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THE NEWSLETTER

Inside this issue:

UPDATE YOURSELF

In the Event of Contract Between Parties, Claim of Quantum Meruit Cannot be Raised 2

Deduction @100% Is Available Even After 5 Years Of Establishment Of Unit 2

In the Event of Contract Between Parties, Claim of Quantum Meruit Cannot be Raised 4

Amendment of Pleadings After Commencement of Trial 4

Payment to Artists Participating in Reality Shows shall be Subject to TDS u/s 194C 5

Quick Takeaways 6

Knowledge Centre 7

Editorial 8-9

UPDATE YOURSELF

Wrong Diagnosis' Does Not Amount To Medical Negligence

In the matter of ***Vinod Jain vs. Santokba Durlabhji Memorial Hospital & Anr. [Civil Appeal No.2024 of 2019, decided on 25.02.2019]*** the legal proceedings were initiated by the appellant on the belief that the cause of demise of his wife was medical negligence. The Hon'ble State Consumer Disputes Redressal Commission, Rajasthan ("**State Commission**") passed the judgment in favour of the appellant, which was reversed in appeal before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi ("**NCDRC**"). Thereafter, the present appeal before the Hon'ble Supreme Court was filed ("**Court**"). The Court referred to the case of ***Bolam vs. Friern Hospital Management Committee [2 (1957) 1 WLR 582]*** wherein it was held that "*A fundamental aspect, which has to be kept in mind is that a doctor cannot be said to be negligent if he is acting in accordance with a practice accepted as proper by a reasonable body of medical men skilled in that particular art, merely because there is a body of such opinion that takes a contrary view*". The Court also referred to ***Kusum Sharma &Ors. vs. Batra Hospital & Medical Research Centre & Ors.[1 (2010) 3 SCC 480]*** wherein the 'Negligence' has been defined as "*A person who holds himself out as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and a duty of care in his administration of that treatment. A breach of any of these duties will support an action for negligence by the patient*". After a thorough examination of multiple other judgments and the facts of the present case, the Court held that "*In our opinion the approach adopted by the NCDRC cannot be said to be faulty, while dealing with the role of the State Commission, which granted damages on a premise that respondent No.2-Doctor could have pursued an alternative mode of treatment. Such a course of action, as a super-appellate medical authority, could not have been performed by the State Commission. There was no evidence to show any unexplained deviation from standard protocol.*"

ITC cannot be claimed on construction of Pre-Fabricated Warehouse

In the case of ***Re: Tewari Warehousing Co. (P.) Ltd. [[2019] 102 taxmann.com 295 (AAR-West Bengal) decided on 18.02.2019]***, the Authority for Advance Ruling ('**AAR**') of West Bengal held that the Applicant i.e. Tewari Warehousing Co. (P.) Ltd. is not entitled to claim input tax credit ('**ITC**') of input goods and input services used in construction of 'Pre-fabricating Warehousing System' as the same is considered as immovable property. Therefore, ITC is blocked as per Section 17(5)(d) of Central Goods and Services Tax Act, 2017 ('**CGST Act**'). As per section 17(5)(d) of the CGST Act, registered person cannot claim ITC in respect of inward supplies used in the construction of immovable property. The Applicant, in the present case,

contended that said warehousing system is fixed by anchor bolts to a low RCC platform embedded to the ground and can be easily dismantled and restructured at another location. Thus, the same is movable in nature and ITC is not blocked on the same u/s 17(5)(d) of CGST Act. After analyzing the definition of term 'immovable property', the Authority observed that the same includes things which are permanently fastened to earth and the intention behind the construction of warehouse in the present case is to use it as a permanent structure. Further, the Authority also analyzed the AAR in case of *Vindhya Telelinks Ltd*. [(2018) 97 taxmann.com 564] which relates to the mobile tower fixed to a pit with a concrete base. It was observed that in case of mobile tower the intention is beneficial enjoyment of mobile tower not of concrete base. However, in the present case the Applicant is constructing a warehouse that is intended to be used as a permanent structure, and associated with beneficial enjoyment of the land on which it is being built. The technology used for the construction of the warehouse involves the application of prefabricated structures and also civil work for supporting the pre-fabricated structure and developing the floor of the warehouse. The warehouse cannot be conceived without beneficial enjoyment of the civil structure embedded on earth. Thus, the same will be considered as 'immovable property'. Accordingly, ITC will be blocked on the same u/s 17(5)(d) of the CGST Act.

Independent Assessment of Arbitral Award cannot be made in an Appeal

In a recent judgment, ***MMTC Ltd. vs. Vedanta Ltd. [Civil. Appeal. No. 1862 of 2014, decided on 18.02.2019***], the Hon'ble Supreme Court ("**Court**") explained the position of law with respect to the scope of interference with an arbitral award. The Court was hearing an appeal against the order of the division bench of the Hon'ble High Court of Bombay ("**Bombay HC**") dismissing an appeal against the single bench order rejecting the challenge to a majority award passed by the arbitration tribunal. The Court observed that while considering a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Act**"), the courts might interfere on the limited ground provided under Section 34(2)(b)(ii) of the Act, i.e., if the award is against the public policy of India. Pursuant to the insertion of Explanation 1 to Section 34(2) of the Act, the scope of Indian public policy has been modified to mean fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law and conflict with the most basic notions of justice or morality. As far as Section 34 of the Act is concerned, the Court noted that it is well settled that the Court does not sit in appeal over the arbitral award and may interfere only if one of the these conditions is met, but such interference cannot travel beyond the restrictions laid down under Section 34 of the Act, and an independent review of the merits cannot be made. The Court further observed that in an appeal made under Section 37 of the Act only the issue of whether power by the courts under Section 34 of the Act, has not exceeded the scope of the provision, is to be ascertained. The Court also observed that in the present case where the award has been confirmed by the Hon'ble Bombay HC under Section 34 of the Act, the Court must be cautious to disturb such concurrent findings. Hence, the Court affirmed the Hon'ble Bombay HC order which refused to interfere with the award.

Deduction @100% Is Available Even After 5 Years Of Establishment Of Unit

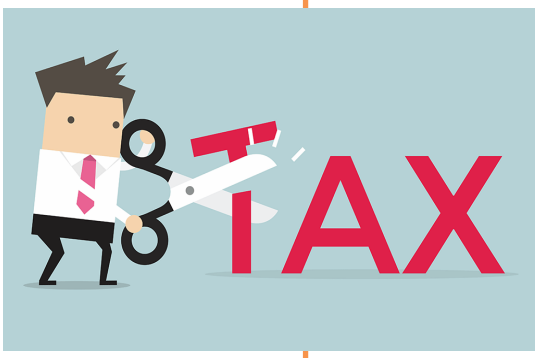
The larger bench of the Hon'ble Supreme Court ("**SC**") in the case of [***PCIT, Shimla vs. M/s. Aarham Softronics, C.A No (S). 1784/2019 dated 20.02.2019***] along with other group cases, has held that the Assessees are entitled to claim 100% deduction of profits and gains even after 5 years of establishment of industrial unit, where such Assessees have carried out substantial expansion of

units. The judgment of division bench of this court in case of **CIT vs. M/s. Classic Binding Industries**, **[C.A No (S). 7208 of 2018]** was reversed wherein further deduction @100% for next 5 years was denied.

The facts of the cases are that the Assessees had established new industrial units in specified areas of Himachal Pradesh. As per Section 80-IC of the Income Tax Act, 1961 ("**Act**"), all the assessees claimed and availed deduction @100% on profits and gainsin first5 assessment years ("**AYs**") of establishment of such units. After the expiry of 5 AYs, the assesses carried out substantial expansion of their existing units i.e. increase in the investment in the plant and machinery by at least 50% of the book value. On that basis, the Assessees again claimed the deduction of profit and gain @100% instead of 25%from 6 to 10 AYs. Before the SC, issue for consideration was that merely on account of substantial expansion of industrial unit, whether, the Assessees would be allowed to claim deduction @100% of profit after 5 years of establishment of unit, despite the fact that Section 80-IC allows for deduction @100% only for first 5 AYs commencing from the establishment of the unit.

In order to arrive at the conclusion as stated above, following principles/analysis were laid down by the SC:

- Section 80-IC(2) & Section 80-IC(3) of the Act provides deduction to new units established in the particular States, and to existing units if substantial expansion was carried out.



- Further, the judgment in **CIT vs. M/s. Classic Binding Industries (supra)** passed by the division bench of this court, wherein by referring definition of 'initial assessment year' contained u/s 80-IB(14)(c), deduction @ 100% was denied for next 5 years of establishment of unit and held that deduction starts with 'initial assessment year' and there cannot be another 'initial assessment year' within the period of 10 years. Aforesaid judgment contains mistake as the division bench emphasized merely on the definition of 'initial assessment year' provided u/s 80-IB(14)(c) which is applicable on the deduction related to this section only. The definition of 'initial assessment year' provided u/s 80-IC was not considered despite that Section 80-IC is a special provision in respect of only those undertakings established in particular States.

- As per Section 80-IC(8)(v) of the Act, there can be 'initial assessment year', relevant to previous year in which the undertaking or the enterprise begins to manufacture/produce article or things; or completes substantial expansion. Further, the Hon'ble SC nowhere objected the legitimacy of substantial expansion of the industrial units.

- As per provision of Section 80-IC of the Act, the deduction @ 25% for the next five years in on the assumption that the new unit remains static without involving substantial expansion thereof. However, the moment substantial expansion takes place, another "initial assessment year" is triggered. This new event entitles that unit to start claiming deduction @ 100% of the profits and gains from year of substantial expansion.

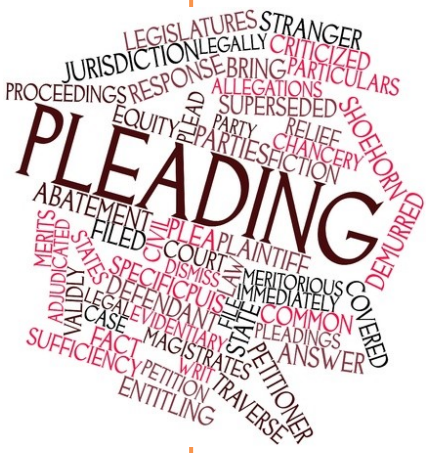
- The purpose behind enacting the Section 80-IC was to encourage the undertakings or enterprises to establish and set up units in the States of hilly areas and to make them industrially advanced. By considering the same, deduction @100% of profits and gains is allowed even when there is substantial expansion of the existing unit.

In the Event of Contract Between Parties, Claim of Quantum Meruit Cannot be Raised

In the Civil Appeal No. 1766 of 2019, ***Mahanagar Telephone Nigam Ltd. ("Appellant") vs. Tata Communications Ltd. ("Respondent")***, Hon'ble Supreme Court ("**Court**") vide its Judgment ***dated 27.2.2019*** has clarified that the claim of quantum meruit (reasonable compensation) under Section 70 of the Indian Contract Act ("**Act**") cannot be agitated when parties are governed by a contract. In the matter, Respondent filed a petition before the Telecom Disputes Settlement and Appellate Tribunal, New Delhi ("**TDSAT**") against the Appellant for recovery of a sum of Rs. 1,10,57,268/-. Issue that arose between the parties was that whether the Appellant was justified in adjusting this amount from the dues payable to the Respondent by deduction from the bills raised by the Respondent. TDSAT held that the Appellant proceeded to unilaterally impose rentals of dark fibre. Aforesaid action of the Respondents amounts to adjudicating a claim in its own favour without any authority. Issue arises before this Court, is, whether, when parties are governed by contract, a claim in quantum meruit under Section 70 of the Act would be permissible. In this regard, the Court held that the present case is covered by Section 74 of the Act, which deals with the Compensation for breach of contract where penalty is stipulated for. Thus, maximum of 12% can be levied as liquidated damages under the contract, which sum would amount to Rs. 25 lakh. As aforesaid clause governs the relations between the parties, a higher figure, contractually speaking, cannot be awarded as liquidated damages, which are to be considered as final. Therefore, while dismissing the appeal, the Court held that the Appellant can claim only this sum and any amount claimed above this sum would have to be refunded to the Respondent.

Amendment of Pleadings After Commencement of Trial

The Supreme Court ("**Court**"), in the case of ***M. Revanna v. Anjanamma* (*Civil Appeal No. 1669 of 2019, decided on 14.02.2019*)**, dealt with an application for amendment of pleadings filed after the commencement of trial. The plaintiffs had made an application under Order VI Rule 17 of the Civil Procedure Code, 1908 ("**CPC**"), for amendment of the plaint, pleading that the partition had already taken place and that they were not interested to pursue the suit.

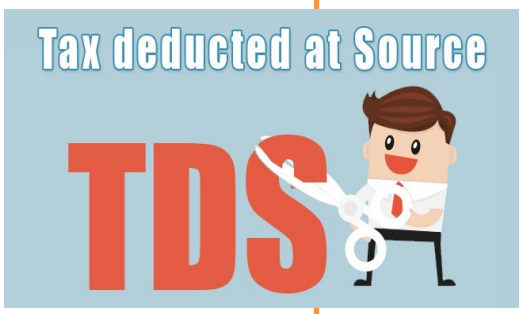


The bench comprising of J. N.V. Ramana and J. Mohan M. Shantanagoudar noted that a leave to amend might be refused if it introduced a totally different, new and inconsistent case, or challenged the fundamental character of the suit. The proviso to Order VI Rule 17 of the CPC prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the Court concludes that in spite of due diligence, the matter could not have been raised, before commencement of trial. The proviso, to an extent, restrains absolute discretion to allow amendment at any stage. Therefore, the onus to show that such an amendment could not have been sought earlier is on the person seeking such amendment. It cannot be claimed as a matter of right under all circumstances.

It was noted that though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the courts needs to consider whether such application is bona fide or not and whether the amendment causes such prejudice to the other side that cannot be compensated adequately in terms of money. In the present case, the bench held that the application was belated and mala fide, and if permitted, would change the nature and character of the suit, causing prejudice to the defendants. It held that the leave to amend would be a travesty of justice, as the Court would be allowing the plaintiffs to withdraw their admission made in the plaint that the partition had not taken place earlier.

Payment to Artists Participating in Reality Shows shall be Subject to TDS u/s 194C

In the case of ***Malayalam Communications Ltd. v. Income Tax Officer (TDS) [2019] 103 taxmann.com 63 decided on 08.02.2019***, the Hon'ble Cochin Tribunal ("**Tribunal**") held that where assessee made payments to various artists like singers, musicians etc. who participated in reality shows hosted by it as guests or judges, tax was required to be deducted at source on the said payments u/s 194C of the Income-tax Act, 1961 ("**Act**"). The facts of the case are that a survey was carried out in the business premises of the assessee wherein it was found that the assessee deducted tax at source while making payments to various artists like singers, musicians etc. who participated in reality shows u/s 194C of the Act @1%. However, the AO while scrutinizing the transaction observed that no written agreement for executing the contract work to produce a programme for telecast had ever been signed by the parties concerned on account of which the payments made to the artists cannot be said to be for the work of telecasting or producing a programme for telecasting by the assessee as contemplated under the provisions of section 194C of the Act. Thus, the assessing authority observed that the payments have been made as remuneration for the service rendered by the artists and hence, the same shall be subject to TDS u/s 194J @10%. When the assessee filed an appeal before the CIT(A), the CIT(A) upheld the order of the AO. On appeal to the Tribunal, the Tribunal observed that the payment to the artists is not covered by 194J of the Act as the payment is not related to production of cinematograph film. The services rendered by the artists are not covered by professional services as defined u/s. 194J of the Act. As seen from the Explanation, services rendered by a person in connection with production of cinematograph film should be liable to deduct TDS u/s. 194J of the Act. A person who is engaged in production of reality show cannot be equated with a person engaged in the production of cinematograph film. Therefore, the payments made to artists who participated in reality shows produced for television will fall within the realm of section 194C of the Act and not under section 194J of the Act.



QUICK TAKEAWAYS

- In the case of ***Commissioner of Income-tax (Exemption) v. Managing Committee, Arya High School, Mausa,*** Punjab ***[2019] 102 taxmann.com 444 (SC) decided on 11.02.2019***, SLP was dismissed against the High Court ruling that where assessee educational society had utilised its income for purchase of land for further extension of school building, which was for educational purpose only exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 could not be denied.

- In the case of ***Amitabh Bansal v. Income Tax Officer [2019] 102 taxmann.com 229 (Delhi - Trib.) decided on 11.02.***2019, it was held that where revenue relies on statements of certain persons to implicate an assessee, principles of cross-examination have to be invariably followed as not providing opportunity to cross-examine is violative of principles of natural justice.

- In the case of ***MC Kinsey Knowledge Centre India (P.) Ltd. v. Principal Commissioner of Income -tax [2019] 102 taxmann.com 439 (SC) decided on 04.02.2019***, the Hon'ble Supreme Court dismissed the SLP against High Court ruling that where services rendered by assessee were specialized and required specific skill based analysis and research that was beyond rudimentary nature of services rendered by a BPO, it was to be held that the services provided by assessee constituted functions of a KPO.

- In the case of ***Ram Siromani Tripathi & Ors. v. State of U.P. &Ors. Civil Appeal Nos. 9142-9144 of 2010 decided on 07.02.2019***, the Hon'ble Supreme Court held that an adjournment cannot be sought on the ground that counsel is out of station. The appeal has to be dismissed for non-prosecution. Under no circumstances, application for restoration shall be entertained.

- CBIC vide Circular No. 90/09/2019-GST dated 18.02.2019 has clarified that in case of failure to satisfy the ***mandatory*** requirement of inserting place of supply and the name of the State in the invoices for inter-State supply would attract penalty under the GST Law.

- In the case of **Ashok Khatriv.S3 Infra Reality (P.) Ltd. [[2019] 103 taxmann.com 52 (NAA) dated 27.02.2019]**, the ***National*** Anti-Profiteering Authority held that penalty is leviable where the assessee engaged in business of construction of flats under affordable housing scheme had denied benefit of Input Tax Credit to buyers of flats in contravention of provisions of section 171(1) of the CGST Act.

- The Hon'ble Supreme Court in the case of ***Nehnu Ram @ Narendra Appellant(s) vs. State Of Rajasthan & Anr. [Criminal Appeal No. 320 of 2019]*** reduced punishment awarded to a rape convict to period already undergone taking into account the 'special reasons'.

- The Hon'ble High Court of Kerala in the case of ***Ramachandran K vs. The Circle Inspector of Police Perinthalmanna [WP (C). No. 35535 of 2018]*** has held that playing rummy for stakes is an offence under the Kerala Gaming Act, 1960. The Court also added that rummy is a game of skill and that playing it for innocent pastime is not an offence.

- The Hon'ble High Court of ***R. Kalyanaraman vs. State [Criminal Original Petition No. 4407 of 2019, decided on 21.02.2019]*** freedom of expression always gets challenged when it touches upon religious beliefs, said the Madras High Court while granting bail to a man accused of making derogatory comments on Prophet Mohammad.

- MCA has amended the ***Companies (Significant Beneficial Owners) Rules, 2018*** vide Notification F.No. 1/1/2018 CL-V dated 08.02.2019.

KNOWLEDGE CENTRE

Multiple Choice Questions (MCQs) on Labour Laws

Q1: Under Child Labour (Prohibition and Regulation) Act, 1986, the child means a person below ?

a. 14 years b. 12 years

c. 18 years d. 10 years

Q2: Minimum no. of workmen required for applicability of Industrial Employment (Standing Orders) Act, 1946 are ?

a. 50 or more b. 100 or more

c. 80 or more d. 35 or more

Q3: Bonus under Payment of Bonus Act, 1965 becomes payable within how many months from close of an accounting year ?

a. 3 months b. 4 months

c. 12 months d. 8 months

Q4: Minimum continuous service required to receive gratuity under Payment of Gratuity Act, 1972 is ?

a. 5 years b. 2 years

c. 10 years d. 3 years

Q5: Equal remuneration Act, 1976 provides for ?

a. equal remuneration to men and women b. prevention of discrimination in matter of employment

c. None of the above d. All of the above

Q6: Minimum no. of workmen required for applicability of Contract Labour (Regulation and Abolition) Act, 1970 are ?

a. 20 or more b. 15 or more

c. 10 or more d. 30 or more

Q7: Employment of a women is prohibited for how many weeks from her delivery/ miscarriage under Maternity Benefit Act, 1961 ?

a. 12 weeks b. 10 weeks

c. 6 weeks d. 2 weeks

Q8: Minimum no. of employees required for applicability of Payment of Bonus Act, 1965 are ?

a. 10 or more b. 15 or more

c. 30 or more d. 20 or more

Q9: Exception to minimum continuous service required to receive gratuity under Payment of Gratuity Act, 1972 are ?

a. Death b. Disablement

c. Both of the above d. None of the above

Q10: Minimum no. of workers required for applicability of Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 are ?

a. 20 or more b. 30 or more

c. 10 or more d. 40 or more

Ans: 1-a, 2-b, 3-d, 4-a, 5-d, 6-a, 7-c, 8-d, 9-c, 10-c

EDITORIAL

Overriding effect of Insolvency and Bankruptcy Code

- By Mahak Vijay, Advocate

According to the statistics released by the World Bank in 2015, it took an average of 4.3 years to resolve an insolvency matter in India, which was quite higher as compared to other nations. Thus, in order to improve the same, the Parliament of India in the year 2016 enacted Insolvency and Bankruptcy Code, 2016 ("**Code**"). Prior to this Code, there were various legislations like Companies Act, 2013, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Sick industrial companies (Special Provisions) Act, 1985 etc. which dealt with insolvency and bankruptcy matters. This resulted in overlapping of laws and ambiguity as to which law will prevail over such matters. The Code caters the need for a single legislation by laying down an exhaustive law for insolvency and bankruptcy, consequentially, the legislative scheme of the Code granted an overriding to the Code. Section 238 under the Code accommodates an overriding effect of Code over other laws for the time being in force in India. The framework, scope and applicability of the said Section has been discussed in various judicial pronouncements.

The overriding effect of the Code finds its first mention in the case of ***Ashok Commercial Enterprises and Ors. vs. Parekh Aluminex Limited [2017 (4) Bom CR 653]*** which was adjudged by the Bombay High Court. The Hon'ble Court, in this case, propounded that Section 238 of the Code will have no application in a case where there is no conflict in the provisions of the Code and other law. Further, the Hon'ble Court stated that as far as winding up is concerned, there is no conflict between the Code and the Companies Act, 2013 and thus, Section 238 of the Code will have no applicability in the instant case.

Henceforth, Section 238 of the Code along with Article 254 of the Constitution of India was widely discussed by the Supreme Court of India in the case of ***Innoventive Industries Ltd. vs. ICICI Bank and Ors [AIR 2017 SC 4084]***. The case dealt with the issue whether the Code will have an overriding effect over Section 4 of the Maharashtra Relief Undertakings (Special Provisions Act), 1958 ("**Relief Act**") and whether a financial creditor can initiate corporate insolvency resolution process ("**CIRP**") against a corporate debtor which is a 'relief undertaking' and has an exemption for specified time from repayment of debts and liabilities, under the Relief Act. The corporate debtor claimed that the Code cannot override the Relief Act as the Relief Act also provided a similar non-obstante clause. The Hon'ble Court referred to Article 254 of the Constitution of India which provides supremacy to central legislations over the state legislation to the extent of repugnancy. Thus, in light of the same, the Hon'ble Court held that the Code being a central legislation will override the provisions of the Relief Act, which is a state legislation. Further, the Hon'ble Court also stated that the later non-obstante clause of the central legislation will prevail over the limited non-obstante clause contained in the Relief Act. The Hon'ble Court also discussed the object of the Code which is to provide for a time bound CIRP and on other hand, Relief Act provides that an entity categorized as 'relief undertaking' wherein the State Government may take over the same and a temporary moratorium is imposed which restricts the creditors from recovering their debts. Hence, giving effect to the Relief Act would directly interfere with operation and scheme of the Code. Further, the moratorium imposed by the Relief Act would directly clash with the moratorium under the Code and giving effect to non-obstante clause of Relief Act would directly be in clash with Section 238 of the Code. Thus, the provisions of the Code will prevail over the Relief Act.

Since, Section 238 of the Code provides an overriding effect, in case, there is any inconsistency between the Code and other laws, it becomes pertinent to understand the meaning and scope of the term 'inconsistency'. The Indian courts in plethora of judgements including *Innovative Industries case (Supra)* have discussed factors through which a court can determine the question as to inconsistency between two legislations which have been summarized hereinbelow:

i) There is a clear and direct inconsistency between the acts;
ii) Such inconsistency is absolutely irreconcilable;
iii) Inconsistency between the provisions of the two acts is of such a nature as to bring the two acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

The Supreme Court in the case of ***Principal Commissioner of Income Tax vs. Monnet Ispat and Energy Ltd. [2018] 211 Comp Cas 99 (SC)*** once again reaffirmed its judgment propounded in the *Innovative Industries Case (Supra)*. The main issue before the Hon'ble Court was whether the moratorium issued under Section 14 of the Code will nullify the order of Income tax Appellate Tribunal passed in respect to tax liability of the assessee under the Income Tax Act, 1961. The Hon'ble Court held that the issue at hand in affirmative and stated that, the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act, 1961. However, the Hon'ble Court, in the instant case, upheld the overriding effect of the Code without discussing whether the test of inconsistency was fulfilled in the instant case.

The most recent judgment propounded on overriding effect of the Code is ***SREI Infrastructure Finance Limited vs. Sterling SEZ and Infrastructure Limited and Ors. [M.A 1280/2018 in C.P. 405/2018]***. In the instant case, the National Company Law Tribunal, Mumbai Bench decided whether the Code will prevail over the Prevention of Monet Laundering Act, 2002 ("**PMLA**"). The main issue involved in the case was that the Enforcement of Directorate ("**ED**") had provisionally attached the assets of Corporate Debtor as part of certain proceedings against the corporate debtor which was required to be custody of the Resolution Professional ("**RP**"). The ED submitted that the PMLA is a special act and under Section 71 of the PMLA, PMLA has an overriding effect over other laws. The Hon'ble Tribunal negated the argument of ED and observed that the proceedings under the PMLA will take a long time and will result in erosion of value of assets which is against the object of the Code. In the economic interest of the beneficiaries, the Code will prevail over the provisions of PMLA as the Code will provide solution at the earliest to the Corporate Debtor as well as the Creditors. Thus, the attachment of the assets of the properties of Corporate Debtor by PMLA court is hit by Section 14 of the Code and the order for attachment is a nullity and *non-est* in law and does not have a binding force. The Hon'ble Tribunal, in the instant case, also have not devolved into the well settled principles of inconsistency and have granted an overriding effect to the Code on the basis of economic benefit of the Code.

Conclusion:

The integral question that needs to be answered while determining the applicability of Section 238 of the Code is as to whether there exists any inconsistency between the Code and other laws. However, it must be noted that there exists one set of judicial pronouncements such as *Ashok Commercial (Supra)* and *Innoventive Industries (Supra)* where Hon'ble Courts have examined the applicability of Section 238 of the Code in the light of well recognised "test of inconsistency" and then, there exists another set of case laws such as *Monnet Ispat Case (Supra)* and *SREI Infrastructure case (Supra),* wherein no attention has been given by Hon'ble Courts/Tribunal to the "test of inconsistency" while analyzing the applicability of Section 238 of the Code. Thus, seeing the diversity in interpretation of Section 238 of the Code, the extent to which the afore discussed judgments hold good, will be determined over a period of time and therefore, one should apply ample caution, while relying on these case laws.

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