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Securities and Exchange Board of India

Revised Framework for Innovation Sandbox

Securities Exchange Board of India ("**SEBI**") introduced a 'Regulatory Sandbox' framework via the SEBI Circular dated June 5, 2020. Under this sandbox framework, SEBI-regulated entities could apply for certain facilities and flexibilities to be granted to experiment with financial technology ("**FinTech**") solutions for a limited time frame in a live environment and on a limited set of Section11 (1) of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act, 1992**") and Section 19 of the Depositories Act, 1996 vide *Circular dated February 02, 2021*has now released the revised framework for Innovation Sandbox.

A managed environment for testing new products and services created by FinTech firms/ entities not governed by SEBI, including individuals, prior to their introduction in a live environment is known as an Innovation Sandbox. SEBI first proposed the idea of an Innovation Sandbox in a circular dated May 20, 2019. The idea of the Innovation Sandbox was well-received by FinTech firms/entities, who saw it as a critical step toward the creation of an effective, equal, open, and inclusive securities market.

SEBI has adopted an amendment to its current structure to encourage further transformation of the securities market environment, in order to build new opportunities in the securities market and to make existing services more effective investor friendly.

1. **Objective-** SEBI has proposed a concept of the "Innovation Sandbox" wherein they will encourage the creation of new products and services, as well as new ways of providing existing products and services, in order to generate new opportunities in the securities market and make existing products and services more effective, inclusive, and investor-friendly. This target will be accomplished by giving FinTech companies, financial institutions, startups, and entities not controlled by SEBI, including individuals ("**Sandbox Applicants**"), access to test data and a test environment.

2. **Steering Committee and Enabling Organizations-** While the existing framework already contained the concept of a steering committee, the updated framework now contains the concept of an enabling organization as a part of the steering committee. According to the revised structure, the Innovation Sandbox is supervised by a steering committee made up of members from stock exchanges, depositories, qualified registrars, and share transfer agents ("**Enabling Organizations**"), as well as SEBI. The steering committee is in charge of approving or denying applications based on the graded eligibility requirements and assigning each Sandbox Applicant a lead Enabling Organization. In addition to the steering committee, the lead Enabling Organization is in charge of efficiently on boarding Sandbox Applicants after their applications have been accepted.

3. **Objective-** SEBI has proposed a concept of the "Innovation Sandbox" wherein they will encourage the creation of new products and services, as well as new ways of providing existing products and services, in order to generate new opportunities in the securities market and make existing products and services more effective, inclusive, and investor-friendly. This target will be accomplished by giving FinTech companies, financial institutions, startups, and entities not controlled by SEBI, including individuals (i.e., Sandbox Applicants), access to test data and a test environment.

   (i) Stage-I: Stage-I limits Sandbox Applicants' access to the test environment and sets a restriction on resource usage. The Sandbox Applicant must meet the following requirements to be eligible for Stage-I of the Innovation Sandbox: (a) The Sandbox Applicant must be an Indian citizen or a company registered in India; (b) The Sandbox Applicant must comply with the Central Know Your Customers Registry and KYC Registration Agency's KYC requirements; and (c) The Sandbox Applicant must have a legitimate need to test the solution in the Innovation Sandbox and provide evidence for accessing the test data (depositories data, stock exchange data etc.) and the test environment.

   (ii) Stage-II: The limit on resource usage placed during Stage-I is removed in Stage-II, subject to resource availability. After completing a minimum of sixty (60) days in Stage-I of the Innovation Sandbox, a Sandbox Applicant becomes eligible for Stage-II of the Innovation Sandbox. After completing the minimum time, the Sandbox Applicant must submit their project to the steering committee for evaluation and entry to Stage-II of the Innovation Sandbox. In addition to the above, the Sandbox Applicant must meet the following requirements to be eligible for Stage-II of the Innovation Sandbox: (a) the Sandbox Applicant's project must be consistent with the Innovation Sandbox's objective; (b) the Sandbox Applicant must have made adequate progress and be on track with its testing plan; (c) A post-testing plan must be proposed by the Sandbox Applicant; (d) The Sandbox Applicant's project must provide identifiable direct/indirect benefits to investors and the financial sector as a whole. Investors and the financial sector as a whole must benefit directly or indirectly from the applicant.

4. **Intellectual Property Rights ("IPR")-** While the current framework allowed for the formulation of policies to protect Sandbox Applicants' IPR, SEBI's revised framework recognizes that Sandbox Applicants' applications are likely to have solutions that are focused on similar ideas. As a result, no claims of IP infringement made by Sandbox Applicants when testing their goods and services in the Innovation Sandbox shall be accepted by SEBI.

Ministry of Corporate Affairs

Companies (Incorporation) Second Amendment Rules, 2021

The Central Government in exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 ("**CA, 2013**") vide *Notification dated February 01, 2021* has amended the Companies (Incorporation) Rules, 2014 ("**CI Rules, 2014** ").

1. These rules may be called the Companies (Incorporation) Second Amendment Rules, 2021.

2. They shall come into force from April 01, 2021.

3. In rule 3 sub-rule (1) of the Companies (Incorporation) Rules, 2014:
   (i) for the words, 'and resident in India', the words 'whether resident in India or otherwise' shall be substituted;
   (ii) in Explanation I, for the words 'one hundred and eighty-two days' (180) the words 'one hundred and twenty days' (120) shall be substituted.

4. Sub-rule (7) of rule 3 of the CI Rules, 2014 shall be omitted.

5. For rule 6 of the CI Rules, 2014 the following shall be substituted-

   "6 ***Conversion of One Person Company into a Public company or a Private Company –***

   (1) The One Person company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the CA, 2013 to give effect to the conversion and to make necessary changes incidental thereto.

   (2) A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the CA, 2013, after increasing the minimum number of members and directors to two (2) or seven (7) members and two (2) or three (3) directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the CA, 2013 for such class of company and by making due compliance of section 18 of the CA, 2013 for conversion.

   (3) The company shall file an application in e-Form No. INC-6 for its conversion into Private or Public Company, other than under section 8 of the CA, 2013, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching following documents –
   (a) Altered MOA and AOA;
   (b) Copy of resolution;
   (c) The list of proposed members and its directors along with consent;
   (d) List of creditors; and
   (e) The latest audited balance sheet and profit and loss account.

   (4) On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

6. In rule 7 sub-rule (1), of the CI Rules, 2014 the words 'having paid up share capital of Rs. 50,00,000/- (Rupees Fifty Lakhs Only) or less and average annual turnover during the relevant period is Rs. 2,00,00,000/- (Rupees Two Crores Only) or less' shall be omitted.

7. In rule 7 sub-rule (4) clause (i) of the CI Rules, 2014 the words 'the paid up share capital company is Rs. 50,00,000/- (Rupees Fifty Lakhs Only) or less or average annual turnover is less than Rs. 2,00,00,000/- (Rupees Two Crores Only), as the case may be' shall be omitted.

8. In the Annexure, e-Form No. INC-5 shall be omitted.

In e-Form No.INC-6, certain changes are incorporated the format of which is provided in the following link-
http://www.mca.gov.in/Ministry/pdf/CompaniesSecondAmndtRules_16022021.pdf

Ministry of Corporate Affairs— Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021

The Central Government in exercise of powers conferred under sub-sections (1) and (2) of section 469 read with Sections 230 to 233 and Sections 235 to 240 of the Companies Act, 2013 ("**CA, 2013**") has amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ("**CAR, 2016**") vide *Notification dated February 01, 2021*.

1. These amended rules may be called as the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 (**CAR, 2021**").
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the CAR, 2016, in rule 25, after sub-rule (1) the following sub-rule shall be inserted, namely-

   "(1A) A scheme of merger or amalgamation under section 233 of the CA, 2013 may be entered into between any of the following class of companies, namely:-
   (i) Two (2) or more start-up companies; or
   (ii) one (1) or more start-up company with one (1) or more small company.

   (1) The One Person company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the CA, 2013 to give effect to the conversion and to make necessary changes incidental thereto.

   (2) A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the CA, 2013, after increasing the minimum number of members and directors to two (2) or seven (7) members and two (2) or three (3) directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the CA, 2013 for such class of company and by making due compliance of section 18 of the CA, 2013 for conversion.".

4. The CAR, 2021 also provide that the term 'start-up company' shall indicate a private company incorporated under the CA, 2013 and recognised as such in compliance with notification number G.S.R. 127 (E), dated the February 19, 2019 released by the Department for Promotion of Industry and Internal Trade.

Ministry of Corporate Affairs— Companies (Specification of Definitions Details) Amendment Rules, 2021

The Central Government in exercise of powers conferred to it by section 469 (1) and (2) of the Companies Act, 2013 ("**CA, 2013**"), has amended the Companies (Specification of Definitions Details) Rules, 2014 ("**CSDD Rules, 2014**") vide *Notification dated February 01, 2021*.

1. These amended rules may be called as the Companies (Specification of Definition Details) Amendment Rules, 2021.
2. They shall come into force from April 01, 2021.
3. The following clause shall be inserted after clause (s) in rule 2, sub-rule (1) of the CSDD Rules, 2014-

> *"(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the CA, 2013,* ***paid up capital and turnover of the small company shall not exceed Rs. 2,00,00,000/- (Rupees Two Crores Only) and Rs. 20,00,00,000/- (Rupees Twenty Crores Only) respectively****.".*

Ministry of Corporate Affairs— Companies (Specification of Definitions Details) Second Amendment Rules, 2021

The Central Government in exercise of powers conferred by the proviso to clause (52) of section 2 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 ("**CA, 2013**") amended the Companies (Specification of definitions detail) Rules, 2014 vide *Notification dated February 19, 2021*.

1. These amended rules may be called as the Companies (Specification of Definition Details) Second Amendment Rules, 2021 ("**CSAR, 2021**").

2. They shall come into force from April 01, 2021.

3. The CSAR, 2021 introduces Rule 2A which specifies the classes of companies that shall not be considered as listed companies, namely-

"a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their-

*i. non-convertible debt securities issued on private placement basis in terms of the Securities Exchange Board of India ("**SEBI**") (Issue and Listing of Debt Securities) Regulations, 2008 ("**SEBI ILDSR, 2008**"); or*

ii. non-convertible redeemable preference shares issued on a private placement basis in terms of the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

iii. both categories of (i) and (ii) above.

b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI ILDSR, 2008; and

c) Public companies which have not listed their equity shares on a recognized stock exchange, but whose equity shares are listed on a stock exchange prescribed in Section 23(3) of the CA, 2013.".

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Ministry of Corporate Affairs— Companies (Share Capital and Debentures) Amendment Rules, 2021

The Central Government by way of enactment of Companies (Amendment) Act, 2020 ("**CA, 2020**") (effective January 22, 2021) had amended inter-alia Section 62(1) of the Companies Act, 2013 ("**CA, 2013**"), to provide that where a letter of offer for further issue of share capital is being provided by a company to the equity shareholders, such offer shall be for a minimum period of fifteen (15) days or "*such lesser number of days as may be prescribed.*

Pursuant to the CA Act, 2020, the Ministry of Corporate Affairs ("**MCA**") in exercise of powers conferred under sub clause (i) of clause (a) of sub-section (1) of section 62, read with sub-sections (1) and (2) of section 469 of the CA, 2013 amended the Companies (Share Capital and Debentures) Rules, 2014 ("**SCD, 2014**") vide *Notification dated February 11, 2021*.

These amended rules may be called as the Companies (Share Capital and Debentures) Amendment Rules, 2021 (**SCD, 2021**").

The SCD, 2021 will come into force with effect from the April 01, 2021.

The MCA has now by way of SCD, 2021 introduced Rule 12A in the SCD, 2014, whereby the minimum period for which a rights offer under Section 62(1)(a)(i) is required to be kept open has been reduced to a period of seven (7) days from the date of the offer.

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Reserve Bank of India

Master Direction on Digital Payment Security Controls

The Reserve Bank of India ("**RBI**") in exercise of the powers conferred by the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934 and Payment and Settlement Systems Act, 2007 vide *Notification dated February 18, 2021* bearing ref No. DoS.CO.CSITE.SEC.No.1852/31.01.015/2020-21 has released the directions i.e., Reserve Bank of India (Digital Payment Security Controls) directions, 2021 (**"DPSC, 2021"**) by keeping in mind the increased instances of cyber breaches, frauds and in order to ameliorate India's digital payments system and improve security, control, compliance among the banking and non-banking entities. The DPSC, 2021 provides a framework for all regulated entities (**"REs"**) in order to improve their security operations.

APPLICABILITY:

The DPSC, 2021 shall come into effect six (6) months from the day they are placed on the official website of the RBI. However, in respect of instructions already issued either by Department of Payment and Settlement Systems, Department of Regulation or Department of Supervision of RBI including those to select REs, by way of circular or advisory, the timeline would be with immediate effect or as per the timelines already prescribed. The provisions of these directions shall apply to the following REs:

a) Scheduled Commercial Banks (excluding Regional Rural Banks);
b) Small Finance Banks;
c) Payments Banks; and
d) Credit card issuing NBFCs.

GOVERNANCE AND MANAGEMENT OF SECURITY RISKS:

(i) REs shall formulate a policy for digital payment products and services with the approval of their Board. The contours of the policy should explicitly discuss about payment security requirements from Functionality, Security and Performance ("**FSP**") angles such as:
    a. Necessary controls to protect the confidentiality of customer data and integrity of data and processes associated with the digital product/ services offered;
    b. Availability of requisite infrastructure e.g. human resources, technology, etc. with necessary back up;
    c. Assurance that the payment product is built in a secure manner offering robust performance ensuring safety, consistency and rolled out after necessary testing for achieving desired FSP;
    d. Capacity building and expansion with scalability (to meet the growth for efficient transaction processing);
    e. Minimal customer service disruption with high availability of systems/ channels (to have minimal technical declines);
    f. Efficient and effective dispute resolution mechanism and handling of customer grievance; and
    g. Adequate and appropriate review mechanism followed by swift corrective action, in case any one of the above requirements is hampered or having high potential to get hampered.

Further, the Board and Senior Management shall be responsible for implementation of the said policy. The policy shall be reviewed periodically, at least on a yearly basis. REs may formulate this policy separately for its different digital products or include the same as part of their overall product policy.

(ii) REs shall incorporate appropriate processes into their governance and risk management programs for identifying, analysing, monitoring and managing the specific risks, including compliance risk and fraud risk, associated with the portfolio of digital payment products and services on a continual basis and in a holistic manner.

(jj) REs shall have trained resources with necessary expertise to manage the digital payment infrastructure. Wherever the REs are dependent on third party service providers, adequate oversight and controls for monitoring the activities of the third party personnel, in line with RBI guidelines on outsourcing, shall be put in place.

(iv) REs shall conduct risk assessments with regard to the safety and security of digital payment products and associated processes and services as well as suitability and appropriateness of the same vis-a-vis the target users, both prior to establishing the service(s) and regularly thereafter. The risk assessment should take into account –

a. The technology stack and solutions used;
b. Known vulnerabilities at each of the touchpoints of the digital product and the remedial action taken by the entity;
c. Dependence on third party service providers and oversight over such providers;
d. Risk arising out of integration of digital payment platform with other systems both internal and external to the RE, including core systems and systems of payment systems operators, etc.;
e. The customer experience, convenience and technology adoption required to use such products;
f. Reconciliation process;
g. Interoperability aspects;
h. Data storage, security and privacy protection as per extant laws/ instructions;
i. Operational risk including fraud risk;
j. Business continuity and service availability;
k. Compliance with extant cyber security requirements; and
l. Compatibility aspects.

Such assessment shall cover the surrounding ecosystem as well. The assessment of risks shall address the need to protect and secure payment data and evaluate the resilience of systems.

OTHER GENERIC SECURITY CONTROLS:

In terms of the Directions the communication protocol in the digital payment channels (especially over Internet) shall adhere to a secure standard. An appropriate level of encryption and security shall be implemented in the digital payment ecosystem. Further, REs shall implement Web Application Firewall solution and Distributed Denial of Service mitigation techniques to secure the digital payment products and services offered over Internet.

AUTHENTICATION FRAMEWORK:

In view of the proliferation of cyber-attacks and their potential consequences, REs are required to implement, except where explicitly permitted/ relaxed, multi-factor authentication for payments through electronic modes and fund transfers, including cash withdrawals from ATMs/ micro-ATMs/ business correspondents, through digital payment

applications. At least one of the authentication methodologies should be generally dynamic or non-replicable. [e.g., Use of One Time Password, mobile devices (device binding and SIM), biometric/ PKI/ hardware tokens, EMV chip card (for Card Present Transactions) with server-side verification could be termed either in dynamic or non-replicable methodologies]. Further, the REs are required to adopt adaptive authentication to select the right authentication factors depending on risk assessment, user risk profile and behaviour.

FRAUD RISK MANAGEMENT:
In order to assess fraud risk the REs shall document and implement the configuration aspects for identifying suspicious transactional behaviour in respect of rules, preventive, detective types of controls, mechanism to alert the customers in case of failed authentication, time frame for the same, etc. Further, the REs shall adopt appropriate standards to protect the customers.

RECONCILIATION MECHANISM:
A real time/ near-real time [not later than twenty-four (24) hours from the time of receipt of settlement file(s)] reconciliation framework for all digital payment transactions between REs and all other stakeholders such as payment system operators, business correspondents, card networks, payment system processors, payment aggregators, payment gateways, third party technology service providers, other participants, etc., shall be put in place for better detection and prevention of suspicious transactions. A mechanism shall be introduced to monitor the implementation and effectiveness of such framework.

CUSTOMER PROTECTION, AWARENESS AND GRIEVANCE REDRESSAL MECHANISM:
REs shall incorporate secure, safe and responsible usage guidelines and training materials for end users within the digital payment applications. They shall also make it mandatory (i.e., not providing any option to circumvent/ avoid the material) for the consumer to go through secure usage guidelines (even in the consumer's preferred language) while obtaining and recording confirmation during the on-boarding procedure in the first instance and first use after each update of the digital payment application or after major updates to secure and safe usage guidelines.

REs shall ensure that its customers are provided information about the risks, benefits and liabilities of using digital payment products and its related services before they subscribe to them. Further, customers shall also be informed clearly and precisely on their rights, obligations and responsibilities on matters relating to digital payments, and, any problems that may arise from its service unavailability, processing errors and security breaches. The terms and conditions including customer privacy and security policy applying to digital payment products and services shall be readily available to customers within the product. All digital channels are to be offered on express willingness of customers and shall not be bundled without their knowledge.

MISCELLANEOUS:
Further, the Directions provided mechanism which are required to implemented by REs regarding internet banking security controls, mobile payments application security controls, and card payments security.

Reserve Bank of India— Investment by Foreign Portfolio Investors in Defaulted Bonds- Relaxations

The Reserve Bank of India ("**RBI**") in exercise of its powers conferred under Section 10 (4) and Section 11(1) of Foreign Exchange Management Act, 1999 issued Circular A.P. (DIR Series) *Circular No. 12 dated February 26, 2021* ("**Circular 2021**") allowing certain relaxations in investment by Foreign Portfolio Investments ("**FPI**") in defaulted bonds.

Under the RBI Directions on Investment by FPIs in Debt issued vide Circular A.P. (DIR Series) Circular No. 31 dated June 15, 2018 ("**Circular 2018**"), investments by FPI in security receipts and debt instruments issued by Asset Reconstruction Companies as well as debt instruments by an entity in accordance with a Corporate Insolvency Resolution Plan approved by National Company Law Tribunal under Insolvency and Bankruptcy Code, 2016 are exempted from the requirements such as minimum residual maturity, short-term investment limit in terms of Circular 2018.

Vide Circular 2021, exemption has been made for investments by FPI in Non-Convertible Debentures / Bonds ("**NCDs / bonds**") which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in case of amortizing bond from the requirements under Circular 2018.

Reference shall also be accorded to Foreign Exchange Management (Debt Regulations), 2019 dated October 17, 2019; A.P. (DIR Series) Circular No. 31 dated November 26, 2015, whereby FPI were permitted to acquire NCDs / bonds which are under default, either fully or partly, in the repayment of principal on maturity or principal instalment in the case of amortizing bond. Also as per Statement on Developmental and Regulatory Policies dated February 5, 2021, it was announced that FPI investment in defaulted corporate bonds will be exempted from short-term limit and the minimum residual maturity requirement under the Medium Term Framework.

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Ministry of Power

Electricity (Late Payment Surcharge) Rules, 2021

The Central Government in exercise of the powers conferred by Section 176 of the Electricity Act, 2003 ("**EA, 2003**") vide *Notification dated February 22, 2021* has introduced the Electricity (Late Payment Surcharge) Rules, 2021 ("**ELPS Rules, 2021**").

They shall come into force on the date of their publication in the Official Gazette.

The ELPS Rules, 2021 is with respect to late payment surcharge ("**LPS**") which will be applicable for Power Purchase Agreements, Power Supply Agreements and Transmission Service Agreements in which the tariffs have been determined under Section 62 of EA, 2003.

LPS means the charges payable by a distribution company ("**DISCOM**") to a generating company or electricity trader for power procured from it, or by a user of a transmission system to a transmission licensee on account of delay in payment of monthly charges beyond the due date.

Pursuant to the ELPS Rules, 2021, the LPS will be payable on the outstanding payment after the due date at the base rate of LPS for the first month of the default. The LPS rate for the successive months will increase by 0.5% for every month of delay. The surcharge should not be higher than 3% of the base rate at any time.

ELPS Rules, 2021 will apply when the rate of late payment surcharge is not higher than the rate defined in the agreement for the purchasing or transmission of power.

A DISCOM that has not paid outstanding late payment surcharge on a bill after the expiry of seven (7) months from the due date will be barred from procuring electricity from a power exchange or granting short-term open access until the bill is paid.

According to ELPS Rules, 2021, all payments made by a DISCOM to a generating company or trading licensee for power obtained from it or by a user of a transmission system to a transmission licensee shall be adjusted first towards LPS and then for monthly charges, beginning with the oldest overdue bill.

Maharashtra Stamp Act, 1958

Maharashtra Stamp (Amendment and Validation) Ordinance, 2021

The Governor of Maharashtra in exercise of the powers conferred under article 213(1) of the Constitution of India has promulgated an *Ordinance dated February 9, 2021* which shall come into effect immediately.

This Ordinance may be called the Maharashtra Stamp (Amendment and Validation) Ordinance, 2021.

Under Schedule I of the Maharashtra Stamp Act, 1958 ("**MSA, 1958**"), Section 5 (Instruments relating to Distinct Matters), Articles 6 (Agreement relating to Deposit of Title Deeds, Pawn, Pledge or Hypothecation) and 40 (Mortgage Deed) have been amended/replaced by the Ordinance.

The Ordinance was enacted to clarify and reinforce the Hon'ble Supreme Court of India's judgment in the case of Chief Controlling Revenue Authority vs. Coastal Gujarat Power Limited (Civil Appeal No. 6054 of 2015) ("**Gujarat Judgement**"). To outline, the Hon'ble Supreme Court of India interpreted the terms "distinct matters" and "distinct transactions" as appearing in Article 5 of the Gujarat Stamp Act, 1958 ("**GSA, 1958**") in the Gujarat Judgment, essentially establishing the principle of looking through the underlying transactions to decide stamp duty incidence.

The key changes are as follows:

1. **Section 5:**

   Section 5 of the Act has been replaced and, with effect from August 11, 2015, is considered to have been replaced by the following provisions:

   > *"Any instrument comprising or relating to several distinct matters or transactions shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters or transactions, would be chargeable under this Act."*

   In Navi Mumbai SEZ Private Limited vs. The State of Maharashtra (Written Petition No. 8014 of 2019), the Hon'ble High Court of Bombay held that the term "distinct matters" is equal to "distinct transactions." This amendment has retrospective impact and is considered to be in effect since August 11, 2015 (the date of the Gujarat Judgment). Section 5 of the MSA, 1958 has been amended to align with Section 5 of the GSA, 1958; both states are now trying to stamp the underlying transactions rather than the instrument, especially in the case of mortgages with multiple beneficiaries.

2. **Schedule I - Article 6:**

   The stamp duty payable on a deposit of title deeds, pawn, pledge, or hypothecation agreement where the sum obtained exceeds Rs. 5,00,000/- (Rupees Five Lakhs Only) has been increased from 0.2% to 0.3%, subject to the current limit of Rs. 10,00,000/- (Rupees Ten Lakhs Only). This was obtained by amending Article 6(1)(b) column (2) and Article 6(2)(b). Since stamp duty is capped at Rs. 10,00,000/- (Rupees Ten Lakhs Only), the small rise in the percentage does not have a significant effect on obtaining higher loans. In addition, sub-clause (3) of Article 6 has been added to provide for a stamp duty of Rs. 500/- (Rupees Five Hundred Only) on an instrument

of additional security if it is executed under Article 6 and the primary security has been fully paid. If full stamp duty, i.e., up to Rs. 10,00,000/- (Rupees Ten Lakhs Only), has been paid on the principal instrument, any instrument providing for additional security in the form of hypothecation or equal mortgage shall be stamped for a nominal sum of Rs. 500/- (Rupees Five Hundred Only). With the amendment coming in effect, Article 6(3) of the MSA, 1958 has been aligned with Article 40(c) of the MSA, 1958, which stipulated a nominal stamp duty for mortgage deeds for additional security or collateral.

3. **Schedule I - Article 40(b):**

   The stamp duty on a mortgage deed [other than an agreement relating to deposit of title deeds, pawn, pledge, or hypothecation (under Article 6)] where possession of the subject property is not provided or agreed to be given has been reduced from 0.5% to 0.3%, subject to the current limit of Rs. 10,00,000/- (Rupees Ten Lakhs Only). The marginal reduction in the percentage may not have a significant effect on obtaining higher loans, as stamp duty is already capped at Rs. 10,00,000/- (Rupees Ten Lakhs Only).

4. **Validation:**

   Clause 4 of the Ordinance clearly validates any actions taken under the MSA, 1958's current Section 5 and Articles 6 and 40 in Schedule I. Furthermore, no suit for refund of stamp duty levied or obtained can be filed.

Case Summary

Case Name : ***Phoenix ARC Private Limited vs. Spade Financial Services Limited & Ors.- Civil Appeal No. 2842 of 2020***

Court Name : The Supreme Court of India

Order Date : February 01, 2021

Sections cited : Section 5(7) of Insolvency and Bankruptcy Code, 2016 ("**IBC, 2016**"); Section 5(8) of IBC, 2016; Section 5(24) of IBC, 2016; Section 5(24A) of IBC, 2016; Section 5(24)(f) of IBC, 2016; Section 21(2) of IBC, 2016; Section 43 of IBC, 2016; Section 45(2) of IBC, 2016; Section 49 of IBC, 2016; Section 50 of IBC, 2016; Section 60(5)(c) of IBC, 2016; Section 61 of IBC, 2016; Section 62 of IBC, 2016.

Facts of the case:

1. The present judgment of the Hon'ble Supreme Court would govern two sets of appeals ie., CA No. 337/2018 and CA No. 338/2019 (Phoenix); CA No. 268/2018 and CA No. 269/2018 (Yes Bank) arising from the judgment delivered by National Company Law Appellate Tribunal ("**NCLAT**"). By judgment dated January 27, 2020, NCLAT dismissed the appeal filed under Section 61 of IBC, 2016 preferred by AAA Landmark Private Limited ("**AAA**") and Spade Financial Services Private Limited ("**Spade**") to assail the Order dated July 19, 2019 ("**Order**") passed by National Company Law Tribunal ("**NCLT**"), New Delhi.
2. NCLT vide its Order held that AAA and Spade have to be excluded from the Committee of Creditors ("**CoC**") formed in relation to the Corporate Insolvency Resolution Process ("**CIRP**") initiated against AKME Projects Limited ("**Corporate Debtor**"). NCLT passed its Order on applications filed by Phoenix ARC Private Limited ("**Phoenix**") and YES Bank under Section 60(5)(c) of IBC, 2016.
3. Phoenix has approached the Hon'ble Supreme Court on the ground to appeal that though NCLAT rightly dismissed the appeal filed by Spade and AAA, holding that they are related parties of the Corporate Debtor and are hence to be excluded from the CoC, there is an erroneous finding that they are financial creditors. [*Paragraph No. 11 of NCLAT judgment*]. Independent appeal under Section 62 of IBC, 2016 were filed by AAA and Spade in order to assail the decision of NCLAT affirming their exclusion from participating in the CoC on the ground that they are related parties of the Corporate Debtor in terms of Section 5(24) of IBC, 2016 and proviso to Section 21(2) of IBC, 2016.

Court's Analysis:

a. Financial Creditor and Financial Debt
   i) The Hon'ble Supreme Court dealt with the first issue by analysing Section 5 (7) of IBC, 2016 (*definition of financial creditor*) and Section 5(8) of IBC, 2016 (*definition of financial debt*).
   ii) In its judgment through Justice Rohinton F Nariman in ***Swiss Ribbons Private Limited vs. Union of India (2019) 4 SCC 17***, the Hon'ble Supreme Court elaborated on the terms of 'financial creditor' and 'financial debt'.
   iii) The Hon'ble Supreme Court also referred to its judgment in ***Pioneer Urban Land and Infrastructure Limited vs. Union of India (2019) 8 SCC 416*** interpreting the expression 'disbursed' and 'time value of money'. The report

of the Insolvency Law Committee dated March 26, 2018 was also discussed the Interpretation of the term "time value of money".

b. Collusive Transactions

i) A transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt. The Hon'ble Supreme Court referred to an excerpt from ***Snook vs. London and West Riding Investments Ltd. [1967] 2 QB 786,*** to elaborate on 'sham transactions'.

ii) Whether a usufructuary mortgage was a sham transaction entered into by the borrower to avoid payment to creditors was deliberated in ***Prem Chand Tandon vs. Krishna Chand Kapoor (1973) 2 SCC 366.***

iii) The IBC, 2016 has made provisions for identifying, annulling or disregarding 'avoidable transactions' which distressed companies may have undertaken to hamper recovery of creditors in the event of the initiation of CIRP. Reference was accorded to Section 43 of IBC, 2016 (*Preferential Transactions*); Section 45(2) of IBC, 2016 (*Undervalued Transactions*); Section 49 of IBC, 2016 (*Transactions defrauding creditors*) and Section 50 of IBC, 2016 (*Extortionate Transactions*).

iv) The IBC, 2016 recognizes that for the success of an insolvency regime, the real nature of the transactions has to be unearthed in order to prevent any person from taking undue benefit of its provisions to the detriment of rights of legitimate creditors.

c. Related Party

i) The expression 'related party' is defined in Section 5(24) of IBC, 2016 in relation to a corporate debtor and Section 5(24A) of IBC, 2016. The definition of 'related party' under IBC, 2016 is significantly broad. The intention of the Legislature in adopting such a broad definition was to capture all kinds of inter-relationships between financial creditor and the corporate debtor.

ii) The purpose of defining the term separately under different statutes is not to avoid inconsistency but because the purpose of each of them is different. Hence, while understanding the meaning of 'related party' in context of IBC, 2016, it was defined to ensure that those entities which are related to the Corporate Debtor can be identified clearly, since their presence can often negatively affect the insolvency process.

d. Exclusion from CoC

i) Whether disqualification under proviso to Section 21(2) of IBC, 2016 would attach to a financial creditor only *in praesenti,* the Hon'ble Supreme Court referred to its judgment in ***Arcelor Mittal India Private Limited vs. Satish Kumar Gupta (2019) 2 SCC 1***, while interpreting Section 29-A(c) of IBC, 2016 observed that disqualification applies *in praesenti*. Further, the interpretation would also be supported by a reading of the first proviso to Section 21(2) of IBC, 2016 in light of definition of 'related party' under Section 5(24) of IBC, 2016.

ii) The purpose of excluding a related party of a corporate debtor from the CoC is to obviate conflicts of interest which are likely to arise in the event that a related party is allowed to become a part of the CoC.

iii) It has been clarified that the exclusion under the first proviso to Section 21(2) of IBC, 2016 is related not to the debt itself but to the relationship existing between a related party financial creditor and the corporate debtor. As such, the financial creditor who *in praesenti* is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party financial creditor divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating the CoC and sabotage the CIRP, by diluting the vote share of the other creditors or otherwise, it would be in keeping with the object and purpose of the first proviso to Section 21(2) of IBC, 2016, to consider the former related party creditor, as one debarred under the first proviso.

Held by the Hon'ble Supreme Court:

1. Spade and AAA cannot be labelled as financial creditors due to collusive nature of their transactions;

2. Spade and AAA are related parties under Section 5(24) of IBC, 2016; and

3. Spade and AAA shall be excluded from CoC in accordance with first proviso to Section 21(2) of IBC, 2016.

Case Summary

Case Name : ***Unitech Limited & Ors. vs. Telangana State Industrial Infrastructure Corporation & Ors.- Civil Appeal Nos. 317 of 2021, 318 of 2021 and 319 of 2021 (arising out of SLP (C) Nos. 9019, 10135, 17529 of 2019)***

Court Name : The Supreme Court of India

Order Date : February 17, 2021

Sections cited : Section 68 of Andhra Pradesh Reorganization Act, 2014 ("**Reorganization Act, 2014**"); Section 74 of Indian Contract Act, 1872; Article 136 of Constitution of India, 1950 ("**CoI, 1950**"); Article 32 of CoI, 1950; Article 226 of CoI, 1950; Article 14 of CoI, 1950.

Facts of the case:

1. The Unitech Limited ("**Appellant**") entered into a Development Agreement with Andhra Pradesh Industrial Infrastructure Corporation Limited ("**APIIC**") on August 19, 2008 ("**Agreement**") for the development, design and construction of an Integrated Township Project / Multi Services Aerospace Park ("**Project**") in a three hundred and fifty (350) acre land in Nadergul Village, Saroornagar Mandal, Ranga Reddy District ("**Land**").

2. The Appellant paid approximately Rs. 1,65,00,00,000/- (Rupees One Hundred and Sixty-Five Crores Only) ("**Project Cost**") for this Project, which constitutes of Rs. 1,40,00,00,000/- (Rupees One Hundred and Forty Crores Only) for the cost of land, Rs. 20,00,00,000/-(Rupees Twenty Crores Only) for Earnest Money Deposit and Rs. 5,00,00,000/- (Rupees Five Crores Only) for Project Development Expenses.

3. The allocation of land, however, was subject to the outcome of a litigation pending before the then Hon'ble High Court of Andhra Pradesh in the matter of ***Pratap Karan vs. Andhra Pradesh Government (2016) 2 SCC 82*** ("**Pratap Karan**").

4. The Appellant therefore postponed the start of work on the land until APIIC handed over encumbrance-free control of the Land.

5. Thereafter, vide judgement dated December 19, 2011 in **Pratap Karan** the Hon'ble High Court of Andhra Pradesh held that the Government of Andhra Pradesh did not have title to the Land.

6. Meanwhile, under the provisions of the Reorganization Act, 2014, the State of Andhra Pradesh was re-organized into the successor States of Andhra Pradesh and Telangana with effect from June 2, 2014.

7. As a result, the Appellant requested both APIIC and the newly-formed Telangana State Industrial Infrastructure Corporation Limited ("**TSIIC**"), a successor of APIIC, for refund of all amounts received in relation to the Land along with interest and damages for the loss suffered by them, including the cost of borrowing capital from banks, expenses for planning and designing, opportunity costs and other costs for development.

8. But since the amounts were not refunded by APIIC and TSIIC, the Appellant filed a Writ Petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court ordered the Appellant to approach the High Court.

9. Therefore, the Appellant filed a Writ Petition before the Hon'ble High Court of Telangana seeking refund of the Project Cost along with interest at the State Bank of India Prime Lending Rate ("**SBI-PLR**") as of September 2007, i.e., the date on which the Appellant began making payments.

10. The Hon'ble High Court of Telangana, vide judgment dated October 23, 2018, allowed the aforesaid Writ Petition.

11. Aggrieved by the judgement ("**Order**") of the Hon'ble High Court of Telangana, TSIIC and the State of Telangana filed an appeal before the Hon'ble Division Bench of the High Court.

12. Vide judgment ("**DB Order**") dated April 1, 2019, the Hon'ble Division Bench and the Order of the Hon'ble Single Bench on TSIIC's liability to refund the Project Cost to the Appellant was upheld.

13. The Hon'ble Division Bench, however, altered the Order to the point that interest must be paid at the SBI-PLR rate from October 14, 2015, i.e., the date on which the Appellant first demanded refund of all amounts, instead of September 2007, when the Appellant began making payments, as the Appellant was then aware of the pending litigation.

14. Aggrieved by the DB Order, Special Leave Petitions were filed before the Hon'ble Supreme Court by the Appellant, the TSIIC and the State of Telangana.

Court's Observations:

The Hon'ble Supreme Court made the following observations pertaining to the maintainability of the Writ Petition under Article 226 of CoI, 1950 and the State Government's liability to refund the amounts to the Appellant:

1. That although there is an Arbitration Provision laid down in the Agreement, a Writ Petition pursuant to Article 226 of the CoI, 1950 is maintainable for asserting contractual rights against the state, or its instrumentalities as defined under Article 12 of the Indian Constitution. This is because if the instrumentality of the State breaches its constitutional mandate to behave equally and reasonably in compliance with Article 14 of CoI, 1950, the remedy under the plenary powers of Article 226 of the Constitution will lie.

2. That, being State Instrumentalities, APIIC and TSIIC are obliged to behave equally pursuant to Article 14 of CoI, 1950. In their commercial relations with private parties in the field of contracts, they cannot claim exemption from the obligation of public law to behave fairly.

3. Furthermore, because APIIC and the Andhra Pradesh State Government were unable to acquire the title to the Land, the entire basis on which the Agreement was established was thus nullified. They could not have conveyed the full title to the Developer, i.e., the Appellant, without having title to the Land.

4. In the absence of title, therefore, the Appellant is entitled to claim full refund of the amounts along with compensatory payment, as provided for in the Agreement.

5. Furthermore, according to the terms of the Agreement, the occurrence of a political force majeure event (i.e. the reorganisation of the States of Andhra Pradesh and Telangana) and the default on the part of APIIC/TSIIC (i.e. the transfer of encumbrance-free land) would entitle the Appellant to claim compensatory payment "from the date on which the first payment of project price" is made.

Held by the Hon'ble Supreme Court:

1. The Hon'ble Supreme Court ordered the TSIIC/APIIC to pay the Project Cost i.e., Rs. 1,65,00,00,000/- (Rupees One Hundred and Sixty-Five Crores Only) to the Appellant, along with interest at SBI-PLR rates starting from the respective payment dates.

2. Further, the Hon'ble Supreme Court held that, as per the terms of the Reorganization Act, TSIIC may pursue legal remedies in relation to apportionment or adjustment of the refunded amounts with APIIC and State of Andhra Pradesh.

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Warm Regards,

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