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WEEKLY CORPORATE UPDATES

Saturday 29th April, 2023

(Curated & compiled by)

Team Indiacorp Law

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Concerns:
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MCA UPDATES

MCA News: Delay in obtaining COI (Certificate of Incorporation)

Dated: 27th April, 2023

The Ministry of Corporate Affairs has informed the stakeholders that there is a delay in the issuance of TAN (Tax Deduction and Collection Account Number) from NSDL, which is resulting in a slight delay in obtaining COI (Certificate of Incorporation). All pending COIs will be issued as soon as the TAN is received from NSDL.

Related Link: https://www.mca.gov.in/content/mca/global/en/notifications-tender/news-updates/updates.html

MCA News: Launch of form STK-2 along with C-PACE functionality

Dated: 21st April, 2023

Ministry of Corporate Affairs is launching form STK-2 along with C-PACE functionality on 01st May 2023 at 12:00 AM. To facilitate implementation of this form in V3 MCA21 portal, stakeholders are advised to note the following points:

(1) STK-2 form on V2 portal will be disabled from 28th April 11:59 PM to 30th April 11:59 pm which is planned for roll-out on 01st May 2023 at 12:00 AM.

(2) All stakeholders are advised to ensure that there are no SRNs in pending payment and Resubmission status.

(3) Offline payments using Pay later option would not be available in V2 for STK-2. You are requested to make payments for these forms in V2 through online mode (Credit/Debit Card and Net Banking).

(4) V3 portal will not be available for filing of all Company/LLP forms due to STK-2 form roll-out from 30th April (03:00 PM) to 01st May 2023 (12:00 AM).

(5) V2 Portal for company filing will remain available for all the forms which are currently in V2 system (except STK-2), throughout this time period.

Related Link:https://www.mca.gov.in/content/mca/global/en/notifications-tender/news-updates/updates.html

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SEBI issued Master Circular for Custodians

Dated: 28th April, 2023

The Securities and Exchange Board of India (SEBI) on April 27, 2023, issued Master Circular for Custodians.
In addition to the requirements specified under this Master Circular, the custodians shall be required to independently comply with the other requirements specified by SEBI for market intermediaries such as the 'Levy of Goods & Services Tax (GST) on the fees payable to SEBI', 'Approach to securities market data access and terms of usage of data provided by data sources in Indian securities market', 'Digital mode of payment', 'Information regarding Grievance Redressal Mechanism' and 'Guidelines on Outsourcing of Activities by Intermediaries', etc.
With respect to any other directions or guidance issued by SEBI, as specifically applicable to Custodians, the same shall continue to remain in force in addition to the provisions of this Master Circular or any other law for the time being in force.
This Master Circular shall come into force from the date of its issue.
The circulars mentioned in Annexure A of the Master Circular shall stand rescinded with effect from the date of issuance of this Master Circular.
[Notification No. SEBI/ HO/ AFD/ AFD PoD/P/CIR/2023/063]

Related Link: https://www.teamleaseregtech.com/updates/article/23334/sebi-issued-master-circular-for-custodians/

SEBI stops brokers from using client funds to create Bank Guarantees

Dated: 27th April, 2023

The Securities and Exchange Board of India (SEBI) has barred the brokers from creating bank guarantees using client funds.SEBI on Tuesday said that such practices will be barred with effect from 1 May and all existing bank guarantees have to be terminated by 30 September 2023. The order is a step taken by the regulator to safeguard clients' funds and securities from misuse by brokers.

According to reports, as per SEBI, the practice of using client funds as collateral instead of bank guarantees for larger sums put the market and the assets at danger. However, the outstanding value of existing bank guarantees could not be ascertained immediately.

The process is being monitored by stock exchanges and clearing companies, who must also provide updates on the total bank guarantees made on client funds and proprietary funds every two weeks. Stockbrokers will still be permitted to create guarantees using their own money.

Brokers have been instructed to produce a certificate on the implementation from a statutory auditor by October 16.

This most recent move follows recently introduced similar regulations. Last year, SEBI ordered stock brokers to settle customer money on a quarterly basis and to transfer any unused cash back to the client's bank account. In the first cycle, these settlements totaled more than Rs 30,000 crore.

Related Link: https://www.businessworld.in/article/SEBI-Stops-Brokers-From-Using-Client-Funds-To-Create-Bank-Guarantees-/26-04-2023-474186/

SEBI issued a notification regarding the modifications in the requirements of filing Offer documents by Mutual Funds

Dated: 25th April, 2023

The Securities and Exchange Board of India (SEBI) on April 25, 2023, issued a circular regarding the Modifications in the requirement of filing Offer Documents by Mutual Funds

This Circular aims to protect the interests of investors in securities, promote the development, and regulate the securities market.
The provisions of this circular shall be applicable with effect from ***May 01, 2023.***

The following has been stated namely: -

• This is in partial modification of the SEBI Circular SEBI/HO/IMD/DF2/CIR/P/2016/68 dated August 10, 2016, which mandated the submission of a soft copy of the final SIDs along with printed/final copy seven working days prior to the launch of the scheme
• It has been decided that AMC shall file all final offer documents (final SID and final KIM) only digitally by emailing the same to a dedicated email Id and there would be a requirement of filing physical copies of the same with SEBI.
• It states that based on the consultation with the AMFI, such submission of all final SID and KIM in the digital form shall be made at least ***two working days*** *prior to the launch of the scheme.*
• It further states that in order to safeguard the interests of investors in the securities market, it has been decided that all new fund offers ("NFOs") shall remain open for subscription for a minimum period of ***three working days***
• All other provisions mentioned in the aforesaid circular shall remain unchanged.

Related Link: https://www.teamleasereqtech.com/updates/article/23249/sebi-issued-a-notification-regarding-the-modifications-in-the-requirem/

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RBI UPDATES

RBI harmonises provisioning norms for urban cooperative banks

Dated: 24th April, 2023

The Reserve Bank on Monday harmonised the provisioning norms for standard assets applicable to all categories of urban cooperative banks (UCBs). In December last year, the RBI had categorized UCBs into four tiers -- tier 1, 2, 3 and 4 - for regulatory purposes. Prior to that, such banks fell only in tier 1 and tier 2 categories.

"On a review, it has been decided to harmonise the provisioning norms for standard assets applicable to all categories of UCBs, irrespective of their tier in the revised framework," the central bank said in a circular.

Direct advances to agriculture and SME sectors which are standard, would attract a uniform provisioning requirement of 0.25 per cent of the funded outstanding on a portfolio basis to all categories of UCBs under the revised framework.

Advances to commercial real estate (CRE) sector which are standard shall attract a uniform provisioning requirement of 1 per cent of the funded outstanding on a portfolio basis.
In case of Commercial Real Estate-Residential Housing Sector (CRE-RH) and all other loans and advances, the provisioning requirements would be 0.75 per cent and 0.4 per cent, respectively.

RBI has categorized all unit UCBs and salary earners' UCBs (irrespective of deposit size), and all other UCBs having deposits up to Rs 100 crore in tier 1.
In tier 2, it has placed UCBs with deposits more than Rs 100 crore and up to Rs 1,000 crore. Tier 3 will cover banks with deposits more than Rs 1,000 crore and up to Rs 10,000 crore.

UCBs with deposits more than Rs 10,000 crore have been categorized in tier 4.

Related Link: https://economictimes.indiatimes.com/industry/banking/finance/banking/rbi-harmonises-provisioning-norms-for-urban-cooperative-banks/articleshow/99737659.cms?from=mdr

Allow foreign currency transactions in Country via RBI: Consultants & service providers urge Government

Dated: 24th April, 2023

Consultants and service providers in the country have urged the government to stop routing domestic foreign currency deals via the US banking system, in order to avoid transaction fees and save foreign currency. Rather such domestic deals involving foreign currencies such as the US dollar should be routed through the Reserve Bank of India. At present a transaction fee is levied on US dollars transactions within the country.

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For example, a payment in US dollars from Delhi to even nearby Faridabad from one entity to the other in the current dispensation is required to be undertaken through the US banking system.

"This should be undertaken directly through the Reserve Bank of India and there should be no requirement of routing them through the American Banking system.

"By routing the transactions through the American Banking system, the country is losing substantial money, which is going to the Americans towards transaction costs," ambassador for Asia-Pacific region for the International Federation of Consulting Engineers K K Kapila said in a statement.

According to him, the consultants and the service sector demanded that such deals involving foreign currencies such as the US dollar in the country should be routed through the Reserve Bank of India.

Related Link: https://www.businessinsider.in/finance/banks/news/allow-foreign-currency-transactions-in-country-via-rbi-consultants-service-providers-urge-govt/articleshow/99725741.cms

RBI notified regarding the remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS)

Dated: 26th April, 2023

The Reserve Bank of India (RBI) on April 26, 2023, was notified regarding the remittances to International Financial Services Centres (IFSCs) under the Liberalised Remittance Scheme (LRS).

The attention of Authorized Dealer Category-I (AD Category-I) banks is invited to A.P. (DIR Series) Circular No. 11 dated February 16, 2021, on "Remittances to International Financial Services Centres (IFSCs) in India under the Liberalised Remittance Scheme (LRS)" and Master Direction No. 7/2015-16 on Liberalised Remittance Scheme (LRS) as amended from time to time.

On a review and with an objective to align the LRS for IFSCs set up under the International Financial Services Centres Authority Act, 2019 vis-à-vis other foreign jurisdictions, it has been decided to amend the directions under para 2 (ii) of the aforementioned A.P. (DIR Series) Circular dated February 16, 2021, as – "Resident Individuals may also open a Foreign Currency Account (FCA) in IFSCs, for making the above permissible investments under LRS." Thus, the condition of repatriating any funds lying idle in the account for a period up to 15 days from the date of its receipt is withdrawn with immediate effect, which shall now be governed by the provisions of the scheme as contained in the aforesaid Master Direction on LRS.

Related Link: https://www.teamleaseregtech.com/updates/article/23287/rbi-notified-regarding-the-remittances-to-international-financial-serv/

NCLT AND M & A UPDATES

Transaction entered by Corporate Debtor voluntary or due to pressure or threat has no relevance while coming to the conclusion whether the transaction is preferential or not, the intent of Corporate Debtor is not relevant since Section 43 of IBC envisages statutory/deeming fiction – GVR Consulting Services Pvt. Ltd. Vs. Pooja Bahry – NCLAT New Delhi

Dated: 26th April, 2023

The case discussed is GVR Consulting Services Pvt. Ltd. Vs. Pooja Bahry, which deals with preferential transactions under Section 43 of the Insolvency and Bankruptcy Code (IBC). The case involves an avoidance application filed by the Resolution Professional (RP) against transactions undertaken by the Corporate Debtor that were found to be preferential, undervalued and fraudulent. The Adjudicating Authority held that the transactions were preferential under Section 43 of the Code, and directed the Corporate Debtor to refund the respective amounts.

The Appellate Tribunal upheld the Adjudicating Authority's decision, noting that the legislative requirements for avoidance of transactions under different enactments were not identical, and the ingredients to prove preferential transactions under the IBC were different from those to prove fraudulent transactions. The Tribunal also noted that the provisions of Section 43 of the Code are deeming fiction, which come into play on fulfillment of the requirements even if in fact it may not be so. The Tribunal further held that if the ordinary course of business or financial affairs of the transferee would itself be decisive for exclusion, almost every transfer made to the transferees would be taken out of the net, which would practically result in frustrating the provision itself.

Related Link: https://ibclaw.in/gvr-consulting-services-pvt-ltd-vs-pooja-bahry-nclat-new-delhi/

If during extended within 45 days as per Section 421 of the Companies Act, 2013, a party in a position to satisfy the court regarding the reasonable ground for delay, NCLAT may entertain petition – Gursharan Singh SawhneyVs. Harkiran Kaur Sawhney&Ors. – NCLAT New Delhi

Dated: 27thApril, 2023

The present case involves an appeal filed under Section 421 of the Companies Act, 2013 against an order passed by the National Company Law Tribunal, Mumbai Bench- Court I. The appellant has sought condonation of a 33-day delay in filing the appeal. The respondent, who had filed an application under Sections 241-242 of the Companies Act, 2013,

sought to remove the appellant as a director of the company, alleging that the appellant was suffering from cancer and the company was taking advantage of her illness to remove her from the post of directorship. The NCLT allowed the company to hold the EOGM but directed that the agenda item of removing the appellant as a director not be taken up, and parties were directed to maintain status quo. The counsel for the appellant argued that the respondent was not entitled to maintain the application as she had no shareholding in the company. The appellant's counsel sought to persuade the court that the NCLT had committed a jurisdictional error in entertaining the petition and had no authority to pass orders for maintaining status quo.

Related Link: https://ibclaw.in/gursharan-singh-sawhney-vs-harkiran-kaur-sawhney-ors-nclat-new-delhi/

The date of default cannot be changed by Bank and the date of NPA cannot be taken to be the date of default for the purpose of period of limitation for filing CIRP application under IBC – Ramdas Dutta Vs. IDBI Bank Ltd. – NCLAT New Delhi

Dated: 27th April, 2023

The case is Ramdas Dutta vs. IDBI Bank Ltd., heard by the NCLAT New Delhi. The appeal was filed by the suspended director of the Corporate Debtor against an order passed by the NCLT, Kolkata Bench - I, where an application filed by IDBI Bank Limited under Section 7 of the IBC was admitted. The Corporate Debtor contested the application on the ground of limitation, as it was filed beyond the period of three years from the date of default. The Bank tried to change the date of default as 31.03.2014, which was, in fact, the date of NPA. The NCLAT held that the date of default cannot be changed by the bank, and the period of limitation would be counted from the date when the default occurs and not from the date of declaration of NPA. It was further held that the payment made by the Appellant could not be used as an acknowledgement under Section 19, and the OTS could not be taken into consideration for the purpose of Section 18 to extend the period of limitation. The NCLAT set aside the impugned order, and the appeal was allowed with no costs.

Related Link: https://ibclaw.in/ramdas-dutta-vs-idbi-bank-ltd-nclat-new-delhi/

Mere allegations that IRP/RP has not conducted the CIRP in accordance with law, the order approving the Plan cannot be interfered with – Brijesh Singh Bhadauriya Vs. Pinakin Shah, IRP of Sintex Industries Ltd. &Ors. – NCLAT New Delhi

Dated: 27th April, 2023

The National Company Law Appellate Tribunal (NCLAT) in New Delhi dismissed an appeal filed by a shareholder of Sintex Industries Ltd. challenging the approval of the company's resolution plan by the Adjudicating Authority. The appellant had alleged that the Insolvency Resolution Professional (IRP) had not conducted the Corporate Insolvency

Resolution Process (CIRP) in accordance with the Insolvency and Bankruptcy Code, 2016 and had committed several illegalities. However, the NCLAT noted that the IRP had conducted the process with the approval of the Committee of Creditors (CoC) and that the resolution plan had been approved by the Adjudicating Authority. The NCLAT further observed that the commercial wisdom of the CoC is not easily interfered with in the exercise of jurisdiction by the Adjudicating Authority or by the Tribunal. As no specific grounds or reasons were given to support the appellant's allegations of breach of the IBC or its regulations, the NCLAT dismissed the appeal.

Related Link: https://ibclaw.in/brijesh-singh-bhadauriya-vs-pinakin-shah-irp-of-sintex-industries-ltd-ors-nclat-new-delhi/

OTHER UPDATES

(Majority View)Unstamped Arbitration Agreements are not valid in law: Supreme Court

Dated: 25th April, 2023

Supreme Court: In an appeal against a full bench judgment in primarily challenging the non-admissibility of an unstamped arbitration agreement and judicial Court's intervention in matters of arbitration, the 5-Judge Bench comprising of K.M. Joseph, Ajay Rastogi, Aniruddha Bose, Hrishikesh Roy and C.T. Ravikumar*, JJ. By a 3:2 majority, held that unstamped arbitration agreements are not valid in law. While KM Joseph, Aniruddha Bose and C.T Ravikumar, JJ. Formed the majority, Ajay Rastogi and Hrishikesh Roy, JJ. Dissented and opined that unstamped arbitration agreements are valid at the pre-referral stage.*

Issues:

Whether the statutory bar contained in Section 35 of the Stamp Act, 1899 applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Arbitration and Conciliation Act, 1996 ('the Act'), would also render the arbitration agreement contained in such an instrument, which is not chargeable to payment of stamp duty, as being non-existent, unenforceable, or invalid, pending payment of stamp duty on the substantive contract/instrument?

The Court also dealt with the scope and nature of the Court's intervention, specifically at the stage of appointment of arbitrator under Section 11 of the Arbitration Act, 1996.

The Court said that the powers conferred under Section 16 of the Act often referred to as 'Kompetenz-Kompetenz' which means that the Arbitral Tribunal is empowered and thus got competence to rule on its own jurisdiction, including on all jurisdictional issues and existence or validity of the arbitration agreement. But the provision under Section 11 (6) of the Act applies when the procedures envisaged under the arbitration agreement have not worked and an application is filed for invocation of the power thereunder before the Court for making appointment of the Arbitrator.

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The Court also analysed Hindustan Steel Ltd. v. Dilip Construction Co., (1969) 1 SCC 597 and observed that that the Court did not take into consideration Section 17 of the Stamp Act, which provides for the precise time, at which, the instrument is to be stamped. Equally, the Court did not bear in mind that Section 62 of the Stamp Act penalizes transgression of Section 17, inter alia.

The Court said that the view taken in SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66, as followed in Garware Wall Ropes Ltd. v. Coastal Marine Constructions and Engineering Limited, (2019) 9 SCC 209 and by the Bench in DharmaratnakaraRaiBahadurArcotNarainswamyMudaliarChattram v. BhaskarRaju& Bros., (2020) 4 SCC 612 as to the effect of an unstamped contract containing an arbitration agreement and the steps to be taken by the Court, represent the correct position in law . Further, N.N. Global (supra) was wrongly decided, when it held to the contrary and overruled SMS Tea Estates (supra) and Garware (supra).

Further, the Court said that an instrument, which is eligible to stamp duty, may contain an arbitration clause and which is not stamped, cannot be said to be a contract, which is enforceable in law within the meaning of Section 2(h) of the Contract Act and is not enforceable under Section 2(g) of the Contract Act. An unstamped instrument, when it is required to be stamped, being not a contract and not enforceable in law, cannot, therefore, exist in law. Therefore, the Court approved paragraphs 22 and 29 of Garware (supra). To this extent, the Court approved VidyaDrolia v. Durga Trading Corpn., (2021) 2 SCC 1 , insofar as the reasoning in paragraphs 22 and 29 of Garware (supra) is approved.

Further, it was said that the true intention behind the insertion of Section 11(6A) the Act was to confine the Court, acting under Section 11, to examine and ascertain the existence of an Arbitration Agreement. The Scheme permits the Court, under Section 11 of the Act, acting on the basis of the original agreement or on a certified copy. The certified copy must, however, clearly indicate the stamp duty paid as held in SMS Tea Estates (supra). If it does not do so, the Court should not act on such a certified copy.

The Bench further stated that if the original of the instrument is produced and it is unstamped, the Court, acting under Section 11, is duty-bound to act under Section 33 of the Stamp Act. When it does so, the other provisions, which, in the case of the payment of the duty and penalty would culminate in the certificate under Section 42(2) of the Stamp Act, would also apply. When such a stage arises, the Court will be free to process the application as per the law.

It was also viewed that an arbitration agreement, within the meaning of Section 7 of the Act, which attracts stamp duty and which is not stamped or insufficiently stamped, cannot be acted upon, in view of Section 35 of the Stamp Act, unless following impounding and payment of the requisite duty, necessary certificate is provided under Section 42 of the Stamp Act.

Thus, the Court held that the provisions of Sections 33 and the bar under Section 35 of the Stamp Act, applicable to instruments chargeable to stamp duty under Section 3 read with the Schedule to the Stamp Act, would render the arbitration agreement contained in such instrument as being non-existent in law unless the instrument is validated under the Stamp Act.

Concerns:

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Whether, if the contract, in which, the arbitration clause is located, is unstamped but the arbitration clause is stamped, the Court can ignore the fact that the instrument containing in the Contract is unstamped?

The Court said that such an eventuality cannot arise, as unless there is misrepresentation or a fraud played, it is incomprehensible as to how, when the contract is produced, it will not be dealt with under Section 33 of the Stamp Act among other provisions.

Whether the arbitration agreement can be treated as a separate contract, and even if the main contract is not stamped, it suffices if the arbitration agreement alone is stamped?

The Court said that the Doctrine of the arbitration agreement being a distinct and a separate agreement, is well-established. The efficacy of the arbitration clause in a contract is preserved so that the extinguishing of the contractual obligations by termination or non-performance does not deprive the parties of their rights and the power of the Arbitrator to adjudicate on disputes, which, otherwise fall within the ambit of the arbitration clause. Thus, the rescission of the main contract would not result in the death of the arbitration clause.

While agreeing with the majority views, Justice CT Ravi Kumar added a concise addendum.

Considering whether while passing an order, the Court exercising the power under Section 11 (6) receives any evidence, for the limited purpose of ascertaining the truth of the assertion that the document thus produced is an arbitration agreement or an instrument containing arbitration clause, Justice Ravi Kumar concurred with the view that when the original document carrying the arbitration clause is produced and if it is found that it is unstamped or insufficiently stamped, the Court acting under Section 11 is duty bound to act under Section 33 of the Indian Stamp Act. Further, he agreed that what is permissible to be produced as secondary evidence i.e., other than the original document in terms of Section 2(a) of the scheme framed under Section 11(10) of the Act, is nothing but certified copy. But such a certified copy would not be available to be proceeded with under Section 33 of the Stamp Act, if it is unstamped or insufficiently stamped.

Justice Ravi Kumar further said that it cannot be presumed that despite the conspicuous difference between the 'certified copy' and 'a copy certified to be true copy', under paragraph 2 (a), 'certified copy' alone was permitted to be appended along with the application under Section 11 of the Act, unintentionally. It was prescribed, fully understanding the nature of exercise of power under Section 11 (6) of the Act and also the presumption of genuineness and correctness of 'certified copy' available by virtue of Section 79 of the Evidence Act.

Thus, it was held that an arbitration agreement, maybe a Clause in an instrument or a standalone agreement which attracts stamp duty, then the Court, acting under Section 11, is bound to act under Sections 33 and 35 of the Stamp Act, if the instrument is not stamped or insufficiently stamped.

Related Link: https://www.scconline.com/blog/post/2023/04/25/unstamped-arbitration-agreements-are-not-valid-in-law-supreme-court-legal-research-legal-news-updates/

Solicitors and Advocates

IT Department readying angel tax norms, valuation guidelines

Dated: 25th April, 2023

The Income Tax Department is working on the guidelines for applicability of the "angel tax" provisions which were extended to foreign investors effective April 1. The idea is to provide clarity on valuation and the exemption norms.

According to sources, the tax department and the department for promotion of industry and internal trade (DPIIT) are in discussions to finalize the norms and the fresh guidelines for applicability of the "angel tax" provisions shall provide clarity on valuation and exemption norms.

According to sources, a number of startups have in recent weeks received notices from the tax department ascertaining details of their fundraise in previous years. "Many startups have responded to the notices, stating that they are registered with the DPIIT and would not come under the ambit of the new tax," said a source familiar with the development, adding that they have also provided their bank account and transaction details to the Central Board of Direct Taxes.

These notices come on the heels of the amendments in the Union Budget to Section 56(2) VII B of the Income Tax Act that would bring foreign investors under the angel tax regime. Effective April 1, unlisted companies issuing shares at a premium to non-residents in excess of fair market value (FMV) will also be taxed. However, businesses incorporated before April 2016 can apply for exemptions from this section and Sebi-registered alternative investment funds (AIFs) are also exempt. About 80,000 startups registered with the DPIIT will be exempt.

"As per the foreign exchange pricing guidelines in India, shares issued to non-resident investors cannot be below the FMV of the shares, which acts as a pricing floor. Angel tax now seeks to tax any amount received more than FMV as income in the hands of the company. As a result, the only tax efficient option for a company would be to procure investment at the exact FMV of the shares, which could impact the price negotiations of an investment," EY wrote in a post-Budget note.

The idea behind the tax is to frustrate use of unaccounted money for share purchases.

Meanwhile, the industry is hopeful that the CBDT will soon issue norms for valuation that would also help them secure funding more confidently and ascertain the tax liability for such transactions.

With the Budget provision effective from this fiscal, it was expected that the CBDT will issue guidelines this month. However, these may now be issued only in May.

"The amendment in the Finance Act, 2023 has upset the apple cart for investors and investee companies which, till now, had the liberty to infuse vigorous premiums against share subscriptions above the FMV as the exchange control regulations only prescribed the FMV as a floor price," said Sandeep Jhunjhunwala, M&A Tax Partner,

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NangiaAndersen, adding that the benefit now stands diluted and the investee company could be subject to income tax on such premiums which would add to the cost of fundraise.

On valuations, the income tax law provides an option to the taxpayer to choose between a prescribed net asset-based valuation or a discounted free cash flow (DCF) method. Where the taxpayer chooses the DCF method, such valuation should be certified by a merchant banker. On the flip side, exchange control laws contain broader pricing guidelines enabling the Indian company to adopt any internationally accepted pricing methodology duly certified by a CA or SEBI-registered merchant banker.

Realted Link: https://www.financialexpress.com/economy/it-dept-readying-angel-tax-norms-valuation-guidelines/3059316/

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