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Ministry of Corporate Affairs vide notification dated August 02, 2023, has issued Companies (Incorporation) Second Amendment Rules, 2023

- MCA vide notification dated August 02, 2023, has issued Companies (Incorporation) Second Amendment Rules, 2023.
- MCA has revised e-form RD-1 i.e., form for filing application to Central Government.
- The notification is herein attached.

Click Here

Securities Exchange Board of India vide notification dated August 09, 2023, has provided reduction of timeline for listing of shares in Public Issue from existing T+6 days to T+3 days

- SEBI vide notification dated August 09, 2023, has provided reduction of timeline for listing of shares in Public Issue from existing T+6 days to T+3 days.
- Consequent to extensive consultation with the market participants and considering the public comments received pursuant to consultation paper on the aforesaid subject matter, it has been decided to reduce the time taken for listing of specified securities after the closure of public issue to 3working days(T+3 days)as against the present requirement of 6working days(T+6 days); 'T' being issue closing date.
- The revised timelines for listing of specified securities and various activities involved in the public issue process are specified in the attached circular.

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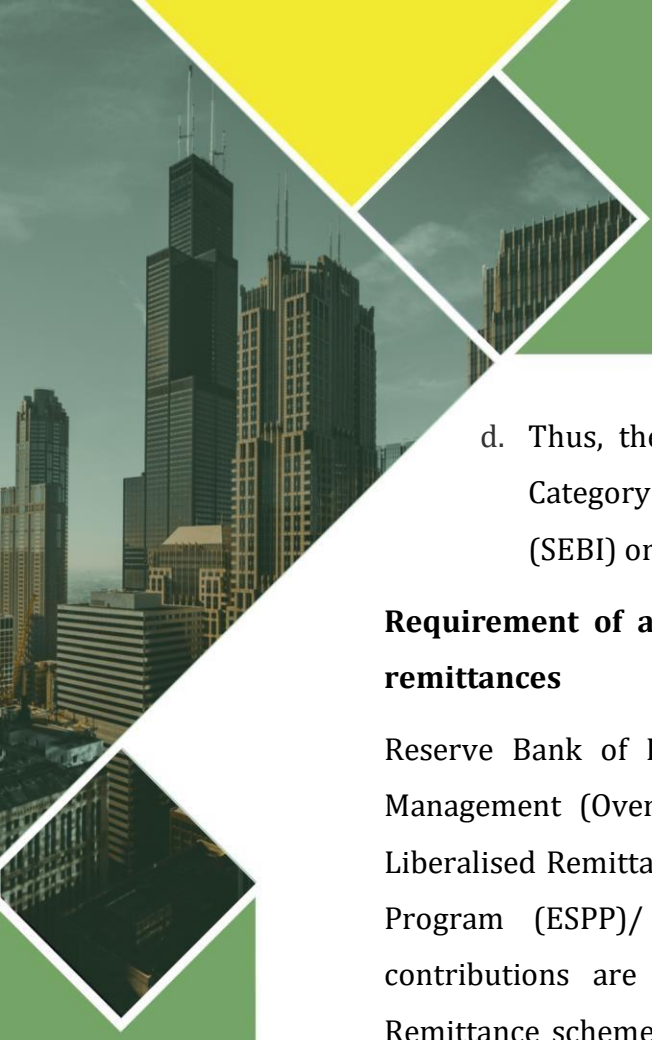
Clarification regarding taxability of income earned by a non-resident investor from off-shore investments in investment fund routed through an Alternative Investment Fund

- CBDT Circular NO.14/2019 dated 03.07.2019 was issued to clarify the taxability of income earned by a non-resident investor from outside India (off-shore investment) routed through investment fund as defined in Explanation 1 (a) to Chapter X11-FB of the Income-tax Act, 1961(the Act). This Circular was made applicable to Category I or Category II
- Consequent Alternative Investment Funds (AIFs) regulated under Securities and Exchange Board of India (SEBI) regulations, subject to the following conditions, namely: -

    a. Not less than ninety per cent of shares or units or interest in the fund management entity of the resultant fund are held by the same entity(ies) or person(s) in the same proportion as held by them in the investment manager entity of the original fund; and

    b. Not less than ninety per cent of the aggregate of shares or units or interest in the investment manager entity of the original fund was held by such entity(ies) or person(s).

    c. By Finance Act 2023, the definition of 'investment fund' under the Income-tax Act,1961 was amended to include reference to International Financial Services Centres Authority (Fund Management) Regulations, 2022 under International Financial Services Centres Authority (IFSCA) Act 2019.



d. Thus, the provisions of section 115UB apply only to Category I or Category II AIFs regulated by Securities and Exchange Board of India (SEBI) or International Financial Services Centres Authority (IFSCA).

Requirement of and additional declarations on ESOP/ESPP cross border remittances

Reserve Bank of India vide its master directions namely Foreign Exchange Management (Overseas Investment) Directions, 2022 and Master Direction - Liberalised Remittance Scheme (LRS) states that since Employee Share Purchase Program (ESPP)/ Employee Share Options Program (ESOP) for which contributions are being made by employees are classified as Liberalized Remittance scheme (LRS) remittances as per RBI regulations, any cross border remittances for the same shall require AD Bank to collect Tax Collected at Source (TCS).

Also, for all ESOP/ESPP cross border remittances where employee contributions have been received, shall require the following:

a. Additional declarations to be signed by the authorized signatories in wet ink.

b. Annexure with the employee details for which the remittance is being made.

No remittances shall be processed unless the abovementioned documents have not been received by AD Bank.

Once the declarations mentioned in point 1 is received, AD Bank shall collect the TCS amount, if applicable and deposit the same with the tax authorities. It shall issue a TCS certificate, on individual employee's name after filing of Quarterly TCS return.

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INELIGIBILITY OF RESOLUTION APPLICANT AS PER S.164(2)(B) COMPANIES ACT CAN'T BE PRESUMED UNLESS COMPETENT AUTHORITY DECLARES DISQUALIFICATION – SUPREME COURT

BRIEF FACTS OF THE CASE

The Supreme Court in the case of M.K. Rajagopalan v. Dr. Periasamy Palani Gounder & Anr. Comprising a bench of Justice Dinesh Maheshwari and Justice Vikram Nath has provided clarification regarding the eligibility of resolution applicants under the Insolvency and Bankruptcy Code, 2016 (IBC).

An application was made by the Tourism Corporation of India Limited under Section 7 of the Insolvency and Bankruptcy Code (IBC) against Appu Hotels Limited seeking commencement of a Corporate Insolvency Resolution Process ("CIRP") and it was approved in 2020. The proposed Resolution Plan was then approved by the CoC after that an application for its approval was filed with the National Company Law Tribunal ("NCLT") which was again approved. However, the decision was challenged before the NCLAT where it got rejected, stating that the SRA was ineligible due to assumed disqualifications under Section 164(2)(b) of the Companies Act, 2013, and Section 88 of the Companies Act, 2013. The SRA then appealed to the Supreme Court.

The primary concern of Supreme Court was to consider the eligibility of M.K. Rajagopalan', the proposed resolution applicants in light of the Indian Trusts Act of 1882. The Court considered Rajagopalan's eligibility to submit a resolution application as the managing trustee of Sri Balaji Vidyapeeth and he was found to be ineligible since it was discovered that he could not bypass the rules specified in the Indian Trusts Act. The Court further considered Rajagopalan's eligibility in light of

Section 166(4) of the 2013 Companies Act and Section 29A of the IBC. These provisions restrict the appointment of Resolution Applicants who have competing interests.

DECISION

The court stated that the Committee of Creditors (CoC) should evaluate Resolution Plans while making business judgements, and the decisions should be made within the bounds of the law. The CoC must have access to all relevant data before approving a Resolution Plan, and the Court ruled that resolution plans that are not given to the CoC before being submitted to the NCLT cannot be backed. In this instance, the CoC disapproved the Resolution Plan due to its sound business judgement. The Court further emphasized that a person cannot be presumed to be disqualified under Section 164(2)(b) until a competent authority makes a formal disqualification decision against them. It emphasized that the company registrar should be the one to look into the disqualification issue. The Court ruled explicitly that a resolution applicant should only be assumed ineligible to serve as a director and submit a resolution plan after receiving a specific judgement of disqualification. The Court made it clear that Section 164(2)(b) does not recognise the idea of "deemed disqualification".

As per the court the decision of NCLAT's that the SRA was ineligible based on Section 164(2)(b) was excessive. The Court also found that the SRA's Director Identification Number (DIN), which showed their authorization to operate as a director, had an "active compliant" status. The Court upheld the NCLAT's observations regarding the ineligibility of the Resolution Plan but set aside certain aspects of the NCLAT's directions.

CASE TITLE: M.K. Rajagopalan v. Dr. Periasamy Palani Gounder & Anr.

CASE NO : CIVIL APPEAL NOS. 1682-1683 OF 2022

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