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CENTRAL LEGISLATION

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I INTRODUCTION

THE PRESENT annual survey of central legislation highlights the legislative trends during the year 2015. One of the significant enactments was that of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The Citizenship (Amendment) Act also assumes importance as it merges of Person of Indian Origin (PIO) and Overseas Citizenship of India (OCI) schemes.

II CITIZENSHIP

The Citizenship (Amendment) Act, 2015

This Act came into effect on 6th day of January, 2015 and amended the Citizenship Act, 1955. The Citizenship Act, 1955 legalises the attainment of citizenship after adoption of the Constitution. It offers citizenship by birth, descent, registration, naturalisation and by incorporation of territory and also deals with provisions concerning registration of overseas citizens of India and their privileges. Additionally, it provides for repudiation and cessation of citizenship under various conditions.

The significant amendment was that it introduced a new condition which allows the Union government to register a person as an Overseas Citizen of India cardholder even if s/he does not satisfy any of the listed qualifications. Thus, by way of amendment, it incorporated sections 7A, 7B, 7C and section 7D that dealt with the registration, Conferment of rights, Renunciation and Cancellation of registration of overseas citizen of India cardholder respectively. The Act outlines certain credentials for registering a person as an overseas citizen of India. They are:

- i. who is a citizen of another country, but was a citizen of India at the time of, or at any time after the commencement of the Constitution; or
- ii. who is a citizen of another country, but was eligible to become a citizen of India at the time of the commencement of the Constitution; or
- iii. who is a citizen of another country, but belonged to a territory that became part of India after the 15th day of August, 1947; or

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- iv. who is a child or a grandchild or a great grandchild of such a citizen; or (b) a person, who is a minor child of a person mentioned in clause (a); or (c) a person, who is a minor child, and whose both parents are citizens of India or one of the parents is a citizen of India; or (d) spouse of foreign origin of a citizen of India or spouse of foreign origin of an overseas citizen of India cardholder registered under section 7A and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application under section 7 A.

III EVICTION FROM PUBLIC PREMISES

The Public Premises (Eviction of Unauthorised Occupants) Amendments Act, 2015

This Act received the assent of the President on the 13th March, 2015 and it amended the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 that provided for the immediate eviction of unauthorised occupants from public premises, including those of government companies and corporations. This amendment conferred the powers to the estate officer to order the eviction of the premises if he is satisfied that premises are in unauthorised occupation under section 4. As per the section:

“If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made. Further, if the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section (1), he shall forthwith issue a notice in writing calling upon the person.

In consonance with this , section 5 also got amended which stipulated that the estate officer once of satisfied that the public premises were in unauthorised occupation, he should make an order of eviction, for reasons to be recorded therein, directing that the public premises should be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

IV MOTOR VEHICLES LAW

The Motor Vehicles (Amendment) Act, 2015

This Act came into effect on March 19, 2015 and amends Motor Vehicles Act, 1988 so as to take account of the private sector in the passenger vehicle division of road transport. It thus brought e-rickshaws and e-carts into the ambit of the Act. Section 2A defined e- rickshaws as ‘a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the

case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.' The Act further mandated that these vehicles should be manufactured, equipped and maintained in accordance with specifications as prescribed by Union government.¹ It exempted drivers of e-rickshaw and e-cart from the prerequisite of learner's licence to drive. Further, it conferred authority to Union government to formulate rules on the terms for e-carts and e-rickshaws, and the stipulations and conduct for issuing driving licenses.²

V FINANCE, BANKING, INSURANCE AND CORPORATIONS

The Finance Act, 2015

The objective of this Act is to give effect to the financial proposals of the Central Government for the financial year 2015-2016. This Act is accountable for putting down the tax slabs that pertains to taxpayers. It also gives effect to financial proposals at the commencement of each financial year. The Act applies to all the States and Union Territories of India unless specified otherwise. The 2015 Act includes a variety of details pertaining to:

- i. Income through Salary
- ii. Agricultural Income
- iii. Tax slabs for Women
- iv. Tax slabs for Senior Citizens
- v. Tax slabs for Very Senior Citizens
- vi. Income Tax Surcharges
- vii. Taxes chargeable to companies
- viii. Advanaace Tax

Details for computation of Net Agricultural Income

The Insurance Laws (Amendment) Act, 2015

This Act paved the way for major reform related amendments in the Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the Insurance Regulatory and Development Authority (IRDA) Act, 1999. The significant amendment is the insertion of new section 2CB that says properties in India not to be insured with foreign insurers except with the permission of Insurance Regulatory and Development Authority of India as established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (herein after IRDAI).

By way of this amendment sections 27, 27A, 27B, 27C and 27D got incorporated that deal with investment of assets. By this, there is also scope for improvement of the foreign investment cap in an Indian insurance company with sufficient safeguard of Indian ownership and management. The Act further mandates every insurer to submit to the authority returns giving details of investments made, in such form, time and

1 The Motor Vehicles (Amendment) Act, 2015, S. 7 and 9.

2 The Motor Vehicles (Amendment) Act, 2015, S. 27.

manner including its authentication as may be specified by the regulations. This Amendment further facilitated properties in India to be insured with a foreign insurer with prior permission of IRDAI, which was earlier to be done with the approval of the Central Government.

Section 29 forbids insurer to grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life insurance policies issued by him within their surrender value, to any director, manager, actuary, auditor or officer of the insurer, if a company or to any other company or firm in which any such director, manager, actuary or officer holds the position of a director, manager, actuary, officer or partner except under certain conditions. The Act further provided liability of appointing insurance agents to insurers and provides for IRDAI to standardize their eligibility, credentials and other features. It facilitated agents to work more broadly across companies in various business categories. The protection being that clash of interest would not be approved by IRDAI through appropriate policy. Further, IRDAI is authorised under the amendments to adjust important characteristics of insurance company operations in various activities such as solvency, investments, expenses and commissions and to plan regulations for disbursement of funds to commission and control of supervision expenses.³ It also empowers the Authority to standardize the work, code of conduct, *etc.*, of surveyors and loss assessors. It also enlarges the extent of insurance intermediaries to include insurance brokers, re- insurance brokers, insurance consultants, corporate agents, third party administrators, surveyors and loss assessors and such other entities.

Further by way of amendments, under section 105 , while holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if on such inquiry, is satisfied that the person has failed to comply with the provisions of any of the sections. While recommending the quantum of penalty under section 105C, the adjudicating officer and while imposing such penalty, the authority shall have due regard to the following factors, namely:—

- (a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) The amount of loss caused to the policyholders as a result of the default; and
- (c) The repetitive nature of default

3 S. 64 of the Act.

The amended law has several provisions for levying higher penalties ranging from up to Rs.1 Crore (eg: section 34 B,⁴ section 42 (4),⁵ 51 (8)⁶) to Rs. 25 crore (penalty for carrying on insurance business in contravention of section 3,⁷ sections 27, 27A, 27B, 27D and 27E *etc.* for various violations including misrepresentation by agents or insurance companies. With a view to serve the interest of the policy holders better, the period during which a policy can be repudiated on any ground, including mis-statement of facts *etc.*, will be confined to three years from the commencement of the policy and no policy would be called in question on any ground after three years.

The Act incorporated sections 38, 39 and 40 that deal with assignment, transfer of insurance policies and nomination by policyholder. These sections provide for an easier process for payment to the nominee of the policy holder, as the insurer would be discharged of its legal liabilities once the payment is made to the nominee. Further, the amendments to the laws will enable the interests of consumers to be better served through provisions like those enabling penalties on intermediaries / insurance companies for misconduct and disallowing multilevel marketing of insurance products in order to curtail the practice of mis-selling.⁸ Further, it is now obligatory in the law for insurance companies to underwrite third party motor vehicle insurance as per IRDAI regulations. Rural and social sector obligations for insurers are retained in the amended laws.

- 4 If any person in respect of whom an order is made by the Authority under sub-section (1) or under the proviso to sub-section (2), contravenes the provisions of this section, he shall be liable to a penalty of one lakh rupees for each day during which such contravention continues or one crore rupees, whichever is less.
- 5 Any person who acts as an insurance agent in contravention of the provision of this Act, shall be liable to a penalty which may extend to ten thousand rupees and any insurer or any person acting on behalf of an insurer, who appoints any person as an insurance agent not permitted to act as such or transacts any insurance business in India through any such person shall be liable to penalty which may extend to one crore rupees.
- 6 Any person who acts as an intermediary or an insurance intermediary without being registered under this section to act as such, shall be liable to a penalty which may extend to ten lakh rupees and any person who appoints as an intermediary or an insurance intermediary or any person not registered to act as such or transacts any insurance business in India through any such person, shall be liable to a penalty which may extend to one crore rupees.
- 7 If a person carries on the business of insurance without obtaining a certificate of registration under section 3, he shall be liable to a penalty not exceeding rupees twenty-five crores and with imprisonment which may extend to ten years.
- 8 See, s.40- (1) No person shall, pay or contract to pay any remuneration or reward, whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent or an intermediary or insurance intermediary in such manner as may be specified by the regulations. (2) No insurance agent or intermediary or insurance intermediary shall receive or contract to receive commission or remuneration in any form in respect of policies issued in India, by an insurer in any form in respect of policies issued in India, by an insurer except in accordance with the regulations specified in this regard: Provided that the Authority, while making regulations under sub-sections (1) and (2), shall take into

Another highlight is the broadening scope of health insurance business that cover the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover,⁹ thereby paving the way for promotion of health insurance.

Amendment also gave way to the provision of appeals against the orders of IRDAI. Under the amended provisions, appeals are to be preferred to Securities Appellate Tribunal (SAT) as the amended law provides for any insurer or insurance intermediary aggrieved by any order made by IRDAI to prefer an appeal to the SAT.¹⁰

The Regional Rural Banks (Amendment) Act, 2015

This Act amended the Regional Rural Banks Act, 1976 that provides for the integration, regulation and winding up of regional rural banks. Reading of section 5 and section 6 together convey that amendment provides for the authorised capital of each RRB to be Rs. 5 crore. It does not permit the authorised capital to be reduced below Rs. 25 lakh. The Bill seeks to raise the amount of authorised capital to Rs. 2,000 crore and states that it cannot be reduced below Rs. 1 crore with a stipulation.¹¹

consideration the nature and tenure of the policy and in particular the interest of the agents and other intermediaries concerned. Without prejudice to the provisions of section 102 in respect of a contravention of any of the provisions of the preceding sub-sections or the regulations framed in this regard, by an insurer, any insurance agent or intermediary or insurance intermediary who contravenes the said provisions shall be liable to a penalty which may extend to one lakh rupees.

9 See, s.6 C.

10 S.110 states: (1) Any person aggrieved— (a) by an order of the Authority made on and after the commencement of the Insurance Laws (Amendment) Act, 2015, or under this Act, the rules or regulations made there under; or (b) by an order made by the Authority by way of adjudication under this Act, may prefer an appeal to the Securities Appellate Tribunal having jurisdiction in the matter. (2) Every appeal made under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Authority is received by him and it shall be in such a form and be accompanied by such fees as may be prescribed: Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. (3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, conforming, modifying or setting aside the order appealed against. (4) The Securities Appellate Tribunal shall make available copy of order made by it to the Authority and parties. (5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of appeal. (6) The procedure for filing and disposing of an appeal shall be such as may be prescribed. (7) The provision contained in section 15U, section 15V, section 15W, section 15Y and section 15Z of the Securities and Exchange Board of India Act, 1992 shall apply to the appeals arising out of the provisions of this Act, as they apply to the appeals under the Securities and Exchange Board of India Act 1992.”

11 Regional rural bank raises its capital from sources other than the Central Government or the state government or the sponsor bank, the shareholding of the Central Government and the sponsor bank shall not be less than fifty-one per cent.: Provided further that the Central Government shall consult the concerned state government if the level of shareholding in the regional rural bank of such state government is reduced below fifteen per cent.

Section 6 of the Act provides for regional rural banks to be sponsored by banks. These sponsor banks are required to:

- (i) Subscribe to the share capital of RRBs
- (ii) Train their personnel, and
- (iii) Provide managerial and financial assistance for the first five years. The Bill removes the five year limit, thus allowing such assistance to continue beyond this duration.

Another noteworthy section is the appointment and term of office of director. Section 10 states that, “a director nominated under clause (a) of sub-section (1) of section 9 shall hold office during the pleasure of the Central Government and for such term, not exceeding three years, from the date on which he assumes his office, as the Central Government may specify at the time of his nomination and shall be eligible for re-nomination: Provided that no such director shall hold office either continuously or intermittently for a period exceeding six years.”

The Warehousing Corporations (Amendment) Act, 2015

The Act received the assent of the President on the May 13, 2015 and amended the Warehousing Corporations Act, 1962. The one of decisive factors of statute is that enterprise should not have monetary support and it must be autonomous of any budgetary support or assurance by the government. The Act in many ways omitted sections pertaining to government’s accountability of being a sponsor to the central warehousing corporation.

The Companies (Amendment) Act, 2015

The Companies (Amendment) Act, 2015 amends the Companies Act, 2013. Accordingly, under section 2 the minimum paid-up share capital prerequisite of Rs. 100,000 (in case of a private company) and Rs. 500,000 (in case of a public company) under Companies Act, 2013 had been omitted. Consequently, no least paid-up capital prerequisite will now be valid for incorporating private as well as public companies in India. Another highlight is that the amended Act had loosened up the authorization condition from a special resolution (*i.e.*, conditional approval of three-fourth majority of shareholders) to an ordinary resolution (*i.e.*, approval of simple majority of shareholders) lest of related party dealings which entail shareholders’ consent.

Further, Companies Act, 2013 had introduced severe requirements corresponding to receipt or renewal or reimbursement of deposit. However, no explicit penalty was agreed for refusal with the pertinent provisions *i.e.*, section 73 and section 76. This inadequacy has been filled by the Companies Amendment Act, 2015. Instead section 76 A has been added for the above non-compliances. As per this section, the defaulting company will be liable for fine of a minimum amount of Rs. 10,000,000 and a maximum of Rs. 100,000,000 in addition to the amount of deposit or part thereof, along with interest. Further, every officer of the company in default is punishable with imprisonment which may extend upto 7 years or with a fine amounting to a minimum of Rs. 2,500,000 and maximum of Rs. 20,000,000 or both. Such officer may attract additional penalty for fraud under CA 2013 if the non-compliance was

done knowingly or with the intention to deceive the company, shareholders, depositors, creditors or tax authorities.

Further, Companies Amendment Act, 2015 has initiated a new condition which states that a company cannot proclaim dividend for a financial year, unless the losses and decline carried over from past years have been left against the profits of the company, in the year it proposes to declare a dividend. Likewise, the section 435 read with section 436 provides the Central Government the power to set up special courts to try offences under CA 2013. By way of the above amendment, special courts may now only try offences punishable under CA 2013, with imprisonment for two years or more. All other offences are to be tried by a Metropolitan Magistrate or a Judicial Magistrate of the First Class.

VI MINES AND MINERALS

The Mines and Minerals (Development and Regulation) Amendment Act, 2015

This new Act aims to make the scheme of auction of mines to augment lucidity in mineral allotment in India legal. The original Act Mines and Minerals (Development and Regulation) Act, 1957 was amended many times during 1958, 1960, 1972, 1978, 1986, 1994, 1999, 2010, 2012 and 2015. Besides regularizing mining auction the Act also aspires to improve the backward areas of the country in the course of mining projects and thereby bringing those areas into the mainstream society.

By way of sections 4 A and 5, the Act has given conferred rights to state government in granting mining lease at the same time provided for relevant interference and approval from the Central Government on selected matters.¹² Section 8 deals with the for which mining leases may be granted or renewed whereby the maximum period for which a mining lease may be granted shall not exceed thirty years, provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years. Further it is stipulated that a mining lease may be renewed for a period not exceeding twenty years with the previous approval of the Central Government.” Under the section 8 of amended Act, for all minerals other than that, mining leases shall be granted for a period of 50 years. All mining leases granted for such minerals before the Bill, shall be valid for 50 years. On expiry of the lease, instead of being renewed, the leases shall be put up for auction, as specified in the Act.

Another highlight of the Act is the creation of a District Mineral Foundation (DMF) and a National Mineral Exploration Trust (NMET).¹³ The DMF is to be established by the state government to work towards improving the lives of people

¹² The proviso to s.6 : “If the Central Government is of the opinion that in the interest of the development of any mineral or industry, it is necessary so to do, it may, for reasons to be recorded in writing, increase the aforesaid area limits in respect of prospecting licence or mining lease, in so far as it pertains to any particular mineral, or to any specified category of deposits of such mineral, or to any particular mineral located in any particular area”.

¹³ See, s. 9B-9C.

from the areas affected by mining operations. The NMET shall be established by the central government for regional and detailed mine exploration. The amount payable to both these organisations by the mining lease owners as tax would be utilized for such developmental work. The Act also makes it obligatory for state governments to comply with the constitutional provisions connected to Scheduled Tribes and Other Traditional Forest Dwellers and panchayat Acts while framing operating rules of DMF as per sections 9B and 9C.

Further, transferability provision in mining leases granted through auction would uphold greater pour of investment in the mining sector and augment competence. The Act also has stringent provisions against unlawful mining as offenders of mining associated issues would be subjected to a maximum sentence of 5 years imprisonment or penalty of Rs. 5.00 lakhs per hectare.¹⁴ Besides, state governments are also empowered to set up special courts for speedy trial of offences as under sections 30B and 30C.¹⁵ The amendment also incorporated the fourth schedule that has notified minerals as Bauxite, Iron ore, Limestone and Manganese ore.

The Coal Mines (Special Provisions) Act, 2015

This Act received the assent of the President on March 30, 2015. By way of this amendment, the Coal Mines (Nationalization) Act, 1973 and the Mines and Minerals (Development and Regulation) Act, 1957 got amended removing the restriction of end use from the eligibility to undertake coal mining except in the case of certain specified coal blocks. Supreme Court *vide* its judgment on August 25, 2014 had cancelled the allocation of coal blocks and issued directions with regard to such coal blocks and the Central Government in pursuance of the said directions had to take immediate action to implement the said order; Thus in public interest for the Central Government had to take immediate action to allocate coal mines to successful bidders and allottees keeping in view the energy security of the country and to minimise any impact on core sectors such as steel, cement and power utilities, which are vital for the development of the nation; It is thus under entry 54 of list I of the seventh schedule to the Constitution that deals with regulation of mines and mineral development to the regulation and development under the control of Union is declared by Parliament by way of this amendment. The objective of this Act is therefore to provide for allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure together with mining leases to successful bidders and allottees with a view to ensure continuity in coal mining operations and production of coal,

14 See, s.21 of the Act.

15 S.30 B reads as: The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1A) of section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification. (2) A Special Court shall consist of a Judge who shall be appointed by the State Government with the concurrence of the High Court. (3) A person shall not be qualified for appointment as a judge of a Special Court unless he is or has been a District and Sessions Judge. (4) Any person aggrieved by the order of the Special Court may prefer an appeal to the High Court within a period of sixty days from the date of such order.

and for promoting optimum utilisation of coal resources consistent with the requirement of the country.

The Act has three schedules.

- (i) 'Schedule-I coal mines' are the 204 cancelled blocks.
- (ii) 'Schedule-II coal mines' are the 42 producing and ready to produce coal mine out of Schedule-I coal mines.
- (iii) Other 32 substantially developed coal blocks out of Schedule-I coal mines are defined as 'Schedule-III coal mines' meant for specified end-use (as per the Act, more mines may be added to Schedule-III).

Section 4 explains the eligibility to participate in auction and payment of fees. It says that Schedule I coal mines shall be allocated by way of public auction in accordance with such rules, and on the payment of such fees which shall not exceed five crore rupees. Central Government may, for the purpose of granting reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal, select any of the following companies through auction by competitive bidding, on such terms and conditions as may be prescribed:

- a. a Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be, or any other company incorporated in India; or
- b. a company or a joint venture company formed by two or more companies, that carry on coal mining operations in India, in any form either for own consumption, sale or for any other purpose in accordance with the permit, prospecting licence or mining lease, as the case may be, and the State Government shall grant such reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal to such company as selected through auction by competitive bidding under this section.

Schedule II coal mines and Schedule III coal mines can be allocated to:

- c. a company engaged in specified end-use including a company having a coal linkage which has made such investment as may be prescribed.
- d. a joint venture company formed by two or more companies having a common specified end-use and are independently eligible to bid in accordance with this Act;
- e. a Government company or corporation or a joint venture company formed by such company or corporation or with any other company having common specified end-use.

Section 5 deals with the allotment of mines to government companies or corporations.¹⁶ Further, section 6 and section 8 collectively states that 'Nominated

¹⁶ S.5 reads as: Central Government may allot a Schedule I coal mine to a Government company or corporation or to a joint venture between two or more Government companies or corporations or to a company which has been awarded a power project on the basis of competitive bids for tariff (including Ultra Mega Power Projects) from specified Schedule I coal mines by making

Authority' shall be appointed for conduct of auction/ allotment and vesting and transfer of all interests, rights and titles of these coal mines in the successful bidder or allottee. Nominate authority is to be assisted by experts and other officers. The proceeds of auction shall be received by the nominated authority and disbursed to respective States.

The major amendment is section 16 that deals with compensation only for land and immovable mining infrastructure shall be paid to the prior allottee after paying secured creditors. The quantum of compensation for the mine infrastructure in relation to Schedule I coal mines is determined as per the written down value reflected in the statutorily audited balance sheet of the previous financial year. The quantum of compensation for the land in relation to schedule I coal mines shall be as per the registered sale deeds together with twelve per cent. Simple interest from the date of such purchase or acquisition, till the date of the execution of the vesting order or the allotment order, as the case may be. 'Commissioner of Payments' shall be appointed for disbursement of compensation.

Section 18 confers power to the central government to appoint custodian to manage and operate such coal mines as may be notified by the Central Government. Another noteworthy provision is section 27 that states that any dispute arising out of any action of the Central Government, nominated authority or commissioner of payment or designated custodian, or any dispute between the successful bidder or allottee and prior allottee arising out of any issue connected with the Act shall be adjudicated by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957.

VII UNDISCLOSED FOREIGN INCOME AND ASSETS

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

By this Act, provisions are drafted to deal with the problem of the black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto. It thus intends to restrain black money, or unidentified foreign possessions and income and inflicts tax and penalty on such income. The Act has received the assent of the President of India on May 26, 2015.

an allotment order in accordance with such rules as may be prescribed and the State Government shall grant a reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal to such company or corporation: Provided that the Government company or corporation may carry on Coal Mining in any form either for its own consumption, sale or for any other purpose in accordance with the permit, prospecting licence or mining lease, as the case may be: Provided further that no company other than a Government company or corporation shall hold more than twenty-six per cent. of the paid-up share capital in the Government company or corporation or in the joint venture between a Government company or corporation, either directly or through any of its subsidiary company or associate company: Provided also that a joint venture of any two or more Government companies or corporations shall be prohibited from alienating or transferring any interest, except the taking of loans or advances from a bank or financial institution, in the joint venture of whatsoever nature including ownership in favour of a third party.

As per the Act, the total undisclosed foreign income and asset of an individual would include: (i) income, from a source located outside India, which has not been disclosed in the tax returns filed; (ii) income, from a source outside India, for which no tax returns have been filed; and (iii) value of an undisclosed asset, located outside India.¹⁷ Chapter 3 of the Act deals with tax authorities and their scope and function.¹⁸

Further, the relevant tax authorities and their jurisdiction are also specific under the IT Act. It says that:

Every tax authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973.

Thus, they would have powers of inspection of documents, and evidence. The proceedings are to be judicial. The Act further levied penalty for offences under chapter 4 and they are:

- i. Undisclosed foreign income/assets: The penalty for nondisclosure of foreign income or assets would be equal to three times the amount of tax payable, in addition to tax payable at 30%.
- ii. Failure to furnish returns: The penalty for not furnishing income tax returns in relation to foreign income or assets is a fine of Rs 10 lakh. This would not apply to an asset, with a value of five lakh rupees or less.
- iii. Undisclosed or inaccurate details of foreign assets: If a person who has filed tax returns does not disclose his foreign income, or submits inaccurate details of the same, he has to pay a fine of Rs 10 lakh. This would not apply to an asset, with a value of five lakh rupees or less.
- iv. Second time defaulter: Any person, who continues to default in paying tax that is due, would be liable to pay an amount equal to the amount of tax arrears.
- v. Other defaults: If a person fails to abide by the tax authority in (i) answering questions, (ii) signing off on a statement, (iii) attending or producing relevant documents, he is to pay a fine between Rs 50,000 to two lakh rupees

Another highlight is the constitution of appellate tribunal and its functioning as prescribed under section 18 of the Act. It says that: "Any assessee aggrieved by an

¹⁷ See s. 42 (12) of the Act.

¹⁸ It says: Every such authority shall exercise the powers and perform the functions of a tax authority under this Act in respect of any person within his jurisdiction. (3) Subject to the provisions of sub-section (4), the jurisdiction of a tax authority under this Act shall be the same as he has under the Income-tax Act by virtue of orders or directions issued under section 120 of that Act (including orders or directions assigning the concurrent jurisdiction) or under any other provision of that Act. (4) The tax authority having jurisdiction in relation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business.

order passed by the Commissioner (Appeals) under section 15, or an order passed by the principal commissioner or the commissioner under any provision of this Act, may appeal to the appellate tribunal against such order. (2) The Principal Commissioner or the Commissioner may, if he objects to any order passed by the Commissioner (Appeals) under any provision of this Act, direct the Assessing Officer to appeal to the appellate tribunal against the order. (3) Every appeal under sub-section (1) or subsection (2) shall be filed within a period of sixty days from the date on which the order sought to be appealed against is communicated to the assessee or to the Principal Commissioner or the Commissioner, as the case may be. (4) The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified.”

After the tribunal’s judgment, if any of the parties feel that an appeal is to be filed, then such appeal shall lie to the high court from every order passed in appeal by the Appellate Tribunal, if the high court is satisfied that the case involves a substantial question of law. The high court appeal then goes to the Supreme Court too.

VIII NEGOTIABLE INSTRUMENTS

The Negotiable Instruments (Amendment) Act, 2015

The Act came into force on June 15, 2015 and amended the Negotiable Instruments Act, 1881. This Act defines terms such as “promissory notes, bills of exchange, cheques” and provides penalties for bouncing of cheques. As per the amendment, Section 6 on the definition of ‘cheque in the electronic form’ had been amended.¹⁹ Under the Act, it was defined as a cheque containing the exact mirror image of a paper cheque and generated in a secure system using a digital signature. The Act further denotes conditions under which complaints for cheque bouncing can be filed. Under the amendment of section 142, the offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

“a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or (b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated. Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of

19 It had been amended as: “a cheque in the electronic form” means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature, as the case may be”.

the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account”.

Another highlight in the amended Act is that cases of bouncing of cheques can be filed only in a court in whose jurisdiction the bank branch of the payee (person who receives the cheque) lies under section 142A that deals with Validation for transfer of pending cases.

IX CONSTITUTIONAL AMENDMENTS

The Constitution (One Hundredth Amendment) Act, 2015

This Act received the assent of the President on the May 28, 2015, thereby amended the Constitution of India to give effect to the acquiring of territories by India and transfer of certain territories to Bangladesh in pursuance of the agreement and its protocol entered into between the Governments of India and Bangladesh. This Act thus facilitates the boundary-dispute settlement between India and Bangladesh²⁰ and legalises the agreement with Bangladesh includes exchange of territories in Assam, West Bengal, Tripura and Meghalaya.

The Constitution (Scheduled Castes) Orders (Amendment) Act, 2015

The objective of this Act was to amend the Constitution (Scheduled Castes) Order, 1950 to modify the list of scheduled castes in the states of Haryana, Karnataka and Odisha and the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962 received the assent of the President on March 20, 2015.

X MISCELLANEOUS

The Payment and Settlement Systems (Amendment) Act, 2015

This Act received the assent of the President on the May 13, 2015 and thereby amended Payment and Settlement Systems Act, 2007 thereby regulate and administer payment schemes in India. The Act assigned the Reserve Bank of India (RBI) as the authority to regulate various financial and inter-bank transfers such as the National Electronics Funds Transfer (NEFT) system, the Real Time Gross Settlement (RTGS) System, ATMs, credit cards, *etc.* The Act extended the application of the Act to a designated trade repository, or issuer, in relation to payment systems. The term Issuer is defined under section 2 (da) of the Act and it means a person who issues a legal entity identifier or such other unique identification (by whatever name called), as may be specified by the Reserve Bank from time to time; Another definition that got

20 The agreement herein meant ‘India-Bangladesh agreement’ under s. 2 (c) of the Act that defines: “ Agreement between the Government of the Republic of India and the Government of the People’s Republic of Bangladesh concerning the Demarcation of the Land Boundary between India and Bangladesh and Related Matters dated the 16th day of May, 1974, Exchange of Letters dated the 26th day of December, 1974, the 30th day of December, 1974, the 7th day of October, 1982, the 26th day of March, 1992 and protocol to the said agreement dated the 6th day of September, 2011, entered into between the Governments of India and Bangladesh”.

inserted in the Act was of legal entity identifier under section 2(db) that means a unique identity code assigned to a person by an issuer to identify that person in such derivatives or financial transactions, as specified by the RBI.

Likewise, trade repository is defined under section 2(r).²¹ Section 23 of the Act got amended whereby a new provision was added for settlement and netting in relation to central counter parties (who is a system provider who by way of novation interposes between system participants). It states that upon an order of declaration of insolvency, dissolution or winding up in relation to a central counter party, the payment obligations and settlement instructions between the central counter party and the system participants is to be determined by the central counter party in accordance with the gross or netting procedure or any other provision of this Act. Section 23-A also got inserted that deals with the protection of funds collected from customers.²²

The Delhi High Court (Amendment) Act, 2015

This Act received the assent of the President on 11th August, 2015. The Act provides for enhancement of pecuniary jurisdiction of the district courts of Delhi from 20 lakh to 2 crore. Another major change is under section 4 that gives power to chief justice to transfer pending suits and proceedings to subordinate courts.

The Repealing and Amending Act, 2015

The President gave his assent to the Repealing and Amending Act, 2015 on 13 May 2015 that repealed a total of 35 obsolete laws of the Centre. This Act had first schedule where the whole Acts got repealed²³ and the second schedule has 2 Acts

21 It is defined as: "A person who is engaged in the business of collecting, collating, storing, processing or disseminating electronic records or data relating to such derivatives or financial transactions, as specified by the RBI."

22 It empowers the RBI to direct system providers of a payment system to ensure protection of funds collected from customers. To this end, system providers must: (i) deposit in a separate bank account; or (ii) maintain liquid assets of an amount equal to such percentage of the amounts collected by the system provider from its customers and remaining outstanding, as specified by the RBI.

23 The Indian Fisheries Act, 1897; The Foreign Jurisdiction Act, 1947; The Sugar Undertakings (Taking Over of Management) Act, 1978; The Representation of the People (Amendment) Act, 1999; The Indian Majority (Amendment) Act, 1999; The Administrators-General (Amendment) Act, 1999; The Notaries (Amendment) Act, 1999; The Marriage Laws (Amendment) Act, 1999; The Repealing and Amending Act, 2001; The Marriage Laws (Amendment) Act, 2001; The Indian Divorce (Amendment) Act, 2001; The Indian Succession (Amendment) Act, 2002; The Legal Services Authorities (Amendment) Act, 2002; The Representation of the People (Third Amendment) Act, 2002; The Transfer of Property (Amendment) Act, 2002; The Indian Evidence (Amendment) Act, 2002; The Representation of the People (Second Amendment) Act, 2002; The Representation of the People (Amendment) Act, 2002; The Election Laws (Amendment) Act, 2003; The Representation of the People (Amendment) Act, 2003; The Election and Other Related Laws (Amendment) Act, 2003; The Marriage Laws (Amendment) Act, 2003; The Representation of the People (Second Amendment) Act, 2003; The Delimitation (Amendment) Act, 2003; The Delegated Legislation Provisions (Amendment) Act, 2004; The Hindu Succession (Amendment) Act, 2005; The Parliament

(The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 and The Whistle Blowers Protection Act, 2011) of its certain proviso got repealed.

The Repealing and Amending (Second) Act, 2015

The President gave his assent to the Repealing and Amending (Second) Act, 2015 on May 14, 2015, which has repealed 90 outdated Acts (out of which, in 2 outdated Acts only few sections have been revoked instead of repealing the whole Acts).

The Andhra Pradesh Reorganisation (Amendment) Act, 2015

This Act became effective from March 30, 2015 and amends the Andhra Pradesh Reorganisation Act, 2014. Through this Act the number of seats of the Legislative Council of Andhra Pradesh has been increased from fifty to fifty eight.

XI CONCLUSION

The legislative endeavours of 2015 are thus noteworthy. The Constitution (Scheduled Castes) Amendment Act added the following communities to the list of Scheduled Castes: Haryana: Kabirpanthi, Julaha; Karnataka: Bhovi, od, odde, Vaddar, Waddar; Odisha: Dhoba, Dhobi, Dom, Dombo, Duria Dom, Katia, Kela, Nalua Kela, Khadala and Turi and Dadra and Nagar Haveli: Chamar and thereby extending the benefits of reservation for upliftment to these communities. It is hoped that The Undisclosed Foreign Income and Assets Act is a brave step towards unearthing black money stashed abroad.

(Prevention of Disqualification); Amendment Act, 2006; The Delimitation (Amendment) Act, 2008; The Representation of the People (Amendment) Act, 2008 ; The Representation of the People (Amendment) Act, 2009; The Personal Laws (Amendment) Act, 2010; The Representation of the People (Amendment) Act, 2010 ; The Anand Marriage (Amendment) Act, 2012 ; The Administrators-General (Amendment) Act, 2012 ; The Parliament ((Prevention of Disqualification) Amendment Act, 2013 *etc.*

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