Curiae also pointed out that in *Vani Agro Enterprises v. State of Gujarat and Others*[11], the SC had directed the trial court to fix the trial of 4 separate cheque dishonour cases on the same date.

Suggestion: In cheque dishonour cases, a consolidated trial of more than three offences committed in one year should be allowed.

In this regard, the Amici Curiae recommended that an amendment should be made to the NI Act.

As far as Section 220 of the Code is concerned, the Amici Curiae observed that this provision, by design, allowed for the trial of any number of offences, committed in the same transaction, at one single trial. However, the Amici Curiae observed that due to multiple complaints being filed for offences committed under Section 138 of the NI Act, which are part of the same transaction, there is undue delay in service of summons to the accused, leading to disproportionate accumulation of such complaints before the court.

Suggestion: Service of summons served in one complaint pertaining to a transaction, should be deemed as valid service for all complaints in relation to the said transaction, in so far as cheque dishonour cases are concerned.

2) SC's verdict: The SC agreed with the Amici Curiae's suggestion that there must be an amendment in the NI Act, which makes it possible to try more than 3 offences committed under Section 138 of the NI Act within 12 months at a single trial. The SC also directed the HCs to issue practice directions to the trial courts to treat the service summons in one complaint under Section 138 of the NI Act, as deemed service of all the other complaints under Section 138 of the NI Act forming part of the same transaction.

3) Observation: It has been observed that if several acts committed by a person show a unity of purpose or design, then such acts can be said to form a part of the same transaction [12]. Thus, multiple cheques issued for discharge of the same debt by the same person, or for different debts owed to the same person, may be regarded as being part of the same transaction. Such complaints must be before the same court and in respect of the same transaction, if multiple cases in the past 12 months are required to be consolidated in a single trial. Having recognised that the maximum number of cases under the NI Act are at the stage of summons, the SC has proactively sought to introduce the concept of deemed service in related cheque dishonour cases by the same offender in respect of the same transaction.

INHERENT POWERS OF THE MAGISTRATE

The Amici Curiae also explored whether a magistrate had inherent powers to recall an erroneous order made by it. *K. M. Mathew v. State of Kerala and Another* [13] held that the magistrate could recall an erroneous order of summons, if the accused could satisfy the magistrate that no offence had been committed by the accused. However, the aforesaid decision was held to be per incuriam by the SC in *Adalat Prasad v. Rooplal Jindal and Others* [14], which held that a magistrate has no inherent powers to recall or review its own order.

1) Amici Curiae's suggestion: The Amici Curiae relied on a conjoint reading of Section 258 of the Code and Section 143 of the NI Act, and the decision of *Meters and Instruments Private Limited and Another v. Kanchan Mehta ("Meters")*[15] which held that the trial court has the jurisdiction to pass appropriate orders under Section 143 of NI Act in exercise of its inherent power.

Suggestion: The Amici Curiae recommended that a power of review or recall of the issuance of process should be conferred upon the courts in cases under Section 138 of the NI Act.

2) SC's verdict: The SC held that the decision in *Meters*, in so far as it conferred power on trial courts to discharge an accused, is not good law. Section 258 of the Code *inter-alia* provides that a magistrate can stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case, which is instituted otherwise than upon complaint. Since cheque dishonour cases are mandatorily instituted on a complaint, the SC held that Section 258 of the Code does not apply to cases under Section 138 of the NI Act. However, the SC observed that the possibility of an amendment in the NI Act, conferring power to recall or review orders on magistrates, may be explored by the Committee.

3) Observation: The SC in this regard has rightly cautioned against excessive judicial activism, and erred on the side of judicial restraint. Rather than reading words into a statute which are not there, the SC opted to explore the possibility of an amendment in the law for conferring inherent powers on magistrates for cheque dishonour cases. The courts should take note that, regardless of the policy considerations, courts are not permitted to rewrite, enlarge or contract a statute.

MEDIATION OF PENDING CASES

The Amici Curiae also recommended to the SC that cases under Section 138 of the NI Act, which remain pending before HCs, appellate courts and the SC itself, can be settled through mediation. The SC was in agreement with this recommendation, and requested courts to identify the pending appeals and revisions arising out of complaints filed under Section 138 of the NI Act, and refer such cases to mediation.

CONCLUSION

There are approximately 35.16 lakh cheque dishonour cases currently pending before courts in India [16]. On an average, a case filed under Section 138 of the NI Act continues to be in the system for almost three years and eight months [17]. The SC, recognising the delays caused in issuance of summons, cases against habitual offenders and unnecessary conversion of summary trials to summons proceedings has issued appropriate directions to HCs to ensure that such delays are curtailed by the issuance of appropriate practice directions. It is pertinent to note that this decision is just the first step in dealing with the huge backlog of cheque dishonour cases. The Committee is due to submit its report on the issues referred to it to the SC, such as attachment of bank accounts to the extent of default, pre-summons mediation, creation of special courts to deal with cheque dishonour cases, etc., and it is expected that the SC will roll out further reforms in this regard. These reforms will definitely require adequate support from (i) the HCs, which must issue the relevant practice directions to the trial courts in an expedited manner, and (ii) the legislature, which should take into account the various recommendations by the SC with respect to amendments in the existing legal regime.

REFERENCES

[1] The Negotiable Instruments Act, 1881, Section 138
[2]Suo motu writ petition (Crl.) No. 2 of 2020 (judgement dated 16.04.2021)
[3] Advocates Siddharth Luthra and K. Parameshwar were appointed as Amici Curiae in this case
[4] Sidharth Luthra & K. Parameshwar, Preliminary Report by the Amici Curiae, Livelaw, Oct. 11, 2020 at , https://www.livelaw.in/pdf_upload/pdf_upload-383612.pdf (last visited May 13, 2021)
[5]Recommendations pertaining to attachment of bank accounts to the extent of the cheque amount, pre-summons mediation, creation of special courts to deal with cheque dishonour cases, etc
[6] Provisions dealing with summary trials
[7] The Code of Criminal Procedure, 1973, Section 264
[8] Vijay Dhanuka & Ors. v. Najima Mamtaj & Ors., (2014) 14 SCC 638; Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors., (2019) 16 SCC 610
[9] (2016) 11 SCC 105

[10] S.S. Binu v. State of West Bengal & Anr., CRR No. 1600 of 2013 (High Court of Calcutta, dated May 3, 2018); Vinod S/o Shri Laxman Das Kinger v. M/s. SBI Global Factors Ltd. & Another, 2011 (4) MHLJ 282; M/s. Mesh Trans Gears Pvt. Ltd. v. Dr. R. Parvathreddy, 2013 (6) Kar LJ 592; Kunal Rajesh Kothari v. The State of Maharashtra and Ors., (2018) 2 DCR 560

[11] 2019 (10) SCJ 238

[12] State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and Another, (1964) 3 SCR 297

[13] (1992) 1 SCC 217

[14] (2004) 7 SCC 338

[15] (2018) 1 SCC 560

[16] Sidharth Luthra & K. Parameshwar, Preliminary Report by the Amici Curiae, Livelaw, Oct. 11, 2020 at, https://www.livelaw.in/pdf_upload/pdf_upload-383612.pdf (last visited May 13, 2021)

[17] Daksh India, Justice in India, Chapter 9: Promise to Pay: An Analysis of Cheque Dishonour Cases (2019)

NEWS AND UPDATES

DOMESTIC ARBITRATION

INDIAN PARTIES ARE ALLOWED TO SELECT A SEAT OF ARBITRATION OUTSIDE INDIA:

The Supreme Court of India ("Supreme Court") in *PASL Wind Solutions Private Limited v. GE Power Conversion India Private Limited* has held that parties to a contract who are Indian nationals or companies incorporated in India can choose a seat of arbitration which is outside India. It was observed that just because Section 28(1)(a) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") makes no reference to an arbitration being conducted between two Indian parties in a country other than India, it cannot be held to mean that two Indian parties cannot resolve their disputes at a neutral forum in a country other than India. It was held that the freedom to designate a foreign seat of arbitration is implicit in the policy of party autonomy, and that such designation is not opposed to public policy.

COURTS SHOULD NOT INTERFERE WITH PLAUSIBLE INTERPRETATION OF CONTRACT PROPOUNDED BY ARBITRAL TRIBUNAL:

The Supreme Court in *M/s. Oriental Structural Engineers Pvt. Ltd. v. State of Kerala* has held that when the view taken by an arbitral tribunal regarding grant of interest in an arbitration proceeding is possible and plausible, the courts are not allowed to set aside such view taken by the arbitral tribunal. In this case, the arbitral tribunal had held that the contract between the parties provided for interest on delayed payments. However, the court, in setting aside proceedings, had set aside the arbitral tribunal's decision regarding interest and held that interest was not payable on delayed payments. The appellate court had agreed with the arbitration court in this regard. The Supreme Court held that the aforesaid decisions of the arbitration court and the appellate court would constitute rewriting of the contract, which was impermissible.

RECENT THOUGHT LEADERSHIP

- Drafting Right Of First Refusal Clauses: Legality, Issues & Concerns
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RECENT UPDATE

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THRESHOLD TESTS FOR AN ANTI-ARBITRATION INJUNCTION MORE EXACTING THAN THOSE APPLICABLE FOR ANTI-SUIT INJUNCTION:

The High Court of Judicature at Madras ("MHC") in *ADM International Sarl v. Sunraja Oil Industries Private Limited and Others* has held that the threshold tests for granting an anti-arbitration injunction are more exacting than those applicable for an anti-suit injunction. The MHC held that while justifiable doubts of bias may be a valid ground for challenging the jurisdiction of an arbitral tribunal either before such tribunal or before a jurisdictional court, a higher threshold should be satisfied for an anti-arbitration injunction, because the petitioner has to justify the departure from the contractual dispute resolution mechanism. The MHC further held that unless it is *ex facie* evident that the contractual remedy is unconscionable and illusory, there is no basis to interfere with the contractual dispute resolution process.

NATIONAL COMPANY LAW APPELLANT TRIBUNAL ("NCLAT") HAS NO POWER TO STAY HANDS OF HIGH COURT IN HEARING OF ANY PLEA UNDER THE ARBITRATION ACT:

The High Court of Judicature at Bombay ("BHC") in *Bay Capital Advisors Pvt Ltd v. IL & FS Financial Services Ltd & Ors* has held that a stay order by the NCLAT on institution or continuation of suits or other proceedings against a company and its entities is not binding on High Courts. The BHC held that NCLAT does not have the authority to stay the hands of a High Court in hearing an application under Section 9 or any other application that properly comes before a High Court under the Arbitration Act. The BHC clarified that other than the National Company Law Tribunal ("NCLT"), there is no other judicial authority over which the NCLAT exercises such superintending power.

INTERNATIONAL ARBITRATION

PRE-CONDITIONS TO ARBITRATION ARE MATTERS OF ADMISSIBILITY, NOT JURISDICTION:

The English High Court in Republic of *Sierra Leone v. SL Mining Ltd* has declined to set aside a partial award, despite the judgment debtor's alleged failure to comply with certain pre-conditions to arbitration in a multi-tier dispute resolution clause. It was held that such non-compliance was a question of admissibility for the tribunal to determine, and not a question to be determined in setting aside proceedings under Section 67 of the English Arbitration Act, 1996. The English High Court observed that compliance with a multi-tier dispute resolution clause is not an issue of substantive jurisdiction, but one of admissibility.

SERVICE PROVIDING ACTUAL NOTICE OF ARBITRATION-RELATED COURT PROCEEDING IS SUFFICIENT UNDER THE FEDERAL ARBITRATION ACT ("FAA"):

The United States District Court for the *Western District of North Carolina in TVL Int'l, LLC v. Zhejiang Shenghui Lighting Co.* has held that when a party has "expressly consented" to service by mail and email in an arbitration, then notice of a petition to confirm an arbitration award, vide email and FedEx, is valid service under the FAA. It was observed that in arbitration-related court proceedings, the rules regarding service of process should be liberally construed. It was also observed that in cases resulting from arbitration proceedings where the parties have consented to the jurisdiction of the district court, the sole purpose of service is to provide notice that a court action has commenced.

INTERNATIONAL BAR ASSOCIATION ("IBA") UPDATES ITS RULES ON THE TAKING OF EVIDENCE IN INTERNATIONAL ARBITRATION:

The IBA has released its updated rules on the taking of evidence in international arbitration ("IBA Rules"). The updated IBA Rules make an express reference in Article 2 to issues of cybersecurity and data protection in the list of issues that the initial consultation on evidentiary issues may address. They also provide for the possibility of and framework for remote hearings and allow the arbitral tribunal to exclude evidence obtained illegally. The updated IBA Rules also provide that documents produced in document production need not be translated into the language of the arbitration, but all documents submitted to the tribunal must be accompanied by translations.

IBC

ALL CLAIMS NOT PART OF RESOLUTION PLAN GET EXTINGUISHED ON APPROVAL OF RESOLUTION PLAN BY ADJUDICATING AUTHORITY:

The Supreme Court in *Ghanashyam Mishra and Sons Private Ltd v. Edelweiss Asset Reconstruction Company* has held that once a resolution plan is approved by the Adjudicating Authority under Section 31(1) of Insolvency and Bankruptcy Code, 2016 ("IBC"), all claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan. It was also held herein that the 2019 amendment to Section 31 of the IBC has retrospective operation, as the amendment is clarificatory and declaratory in nature.

RESOLUTION APPLICANT CAN CHANGE THE LINE OF BUSINESS OF THE CORPORATE DEBTOR, IF WARRANTED:

The NCLAT in *Next Orbit Ventures Fund v. Print House (India) Pvt. Ltd and Others* has held that there is nothing in the IBC which prevents a resolution applicant from changing the present line of business of the corporate debtor, or adding value or creating synergy to the existing assets and converting an obsolete line of business to a more viable and feasible option. The NCLAT further observed that if the resolution plan contemplates a change in the nature of business to another line when the existing business is obsolete or non-viable, it cannot be construed that the resolution plan is not 'feasible or viable'.

CORPORATE

GAP BETWEEN TWO BOARD MEETINGS UNDER SECTION 173 OF THE COMPANIES ACT, 2013 ("CA 2013") EXTENDED:

In view of the difficulties arising due to resurgence of Covid-19 and requests received from stakeholders, it has been decided by the Ministry of Corporate Affairs ("MCA") that the requirement of holding meetings of the Board of the companies within the intervals provided in Section 173 of the CA 2013 (120 days) stands extended by a period of 60 days for first two quarters of Financial Year 2021-22. Accordingly, the gap between two consecutive meetings of the Board may extend to 180 days during the Quarter - April to June 2021 and Quarter-July to September, 2021, instead of 120 days as required in the CA 2013.

RELAXATION OF TIME FOR FILING FORMS RELATED TO CREATION OR MODIFICATION OF CHARGES UNDER THE CA 2013:

On account of the resurgence of the Covid-19 pandemic, the Central Government has, in exercise of its powers under Section 460 read with Section 403 of the CA 2013 and the Companies (Registration Offices and Fees) Rules, 2014, has decided to allow relaxation of time and condone the delay in filing forms related to creation/ modification of charges. This circular is applicable in respect of filing of Form No. CHG-1 and Form No. CHG-9 by a company or a charge holder, where the date of creation/modification of charge:

a) is before 01.04.2021, but the timeline for filing such form had not expired under section 77 of the CA 2013 as on 01.04.2021; or

b) falls on any date between 01.04.2021 to 31.5.2021 (both dates inclusive).

CLARIFICATION ON SPENDING OF CSR FUNDS FOR 'CREATING HEALTH INFRASTRUCTURE FOR COVID CARE':

In continuation to the MCA's General Circular No. 10/2020 dated 23.03.2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it was further clarified by the MCA vide General Circular No. 09/2021, that spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the CA 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively. The MCA further clarified that the companies, including Government companies, may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by MCA from time to time.

SELECTIVE REDUCTION OF SHARE CAPITAL IS PERMISSIBLE IF NON-PROMOTER SHAREHOLDERS ARE PAID FAIR VALUE OF THEIR SHARES:

The NCLAT in *Brillio Technologies Pvt. Ltd. v. Registrar of Companies, Karnataka and Another* has held that selective reduction, while reducing the share capital of a company, is permissible if the non-promoter shareholders are being paid fair value of their shares. It was also held herein that Section 66 of the CA 2013 makes provision for reduction of share capital simpliciter without it being part of any scheme of compromise and arrangement. The NCLAT further observed that there is no law that a company can reduce its capital only to reduce any kind of accumulated loss.

OTHER UPDATES

FUNCTIONAL CONVENIENCE OF A PARTY IN COMMERCIAL LITIGATIONS CANNOT BE A GROUND TO TRANSFER CASE:

The Supreme Court in *Fumo Chem Pvt. Ltd. v. Raj Process Equipments And Systems Pvt. Ltd.* has held that functional convenience of one of the parties in commercial litigations cannot be a ground to transfer a case under Section 25 of the *CPC*. The Supreme Court held that a petitioner seeking transfer of a case involving business-related disputes from one jurisdiction to another will have to establish some grave difficulty or prejudice in prosecuting or defending the case in a forum otherwise having power to adjudicate the cause.

INTENTION OF THE PARTIES MUST BE UNDERSTOOD FROM THE LANGUAGE USED IN THE CONTRACT, IN THE LIGHT OF THE SURROUNDING CIRCUMSTANCES AND OBJECT OF THE CONTRACT:

The Supreme Court in *Bangalore Electricity Supply Company Limited (BESCOM) v. E.S. Solar Power Pvt. Ltd. and Others* has held that in seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, and that the duty of the court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e., expressed intentions. The Supreme Court also observed that if a contractual provision has two possible meanings, the meaning which is more in accord with what the court considers to the underlined purpose and intent of the contract, or part of it, will be considered. The Supreme Court held that every contract is to be considered with reference to its object and the whole of its terms, and accordingly, the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause.

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MAY 2021

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CROSSWORD PUZZLE- ANSWERS