

Editorial



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**Orbit Law Services
celebrated its
second anniversary
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The legal climate in India has been adapting to the changes that are playing out in the market.

India is the world's 10th largest economy and the GDP is poised to jump three-fold by 2020. The Union Government's initiative of 'Make in India' and the policy reforms to improve India's rankings on the World Bank's list of Ease of Doing Business ("EoDB") has made India a more amenable place to do business than it had been in the past. The EoDB ranking has also been implemented by the government at a state level so that each state in India is competing to better serve businesses and investors, a report on the assessment of implementation of Business Reforms by States.

The past year has seen the liberalization of the defence, insurance and aviation sectors. There is already a steady increase in foreign direct investment ("FDI"), especially over the past five years.

A couple of months back, vide Press Note. 6 (2016 Series), the Government has liberalized its FDI policy on other Financial Services and Non-Banking Finance Companies (NBFCs), so that they may receive up to 100% FDI under the automatic route, subject to certain conditions.

With changes in policy and recent law reform, the Government is determined to fillip the growth of the economy to stay on course with regard to projections. To boost investor confidence as regards the enforcement of contracts, the end of last year saw the enactment of two laws: (i) the Commercial Courts, Commercial Division, and Commercial Appellate Division Act 2015, setting up commercial courts at New Delhi and Mumbai, and (ii) the Arbitration and Conciliation (Amendment) Act 2015; both these Acts are seen as progressive legislations changing the landscape of dispute resolution. Last month, the Mumbai Centre for International Arbitration (MCIA) was inaugurated to a first-of-its-kind arbitral institution in India, with its own rules drawing on the latest developments in international arbitration best practice.

Similarly, to deal with financial closure and insolvency of individuals and companies there are a number of laws and adjudicating forums. The credit system was strained as lenders had to rely on these multiple laws and multiple forms for legal recourse for such restructuring and/or recovery of assets in case of default. The passing of the Insolvency and Bankruptcy Code 2016, which came into force on 28 May 2016, seeks to streamline the process and sets out a time-bound process for insolvency resolution of companies and

individuals, so that within 180 days the process should be completed. If the insolvency cannot be resolved, the assets of the borrowers may be sold to repay creditors.



In this edition:

As arbitration proceedings are being seen as a practical and effective alternative dispute resolution mechanism, the question that remains to be addressed is what happens in case one party alleges that the other has committed a fraud. Does this matter get heard by an arbitrator, or should matters, where serious fraud is alleged, be heard by a competent Civil Court; more about this by **Mr. T. Ravichandran**, Partner.

The prospect of facing proceedings under the Income Tax Law can be daunting, with little information available as to what happens, and how best one can be prepared. **Mr. Nirjay Singh**, Associate Partner – Taxation, who has many years of experience dealing with tax proceedings has shared some valuable pointers on some of the processes that are followed by authorities in assessment proceedings under Indian Tax laws to which the client should adhere to.

The National Civil Aviation Policy 2016 sets the proposal of the Government to promote the growth of the aviation sector in India, as this has a multiplier effect on the economy. Regional connectivity and access to travel by air for all by making flying a more affordable and convenient mode of travel is at the top of the agenda. To further these ends, the Ministry of Civil Aviation will continue to encourage the development of Airports by State Governments or the private sector or in Public Private Partnership model, by forming special purpose vehicle companies (SPVs) with the Airport Authority of India or other public sector undertakings; more about this by **Ms. Nada Kamal**, Senior Consultant - Aviation.

Last but not, by far, the least; to conclude we share some important and recent Judgments and Legislative briefs highlighting the recent developments in the field of law in India.

DISPUTE RESOLUTION: Non-Arbitrable Disputes – Fraud – Judgment of the Supreme Court in *A. Ayyasamy - vs. - A. Paramasivam & Others*



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There is a considerable amount of confusion in the minds of the litigating public about the efficacy of arbitration proceedings especially in matters where an element of fraud is alleged by one party and denied by the other party. The position of law prevailing on this date is the Judgment of the Supreme Court in *N. Radhakrishnan vs. Maestro Engineers and Others (2010) 1 SCC 72* wherein the Supreme Court had held that where serious allegations of fraud are alleged, then the same cannot be dealt with by an arbitrator and the issue needs to be settled only before a competent Civil Court.

There are two lines of Judgments one which support the theory that the Civil Court should exercise jurisdiction in case of serious fraud and the other view is that even in cases of serious fraud, the arbitral tribunal should rule on its jurisdiction. The Law Commission of India in its 246th Report did have an occasion to give its views on arbitrability of fraud in paragraphs 50 and 51 of its report. The sum and substance of the report of the Law Commission of India is that when there are serious allegations of fraud, they are to be treated as non-arbitrable and only the civil court should decide such matters. However, where there are allegations of fraud simpliciter and such allegations are merely alleged, there is no need to nullify the effect of arbitration.

Facts of the case

The Appellant and the Respondent were brothers and there was a partnership deed setting out the rights and obligations of the parties. The partnership deed did contain an arbitration clause. Despite the arbitration clause, the Respondents who were the other brothers filed a civil suit before the District Munsif Court, Tirunelveli for the relief of declaration that they are entitled to participate in the administration of the hotel. The Appellant herein after receiving the summons filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 raising an objection as to the maintainability of the suit in view of the arbitration clause in the agreement. This application was resisted by the respondents on the ground that there are allegations of fraud and relying on *N. Radhakrishnan*, the respondents argued that the matter cannot be arbitrated upon. The appellant took shelter under the judgment of the Supreme Court rendered in *Swiss Timing Limited vs Commonwealth games 2010 Organising Committee (2014) 6 SCC 677* which had held that *N. Radhakrishnan* was *per incuriam*.

It was argued by the parties that inasmuch as *N. Radhakirshnan* is *per incuriam*, such a plea of fraud can be adequately taken care of even by the Arbitrator. The trial Court dismissed the application relying on *N. Radhakrishnan*. Challenging this, the Appellant preferred revision petition before the Madras High Court on the ground that the trial court committed a jurisdictional error in rejecting the application under Section 8. The High Court brushed aside this plea on the ground that *Swiss Timing Ltd.* was passed by a single Judge of the Supreme Court under Section 11 whereas *N. Radhakrishnan* was rendered by Division Bench. Challenging this, Special Leave Petition has been filed before the Supreme Court.

Analysis of the Supreme Court Judgment

It is relevant to submit that fraud which was alleged by the Respondents was that the appellant signed and issued a cheque from the hotel's account to his son without the knowledge and consent of the other partners and that the hotel account books were not shown to them. Both the lower Courts adopted the dicta laid down in N.Radhakrishnan while dismissing the application of the appellant under section 8 of the Arbitration and Conciliation Act, 1996 holding that there are serious allegations as to fraud and malpractices committed by the Appellant.

Non Arbitrable Disputes

The Supreme Court has held that mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the Civil Court.

The Arbitration Act does not make any provision excluding any category of disputes treating them as non arbitrable. The Courts have held that certain disputes like criminal offences of a public nature, disputes arising out of illegal agreements et al as non arbitrable. As per the dicta laid down by the Supreme Court, the following categories of disputes namely:

- a. Patent, trademark and copy right,
- b. anti-trust/competition laws,
- c. insolvency and winding up,
- d. bribery and corruption,
- e. fraud,
- f. criminal matters, and
- g. trust deed

The Supreme Court of India, relying on its earlier judgments considered N. Radhakrishnan, wherein, serious allegations against respondents were made alleging malpractices in the account books and manipulation of the finances of the partnership firm. The Supreme Court had held that such a case cannot be properly dealt with by the Arbitrator and ought to be settled by Court through detailed evidence let in by both parties. Further elaborating on N. Radhakrishnan, the Supreme Court has held that mere allegation of fraud in the pleadings by one party against the other cannot be a ground to hold that the matter is incapable of settlement by arbitration and should be decided by the Civil Court. The allegations of fraud should be so serious that the decision on these issues demand extensive evidence for which civil court should appear to be a more appropriate forum than the arbitral tribunal. Otherwise, it may become a convenient mode of avoiding the process of arbitration by simply using the device of making allegations of fraud and pleading that issue of fraud needs to be decided by the Civil Court.

Other Judgments on this issue:

Booz Allen & Hamilton Inc. Vs. SBI Home Finance Limited and others (2011(5) SCC 532)

The Supreme Court carried out a detailed discussion on the term ‘arbitrability’ in the light of:

- (a) Whether the disputes are capable of adjudication and settlement by arbitration?
- (b) Whether the disputes are covered by the arbitration agreement? and
- (c) Whether the parties have referred the disputes to arbitration?

All disputes relating to rights in personam are considered to be amenable to arbitration and all disputes relating to rights in rem are required to be adjudicated by the Courts and Tribunals.

Where the subject matter falls exclusively within the domain of public fora, i.e., the Courts, such disputes would not be arbitrable and cannot be decided by the Arbitral Tribunal. The reason and rationale given for adjudicating such disputes through the process of courts i.e. public fora, and not by Arbitral Tribunals, which is a private forum, is given in paragraphs 35 to 38 of this judgment. The sum and substance of this judgment of Supreme Court is that generally and traditionally all disputes relating to *rights in personam* are considered to be amenable to arbitration and all disputes relating to *rights in rem* are required to be adjudicated by the Courts and Tribunals. Of course this is not however a rigid or inflexible rule.

Bharat Rasiklal Versus GautamRasiklal (2012) 2 SCC 144

The Supreme Court held that when fraud is of such a nature that it vitiates the arbitration agreement, it is for the Court to decide on the validity of the arbitration agreement by determining the issue of fraud.

N. Radhakrishnan Vs. Maestro Engineers and Others (2010) 1 SCC 72

The Supreme Court held that an issue of serious fraud is not arbitrable. In this case the Respondents had instituted a suit against the Appellant upon which the Appellant filed an application under section 8 of the Act and while filing this application had made serious allegations against the Respondents of having committed mal-practices in the account books and manipulations of the finance of the Partnership Firm. The Supreme Court held that such a case cannot be properly dealt with by the Arbitrator and ought to be settled by the court through detailed evidence.

Findings of the Supreme Court of India

One of the contentions raised by the Appellant is that N. Radhakrishnan is a judgment *per incuriam* as held by the SC in Swiss timing case inasmuch as

- (a) the earlier Judgment of the Supreme Court in Anand Gajapathy Raju 2000(4) SCC 539 was not considered and
- (b) the provisions of the Section 16 of the Arbitration Act were also not brought to the notice of the court.

The Supreme Court, while considering whether N. Radhakrishnan was *per incuriam*, held that it is not so for the reasons that Swiss Timing Ltd.’s case was rendered by a

Mere allegations of fraud simpliciter may not be a ground to nullify the effect of an Arbitration Agreement between the parties.

Judge while dealing with an application under section 11(6) and Section 11 essentially confers powers on the Chief Justice of India, which power has been exercised by another Judge as a delegate of Chief Justice of India and notwithstanding the fact that the power of the Chief Justice of India is a judicial power as held by the Supreme Court in SBP & Co. Vs. Patel Engineering Limited and another (2005) 8SCC 618 the same cannot be deemed to have precedential value and therefore the law laid down by the Supreme Court in N. Radhakrishnan vs. Maestro Engineers and Others is not overruled.

Having upheld N. Radhakrishnan, the Supreme Court has held that mere allegations of fraud simpliciter may not be a ground to nullify the effect of an Arbitration Agreement between the parties.

It is only those cases where the court finds that there are serious allegations of fraud or whether the allegations of fraud are so complicated then it becomes essential that such complex issues can be decided by the civil courts only. Thus, when there are simple allegations of fraud touching upon the internal affairs of the party and no implication in public domain, arbitration clause need not be avoided.

TAXATION: Assessment Proceedings Under the Income Tax Law



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The sunset of 30th September last year saw the curtain lift on Income Disclosure Scheme, 2016 (IDS), which provided one with the opportunity to disclose the unaccounted income and assets not disclosed to the income tax department. The tax department has to complete the assessment proceedings for 31st March, 2014 by 31st December, 2016 thereby assessing the income of various corporate and entities. Some key pointers to handle the proceedings as a routine guide are highlighted in this article to assist one in pre-emptively preparing for tax litigations.

Representations made before the Assessing Officer and first appellate authorities are foundation to the appeal. In order to make a good representation one should ensure one knows the facts, law and procedure.

Assessment is a process of determination of any liability under the provision of the tax laws (section 2(8)) of the Income Tax Act 1961 (the “**Income Tax Act**”). It is a well settled principle of law that assessment proceedings are quasi-judicial proceedings. The Assessing Officer must proceed in a judicial manner and come to a judicial conclusion upon properly ascertaining facts. Discretion should be judicious. It should not be an arbitrary exercise of power, and principles of natural justice are followed so that one has a right to be heard.

Following are few points one needs to keep in mind during the various proceedings before the Assessing Officer.

1. Notice for scrutiny:

Time limit: The starting point for making any assessment is the issue of notice for scrutiny under section 143(2) read with section 142(1) of the Income Tax Act. As per s.143(2)(ii), no notice under section 143(2) of the Income Tax Act can be *served* upon an assessee after the expiry of six months from the end of the financial year in which the return is furnished. **Whether mandatory:** The service of notice under section 143(2) of the Income Tax Act is a mandatory requirement in order to assume jurisdiction for making a valid assessment order.

Section 292BB of the Income Tax Act: Section 292BB is inserted with effect from 1st April 2008 stipulates that where the assessee appears in any proceedings or has co-operated in any inquiry, it would be deemed that the notice has been duly served upon him within the stipulated time limit and the assessee *shall* be precluded from taking any objection in any proceedings or inquiry in respect of service of notice. However, a proviso is also added to this section pursuant to which the said section may be held to be not applicable in a case where the assessee raises the objection of non-service of notice before the completion of assessment or reassessment.

Consequently, objection if any against the service of the notice, has to be made before the assessing officer in the assessment proceedings. It is advisable to raise this objection in writing and respective dates should be mentioned. It is not necessary that the objection

has to be raised at the first hearing but the objection must be made at any time before the completion of assessment or reassessment.

2. Adjournments

Adjournment should always be taken by writing a letter to the Assessing officer requesting time. It is advisable to avoid oral adjournments at proceedings or to request adjournments over the telephone.

Compliance of notices: Once a valid notice is issued and served on the assessee, one needs to prepare and submit a proper reply to all the notices and the same should be in writing and placed on record.

3. Requirements as per Proceeding Sheet:

Instead of issuing notices for the details that are required, in many cases, the requirements are written in the proceeding sheet itself and the professional/assessee appearing is asked to sign the same. In such cases, one should note down all the requirements written in the proceeding sheet *before* signing the same so that you do not miss out any of the points asked by the Assessing Officer in the course of assessment proceedings. This then serves as a checklist in your preparation of the case.

4. Submission to contain every aspect of the point in issue:

The submissions made in writing and filed with the Assessing Officer with respect to any of the point must be detailed and one may review the checklist prepared from the Proceeding Sheet (see 3 above) to ensure that all the points made therein have been covered.

5. No admission in the submission /proceeding sheet:

It is pertinent to note that whilst making written submissions to the tax authorities, one should proceed with caution so that one does not state anything which could be read as an admission of a mistake on one's part or that an admission for the addition or disallowance proposed to be made. Even if one thinks that there is no case in the point in issue, one must not state more than what is required to be addressed in the written submissions.

6. Notice containing reliance on third party evidences &/or statements:

While asking for the details from the assessee, it may so happen that the Assessing Officer may have relied upon various third party evidences and or statement of the third party and ask the assessee to furnish details and/or explanations in that regard. For example, an Assessing Officer may call for the Bank Statement & Sales Register of the party from whom assessee may have made purchases during the year, and at the proceeding the Assessing Officer may call for the same from assessee to cross tally. In such a situation, the first thing one must do is to review the notice to check whether this has been addressed therein; then one should reply by asking for the copies of the documents and/or statements relied upon therein, without making any further statements. Further statements and comments should be given only after looking at the documents and/or statements relied upon. Thus, whatever supporting documentary evidences that is

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in the possession of the assessee must be filed before the Assessing Officer to rebut the third party reliance so placed. When the Assessing Officer gives the assessee the copy of such documents and/or statements on which reliance is placed, the assessee must submit a proper written reply negating the third party evidences in a formal submission. In case the Assessing Officer does not supply the assessee with the evidences relied upon, the additions or disallowances would be held as bad in law (KishenchandChellaram v. CIT125 ITR 713 (SC)).

7. Ask for cross-examination:

In continuation to above, where the Assessing Officer relies upon the statement of the third party to make addition or disallowance, an assessee must exercise their right to ask for a copy of the statement recorded and then irrespective of whether or not the Assessing Officer supplies the copy of the statement recorded of that person, one must submit a written request seeking a cross-examination of that person. This gives one the opportunity to test the veracity of the statement and it may be the case that such third person may not turn up for cross-examination, or even if he does attend a cross-examination one has the chance to rebut the statement given by him on the basis of facts of case.

While filing his submissions, an assessee should try to file as much supporting evidence as possible.

8. Production of certain third party evidences/parties:

Where an assessee is relying on certain transactions as part of their reply to a notice, in the course of assessment proceedings, the Assessing Officer may require that the assessee produce the third party evidences in the form of confirmations and/or require that parties who carried out that transaction be made available for a cross-examination. In such cases, it is advisable to try and file the confirmation of the third party and also produce the party, if asked for. This is for the reason that the initial onus is cast upon the assessee to prove the transaction entered into.

9. When various submissions are filed:

While filing his submissions, an assessee should try to file as much supporting evidence as possible. All supporting evidences that are filed should be properly listed and each of the documents filed must be part of the submission so as to prove that such supporting documentary evidence was filed before the Assessing Officer. Similarly, where documents are produced and/or books of account are produced, reference to these must also be made in the submission in writing, with a list of the exhibits annexed thereto. All these should be placed on record so as to prove in future that whatever was asked for was filed and/or produced before the Assessing Officer.

10. Best Judgement:

Best judgment assessment is given statutory recognition in terms of provisions of section 144 of the Income Tax Act. However, the said provisions would only get triggered when a default of any one of four situations contemplated under section 144 of the Income Tax Act is committed:

A proper understanding of these processes will help clients to face tax litigations judiciously and build a strong case to defend themselves.

- (i) Failure to comply with all the terms of a notice issued under section 142(1) of the Income Tax Act is a default separate from, and independent of, the default in compliance with all the terms of a notice under section 143(2). Even if the assessee has complied completely and in every respect with a notice under section 143(2) by producing all the evidence he relies on in support of his return, if he has failed to produce the evidence specifically called for in a section 142(1) notice, then the latter default entails a section 144 assessment to the best of the Assessing Officer's judgment.
- (ii) The last clause in section 144(1) of the Income Tax Act stipulates for best judgment assessment for failure to comply with all the terms of notice issued under section 143(2) of the Income Tax Act.
- (iii) At the same time, in order to commit the default under section 143(2) of the Income Tax Act, it is necessary that there must be a failure on the part of the assessee to produce books or documents or evidence on which the assessee relies in support of the return.
- (iv) When income is estimated by applying net profit rate, there remains no scope for further disallowance of any expenditure ((2008) 301 ITR (AT) 171 (Kolkata) (SB)).

11. Maintain Proceeding Sheet:

To better manage the case, it is pertinent to note that one should maintain a proceeding sheet for each hearing in the same way as the Assessing Officer maintain in their file.

Conclusion

A famous legal maxim says “*Ignorantia juris non excusat*”, which means ‘ignorance of the law is no excuse’. We cannot defend our actions by pleading that we lacked knowledge and were not aware of the law. Therefore, it becomes imperative that we possess a clear understanding of the system and procedures in place within the Income Tax regime so as to be better able to manage and defend ourselves. A proper understanding of these processes will help clients to face tax litigations judiciously and build a strong case to defend themselves and to address issues of additions made to returned income disclosed in further appellate proceedings.

AVIATION: Time to Fly High – Developments in the Civil Aviation Sector in India



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The much awaited National Civil Aviation Policy (“**NCAP 2016**”) that was expected to be finalized by the end of 2015 finally saw the light of the day on the 15th of June 2016 paving the way forward for the Indian aviation industry. It is the first time since independence that a comprehensive policy on civil aviation has been formulated and passed.

Being the very first of its kind, the NCAP 2016 is being seen as a total game changer that will help in transforming the entire civil aviation industry canvas for good.

The Ministry of Civil Aviation (“**MoCA**”) consulted and invited views on the draft civil aviation policy (released in October 2015) from industry stakeholders in order to recognize the impediments. This consultative approach has been immensely welcomed and has made the NCAP a big success by bringing cheer to the industry stakeholders and the travelling public alike.

As per the statement issued by the Minister for Civil Aviation, Mr. Ashok Gajapathi Raju, the NCAP 2016 has taken its final form as the first integrated policy on civil aviation in India only after receiving nearly 450 responses and having talks with all stakeholders namely- airlines, airport operators, industry experts and informal consultation between ministers.

At a time when India is poised to ascend from being the 10th largest aviation market, in terms of domestic and international passenger traffic, to being the 3rd largest in the world by 2020, the NCAP is being seen by the industry experts as a landmark change in the civil aviation of India.

The National Civil Aviation Policy

NCAP 2016 is very comprehensive and covers almost twenty two policy areas. The main features of the policy are listed below:

- | | |
|---|---|
| a) Regional connectivity | k) Ground Handling |
| b) Air Transport Operations | l) Air-Cargo |
| c) Route Dispersal guidelines | m) Aviation Education and Skill Development |
| d) 5/20 Rule for international Operations | |
| e) Bilateral traffic rights | |
| f) Code-share Agreements | |
| g) Fiscal Support | |
| h) Airports developed by State Government, Private Sector or in Public Private Partnership mode | |
| i) Airport authority of India | |
| j) Maintenance, Repair and Overhaul | |

Regional Connectivity

Of the total 450 airstrips/airports in India, only 75 airports have scheduled operations. The government of India wants to develop regional airports with a view to enhance regional connectivity to tier II and tier III cities. The Regional Connectivity Scheme (“RCS”) or “UDAN” (Ude Desh Ka Aam Nagrik) as it came to be popularly known, will put smaller cities like Pathankot, Agra, Pantnagar, Kanpur, Bikaner and the likes, on the aviation network of India. RCS not only intends to provide connectivity between tier II and tier III cities but also link these cities to the major cities including metros.

To achieve this, the unused, unserved or underserved airports/airstrips will be developed and used. These airports would be No-frill or low-cost airports that would be developed or revived purely on the basis of demand from airline operators at an indicative cost of Rs. 50 – Rs. 100 crore without any focus on their financial viability. The views and the willingness of the concerned state government would be taken into account before revival of any airport or airstrip is undertaken. The Airports Authority of India (AAI) or state governments may consider the option of developing these low-cost airports through Public Private Participation (PPP) as well.

As per the NCAP, the RCS will be offered only to the states that will be:

- willing to reduce value added tax (VAT) charged on Aviation Turbine Fuel (ATF) at these airports to 1% or less for a period of 10 years
- providing land free of cost and free of any encumbrances to develop the airport
- developing multi-modal hinterland connectivity to the airport through roads, rail, metro, waterways, etc. as and when applicable and required.
- providing police and fire services free of cost.
- supplying power, water and other utilities at substantially concessional rates.

The strategy on ATF is an appreciable move, because in India ATF is the costliest than anywhere else in the world on account of the high taxes and duties levied by the central and state governments. The ATF costs account for almost 50% of the operational cost of any airline in India. A concession on ATF at regional airports would mean that the airline can pass on the benefit to the passengers by keeping airfares low on account of reduced operational costs.

Under the RCS, the low-cost regional airports or RCS airports will also be offering the following concessions to the airlines flying to/from them for a period of 10 years from the commencement of the flight operations:

- Airlines will not pay any airport charges for their operations under the RCS. The landing or parking charges and Terminal Navigation Landing Charges (TNLC) will be completely waived off.
- Route Navigation and Facilitation Charges (RNFC) will be levied on a nominal basis.

India is poised to ascend from being the 10th largest aviation market in the world in terms of domestic and international passenger traffic, to being the 3rd largest in the world by 2020.

In addition to the above mentioned measures the following measures would further ensure efficiency and reduce costs:

To ensure the success of this scheme, airlines are encouraged to provide services at an indicative airfare of Rs. 2,500 per passenger for short haul flights (500 kms to 600 kms) of a duration of one hour or less.

- Airlines will be allowed Self ground handling at RCS airports.
- Service tax on tickets will be levied only on 10% of the taxable ticket value for passengers departing from or arriving at a RCS airport for the first year of operations.
- Excise duty charged on ATF would be reduced to a mere 2% for an airline operator drawing ATF from an RCS airport. This will be for an initial period of 3 years. While elsewhere in the country the excise duty on ATF is a whopping 14% (with an exception of Excise duty being 8% for scheduled commuter airlines already providing regional connectivity). This will significantly bring down the cost of operation for the airlines serving the RCS airports.

The above-mentioned airport charges like landing charges, parking charges, TNLC, RNFC contribute to the operational expenses for an airline. If these are also waived off or charged at subsidized rates, this move would further bring down the cost of operations for the airlines serving these RCS airports and will make it possible for the airlines to offer lower airfares.

To ensure the success of this scheme and make it attractive for flyers, airlines are encouraged to provide services at an indicative airfare of Rs. 2,500 per passenger for short haul flights (500 kms to 600 kms) of a duration of one hour or less. Given the above-mentioned concessions to the airlines, it is being perceived that it would not be as difficult to offer an airfare proposition like this. However, if the airlines find that even after the adoption of the above-mentioned measures, the airfare of ₹Rs. 2,500 on such routes is unviable, then they would be supported by a Viability Gap Funding (“VGF”) by the state government and MoCA.

Giving wings to the NCAP, the government has recently consented to 27 proposals received from 5 airlines that will connect 43 airports on as many as 128 routes countrywide. The airlines selected include - Low-cost carrier - SpiceJet, regional airline - TruJet, Air India’s subsidiary - Alliance Air and private charter firms- Deccan Charter and Air Odisha.

It is anticipated that RCS will bring the multiplier effects associated with airports (and aviation at large) to the economies of such tier II and tier III cities resulting in benefits like - creation of job opportunities, providing a boost to tourism, supporting local small businesses and industries by attracting more investments, etc. The government is very optimistic that RCS will benefit the economy of the entire country and will take us a step closer to becoming one of the fastest growing aviation markets of the world.

Conclusion

NCAP 2016 has endeavoured to lay down a framework for providing safe, secure, affordable and sustainable air travel for passengers to different parts of India as well as given a sound set of policies to tap the great potential of air cargo industry and MRO services industry.

The policy does away with many old and obsolete rules that were hampering the growth of the aviation sector in India and was making survival of airlines, airports, MROs, and other sub-sectors difficult.

Now, how far the policy succeeds in achieving its set objectives remains to be seen. The efficiency in the implementation of NCAP needs to stand the test of time.

Judgments Corner

Energy Watchdog versus Central Electricity Regulatory Commission and Ors. Etc.

The Supreme Court of India set aside the Judgment of the Appellate Tribunal for Electricity, New Delhi which granted compensatory Tariff under Electricity Act to Adani & Tata Power Company. Refusing to agree to the arguments advanced by Adani & Tata Power Company that there was a force majeure (Change in Indonesian law with regard to pricing of coal), the Supreme Court has given a fillip to the principle of sanctity of contracts. Ultimately the matter has been remanded to Central Electricity Regulatory Commission to go into the matter afresh considering the observation of Supreme Court. More on this in our next issue.

Ashok Kumar Vs. Authorised Officer, Punjab National Bank

A single Judge of the Punjab and Haryana High Court had held that non-compliance of statutory requirements of publication of Possession Notice and Auction Notice in vernacular language rendered statutory requirements under the SARFAESI Act as farce. The High Court has held that there should be purposeful compliance of provisions of law and it cannot be reduced to an empty formality.

Gangotri Enterprises Vs. Union of India

The Supreme Court upheld the order passed by the High Court under Section 9 of the Arbitration Act granting injunction restraining the Respondents from encashing the Bank Guarantee. The Respondents sought to enforce the Bank Guarantee in respect of payments which are not actually due but was on a claim for damages which has not been ascertained/determined relying on the earlier judgment of the Supreme Court in identical situation in the case of Union of India Vs. Raman Iron Foundry (1974) 2 SCC 231.

ICICI Bank Ltd versus Palogix Infrastructure Pvt. Ltd. & Ors

Whether a Power of Attorney executed by a Principal in favour of its Branch Manager before passing of the Insolvency and Bankruptcy Code can be utilized for initiating Insolvency Resolution Process against a Corporate Debtor under the Insolvency and Bankruptcy code came up for consideration before the NCLT, Kolkata. It is the contention of the Corporate Debtor that the application is not maintainable in as much as the Insolvency and Bankruptcy code was not in existence at the time when the Power of Attorney was executed and therefore the Principal would not have granted the power to take such an action. The judicial and administrative member deferred and ultimately the matter was referred to another judicial member of the Guwahati Bench. NCLT, Guwahati after analyzing various judgments under the Power of Attorney upheld the objection of the Corporate Debtor and rejecting the application filed by the banker for initiating Insolvency resolution process on the basis of the Power of Attorney executed prior to the passing of the Insolvency and Bankruptcy code.

LEGISLATIVE BRIEF

The Motor Vehicles (Amendment) Bill, 2016

Highlights of the Bill

- The Bill amends the Motor Vehicles Act, 1988 to address issues such as third party insurance, regulation of taxi aggregators, and road safety.
- Under the Act, the liability of the third party insurer for motor vehicle accidents is unlimited.
- The Bill caps the maximum liability for third party insurance in case of a motor accident at Rs 10 lakh in case of death and at five lakh rupees in case of grievous injury.
- The Bill provides for a Motor Vehicle Accident Fund which would provide compulsory insurance cover to all road users in India for certain types of accidents.
- The Bill also provides for: (i) amending the existing categories of driver licensing, (ii) recall of vehicles in case of defects, (iii) protection of good Samaritans from any civil or criminal action and (iv) increase of penalties for several offences under the 1988 Act.
- Even though the Bill caps the maximum liability for third party insurance, it does not cap the compensation amount that courts can award. In cases where courts award compensation higher than the maximum liability amount, it is unclear who will pay the remaining amount.
- Under the Act, compensation for hit and run victims comes from a Solatium Fund.
- The Bill creates a new Motor Vehicle Accident Fund in addition. With a Fund already existing to provide compensation for hit and run accidents, the purpose of the new Accident Fund is unclear.
- State governments will issue licenses to taxi aggregators as per central government guidelines. Currently, state governments determine guidelines for plying of taxis.
- While the penalties for contravening provisions of the proposed scheme on interim relief to accident victims are specified in the Bill, the offences that would warrant such penalties have not been specified.

The Maternity Benefit (Amendment) Bill, 2016

Highlights of the Bill

- The Act provides maternity leave up to 12 weeks for all women. The Bill extends this period to 26 weeks. However, a woman with two or more children will be entitled to 12 weeks of maternity leave.

- The Bill introduces maternity leave up to 12 weeks for a woman who adopts a child below the age of three months, and for commissioning mothers.
- The period of maternity leave will be calculated from the date the child is handed over to the adoptive or commissioning mother.
- The Bill requires every establishment with 50 or more employees to provide for crèche facilities within a prescribed distance. The woman will be allowed four visits to the crèche in a day.
- An employer may permit a woman to work from home, if the nature of work assigned permits her to do so. This may be mutually agreed upon by the employer and the woman.
- The Bill requires an establishment to inform a woman of all benefits that would be available under the Bill, at the time of her appointment. Such information must be given in writing and electronically.

The Central Goods and Services Tax Bill, 2017

- The Central Goods and Services Tax Bill, 2017 was introduced in Lok Sabha on March 27, 2017. The Bill provides for the levy of the Central Goods and Services Tax (CGST).
- Levy of CGST: The centre will levy CGST on the supply of goods and services within the boundary of a state. Supply include sale, transfer and lease made for a consideration to further a business.
- Tax rates: The tax rates of CGST will be recommended by the GST Council. This rate will not exceed 20%. In addition, the Bill allows certain taxpayers whose turnover is less than Rs 50 lakh to pay GST at a flat rate on turnover (known as composition levy), instead on the value of supply of goods and services. This rate will be capped at 2.5%.
- Exemptions from CGST: The centre may exempt certain goods and services from the purview of GST through a notification. This will be based on the recommendations of the GST Council.
- Liability to pay CGST: The liability to pay CGST in relation to supply of goods and services will arise on the date of: (i) issue of invoice, (ii) receipt of payment, whichever is the earliest.
- Taxable amount (value of supply): CGST will be levied on the supply of goods and services, whose value includes: (i) price paid on the supply; (ii) taxes and duties levied under a different tax law; (iii) interest, late fee, penalties for delayed payments, among others.
- Input tax credit: Every taxpayer while paying taxes on outputs, may take credit equivalent to taxes paid on inputs. However, this will not be applicable on supplies related to: (i) personal consumption, (ii) supply of food, outdoor catering, health services, etc.

- Registration: Every person who makes supply of goods and services and whose turnover exceeds Rs 20 lakh will have to register in every state where he conducts business. The turnover threshold is Rs 10 lakh for special category states.
- Returns: Every taxpayer would have to self-assess and file tax returns on a monthly basis by submitting: (i) details of supplies provided, (ii) details of supplies received, and (iii) payment of tax. In addition to the monthly returns, an annual return will have to be filed by each taxpayer.
- Refunds and welfare fund: Any taxpayer may apply for refund of taxes in cases including: (i) payment of taxes in excess, or (ii) unutilized input tax credit. Upon such application, the refund may be credited to the taxpayer, or to a Consumer Welfare Fund. The Fund will be used for the purpose of consumer welfare.
- Prosecution and appeals: For offences such as mis-reporting of: (i) goods and services supplied, or (ii) details furnished in invoices, a person may be fined, imprisoned, or both by the CGST Commissioner. Such orders can be appealed before the Goods and Services Tax Appellate Tribunal, and further before the High Court.
- Transition to the new regime: Taxpayers with unutilised input tax credit obtained under the current laws such as CENVAT may utilise it under GST. In addition, businesses may also avail input tax credit on stock purchased before the start of implementation of GST.
- Anti-profiteering measure: The central government may by law set up an authority or designate an existing authority to examine if reduction in tax rate has resulted in commensurate reduction in prices of goods and services. The powers of the authority will be prescribed by the government.
- Compliance rating: Every taxpayer shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Bill. The compliance rating score will be updated at periodic intervals and be placed in the public domain.

Orbit Law Services – The Firm’s News

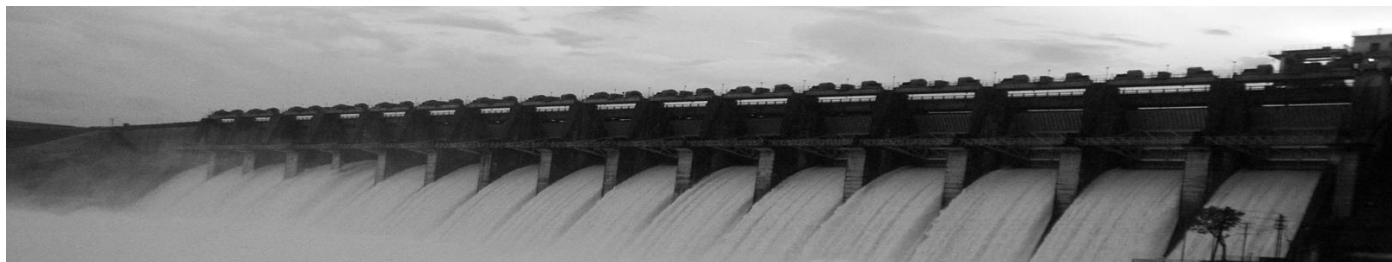


An informative Session on ***“Rights of Secured Creditor under Insolvency and Bankruptcy Code 2016”*** was conducted by Orbit Law Services - Chennai, on its successful completion of first year on 20.04.2017 at Hotel Crown Plaza. Mr. Arvind Pandian, Former Additional Advocate General shared his thoughts with the participants from various banks.



To celebrate the second anniversary of Orbit Law Services, Orbit team members from all the four Office locations met for an annual retreat organised at Rio Resort in Goa over the weekend of 30 September to 3 October 2016.





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