The Corporate Brief

January 2024

Centre for Business & Commercial Laws

NATIONAL LAW INSTITUTE UNIVERSITY, BHOPAL

The Corporate Word

Brownfield Investments

A brownfield investment (BI) is a type of foreign direct investment (FDI) where a company invests in an existing facility to start its operations in the foreign country. It is the lease or purchase of a pre-existing facility in a foreign country.

Alpha Decay

This term describes the tendency of actively managed funds to underperform their benchmark index over time, net of fees. It challenges the claim of active managers consistently outperforming the market and raises questions about their value proposition. Understanding alpha decay is crucial for assessing the potential benefits and costs of actively managed investments.

Collateralized Debt Obligation

A collateralized debt obligation is a complex structured finance product that is backed by a pool of loans and other assets.These underlying assets serve as collateral if the loan goes into default.

Amortization

Amortization refers to the gradual reduction of a debt over time through scheduled payments. These payments typically cover both the principal amount borrowed and the accrued interest.

ETF (Exchange-Traded Fund)

An ETF is a type of investment fund and exchange-traded product that holds a basket of assets, such as stocks, bonds, or commodities. ETFs are traded on stock exchanges, providing investors with the ability to buy and sell shares throughout the trading day at market prices.

P/E Ratio (Price-to-Earnings Ratio)

The P/E ratio is a financial metric that compares a company's current share price to its earnings per share (EPS). It is a valuation tool used by investors to assess a stock's relative value and determine whether it is overvalued or undervalued. A higher P/E ratio may suggest a higher expected future earnings growth.

Bond Yield

Bond yield is the annual return on a bond expressed as a percentage of its face value. It includes both the interest paid by the bond (coupon payments) and any capital gains or losses if the bond is bought or sold at a price different from its face value. Yield is a crucial measure for fixed-income investments.

Giffen Good

A non-luxury product for which demand increases and vice versa, thus defying standard laws of demand.

Case Summary: ACIT v. Blackstone Capital Partners (Singapore) VI FDI Three (P.) Ltd.

- Amar Prem Prakash

Background

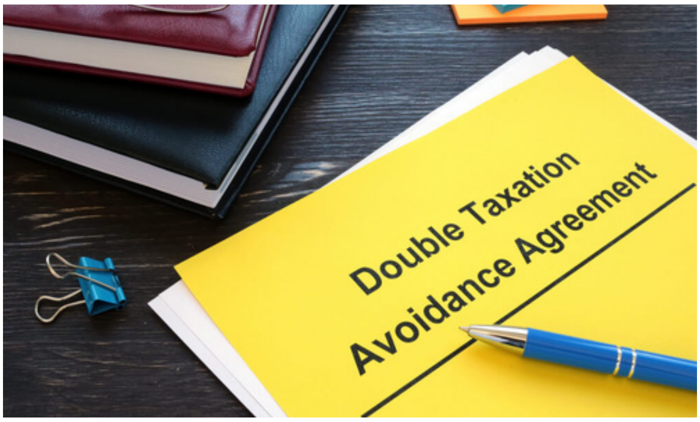
On January 12, 2024, the Supreme Court issued a stay on the Delhi High Court's ruling, which had used its authority to cancel the tax department's reassessment proceedings against Blackstone Capital Partners (Singapore) VI FDI Three (P.) Ltd. Reassessment proceedings involve the reopening of a previously completed assessment under specific criteria. This process aims to reassess the total income of the taxpayer by incorporating any income that was not accounted for in the initial assessment. The High Court determined that the tax department is not allowed to question the validity of the Tax Residency Certificate (TRC) provided by the taxpayer's jurisdiction. The court regarded the TRC as adequate proof to establish eligibility for treaty benefits, residency status, and legal ownership. A TRC is essentially an authoritative document issued by the tax department to verify an individual or entities' classification as a tax resident in India for a specified duration.

Facts of the case

The assessee, a Singaporean firm, purchased equity shares of Agile Electric Sub Assembly Private Ltd, an Indian company, in two installments during the assessment year 2014-15. The taxpayer later sold all the ownership shares of Agile to Igarashi Electric Works Ltd. and other individuals during the Assessment Year 2016-17. It possessed a legitimate TRC granted by the Inland Revenue Authorities of Singapore (IRAS). The taxpayer asserted their entitlement to the advantages outlined in Article 13(4) of the India-Singapore Double Taxation Avoidance Agreement (DTAA), which specifically designates Singapore as the jurisdiction responsible for taxing capital gains. The Assessing Officer (AO) issued a notice of reassessment alleging that the assessee was a shell/conduit firm with minimal commercial activity in Singapore and lacking genuine and continuous business operations. The AO vehemently contended that the taxpayer was a firm situated in the United States due to its management being largely based there together with the fact that the investment money for India originated from the United States. Due to the absence of capital gains tax exemption in the India-USA DTAA, the AO refused to grant the assessee exemption on capital gains. Dissatisfied with the decision, the Taxpayer filed a writ petition before the High Court.

Judgment

The Delhi High Court ruled in January 2023 that the TRC is the only legally required evidence to qualify for the benefits under the DTAA. The AO could not challenge it, as doing so would directly contradict the Government of India's consistent position and repeated promises to Foreign Investors. In addition, it was held that the press release dated 01-03-2013 released by the Finance Ministry following the 2013 modification explicitly states that a TRC must be acknowledged, and tax officials are not allowed to question its validity. The IRAS issued a TRC to the assessee after conducting a thorough examination of the documentation, and the Indian Revenue authorities were unable to ignore it. The argument was that the AO was not allowed to question the validity of the TRC provided by the other tax jurisdiction, since it serves as adequate proof for claiming treaty eligibility, residence status, and legal ownership.



Consequently, it was held by the HC that AO was incorrect in issuing a reassessment notice to deny the assessee the benefit of the India-Singapore DTAA. A Special Leave Petition (SLP) was filed to the Hon'ble Supreme Court challenging the decision made by the Delhi High Court on the provision of treaty advantages based on the TRC. The Supreme Court issued a notice, granted a stay, and prohibited the tax department from taking action against the firm in response to the tax notices. The court deferred the case until March 2024, when arguments on the merits will be heard.

Read More:

https://itatonline.org/digest/verdicts/blackstone-capital-partners-singapore-vi-fdi-three-pte-ltd-v-acit-delhi-high-court/

https://economictimes.indiatimes.com/markets/stocks/news/sc-ruling-to-decide-fate-of-trcs-tax-notices-to-investors/articleshow/106556186.cms?from=mdr

https://www.azbpartners.com/bank/indian-high-court-ruling-gives-certainty-to-foreign-investors/

https://www.mgbadvisors.com/the-delhi-high-court-in-the-case-of-blackstone-capital-partners/

India Introduces Scheme for Direct Listing of Equity Shares on International Exchanges

-Rohit Mishra

Introduction

The Ministry of Finance, through the Department of Economic Affairs (DEA), has recently unveiled a significant regulatory initiative allowing public Indian companies to issue and list their equity shares on permitted international exchanges. The amended Foreign Exchange Management (Non-debt Instruments) Rules, 2019, and the Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024, jointly establish a comprehensive framework for this purpose.

The Regulatory Framework

The regulatory amendments specify that the scheme begins with the Gujarat International Finance Tec-City International Financial Services Centre (GIFT-IFSC) as the permissible jurisdiction, and the India International Exchange and NSE International Exchange as the designated international exchanges. The move is expected to reshape the Indian capital market landscape, offering Indian companies, especially those in the start-up and technology sectors, an alternative avenue to access global capital beyond domestic exchanges.

The rules define 'permissible holders' as individuals residing outside India, subject to sectoral limits and caps as per foreign exchange norms. Notably, holders from countries sharing a land border with India, such as China, will require approval from the Central Government to hold equity shares of public Indian companies. This aligns with existing restrictions on Chinese companies and investors, indicating a cautious approach to foreign investment.

Eligibility and Restrictions

The rules outline that individuals residing outside India are eligible as permissible holders, subject to sectoral limits and foreign exchange norms. Notably, citizens from countries sharing a land border with India, such as China, require Central Government approval to hold equity shares of public Indian companies, reflecting a nuanced approach to foreign investment.

Public Indian companies are now permitted to issue equity shares on international exchanges, and existing shareholders can offer equity shares as well.

However, restrictions apply if the public Indian company, its promoters, promoter group, directors, or selling shareholders are debarred from accessing the capital market by the appropriate regulator, or if they are classified as wilful defaulters, fugitive economic offenders, or are under investigation.

Pricing Dynamics

The pricing dynamics set forth in the notification bring an interesting twist. Listed entities must issue shares at a price not lower than that offered to domestic investors, while unlisted entities will navigate a book-building process, with the price not dipping below the fair market value stipulated by the Foreign Exchange Management Act (FEMA).

The Ministry of Finance envisions this initiative as a catalyst for better valuation of Indian companies, aligning them with global standards and performance metrics. Beyond the financial jargon, the move is expected to infuse fresh life into the sector by attracting foreign investment, unlocking untapped growth avenues, and diversifying the investor base.

Public Indian companies now have the flexibility to dance between domestic and international markets, raising capital domestically in Indian Rupees and globally in foreign currency at GIFT-IFSC, casting a wider net for global investors.

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MINISTRY OF
FINANCE

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Conclusion

The Ministry of Finance's statement emphasizes that this policy initiative will not only benefit Indian companies going global but also provide new investment opportunities for investors, diversification of financial products, and enhance liquidity in the capital market ecosystem at GIFT-IFSC. The maiden international financial services center of India, GIFT-IFSC, facilitated by the International Financial Services Centres Authority (IFSCA), is positioned to connect India with global opportunities, promoting the seamless flow of global capital into the Indian economy.

Read More:

https://www.livemint.com/market/stock-market-news/government-allows-direct-listing-of-securities-by-indian-companies-on-gift-ifsc-11706097015602.html

https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1999154#:~:text=Earlier%2C%20through%20the%20Companies%20(Amendment,permissible%20foreign%20jurisdictions%20or%20other

https://www.thehindubusinessline.com/markets/rules-for-direct-listing-of-securities-by-indian-companies-on-international-exchanges-of-gift-ifsc-notified/article67773235.ece

SC: Burden To Call For Curing Of Defects In Filing Of Tax Returns In On The Assessing Officer

-Ishita Warghat

Introduction

The Supreme Court, on 23rd January 2024, in a bench consisting of Justices BV Nagarathna and Ujjal Bhuyan, ruled that an Assessing Officer (AO) must notify the assessee of any errors in a tax return and that the return cannot be considered defective if the AO does not follow through on this obligation.

Determining the flaws and notifying the assessee for correction falls under the purview of the AO's discretion and they bear the responsibility. The income tax return cannot be interpreted as a flawed return if they abstain from exercising their discretion, according to the bench.

Question of Law Involved

The bench was asked to decide whether it was good law or not to reopen a finished assessment, or reassessment, under Section 147 of the Income Tax Act, 1961 (the Act), after notice was given under Section 148 of the Act.

In this instance, due to a search and seizure operation by the revenue department, a partnership firm did not file a balance sheet or regular books of account throughout the relevant period for three assessment years (1990–91, 1991–92, and 1992–93) when filing returns.

After the three assessment years, the firm filed a balance statement and a profit and loss account, in accordance with the assessment orders issued under Section 143(3) of the Act. Following the evaluating officer's discovery of a discrepancy during examination, a request was made to reopen the appellant and its partners' assessment for the academic years 1988–89 to 1993–94.

Outcome

In the end, the AO conducted the assessment for Assessment Years (AYs) 1988–89 and 1989–90 based on the profit and loss account and balance sheet that the appellant had submitted to South Indian Bank in order to get credit. Additionally, re-evaluations were conducted using the accounts that were turned in to the bank.

The firm filed an appeal with the Commissioner of Income Tax (Appeals) [CIT(A)] against the reassessment decisions, claiming that the proviso to Section 147 prohibited reassessment because the assessments were sought to be reopened beyond four years from the end of the relevant AY. They contended that an estimate could not be used to calculate income evading assessment. However, for each of the three assessment years, the AO distributed the purportedly escaping revenue according to the matching sales turnover.

The appellant's arguments were rejected by the CIT(A), which increased the amount of evaded income. It did point out, nevertheless, that the AO had used the appellant's 1989 balance sheet as the foundation for balancing the accounts of the appellant's partners. Furthermore, it was noted that the balance sheet and profit and loss statement provided to the South Indian Bank were untrustworthy.

Consequently, the appellant filed a complaint with the Income Tax Appellate Tribunal, wherein it was decided that the appellant's case fell under the proviso of Section 147, and the re-evaluation was ruled to be legally forbidden.

The revenue department appealed the Tribunal's decision, leading to the High Court overturning the Tribunal's finding. In response to this, the firm and its partners took the case to the Supreme Court. The Supreme Court stated that while a return lacking a standard balance sheet and profit and loss account might be considered flawed, it is not necessarily deemed invalid. Additionally, the court emphasized that presenting books of accounts or other evidence typically discoverable by the assessing officer does not constitute a genuine and comprehensive disclosure.

Read more:

https://www.business-standard.com/finance/news/burden-to-call-for-curing-of-defects-in-tax-return-on-assessing-officer-sc-124012400998_1.html

https://www.a2ztaxcorp.com/burden-to-call-for-curing-of-defects-in-tax-return-on-assessing-officersupremecourt/#:~:text=officer%3A%20Supreme%20Court,Burden%20to%20call%20for%20curing%20of%20defects%20in,on%20assessing%20officer%3A%20Supreme%20Court&text=The%20Supreme%20Court%20on%20Tuesday,return%20cannot%20be%20called%20defective

Navigating Eligibility: NCLAT's Verdict on Ex-Promoters/Directors as Resolution Applicants

-Animisha Dwivedi

Introduction

The National Company Law Appellate Tribunal (NCLAT), in a recent ruling, clarified the matter regarding the eligibility of a Resolution Applicant in matters of insolvency. Section 29A of the Insolvency and Bankruptcy Code (IBC) lays down the conditions under which a Resolution Applicant (RA) might be ineligible to submit a Resolution plan. Despite the existing provision, questions have arisen regarding the applicability of the conditions.

A Resolution Applicant performs a crucial role in the Corporate Insolvency Resolution Process (CIRP). Section 5(25) of the IBC defines it as a person who, individually or jointly with any person, submits a resolution plan to the Resolution Professional. On 11 January 2024, the NCLAT, in the case of Vishram Narayan Panchpor v. Committee of Creditors, dealt with the impact of the existence of former relations between a Resolution Applicant and the Corporate Debtor (CD) on the RA's eligibility under Section 29A. The Tribunal was hearing an appeal against the decision of the National Company Law Tribunal (NCLT) whereby the Resolution plan was dismissed citing the ineligibility of the RA.

Facts of the case

In the instant case, the Corporate Debtor, M/s. Blue Frog Media Private Ltd, had applied for the initiation of the CIRP under Section 10 of IBC through its Managing Director.

On the acceptance of this application by the Adjudicating Authority, the resolution plan was submitted to the Authority by the RA, Mr. Mahesh Mathai (Ex-Director of the Corporate Debtor). The plan submitted by Mr. Mathai had also received the approval of the Committee of Creditors by a vote share of 91.86%. The application seeking approval of the resolution plan was however dismissed by the Adjudicating Authority. Mr. Mathai having been associated with the Corporate Debtor as an Ex-Managing Director was deemed unfit for the role of Resolution Applicant.

This order of the NCLT was challenged by the Resolution Professional, arguing that Section 29A does not automatically bar the Promoter or Ex-managers from being eligible to act as a RA.

Judgement

The main issue in front of the NCLAT was to determine the eligibility of the RA under Section 29A of the IBC. With regards to Section 29A, it was observed that the NCLT while rejecting the resolution plan had cited clause (c) to justify the ineligibility of Mr. Mathai. However, the NCLAT noted that Section 29A(c) comes into play only in cases where the applicant or the associate of the applicant has an account with the Corporate Debtor and the same has been designated as a Non-Performing Asset (NPA). Since in the present case there was no evidence of any account of the CD or the Successful Resolution Applicant to be an NPA, it was held that clause (c) could not be applied.

The Tribunal further observed that a simple reading of Section 29A proves that the ineligibility of an Applicant arises only in cases when the said person falls under any of the categories provided in clauses (a) to (g). The appellant's case does not fall under any of these clauses. Therefore, it cannot be considered tainted by the ineligibility under Section 29A.

The NCLAT also relied on the Supreme Court's judgment in Hari Babu Thota v. Shree Aashraya Infra-Con Limited while observing that there is no disqualification under Section 29A per se. It was further held that the mere fact of Mr. Mathai being a director or promoter does not automatically attract Section 29A. Accordingly, the interpretation of the NCLT was held to be erroneous and its order was set aside.

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Read more :

https://www.metalegal.in/post/dissecting-s-29a-of-the-ibc-nclat-clarifies-resolution-applicant-eligibility-in-insolvency-cases

https://www.livelaw.in/pdf_upload/vishram-narayan-panchpor-rp-of-blue-frog-media-pvt-ltd-vs-committee-of-creditors-blue-frog-media-pvt-ltd-and-anr-517694.pdf

Navigating GST Refunds: Rajasthan High Court Declares Bank Guarantee Demand Inconsistent with Law

-Rishika Jain

Introduction

In a recent development, the Rajasthan High Court delivered a significant judgment in the case of Raj Kamal Cargo Movers v. Assistant Commissioner of Jaipur, by shedding light on the complexities surrounding Goods and Services Tax (GST) refunds and challenges faced by taxpayers.

The case centers around the Assistant Commissioner's insistence on a bank guarantee to provide a refund, despite clear directives from the appellate authority.

Background of the case

The petitioner, Raj Kamal Cargo Movers, faced demands amounting to ₹34,88,364 because of the orders of the Assistant Commissioner. Upon appealing against these orders, the appellate authority set aside these demands and instead directed a refund of ₹34,88,364.

This decision prompted the petitioner to apply online for the refund through the GST Common Portal.

The situation took a different turn when the Assistant Commissioner, under Section 54(11) of the Rajasthan Goods & Services Tax Act, 2017, sought to withhold the refund. Per the section, where an order giving rise to a refund is the subject matter of an appeal or further proceedings and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal on account of malfeasance or fraud committed, he may withhold the refund till such time as he may determine.

However, the higher authority found no reasonable ground for withholding the refund, stipulated that the petitioner must furnish solvent security.

Issue

The central issue in the above case revolves around the actions of the Assistant Commissioner, who demanded a bank guarantee in the form of solvent security.

Judgement of the Court

The High Court scrutinized the Assistant Commissioner's actions and noted a consistent attempt to obstruct the refund process. Despite providing solvent security, the Commissioner, in an attempt to further delay the refund, had again demanded a bank guarantee. This raised urgent questions regarding the authorities' intentions and lack of adherence to the appellate authority's decision.

The Court pointed out the contradiction in demanding a bank guarantee as 'solvent security', emphasizing that solvent security involves demonstrating ownership of movable/immovable property equivalent to the secured amount, whereas a bank guarantee is a commitment by the bank on behalf of the applicant to cover payment obligations to a third party.

Demanding a bank guarantee beyond the specified solvent security was unnecessary and contradictory. Nevertheless, the Appellate Authority's order provided sufficient direction for the refund process.

The Assistant Commissioner's acts were taken to be an attempt to obstruct the refund process. Contrary to the Appellate Authority's explicit directions, the Assistant Commissioner's demand for a bank guarantee was deemed ex facie contrary to the law.

Conclusion

The Rajasthan High Court's ruling serves as a beacon for taxpayers navigating the intricate landscape of GST refunds. This judgment provides clarity on the procedural aspects of GST refunds and reinforces the principle that authorities must adhere to the directions of appellate bodies. Taxpayers can take solace in the Court's stance against unwarranted obstacles in the refund process, emphasizing adherence to the law and due process. The judgment reaffirms the importance of following legal directives and sets a precedent against arbitrary demands, providing a valuable guide for both taxpayers and tax authorities in the realm of GST.

Read More :

https://www.taxmann.com/post/blog/demanding-bank-guarantee-from-assessee-to-grant-gst-refund-is-contrary-to-law-hc/

https://www.caclubindia.com/articles/judicial-intervention-in-gst-refund-dispute-case-analysis-50909.asp

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Government's Policy Decisions: Not Abuse of Dominance

-Pushpendra Dixit

Background

In the Indian business landscape, the Competition Act of 2002 stands as a guardian against unfair market practices. Within its provisions lies the crucial concept of abuse of dominance, a defender of fair competition and a deterrent to anti-competitive behaviour. Acting as the vigilant watchdog, the Competition Commission of India (CCI) shoulders the responsibility of enforcing these regulations.

Facts of the case

The Complaint was filed before the Competition Commission of India by a Delhi-based lawyer (the Informant) against the Kerala State Road Transport Corporation (Opposite Party), alleging a violation of Section 4 of the Competition Act(the Act), which concerns abuse of dominance. The Government of Kerala has made special provisions exercising its power under Section 100(2) of the Motor Vehicles Act, 1988 and approved a scheme by way of notification. Accordingly, the KSRTC was conferred with the exclusive right to operate buses on the Nilakkal-Pamba route, often used by pilgrims to reach the well-known Sabarimala Temple. The Informant sought relief against KSRTC for its abusive conduct and also sought interim relief under Section 33 of the Act to the extent of restraining KSTRC from operating buses on the Nilakkal-Pamba route during the season.

The question to be resolved by the court was whether the exclusive operation of buses on the said route was a violation of Section 4 of the Competition Act, 2002?

Arguments on behalf of the Informant

The informant stated that during the main season, between November and January, there is a usual footfall of 1.5 - 2 lakh passengers. They further informed that the OP provides additional bus services from various places to Nillakkal.

Further, the OP charges fares above the standard rates while calculating fares based on the actual distance travelled. Aprrt from the OP, no private vehicles were permitted to drop their passengers at Pamba, thereby forcing passengers to avail the services of the OP, blatantly stifling competition. The informant alleged that KSRCTC, being a government entity, had used its dominant position in an abusive manner in order to create a monopoly. Therefore, it had contravened Section 4 of the Act.

Arguments on behalf of the Opposite Party

On the other hand, the KSRTC stated that it had legitimately exercised its power under Section 100(2) of the Motor Vehicles Act,1988 and nationalized 31 routes in Kerala. The entire Sabarimala route has been covered under various nationalisation schemes for decades. The Informant has no locus standi in the present case as the special/additional services being offered by the KSRTC are in line with the provision of nationalization schemes.

The CCI's decision

The CCI dismissed the complaint and held that the Act does not apply to the notification of the Kerala government granting exclusivity to the OP for operations, as it serves public interests. Further, it is a policy decision of the Kerala Government, which is best equipped to determine welfare measures within the State for the improvement of services.

This may not be considered anti-competitive in such circumstances. The fares being charged by the OP are fixed by KSRTC in accordance with the notification dated 30.04.2022, which applies to both nationalised and non-nationalized routes with provisions for the enhancement of the rates during festivals or special occasions. Hence, there has been no contravention of Section 4 of the Act as there is discernible competition concern in this matter.

Read More:

https://www.livelaw.in/pdf_upload/mr-shine-psasidhar-advocate-and-kerala-state-road-transport-corporation-518644.pdf

https://www.taxmann.com/post/blog/ksrtc-exclusivity-for-operating-buses-on-sabarimala-route-is-a-govt-s-policy-decision-isnt-anti-competitive-cci/

https://www.livelaw.in/news-updates/cci-exclusivity-granted-to-kerala-state-road-transport-corporation-by-kerala-government-in-public-interest-is-not-anti-competitive-247785?infinitescroll=1

SEBI Proposes Major Regulatory Changes for Indian-listed Entities for a Dynamic Market and Board Effectiveness

- Jyotsna Sood

Introduction

The Securities and Exchange Board of India ('SEBI'), on January 11 2024, released a Consultation Paper highlighting the recommendations made by the Expert Committee for facilitating ease of doing business and harmonisation of the provisions of Initial Capital Disclosure Requirements ('ICDR') and Listing Obligations and Disclosure Requirements ('LODR') regulations, seeking public comments.

Amendments to the LODR Regulations

Recognising the shortcomings associated with a single-day assessment of market capitalisation (currently on 31st March), the Committee has recommended an assessment based on an average calculated over six months. The move seeks to shield listed entities against the losses that might accompany market fluctuations and alleviate the burden on companies facing a sustained decline in market capitalisation.

The amendments include restricting the operation of Regulation 26(1) of the LODR, which limited the total number of committees wherein a director could act as a chairperson or a member, to equity-listed entities alone. Further, they restrict the calculation criteria to Audit Committees, aimed at enhancing board efficiency.

For key managerial personnel appointments, the committee has proposed an extension of the time limit for filling vacancies, especially those requiring regulatory approvals, from the current three months to a maximum of six months, emphasising the need for timely compliance by listed entities without compromising the interests of the stakeholders.

Amendments to the ICDR Regulations

With respect to the ICDR regulations, the Committee has suggested the inclusion of equity shares resulting from the conversion of fully paid-up, compulsorily convertible securities held for a minimum of one year before filing the Draft Red Herring Prospectus ('DRHP') in the minimum promoters' contribution. In the interest of the growing number of startups and their promoters who may fall short of meeting the promoters' contribution requirements of 20 % of the total shares, the Committee has recommended allowing non-individual shareholders holding 5% or more of the post-offer equity share capital to contribute to the minimum promoters' contribution shortfall, capped at 10%, without being classified as promoters.

The timeline for prior intimation of board meetings which currently varies from 2 to a maximum of 11 working days is endorsed to be reduced to two working days for all types of proposals that are to be considered by the board of a listed company. Additionally, the Committee put forth the suggestion to increase the maximum gap between the meetings of risk management to 210 days from the present 180 days.

The committee has also suggested an amendment to the regulations to allow issuer companies to extend the bidding period by one working day as opposed to the extant requirement of a minimum of three working days, to accommodate any unforeseen or force majeure events that might affect the process, while simultaneously allowing for a more adaptable framework.

The proposed changes, based on the interim recommendations of the Expert Committee, signify a comprehensive effort to enhance the business environment for listed entities in India by promoting the efficiency of board operations and aligning the regulatory framework with the evolving needs of the market.

Read More:

https://m.economictimes.com/markets/stocks/news/sebi-floats-consultation-paper-on-expert-panels-suggestion-for-ease-of-doing-biz/articleshow/106736492.cms

https://www.taxmann.com/post/blog/analysis-regulatory-changes-for-indian-listed-entities/
.
https://corporate.cyrilamarchandblogs.com/category/sebi/

Delhi HC on bogus Whatsapp and Telegram operating under the Sequoia Capital name: an IPR Violation

-Divyank Dewan

Introduction

The Delhi High Court, in a recent order in the case Sequoia Capital Operations LLC v. John Doe, instructed social media applications like Telegram, WhatsApp, and YouTube to take down any accounts operated through a specific mobile number that was impersonating venture capital firms Peak XV Partners and Sequoia Capital. The accused impersonated the venture firms to create bogus investment platforms that duped many unsuspecting investors. While the precise amount that people were cheated of is unknown, some people took to public platforms to say they had lost as much as 30 lakhs to the scheme.

This came to light after Peak XV Partners alerted the general public through posts on Linkedin and Twitter on December 28 last year, which attracted comments from many people.

The accused was using the brand name 'Pak XV' which is very similar to 'Peak XV'.

Background of the case

The plaintiff offered a range of investment services in various sectors, such as artificial intelligence, machine learning, cryptocurrency, healthcare, fintech, e-commerce, edtech, telecom etc., under the brand name "SEQUOIA". In 2023, officials of Peak XV Partners, formerly Sequoia Capital India, were informed of a WhatsApp group named John Analyst Group-303, managed by the accused who identified themselves as Sequoia Capital Investors Advisors and Sequoia Capital BTC Trading Team, purportedly a part of the Sequoia Capital Group. An informant revealed that she had been added to this WhatsApp group without her consent and that the group admins were circulating several trading and investment advice.

It was brought forth that the accused was luring consumers using the "SEQUOIA" name and circulating images with trading tips purportedly originating from the official website of the plaintiff.

Judgment

The Court observed that the accused was attracting unsuspecting consumers using the plaintiff's reputation connected with their registered "SEQUOIA" trademarks. The admins of the WhatsApp group 'John Analyst Group-303' were not authorised by the plaintiff to offer financial trading and investment related advice and were misrepresenting themselves to the public to that effect.

The Court opined that, prima facie, it appeared to be an illegitimate channel, intended to be used as a ploy to induce the users to invest substantial sums of money.

Thus, the Court restrained the accused or any person acting on their behalf, from using the plaintiff's registered "SEQUOIA" trademarks or its variations, as a part of their domain names, websites, mobile applications, social media handles in any manner that would amount to infringement of plaintiff's trademarks.

The Court further directed Meta and Telegram to remove WhatsApp accounts of the mobile numbers and they should also delete the WhatsApp group 'John Analyst Group-303' or any other groups or communities' groups administered by the phone numbers of the group admins of the group that were misusing plaintiff's trade marks in their communications.

Conclusion

The judge issued an interim injunction to curb the misuse of the trademarks and protect unsuspecting consumers and the Ministry of Electronics and Information Technology and the Department of Telecommunications were ordered to notify all telecom and internet service providers to permanently block/remove access to alleged misuses of the Sequoia trademark.

Read More :

https://www.moneylife.in/article/delhi-hc-orders-whatsapp-telegram-to-remove-fraudulent-groups-misusing-trademarks-of-peak-xv-and-sequoia-capital/73252.html

https://legal.economictimes.indiatimes.com/news/litigation/delhi-hc-orders-whatsapp-telegram-to-remove-fraudulent-groups-misusing-vc-firms-trademarks/107240259#:~:text=2%20min%20read-,Delhi%20HC%20orders%20WhatsApp%2C%20Telegram%20to%20remove%20fraudulent%20groups%20misusing,Peak%20XV%20and%20Sequoia%20Capital.

https://startup.outlookindia.com/investors/delhi-high-court-orders-whatsapp-telegram-to-take-down-accounts-impersonating-peak-xv-sequoia-news-10405

Zee Sony Merger Fallout - Timeline and Merger Enforcement Application filed with NCLT

-Kislay Parashar

Introduction

When the leaderships at Sony Pictures Network India and Zee Entertainment agreed to a merger of the two companies on the 21st September 2021, it seemed to be the dawn of a new market leader in the entertainment space, with a combined market share by ad revenue adding up to approximately a fourth of the market. After 90 days of due diligence, the entertainment giants signed a Merger Co-operation Agreement (MCA), stating that the said merger is to come into effect within two years.

However, a turbulent period seeking NCLT approval, fund misappropriation allegations, and a 62-page termination notice are a few among the many complications faced by this merger.

It was decided that the merger shall be completed within 24 months. Upon facing delays, it also allowed for a month of time for discussions regarding extension of the deadline.

Further, it was also stated that Mr. Punit Goenka, the current MD and CEO of Zee Entertainment and son of Mr. Subhash Chandra, the founder of the company, would also be the Managing Director and CEO of the merged entity.

On the 22nd February 2023, the NCLT accepted IndusInd Bank's petition, objecting to this merger and filing an insolvency plea against Zee, claiming a default of Rs 83.08 Crore. However, this was quickly settled by Zee, informing NCLAT on 29th March 2023 of this settlement of the payment dispute and IndusInd Bank withdrew their objection to the merger, the appeal being disposed of. However, this turned out only to be the first hurdle in the way to this merger.

Allegations of Fund Misappropriation

Securities and Exchange Board of India (SEBI) issued a confirmatory order, dated 14th August 2023, restraining Mr. Punit Goenka and his father Mr. Subhash Chandra from holding any key managerial position any Zee group entity. The order stated the two were embroiled in transactions which siphoned money from the publically traded Zee companies to the privately owned company Essel Private Limited, owned by members of the Subhash Chandra family. Aggrieved by the said order, Mr. Goenka moved the Securities Appellate Tribunal (SAT) on 26th August 2023. SAT then quashed SEBI's order on Mr. Goenka and his father on 30th October 2023, reinstating him as the MD and CEO of Zee Entertainment.

Fallout of the merger

The NCLT approved the merger on 10th August 2023, dismissing the objections. However, Sony and Zee had faced disagreements regarding the leadership of the merged entity, with Zee, sticking to the scheme of agreement, endorsing Mr. Punit Goenka for the role, while Sony advocating for NP Singh, the MD and CEO of Sony India. It is to be noted that Subhash Chandra and family owned 3.99% of the company, while Sony would own over half of the merged entity. With the deadline of 21st December 2023 approaching and no agreement on the details of the merger, Zee sought an extension of the deadline. However, after the end of the one month discussion period and no resolution in view, on 22nd January 2024, with a 62 page termination notice, Sony officially called off the merger and invoked the arbitration clause, seeking $90 million in termination fees.

Zee denied these allegations and called the $90 million "legally untenable" and initiated arbitration proceedings before the Singapore International Arbitration Centre.

Merger Enforcement Application filed with NCLT

On 30th January 2024, NCLT admitted a petition made by Mad Men Film Ventures, a shareholder of Zee Entertainment, for the enforcement of the merger between Zee Entertainment and Sony Pictures Network India. The counsel for the shareholder stated that it appears there was dispute between Zee and Sony on who would lead the merging entity even though the scheme of arrangement clarified who would head the merger. The representative for Sony responded with calling the shareholder a mere proxy for Zee and clarified that the termination of the merger was due to some conditions not being met from the agreement. These arguments were rejected by the tribunal and the next date of the hearing was set on 12th of March 2024.

Read More:

https://cbcl.nliu.ac.in/competition-law/the-sony-zee-affair-a-market-opportunity-or-a-competitive-disadvantage/

https://www.moneycontrol.com/news/business/companies/zee-sony-merger-called-off-a-timeline-of-how-the-10-billion-deal-took-off-and-derailed-12102851.html

https://www.thehindubusinessline.com/markets/punit-goenka-back-as-md-of-zee-after-sat-sets-aside-sebi-order/article67475692.ece

Supreme Court Refers Dissenting Financial Creditors' Payment Issue Under IBC to Larger Bench

-Divyanshi Shukla

Introduction

The two judge bench consisting of Justice Sanjiv Khanna and Justice S.V.N. Bhatti, in DBS Bank Ltd Singapore v. Ruchi Soya Industries Ltd, decided to refer a frequently vexed question to a larger bench of the Apex Court in order to address a crucial debate: are dissenting financial creditors entitled to the minimum value of their collateral under the Insolvency and Bankruptcy Code, 2016 (IBC)? Section 2 (1) (f) of CIRP Regulations defines "dissenting financial creditor" as a financial creditor who voted against the resolution plan or abstained from voting for the resolution plan approved by the committee".

This pivotal development stems from the case of DBS Bank Ltd Singapore challenging Ruchi Soya Industries Ltd, and it has the potential to significantly impact the rights of creditors within the framework of Indian bankruptcy proceedings.

Background of the case

The referral stems from a deviation from the precedent established by a coordinating bench in the 2021 case of India Resurgence ARC Private Limited v. Amit Metaliks Limited & Another. The earlier decision articulated that a dissenting financial creditor is not entitled to challenge an approved resolution plan by asserting a higher amount linked to its security interest. Now, what the dissenting financial creditors are entitled to depends upon how the secured creditors are settled.

Findings of the court

The Supreme Court emphasized the legislative intent enshrined in Section 30(2)(b)(ii). It highlighted this provision as a safeguard, ensuring that dissenting creditors are promised an amount equivalent to what they would have received in liquidation proceedings because this section talks about the amount to be paid to creditors in the event of liquidation.

The Court construed this protective measure as a way to uphold the autonomy of minority creditors. As this section ensures that minority creditors receive the payment that is equivalent to their security interest and this section should not be read as to nullify the minimum entitlement that they receive. Expressing reservations about the India Resurgence decision, the Court clarified that dissenting financial creditors maintain the right to receive a payment matching the value of their security interest.

Furthermore, the Court also noted that the position of the dissenting financial creditor is the same as that of a secured creditor who has willingly given up security and is entitled to payment under Section 53(1)(b)(ii)s of the Code.

The dissenting financial creditor must statutorily forgo and relinquish his security interest upon the resolution plan being accepted.

Conclusion

The Court has clarified the stance related to the entitlement received by the minority creditors in the case of liquidation, the court has done so by rejecting the arguments conflicting with the legislative intent, i.e., to pay the dissenting creditors the full liquidation value. The Court listed the matter to a larger bench noting that it would be appropriate to do so because of the differing interpretation of Section 30(2)(b)(ii). The entitlement of dissenting financial creditors has been a complex issue under the IBC. This ruling of the Apex Court provides some clarity and guidance. However, given the complex nature, it requires careful consideration that would be interesting to see in the future.

Read More:

Dissenting financial creditors: their entitlement to security interest during the resolution process - Taxmann

https://ibclaw.in/case-name/dbs-bank-ltd-singapore-v-ruchi-soya-industries-ltd-and-anr/

https://www.barandbench.com/news/dissenting-financial-creditors-ibc-supreme-court-larger-bench-reference