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MONTHLY NEWSLETTER

OCTOBER 2021

AGREEMENTS FOR SETTLEMENT AND RELEASE IN INDIA: LEGAL POSITION AND ESSENTIAL ELEMENTS

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INTRODUCTION

As the number of disputes landing up before courts keep on ascending, parties may wish to settle their disputes out of court amicably. Growing predominance of Settlement and Release Agreements ("Settlement Agreements") are a direct consequence of the rising number of disputes before courts and the unfortunate accompanying circumstances that preclude potential litigants from approaching the courts.

A civil dispute between two or more parties is capable of a settlement by way of a private agreement. Settlement Agreements constitute a speedy, effective and amicable means to resolve a dispute between the parties. Although some formal procedures for conduct of the out of court dispute resolution processes and drawing up Settlement Agreements exist, however, there exists considerable freedom for the parties to draw up the terms of the Agreement after proper negotiations between themselves and by using a third-party mediator or conciliator.

In this paper we shall discuss the nature of the agreement, the ingredients of such a settlement including its form, legal sanctity of the Settlement Agreements and the manner of execution of such Settlement Agreements.

STATUTORY RECOGNITION OF SETTLEMENT AGREEMENTS

CODE OF CIVIL PROCEDURE, 1908

A civil dispute between two or more parties arising out of a contract will invariably have an arbitration clause. If it doesn't, the dispute is capable of being adjudicated under the civil courts system by following the procedure of the Code of Civil Procedure, 1908 ("CPC").

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.

On the institution of a plaint before the appropriate court having jurisdiction over the dispute, the parties have an opportunity to reach a compromise and settle their disputes which the courts then record as a consent decree. Order XXIII Rule 3 of the CPC deals with compromise of suits. It provides that the court shall order a compromise, settlement or satisfaction which is signed and in writing, to be recorded. [1] Such an agreement has to be lawful and in accordance with the Indian Contract Act, 1872, [2] and the Court must be mindful of the fact that if there is any allegation of an unlawful agreement or an agreement not entered by free will, the Court has a duty to decide such a question. [3]

Alternatively, if the court is of the view that there is scope of settlement of the disputes between the parties, the Court may direct the parties to settle their dispute out of court by adopting one of the many ADR processes recognized under Section 89 of the CPC viz. arbitration, conciliation, resolution via Lok Adalat or mediation.

Any resolution of disputes by the use of these ADR processes gets its recognition by the respective statutes governing the specific ADR process. Hence, arbitration and conciliation will be governed by the Arbitration and Conciliation Act, 1996, ("ACA, 1996") Lok Adalat will be governed by the Legal Services Authority Act, 1987 and mediation shall be governed by prescribed rules as applicable. Thereafter, such a reference to a specific process will determine the nature of the settlement or dispute resolution arrived at between the parties.

ARBITRATION AND CONCILIATION ACT, 1996

Under Section 30 of the ACA 1996, the arbitral tribunal is encouraged to settle the disputes between the parties. [4] In case the parties reach a mutually agreeable settlement, the arbitral tribunal has the power to record the settlement in the form of an award based on consent. [5] Resolution of a dispute by the parties themselves at the behest of and encouragement by the arbitral tribunal is commendable because an amicable dispute resolution has a positive effect on the business and commercial relationship of the parties. [6]

Although a Settlement Agreement has to follow the parameters for an arbitral award under Section 31,[7] however, an award made pursuant to a settlement under Section 30 does not require any reasons to be given for the award.[8]

The arbitral tribunal can use the method of mediation, conciliation or any other process for the parties to reach a settlement.[9] The ACA, 1996 itself provides for conciliation by mutual agreement between the parties and in case an agreement is reached to settle the disputes by way of a conciliation independent of an arbitration process, such an agreement is recorded by the conciliator and is binding between the parties.[10] Such an agreement has the same status as a settlement under Section 30 of the ACA, 1996 and hence enforceable as an arbitral award.[11] The Supreme Court in *Mysore Cements Limited v. Svedela Barmac Ltd* has held that the compliance under Section 73 of the ACA, 1996 must be strictly complied with for the Settlement Agreement to receive the protection under Section 74 and for it to be executed as an award.[12]

However, it must be noted that any award passed by the arbitrator in lieu of a Settlement Agreement or otherwise is amenable to the checks under Section 34 of the ACA, 1996. Hence in the case of *Surinder Kumar Beri v. Deepak Beri & Anr*, when the arbitral tribunal added additional terms to the award dehors the Settlement Agreement reached between the parties, the High Court of Delhi ("DHC") held that such an act by the arbitrator was in violation of the provisions of public policy and set aside the award.[13]

COMMERCIAL COURTS ACT, 2015

Under the Commercial Courts Act, 2015 ("CCA, 2015") a separate jurisdiction of courts within the current courts system is designated to resolve commercial disputes between the parties.[14] However, with an amendment brought in the Act in 2016, it has now become mandatory for the parties to go for a pre-institutional mediation for any commercial dispute raised under the Act unless there exists a requirement of an urgent interim relief.[15]

This mandatory mediation is governed by the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 ("CC Mediation Rules") wherein a fast-track procedure is provided for an attempt to resolve the disputes between the parties by appointment of a mediator. The procedure for mediation is provided under Rule 7 of the CC Mediation Rules and under Form IV the format is provided for the recording of the Settlement Agreement between the parties. In Delhi, the Delhi State Legal Services Authority has been designated as the authority to conduct the mandatory mediation under the CCA, 2015. As per the CC Mediation Rules, the authority has to appoint a mediator and the mediator has to attempt a settlement of the dispute between the parties while maintaining an ethical process as provided under the rules.[16] Such a mediation and the consequent settlement is to be completed within a period of 3 months and extendable by another 2 months by mutual agreement of the parties.[17]

ENFORCEMENT OF SETTLEMENT AGREEMENTS

As far as enforcement of Settlement Agreements are concerned, the same is directly linked to the recognition of the agreements itself. The statutes which recognize the Settlement Agreements invariably also provide for the manner of enforcement of the same. However, in cases where the Settlement Agreement is not reached by using a process under a statute or a rule which provides such a deeming fiction and provides an added layer of recognition or enforcement, such agreements would only be enforceable as a contract. Reference is made here to the judgment of the DHC in *Ravi Aggarwal v. Anil Jagota*[18] wherein the DHC was dealing with the execution petition for a Settlement Agreement reached between the parties. The DHC however stated that the settlement arrived at was by way of a private mediation unlike a conciliation procedure under the ACA, 1996 and hence such a

Settlement Agreement was enforceable only as a private contract between two parties and not like a conciliated Settlement Agreement which is equivalent to an award. Hence, the takeaway from this discussion is that in an attempt to reach a settlement, it is always advisable to conduct the process of settlement under a statute and to ensure that the statute provides for an enforcement mechanism for the Settlement Agreement reached between the parties. To continue this discussion, this chapter shall deal with the enforcement mechanism provided under the various statutes which recognize Settlement Agreement for disputes.

CODE OF CIVIL PROCEDURE, 1908

Under the CPC, there is a recognition of Settlement Agreements arrived at between the parties. Thereafter it is mandatory for the court to draw up the decree on the basis of such a Settlement Agreement. [19] Even if the court has not drawn up the decree due to oversight, the order recognizing the compromise agreement between the parties, for all intents and purposes, is to be treated as a decree and especially for the purpose of execution in light of Order XX Rule 6A of the CPC.[20] As the Settlement Agreement transforms into a decree it can be executed just like any other decree by a civil court under the CPC.

ARBITRATION AND CONCILIATION ACT, 1996

Under the ACA, 1996, the Settlement Agreements reached during the process of arbitration are recognized under Section 30. Under this section a deeming fiction is also created wherein they are considered equivalent to an award made by the arbitral tribunal and in turn enforceable under Section 36 of the ACA, 1996 as a decree of a civil court just like any other arbitral award made under Section 31 of the ACA, 1996. Similar to Section 30, under Section 73 of the ACA, 1996 Settlement Agreements executed by the parties during the process of conciliation are held to be final and binding between the parties and are in turn held to be equivalent to Settlement Agreements reached during arbitration under Section 30. Hence, the Settlement Agreements executed under Section 73 can also be enforced as an arbitral award and necessarily become equivalent to a decree of a civil court for the enforcement under Section 36 of the ACA, 1996.

This deeming fiction is provided under Section 74 of the ACA, 1996 wherein a Settlement Agreement reached under a conciliation process is equivalent to a Settlement Agreement under Section 30 of ACA, 1996 and in turn equivalent to decree of a civil court. The DHC also recognized this legal fiction and stated that such a fiction created by a statute cannot be extended to other statutes.[21]

However, it is also to be noted that not every agreement or arrangement between the parties in whatever form or manner acquires the status of a Settlement Agreement within Section 73 of the ACA, 1996.[22]

COMMERCIAL COURTS ACT, 2015

The settlement arrived at between the parties under the CCA, 2015 is to be reduced into writing and the same is equivalent to a Settlement Agreement under Section 30 of the ACA, 1996. Hence, we see that the CCA, 2015 and the mandatory prelitigation mediation also creates a deeming fiction and equates the settlement arrived at between the parties under the CC Mediation Rules to be equivalent to the Settlement Agreement under Section 30 of the ACA, 1996 and hence equivalent to a decree of a civil court. Therefore, settlement arrived at or under the CCA, 2015 can be enforced as an arbitral award under Section 36 of the ACA, 1996.

SOME DRAFTING TIPS FOR SETTLEMENT AGREEMENTS

In many a circumstance, parties may find it more prudent to settle their disputes over engaging in expensive and time-consuming litigation. For this purpose, it is of utmost necessity to record all terms and conditions of the settlement in writing in order to avoid any further litigations.

A carefully and precisely drafted Settlement Agreement would ensure the probability of the outcome as the parties want it to be. In this section, we produce some key ingredients that every drafter of a Settlement Agreement must keep in mind while attempting to draft one.

SCOPE OF THE SETTLEMENT AGREEMENT

While it is obvious that parties shall wish to settle any disputes that may have arisen on or prior to the date of execution of the agreement, a precise delineation of the scope of a Settlement Agreement is crucial. The agreement should clearly state with specific details the legal dispute that is being settled by the parties. Not paying attention while drafting the scope might have the unwelcome consequence of either settling disputes that may have existed at such time but were not intended to be a part of the agreement or the effect of prohibiting all claims even under the Settlement Agreement.

Let's consider an example of such a situation. Party A and Party B are the parties to a dispute whereunder Party B has claimed INR 50,00,000 as damages for breach of contract. Party A is however, willing to pay INR 30,00,000 in an out of court settlement. Both parties sign a Settlement Agreement. Such agreement only states that Party A shall pay Party B the amount of INR 30,00,000 within a period of 10 days from the execution of the agreement and the mutual general release of both parties. It does not define the scope of the agreement. Day 10 comes and Party A does not pay. The question arises whether this would constitute a breach of the Settlement Agreement enabling Party B to raise a claim for the original amount of INR 50,00,000. Or can Party B only claim INR 30,00,000 now? The situation could have been avoided by limiting the scope of the Settlement Agreement to be effective where Party A pays the full amount within the prescribed period. This can be achieved by inserting a conditional release clause that takes effect only upon the payment of the settlement amount or otherwise preserves

the Plaintiff's right to pursue the original claim. Counsels must be careful that the terms of the Settlement Agreement must not substitute all the earlier claims unconditionally.[24]

A similar situation arose in the case of *Rucker v. Rucker*[25] where the parties had settled a dispute arising from a promissory note. The court observed that the Settlement Agreement substituted the terms of the original promissory note, thereby disabling the party from claiming the original amount under the promissory note. The Plaintiff could only sue under the Settlement Agreement.

For avoiding such consequences, using clear language specifying the exact circumstances of the dispute envisioned to be settled in the recitals clause of the agreement is important. Parties might also consider specifying claims that would not be settled under the agreement.

ADMISSION OF LIABILITY

It is significant to note that willingness of a defendant to settle is not unanimous with an admission of liability. At least not on paper. While drafting a Settlement Agreement from the defendant's perspective, inserting a no-fault clause indicating that there is no admission of liability on the part of the Releasee is important.[26]

CONDITIONS TO THE SETTLEMENT

Parties must consider specifying the mechanism by which the settlement comes into effect. For instance, a party may only be obliged to file an application for compromise of the legal proceedings when the settlement amount has been paid.[27]

CONFIDENTIALITY CLAUSE

The confidentiality clause must be drafted in such a manner so as to prohibit even the disclosure of existence of such Settlement Agreement under normal circumstances. But as evidenced in the previous section, parties might be compelled to disclose the contents of a Settlement Agreement by the judicial authorities. The agreement must provide for such exceptional situations so that parties are not held liable for disclosing the terms of the Settlement Agreement in such situations. Drafters may also consider providing a remedy for liquidated damages where the clause is breached by a party.

CONCLUSION

While the present paper has sought to provide a comprehensive view on Settlement Agreements, the fact remains that each Settlement Agreement is unique and dependent upon the facts of each case and the willingness of the parties to enter into a settlement. Parties and drafters shall have to resort to their own ingenuity and imagination to specify on paper whatever they envision the outcome to be. Given the sheer number of pending and ongoing litigations coupled with the delays attributable to Covid-19, it is a possibility that Settlement Agreements might gain more popularity among parties wishing to attain a speedier disposal of their disputes.

REFERENCES

[1] Compromise of Suits, Order XXIII Rule 3, Code of Civil Procedure, 1908
[2] Explanation to Rule 3, Order XXIII, Code of Civil Procedure, 1908; Ruby Sales & Service (P) Ltd. v. State of Maharashtra (1994) 1 SCC 531.
[3] Banwarilal v. Chando Devi (1993) 1 SCC 581.
[4] Section 30(1), Arbitration and Conciliation Act, 1996
[5] Section 30(2), Arbitration and Conciliation Act, 1996
[6] Justice Indu Malhotra, Commentary on the Law of Arbitration, Vol 1 (4th edn, Wolters Kluwer 2020) 780
[7] Section 30(3), Arbitration and Conciliation Act, 1996
[8] Section 31(3)(b), Arbitration and Conciliation Act, 1996
[9] Section 30(1), Arbitration and Conciliation Act, 1996
[10] Section 73, Arbitration and Conciliation Act, 1996
[11] Section 74, Arbitration and Conciliation Act, 1996
[12] Mysore Cements Limited v. Svedela Barmac Ltd (2003) 10 SCC 375
[13] Surinder Kumar Beri v. Deepak Beri & Anr 2018 (171) DRJ 414
[14] Section 3. Constitution of Commercial Courts, Commercial Courts Act, 2015
[15] Section 12A. Pre-Institution Mediation and Settlement, Commercial Courts Act, 2015
[16] Rule 12. Ethics to be followed by Mediator, Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018
[17] Section 12A(3), Commercial Courts Act, 2015
[18] Geojit Financial Services Ltd. v. Kritika Nagpal (Judgment dated 25th June 2013 passed by the BHC in Appeal No. 35 of 2013 in Arbitration Petition No. 47 of 2009)
[19] Sir Sobha Singh and Sons Pvt. Ltd. vs. Shashi Mohan Kapur (Deceased) thr. L.R. AIR 2019 SC 5416
[20] Id.
[21] *Anuradha SA Investments LLC & Anr. v Parsvnath Developers Limited & Ors.* 2017 (4) ARBLR 72 (Delhi).
[22] Haresh Dayaram Thakur v. State of Maharashtra (2000) 6 SCC 179
[23] 12A(4) & (5), Commercial Courts Act, 2015
[24] Lisa B. Markofsky, 'Consider whether the promise of a bird in the hand is better than two in the bush' *https://www.natlawreview.com/article/consider-whether-promise-bird-hand-better-two-bush*
[25] 257 Or. App. 544
[26] Supra Note 13.
[27] Ashurst, 'The art of compromise: 10 tips for effective Settlement Agreements', *https://www.ashurst.com/en/news-and-insights/legal-updates/the-art-of-compromise---10-tips-for-settlement-agreements/*

DOMESTIC ARBITRATION

SUPERANNUATION DOESN'T DISQUALIFY AN ARBITRATOR WHO WAS APPOINTED BASED ON HIS OFFICE

The Supreme Court of India ("SCI") in *M/s Laxmi Continental Construction Co. v. State of U.P. & Anr.*, held that an arbitrator who was appointed by virtue of his office will not be disqualified by the reason of his retirement. Once such an officer is appointed as an arbitrator, he continues to function as an arbitrator till the arbitration proceedings are concluded unless he incurs the disqualification under the provisions of the Indian Arbitration Act, 1940.

ARBITRATOR CANNOT AWARD INTEREST IN CONTRAVENTION OF CONTRACT PROVISIONS EXPRESSLY PRECLUDING INTEREST ON DUES

The SCI in Garg Builders v. Bharat Heavy Electricals Limited, held that an arbitrator cannot award interest if the contract prohibits pre-reference and pendente lite interest. The SCI held that in this particular case the language used in the clause barring interest was very clear and categorical which stated no interest would be payable on "any moneys due to the contractor" would include the amount as per the arbitral award. The SCI relied on Sri Chittaranjan Maity v. Union of India which stated that the Arbitration and Conciliation Act, 1996 ("Arbitration Act") contains a specific provision (Section 31(7)(a)) which states that if the agreement prohibits award of interest for the pre-award period, the arbitrator cannot award interest for the said period. The SCI stated that in case there was express provision allowing parties to opt out from imposing interest and they have chosen to do so with free consent, then arbitrator cannot grant interest.

RECENT UPDATE

We are proud to share that **AKS Partners** has been conceded as Other Notable Firm for Corporate and M&A and Dispute Resolution by **ASIALAW PROFILES (2022)**

PRE-DEPOSIT OF 75% OF ARBITRATION AWARD UNDER SECTION 19 OF THE MIRCO, SMALL, AND MEDIUM ENTERPRISES DEVELOPMENT ACT, 2006 ("MSMED ACT") MANDATORY

The SCI in Gujarat State Disaster Management Authority v. M/s Aska Equipments Limited has considered the issue of whether while preferring an appeal under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act the deposit of 75% of the award amount award could be waived off. The Court held that considering the object and purpose of Section 19 of the MSMED Act which provides for deposit of 75% of the awarded amount, the pre-deposit of such amount must be construed to be mandatory.

POSSIBILTY RATHER THAN PROBABILITY OF REASONING OF THE ARBITRAL TRIBUNAL TO BE CONSIDERED WHILE EXAMINING SUSTAINABILITY OF ARBITRAL ORDERS OR AWARDS

In the case of Sanjay Arora vs. Rajan Chadha, the High Court of Delhi ("DHC") while deciding upon an appeal under Section 37(2)(b)(1) of the Arbitration Act stated that while deciding on appeals against interlocutory orders under Section 17 of the Arbitration Act, the court is concerned with possibility, rather than the probability of the reasoning of the Arbitral Tribunal. The DHC further stated that in case the interpretation by the arbitral tribunal is not impossible and does not contravene the other provisions of the contract or are blatantly unreasonable such interpretation would not be interfered into by the court.

INTERNATIONAL ARBITRATION

SINGAPORE INTERNATIONAL ARBITRATION CENTRE ("SIAC") HOLDS ITS HAS JURISDICTION TO DECIDE ARBITRATION

A SIAC tribunal has held that it has jurisdiction to decide all matters arising out of Amazon's dispute with Future Retail Limited. The tribunal further held that it had jurisdiction over Future Retail in the arbitration invoked by Amazon over disputes arising out of shareholder agreements it had entered into with Future Coupons Private Limited notwithstanding the fact that Future Retail Limited is not a signatory to Future Coupons Private Limited. It was observed by the tribunal that the terms of the agreements, as well as the facts of the case, clearly show the intention of the parties to bind Future Retail Limited to the Future Coupons Private Limited shareholders arbitration agreement.

CORPORATE AND IBC

RESERVE BANK OF INDIA ("RBI") RELEASES THEME OF THE FOURTH COHORT OF THE REGULATORY SANDBOX

The RBI *vide* press release dated October 8, 2021 set out the theme of the fourth cohort under the Regulatory Sandbox as "Prevention and Mitigation of Financial Frauds". The intent is to minimize financial frauds, with the help of FinTechs which could strengthen the fraud governance, reduce the response time to frauds and detect financial frauds.

MINISTRY OF CORPORATE AFFAIRS ISSUED DRAFT RULES FURTHER TO AMEND THE AIRCRAFT (CARRIAGE OF DANGEROUS GOODS) RULES, 2003

The draft rules seek to amend the definition of "dangerous goods" and extended the liability regarding mis-declared and undeclared good under Section 9A to the agents of the shippers. In addition to this, the terms of "officer" have been generalised to include all persons and payment of fees training programmes to be exclusively through online means.

RBI RELEASED GUIDELINES ON VALUE FREE TRANSFER ("VFT") OF GOVERNMENT SECURITIES

The RBI *vide* notification dated October 5, 2021 issued guidelines on VFT of Government Securities. It has been decided by the RBI to issue revised VFT Guidelines to further streamline VFT of government securities. VFT of the government securities shall mean transfer of securities from one SGL/CSGL to another SGL/CSGL account, without corresponding payment leg in the books of RBI.

THE DEPARTMENT OF ECONOMIC AFFAIRS ("DEA") HAS AMENDED THE FOREIGN EXCHANGE MANAGEMENT (NON-DEBT INSTRUMENTS) RULES, 2019 ("NDI RULES")

DEA *vide* Notification No. S.O 4091 (E) issued Foreign Exchange Management (Non-debt Instruments) (Third Amendment) Rules, 2021 ("Amendment Rules") to amend the NDI Rules. The Amendment Rules inserts Serial No. 4.3 after Serial No. 4.2 in the Table of the Schedule I. As per the Amendment Rules the foreign investment up to 100% under the automatic route is allowed in case an 'in-principle' approval for strategic disinvestment of a PSU has been granted by the Government.

RBI ISSUES THE MASTER CIRCULAR FOR PRUDENTIAL NORMS ON INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONING PERTAINING TO ADVANCES ("MASTER CIRCULAR")

The RBI *vide* notification dated October 1, 2021, issued a Master Circular which is in consonance with the accepted international practices and the recommendations made by the Committee on the Financial System. Through this Master Circular, RBI aims to make banks more transparent and consistent in the published accounts. The Master Circular urges banks to ensure realistic payment schedules while granting loans on the basis of the cash flows of the borrowers among other practices to improve recovery of loans and ensure a uniform and consist application of the norms.

DPIIT RELEASES PRESS NOTE ON REVIEW OF FOREIGN DIRECT INVESTMENT POLICY ON TELECOM SECTOR

The DPIIT *vide* press release dated October 6, 2021 set out the amendments to the Consolidated FDI Policy Circular of 2020 allowing for 100% FDI in the Telecom Sector through the automatic route.

RBI NOTIFIES INCLUSION OF PAYTM PAYMENTS BANK LIMITED IN THE SECOND SCHEDULE OF THE RESERVE BANK OF INDIA ACT, 1934

The RBI *vide* notification dated October 7, 2021 has advised that Paytm Payments Bank Limited has been included in the Second Schedule of the Reserve Bank of India Act, 1934 vide notification DoR.LIC.No.S926/16.03.006/2021-22 dated September 06, 2021 and published in the Gazette of India (Part III - Section 4) dated October 02-October 08, 2021.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA ("IBBI") AMENDS IBBI (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATIONS 2016

IBBI *vide* notification dated 30.09.2021 introduced the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2021 ("Amendment") which seeks to amend various provisions of the IBBI (Insolvency Resolution Process for Corporate Persons Regulations), 2016. The Amendment introduced Regulation 17(1A) which provides that functions and powers of the members of the committee shall be laid down by the Board. Regulation 36A has been amended to add sub-regulation (4A) which provides that the manner of modification in the expression of interest to be same as the initial expression of interest with an additional proviso limiting such modification to only one.

RBI RELEASES STATEMENT ON DEVELOPMENT AND REGULATORY POLICIES

The RBI *vide* press release dated October 8, 2021 set out various developmental and regulatory policy measures regarding liquidity measures, payment and settlement systems, debt management, financial inclusion and customer protection. Notably among these the RBI has introduced Internal Ombudsman Scheme ("IOS") for certain categories of NBFCs which have higher customer interface on the lines of existing IOS for banks who will be at the top of the internal grievance redress mechanism.

RBI NOTIFIES EXTENSION OF FACILITY OF PRIORITY SECTOR LENDING BANKS TO NBFCS (OTHER THAN MICRO FINANCE INSTITUTIONS)

RBI has extended the Statement on Developmental and Regulatory Policies through which the facility of banks lending to NBFCs (other than Micro Finance Institutions) for on-lending was allowed to be classified as Priority Sector Lending till March 31, 2022. Loans disbursed under the on-lending model will continue to be classified under Priority Sector till the date of repayment/maturity whichever is earlier. Further, bank loans to Housing Finance Companies for on-lending for the purpose of housing, as prescribed in paragraph 23 of Master Directions on Priority Sector Lending dated September 4, 2020 will continue to apply.

SECURITIES AND EXCHANGE BOARD OF INDIA ("SEBI") ISSUES CIRCULAR REGARDING MINIMUM PERCENTAGE OF TRADE CARRIED OUT BY MUTUAL FUNDS THROUGH REQUEST FOR QUOTE (RFQ) PLATFORM

The SEBI *vide* circular SEBI SEBI/HO/IMD/DF3/CIR/P/2020/130 dated July 22, 2020, has mandated mutual funds ("MF") to undertake at least 10% of their total secondary market trades in Corporate Bonds through RFQ platform of stock exchanges. Further based on the recommendations of the Mutual Fund Advisory Committee has modified paragraph 1(A)(i) as follows: (a) on a monthly basis MFs shall undertake a minimum of 25% of their total secondary market trade by value through one to many mode on RFQs (excluding Inter Scheme Transfer trades). (b) MF shall now undertake minimum of 10% of their total secondary market trade by value in Commercial Paper through one to many mode on RFQs. The circular will come in force from December 1, 2021.

OTHER UPDATES

CIVIL COURT LACKS JURISDICTION TO DECIDE ON TERMINATION OF EMPLOYMENT COVERED UNDER INDUSTRIAL DISPUTES ACT, 1947

The SCI in *Milkhi Ram v. Himachal Pradesh State Electricity Board* held that the civil court could not decide on the termination of an employee under the Industrial Disputes Act, 1947 ("ID Act"). The SCI stated that while the civil court may have limited jurisdiction, it would not extend to adjudication on orders passed by a disciplinary authority. The SCI stated that while opting for a remedy the litigant may either choose the civil courts or the industrial forum. In this case, the claim was based on the provisions of the ID Act and thus the decree was nullified to the extent it covered ID Act provisions.

BURDEN OF PROOF FOR DEFICIENCY OF SERVICES LIES ON THE COMPLAINANT

The SCI in the case of SGS India v. Dolphin International held that the onus to prove deficiency in service under the Consumer Protection Act, 1986 would lie on the complainant. In the present case the opposite party failed to produce the reports of the samples of groundnut shipped to the complainant based on which the NCDRC drew an adverse inference and held in favour the complainant. The SCI reiterated that only when the complainant has discharged its primary obligation of proving the deficiency could such an adverse inference be drawn.

REVENUE RECORD DOES NOT GRANT RIGHT, TITLE, OR INTEREST AND CANNOT FORM THE SOLE BASIS FOR CLAIMING TITLE WITHOUT SUPPORTING DOCUMENTS

The SCI in the case of *Prabhagiya Van Adhikari Awadh Van Prabhag v. Arun Kumar Bhardwaj (Dead) Thr. Lrs. & Ors.*, held that the revenue record is not a document of title.

In the present case the appellant claimed leasehold rights over certain forest lands solely on the basis of a revenue record without any supporting documents. While referring to section 5 of the Indian Forest Act, 1927 which places a bar on accrual of forest rights except by way of succession or contract the SCI held that no rights, title or interest can be created solely on the basis of revenue records. Further the SCI stated that such record is inconsequential unless a written agreement is produced by the appellant.

JUDICIAL DELAYS WOULD NOT HINDER PERSONS RIGHT TO CLAIM STAMP DUTY REFUND

The SCI in *Mr. Rajeev Nowhar v. Chief Controlling Revenue Authority Maharashtra* Case, Pune held that any delay in making application for stamp duty refund would not be barred if caused due to delays in judicial proceedings. In the present case the appellant had purchased stamp duty towards purchase of real estate. Subsequently, disputes arose between the appellant and the builder and the appellant approached the National Consumer Disputes Redressal Commission ("NCDRC"). After adjudication of the dispute by NCDRC the appellant applied for refund of stamp duty which was denied by the Maharashtra Revenue authorities as the application was made post the 6 month timeline under section 48 of the Maharashtra Stamp Act, 1958. The SCI held that the case would fall under the purview of Section 47 wherein the stamp purchased has become unfit for purpose for which it was purchased. Further since the delay was not due to the negligence of the appellant the refund could not be denied.

THE FIRST APPELLATE COURT CANNOT DISPOSE OF THE FIRST APPEAL UNDER SECTION 96 OF CODE OF CIVIL PROCEDURE, 1908 ("CPC") AND THAT TOO WITHOUT RAISING THE POINTS FOR DETERMINATION AS PROVIDED UNDER ORDER XLI RULE 31 CPC

The SCI in *K. Karuppuraj v. M. Ganesan*, held that while considering the scope and ambit of exercise of powers under Section 96 of CPC held that it is the duty of the appellate court (while sitting as a court of first appeal) to deal with all the issues and evidences led by the parties before recording its findings. This issue came before the SCI against the order of the High Court of Madras wherein it failed to frame the points for determination as required under Order XLI Rule 31 CPC and disposed of the appeal preferred under Order XLI CPC read with Section 96.

NON-FILING OF A 'STATEMENT OF TRUTH' IN A WRITTEN STATEMENT IS A CURABLE DEFECT

The High Court of Calcutta in *Harji Engineering Works Pvt. Ltd. v. Hindustan Steelworks Construction Ltd.*, while granting leave to the respondent to file a statement of truth along with written statement held that pursuant to Rule 15A a party cannot be deprived of its claim or defence in a commercial dispute by reason of improper verification of its pleading as the use of the words 'shall' in sub rule (4) of Rule 15A and 'may' in sub

rule (5) of Rule 15A of Order VI of the Code of Civil Procedure, 1908 are not indicators of whether a particular provision in a statute is mandatory or directory. Rather, a more definitive marker would be the purpose of the provision set against the overall scheme of the statute and the context in which the words are used.

GUIDELINES ON THE NATURE OF INQUIRY FOR APPLICATION OF TEST OF DECEPTIVE SIMILARITY IN CASE OF PASSING OFF ACTION LAID DOWN BY KARNATAKA HIGH COURT

The High Court of Karnataka in ITC Limited v. CG Foods (India) Private Limited, laid down detailed guidelines on the nature of inquiry for a passing off action. The Court has laid down the factors to be inquired into while applying the test of deceptive similarity as follows: (i) understand the perceptive abilities of the hypothetical purchaser based on the nature of goods, market share, class of persons and other factors; (ii) clear the governing comparisons of the marks to understand the manner in which ordinary persons behave and what might confuse or deceive them; (iii) the test of deceptive similarity is satisfied if based on the rules governing comparison of marks there is a likelihood of deception of hypothetical purchaser.

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