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Corporate & Commercial

Monthly Newsletter
November 2022

Table of Contents

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Amendment in the definition of 'Small Company'

On September 15, 2022, the Central Government vide notification G.S.R. 700(E) has amended the Companies (Specification of Definition Details) Rules, 2014 to increase the monetary limits of the paid-up share capital and turnover of a 'small company' as defined under the Companies Act, 2013. The maximum limit of paid-up capital for a small company has been increased from INR 2,00,00,000 (Rupees Two Crore) to INR 4,00,00,000 (Rupees Four Crore). The maximum limit of turnover has been increased from INR 20,00,00,000 (Rupees Twenty Crore) to INR 40,00,00,000 (Rupees Forty Crore).

This is the second amendment within a span of 1.5 years which effectively has doubled the limits. The Ministry of Corporate Affairs has stated the change is another step towards 'ease of doing business', enabling a larger base of companies to benefit from exemption of certain compliance requirements and reducing compliance burdens on such companies.

Small companies enjoy certain privileges/exemptions/relaxations such as:

- **Fast track mergers:** Small companies are eligible for fast track mergers under the Companies Act, 2013 which do not require applications to be made to the National Company Law Tribunal (NCLT) and are dealt with by the Central Government. This enables a more time and cost-effective conclusion of a merger, avoiding the long drawn and costly process of the traditional NCLT driven merger process. The fast-track merger process also saves on the legal costs of multiple appearances before the NCLT, and bypass certain other procedural requirements such as issuing public advertisements.
- **Relaxation in filing of returns:** Small companies need not file the lengthy annual return (MGT-7) but rather an abridged annual return (MGT–7A). Annual return of the company can be signed by the company secretary, or where there is no company secretary, by a director of the company. The financial statement of a small company does not require a cash flow statement. Further, there are relaxations in the auditor's report along with an exemption for the mandatory rotation of auditors.
- **Board meetings:** Unlike other companies that need to hold four board meetings in a calendar year, a small company is needed to hold at least one meeting of the board of directors in each half of a calendar year and the gap between the two board meetings must not be less than ninety days.
- **Lesser penalties:** Penalties payable for non-compliance of any of the provisions of the Companies Act, 2013 by a small company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of INR 200,000 (Rupees Two Lakhs) in case of a company and INR 100,000 (Rupees One Lakh) in case of an officer who is in default or any other person, as the case may be.

India considering allowing Chinese JVs with India companies for electronics manufacturing

In an attempt to boost the domestic high-end electronics manufacturing sector, the government is considering allowing Chinese companies to set up bases in the country with certain riders.

Government may soon identify 50 - 60 Indian companies that would want to form a joint venture (JV) with their Chinese counterparts allowing foreign electronics manufacturers not just from China but also from South Korea, Taiwan, Vietnam and European countries. However, the JV proposal may need to fulfil specific conditions:

- The Indian company must have a majority stake in the JV.
- The control of the board remains with the Indian firm.
- The Chinese firms must set up manufacturing units in the country in partnership with local companies.
- The government must identify big Indian firms that could be open to enter the electronics segment if any foreign company is proposing to share technology.
- Proposals where high-end technology must be sourced from the neighboring country through a joint venture with a local firm can be approved to develop an ecosystem in India.

India's PLI schemes on electronics manufacturing, including smartphones and IT hardware, were designed to attract global manufacturers based in China. But for that to happen, partners such as component makers, also mainly from China, need to shift to India which was posing to be major difficulty due to the stringent rules.

The electronics industry has been seeking relaxations in the rules for a while now, so that an ecosystem can be developed in India. A clarity on FDI policy needs to be defined in view of the press note (Press Note 3 of 2020) to facilitate shifting of companies, which will help create the ecosystem, bring investments, create jobs, facilitate skill improvement, and help develop the overall sector.

Myriad of extremities befalling Agreement to Sell

An agreement to sell, is an executory contract and amongst others, encapsulates the parties' intention to sell and to purchase a property (movable or immovable) in the future. This agreement is a precursor to a sale deed, which is the culmination of a contract, that an agreement to sell kickstarts. Unlike English law, in strict parlance, an agreement to sell does not create an interest in the immovable property.

Relevant statutory provisions

Section 17(2)(v) of the Registration Act, 1908 ("Act") carves out, from the mandate of registration, agreements that by itself do not create/assign/extinguish any right, title or interest in an immovable property but merely record the right to obtain such a document in future. Thus, prima facie, registration of an agreement to sell appears to be facultative. This would in turn imply that the mischief of Section 49 of the Act would not be attracted qua an unregistered agreement to sell.

At this stage it would also be apposite to take into consideration Section 17(1A) of the Act which mandates the registration of contracts for the purposes of Section 53A of the Transfer of Property Act, 1882.

A recent judgement of the Hon'ble Apex Court, in this regard, deserves due deliberation. In ***Balram Singh v. Kelo Devi***[1], the Hon'ble Supreme Court deliberated upon the admissibility of an unregistered agreement to sell as evidence in a suit for permanent injunction. The brief facts of the case are that the Defendant had filed a suit for permanent injunction based on an unregistered agreement to sell, which was dismissed by the trial Court. However, on appeal, the judgement of trial court was reversed, and injunction was granted, against which, the Appellant filed the said appeal. At the outset, the Hon'ble Apex Court stated that an unregistered agreement to sell is inadmissible as evidence in a suit for specific performance and even for permanent injunction and that the Defendant was fully aware of the fact that specific performance cannot be granted on the basis of an unregistered agreement to sell and hence, a relief that cannot be granted directly cannot be granted indirectly as well. The Court observed that an unregistered agreement to sell would be admissible as evidence only for collateral purposes.

Whilst not expressly stated, the judgement is distinguishable on facts and needs to be parsed in light of the fact that the impugned agreement to sell was executed in the state of Uttar Pradesh, where its registration is obligatory. Various states, like Uttar Pradesh, Andhra Pradesh, Gujarat, Kerala, Tamil Nadu, and Madhya Pradesh have effected amendments in Section 17 of the Act, to encapsulate the mandate of compulsory registration of an agreement to sell, by adding it to the list encompassed in Section 17(1). Other states like Rajasthan and Odisha have brought amendments to mandate the registration of an agreement to sell where possession has been handed over. The intent and object behind these amendments has been finely articulated by the Hon'ble Supreme Court in the case of ***T.G. Ashok Kumar v. Govindamma***[2], wherein the Hon'ble Supreme Court has, inter alia, opined that mandating registration of agreement to sell would help in countering and curbing the malaise of unscrupulous re-sales of property, undervaluation of property for the purposes of stamp duty, and circulation of black money.

Thus, whether registration of an agreement to sell is mandatory or not, varies from state to state. The case discussed above stemmed from the state of Uttar Pradesh, where the registration of an agreement to sell is mandatory. The dichotomy on a pan-India evaluation is that in distinction of the aforementioned judgement and the state amendments, in states where the amendments mandating registration have not been brought about, the Hon'ble High Courts have entertained suits for specific performance based on unregistered agreements to sell on the grounds that since these agreements did not create any right, title or interest in the immovable property, they were not attracted by the mandate of registration and hence, beyond the gamut of Section 49 of the Act. A few instances are ***Vinod Kumar v. Ajit Singh*** [3]and ***Sukhwinder Kaur v. Amarjit Singh***[4].

The law regarding registration of agreement to sell is evolving and is manifest from the aforementioned state amendments and also from Section 13 of the Real Estate (Regulation and Development) Act, 2016 which mandates the registration of a agreement to sell in case the promoter seeks an advance of more than 10% of the consideration.

In light of the aforesaid, it is advisable to register agreements to sell, especially in the following circumstances,

- In states where an amendment to such effect has been enacted
- For the purposes of availing the benefit of Section 53A of the Transfer of Property Act
- For the purposes of seeking more than 10% advance under the Real Estate (Regulation and Development) Act, 2016

The mandate for registration of an agreement to sell would impart transparency regarding the property, streamline and ease enforceability in a court of law and would render a public repository of encumbrances, which will in turn prevent and preclude fraudulent sales.

SEBI | New rules for Credit Rating Agency rating scales

SEBI has issued new rules in an attempt to homogenize the way Credit Rating Agencies (**CRAs**) assign ratings to securities. CRAs typically undertake ratings of various financial instruments under the guidelines of different financial sector regulators. With the new norms, expected to come into effect from January 01, 2023, CRAs will have to report on their compliance as ratified by their respective board of directors to Sebi within one quarter from the date of applicability of the circular. This will help investors make more informed decisions regarding securities in the debt investment space.

Key aspects

- Standardized symbols and their definitions have been devised for issuer rating or corporate credit rating.
- SEBI has specified standard descriptors for rating watch and rating outlook. As far as CRA's view on the expected direction of the rating movement is concerned, 'rating outlook' implies its views in the near to medium term, whereas a 'rating watch' indicates for the short term.
- CRA will have to assign a rating outlook and disclose the same in the press release.
- Rating symbols should have CRA's first name as prefix.
- Rating symbols and their implications:
  - Issuers with 'AAA' rating symbols have the highest degree of safety on timely servicing of debt obligations
  - Issuers with 'AA' and 'A' rating symbol have high and adequate degree of safety, respectively about timely servicing of debt obligations

[1] MANU/SC/1241/2022
[2] (2010) 14 SCC 370
[3] (2013 SCC OnLine Del 6432)
[4] (2012 SCC OnLine P&H 935)

- Issuers with BBB rating bear moderate degree of safety on timely servicing of debt obligations
- Issuers with BB, B and C ratings have 'moderate', 'high', 'very high' risk of default, respectively pertaining to timely servicing of debt obligations
- Issuers with D rating are in default or are expected to be in default soon

SEBI | Standard operating procedure for Inter-operable Regulatory Sandbox issued

SEBI issued a standard operating procedure for Inter-operable regulatory sandbox (**IoRS**) in a bid to enhance testing of innovative financial products falling within the regulatory ambit of more than one sector regulators. This is done to create a single window available for engagement with varied regulators on their hybrid product.

Key aspects

- The Regulatory Sandbox (**RS**) framework of the regulator, under whose remit the 'dominant feature' of the product falls, governs it as Principal Regulator (**PR**).
- The regulator/s under whose remit the other features apart from the dominant feature of the product fall will be the Associate Regulator (**AR**).
- Two sets of factors would be considered for deciding the dominant feature:
  - The type of enhancement to the existing products like loans, deposits, capital market instruments, insurance, G-sec instruments, and pension products
  - The number of relaxations sought by the entity for undertaking the test under the IoRS; the dominant feature will be decided with greater weightage to the number of relaxations sought
- Based on the dominant features of the product, the eligibility criteria, and net worth criteria as applicable for the RS of the concerned regulator will be applicable to the applicant entity for participation in the IoRS.
- The applications from Indian fintechs having global ambition and foreign fintechs seeking entry to India will be referred to IFSCA for taking forward the proposals, as IFSCA will be the PR for all such applications.
- Any coordination issue between PR and AR to reach common views on the regulatory treatment of innovative products, services and business models shall be discussed and sorted out in the IRTG on FinTech before initiation of the live testing under IoRS.
- Post successful exit from the IoRS, the entity will have to approach PR and AR(s), for authorization and for seeking regulatory dispensation before launching the product in the market.
- The product being admitted and successfully exiting the IoRS will be published by the regulator concerned through press release, specifically indicating that it is under IoRS of IRTG on FinTech.

SEBI | Brokers allowed to place bids on RFQ platform on behalf of clients

SEBI has allowed stockbrokers registered under the debt segment of the stock exchanges to place or seek bids on the Request for Quote (**RFQ**) platform on behalf of the clients. SEBI has now mandated registered mutual funds and portfolio management services to undertake a specified percentage of their total secondary market trades in corporate bonds through RFQ platform to increase the liquidity on this platform. This rule will come into effect from January 01, 2023, onwards.

The RFQ platform is a system or interface for inviting quotes on an electronic platform introduced as a 'participant-based' model, wherein all regulated entities, listed corporate bodies, institutional investors and all Indian financial institutions were eligible to register, access and transact. The securities eligible for being traded on the RFQ platform are:

- Non-convertible securities
- Securitized debt instruments
- Municipal debt securities
- Commercial paper
- Government securities
- State development loans
- Treasury bills

SEBI | Merchant Bankers barred from conducting any business other than those related to securities market

SEBI recently announced that a merchant banker cannot conduct any business other than those pertaining to the securities market. Since referral activities for non-security related services do not fall within the purview of the activities permitted by Regulation 13A (Merchant Banker Rules) nor is specifically enumerated, hence merchant bankers are not permitted to undertake such activities.

The clarification came after PNB Investment Services, which is registered as a merchant banker, sought informal guidance on whether it can act as a direct selling agent by starting a fresh business vertical for marketing retail products such as home loans, car loans on behalf of PNB or other banks.

RBI | ARCs to act as Resolution Applicants under IBC

With the aim of bringing more transparency and improve corporate governance in the ARCs sector, RBI has allowed Asset Reconstruction Companies to act as resolution applicants under the Insolvency and Bankruptcy Code (**IBC**).

Key aspects

- ARCs can operate as resolution applicants, which is not allowed under Securitization and Reconstruction of Financial

Assets and Enforcement of Security Interest Act (**SARFAESI Act**).

- To qualify as Resolution Applicant, the companies need to have a minimum net owned fund of INR 1000 crore and a board-approved policy to take up the role of an applicant.
- The ARC should also have a committee comprising most independent directors to take decisions on proposals of submitting resolution plans under the IBC.
- ARCs must aim to prepare a panel consisting of sector-specific management firms and individuals with expertise in running firms and companies.
- ARCs shall not retain any significant influence or control over the corporate debtor after five years from the approval date of the resolution plan by the adjudicating authority.
- ARCs should also make additional disclosures in their financial statements on assets acquired under IBC, in addition to the existing disclosure requirements.
- MD and CEO who completes 15 years in the position shall be eligible for reappointment only after a cooling off period of three years. During this three-year period, the person shall not be associated with the ARC in any direct or indirect capacity.
- ARCs shall not retain any significant influence or control over the corporate debtor after five years from the date of approval of the resolution plan by the concerned court or tribunal. If this is not complied with, the ARCs will not be allowed to submit any fresh resolution plans.
- ARCs shall make additional disclosures in the financial statements with respect to assets acquired under IBC in addition to the existing disclosure requirements.
- ARCs must disclose the implementation status of the resolution plans on a quarterly basis in their financial statements, after approval.

RBI | New guidelines for ARCs

RBI recently pushed forward new regulatory guidelines for Asset Reconstruction Companies (**ARCs**) and reports say that this could affect the settlement of stressed retail loans. This new rule does not distinguish between corporate and retail loan making it tough for lenders to offload retail bad loans.

Earlier, RBI had set up a committee to undertake a comprehensive review of the working of ARCs and recommend suitable measures for enabling them to function in a more transparent and efficient manner. The regulatory framework for ARCs has been amended based on the committee's recommendations and feedback from stakeholders. However, under the new norms, ARCs would not find it practical to settle the loans with the defaulters. Also, in case of home loans the value of security is more than the loan amount, so settlement will always be below the loan amounts.

Key aspects

- These guidelines aim to prevent ARCs from cutting deals with defaulting businesses.
- ARCs typically buy bad loans from lenders at a discount and try to make a profit by recovering a larger amount. RBI announced settlement of dues with the borrower will be done after the proposal is examined by an Independent Advisory Committee (**IAC**) .
- IAC, after assessing the borrower's financial position, the time frame available for recovery of the dues, projected earnings and cash flows of the borrower and other relevant aspects, shall give its recommendations to the ARC regarding the settlement of dues with the borrower. The norms require that the settlement with the borrower be done only after all possible steps of recovery of dues have been taken and there is no further scope of recovering the dues.
- The new norms allow large ARCs to bid for companies as resolution applicants in the insolvency process.
- ARCs' contribution to acquire a stressed asset on an all-cash basis was decreased to 2.5% from 15%.

RBI | India's first pilot project on Digital Rupee

RBI became one of the first major Central Banks in the world to launch pilot project on central-bank-backed Digital Rupee for the wholesale segment on November 1, 2022. A Central Bank Digital Currency (CBDC) or Digital Rupee is a digital form of currency notes issued by RBI. Digital currency or rupee is an electronic form of money, that can be used in contactless transactions.

CBDC can be classified into two types:

- **Retail (CBDC-R)** would be potentially available for use by all
- **Wholesale (CBDC-W)** is designed for restricted access to select financial institutions.

Benefits of Digital Rupee

- Reducing the transaction cost, having a digitised currency will make it easier for governments to access all transactions happening within the authorized networks.
- The government will have better control over how money leaves and enters the country, which would allow them to create a space for better budgeting and economic plans, and overall, a much safer environment.
- Digital Rupee do not get torn, burnt, physically damaged, or physically lost.
- Digital currency will fuel financial inclusion and bring in resiliency and efficiency to the payments space.
- CBDC and the RBI's RTGS will jointly augment the Delivery-Versus-Payment mechanism for secured and guaranteed payment and settlement of funds. CDBC interfacing with RTGS will complement the RBI's vision of interoperability, transparency, accessibility.

State Bank of India, Bank of Baroda, Union Bank of India, HDFC Bank, ICICI Bank, Kotak Mahindra Bank, Yes Bank, IDFC First Bank and HSBC are the nine banks identified for participation in the wholesale e-rupee (e-W) pilot project. The first pilot in the Digital Rupee-Retail segment (e-R) is planned for launch within a month in select locations in closed user groups comprising customers and merchants.

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