MONTHLY NEWSLETTER

Lexport
Interpreting India for commerce

MAY 2020

RBI/FEMA

1) EXTENSION OF INTEREST EQUALIZATION SCHEME ON PRE AND POST SHIPMENT RUPEE EXPORT CREDIT

GoI has approved the extension of Interest Equalization Scheme for pre and post shipment Rupee export credit, with same scope and coverage, for one more year i.e. upto March 31, 2021. The extension shall take effect from April 01, 2020 and end on March 31, 2021 covering a period of one year. Consequently, the extant operational instructions issued by the RBI under the said Scheme shall continue to remain in force upto March 31, 2021. – ***[DOR.Dir.BC.No.69/04.02.001/2019-20, dated 13th May, 2020]***

2) EXTENSION OF DATE OF IMPLEMENTATION OF DIRECTIONS ON HEDGING OF FOREIGN EXCHANGE RISK

RBI vide its circular A.P. (DIR Series) Circular No. 29 dated April 7, 2020 issued directions on Hedging of Foreign Exchange Risk which were to come into effect from June 1, 2020. Based on the requests received from market participants and in the context of the difficulties arising from the outbreak of novel coronavirus disease (COVID-19), RBI has decided that the Directions will now come into effect from September 1, 2020. – ***[A.P.(DIR Series) Circular No.31, dated 18th May, 2020]***

3) REPORTING PLATFORM FOR OTC DERIVATIVES BY IBUS

RBI has mandated that all OTC foreign exchange, interest rate and credit derivative transactions, both inter-bank and client, will be reported to CCIL's trade reporting platform. The matter has been further discussed with banks operating IBUs and CCIL. Accordingly, RBI has]decided that IBUs shall report all OTC foreign exchange, interest rate and credit derivative transactions - both interbank and client transactions - undertaken by them to CCIL's reporting platform with effect from June 1, 2020. Additionally, as a one-time measure to ensure completeness of data, all matured and outstanding transactions as on May 31, 2020, shall be reported by July 31, 2020. – ***[FMRD.FMID.26/02.05.002/2019-20, dated 18th May, 2020]***

4) KNOW YOUR CUSTOMER (KYC) DIRECTION, 2016 EXTENDED TO HOUSING FINANCE COMPANIES

RBI vide present circular has extended the Master Direction – Know Your Customer (KYC)

Direction, 2016 to all Housing Finance Companies. Consequently, earlier instructions/ guidelines/ regulations issued in this regard (contained in the circulars mentioned in the Appendix to the present circular) by National Housing Bank (erstwhile regulator of Housing Finance Companies) stand repealed. – ***[DOR.NBFC (HFC).CC.No.111/03.10.136/2019-20, dated 19th May, 2020]***

5) RELAXATIONS IN 'VOLUNTARY RETENTION ROUTE' (VRR) FOR FOREIGN PORTFOLIO INVESTORS (FPIS) INVESTMENT IN DEBT

As per extant directions, FPIs shall invest at least 75% of their 'Committed Portfolio Size' (CPS) within three months from the date of allotment. In view of the disruptions caused by COVID-19, RBI has decided to allow FPIs that have been allotted investment limits, between January 24, 2020 (the date of reopening of allotment of investment limits) and April 30, 2020, an additional time of three months to invest 75% of their CPS. For FPIs availing the additional time, the retention period for the investments (committed by them at the time of allotment of investment limit) would be reset to commence from the date that the FPI invests 75% of CPS. – ***[A.P.(DIR Series) Circular No.32, dated 22nd May, 2020]***

6) EXTENSION OF TIME LIMITS FOR SETTLEMENT OF IMPORT PAYMENT

As per extant directions, remittances against normal imports (i.e. excluding import of gold/diamonds and precious stones/ jewellery) should be completed not later than six months from the date of shipment, except in cases where amounts are withheld towards guarantee of performance etc. In view of the disruptions due to outbreak of COVID- 19 pandemic, RBI has decided to extend the time period for completion of remittances against such normal imports (except in cases where amounts are withheld towards guarantee of performance etc.) from six months to twelve months from the date of shipment for such imports made on or before July 31, 2020. – ***[A.P. (DIR Series) Circular No.33, dated 22nd May, 2020]***

In line with this relaxation, RBI has further decided to increase the maximum permissible period of pre-shipment and post-shipment export credit sanctioned by banks from one year to 15 months, for disbursements made upto July 31, 2020. – ***[DOR.DIR.BC.No.73/04.02.002/2019-20, dated 23rd May, 2020]***

7) INCREASE IN EXPOSURE TO A GROUP OF CONNECTED COUNTERPARTIES

On account of the COVID-19 pandemic, debt markets and other capital market segments are witnessing heightened uncertainty. As a result, many corporates are finding it difficult to raise funds from the capital market and are predominantly dependent on funding from banks. Taking note of the situation and with a view to facilitate greater flow of resources to corporates, RBI has decided, as a one-time measure, to increase a bank's exposure to a group of connected counterparties from 25% to 30% of the eligible capital base of the bank. The increased limit will be applicable up to June 30, 2021. – ***[DOR.No.BP.BC.70/21.01.003/2019-20, dated 23rd May, 2020]***

8) COVID-19 – REGULATORY PACKAGE

Referring to the Circular DOR.No.BP.BC.47/21.04.048/2019-20 dated March 27, 2020 and Circular DOR.No.BP.BC.63/21.04.048/2019-20 dated April 17, 2020 announcing certain regulatory measures in the wake of the disruptions on account of COVID-19 pandemic and the consequent asset classification and provisioning norms. As announced in the Governor's Statement of May 22, 2020, the intensification of COVID-19 disruptions has imparted priority to relaxing repayment pressures and improving access to working capital by mitigating the burden of debt servicing, prevent the transmission of financial stress to the real economy, and ensure the continuity of viable businesses and households. Consequently, RBI vide present circular has issued detailed instructions in this regard. – ***[DOR.No.BP.BC.71/21.04.048/2019-20, dated 23rd May, 2020]***

9) RECOVERY OF PENAL INTEREST ON DELAYED REMITTANCE OF GOVERNMENT RECEIPTS INTO GOVERNMENT ACCOUNT

Referring to circular RBI/2019-20/70 DGBA.GBD.No.653/42.01.011/2019-20 dated September 26, 2019 and based on feedback received from Accountant General office of C& AG has reconsidered the matter of ignoring the petty claims of penal interest involving and hence do not concur with proposal dated September 26, 2019 of ignoring the penal interest amount of ₹ 500/- or below. The C&AG has advised that they have withdrawn their concurrence given earlier based on which RBI had issued the instructions vide the above circular of September 2019. It is also advised that since the circular No. RBI/2007/291 DGBA GAD. No. H-14061/31.04.008/2006-07 dated March 21, 2007 already provides for a methodology to calculate penal interest based on transaction value of upto Rs. 1 lakh and above Rs. 1 lakh, there is no need for further filters of Rs. 500/- or below. Accordingly RBI advises agency banks that the aforesaid RBI circular dated September, 2019 stands withdrawn from the date of its issue. Agency banks may take note that as advised by the O/o C&AG, penal interest calculation for delayed reporting of State Government transactions will be made as per the instructions given in the RBI Circular dated March 21, 2007 without any further filters of Rs. 500/- or below. – ***[DGBA.GBD.No.1909/42.01.011/2019-20, dated 29th May, 2020]***

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FOREIGN TRADE

1) CLARIFICATION WITH RESPECT TO SUBMISSION OF PRE-SHIPMENT INSPECTION CERTIFICATE (PSIC)

The Import policy of metallic scrap and waste requires importers to furnish Pre-shipment Inspection Certificate (PSIC) for customs clearance of metal scrap and waste imports in accordance with the conditions laid out in Para 2.54 of Handbook of Procedures, 2015-2020. It has come to the notice of this Directorate that importers have been finding it difficult to submit the original copy of PSIC document due to the prevailing situations during COVID-19 related lock down.

In view of the above, it has been decided that a scanned copy of the PSIC document may be accepted in place of a physical copy for the purpose of Customs clearance. However, the importer has to provide an undertaking to the concerned Custom Authority at the time of the clearance as given in the Annexure to this Trade Notice.

Customs Authorities may take scanned copy of the PSIC document submitted by the importers for clearance without asking for the physical copy. The original physical copy of the PSIC needs to be submitted to Customs within 60 days of the clearance.

This facility is allowed only till 30th June 2020 in view of the present situation of documents movement interruption due to COVID-19. ***–[Trade Notice No. 09/2020-2021, 6th May, 2020 (DGFT)]***

2) PROCEDURE FOR AVAILING TRANSPORT AND MARKETING ASSISTANCE (TMA) ON SPECIFIED AGRICULTURE PRODUCTS-CLAIMS TO BE MADE ON PER KILOGRAM BASIS FOR THE SHIPMENTS BY AIR REGARDING

Assistance for products exported by air would be based or per kilogram basis instead of per ton. Annexure 3 to the Notification No. 17/3/2018-EP (Agri. IV) dated 27th February,2019 has been replaced indicating the differential rate of assistance on per kilogram basis for the products exported by air. ***–[Public Notice No. 05/2015-2020, 12th May, 2020 (DGFT)]***

3) EXTENSION OF INTEREST EQUALISATION SCHEME (IES) FOR PRE AND POST SHIPMENT RUPEE EXPORT CREDIT FOR ONE MORE YEAR I.E. UPTO 31.03.2021 WITH SAME SCOPE AND COVERAGE

Interest Equalisation Scheme for Pre and Post shipment Rupee Export Credit is further extended for one more year i.e. upto 31.03.2021 with same scope and coverage. Guidelines issued by Reserve Bank of India and Relevant RBI notifications issued from time to time on this subject may be referred. ***–[Trade Notice No. 11/2020-2021, 14th May, 2020 (DGFT)]***

4) INCLUSION OF GOPALPUR PORT, ODISHA AS A PORT OF REGISTRATION UNDER PARA 4.37 OF HANDBOOK OF PROCEDURES, 2015-2020.

Gopalpur Port is added by amending the Para 4.37 under Sub Para 'Sea Ports' making Gopalpur as a port of registration for various Schemes under the Foreign Trade Policy. ***–[Public Notice 06/2015-2020, 22nd May, 2020 (DGFT)]***

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CORPORATE

1) MCA CLARIFICATION RE: HOLDING OF AGMS THROUGH VC/OAVM

MCA clarification re: holding of AGMs through VC/OAVM: Following relaxations on holding of EGMs through Video Conferencing (VC) or other audio visual means (OAVM) and permitting e-voting/voting through registered

email, the MCA has clarified that companies may hold their annual general meeting (AGM) by VC/OAVM during the calendar year 2020. Earlier it had allowed companies whose financial year ended 31 December 2019 to hold their AGMs by 30 September 2020. The relaxation in holding of AGMs for all companies has been made owing to the need for continuous adherence to social distancing norms and restrictions on movements of persons.

The procedure given in circulars dated 8 April 2020 and 13 April 2020 for holding of EGMs and manner of issuing notices will apply *mutatis mutandis* for the conduct of AGMs during 2020 depending on whether the company is required to provide the facility of e-voting or has opted for the same or not.

Financial statements along with Board's reports, Auditor's reports and other documents are required to be sent only through email to members, trustees for the debenture-holder of any debentures issued by the company and all other entitled persons.

Companies required to provide e-voting facility: In addition to the requirements mentioned above, a company which is required to provide e-voting facility, shall, prior to sending the financial statements and other documents by email, issue a public notice by way of an advertisement in newspapers (in principal vernacular language and English language) circulated in the district in which their registered offices are situated, containing information of date and time of the meeting through VC/OAVM, the manner of casting votes, manner in which email addresses may be registered with the company etc.

Where such a company has received permission from the relevant authorities to hold an AGM at its registered office, it should also provide VC/OAVM facility to allow members other than those who can be physically present to participate. Participation through both means shall be counted towards quorum under section 103 of the CA 2013. All resolutions shall continue to be passed by e-voting.

In case the company is unable to pay the dividend to any shareholder by the electronic mode due to non-availability of the details of the bank account, the company shall, upon normalization of the postal services, dispatch the dividend warrant cheque to such shareholder by post.

Companies not required to provide e-voting facility: Companies which are not required to provide e-voting facility under the Act may hold AGMs through VC/OAVM only if they have on their records the email addresses of half of the total number of members who; (i) in case of a Nidhi company, hold shares of more than One Thousand Rupees in face value or more than 1% of the total paid-up share capital, whichever is less; (ii) in case of other companies having share capital, represent at least 75% of such part of the total paid-up share capital as gives a right to vote at the meeting; and (iii) in companies not having share capital, who have the right to exercise not less than 75% of the total voting power exercisable in the meeting.

Such companies should provide a window to the shareholders for registering their mandate for transferring dividends electronically through ECS or any other means. ***–[General Circular***

No.20/2020, 5th May, 2020 (Ministry of Corporate Affairs)]

2) REDUCTION IN STATUTORY RATE OF EPF FROM 12% TO 10%

Following the announcement made by the Finance Minister under the Atma Nirbhar Abhiyan on 18 May 2020 to reduce the rate of EPF contributions from 12% to 10% of basic wage and dearness allowance for wage months May, June and July 2020 for all class of establishments covered under the EPF & MP Act, 1952, the Ministry of Labour and Employment has, in exercise of powers conferred by first proviso to section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 amended its notification number S.O. 320(E), dated 9th April, 1997, to provide for this change. The Ministry also issued a press release announcing the reduction in the rate. It has clarified that this reduced rate of 10% is not applicable to Central and State Public Sector enterprises or any other establishment owned or controlled by or under control of the Central Govt. or State Govt. These establishments shall continue to contribute 12% of basic wages and dearness allowances.

The reduced rate is also not applicable for Pradhan Mantri Garib Kalyan Yojana (PMGKY) beneficiaries, since in such cases the entire employees EPF contributions (12% of wages) and employers' EPF & EPS contribution (12% of wages), totalling 24% of the monthly wages is being contributed by the Central Govt.

As a result of reduction in statutory rate of contributions from 12% to 10%, the employee shall have a higher take home pay due to reduction in deduction from his pay on account of EPF contributions and employer shall also have his liability reduced by 2% of wages of his employees.

The EPFO has released a list of FAQs which clarifies, among others, that establishments which get registered with EPFO during these wage months will also be eligible for reduced rate for the remaining eligible period. The reduced rate of EPF contributions to 10% will not reduce the pension contributions or benefits. While the reduced rate of contribution is the minimum rate of contribution during period of the package, employer and employee have the option to contribute at a higher rate if they wish to. ***–[Ministry of Labour and Employment, Notification dated 18th and 19th May, 2020]***

3) LIST OF PAYMENTS & RECEIPTS SUBJECT TO REDUCED TDS/TCS

With respect to the announcement regarding reduction in the rate of TDS on specified non-salaried payments and TCS on specified receipts by 25% of the existing rate, for the period from 14th May, 2020 to 31st March, 2021, the MoF has issued a list of such specified payments and receipts alongwith the existing and reduced rate as applicable. ***–[Press Information Bureau, 13th May, 2020, Ministry of Finance]***

4) MCA CLARIFICATION RE NOTICE U/S 62(2) CA 2013 BY LISTED COS FOR RIGHTS ISSUES UP TO 31 JULY 2020

Following a one-time relaxation of procedures for Rights issues opening upto 31 July 2020 granted by SEBI, the MCA has clarified that in case of listed companies which have complied

with SEBI circular dated 6 May 2020 in this regard, the inability to dispatch notice to shareholders through registered post/speed post/courier will not be considered a violation of section 62(2) of the Companies Act, 2013 [pertaining to further issue of capital]. ***–[General Circular No. 21/2020, 11th May, 2020 (Ministry of Corporate Affairs)]***

5) INSOLVENCY AND BANKRUPTCY BOARD OF INDIA INVITES COMMENTS FROM PUBLIC ON THE REGULATIONS NOTIFIED UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

The Insolvency and Bankruptcy Code, 2016 (Code) is a modern economic legislation. Section 240 of the Code empowers the Insolvency and Bankruptcy Board of India (IBBI) to make regulations subject to the conditions that the regulations: (a) carry out the provisions of the Code, (b) are consistent with the Code and the rules made thereunder; (c) are made by a notification published in the official gazette; and (d) are laid, as soon as possible, before each House of Parliament for 30 days.

The IBBI has evolved a transparent and consultative process to make regulations. It has been endeavour of the IBBI to effectively engage stakeholders in the regulation making process. The process generally starts with a working group making draft regulations. The IBBI puts these draft regulations out in public domain seeking comments thereon. It holds a few round tables to discuss draft regulations with the stakeholders. It takes advice of its Advisory Committee. The process culminates with the Governing Board of the IBBI finalising regulations and the IBBI notifies them. This process endeavours to factor in ground reality, secures ownership of regulations and makes regulations robust and precise, relevant to the time and for the purpose.

Public consultation enables collective choice and hence plays an important role in evolution of regulatory framework. The participation of the public, particularly the stakeholders and the regulated, in the regulatory process ensures that the regulations are informed by the legitimate needs of those interested in and affected by regulations.

Usually, a regulator prepares draft regulations and presents these to the stakeholders to revalidate its understanding of the issue the said regulations seek to address, and the appropriateness of such regulations to address the issue. Based on the inputs from the stakeholders, the regulator finalizes the regulations with modifications, as may be warranted. The IBBI has been essentially following this approach and will continue to do so.

Despite the best of efforts and intentions, a regulator may not always have the understanding of the ground realities, as much and as early as the stakeholders and the regulated may have, particularly in a dynamic environment. The stakeholders could, therefore, play a more active role in making regulations. They may contemplate, at leisure, the important issues in the extant regulatory framework that hinder transactions and offer alternate solutions to address them, in addition to responding urgently to draft regulations proposed by the regulator. This is akin to crowdsourcing of ideas. This would enable every idea to reach the regulator. Consequently, the universe of ideas available with

the regulator would be much larger and the possibility of a more conducive regulatory framework much higher.

Keeping in view the above, the IBBI has invited comments from public, including the stakeholders and the regulated, on the regulations already notified under the Code. The comments received between 13th April, 2020 and 31st December, 2020 shall be processed together and following the due process, regulations will be modified to the extent considered necessary. It will be the endeavor of the IBBI to notify modified regulations by 31st March, 2020 and bring them into force on 1st April, 2021. ***–[No. IBBI/PR/2020/07, 4th May, 2020 (Insolvency and bankruptcy Board of India)]***

6) APPREHENSION OF BIAS EXPRESSED BY CD ON APPOINTMENT OF IRP PROPOSED BY FINANCIAL CREDITOR IS SUFFICIENT JUSTIFICATION FOR SEEKING SUBSTITUTION, EVEN THOUGH THE APPOINTEE IS NOT OTHERWISE INELIGIBLE TO ACT AS SUCH.

The NCLAT has held that notwithstanding the fact that even though an IRP is not disqualified or ineligible to act as such, the apprehension of bias expressed by the Corporate Debtor qua such appointee cannot be dismissed offhand and the AA was perfectly justified in seeking substitution of the IRP to ensure that the CIRP was conducted in a fair and unbiased manner. In the present case the IRP was an ex-employee of the Financial Creditor (FC) and proposed by the FC.

However, the NCLAT clarified that merely because the proposed IRP continues to draw pension for services rendered in past did not clothe him with the status of an 'interested person'. The provision in Section 17(1) of the Income Tax Act, 1961 bringing pension within the ambit of 'salary' cannot be interpreted to render a pensioner of a Financial Creditor ineligible as an 'interested person' being in employment of the Financial Creditor as the definition of 'salary' under the Income Tax Act, 1961 is designed only for the purposes of computing of income to determine tax liability.

The CIRP Regulations clearly provide that an Insolvency Professional is eligible for appointment as a Resolution Professional for the CIRP of a Corporate Debtor if he or his partners and directors of the Insolvency Professional Entity are independent of the Corporate Debtor. Admittedly, the proposed IRP was a qualified Insolvency Professional and neither he nor any of his associates is alleged to be connected with the Corporate Debtor in a manner rendering him ineligible to act as a Resolution Professional. With regard to the ineligibility or disqualification of the proposed IRP for appointment as Interim Resolution Professional or Resolution Professional, the Appellate Tribunal relied on *State Bank of India v. Ram Dev International Ltd. (Through Resolution Professional)* where it was observed that merely because a Resolution Professional is empanelled as an Advocate or Company Secretary or Chartered Accountant with the Financial Creditor cannot be a ground to reject the proposal of his appointment unless there is any disciplinary proceeding pending against him or it is shown that the person is an interested person being an employee or on the payroll of the Financial Creditor. No such disqualifying grounds were present in the instant case.

Nevertheless, the NCLAT took note of the fact that the Financial Creditor restricted its choice to propose such a person as IRP obviously having regard to past loyalty and the long services rendered by the latter. This conclusion was further reinforced by filing of the instant appeal by the Financial Creditor who was upset with the impugned order directing him to substitute the name of the Interim Resolution Professional. Therefore, this has to be viewed in the context of apprehension of bias raised by the Corporate Debtor for the apprehension of bias necessarily rests on his perception. The NCLAT thus concluded that the apprehension of bias on part of the Corporate Debtor was important and there was no legal infirmity in the impugned order seeking substitution of the IRP. The appeal of the Financial Creditor was dismissed noting that he should not have had any grievance since the impugned order caused no prejudice to him. ***–[State Bank of India vs. M/s Metenere Ltd., 22nd May 2020, (National Company Law Appellate Tribunal)]***

7) IB CODE DOES NOT ENVISAGE A PRE-ADMISSION ENQUIRY INTO PROOF OF DEFAULT; NCLT CANNOT DIRECTING A FORENSIC AUDIT AT PRE-ADMISSION STAGE

The NCLAT has held that the Adjudicating Authority (AA) cannot direct a forensic enquiry at the pre-admission stage to verify the occurrence of default as claimed by the financial creditor. Such an approach would defeat the time bound nature of the Code by prolonging the pre-admission exercise. Satisfaction in regard to occurrence of default has to be drawn either from the records of the information utility or other evidence provided by the Financial Creditor. If the Financial Creditor fails to provide evidence as required, the AA is at liberty to take an appropriate decision such as returning the application if it is incomplete for rectification within 7 days of receipt of notice from the AA.

It further held that an application under Section 75 of the IB Code (Punishment for false information furnished in application), being a penal provision which postulates an enquiry and recording of finding in respect of culpability of the Applicant, cannot frustrate the provisions of the Code when the matter is at the stage of admission, unless a case of forgery or falsification of documents is patent and prima facie established. ***–[Allahabad Bank vs. Poonam Resorts Ltd., 22nd May, 2020, (National Company Law Appellate Tribunal)]***

8) NCLAT HOLDS IMPLEADMENT OF MCA IS NOT MANDATORY IN ALL APPLICATIONS FILED UNDER THE I&B CODE

In an appeal filed against the Order of the Principal Bench of the NCLT which made it mandatory to implead the MCA as a party respondent for all cases under the I&B Code across all benches of the NCLT, the NCLAT held the impugned order to be untenable, suffering from material irregularity and patently illegal. The NCLAT observed that such blanket directions by the NCLT on the ground that authentic record is made available by officers of the MCA for proper appreciation of matters, cannot be issued in a single stroke. This is to be determined only on a case to case basis when the need arises. ***–[Union of India vs. Oriental Bank of Commerce, 22nd May, 2020,***

(National Company Law Appellate Tribunal)]

9) NCLT ON RAISING THE THRESHOLD OF MINIMUM DEFAULT LIMIT UNDER I&B CODE

Notification dated 24th March 2020 u/s 4 of the I&B Code raising the minimum default limit under the I&B Code to Rupees One Crore will not apply to applications pending for admission as the amendment is not expressly or impliedly retrospective in nature. ***–[(Foseco India Limited vs Om Boseco Rail Products Limited , 20h May 2020, (National Company Law Tribunal (Kolkata Bench)]***

10) EVERY BREACH OR NON-PERFORMANCE CANNOT BE JUSTIFIED OR EXCUSED MERELY ON THE INVOCATION OF COVID-19 AS A *FORCE MAJEURE* CONDITION; AD-INTERIM ORDER OF INJUNCTION FROM INVOKING BANK GUARANTEE VACATED

The Delhi High Court vacated its ad-interim order dated 20 April 2020 which had injuncted the invocation of bank guarantee on the ground that the lockdown is in the nature of *force majeure* being special equities causing irretrievable injury.

The Court held that while there was no doubt that COVID-19 is a *Force Majeure* event, the ground of force majeure would have to be adjudged on the basis of the fact situation and whether this event was the cause of the non-performance.

The Court opined on two issues: (i) Whether COVID-19 can provide succour to a party in breach of contractual obligations? ; and (ii) Whether the invocation of the Bank Guarantees is liable to be injuncted on the ground of occurrence of a force majeure event i.e., COVID-19, if the breach occurred prior to the said outbreak?

On both the issues the court held that the question as to whether COVID-19 would justify non-performance or breach of a contract has to be examined on the facts and circumstances of each case. Every breach or non-performance cannot be justified or excused merely on the invocation of COVID-19 as a *Force Majeure* condition. The Court would have to assess the conduct of the parties prior to the outbreak, the deadlines that were imposed in the contract, the steps that were to be taken, the various compliances that were required to be made and only then assess as to whether, genuinely, a party was prevented or is able to justify its non-performance due to the epidemic/pandemic.

It noted the settled position in law that a *Force Majeure* clause is to be interpreted narrowly and not broadly. Parties ought to be compelled to adhere to contractual terms and conditions and excusing non-performance would be only in exceptional situations. As observed in *Energy Watchdog v. Central Electricity Regulatory Commission, (2017) 14 SCC 80* it is not in the domain of Courts to absolve parties from performing their part of the contract. It is also not the duty of Courts to provide a shelter for justifying non-performance. There has to be a 'real reason' and a 'real justification' which the Court would consider in order to invoke a *Force Majeure* clause.

In the present case, the court held that the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself.

The question as to whether the *Force Majeure* clause itself would apply or justify non-performance in these facts would have to be finally determined finally in the arbitral proceedings. At this stage the *Force Majeure* clause does not afford any succour or shelter to the Contractor, to seek restraint against encashment of the Bank Guarantees.

The Court observed that at the time when the ad-interim order was passed by the ld. Single Judge the pleadings between the parties were not complete. In fact, most of the relevant correspondence was not filed by the Contractor and has now come on record by way of the reply and the rejoinder and further submissions filed by the parties. Thus, the submission on behalf of the Contractor that the ad-interim order ought to be continued is not tenable. The said order being *ad-interim* in nature, was prior to pleadings between the parties and does not deserve to be continued in favour of the Contractor, for the reasons stated above.

Therefore, the Court concluded that no case is made out for passing of any interim order staying the invocation or encashment of three sets of Bank Guarantees. Accordingly, the ad-interim order dated 20th April, 2020 (*as modified on 24th April 2020*), was vacated in the above terms.- ***[Halliburton Offshore Services Inc v. Vedanta Ltd & Anr., 29th May 2020, (Delhi High Court)]***

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SECURITIES

1) SEBI GRANTS ONE-TIME RELAXATION OF PROCEDURES FOR RIGHTS ISSUE OPENING UPTO 31 JULY 2020

In view of the COVID-19 pandemic and the ensuing lockdown measures undertaken by the government, SEBI has decided to grant one time relaxations from the strict enforcement of certain proceduralcompliances under the SEBI (Issue of Capital and Disclosure Requir ements) Regulations, 2018 (ICDR Regulations), pertaining to Rights Issue opening upto 31 July 2020, as under:

(i)Service of the abridged letter of offer, application form and other issue material to shareholders may be undertaken by electronic transmission as already provided under Regulation 77(2) of the ICDR Regulations. Failure to adhere to modes of dispatch through registered post or speed post or courier services will not be treated as non-compliance during the said period. However, the issuers shall publish the letter of offer, abridged letter of offer and application forms on the websites of the company, registrar, stock exchanges and the lead manager(s)to the rights issue.

(ii)Issue related advertisement as mandated by Regulation 84(1) shall contain additional details providing the manner in which shareholders who

have not been served notice electronically may apply. The issuer has been given the flexibility to publish the dispatch advertisement in additional newspapers, over and above those required in Regulation 84.The advertisement should also be made available on the website of the Issuer, Registrar, Lead Managers, and Stock Exchanges. Advertisements in television channels, radio, internet etc. even in the form of tickers/crawlers, may be used to disseminate information relating to the application process.

(iii)In the case of physical shareholders who have not been able to open a demat account or are unable to communicate their demat details to the issuer/registrar for credit of Rights Entitlements (REs) within specified time, they may be allowed to submit their application subject to certain conditions.

(iv)An optional mechanism (non-cash mode only) to accept the applications of the shareholders, other than the mandated ASBA facility, shall be instituted by the issuer along with lead manager(s) to the issue, the registrar, and other recognized intermediaries, subject to ensuring that no third party payments shall be allowed in respect of any application.

(v)In respect of all offer documents filed until 31 July 31 2020, authentication/certification/ undertaking(s) may be done using digital signature certifications and the issuer along with lead manager(s) shall provide procedure for inspection of material documents electronically. – ***[SEBI/HO/CFD/DIL2/CIR/P/2020/78, 6 May 2020, (SEBI)]***

2) FURTHER RELAXATION OF COMPLIANCES UNDER SEBI (LODR) REGULATIONS 2015

Following relaxations made by MCA under the Companies Act 2013 with respect to conducting AGM/EGM through electronic modes and dispensing with despatch of hard copies of annual reports to shareholders etc., SEBI has made concurrent relaxations of related provisions of the LODR Regulations 2015 as under :

(i)The requirements of sending physical/hard copies of annual reports to shareholders under Reg. 36 (1) (b) and (c), and by entities which have listed their NCDs and NCRPS under Reg. 58(1)(b) and (c) are dispensed with for listed entities who conduct their AGMs during the calendar year 2020.

(ii)The requirement under regulation 44 (4) obligating listed entity to send proxy forms to holders of securities is dispensed with temporarily, for listed entities who conduct their AGMs through electronic mode during the calendar year 2020.

(iii)The requirement under Regulation 12 which prescribes issuance of 'payable at par' warrants or cheques and sending these warrants/cheques by speed post, in case the amount payable as dividend exceeds Rs.1500/-, will apply upon normalization of postal services. However, where email addresses of shareholders are available, listed entities shall endeavour to obtain their bank account details and use the electronic modes of payment specified in Schedule I of the LODR.

Further, the exemption from publication of advertisements in newspapers, as required under

regulation 47 and 52(8), for all events scheduled till 15 May 2020 has been extended for all events scheduled till 30 June 2020.

Also, listed entities that are banking and/or insurance companies or having subsidiaries which are banking and / or insurance companies may submit consolidated financial results under regulation 33(3)(b) for the quarter ending 30 June 2020 on a voluntary basis. However, they shall continue to submit the standalone financial results as required under regulation 33(3)(a) of the LODR. If such entities choose to publish only standalone financial results and not consolidated financial results, they shall give reasons for the same. ***–[SEBI/HO/CFD/CMD1/CIR/P/2020/79, 12th May, 2020 (SEBI)]***

3) SEBI RELAXES COMPLIANCE OF MPS REQUIREMENT BY LISTED ENTITIES

In view of the prevailing business and market conditions, SEBI has relaxed the applicability of its circular dated 10 October 2017 which prescribes the procedure to be followed by stock exchanges against listed entities, their promoters and directors, including levy of fines, freeze of promoter holding etc, which are non-compliant with the Minimum Public Shareholding (MPS) requirement under Regulation 38 of the SEBI (LODR) Regulations 2015.

Accordingly, stock exchanges have been advised not to take any penal action in terms of the aforesaid circular, with respect to listed entities for whom the deadline to comply with MPS requirements falls between the period from March 1, 2020 to August 31, 2020. Further, any penal action already initiated by Stock Exchanges from March 1, 2020 till date for such non-compliance may be withdrawn. ***–[SEBI/HO/CFD/CMD1/CIR/P/2020/81, 14th May, 2020 (SEBI)]***

4) SEBI RELAXES PROCEDURAL COMPLIANCES RE: SERVICE OF OPEN OFFER LETTER/ TENDER FORM UNDER TAKEOVER & BUYBACK REGS

SEBI has granted a one-time relaxation from compliances under the SEBI (SAST) Regulations 2011 and the SEBI (Buyback) Regulations 2018 pertaining to open offers and buy-back tender offers opening upto 31 July 2020.

The service of the letter of offer and/or tender form and other offer related material to shareholders may be undertaken by electronic transmission, as is already provided under Regulation 18(2) of the Takeover Regulation and Regulation 9(ii) of Buyback Regulations, subject to the following:

(i)The letter of offer and tender form must be published on the websites of the acquirer/company, registrar, stock exchanges and the manager(s) to offer.

(ii)Adequate steps be taken by the acquirer/company along with the lead manager(s) to reach out to shareholders through other means such as ordinary post or SMS or audio-visual advertisement on television or digital advertisement, etc.

(iii)The acquirer/ company shall make an advertisement, containing details regarding the dispatch of the letter of offer electronically and availability of letter of offer along with the tender

form on the its websites, in the same newspapers in which (i) detailed pubic statement was published as per regulation 14(3) of Takeover Regulations or (ii) public announcements was published as per regulation 7(i) of Buy-back Regulations. The advertisement may also be placed in additional newspapers and on television channels, radio, internet, etc. and be made available on the website of the company, Registrar, Managers to the offer, and Stock Exchanges.

(iv)A procedure for inspection of material documents electronically must also be provided by the acquirer/company and the manager. ***–[SEBI/CIR/CFD/DCR1/CIR/P/2020/83, 14th May, 2020 (SEBI)]***

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COMPETITION

1) INVITING PUBLIC COMMENTS REGARDING EXAMINATION OF NON-COMPETE RESTRICTIONS UNDER REGULATION OF COMBINATIONS

The Competition Commission of India (Commission) has been looking at noncompete restrictions stipulated in mergers and acquisitions while reviewing combinations. Notifying parties are required to furnish information on non-compete restrictions for the purpose of its examination. The Commission has issued a Guidance Note explaining the circumstances under which a non-compete restriction would be regarded as 'ancillary' or 'not ancillary'. The Guidance Note provides that 3 years of non-compete obligation is usually justified in case of transfer of goodwill and know-how and two years in case of transfer of goodwill alone. It further provides that the scope of non-compete shall be restricted to the business sold and the territory where it was conducted. However, a finding that the restriction is not ancillary does not raise any presumption of infringement under the provisions of the Act.

It has been observed that prescribing a general set of standards for assessment of non-compete restrictions may not be appropriate in modern business environments. While it may be possible to conduct a detailed examination on case by case basis, the same may, however, not be feasible considering the timelines followed in combination cases.

The Commission, therefore, proposes to omit paragraph 5.7 of Form I in the Combination Regulations (i.e. Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011) that seeks information regarding non-compete restrictions agreed between the parties to combination and justification for the same. This would allow the parties flexibility in determining non-compete restrictions, while also reducing the information burden on them. However, the parties will be responsible for ensuring that their non-compete arrangements are competition compliant. Competition concerns, if any, that may arise from non-compete restrictions can be looked into under Sections 3 and/ or 4 of the Act.

Therefore, the Commission has invited comments from public by June 15, 2020 ***–[Press Release No. 10/2020-21, May 15, 2020]***

2) CCI APPROVES ACQUISITION OF 100% OF THE TOTAL ISSUED AND PAID UP SHARE CAPITAL OF EMAMI CEMENT LIMITED, ON A FULLY DILUTED BASIS, BY NUVOCO VISTAS CORPORATION LIMITED

The proposed combination pertains to the acquisition of 100% of the total issued and paid up share capital of Emami Cement Limited ("ECL"), on a fully diluted basis by Nuvoco Vistas Corporation Limited ("NVCL"). NVCL is a Nirma promoter group company and currently operates cement manufacturing units in the states of (i) Chhattisgarh, (ii) Jharkhand, (iii) West Bengal, (iv) Rajasthan and (v) Haryana. It is stated to be engaged in the businesses of manufacturing and sale of variety of grey cements including Portland Pozzolana cement, Portland Slag cement and Ordinary Portland cement. It is also engaged in the sale of certain other value-added products like construction chemicals, wall putty, and cover blocks. ECL is a part of the Emami group and owns and operates cement manufacturing units in the states of (i) West Bengal, (ii) Chhattisgarh, (iii) Bihar and (iv) Odisha. It is stated to be engaged in the manufacturing and sale of variety of grey cements including Portland Pozzolana cement, Portland Slag cement, Ordinary Portland cement and plain cement concrete i.e. composite cement. It also manufactures and sells small quantities of clinker and ground granulated blast furnace slag. ***–[Press Release No. 11/2020-21, May 21, 2020]***

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INDIRECT TAXES

a. CUSTOMS

1) INCREASE IN EFFECTIVE RATE OF ROAD AND INFRASTRUCTURE CESS (RIC) COLLECTED AS ADDITIONAL DUTY OF CUSTOMS ON PETROL AND DIESEL

Notification No. 18/2019-Customs dated 6th July, 2019 amended so as to increase effective rate of Road and Infrastructure Cess (RIC) collected as additional duty of customs on petrol and diesel by Rs. 8 per litre. – ***[Notification No. 21/2020-Customs, dated 5th May, 2020]***

2) CONFIRMATION OF INCREASE OF 5% IN THE RATE OF DUTY OF CUSTOMS ON "REFINED BLEACHED DEODORIZED PALMOLEIN AND REFINED BLEACHED DEODORIZED PALM OIL" ORIGINATING IN MALAYSIA

Confirmation of provisional increase of 5% in the rate of duty of customs levied vide notification No. 29/2019-Cus dated 04.09.2019, for a period of 180 days, on imports of "Refined Bleached Deodorized Palmolein and Refined Bleached Deodorized Palm Oil", falling under tariff item [1511 90 10] or tariff item [1511 90 20] of the First Schedule to the Customs Tariff Act, 1975, originating in Malaysia and imported under India-Malaysia Comprehensive Economic Cooperation Agreement. – ***[Notification No. 22/2020-Customs, dated 12th May, 2020]***

3) EXTENSION OF PERIOD OF VALIDITY OF EXISTING EXPORT PERFORMANCE CERTIFICATES FOR FY 2019-20 UP TO 30.09.2020

Customs Notification No. 50/2017-Customs dated 30.06.2017 amended so as to extend the period of validity of existing Export Performance Certificates for FY 2019-20 up to 30.09.2020. – ***[Notification No. 23/2020-Customs, dated 14th May, 2020]***

4) EXTENSION OF LAST DATE OF EXPORT BY SIX MONTHS, FOR THOSE CASES WHERE THE LAST DATE OF EXPORT FALLS BETWEEN 01.2.2020 AND 31.7.2020

Notification No. 56/2000-Customs dated 05.05.2000, No. 57/2000-Customs dated 08.05.2000 and No. 40/2015-Customs dated 21.07.2015 amended providing for extension of last date of export by six months, for those cases where the last date of export falls between 01.2.2020 and 31.7.2020 due to the outbreak of COVID-19 pandemic. – ***[Notification No. 24/2020 – Customs, dated 21st May, 2020]***

5) NOTIFICATION OF GOPALPUR PORT

Inclusion of Gopalpur Port [INGPR1] as notified port for getting benefits under AA/ EPCG schemes and other export incentive schemes like MEIS/SEIS and other such schemes. – ***[Notification No. 25/2020-Customs, dated 21st May, 2020]***

6) ADD ON IMPORT OF SODIUM CITRATE

Anti-dumping duty imposed on import of Sodium citrate originating in or exported from China PR for a period of further 5 years. – ***[Notification No. 08/2020-Customs (ADD), dated 19th May, 2020]***

7) ADD ON IMPORTS OF ELECTRONIC CALCULATORS OF ALL TYPES EXCLUDING SOME SPECIFIC TYPES

Anti-dumping duty levied on imports of 'Electronic Calculators of all types excluding calculators with attached printers, commonly referred to as printing calculators; calculators with ability to plot charts and graphs, commonly referred to as graphing calculators; programmable calculators', originating in, or exported from, People's Republic of China for a period of five years, in pursuance of final findings of sunset review investigations issued by DGTR and in supersession of the notification No. 24/2015-Customs (ADD), dated the 29th May, 2015. – ***[Notification No. 9/2020-Customs (ADD), dated 27th May, 2020]***

8) EXTENSION OF ADD ON ACRYLIC FIBRES

Notification No. 27/2015-Customs (ADD) dated 1st June, 2015 amended so as to extend the levy of Anti-Dumping duty on acrylic fibres originating in or exported from Thailand for a further period of 6 months. – ***[Notification No. 10/2020-Customs (ADD), dated 29th May, 2020]***

9) IMPLEMENTATION OF PGA E-SANCHIT–UPLOADING OF LICENSES/PERMITS/CERTIFICATES/ OTHER AUTHORIZATIONS (LPCOS) BY PGAS

The CBIC has brought onboard e-SANCHIT App one more Participating Government Agencies (PGA) namely Registrar of Newspapers of India (RNI) with its Licenses/Permits/Certificates/Other Authorizations (LPCOs). The eSANCHIT application provides facility to upload digitally signed Licenses/Permits/Certificates/Other Authorizations (LPCOs) through Participating Government Agencies (PGAs) at all ICES locations across India. Registrar of Newspapers of India (RNI) with its LPCOs is being brought onboard e-SANCHIT as a PGA for this purpose. The beneficiaries i.e. importers or exporters or customs brokers would not be allowed to upload the previously issued LPCOs on e-SANCHIT with effect from May 31, 2020, as the facility to upload the LPCOs is now being fully made available to Registrar of Newspapers of India (RNI). It is reiterated that the PGA will be communicating with the beneficiaries through the e-mail addresses registered in the ICEGATE. Board had also introduced a simplified auto-registration process in ICEGATE based on email ids already provided by them for registration under GST without the use of digital signatures for limited purposes of e-SANCHIT (communication and viewing) and the IRNs will be communicated to such email ids. The total number of PGAs on Board e-Sachit to date becomes 51. – ***[Circular No.24/2020-Customs, dated 14th May, 2020]***

b. CENTRAL EXCISE

1) INCREASE OF SPECIAL ADDITIONAL EXCISE DUTY (SAED) ON PETROL BY RS. 2 PER LIRE AND ON DIESEL BY RS. 5 PER LITRE

Notification No. 05/2019-Central Excise dated 6th July, 2019 amended so as to increase effective rate of Special Additional Excise Duty (SAED) on petrol by Rs. 2 per lire and on diesel by Rs. 5 per litre. – ***[Notification No. 5/2020-Central Excise, dated 5th May, 2020]***

2) INCREASE OF ROAD AND INFRASTRUCTURE CESS (RIC) COLLECTED AS ADDITIONAL DUTY OF EXCISE ON PETROL AND DIESEL BY RS. 8 PER LITRE

Notification No. 04/2019-Central Excise dated 6th July, 2019 amended so as to increase effective rate of Road and Infrastructure Cess (RIC) collected as additional duty of excise on petrol and diesel by Rs. 8 per litre. – ***[Notification No. 6/2020-Central Excise, dated 5th May, 2020]***

3) NOTIFICATION OF EXTENSION OF DUE-DATES FOR PAYMENT UNDER SVLDRS

SVLDRS Rules, 2019 amended so as to extend time limits for furnishing various forms, statements and payment of dues under Sabka Vishwas Scheme (SVLDRS). – ***[Notification No. 1/2020-Central Excise (N.T.), dated 14th May, 2020 & Amendment to Circular No. 1071/4/2019-CX.8, dated 29th May, 2020]***

c. GST

1) CENTRAL GOODS AND SERVICES TAX (FIFTH AMENDMENT) RULES, 2020

The CBIC vide present notification amended the CGST Rules to the following effect:- GSTR-3B can be filed through EVC till 30.06.2020 in case of a registered person being Company. NIL GSTR3B Return allowed to be filed by SMS. CBIC has enabled the facility to file GSTR-3B through Electronic Verification Code (EVC) and Short Message Service (SMS) to ease the compliance procedure under the Goods and Services Tax (GST) regime. – ***[Notification No. 38/2020 – Central Tax, dated 5th May, 2020]***

2) AMENDMENTS TO SPECIAL PROCEDURE FOR CORPORATE DEBTORS

The CBIC vide present circular has made amendments to special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016. – ***[Notification No. 39/2020 – Central Tax, dated 5th May, 2020]***

3) EXTENSION OF DUE DATE FOR FURNISHING OF FORM GSTR 9/9C

Due date for furnishing FORM GSTR 9/9C for FY 2018-19 extended till 30th September, 2020. – ***[Notification No. 41/2020 – Central Tax, dated 5th May, 2020]***

4) SECTION 128 OF FINANCE ACT, 2020 NOTIFIED

The CBIC brings into force Section 128 of Finance Act, 2020 in order to bring amendment in Section 140 of CGST Act w.e.f. 01.07.2017. – ***[Notification No. 43/2020 – Central Tax, dated 16th May, 2020]***

5) CLARIFICATION IN RESPECT OF CERTAIN CHALLENGES FACED BY THE REGISTERED PERSONS IN IMPLEMENTATION OF PROVISIONS OF GST LAWS

The CBIC vide present circular issued clarification in respect of certain challenges as bellow faced by the registered persons in implementation of provisions of GST Laws:

i. Notification No. 11/2020 – Central Tax dated 21.03.2020, issued under section 148 of the CGST Act provided that an IRP / CIRP is required to take a separate registration within 30 days of the issuance of the notification. It has been represented that the IRP/RP are facing difficulty in obtaining registrations during the period of the lockdown and have requested to increase the time for obtaining registration from the present 30 days limit.

ii. The notification No. 11/2020– Central Tax dated 21.03.2020 specifies that the IRP/RP, in respect of a corporate debtor, has to take a new registration with effect from the date of appointment. Clarification has been sought whether IRP would be required to take a fresh registration even when they are complying with all the provisions of the GST Law under the registration of Corporate Debtor (earlier GSTIN) i.e. all the GSTR-3Bs have been filed by the Corporate debtor / IRP prior to the period of appointment of IRPs and they have not been defaulted in return filing.

iii. Another doubt has been raised that the present notification has used the terms IRP and RP interchangeably, and in cases where an appointed IRP is not ratified and a separate RP is

appointed, whether the same new GSTIN shall be transferred from the IRP to RP, or both will need to take fresh registration.

iv. As per notification no. 40/2017-Central Tax (Rate) dated 23.10.2017, a registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% provided, inter-alia, that the merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier. Request has been made to clarify the provision vis-à-vis the exemption provided vide notification no. 35/2020-Central Tax dated 03.04.2020.

v. Sub-rule (3) of that rule 45 of CGST Rules requires furnishing of FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during a quarter on or before the 25th day of the month succeeding that quarter. Accordingly, the due date of filing of FORM GST ITC-04 for the quarter ending March, 2020 falls on 25.04.2020. Clarification has been sought as to whether the extension of time limit as provided in terms of notification No. 35/2020-Central Tax dated 03.04.2020 also covers furnishing of FORM GST ITC-04 for quarter ending March, 2020. – ***[Circular No. 138/08/2020-GST, dated 06th May, 2020]***

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INTELLECTUAL PROPERTY RIGHTS

1) UNDER SECTION 45 OF THE TRADE MARKS ACT, REGISTRATION OF ASSIGNMENT IS MANDATORY: DELHI HC

The Delhi HC in this case observed that under Section 45 of the Trade Marks Act, registration of assignment is mandatory. Also, it is mandatory for an assignee of a registered trade mark to apply in the prescribed manner to the Registrar of Trade Marks to register his title thereto. – ***[M/S Liberty Footwear Company vs Liberty Innovative Outfits Limited, dated 26 May, 2020 (Delhi HC)]***

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CONSUMER

1) SC ORDERS HIGHER COMPENSATION TO NEXT OF KIN OF MANGALORE AIR CRASH VICTIM

The Supreme Court has awarded Rs 7,64,00,000 compensation to the next of kin of a 45-year old man who was killed when Air India Express Flight 812 from Dubai crashed on landing in Mangaluru on May 22, 2010 that killed 158 of the 166 passengers on board.

The family members of Mahendra Kodkany, which includes his wife, daughter and son, who were earlier granted Rs 7.35 crore as compensation by National Consumer Disputes Redressal Commission (NCDRC), will now get the enhanced amount along with 9 per cent interest per annum (on the amount yet to be paid).

Kodkany was the regional director for the Middle East for a UAE-based company. In its order, an apex court bench of Justices DY Chandrachud and Ajay Rastogi said it was unable to accept the reasons cited by NCDRC in making a deduction

from the salary of the victim while calculating compensation.

The bifurcation of salary into diverse heads may be made by the employer for a variety of reasons. However, in a claim for compensation arising out of the death of the employee, the income has to be assessed on the basis of the entitlement of the employee.

The accident, in which the aircraft overshot the runway, went down a hillside and burst into flames, killed 158 of the 166 passengers on board.

The top court further held that Kodkany had been a confirmed employee entitled to adequate weightage in terms of determination of compensation in the event of untimely demise.

"In the event that the amount which has been paid by Air India is in excess of the amount payable under the present judgment in terms of our above order, we direct under Article 142 of the Constitution (discretionary power to the Supreme Court), that the excess, if any, shall not be recoverable from the claimants. ***–[Supreme Court of India, 20th May, 2020]***

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ENVIRONMENT

1) LG POLYMERS FINED RS 50CR FOR VIZAG GAS LEAK BY NGT, MINISTRY SAYS FIRMS VIOLATED GREEN NORMS

The LG Polymers' plant in Vishakhapatnam violated green rules as far as its functioning under expanded capacity is concerned, the environment ministry said after conducting preliminary investigation in gas leak which claimed 11 lives. Meanwhile, the National Green Tribunal (NGT) imposed an interim fine of Rs 50 crore on the LG Polymer - the South Korean company which owns the chemical factory in Vizag that faced gas leak accident - and sought response from the Centre and state authorities while noting that the incident appeared to be a result of "failure to comply" with rules and other statutory provisions. – ***[The Times of India, dated 09th May, 2020]***

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