

NEWSLETTER

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Monthly Bulletin



TOLSTOY HOUSE, 4TH FLOOR, TOLSTOY MARG,
NEW DELHI – 110001, INDIA TEL : +91 11 4213 0000



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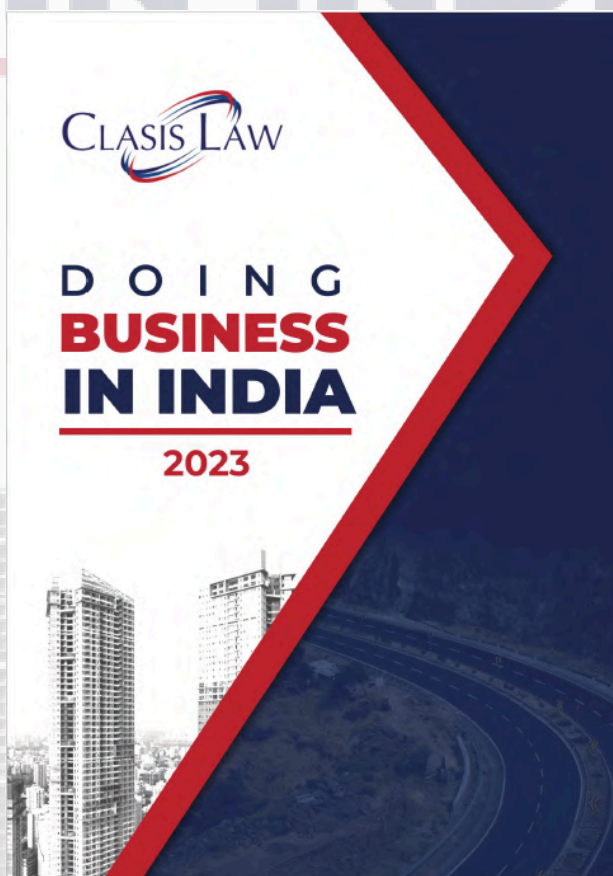
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DOING BUSINESS IN INDIA

We are pleased to share our e-book titled
"Doing Business in India".

The book intends to give the reader an overview of the various aspects of doing business in India including but not limited to the applicable legislations, compliances and processes.



Please scan the **QR code** above or **[Click Here](#)** to download the e-book. Alternatively, you may write to us at **info@clasislaw.com** for the copy.

FEATURED ARTICLE



HOLDING SHARES AS NOMINEE OF SUBSIDIARY IN INDIA – LEGAL IMPLICATIONS AND COMPLIANCE

Written By
Neetika Ahuja, Partner
Poonam Upreti, Associate

Foreign Direct Investment (FDI) continues to play a pivotal role in India’s economic growth and development as the country increasingly attracts international investors. The Indian government has been proactively working to enhance the ease of doing business in India, with the aim of further boosting foreign investments. Foreign investors commonly enter the Indian market through two primary routes: (i) subsidiaries; and (ii) joint ventures (JV).

A wholly owned subsidiary is a legal entity in which the foreign investor holds the entire share capital and voting rights, providing complete control over the operations of the business. In contrast, a joint venture involves a partnership between parties sharing profits, risks, and control based on their respective stakes.

A foreign investor who intends to incorporate a wholly owned subsidiary in India, can own the entire share capital of the Indian wholly owned subsidiary. However, the Companies Act, 2013 (“Act”), stipulates certain legal requirements that must be met to ensure compliance. The Act mandates that a private company must have at least 2 (two) shareholders, while a public company must have at least 7 (seven) shareholders. To comply with this requirement, if a foreign investor wishes to incorporate a wholly owned subsidiary as a private limited company in India then the foreign investor requires a person who can hold a share in a nominee capacity (**Nominee Shareholder**). In such cases, the nominee shareholder’s name is entered into the investee company’s register, but the beneficial interest related to such share i.e., the right to profits and control remains with the foreign investor.

To maintain regulatory transparency, certain filings are also required to be made under the Act. A nominee/ registered shareholder who does not have beneficial ownership is required to submit a declaration in form MGT-4 within 30 days of its name being entered into the company’s register. This form specifies the name of the actual beneficial owner. Additionally, beneficial owner must disclose its interest in the shares through form MGT-5, which also requires information about the registered holder. After receiving these declarations, the company is obligated to disclose such facts to the Ministry of Corporate Affairs by filing e-form MGT-6. The annual return filed by the investee company should clearly specify the residency and shareholding status of person holding the share in such company.

In addition to complying with the Act, foreign investors must also adhere to the provisions of

FEATURED ARTICLE

the Foreign Exchange Management Act, 1999 (“**FEMA**”). Under FEMA, any foreign investment must be made freely convertible foreign currency via inward remittance through banking channels. Further, the investment must meet specific pricing norms and the necessary filings must be made with the Reserve Bank of India (“**RBI**”).

Although the investments made by Indian resident citizen are not subject to FEMA compliances, however, according to the explanation provided in the definition of [1]foreign investment, if a person holds shares as a nominee shareholder and declares that the beneficial interest lies with a person resident outside India, the investment, even if made by an Indian resident citizen, is considered as foreign investment and subject to the requisite FEMA compliances.

The term “person resident outside India” includes Non-Resident Indians (“**NRIs**”). However, the applicability of FEMA provisions to NRIs depends on the nature of the investment. NRIs can invest on a repatriable or non-repatriable basis. Non-repatriable investments are treated as domestic investments and do not require reporting to the RBI. In contrast, repatriable investments, which allow funds to be transferred out of India, must comply with pricing norms and be reported to the RBI.

It is clear that any investment made by a person (including NRIs) on behalf of a person resident outside India as a nominee shareholder will always be treated as foreign investment. For NRIs holding shares in their individual capacity, the investment type must be clearly defined. Even a single share held on a repatriable or non-repatriable basis must comply with FEMA regulations, regardless of the transaction amount.

Conclusion

The role of shareholders in FDI is crucial to ensuring legal compliance and maintaining transparency in India’s investment framework. It is essential to clearly define the ownership structure whether through a nominee shareholder or a direct beneficial owner, to avoid any ambiguity about the actual control and benefits associated with the shares. It has been often seen that discrepancies in filings or failure to disclose beneficial ownership can lead to significant legal and financial consequences, including penalties, complications in mergers and acquisitions and challenges during due diligence processes.

To mitigate these risks, foreign investors must adhere to both the Companies Act, 2013 and FEMA provisions, ensuring that all filings and disclosures are made accurately and within the prescribed timeframes. Timely and accurate documentation of share ownership not only fosters investor confidence but also ensures that the company’s operations to remain compliant, efficient and transparent.

Footnote :

[1] foreign investment means any investment made by a person resident outside India on a repatriable basis in equity instruments of an Indian company or to the capital of a LLP.

LEGAL UPDATES

APPLICATION UNDER SECTION 7, IBC NOT BARRED BY MERE EXISTENCE OF A DISPUTE BETWEEN THE FINANCIAL CREDITOR AND THE CORPORATE DEBTOR

Introduction

In a recent decision[1], the National Company Law Tribunal, (“**NCLT**”), New Delhi, comprising Chief Justice (Retd.) Ramalingam Sudhakar (President) and Avinash K. Srivastava (Technical Member), has ruled that mere existence of a dispute between the Financial Creditor and the Corporate Debtor does not bar the entertaining Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”).

Brief Facts

Madhya Pradesh Road Transport Corporation Limited (MPRDC) invited applications for the development of the Waraseoni-Lalbarra section of a Major District Road in Madhya Pradesh. Consequently, MBL Infrastructure Ltd. was awarded the project in 2011 under a 15-year Public-Private Partnership (PPP) concession. Thereafter, MBL Infrastructure requested the acceptance of MBL (MP) Toll Road Company Limited (“**Corporate Debtor**”) to undertake the project, leading to a concession agreement with MPRDC and an agreement between MBL Infrastructure and the Corporate Debtor for construction, operation, and maintenance.

Subsequently, the Corporate Debtor secured a loan from Punjab National Bank (International) Limited (“**Financial Creditor**”) for project implementation, with a Term Loan Facility of USD 8.06 million sanctioned in April 2012. Based on the Sanction Letter, the Corporate Debtor entered into a Loan Facility Agreement. MBL Infrastructure Ltd. gave a corporate guarantee from MBL Infrastructure.

Thereafter, Escrow Agreement was entered into between Corporate Debtor, MPRDC and PNB Mid Corporate Branch, Noida being the “Lender's Representative” as well as the “Escrow Bank/Agent”). That as per Clause 2 of the aforesaid agreement the Escrow Bank was to act as a Trustee for MPRDC, Corporate Debtor and Financial Creditor.

However, due to non-payment, the Corporate Debtor's loan account was classified as a Non-Performing Asset (NPA) in March 2023, with an outstanding debt of USD 53,38,895.44 (Rs. 44,04,58,873).

Being aggrieved, the Financial Creditor filed an application under Section 7 (“**Application**”) of the Insolvency and Bankruptcy Code (**IBC**) to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor. Corporate Debtor objected to the maintainability of the Application and amongst the various objections raised, one objection was existence of dispute between the Financial Creditor and the Corporate Debtor due to breach of Escrow Agreement and that arbitration has already been invoked by the Corporate Debtor prior to alleged demand notice.

Observations of the Court

The legal question before the court was whether existence of a dispute between the Financial Creditor and Corporate Debtor due to breach of Escrow Agreement bars a Section 7 Application to be entertained. The Tribunal emphasized that the scope of inquiry under the Insolvency and Bankruptcy Code (IBC) is confined to determining the existence of

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'debt' and 'default'. It clarified that a pre-existing dispute does not serve as a defence against a Section 7 application, distinguishing it from Section 9 applications (which are filed by “**Operational Creditors**”). The Tribunal further observed that disputes related to the Escrow Agreement fall within the jurisdiction of the Arbitration and Conciliation Act, 1996, and that the adjudicating authority, exercising its summary jurisdiction, cannot extend beyond the confines of the IBC.

Additionally, the tribunal noted that the failure to send the demand notice to the correct address does not benefit the Corporate Debtor as contented by them, since such notice is not a mandatory requirement under Section 7 of the Code. Furthermore, the Tribunal acknowledged that the Corporate Debtor admitted to an outstanding amount of USD 1.78 million as of July 2023, thereby confirming the existence of

both 'debt' and 'default'.

Conclusion

The tribunal, therefore, held that any dispute raised by the Corporate Debtor before the Arbitrator under the Escrow Agreement does not preclude the Financial Creditor from initiating proceedings under the Insolvency and Bankruptcy Code (IBC). Relying on the judgment in *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.*[1], the Tribunal concluded that if the creditor recovers a part of the amount guaranteed by the surety and agrees not to proceed against the surety for the balance amount, it does not extinguish the remaining debt owed by the principal borrower. In such circumstances, the creditor retains the right to proceed against the principal borrower to recover the outstanding balance.

Footnotes :

[1] *Punjab National Bank (International) Limited v. M/S MBL (MP) Toll Road Company Limited* [2025 SCC OnLine NCLT 58]

CORPORATE REGULATORY UPDATES

1. Public Consultation on Digital Personal Data Protection (DPDP) Rules, 2025

On January 3, 2025, the Ministry of Electronics and Information Technology (**MeitY**) released the draft Digital Personal Data Protection Rules, 2025 (**Draft DPDP Rules, 2025**) for public consultation.

The Draft DPDP Rules, 2025 outline implementation measures, including :

- Notice requirements for Data Fiduciaries
- Consent Manager registration and obligations
- Processing of personal data for government benefits and subsidies
- Security safeguards & data breach notifications
- Child & disability-specific data processing norms
- Establishment of the Data Protection Board

Stakeholders are invited to submit their feedback by February 18, 2025.

2. IFSCA Consultation Paper on Special Purpose Vehicles (SPVs) for Co-Investment & Leverage Transactions

The International Financial Services Centres Authority (**IFSCA**) on 9 January 2025 issued consultation paper (**Consultation Paper Fund Management**) Framework for Special Purpose Vehicle (**SPV**) for Co-investment and leverage transaction under IFSCA (Fund Management) Regulations 2022. The Consultation Paper Fund Management, focuses on promoting ease of doing business and to facilitate the growth of alternative investment industry in the IFSC, the creation of a Special Purpose Vehicle under the controlling scheme is being operationalized, to enable other investors to co-invest in the underlying securities along with the scheme or allow a scheme to take leverage at SPV level.

3. RBI Issues Master Directions on Non-Resident Investment in Debt Instruments

The Reserve Bank of India (**RBI**) issued the RBI (Non-Resident Investment in Debt Instruments) Directions, 2025, consolidating prior guidelines under the Foreign Exchange Management Act (FEMA). These directions regulate:

- Foreign Portfolio Investors (FPI), Non-Resident Indians (NRI), and Overseas Citizens of India (OCI) investments in debt instruments
- The Fully Accessible Route (FAR) for certain government securities
- Investment in Sovereign Green Bonds
- Reporting & settlement obligations for FPIs investing in Indian debt markets

These updates aim to streamline processes and enhance transparency in non-resident investments.

4. Amendments to Plastic Waste Management Rules, 2016

On January 23, 2025, the Ministry of Environment, Forest and Climate Change amended the existing Plastic Waste Management Rules, 2016 by introducing the Plastic Waste Management (Amendment) Rules, 2025. The amended rules provide that a producer, importer or brand owner may, with effect from the 1st July, 2025, provide the information specified under sub-rule (1) of rule 11, in the following manner:

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- in a barcode or Quick Response code printed on the plastic packaging;
- in the product information brochure;
- print on the plastics packaging the unique number issued under any law for the time being in force.

The producer or importer or brand owner shall also inform the details of publishing of a barcode or QR code, brochure or unique number to the Central Pollution Control Board. Further, if any person failed to comply or contravenes the provisions of rule 11, he shall be liable to a penalty in accordance with the provisions of section 15 of the Act.

5. SEBI's Framework for Waiver or Reduction of Interest in Recovery Proceedings

SEBI introduced a structured mechanism for requesting waivers or reductions of interest on penalties under the SEBI Act, SCRA, and the Depositories Act. Key highlights include:

- Delegation of authority:
 - Panel of Executive Directors for amounts under ₹2 crores
 - Panel of Whole-time Members for higher amounts
- Waivers not applicable to fee non-payment or disgorgement orders
- Applications must be submitted post full payment of principal dues and must establish hardship, uncontrollable default, and cooperation with inquiries

6. IBBI Mandates eBKray Auction Platform for Liquidation

The Insolvency and Bankruptcy Board of India (IBBI) has made it mandatory for insolvency professionals to list and auction liquidation assets exclusively through the eBKray platform from April 1, 2025. This is part of ongoing efforts to streamline the liquidation process and enhance transparency. As of now, 210 assets have been listed, with 25 auctions scheduled or conducted. The platform, currently in pilot mode, will continue to evolve based on user feedback. Effective from April 1, 2025, all IPs must use eBKray for asset auctions, with unsold asset listings to be completed by March 31, 2025.

7. IFSCA Circulars on SNRR Accounts

On January 29, 2025, IFSCA issued two key circulars concerning Special Non-Resident Rupee (SNRR) accounts:

1. Internet Banking for SNRR Accounts

- IFSC Banking Units (IBUs) must coordinate with their banks for early rollout of internet banking services for SNRR accounts.
- Quarterly status reports to be submitted, starting March 31, 2025.

2. Expansion of Permissible Transactions via SNRR Accounts

- Amends FEMA (Deposit) Regulations, 2016 to expand transaction categories beyond administrative expenses, scrap sales, and government incentives.
- SNRR accounts can now be used for all business-related transactions.

RECENT EVENTS



Raveena Anand
Senior Associate

Raveena Anand, Senior Associate attended the Indian Employment Forum 2025 conference presented by the International Employment Lawyer on February 6, 2025 in Four Seasons, Mumbai.



OFF BEAT SECTION

ICC Champions Trophy 2025: The Resurgence of an Elite Cricket Tournament

Set to take place in February 2025, the ICC Champions Trophy marks its much-anticipated return after an eight-year hiatus. This high-stakes tournament will bring together the world's top eight ODI teams in a knockout-style format known for delivering some of cricket's most thrilling encounters.

Historical Significance and Importance



Introduced in 1998 as the ICC Knockout Tournament and rebranded as the Champions Trophy in 2002, the event was designed as a shorter, high-intensity alternative to the Cricket World Cup. Over the years, it has showcased intense rivalries and unforgettable moments, with Pakistan securing their first title in 2017 with a dominant win over India.

Unlike the Cricket World Cup's extended league format, the Champions Trophy is known for its fast-paced, high-intensity matches, where only the best-performing teams qualify. This edition carries added significance due to its geopolitical context, particularly regarding India's participation in Pakistan. With international cricket shifting towards shorter formats, teams like England, Australia, South Africa, and New Zealand will be eager to showcase their 50-over prowess.

2025 Edition: A Landmark Event



The 2025 edition will be hosted by Pakistan, marking the country's first major ICC event since the 1996 Cricket World Cup. The tournament will feature the top eight ODI teams as per ICC rankings, competing in a round-robin stage before progressing to the knockout rounds. This format ensures that every match carries significant weight, making it one of the most competitive trophies to win.

With Pakistan as the host, the 2025 ICC Champions Trophy promises to be a landmark event, featuring intense rivalries, legendary performances, and an electrifying cricketing atmosphere. As anticipation builds, the key question remains—who will rise to the occasion and etch their name in Champions Trophy history?

Notable Recognitions & Accolades

