ETERNITY:LAW APPRISE

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SECURITIES AND EXCHANGE BOARD OF INDIA

In exercise of powers conferred by Section 11(1) of the Securities and Exchange Board Act, 1992 the Securities Board of India ("**SEBI**") vide Circular dated April 29, 2022 ("**Circular**") modified the operational guidelines for Foreign Portfolio Investors ("**FPI"**), designated depository participants and eligible foreign investors. The provisions of the Circular shall come into effect from May 09, 2022.

SEBI on January 14, 2022 issued the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022 for generation of foreign portfolio investor registration number. Subsequently he Department of Economic Affairs, Ministry of Finance, Government of India, vide Notification dated March 29, 2022, amended the Common Application Form ("**CAF**"), wherein both the depositories, i.e. National Securities Depositories Limited and Central Securities Depository Limited were allowed to host the CAF for FPI registration.

Therefore, in order to operationalize the same SEBI decided to modify the operational guidelines for Foreign Portfolio Investors ("**FPI**"), Designated Depository Participants ("**DDP**") and eligible foreign investors which were issued vide its Circular dated November 05, 2019 ("**Operational Guidelines**"). The modifications made to the Operational Guidelines are as follows:

1. The paragraph 6 of Part A of the Operational Guidelines pertaining to the Certificate of Registrations shall now be read as, "*The designated depository participant shall grant the certificate of registration, bearing registration number generated by SEBI.*"

2. In paragraph 10 (iii) of Part A of the Operational Guidelines pertaining to name change shall be read as, "*Upon receipt of the request for name change along with above mentioned documents, the DDP shall effect the change in name in the certificate. The DDP shall issue a letter and fresh registration certificate to such applicant acknowledging the change in name. Respective Depositories shall make necessary arrangements for DDPs to provide fresh registration certificate as an acknowledgement from its database including a statement that the name change has been granted without prejudice to any tax liability/ implication in India*."

SECURITIES AND EXCHANGE BOARD OF INDIA

In exercise of powers conferred by Section 11(1) of the Securities and Exchange Board Act, 1992 read with provision of Regulations 20 of SEBI (Credit Rating Agencies) Regulations, 1999 the Securities and Exchange Board of India ("**SEBI**") issued a Circular dated April 01, 2022 ("**Circular**"), wherein it has extended the timeline for implementation of using standard rating scales by credit rating agencies in order to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

SEBI vide its Circular dated July 16, 2021 ("**July Circular**") had directed the credit rating agencies to either align their rating scales with the rating scales prescribed under the guidelines of respective financial sector regulator or authority in terms of Regulation 9(f) of SEBI (Credit Rating Agencies) Regulations, 1999, or follow rating scales prescribed by the SEBI vide its circulars dated June 15, 2011, June 13, 2019, or any other circular issued by the Board from time to time, by March 31, 2022.

Subsequently on receiving various from the credit rating agencies for extension of the date of application of July Circular, SEBI vide its Circular has extended the same. SEBI has therefore directed the credit rating agencies to comply with the July Circular on or before June 30, 2022.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

In exercise of powers conferred by Section 196(1)(t) read with Section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 3016) ("**IBC, 2016**"), the Insolvency and Bankruptcy Board of India ("**IBBI**") vide Notification dated April 05, 2022, ("**Notification**") further amended the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 ("**IBBI VLP Regulations, 2017**"). The IBBI VLP Regulations, 2017 shall now be called as the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022 ("**IBBI VLP Amendment Regulations, 2022**") and shall come into force with effect from its publication in the Official Gazette.

Following amendments have been made to IBBI VLP Regulations 2017:

1. Regulation 5(2) shall now read as, "*The insolvency professional shall, within seven days of his appointment as liquidator, intimate the Board about such appointment.*"

2. Regulation 10(2)(r) shall now read as, "*such other books or registers as may be necessary to account for transactions entered into by him in relation to the corporate person.*"

3. A proviso has been inserted after Regulation 30 (2) which reads as, "*Provided that where no claim from creditors has been received till the last date for receipt of claims, the liquidator shall prepare the list of stakeholders within fifteen days from the last date for receipt of claims.*"

4. In Regulation 35(1) the words "six months" have been substituted by the words "thirty days" and shall now be read as, "*The liquidator shall distribute the proceeds from realization within thirty days from the receipt of the amount to the stakeholders.*"

5. Regulation 37(1) has been substituted by the following regulation:

"(1) *The liquidator shall endeavor to complete the liquidation process of the corporate person and submit the Final Report under regulation 38 within: -*

(a) two hundred and seventy days from the liquidation commencement date where the creditors have approved the resolution under clause (c) of sub-section (3) of section 59 or clause (c) of sub-regulation (1) of regulation 3, and

(b) ninety days from the liquidation commencement date in all other cases."

6. Regulation 38 (3) shall now be read as, "(3) *The liquidator shall submit the Final Report and the compliance certificate in Form-H along with the application under sub-section (7) of section 59 to the Adjudicating Authority."*

7. Earlier as per Regulation 39(7) a stakeholder, who wanted to claims to any amount deposited into the corporate voluntary liquidation account, was supposed to make an application under Form-H for an order for withdrawal of the amount. However, as per the amendment the said application has to be made in Form-I.

MINISTRY OF POWER

In exercise of power conferred upon by Section 176 (2)(1)(z) of the Electricity Act, 2003 (36 of 2003), the Central Government vide Notification dated April 20, 2022, ("**Notification**") further amended the Electricity (Rights of Consumers) Rules, 2020 ("**Principal Rules**"). The Principal Rules shall now be called as the Electricity (Rights of Consumers) Amendment Rules, 2022 ("**Rules 2022**") and shall come into force with effect from the date of its publication in the Official Gazette.

The amendments made to Principal Regulations are as follows:

1. In Rule 2(1) following amendments have been made:

a. Sub- clause (fa) and (fb) have been inserted after Clause (f) which read as follows,

"(fa) *customer average interruption duration index means the average interruption duration of the sustained interruptions for those who experienced interruptions during the reporting period, as specified by the State Commission.*

(fb) *customer average interruption frequency index means the average interruption frequency of the sustained interruptions for those who experienced interruptions during the reporting period, as specified by the State Commission*"

b. Sub-clause (ja) has been inserted after Clause (j) which reads as follows,

"(ja) *momentary average frequency interruption frequency index means the average number of momentary interruptions per consumer occurring during the reporting period, as specified by the State Commission"*

c. Sub –clause (ma) and (mb) have been inserted after Clause (m) which shall read as follows,

"(ma) *system average interruption duration index means the average duration of the sustained interruptions per Consumer occurring during the reporting period, as specified by the State Commission*

(mb) *system average interruption frequency index means the average frequency of the sustained interruptions per Consumer occurring during the reporting period, as specified by the State Commission"*

2. After Rule 10 (2) which speaks about reliability of power supply to be supplied by the distribution licensee the following sub-clauses have been inserted:

"(3) *In view of the increasing pollution level particularly in the metros and the cities with a population 100,000 and above, the distribution licensee shall ensure 24x7 uninterrupted power supply to all the consumers, so that there is no requirement of running the diesel generator sets and accordingly, the State Commission shall give trajectory of system average interruption frequency index and system average interruption duration index for such cities.*

(4) *The State Commission may consider the customer average interruption duration index, customer average interruption frequency index and momentary average interruption frequency index as additional indicators of reliability of supply and the minimum interruption time for calculation of additional reliability indicators shall be as specified by the State Commission and in case the interruption time is not specified by the State Commission, three minutes shall be considered as interruption time for calculating the additional reliability indicators.*

(5) *The State Commission shall have an online mechanism for reviewing and monitoring of reliability indices of distribution licensees and such Commission may consider a separate reliability charge for the distribution company, if they require funds for investment in the infrastructure for ensuring the reliability of supply to the consumers.*

(6) *The consumers, who are using the diesel generator sets as essential back up power, shall endeavor to shift to cleaner technology such as renewable energy with battery storage and the like in five years from the date of commencement of these rules or as per the timelines given by the State Commission for such replacement based on the reliability of supply in that city covered under area of supply of the distribution licensee.*

(7) *The process of giving temporary connections to the consumers for construction activities or any temporary usage and the like shall be simplified by the distribution licensee and given on an urgent basis and not later than forty-eight hours and within seven days in case augmentation of the distribution system is required and this shall avoid any use of diesel generator sets for temporary activities in the area of the distribution licensee.*

(8) *The temporary connection shall be through a prepayment meter or through consumer meters as defined in the Central Electricity Authority (Installation and Operation of Meters) Regulations as amended from time to time".*

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

In exercise of the powers conferred by Section 196(1)(t) read with Section 240 of the Insolvency and Bankruptcy Code, 2016 the Insolvency and Bankruptcy Board of India ("**IBBI**") further amended the Insolvency Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**IBBI Regulations 2016**"). IBBI Regulations 2016 shall now be called as Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2022 ("**IBBI Regulations 2022**"). They shall come into force on the date of their publication in the Official Gazette.

Following amendments have been made to the IBBI Regulations 2016:

After Regulation 2A which speaks about contribution to liquidation costs, an explanation has been inserted which states that the requirements mentioned in Regulation 2A shall apply only to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019;

After Regulation 21A which speaks about presumption of security interest, an explanation has been inserted which states that the requirements mentioned in Regulation 21A shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019;

After Regulation 31A which speaks about stakeholder's consultation committee, an explanation has been inserted which states that the requirements mentioned Regulation 31A shall apply to the liquidation processes commencing on or after the date of the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019;

After Regulation 44 which speaks about completion of the liquidation process, an explanation has been inserted which states that in relation to the liquidation processes commenced prior to the commencement of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019, the requirements of this regulation as existing before such commencement, shall apply.

CASE SUMMARY

Case Name :	Oil and Natural Gas Corporation Limited Vs. Discovery Enterprises Private Limited & Anr. In Civil Appeal No. 2042 of 2022
Court Name :	Hon'ble Supreme Court of India
Order Dated :	April 27, 2022

Facts of the Case:

1. In the present case, Oil and Natural Gas Corporation Limited ("**Appellant**"/ "**ONGC**") approached the Hon'ble Supreme Court of India to challenge the appeal which was dismissed by the Hon'ble Bombay High Court ("**Bombay HC**") filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("**A&C Act**").

2. Discovery Enterprises Private Limited ("**Respondent No. 1**"/ "**DEPL**") is a company belonging to Jindal Drilling Industries Limited ("**Respondent No. 2**"/ "**JDIL**"). On March 22, 2006, ONGC awarded a contract to DEPL for operating a floating, production and offloading vessel ("**Contract"**). ONGC paid the custom duty of Rs. 55,78,00,000/- (Rupees Fifty- Five Crores Seventy-Eight Lakhs Only) on the understanding that the vessel would be re-exported after work was completed under duty drawback formalities for which would be completed by DEPL.

3. However, the vessel left Indian territorial waters and did not return. DEPL also failed to complete the formalities for duty drawback and did not compensate ONGC for customs duty and other expenses incurred amounting to Rs. 63,88,00,000/- (Rupees Sixty-Three Crores and Eighty-Eight Lakhs Only). Thereafter, on April 25, 2008 ONGC invoked arbitration against the Respondent No. 1 and Respondent No.2 as per Clause 37 of the Contract and claimed the aforesaid amount. In the Interim award dated October 27, 2010, the Arbitral Tribunal held that JDIL was not a party to the Contract. This interim award was challenged by ONGC and the appeal filed before Hon'ble Bombay HC was dismissed on June 27, 2012. Aggrieved by dismissal of Appeal, ONGC then approached the Hon'ble Supreme Court of India.

4. The Appellant submitted that DPEL and JDIL are one single entity and thus, JDIL has to participate in the arbitration proceedings. Further, it was contended that the doctrine of "Group of Companies" would be applied in the present case.

5. The Respondents contended that JDIL cannot be held responsible for the acts or omissions of DEPL and the doctrine of "Group of Companies" cannot be invoked in the present case.

Decision of Hon'ble Supreme Court of India:

1. The three (3) judges bench of the Hon'ble Supreme Court of India stated that "A non-signatory may be bound by the arbitration agreement" and laid down two (2) conditions as follows:
   (i) There must exists a group of companies; and
   (ii) Parties have engaged in conduct or made statements indicating an intention to bind a non-signatory.

2. Discussing the doctrine of "group of companies" the bench stated that 'group of companies" doctrine' is relatively new in India, and the A&C Act does not expressly recognize this doctrine. However, the jurisprudential sanctity for the recognition and applicability of this doctrine was largely established by the Hon'ble Supreme Court of India in the year 2012 in its judgment of *Chloro Controls v. Severn Trent Water Purification Inc. & Ors* ("**Chloro Control Judgement**"). In the said judgement, the Hon'ble Supreme Court of India while recognizing the fact that the 'group of companies' doctrine has in the past few years been widely adopted in jurisdictions such as England, US and France, noted that, "*definite reference to the language of the contract and intention of the parties" must be ascertained with great caution. Furthermore, the Hon'ble Court also stressed that, "intention of the parties is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties".*

3. *The* doctrine was again explored by the Hon'ble Supreme Court of India in the case of Mahanagar Telephone Nigam Ltd. V. Canara Bank, wherein it built and extended the Chloro Controls judgement by stating that, "*there is a tight group structure with strong organizational and financial links, so as to constitute a single economic unit, or a single economic reality*". That the Hon'ble Supreme Court of India had considered and accepted the contention that fund flow between group companies would constitute as an adequate circumstance for applying the doctrine.

4. *Observing* that the principle for binding non-signatories by application of the group of companies doctrine was invoked in *Chloro Controls India Pvt. Ltd.* v. *Severn Trent Water Purification Inc* and *MTNL* v. *Canara Bank*, the Hon'ble Court summarized the following factors for determination of the

application:

(i) mutual intent of the parties;

(ii) relationship of a non-signatory to a party which is a signatory to the agreement;

(iii) commonality of the subject matter;

(iv) composite nature of the transaction; and

(v) performance of the contract.

5. *Allowing* the appeal against the decision of the Hon'ble Bombay HC, the bench approved the contention of the Appellant that the interim award was rendered purely on the premise that a non-signatory to the arbitration agreement cannot be impleaded as a party. The Hon'ble Supreme Court of India vitiated the interim award and said that the failure of the Arbitral Tribunal to allow for discovery and inspection went to the root of the process in as much as it disabled the Appellant from pursuing its fundamental claim based on the application of the doctrine of "group of companies". Thus, the judgement of the Hon'ble Bombay HC was set aside and the plea was allowed.

[1](2013) 1 SCC 641
[2]2014 SCC Online SC 1762

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Warm Regards,

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