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RESERVE BANK OF INDIA

Reserve Bank of India (“RBI”) has vide its Circular dated February 26,2019 had provided for amendments relating to Foreign Exchange Management (Export and import of Currency) (Amendment) Regulations, 2019 which are as follows :-

Amendment to Regulations 8

(i) The existing sub-Regulations (1) of Regulations 8 shall be substituted with the following namely:

- (1) take or send out of India to Nepal or Bhutan, currency notes of Government of India and Reserve Bank of India notes (other than notes of denominations of above Rs.100 in either case), provided that an individual travelling from India to Nepal or Bhutan can carry Reserve Bank of India notes of Mahatma Gandhi (new) Series of denominations Rs. 200/- and/or Rs. 500/- up to a total limit of Rs. 25,000.

Reserve Bank of India (“RBI”) has vide its Circular dated February 27th, 2019 had provided for amendments relating to Foreign Exchange Management (Foreign Currency Accounts by a person resident in India) (Amendment) Regulations, 2019 which are as follows :-

1. Amendment to Regulations 4

In Regulation 4, the existing sub-regulation (G)(2), shall be substituted as follows:

“(2) An authorized dealer in India may, subject to the directions as may be issued by the Reserve Bank, allow ship-manning/ crew managing agencies in India and re-insurance and composite insurance brokers registered with IRDA to open and maintain non-interest bearing foreign currency accounts in India for the purpose of undertaking transactions in the ordinary course of their business.”

INVESTMENT BY FOREIGN PORTFOLIO INVESTORS (FPI) IN DEBT

Authorized Dealer Category-I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2017, as amended from time to time and the relevant directions issued thereunder.

1. In terms of paragraph 4(f) (ii) of the AP (DIR Series) Circular No. 31 dated June 15, 2018 no FPI shall have an exposure of more than 20% of its corporate bond portfolio to a single corporate (including exposure to entities related to the corporate. In order to encourage a wider spectrum of investors to access the Indian corporate debt market, it has been decided to withdraw this provision with immediate effect.
2. The directions contained in this circular have been issued under sections 10 (4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and are without prejudice to permissions/ approvals, if any, required under any other law.

MINISTRY OF CORPORATE AFFAIRS

1. The Companies (Amendment) Second Ordinance, 2019 was promulgated on February 21st, 2019.

2. In section 2 of the Companies Act, 2013 in clause (41), --

For the first proviso, the following provisos shall be substituted namely:

“Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is year.

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Second Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”

(b) In the second proviso , for the words “Provided further that”, the words “Provided also that” shall be substituted.

3. After section 10 of the principal Act, the following section shall be inserted namely:-

“10A. (1) A company incorporated after the commencement of the Companies (Amendment) Second Ordinance,2019 and having a share capital shall not commence any business or exercise any borrowing powers unless---

- (a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- (b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

- (2) If any default is made in complying with the requirements of this section the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.
- (3) Where no declaration has been filed with the Registrar under clause(a) of sub-section(1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations , he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of companies under Chapter XVIII.

4.In section 12 of the principal Act, after sub-section (8), the following sub-section shall be inserted, namely :----

“(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verifications of the registered company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of company from the

from the register of companies under XVIII.”

5. In section 14 of the principal Act,---

In sub-section (1), for the second proviso, the following provisos shall be substituted, namely :---

“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Second Ordinance ,2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”

(ii) In sub-section (2), for the word “Tribunal”, the words “Central Government” shall be substituted.

6. In section 53 of the principal Act, for sub-section (3), the following sub-section (3), the following sub-section shall be substituted, namely:---

“(3) Where any company fails to comply with the provisions of this section , such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issues of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent, per annum from the date of issue of such shares to the persons to whom such shares have been issued.”

7. In section 64 of the principal Act, for sub-section (2), the following sub-section shall be substituted namely :---

“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.”

8. In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos shall be substituted, namely:---

“Provided that the Registrar may, on an application by the company, allow such registration to be made---

- (a) In case of charges created before the commencement of the Companies (Amendment) Second Ordinance, 2019 within a period of three hundred days of such creation ; or
- (b) In case of charges created on or after the commencement of the Companies (Amendment) Second Ordinance 2019, within a period of sixty days of such creation,

On payment of such additional fees as may be prescribed:

In clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Second Ordinance 2019, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) In clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such advalorem fees as may be prescribed.”

9. Section 86 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered the following sub-section shall be

inserted, namely:----

“(2) If any person willfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.”

10. For section 87 of the principal Act, the following section shall be substituted, namely :----

“87. The Central Government on being satisfied that----

- (a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under the Chapter; or
- (b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83, was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require that the omission or misstatement shall be rectified.”

11. In section 90 of the principal Act,----

For sub-section (9), the following sub-section shall be substituted namely:-----

“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if so such application has been filed within a period of one year from the date of the order under sub-section (8) , such shares shall be transferred, without any restriction to the authority constituted under sub-section(5) of section 125, in such manner as may be prescribed;

12. In section 92 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely: ---

“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”

13. In section 102 of the principal Act, for sub-section (5), the following sub-section shall be substituted namely: --

“(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key

managerial personnel or any of his relatives, whichever is higher.”

14. In section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees,” the words “liable to a penalty of five thousand rupees” shall be substituted.

15. In section 117 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely: ---

“(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”

16. In section 121 of the principal Act, for sub-section (3), the following sub-section shall be substituted namely: --

“(3) If the company fails to file the report under sub-section(2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of

continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”

17. In section 137 of the principal Act, in sub-section (3),----

For the words “punishable with fine” , the words “liable to a penalty” shall be substituted;

For the portion beginning with “punishable with imprisonment” , and ending with “five lakh rupees or with both” , the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure , with a further penalty of one hundred rupees , with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” shall be substituted .

18. In section 140 of the principal Act, for sub-section(3), the following sub-section shall be substituted namely: ---

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failures continues, subject to a maximum of five lakh rupees.”

19. In section 157 of the principal Act, for sub-section (2), the following sub-section shall be substituted namely:---

“(2) If any company fails to furnish the Director Identification Number under sub-section(1), such company shall be liable to a penalty of

twenty-five thousand rupees and in case of continuing failure , with a further penalty of one hundred rupees for each day after the first during such failure continues, subject to a maximum of one lakh rupees , and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”

20. For section 159 of the principal Act, the following section shall be substituted namely:--

“159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”

21. In section 164 of the principal Act , in sub-section (1), after clause (h), the following clause shall be inserted, namely:---

“(i) he has not complied with the provisions of sub-section(1) of section 165.”

22. In section 165 of the principal Act, in sub-section (6), for the portion beginning with “punishable with fine” and ending with “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” shall be substituted.

23. In section 191 of the principal Act, for sub-section (5), the following sub-section shall be substituted namely :---

“(5) If a director of the company makes any default in complying with the provisions of this section such director shall be liable to a penalty of one lakh rupees.”

24. In section 197 of the principal Act,---

(a) Sub-section (7) shall be omitted;

(b) For sub-section (15), the following sub-section shall be substituted , namely:---

“(15) If any person makes any default in complying with the provisions of this section , he shall be liable to a penalty of one lakh rupees and where any default has been made by a company , the company shall be liable to a penalty of five lakh rupees.

25. In section 203 of the principal Act, for sub-section (5), the following sub-section shall be substituted namely:---

“(5) If any company makes any default in complying with the provisions of this section such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

26. In section 238 of the Principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.”, the words “liable to a penalty of one lakh rupees” shall be substituted.

27. In section 248 of the principal Act, in sub-section (1),---

(a) in clause (c), for the word and figures "section 455," the words and figures "section 455; or shall be substituted.

(b) after clause (c) and before the long line, the following clauses shall be inserted namely:---

"(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations as revealed after the physical verification carried out under sub-section(9) of section 12."

28. In section 441 of the principal Act,---

(a) in sub-section (1), in clause (b), for the words "does not exceed five lakh rupees", the words "does not exceed twenty-five lakh rupees", the words "does not exceed twenty-five lakh rupees" shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted ,namely:--

(6) Notwithstanding anything contained in the Code of Criminal Procedure 1973 any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable."

29. In section 446B of the principal Act, for the portion beginning with "punishable with fine" and ending with "specified in such sections", the words "liable to a penalty which shall not be more than one half of the

penalty specified in such sections” shall be substituted.

30. In section 447 of the principal act , in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.

31. In section 454 of the principal Act,--

(i) For sub-section (3), the following sub-section shall be substituted namely:-

“(3) The adjudicating officer may, by an order----

(a) Impose the penalty on the company, the officer who is in default or any other person , as the case may be, stating therein any noncompliance or default under the relevant provisions of this Act; and

(b) Direct such company or officer who is in default or any other person as the case may be to rectify the default wherever he considers fit.”

“454A. Where a company or an officer of a company or any other person having already been subjected to penalty under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be , it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of the Act.

ii) In sub-section (4), for the words “such company and the officer who is in default”, the words “such company the officer who is in default or any other person” shall be substituted.

iii) In sub-section (8),

In clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words , brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be ,” shall be substituted

(b) In clause (ii)---

(i) For the words “Where an officer of a company.”, the words “Where an officer of a company or any other person” shall be substituted;

(ii) For the words “does not pay the penalty”, the words , brackets and figures “fails to comply with the order made under sub-section(3) or sub-section(7), as the case may be,” shall be substituted.

32. After section 454 of the principal Act, the following section shall be inserted namely:---

“454A. Where a company or an officer of a company or any other person having already been subjected to penalty under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be , it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of the Act.”

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Warm Regards,

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