

## Newsletter

November 2020

It gives us immense pleasure to circulate this edition of DMD Advocates' newsletter focusing on recent legal developments in India.

In this edition, we have covered some of the key notifications, advisories, orders and judgments issued by authorities such as, the Government, SEBI, RBI and various courts and tribunals from September 2020 to November 2020.

Also, starting 1 December 2020, DMD Advocates has changed its email domain name from "dumeds.com" to "dmd.law". The new email address is similar to the current one, except it has changed from "@dumeds.com" to "@dmd.law". Please update your address book and whitelist the domain. Be assured all mails sent to "dumeds.com" will continue to be received and responded to; however, our response to the same will be from "dmd.law".

We hope you enjoy reading this edition and find it useful in your area of work.



## Newsletter

November 2020

### *Supreme Court*



#### ***Supreme Court recommends Government to make advance tax ruling system more comprehensive - 11 September 2020***

The Supreme Court has recommended the Central Government to consider the efficacy of the advance tax ruling system and make it more comprehensive as a tool for settlement of disputes rather than battling it through different tiers, whether private or public sectors are involved. The Court suggested that a council for Advance Tax Ruling based on the Swedish model and the New Zealand system may be a possible way forward.

Writing two postscripts, the Court said that it was forced to do so on account of the back-breaking dockets which are ever increasing and as a move towards trust between the Tax Department and the assessee. The Court further said that it hoped that both the aspects meet consideration at an appropriate level. The Court gave this suggestion while hearing the case of National Co-operative Development Corporation v. Commissioner of Income Tax. To access a copy of the Judgement dated 11 September 2020, click [here](#).

#### ***Supreme Court allows enforcement of foreign arbitral award passed by the Malaysian Tribunal in support of Vedanta Limited - 16 September 2020***

On 16 September 2020, the Supreme Court dismissed Central Government's plea against enforcement of a 2011 Malaysian arbitral award in favour of Vedanta Limited in a dis-

pute arising out of a contract for exploring and developing the petroleum resources in the Ravva Gas and Oil Fields. The Court held, "the enforcement of the foreign award does not contravene the public policy of India, or that it is contrary to the basic notions of justice."

On 19 February, 2020, the Delhi High Court had directed the enforcement of the foreign award. To access a copy of the Judgement dated 16 September 2020, click [here](#).

### *Gazette*

#### ***President promulgates the Arbitration and Conciliation (Amendment) Ordinance, 2020 - 4 November 2020***

On 4 November 2020, the President promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2020 to amend the Arbitration and Conciliation Act, 1996. The key change under the Ordinance is insertion of a new proviso under Section 36(3) related to enforcement of arbitral awards.

The amended Section 36 provides that parties can seek an unconditional stay on enforcement of arbitral award if the Court is satisfied that a prima facie case is made out that the arbitration agreement or contract which is the basis of the award or the making of the award was induced or effected by fraud or corruption, pending disposal of the challenge under Section 34 to the award. The new proviso will be deemed to have been inserted with effect from 23 October 2015. To access the gazette copy of the Ordinance, click [here](#).

#### ***Equalisation levy (Amendment) Rules, 2020 - 28 October 2020***

The Central Board of Direct Taxes (CBDT) on 28 October 2020, published the Equalisation levy (Amendment) Rules, 2020 (Amendment Rules) to amend the Equalisation levy Rules, 2016. The Amendment Rules provide for the charge of equalisation levy on e-commerce supply of services. The Amendment Rules take effect from 28 October 2020 i.e. the date

## Newsletter

November 2020

of publication in the official gazette. To access the Gazette copy of the Amendment Rules, click [here](#).



### ***FDI Policy***

#### ***India's Consolidated FDI Policy, 2020: Key Aspects - 15 October 2020***

India recently announced its consolidated Foreign Direct Investment (FDI) policy, effective from 15 October 2020. The consolidated FDI policy incorporates restrictions notified earlier in the year on FDI coming in from overseas entities or citizens belonging to neighboring countries that share a land border with India, including China, to prevent opportunistic takeovers of firms whose operations and finances may have suffered during the lockdown and due to the general impact of the COVID-19 pandemic. Other updates to the consolidated FDI policy include the changes introduced to India's FDI regulation since the previous policy was implemented (28 August, 2017). These include respective press notes issued by the Department for Promotion of Industry and Internal Trade (DPIIT) and RBI regulations over the last three years. To access a copy of the consolidated FDI policy, click [here](#).

#### ***Clarification on FDI Policy for uploading/streaming of news and current affairs through Digital Media - 16 October 2020***

Pursuant to the Press Note 4 of 2019 of DPIIT, the FDI regime for entities engaged in the News Digital Media Sector was liberalised, allowing 26% FDI under Government

approval route on 'Uploading/Streaming of Current Affairs and News through Digital Media'.

Based on representations received from stakeholders, the DPIIT on 16 October 2020 issued the following clarifications:

1. The decision of permitting 26% FDI through Government route would apply to following categories of Indian entities, registered or located in India:

- Digital media entity streaming/uploading news and current affairs on websites, apps or other platforms;
- News agency which gathers, writes, distributes/transmits news, directly or indirectly to digital media entities and/or news aggregators; and
- News aggregator, being an entity which, using software or web application, aggregates news content from various sources, in one location.

2. The Entities covered above, are required to align their FDI to the 26% level with the approval of the Central Government, within one year from the date of issue of this clarification, i.e. one year from 16 October 2020.

Further, compliance with the FDI policy and relevant FEMA notification would be the responsibility of the investee entity. Certain other conditions to be adhered to have also been provided in the clarification. To access a copy of the clarification issued by DPIIT, click [here](#).

### ***RBI Circulars & Notifications***

#### ***RBI directs banks not to grant approval for liaison/branch offices of foreign law firms under FEMA - 23 November 2020***

RBI has directed AD Category – I banks not to grant any approval for any branch office, project office, liaison office or other place of business in India under FEMA to foreign law firms/companies or foreign lawyers or any other person resident outside India for the purpose of practicing legal profession in India.

## Newsletter

November 2020

Further, the RBI has mandated that banks bring to the notice of the RBI in case any violation comes to their notice. The RBI's directions come in the background of the Supreme Court's 2018 decision to not allow foreign law firms to establish offices and practice in India. To access a copy of the RBI Circular, click [here](#).



### ***Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts - 26 October 2020***

The Government of India had announced the Scheme for grant of ex-gratia payment of difference between compound interest and simple interest for six months to borrowers in specified loan accounts (1 March 2020 to 31 August 2020) (the Scheme) on 23 October 2020, which mandates ex-gratia payment to certain categories of borrowers by way of crediting the difference between simple interest and compound interest for the period between 1 March 2020 to 31 August 2020 by respective lending institutions.

In furtherance of the Scheme, RBI advised all lending institutions to be guided by the provisions of the Scheme and take necessary action within the stipulated timeline. To access the RBI Circular in this regard, click [here](#).

### ***PIB***

### ***New Guidelines for Other Service Providers (OSPs) by Department of Telecommunications - 5 November 2020***

In a massive relief to Information Technology

enabled Services (ITeS) and Business Process Outsourcing (BPO) industry, the government has significantly simplified Other Service Provider (OSP) guidelines. The new guidelines waived a number of registration and compliance requirements, including registration of OSP centers in India. Requirements of furnishing bank guarantee, network diagrams and reporting obligations have been done away with as well. The OSPs are also permitted to operate as Work From Home (WFH) and Work From Anywhere (WFA), share infrastructure between international OSP & domestic OSP and use distributed architecture of Electronic Private Automatic Branch Exchange (EPABX) and Closed User group (CUG). To access a copy of the new OSP guidelines, click [here](#) and to access the corresponding PIB release, click [here](#).

### ***Extension of due date of furnishing of Income Tax Returns and Audit Reports - 24 October 2020***

In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliances due to the outbreak of COVID-19, the Government brought the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 ('the Ordinance') on 31 March 2020 which, inter alia, extended various time limits. The Ordinance has since been replaced by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act. The Government issued a Notification on 24 June 2020 under the Ordinance which, inter alia, extended the due date for all Income Tax Returns for the FY 2019-20 (AY 2020-21) to 30 November 2020. Hence, the returns of income which were required to be filed by 31 July 2020 and 31 October 2020 were required to be filed by 30 November 2020. Consequently, the date for furnishing various audit reports including tax audit report under the Income-tax Act, 1961 (the Act) was extended to 31 October 2020.

In order to provide more time to taxpayers for furnishing of Income Tax Returns, the due

## Newsletter

November 2020

date for furnishing of Income Tax Returns has been further extended, as under:

- The due date for furnishing of Income Tax Returns for the taxpayers (including their partners) who are required to get their accounts audited [for whom the due date (i.e. before the extension by the said notification) as per the Act is 31 October 2020] has been extended to 31 January 2021.
- The due date for furnishing of Income Tax Returns for the taxpayers who are required to furnish report in respect of international/specified domestic transactions [for whom the due date (i.e. before the extension by the said notification) as per the Act is 30 November 2020] has been extended to 31 January 2021.
- The due date for furnishing of Income Tax Returns for other taxpayers [for whom the due date (i.e. before the extension by the said notification) as per the Act was 31 July 2020] has been extended to 31 December 2020.

Consequently, the date for furnishing of various audit reports under the Act including tax audit report and report in respect of international/specified domestic transaction has also been extended to 31 December 2020. To access a copy of the PIB release in this regard, click [here](#).

### ***Extension of due dates for Annual Return and Reconciliation Statement for 2018-19 - 24 October 2020***

The Government has been receiving a number of representations regarding need to extend due date for filing Annual Return (FORM GSTR-9) and Reconciliation Statement (FORM GSTR-9C) for 2018-19 due to COVID-19 pandemic related lockdown and restrictions. In view of the same, on the recommendations of the GST Council, the due date for filing Annual Return (FORM GSTR-9/GSTR-9A) and Reconciliation Statement (FORM GSTR-9C) for Financial Year 2018-

19 has been extended from 31 October 2020 to 31 December 2020. To access a copy of the PIB release in this regard, click [here](#).

### ***Recommendations of the 42<sup>nd</sup> GST Council Meeting - 5 October 2020***

The 42<sup>nd</sup> GST Council meeting took place on 5 October 2020 and the following recommendations were made:

- Levy of Compensation Cess to be extended beyond the transition period of five years i.e. beyond June 2022, for such period as may be required to meet the revenue gap. Further details to be worked out.
- Centre releasing compensation of INR 20,000 crore to States towards loss of revenue during 2020-21 and an amount of about INR 25,000 crore towards IGST of 2017-18.
- Enhancement in features of return filing.
- As a further step towards reducing the compliance burden particularly on small taxpayers having aggregate annual turnover less than INR 5 crore, the Council's earlier recommendation of allowing filing of returns on a quarterly basis with monthly payments by such taxpayers to be implemented from 1 January 2021. Such quarterly taxpayers would, for the first two months of the quarter, have an option to pay 35% of the net cash tax liability of the last quarter using an auto generated challan.
- Amendment to the CGST Rules: Various amendments in the CGST Rules and Forms have been recommended including provision for furnishing of Nil FORM CMP-08 through SMS.
- Refund to be paid/dispensed in a validated bank account linked with the PAN & Aadhaar of the registrant from 1 January 2021.

To access a copy of the PIB release in this regard, click [here](#).

**Webinars and Articles**

***Webinar on key takeaways for businesses from the recent decision of the Permanent Court of Arbitration at The Hague in \$5.5 billion retrospective tax dispute between Vodafone and India - 8 October 2020***

In a landmark arbitral award published on September 25, 2020 by the Permanent Court of Arbitration at The Hague, the bilateral investment treaty tribunal ruled in favour of Vodafone with respect to the Government of India's retrospective tax claim of ~US\$ 5.5 billion (inclusive interest & penalty).

On 8 October 2020, DMD Advocates along with US-India Strategic Partnership Forum (USISPF) organized a close-door discussion with Ms. Anuradha Dutt, Founding & Managing Partner (Delhi) and Ms. Fereshte Sethna, Founding & Managing Partner (Mumbai), who represented Vodafone as Counsel at the international investment treaty arbitral tribunal proceedings, to discuss the journey and share valuable insights in terms of tax planning, tax structuring and policy risk for foreign investors in India. The webinar was moderated by DMD's Taxation Partner Tushar Jarwal.

## PUBLICATIONS

***Interview of Ms. Fereshte Sethna on Vodafone tax case - 26 September 2020***

Our Founder and Managing Partner, Ms. Fereshte Sethna discussed implications of the recent decision of the Permanent Court of Arbitration in \$5.5 billion retrospective tax dispute between Vodafone and India in an interview with Moneycontrol. To view excerpts from the interview, click [here](#).

***Case Analysis: Acknowledgment of debt will not extend the time for triggering an action under IBC (Babulal v. Veer Gurjar Aluminium Industries Pvt. Ltd.) -***

***September 2020***

Partner Anish Kapur and Senior Associate Priyanka MP analysed the recent Supreme Court Judgement in Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr, Civil Appeal No. 6347/2019, wherein the court held that Section 18 of the Limitation Act, 1963, which provides for a fresh period of limitation to be computed from the time when an acknowledgment of liability has been made in writing and signed, is not applicable to proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code'). To access a copy of the article, click [here](#).

***Interview: Partner Sumit Sinha discusses recent changes in Insolvency & Bankruptcy Code (IBC) and its ramifications - 24 October 2020***

Partner Sumit Sinha shared his views on the recent changes in IBC and its ramifications in an interview published in the latest edition of NUALS, Kochi e-newsletter on IBC. To view the newsletter, click [here](#).

***Article on Equalisation Levy - 16 November 2020***

In an article published in the British Tax Review 2020 issue, Partner Sachit Jolly shared his views on equalisation levy. To view a copy of the article, click [here](#).

***Article on legal matrix of online fantasy sports in India - 24 November 2020***

Partner Sachit Jolly and Senior Associate Priyanka MP discuss legal matrix of online fantasy sports in India in an article published on Bar & Bench. To view the article, click [here](#).

***Article on recently notified Consumer Protection Act, 2019 - 16 September 2020***

Counsel Kuber Dewan and Associate Trisha Raychaudhuri analysed various provisions of the recently notified Consumer Protection Act, 2019 in an article titled "Consumer Supreme". To view the article, click [here](#).

**Case Highlights**

***Master Card Asia Pacific Pte. Ltd. - 18 August 2020***

In a first litigation that India has seen on the new “Equalisation Levy”, DMD Advocates represented Mastercard Asia Pacific Pte. Ltd. (a non-resident company) before the Delhi High Court, challenging action of the tax department of levying both Income Tax and Equalisation Levy, even though either of them is leviable by law. The action of the tax department in imposing an EL when income tax stands already paid was stalled by the Delhi High Court. For details, click [here](#).

Team Members: Tushar Jarwal, Partner; Rahul Sateija, Deepak Thackur

***Samsung Electronics India Pvt Ltd. - 9 October 2020***

DMD Advocates is representing Samsung before the Delhi High Court in a challenge to the order of the National Anti-Profitteering Authority (NAA) alleging profiteering on LCD TV and Power Banks. Samsung challenged the *vires* of anti-profitteering provisions and the allied rules, and the Delhi High Court is now considering the constitutional issues along with a batch of matters. For details, click [here](#).

Team Members: Tushar Jarwal, Rahul Sateija, Deepak Thackur, Anurag Soan

***Samsung Electronics India Pvt. Ltd. - 21 October 2020***

In order to avoid multiple proceedings pending before different High Courts and to arrive at an early quietus on the issue of the VAT rate applicable on mobile phone chargers and batteries when sold along with a mobile phone (in a single composite pack), the Supreme Court has issued notice in Samsung’s Transfer Petitions seeking to transfer matters from Punjab and Haryana High Court and Andhra Pradesh High Court to the Supreme Court. This matter involves a reconsideration of the Nokia Judgment on the same issue rendered by the Supreme Court earlier. For details, click [here](#).

Team Members: Tushar Jarwal, Rahul Sateija, Deepak Thackur, Anurag Soan

***GE Power India Ltd. - 1 October 2020***

In a matter where the application of GE Power to claim for dispute resolution under the Indirect tax amnesty scheme (Sabka Vishwas Legacy Dispute Resolution Scheme) was rejected erroneously and without providing an opportunity of hearing, DMD Advocates is advising GE Power India Ltd. in challenging the corresponding order before the Calcutta High Court. The Court has issued notice and the matter is now pending for consideration.

Team Members: Tushar Jarwal, Rahul Sateija, Deepak Thackur, Anurag Soan

***Areva T&D India Ltd.—8 September 2020***

The Madras High Court in a detailed and reasoned judgment held that a “slump exchange” is not liable to capital gains under Section 50B read with Section 2(42C) of the Income Tax Act, 1961 which defines slump sale. The judgment can be cited as a precedent for a number of fundamental principles of law declared by the Madras High Court while delivering the judgment on the core issue. For details, click [here](#).

Team Members: Tushar Jarwal, Rahul Sateija, Deepak Thackur

***LM Wind Power Blades India Pvt Ltd. - 22 September 2020***

DMD Advocates successfully argued before the Bombay High Court for LM Wind Power wherein the Bom-bay High Court has directed refund of INR 4.37 Crore to LM Wind Power against GST and Penalty which were recovered within two days from the passing of the order by the GST Authorities in a high-handed and arbitrary action. For details, click [here](#).

Team Members: Tushar Jarwal, Rahul Sateija, Deepak Thackur

***Indian Metals and Ferro Alloys Limited (IMFA) - 5 November 2020***

Orrisa High Court has intervened in a Writ Petition filed by IMFA on denial of export benefit under the Merchandise Exports From India Scheme (MEIS) by the Director General of Foreign Trade (DGFT).

Team Members: Tushar Jarwal, Rahul Sateija, Deepak Thackur, Anurag Soan

**DMD News**

***DMD Advocates won USD 5.5 billion case for Vodafone at the Permanent Court of Arbitration (PCA) at The Hague - 25 September 2020***

On 25 September 2020 in a landmark victory, the PCA at The Hague ruled in favour of our longstanding client Vodafone with respect to the Indian government's retrospective tax claim of approximately USD 5.5 billion together with penalty and interest (approximately INR 40,000 Crore) stemming from the company's acquisition of the Indian assets of Hutch back in 2007.

Commenting on the victory, Anuradha Dutt, Founding & Managing Partner (Delhi), said that "Vodafone has finally got justice, first from the Supreme Court and now from an international arbitral tribunal" and Fereshte Sethna, Founding & Managing Partner (Mumbai), said "we are hopeful that the Government of India will now put a quietus to this matter." Senior Counsel Harish Salve represented Vodafone as India Counsel before the PCA along with DMD Advocates' team comprising Anuradha Dutt, Fereshte Sethna, Haaris Fazili and Kunal Dutt. To view news article related to this development, click [here](#).

***DMD Advocates advised Japan based MonotaRO in acquiring a majority shareholding in IB MonotaRO***

DMD Advocates along with Japanese law firm Nishimura & Asahi recently advised Japan based MonotaRO in acquiring a majority shareholding in IB MonotaRO, a new company to which Emtex's B2B e-commerce business ([www.industrybuying.com](http://www.industrybuying.com)) will be transferred. DMD Advocates' transaction team comprised of Partner Sumit Sinha and Principal Associate Ashima Dewan. Taxation Partner Sachit Jolly advised on certain tax aspects in relation to the transaction. Principal Associate Saiyam Chaturvedi, Senior Associate Tanay Shah and Associate Shagun Sharda were also part of the due diligence team of this transaction. Nishimura & Asahi team was led by Partner Taeko Suzuki along with Isha Shah. To view news article related to this development, click [here](#).

***Counsel Kuber Dewan promoted to Partner***

In our recent round of promotions, Counsel Kuber Dewan has been promoted to a Partner in the Firm's Dispute Resolution Practice. Kuber is a law graduate from Symbiosis Law School, Pune, and has 12 years of experience in representing clients in complex commercial litigations and arbitrations. Our Founder & Managing Partner of Delhi office Ms. Anuradha Dutt commented: "Kuber has immensely contributed to the Firm's overall growth in a short span of time and has proved to be a valuable asset to the Firm's dispute resolution practice. We look forward to his continued commitment to the Firm's growth and wish him success in his new role."



## Newsletter

November 2020

### Partners & Directors

#### Anuradha Dutt

Founder & Managing Partner, Delhi  
*Litigation,  
International Arbitration*

#### Vijayalakshmi Menon

Founder & Senior Partner, Delhi  
*Litigation, Intellectual Property Rights*

#### Pawan Sharma

Partner, Delhi  
*Regulatory, Competition*

#### Ekta Kapil

Partner, Delhi  
*Litigation*

#### Sanjiv Malhotra

Senior Director & Chief Economist, Delhi  
*Transfer Pricing*

#### Anay Banhatti

Partner, Mumbai  
*Taxation*

#### Sachit Jolly

Partner, Delhi  
*Taxation*

#### Kuber Dewan

Partner, Delhi  
*Dispute Resolution*

#### Fereshte Sethna

Founder & Managing Partner, Mumbai  
*International Litigation,  
Alternate Dispute Resolution*

#### Rashi Dhir

Senior Partner, Delhi  
*Corporate*

#### Jeremy Lynn Pereira

Partner, Delhi  
*Litigation, Arbitration*

#### Tushar Jarwal

Partner, Delhi  
*Taxation*

#### Anish Kapur

Partner, Delhi  
*Litigation, Arbitration*

#### Sumit Sinha

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