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Ministry of Corporate Affairs

Under third proviso to Section 96(1) of the Companies Act, 2013 ("**Act**"), which provides that the Registrar of the Companies ("**ROC**") may extend the time limit to hold any Annual General Meeting ("**AGM**"), for any special reason by a period not exceeding three (3) months. In view of the aforesaid power, the Ministry of Corporate Affairs vide its *Order dated September 23, 2021* ("**Order**") has granted extension of time to the Companies to hold their Annual General Meeting by two (2) months for the financial year which ended on March 31, 2021.

Section 96(1) of the Companies Act, 2013 provides as under:

> *"96. Annual general meeting— (1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:*
>
> *Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:*
>
> *Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:*
>
> *Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months."*

The extension has been granted to the companies without having to file Form No. GNL-1 for seeking such extension. Further, the Order states that the aforementioned extension of time to hold the AGM shall also cover the pending applications that are filed in form GNL-1 for the extension of time to hold the AGM for the financial year ended on March 31, 2021, which are yet to be approved, which have been rejected and which has already been approved but where the extension granted was than two (2) months.

However, the applications filed in Form GNL-1 for the extension of AGM for the financial year which ended on March 31, 2021, where the extension approved was for a period more than two (2) months, do not fall under the purview of this Order.

Ministry of Commerce and Industry

The Ministry of Commerce and Industry (Department of Industry and Internal Trade) vide its *Notification dated September 21, 2021* has amended the Patent Rules, 2003 ("**Principal Rules**"). The Patent (Amendment) Rules, 2021 makes the following amendments to the Principal Rules:

1. In Rule 2, after sub rule (c) in the Principal Rules, the term "educational institution" has been inserted. The definition has been extracted as follows:

> *"(ca) educational institution" means a university established or incorporated by or under Central Act, a Provincial Act, or a State Act, and includes any other educational institution as recognized by an authority designated by the Central Government or the State Government or the Union territories in this regard;".*

2. Rule 7 of the Principle Rules makes the following substitutions:

   a. The second proviso to Rule 7(1) of the Principal Rules has been substituted as follows:

   > *"Provided further that in the case of a small entity, or startup, or educational institution, every document for which a fee has been specified shall be accompanied by Form-28.";*

   b. Rule 7(3) of the Principal Rules shall be substituted to state as under:

   > *"(3) In case an application processed by a natural person, startup, small entity or educational institution is fully or partly transferred to a person other than a natural person, startup, small entity or educational institution, the difference, if any, in the scale of fees between the fees charged from the natural person, startup, small entity or educational institution and the fees chargeable from the person other than a natural person, startup, small entity or educational institution, shall be paid by the new applicant along with the request for transfer."*

3. Amendments have been made to the First and Second Schedule of the Principal Rules to include Educational Institutions within its ambit, are in order to fulfill the goal of "Mission Aatmanirbhar Bharat" by which Educational Institutions have been given the benefits related to 80% reduced fee for patent filing and prosecution. The same has been enumerated by the Ministry of Commerce and Industries in their press release dated September 23, 2021.

Ministry of Power

The Union Minister of Power and Renewable Energy vide *Press Release dated September 29, 2021* gave his assent to the proposed amendments in the existing Renewable Energy Certificate ("**REC**") mechanism with the intention of bringing the REC mechanism in tandem with the contemporary changes in the power sector and to promote new renewable technologies.

The Ministry of Power vide *Circular bearing no. 23/6/2021-R&R Part-1 dated June 04, 2021* issued a 'Discussion Paper on redesigning the REC mechanism', for seeking comments of stakeholders in the power sector:

Some of the key features of the proposed changes in the redesigned REC mechanism are:

1. Till a REC is sold, the validity with respect to it would be perpetual.

2. Specifications with respect to floor and forbearance prices are not required.

3. To ensure there is no hoarding of RECs, the Central Electricity Regulatory Commission ("**CERC**") should set up a surveillance mechanism with the intention to monitor the same.

4. The Renewable Energy ("**RE**") generators who are eligible for REC, will be eligible for issuance of RECs for fifteen (15) years from the date of commissioning of the projects. The existing RE project that are eligible for REC would continue to get RECs for twenty-five (25) years.

5. Introduction of a technology multiplier which can be used for the purpose of promoting new and highly priced RE technologies, specific to technology depending on maturity they can be further allotted in different sections.

6. RECs can be issued to such obligated entities, such as distribution companies and open access consumers which purchase RE power beyond the renewable purchase obligation compliance as notified by the Central Government.

7. To permit bilateral transactions and traders in REC mechanism.

8. No REC to be issued to the beneficiary of subsidies/concessions or waiver of any other charges. The Forum of Regulators shall define concessional charges uniformly for denying the RECs.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

The Insolvency and Bankruptcy Board of India, vide Notification bearing No. IBBI/2021-22/GN/REG078 dated September 30, 2021, has made amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("**Principal Regulations**"), titled *Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2021* which puts forth the following amendments:

1. After Regulation 17(1) of the Principal Regulations, sub-regulation (1A) has been inserted to enable the committee and its members to discharge functions and exercise powers in respect of the corporate insolvency resolution process in compliance with the guidelines as may be issued by the Board.

2. Sub-regulation (4A) shall be inserted after Regulation 36A(4) of the Principal Regulations which provides that any form of modifications to be made in the invitation for expression of interest shall be made in the same way as the initial invitation was made and such modification shall not be made more than once.

3. A proviso to Regulation 36B(5) of the Principal Regulations has been inserted, according to which any modification in the request for resolution plan or evaluation matrix modification will not be allowed more than once.

4. Regulation 39 (1A) of the Principal Regulations which deals with 'Approval of Resolution Plan' is substituted to the following effect –

    - The Resolution Professional shall permit the modification of the Resolution plan not more than once and bring about a challenge mechanism to empower resolution applicants to improve their plans.

    - The committee shall not consider any resolution plan which is received after the time specified under Regulation 36B or is received from a person who does not appear in the final list of prospective resolution applicants or in the event when such plan do not comply with the provisions of Section 30(2) and sub-regulation 1.

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

IBBI (Liquidation Process) (Second Amendment) Regulations, 2021

The Insolvency and Bankruptcy Board of India ("**IBBI**") vide *Notification dated September 30, 2021* has amended Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 ("**Principal Regulations**") which shall now be called as Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021. The Principal Regulations have been amended to the following effect which shall come into force from September 30, 2021:

1. In Regulation 2(1)(ea) of the Principal Regulations, in sub-clause (vii) with respect to the definition of 'liquidation cost' the words "to contributories" have been omitted.

2. Regulation 2B of the Principal Regulations now states that when a compromise or arrangement is proposed under Section 230 of the Companies Act, 2013 (18 of 2013), it shall be completed within ninety (90) days of the order of liquidation.

3. Regulation 15(2)(e) of the Principal Regulations requires that the progress report related to the liquidation process shall contain information relating to any application filed under Part II along with the developments in such applications if any.

4. Amendments to Regulation 31A of the Principal Regulations, which states about the stakeholder's consultation committee:

    - Sub- regulation (1) which earlier provided that a consultation committee shall be constituted by the liquidator within sixty days from the commencement of the liquidation process, on the basis of the list of stakeholders as prepared under regulation 31, would advise the liquidator only on the matters relating to sale under regulation 32, now provides that such committee shall also advise the liquidator on the matters relating to appointment of the professionals as well as their remuneration, along with sale under regulation 32 which includes manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy. Further, it states that if any such decision is taken before the constitution of such committee the committee shall be informed regarding the same in its first meeting;

- Sub-regulation (4) has been substituted and it now states that if stakeholders of any class fail to nominate their representatives, under sub-regulation (3) then such representatives will be selected by a majority of voting share of the class, present and voting;
- The proviso to sub-regulation (10) which stated that when the liquidator takes a decision different from the advice of the consultation committee he shall record the reasons for the same in writing now includes that such decision shall also be mentioned in the next progress report.

5. In sub-regulation (1) of Regulation 44 of the Principal Regulation the words "Chapter III of" have been omitted wherein the liquidator shall liquidate the corporate debtor within a period of one year from the liquidation commencement date, notwithstanding pendency of any application for avoidance of transactions.

6. The words 'and announcement to public' appearing in the table relating to model timelines for liquidation process, in column (3), against Sl. No. 9 of regulation 47 of the Principal Regulations have been removed.

7. Amendments to Schedule I, paragraph I of the Principal Regulations, which contains information about auction:

- Proviso stating that the liquidator should not require the payment of any non-refundable deposit or fee for participation in an auction under the liquidation process and that the earnest money deposit shall not exceed ten percent of the reserve price has been inserted after clause (3)
- Clause (5) now requires the liquidator to issue a public notice of an auction in the manner specified in Regulation 12(3)
- Clause (11A) which requires the liquidator to intimate the reasons for rejection of the highest bid to the highest bidder and also mention it in the next progress report has been inserted after clause 11.

8. Amendments to Schedule I, in Form H, in para 2 of the Principal Regulations, which contains information about the compliance certificate-

- Serial No. 19 in the table and the entries thereof shall be omitted;
- The word 'announcement' appearing in column no. (2) of serial no.23 and serial no. 24 has now been substituted by the word 'notice'.

Securities and Exchange Board of India

In exercise of the powers conferred by Section 11, Section 11A (2), and Section 30 of the Securities and Exchange Board of India Act, 1992 read with Section 31 of the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India ("**SEBI**") further amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**Principal Regulations**"), to be known as the SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021 ("**SEBI Amendment Regulation**").

The applicability of SEBI Amendment Regulation were notified vide *Circular dated September 07, 2021* wherein the following amendments were made to the Principal Regulations:

1. The SEBI Amendment Regulation shall be applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities and shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of Regulation 15.

2. Regulation 2(u) of the Principal Regulations which defines the terms *non-convertible debt securities*, *non-convertible redeemable preference shares*, *non-convertible securities*, *perpetual debt instrument* and *perpetual non-cumulative preference share* are amended to the effect to have same meaning as assigned to them under the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

3. The obligations mentioned in Chapter IV are now made applicable to entities having listed non-convertible debt securities by insertion of Regulation (1A) in Regulation 15 of the Principal Regulations.

4. Accordingly, the provisions of Regulation 16 to Regulation 27 of Chapter IV of the Principal Regulations shall now be applicable to a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed non-convertible debt securities of Rupees Five Hundred Crore and above – to be referred to as '*high value debt listed entities*' mandatorily on a 'comply or explain' basis until March 31, 2023. Such entity shall ensure the compliance with same within six (6) months from the date of reaching the abovementioned threshold.

5. Explanation is provided after sub-clause (viii) of Regulation 16(1)(b) of the Principal Regulations with respect to independent directors in case of a high value debt listed entity as under –

- a body corporate which is mandatorily required to constitute board of directors in a specific manner under the law, the non-executive directors on board of such body corporate shall be treated as independent directors

- a Trust which is mandated to constitute board of trustees in accordance with the law, the non-employee trustees on board of such Trust shall be treated as independent directors

6. Regulation 21(5), of the Principal Regulations shall be substituted and be read as follows –

"(5) The provisions of this regulation shall be applicable to:

i. the top 1000 listed entities, determined on the basis of market capitalization as at the end of the immediate preceding financial year; and,

ii. a 'high value debt listed entity"

7. For the purpose of Regulation 26 of the Principal Regulations, wherein it is stated that a director shall not be a member in more than ten (10) committees or act as chairperson of more than five (5) committees across all listed entities in which he/she is a director, the term listed entity shall include high value debt listed entities along with other listed entities mentioned in sub-clause (a).

8. Regulation 50 of the of the Principal Regulations is substituted and now mandates a listed entity to give at least two (2) days prior intimation to stock exchange when the following matters are to be proposed in its Board meeting - -

- any alteration in the form or nature of non-convertible securities that are listed on the stock exchange or in the rights or privileges of the holders thereof;
- an alteration in the date of the interest/ dividend/redemption payment of non-convertible securities;
- financial results viz. quarterly or annual, as the case may be;
- fund raising by way of issuance of non-convertible securities; or
- any matter affecting the rights or interests of holders of non-convertible securities.

9. Under the amended provision of Regulation 52, of the Principal Regulations the listed entity is now required to submit its un-audited or audited quarterly and year to date standalone financial statements to a recognised stock exchange within forty-five (45) days from the end of the quarter and the same shall be provided to the Debenture Trustee as well.

10. Sub-regulation 7 of Regulation 52 of the Principal Regulation requires the listed entity to intimate the utilization of proceeds of the issue of non-convertible securities within forty-five (45) days from the end of each quarter to the stock exchange until the proceed are completely utilised or the purpose for which these securities are issued has been achieved. Additional sub-regulation 7A has been inserted to ensure that there is no material deviation from the object of issue of these securities without Initiation to the stock exchange.

11. A new Regulation 61A has been inserted to the Principal Regulations which does not allow the listed entity to forfeit unclaimed interest/ dividend/redemption amount which was to be claimed within thirty (30) days of such payment and requires to deposit the said amount in an escrow account to be opened by the listed entity in any scheduled bank. However, if in case the said amount remains in the escrow account for a period of more than seven years then the same shall be transferred to the 'Investor Education and Protection Fund' constituted in terms of Section 125 of the Companies Act, 2013.

12. Schedule III Part B of the Principal Regulations have been amended to provide additional event based disclosure and compliance by the listed entities, few of which are listed as under:

- Any change in Directors, Key Managerial Personnel ("**KMP**") Auditor and Compliance Officer;
- fraud/defaults conducted by the promoter or key managerial personnel or director or employees of the listed entity or by listed entity or arrest of KMP or promoter;
- detailed reasons for the resignation of the auditor shall be disclosed by the listed entities to the stock exchanges not later than 24 hours of receipt of such reasons from the auditor;
- resolution plan/restructuring in relation to loans/borrowings from banks/ financial institutions;
- winding-up petition filed by any party/creditors etc.

CASE SUMMARY

Case Name : ***Appeal No. 386 of 2019 in the matter of Maharashtra State Electricity Distribution Company Limited Vs. Maharashtra Electricity Regulatory Commission & Anr.***

Court Name : **Appellate Tribunal for Electricity.**

Order Dated : **September 20, 2021.**

Facts of the Case:

1. The "**Appellant**" i.e. Maharashtra State Electricity Distribution Company Limited/MSEDCL had entered into a Wind Energy Purchase Agreement ("**WEPA**") on August 20, 2014 with Rajlakshmi Minerals ("**Respondent No. 2**") for the purchase of entire quantum of electricity generated from the operation of its 3.40 MW power plant, situated in Kolhapur, Maharashtra. The purchase price determined in the WEPA was at Rs. 5.81 per Kwh. Further, the WEPA also contained a provision for levy of Delayed Payment Surcharge ("**DPC**") at 1.25% per month in case of delay in payment beyond the due date.

2. On default by the Appellant in making timely payments of its dues for electricity supplied under the WEPA, Respondent No. 2 filed a petition against the Appellant before Maharashtra Electricity Regulatory Commission/MERC ("**Respondent No. 1**"/ "**State Commission**") on January 09, 2019 vide Case No. 26 of 2019 seeking directions against Appellant for recovering the payment of principal amount and DPC for electricity supplied under the WEPS to the Appellant.

3. Thereafter, Respondent No. 1 vide its Order dated March 26, 2019 ("**Impugned Order**") directed the Appellant to release the defaulted payments to Respondent No. 2 relating to the principal amount along with DPC for the electricity supplied under the WEPA. The State Commission also directed the Appellant to reconcile the statement of accounts with Respondent No.2 within two (2) weeks of the date of the Impugned Order. Additionally, Respondent No. 1 observed that the Appellant had similar outstanding claims of other generators as well for which the Appellant gave various assurances and payment plans but failed to keep those promises and therefore Respondent No. 1 ordered that if the Appellant fails to make the defaulted payments in time, penal interest of 1.25% per month will also be levied on the amount of DPC.

4. Aggrieved by the Impugned Order, the Appellant filed the present appeal with this Hon'ble Appellate Tribunal for Electricity ("**APTEL**") claiming that there is no principle of imposition of interest over interest as awarded by Respondent No.1 in its Impugned Order.

Order of Hon'ble APTEL:

1. The Hon'ble APTEL vide Order dated September 20, 2021, observed that the Appellant is a habitual defaulter towards various sellers over a prolonged period of time and the State Commission has only been prodding them to adhere to the submitted payment plans, which the Appellant has evidently failed to do and such submissions of various payment plans seem like a ploy to buy time.

2. The Hon'ble APTEL also expressed their disappointment with the State Commission in accepting mere paper promises from the Appellant towards their liabilities and failed to discharge its responsibility by directing the parties to reconcile the statement of accounts within two weeks from the date of the Impugned Order.

3. Further, the Hon'ble APTEL also chastised the Appellant by saying that the Appellant has been misleading Respondent No. 1 by submitting false and misleading payment plans and has also attempted to do the same with this Hon'ble APTEL.

4. With respect to the imposition of 1.25% interest on the DPC, the Hon'ble APTEL dismissed the contentions of the Appellant and held that a regulatory commission under the Electricity Act, 2003 has the right to exercise the powers of a civil court thus making it competent to not only award the payment of the principal amount but also any interest whether past, *pendente lite* or future, because if such interest were denied, the party entitled to recover the amount will not receive the money due in full, suffering erosion of real value due to time elapse which would result in incomplete justice.

5. Further, the claim for DPC merges with the principal amount and interest on the entire claim can be awarded which is in line with the long established practice of awarding future interest on the "*principal sum adjudged*". Further the Hon'ble APTEL held as under:

> *The present case is a perfect illustration of the importance of awarding interest on LPS / DPC, as the appellant has, year after year, caused massive delay in payments and compelled the respondent to initiate legal proceedings before the State Commission for recovery of its legitimate dues.*

6. Lastly, the Hon'ble APTEL reprimanded the Appellant by saying that the manner in which the Appellant has been warding off its creditors by depriving them of timely payments of their legitimate dues was deeply disturbing and reflective of its financial mis-management, which is not expected from a distribution licensee as it leads to unnecessary litigation, adding to the cost for all stake-holders and the State Commission being a sector regulator is equipped with requisite power to ensure compliance and ought to do better.

7. In light of the above, the Hon'ble Tribunal dismissed the Appeal and issued the following directions:

   a. The State Commission was directed to determine the amount payable by the Appellant and ensure that the liability is discharged within three (3) months from the date of the Order.

   b. It is the State commission's duty to issue appropriate directions and ensure that the Distribution Licensee conducts itself in an appropriate manner according to the Electricity Act, 2003, so as to ensure that the business is conducted in a reasonable manner and the interests of the consumers are protected.

   c. The State Commission is directed to examine the financial affairs of the Appellant and take appropriate measures to ensure that the Appellant is able to maintain financial discipline.

Case Summary

Case Name : ***GCCL Infrastructure & Projects Limited***

Court Name : **National Company Law Tribunal**

Order Dated : **September 14, 2021**

Facts of the Case:

1. This application was filed under Section 54A of the Insolvency and Bankruptcy Code, 2016 by GCCL Infrastructure and Projects Limited ("**Corporate Debtor**") to initiate Pre-Packaged Insolvency Resolution Process ("**PPIRP**") of the Corporate Debtor.

2. The total debt amount payable by the Corporate Debtor to its various creditors is Rs. 54,16,250/- (Rupees Fifty-Four Lakhs Sixteen Thousand Two Hundred and Fifty Only) and the date of default is December 31, 2020.

3. The Corporate Debtor being a Micro, Small & Medium Enterprise ("**MSME**") is eligible to file the abovementioned application under Section 54A(1) of the Insolvency and Bankruptcy Code, 2016 ("**Code**").

4. The Corporate Debtor has complied with the following conditions in order to make the PPIRP application, namely:

    a. Declaration by majority Directors of the Corporate Debtors under **Section 54A(2)(f)** of the Code in the prescribed Form P6.

    b. Special Resolution by the Members of the Corporate Debtor with the intention to initiate the PPIRP as per **Section 54A(2)(g)** of the Code was passed.

    c. Approval obtained from the Financial Creditors for filing the herein mentioned application as per Section 54A(3) of the Code.

    d. Submission of Base Resolution Plan as per Section 54K of the Code.

    e. Corporate Debtor has proposed name of Insolvency Professional to be appointed as RP as per Section 54C(3)(b) of the Code, who has given his consent in writing.

    f. Financial Creditor approved Resolution Professional ("**RP**") appointed as per Section 54A(2)(e) of the Code read with Regulation 14(5) of the IBBI (Pre-Packaged IRP) Regulations, 2021.

g. RP's Report prepared as per Section 54B(1)(a) of the Code in the prescribed Form 8.

h. Requisite declarations regarding existence of avoidance of transactions relating to the company and its directors have been submitted as per Section 54(3)(c) read with Regulation 16(2) of IBBI (Pre-packaged IRP) Regulation, 2021.

i. Corporate Debtor also filed an affidavit with respect to eligibility under Section 29A of the Code to submit Resolution Plan in compliance with Section 54(2)(d) of the Code.

j. Audited financial statements of the company for the FY 2019-20 and FY 2020-21 in compliance with Section 54C(3)(d) of the Code has been complied with.

k. Information as required under Section 54F(3)(f) of the Code have also been produced.

Order of the Hon'ble National Company Law Tribunal:

1. Application for PPIRP of the Corporate Debtor stands admitted under Section 54C of the Code.

2. Owing to the commencement of PPIRP, moratorium has been declared under Section 14 of the Code, thereby prohibiting all the actions envisaged under Section 14(1) of the Code.

3. RP proposed by Corporate Debtor is appointed to conduct the PPIRP as per the provisions under Chapter III-A of the Code. The RP shall perform his duties and functions as per the provisions under Section 54F of the Code.

4. Adjudicating Authority gave directions to RP to make public announcement of PPIRP of the Corporate Debtor as per Section 54A of the Code.

5. As provided under Section 54F(5) of the Code, personnel of the Corporate Debtor shall provide all assistance and cooperation to the RP and in a case of non-cooperation, the RP can approach the Adjudicating Authority under Section 19(2) of the Code. Management of Corporate Debtor shall remain vested with the Board of Directors of the Corporate Debtor as per Section 54H subject to action under Section 54J of the Code, if any. Board of Directors shall discharge their duties as specified under Section 54H(b) and Section 54 H(c) of the Code.

6. The RP has been directed to file an intern report in a span of thirty (30) days to the Adjudicating Authority.

7. The Adjudicating Authority has directed the registry to communicate a copy of this Order to the Financial Creditor, Corporate Debtor and to the RP and the concerned Registrar of Companies after completing the necessary formalities within seven (7) working days and to upload the same on the website immediately after pronouncement of the Order.

Case Summary

Case Name	**: *Arbitration Petition No. 17 of 2020 in the matter of DLF Home Developers Limited Vs. Rajapura Homes Private Limited and Anr. & Arbitration Petition No. 16 of 2020* in the matter of DLF Home Developers Limited Vs. Begur OMR Homes Private Limited & Anr.**
Court Name	**: Supreme Court of India**
Order Dated	**: September 22, 2021**

Facts of the Case:

1. In the year 2007-2008 DHDL ("**Petitioner**") and Ridgewood Holdings Limited entered into a Joint Venture wherein Ridgewood Holdings Limited invested in four Special Purpose Vehicles, including Rajapura Homes Private Limited ("**Respondent No.1**") in Arbitration Petition No. 17 of 2020 and Begur OMR Homes Private Limited (Respondent No.1 in Arbitration Petition No. 16 of 2020) ("**Begur Company**") for developing residential projects in various cities across India.

2. In June 2008, Ridgewood Holdings Limited transferred its stake in the joint venture to its affiliates, Resimmo PCC ("**Respondent No.2**") in both the Petitions and Clogs Holding BV ("**Clogs**"). As per the terms of the agreement upon expiry of the exit period, Respondent No.2 and Clogs were entitled to a put option on the Petitioner, which they exercised from January to May 2014. However, Petitioner was not able to provide an exit to Respondent No.2 and Clogs. Subsequently in 2015 the parties agreed to a negotiated settlement, as per which, Respondent No.2 was to acquire sole ownership and control of two Special Purpose Vehicles namely, Respondent No.1 and the Begur Company. It can be noted Respondent No.2 is a company incorporated under the laws of Mauritius and is engaged in the business of providing investment management services.

3. To effect the change of ownership of the First Respondent, the Petitioner, Respondent No.1 and Respondent No. 2 executed a Share Purchase Agreement dated July 08, 2016 ("**Rajapura SPA**") with the purpose of transferring the Petitioner's entire shareholding in Respondent No.1 to Respondent No.2. Similarly, a Share Purchase Agreement dated 25.01.2017 was also executed between the Petitioner, Begur Company and Respondent No.2 to transfer the Petitioner's entire holding in the Begur Company to Respondent No.2 ("**Southern Homes SPA**"). While the primary subject matter of the Share Purchase Agreements ("**SPAs**") was the transfer of shares from the Petitioner to Respondent No.2, both the SPAs also stipulated certain additional obligations that would have to be

undertaken by the Petitioner.

4. In terms of the agreement, and in pursuance of the construction obligations under the Rajapura SPA and the Southern Homes SPA, the Parties on 25.01.2017 executed the DLF-Rajapura Hones Construction Management Services Agreement ("**RCMA**") and the DLF- Southern Homes Construction Management Services ("**SCMA**"). Under both RCMA and SCMA, the Petitioner had to provide construction services to Respondent No.1 and Begur Company, respectively for completion of the homes and to hand over the sold units. Both agreements had same arbitration clauses and as per Clause 11 of the RCMA and SCMA, the seat and venue of the arbitration would be New Delhi and the arbitration would be governed by the Arbitration and Conciliation Act, 1996 ("**Act**")

5. Petitioner was entitled to a "Fee" as a consideration for the construction management services provided by it under the SCMA and RCMA. The clause under SCMA and RCMA put forth that upon completion of its construction obligations, Petitioner would have to submit written notice of Completion to Respondent No.1 and Begur Company. Respondent No.1 and Begur company had the right to reject or confirm the same. Agreement specified that once Respondent No.1 and the Begur Company accepted the notice of completion, Respondent No.2 would be obligated to invest Rs.75,00,00,000/- in the Begur Company.

6. Petitioner vide letter 26.05.2020 issued a notice invoking arbitration under the SCMA and RCMA clauses. The notice of completion dated 16.08.2019 and 26.12.2019 which was issued pursuant to the Clause 4.2 under the SCMA and RCMA was rejected on unreasonable grounds by the Respondent No. 1 and Begur Company. The Petitioner further alleged that the refusal of the Respondent Companies to accept the notice of completion amounts to a breach under the SCMA and RCMA and was done with the intention to avoid Respondent No.2's obligation to invest Rs. 75 Crores in the Begur Company as put forth under the SCMA, RCMA and the Fee Agreement. Petitioner referred all disputes arising out of the SCMA and RCMA to a common Arbitral Tribunal composing of a sole arbitrator.

7. The Respondents claimed that the differences between the parties have arisen under the Rajapura SPA and Southern Homes SPA and not under the RCMA/SCMA. Further, Respondents refused to have the disputes consolidated into a common and composite tribunal and stated the same would have to be resolved under separate arbitration proceedings. On 13.06.2020, Respondents issued two more letters through their counsel, Freshfields Bruckhaus Deringer Singapore Pte. Ltd., reiterating that the disputes between the parties are not governed within the terms of the SCMA and RCMA and Respondents reserved their rights to invoke the dispute resolution provisions under the Southern Homes SPA and Rajapura SPA, respectively by instituting arbitral proceedings under the SIAC rules.

8. Aggrieved by the Respondents refusal, Petitioner preferred two separate petitions under Section 11(6) read with Section 11(12) of the Act, praying for appointment of a sole arbitrator for resolution of all the disputes from the SCMA and RCMA. Arbitration between Parties falls within "international commercial arbitration" as under Section 2(1)(f) of the Act since Respondent No.2 is not incorporated in India.

Order of the Hon'ble Supreme Court:

Adjudicating on the scope of the judicial inquiry under Section 11 of the Act, the Hon'ble Supreme Court held has under:

> *"19. To say it differently, this Court or a High Court, as the case may be, are not expected to act mechanically merely to deliver a purported dispute raised by an applicant at the doors of the chosen Arbitrator. On the contrary, the Court(s) are obliged to apply their mind to the core preliminary issues, albeit, within the framework of Section 11(6-A) of the Act. Such a review, as already clarified by this Court, is not intended to usurp the jurisdiction of the Arbitral Tribunal but is aimed at streamlining the process of arbitration.* ***Therefore, even when an arbitration agreement exists, it would not prevent the Court to decline a prayer for reference if the dispute in question does not correlate to the said agreement.***
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> *....*
>
> *25. We are, therefore, of the considered opinion that in order to determine the nature of arbitral proceedings, the two groups of agreements will have to be read in harmony and reconciled so as to avoid any head on collision, and thereafter a conclusion as to which of the clauses would be applicable in the present case, needs to be drawn.*
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> *....*
>
> *34. ……*
>
> *It was urged on behalf of the Petitioner that since the RCMA and SCMA are inextricably interlinked to each other, the dispute/difference cannot be segregated into two separate proceedings....*

35. ….

We leave it to the wisdom of the sole arbitrator to decide whether the disputes should be consolidated and adjudicated under one composite award or otherwise. The modalities and manner in which the two separate arbitral proceedings shall be conducted shall also be resolved by the sole arbitrator."

The Hon'ble Supreme Court allowed both the petition and appointed Mr. Justice (Retd.) R.V. Raveendran, Former Judge, Supreme Court of India as the sole arbitrator to resolve the differences between the parties.

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Warm Regards,

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