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*News, Views and Updates*

### **LATEST IN LEGAL ARENA**

**December 16, 2016**

#### **Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016**

The Insolvency and Bankruptcy Board of India (Board), in exercise of its powers conferred under section 240 of the Insolvency and Bankruptcy Code, 2016 (Code), has notified the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. These regulations inter alia provide for the details of activities from issue of liquidation order under section 33 of the Code to dissolution order under section 54. These regulations come into force on 15.12.2016.

These regulations prohibit an insolvency professional from acting as a liquidator for a corporate debtor if he is not independent of the corporate debtor. These prohibit partners or directors of an insolvency professional entity of which the insolvency professional is a partner or director from representing other stakeholders in the same liquidation process. These oblige the liquidator, and also registered valuer(s) and professional(s) assisting him in liquidation to make disclosures - initial and continuing - about pecuniary or personal relationship with any of the stakeholders entitled to distribution of assets. These also specify the manner and contents of public announcement, receipt and verification of claims of stakeholders, reports and registers to be maintained, preserved and submitted by the liquidator, the manner of realisation of assets and security interest, and distribution of proceeds to stakeholders and other such provisions.

#### **Binding arbitration agreement cannot subsist between the parties, if the contract has not been concluded**

The Delhi High Court while deciding a case where no acceptance was communicated as regards sale contracts and the other party sought to enforce the award rendered by invoking the arbitration clause in the contract, declined to enforce the award in view of no communication of acceptance of the contract to the other party.

The case concerned two companies at a preliminary stage of negotiation for sale of palm oil, whereby the seller, who presumed the existence of a binding contract between the two, sought to enforce the award given by an Arbitral Tribunal which held the contracts to be existing, it being a usual practice to conclude unsigned contracts.

The Court in the present case held that Section 44(a) of the Arbitration and Conciliation Act, 1996

contract between the parties and the subsequent entailing causes of action by invocation of the arbitration clause or otherwise. These Rules prescribe the forms of application to the Tribunal to confirm a reduction of share capital of a company and other likewise. These further lay down the provisions related to issue of notice and directions by the NCLT, procedure with regard to representation and objections received, Order on application and Minutes thereof, etc.

### **National Company Law Tribunal (Procedure for reduction of share capital of Company) Rules, 2016**

The Ministry of Corporate Affairs (MCA) has notified the National Company Law Tribunal (procedure for reduction of share capital of Company) Rules, 2016. These Rules shall come into force on 15.12.2016. These Rules provide for the procedure to be followed before the National Company Law Tribunal (NCLT) by the company proposing to reduce its share capital.

### **Notification of Sections of the Insolvency and Bankruptcy Code, 2016**

The Central Government in exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016, has notified sections 33 to 54 (both inclusive) of the said code. These sections have come into force on 15.12.2016.

### **When the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the Courts**

The Supreme Court while explaining the law on probation of offenders said that when the legislature has prescribed minimum sentence without discretion, the same cannot be reduced by the Courts. However, sometimes the legislation prescribes a minimum sentence but grants discretion and the courts, for reasons to be recorded in writing, may award a lower sentence or not award a sentence of imprisonment. Such discretion includes the discretion not to send the accused to prison.

The Court further explained that if the sentence can be reduced to nil, then the statute does not prescribe a minimum sentence. A provision that gives discretion to the court not to award minimum sentence cannot be equated with a provision which prescribes minimum sentence. The two provisions, therefore, are not identical and have different implications, which should be recognized and accepted for the Probation of Offender Act, 1958.

### **Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified**

The Ministry of Corporate Affairs (MCA) has notified the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016. These Rules are effective with effect from 15.12.2016. These Rules prescribes appropriate forms for filing the application for order of a meeting, creditors responsibility statement, notice of meeting, advertisement of notice of the meeting, notice to statutory authorities, etc. The Rules further provide for the procedure to be adopted by the companies before the National Company Law Tribunal for sanctioning the scheme of compromises, arrangements and amalgamations.

**For any clarification or delineation, feel free to contact us.**



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