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Benami Transactions (Prohibition) Act - A Study in Comparison

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In a further crackdown on the parallel economy that has affected the Indian economy adversely, the Central Board for Direct Taxes (CBDT) on November 1, 2016 has notified the Benami Transactions (Prohibition) Amendment Act, 2016 (Amendment Act). The Amendment Act brings within its purview several changes to the Benami Transactions (Prohibition) Act, 1988 (1988 Act).

The Amendment Act seeks to cover comprehensively all aspects of transactions or arrangements where the source of funding for acquisition of a benami property has no permissible links to the ownership structure. In other words, a benami transaction encompasses all such transactions in which the real beneficiary of a property is a different entity from the entity who has made the payment for such property, as a result of which, the owner of such property is a mere 'front' for the actual beneficiary/ funding entity.

It may be worthwhile to understand the concept of "benami transactions" through a comparative analysis between the 1988 Act and the Amendment Act. The concept of "benami transactions" under the Amendment Act is much wider and also includes 'arrangements' under its ambit. Though the term 'arrangement' has not been defined in the Amendment Act, one may refer to its definition in the Black's Law Dictionary (Tenth Edition), which defines the term "arrangement" to include *'a measure taken or a plan made in advance of some occurrence'*. This would imply that a transaction which may not have concluded or an 'understanding' which may or not have been documented is also included in the definition of benami transaction. The inclusion of arrangements has thus widened the definition of benami transaction and has effectively plugged the loophole in the 1988 Act. Benami transactions also include transactions carried out in fictitious names or where the person providing the consideration is not traceable.

The Amendment Act, unlike the 1988 Act, provides certain exceptions to the definition of benami transactions under Section 2(9) and in this regard, property held by the following categories of persons have been exempted from the purview of 'benami transactions,' thus providing legitimate relaxations to certain types of transactions:

(a) a Karta or a member of a Hindu undivided family, provided such property is held for his benefit or the benefit of other members in the family;

(b) a person standing in fiduciary capacity for the benefit of other person;

(c) an individual purchasing property in the name of his spouse or child; and

(d) any person in the name of his brother or sister or lineal ascendant or descendant.

It is interesting to note that the Amendment Act empowers the Central Government to exempt any charitable or religious trust's property from being under the purview of this Act (by issuance of a notification to this effect). This may not be feasible given the recent crackdown on licenses granted by the Government of India under the Foreign Contribution Regulation Act, 1976 and the stringent views taken in relation to such not-for-profit organizations.

The Amendment Act has brought new concepts that include *inter-alia* 'benami property', 'benamidar', 'beneficial owner', 'fair market value' and 'transfer'. 'Benami property' has been defined as a property which is the subject matter of a benami transaction. A 'benamidar' is a person in whose name a benami property is transferred or held. A 'beneficial owner' is the person for whose benefit the property is held by a benamidar.

The definition of 'transfer' under the Amendment Act is more detailed than the definition given under Section 4 of the Transfer of Property Act, 1882. The said definition is inclusive in nature and broadens the ambit of the term 'transfer', which includes sale, purchase or any other form of transfer of right, title, possession or lien in a property.

The Amendment Act also empowers the Central Government to confiscate any benami property. It further prohibits a benamidar from transferring the benami property to the beneficial owner or any other person acting on his behalf. Thus, it is abundantly clear that the intention of the legislature is to create a mechanism to curb and redress benami transactions. However, it is equally interesting to note that the Amendment Act does not curb any mischief with respect to transfer of a benami property to a third party (i.e., not being a beneficial owner or any other person acting on his behalf) by a benamidar.

Chapters II and III of the Amendment Act envisage creation, role and jurisdiction of several authorities, namely (i) the Initiating Officer, (ii) the Approving Officer, (iii) the Administrator and (iv) the Adjudicating Authority. These authorities are vested with the same powers as that of a civil court under the Code of Civil Procedure, 1908. The Amendment Act also deems every proceeding instituted by any of the authorities involving discovery, inspection, summons, etc. to be a judicial proceeding within the meaning of the Indian Penal Code, 1860. This serves as an indication of the intention of the legislature to give more teeth to the erstwhile 1988 Act since no such distinct authority had been constituted under the 1988 Act which had the authority to seize and acquire benami property as provided under Section 5 of the 1988 Act. This, in turn, was ostensibly due to the fact that the requisite rules in relation to the 1988 Act had not been framed. At this juncture, it is worth mentioning that in the case of *Shanmuga Patro* v. *Ministry of Finance*, in 2012, a writ petition was filed in Delhi High Court with a prayer to have the Court appoint a competent authority contemplated under

Section 5 of the 1988 Act, and thereby frame rules in relation to the procedure to be adopted by the said authority for acquiring benami properties. However, the Court dismissed the writ petition by stating that it was beyond the powers of the judiciary to undertake such action. In light of the above, Chapter III of the Amendment Act seeks to remove the lacunae of the 1988 Act and provide more clarity on the aforesaid issue.

Section 19 empowers any authority constituted under the Amendment Act to require any police officer, officer of the Central or State Government for conducting proceedings under the Act. Section 20 of the Amendment Act mandates any officer of the Income Tax Authorities, Customs and Excise Department, Narcotics Control Bureau, Reserve Bank of India and banking companies, Securities and Exchange Board of India and the stock exchange, Enforcement Directorate, any body-corporate constituted under any State or Central Act, and local authorities to assist the above-mentioned authorities in the enforcement of the Amendment Act. The Amendment Act provides wide powers to the authorities in relation to calling for information from, and impounding records of, any person including from any officer of the Government.

Chapter IV of the Amendment Act lays down the procedure for attachment, adjudication and confiscation of benami property and Section 24 of the Amendment Act provides the accused an opportunity to show cause as to why a property should not be treated as a benami property, thus opening a scope for trial.

The Initiating Officer shall commence proceedings, issue notice and pass necessary orders including that of provisional attachment with the approval of the Approving Authority. Upon passing of the order, the Initiating Officer shall refer the same to the Adjudicating Authority for hearing and orders. Any appeal against the order of the Adjudicating Authority shall be placed before the Appellate Tribunal as set up under Chapter V of the Amendment Act.

Chapter VI provides for constitution of special courts for conducting trial of an offence punishable under the Amendment Act. However, it may be noted that the Special Courts have not been granted with any power to take cognizance of matters *suo motu*. Chapters VII sets out the penal consequences for entering into a benami transaction and prescribes rigorous imprisonment of up to 7 years and fine of up to 25% of the fair market value of the property. In addition, the Amendment Act prescribes rigorous punishment by imprisonment and fine for furnishing false information to any of the authorities under the Amendment Act. It is imperative to note that all offences under this Act are non-cognizable and shall not bar the application of any other applicable law for the time being in force including but not limited to a separate action under the Income Tax Act, 1961.

Comments:

Benami transactions have been a bane of the Indian economy since the 1980s, requiring a comprehensive legislation to curb the effects of such transactions which cripple a growing economy. This Amendment Act has been passed in the midst of growing public sentiments against corruption and a drive against black money in India. The Amendment Act is one amongst a series of legislations being passed by the Government to stop circulation of unauthorized currency and purchase of unaccounted property in India. The inclination of the present Government to effectively curb fraudulent property transactions and bring transparency is therefore quite evident.

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Notifications & Circulars

Mergers & Acquisitions provisions notified in Companies Act: The Companies Act, 2013 (Companies Act) is one of the landmark legislations enacted in recent years to bring forth transparency, ease of doing business and protecting rights of minority shareholders. The Companies Act was, in many ways, perceived as a reaction to the Satyam scam which uncovered several aspects of corporate fraud that *inter alia* diminished minority shareholder rights. A series of amendments, clarifications and release of rules and procedures have rendered the Companies Act as an effective corporate governance mechanism for regulators as well as shareholders. The Ministry of Corporate Affairs (MCA) has brought in several amendments and notifications to make the Companies Act relevant to changing times and to make it consistent with other applicable laws.

The 90 sections notified by the MCA on December 7, 2016 made effective as on December 15, 2016, include provisions on "Compromises, Arrangements and Amalgamations" provided under Chapter XV (Sections 230-240), and provisions on "Winding Up" under Chapter XX (Sections 270-288, 290-303, 324, 326-365) and Chapter XXI (Proviso to Section 370, Sections 372-373, 375-378) of the Companies Act. Prior to December 15, 2016, the relevant provisions under the Companies Act, 1956 (1956 Act) governed mergers and amalgamations in India. Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, effective from 15-12-2016 have also been notified by the MCA.

Further, Section 434(1)(c) of the Companies Act read with Companies (Transfer of Pending Proceedings) Rules, 2016 and Companies (Removal of Difficulties) Fourth Order, 2016 have also been notified on December 7, 2016 with effect from December 15, 2016. Section 434(1)(c) provides for transfer of all proceedings under the 1956 Act, pending before any District Court or High Court to the relevant bench of the National Company Law Tribunal (NCLT). The transfer of proceedings

to NCLT will aid in ushering the regime of faster resolution of corporate disputes, thereby facilitating ease of business besides simultaneously reducing the burden on courts. Certain proceedings, *inter alia,* where orders have been reserved by the High Courts have not been transferred to the NCLT.

The notified provisions are briefly explained below:

1. Appointment of a Company Liquidator: In the event of compulsory winding up, a Company Liquidator would be appointed by the NCLT whereas in case of voluntary winding up, a Company Liquidator would be appointed by the company or its creditors.

2. Incorporation by fraudulent means: In the event a company has been incorporated by fraudulent means, the NCLT, upon receiving an application to that effect, can remove the name of such company from the register of companies or pass an order for winding up of such a company.

3. Disclosures: If the proposed scheme of arrangement or compromise includes reduction of share capital of the company or a Corporate Debt Restructuring (CDR) scheme consented to by not less than 75% of the secured creditors in value, it has to be disclosed by the entity making such an application to the NCLT. Further, a notice to schedule a meeting of creditors or members, as the case may be, is also required to be sent to the Central Government, income-tax authorities, Reserve Bank of India, Securities and Exchange Board of India (SEBI), Registrar of Companies (RoC), respective stock exchanges, Official Liquidator, Competition Commission of India and any other authority likely to be affected by such an arrangement or compromise. The authorities mentioned hereinabove can make representations within a period of thirty days from receipt of such notice.

4. Valuation Report: The CDR scheme should contain a valuation report prepared by a registered valuer in respect of the shares, property and assets of the company. A notice of the meeting scheduled should be enclosed with the valuation report.

5. Publication: The notice of such meeting of creditors or members, as the case may be, along with other relevant documents is required to be published on the website of the company as well as in newspapers. Such documentation is required to be sent to SEBI and the respective stock exchange in case of a listed company.

6. Buy-back of securities: For a compromise or arrangement with respect to buy-back of securities to be approved by the NCLT, such buy-back should be in accordance with Section 68 of the Companies Act.

7. Objection to the scheme of compromise or arrangement: In order to expedite and protect the process of compromise / arrangement from frivolous objections, the Companies Act envisages that an objection will only be considered when it is raised by individuals holding at least 10% of the shareholding or by persons having outstanding debt amounting to at least 5% of the total outstanding debt in the company.

8. Fast-track Merger: In order to streamline the process of merger between two or more small companies or between a holding company and its wholly-owned subsidiary or any other prescribed company, the scheme would need to be approved by members holding at least 90% of shares or by creditors representing nine-tenths in value. This does not require the NCLT's approval. However, notice of such a scheme needs to be issued to the RoC and the Official Liquidators.

9. Merger of a listed transferor company and an unlisted transferee company: Such a merger will not compulsorily cause the unlisted company to become listed. In the event that the shareholders of the listed company want to opt out of the unlisted transferee company, they will be paid the value of the shares held by them based on a pre-determined price formula or on valuation.

10. Demerger: Chapter XV of the Companies Act provides for the schemes of compromise, arrangement, amalgamation and demerger. Demerger or division of companies essentially amounts to division of the undertaking, property and liabilities of a company for transfer to two or more companies.

11. Cancellation of shares: A transferee company shall not, as a result of compromise or arrangement, hold any shares in its own name or in any trust - whether on its behalf or on behalf of any of its subsidiary or associate companies. In the event of non-compliance of this provision, the shares held by the transferee company shall stand cancelled.

12. Protection of minority shareholders' rights: An offer for purchasing the shares of minority shareholders (at a price determined by a registered valuer) has to be made by an acquirer or any person or group of persons who become a registered holder of 90% or more of the issued equity share capital of the company by virtue of an amalgamation.

The notified provisions of the Companies Act strive to simplify and streamline the process of compromises, arrangements and amalgamations. Simultaneously, they seek to implement the principles of good corporate governance by providing for transparency and accountability through additional disclosures in the proposed scheme, protection of minority shareholders, the role of NCLT as a forum for resolution of corporate disputes etc. to name a few. The notified provisions ensure protection of shareholders' rights while also enabling smaller companies to conduct their business with ease.

Companies (Transfer of Pending Proceedings) Rules, 2016 notified: The National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal were established in June 2016 to adjudicate upon company law matters in India. The Central Government by Notification No. S.O.1936 (E) dated 1st June, 2016, appointed 1st June, 2016 as the date on which all proceedings pending before the Company Law Board would stand transferred to the NCLT. Now, the Ministry of Corporate Affairs has notified the Rules on 7th December, 2016,

by Notification No. G.S.R 1119(E), to provide for transfer of matters pending before the Company Law Board to the NCLT.

The Rules divide pending proceedings into two broad categories: (i) Proceedings relating to cases other than winding up and (ii) cases relating to winding up. Proceedings, other than winding up, such as arbitration, compromise, arrangements and reconstruction, shall stand transferred to the Benches of National Company Law Tribunal in accordance with their territorial jurisdiction. However, proceedings in which orders have been reserved shall not be transferred.

Petitions relating to winding up due to inability to pay debts, pending before a High Court, which have not been served to the concerned respondent, shall be transferred to the Benches of the NCLT in accordance with their territorial jurisdiction. However, the concerned petitioner shall be required to submit the requisite information, including details of the proposed insolvency professional, within 60 days of the Notification, failing which, the petition would abate. For winding up cases where opinions were forwarded by the Board for Industrial and Financial Reconstruction to a High Court, and where no appeal is pending, proceedings which have been initiated in accordance with the Sick Industrial Companies (Special Provisions) Act, 1985, shall also continue to be adjudicated by the High Court. Further, according to the new Rules, no fees shall be payable for proceedings transferred.

Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 notified: The Insolvency and Bankruptcy Board of India (IBBI), notified the Regulations on 15th December, 2016, by Notification No. IBBI/2016-17/GN/REG005. The Regulations provide the processes/procedures involved in liquidation of a corporate debtor till passing of a dissolution order (i.e., Section 33 to Section 54 of the Insolvency and Bankruptcy Code, 2016).

The Regulations deal with *inter-alia* the appointment and remuneration of the Liquidator, and specify the powers of the Liquidator which include reporting, maintaining registers and books of accounts, appointment of professionals, consultation with stakeholders, making an application to adjudicating bodies to direct personnel to cooperate, disclaiming onerous property, etc. It is stated that the fees of the liquidator shall be a part of the liquidation cost and shall be as decided by a committee of liquidators during the process of resolution. In every other case, the fee shall be computed as a fixed percentage of the amount realized net of other liquidation costs and of the distributed amount. The duties of the liquidator also include making public announcements, submitting preliminary reports and applying for early dissolution and submitting progress reports.

According to the new Regulations, a person who claims to be a stakeholder shall be required to prove his claim for debts owed to him. The Regulations also deal with claims by operational

creditors, financial creditors, workmen and employees and other stakeholders and all other aspects relating to a claim and its verification. It is provided that the assets should ordinarily be sold through auctions. In the instance of the asset in question being perishable, the liquidator may sell it through a private sale subject to the condition that the value of the asset shall reduce considerably if not sold immediately or if the asset is being sold at higher price than the reserved price of a failed auction. The assets can be sold on a standalone basis, in a slump sale, in parcels or collectively. Finally, the manner in which the proceeds of the liquidation may be distributed have also been stipulated.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 notified: The Regulations were notified by IBBI vide Notification bearing No. IBBI/2016-17/GN/REG004 dated 30th November, 2016. The Regulations set out *inter-alia* the eligibility criteria for appointment of insolvency professionals for a corporate insolvency resolution process of a corporate debtor. An insolvency professional who is not independent of the contract debtor, is prohibited from acting as a liquidator to the said corporate debtor. The Regulations also prohibit a resolution professional who is a partner or director of an insolvency professional entity, from representing any of the other stakeholders in the same liquidation process.

The procedure and the required contents for a public announcement and submission of proof of claims of entities across various categories such as operational creditors, financial creditors, workmen and employees as well as substantiation of such claims, costs of the proof along with the submission and verification of such claims, have been specified.

As per the Regulations, in cases where a corporate debtor has no financial debt or where all financial creditors are related parties to a corporate debtor, a committee of creditors with only operational creditors shall be set up. The Regulations also deal in detail with meetings of committee of creditors, the voting mechanism and conduct of corporate insolvency resolution, including the appointment of registered valuers, transfer of debt due to creditors and sale of assets outside the ordinary course of business.

The Regulations clearly state the costs to be taken into consideration during the insolvency resolution process such as amounts due to suppliers of essential goods and services such as electricity and water to the corporate debtor, costs incurred by the resolution professional, fees payable for engaging professional advisors, to name a few. The layout for the resolution plan along with mandatory contents of the resolution plan and the procedure for approval of such resolution plan have also been set out.

National Company Law Tribunal (Procedure for Reduction of Share Capital of Company) Rules, 2016: The Rules, notified by the Ministry of Corporate Affairs

on 15th December, 2016, by Notification No. G.S.R. 1147(E), prescribe a new Form No. RSC-1 for an application to the National Company Law Tribunal ("Tribunal"), to confirm a reduction of share capital of a company. If the authorities or creditors of the company desire to make any representations, they can do so in accordance with the procedure specified in the Rules. The Tribunal shall give necessary directions with regard to the representations and objections received. If the Tribunal deems it fit to make a reduction of the share capital of the company concerned, the order pertaining to it shall have the necessary directions, terms and conditions and the order shall be in Form No. RSC-6. The Certificate issued by the Registrar of Companies under Section 66(5) of the Companies Act, 2013 (which provision deals with reduction of share capital), shall be in Form No. RSC -7.

National Company Law Tribunal (Amendment) Rules, 2016 notified: The Rules, notified by the Ministry of Corporate Affairs (MCA) on 20th December, 2016, have effected certain necessary procedural changes to the National Company Law Tribunal Rules, 2016, including the following:

- The Rules allow for more than one person having common interest in a matter to join together and present a joint petition.
- A new provision in the form of Rule 68A has now been inserted with respect to the details and documents that are required to be provided along with an application for cancelling a variation of rights attached to any class of shares is made on behalf of shareholders of the class entitled to apply for such cancellation under Section 48(2) of Companies Act, 2013. Such application should be accompanied by *inter-alia* the details of capital structure of the company in question, nature of the variation made to the rights attached, the number of shareholders who did not consent to such variation as well as the number of shares held by them, to name a few.
- A new provision in the form of Rule 76A has been inserted *vide* which an application for re-opening of books of account and re-casting the financial statements of a company may be made by any person concerned including the Central Government, Income Tax authorities, SEBI or any other statutory regulatory body or authority.

Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eighteenth Amendment) Regulations, 2016 notified: The Reserve Bank of India vide Notification No. FEMA 381/2016-RB dated 7th December, 2016, has amended the foreign investment caps and entry routes for the following sectors amending Annexure B of Schedule 1 of the Regulations:

- 100% foreign investment is permissible in the specified agriculture and animal husbandry industry under the automatic route;

- 100% foreign investment is permissible in the manufacturing sector under the automatic route;
- 100% foreign investment is permissible in the defence sector; whereas foreign investment up to 49% is permissible under the automatic route, any foreign investment beyond 49% shall require prior approval of the Central Government, if such investment is likely to result in access to modern technology, among other reasons.
- 100% foreign investment is permissible in broadcasting carriage services which include teleports, DTH, cable network, mobile TV and Headend-in-the Sky Broadcasting Service under the automatic entry route.
- 100% foreign investment is permissible in cable networks under the automatic entry route.
- 100% foreign investment is permissible in the civil aviation sector under the Automatic entry route.
- 100% foreign investment is permissible in single brand retail trading; whereas foreign investment up to 49% is permissible under the automatic route, any foreign investment beyond 49% shall require prior approval of the Foreign Investment Promotion Board ('FIPB').
- 100% foreign investment is permissible in the greenfield projects of the pharmaceuticals sector under the automatic entry route.

Ratio Decidendi

Central legislation shall have precedence over State legislation – Supreme Court rulings on SARFAESI Act: The present case before the Supreme Court of India arose out of an appeal against an order of the High Court of Guwahati. The contention before the Supreme Court of India was in relation to a provision of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) being in contravention of the Tripura Land Revenue and Land Reforms Act, 1960 ("Tripura Act"). The High Court of Guwahati had held that since the Tripura Act was protected under Article 31-B (pertaining to validation of certain legislations under Section IX) of the Constitution of India, therefore, the Tripura Act would prevail over SARFAESI Act.

Section 13 of the SARFAESI Act enables a bank to take possession of a property and sell such property to realize its dues, as it deems fit. The purchaser of such property gains clear title to the property that has been sold, so long as the prescribed requirements under the law have been met. The alleged contravention arose with respect to Section 187 of the Tripura Act, whereby a bank is prohibited from transferring the property which was mortgaged by a member belonging to a Scheduled Tribe to any person other than a member of a Scheduled Tribe.

The Apex Court applied the test of 'dominant legislation' in the present case and enunciated the difference between Central and State Laws. The Apex Court also made it clear that the sale of mortgaged property by a bank is *'an*

inseparable and integral part' of the banking sector. Prior to the enactment of SARFAESI Act, no parallel Central legislation existed that dealt with the sale of secured assets. Hence till such time SARFAESI Act had not been enacted, the Tripura Act operated validly within this sphere. However, when the Parliament enacted the SARFAESI Act as a Central legislation to exclusively deal with the sale of secured assets, the State law, to the extent of its inconsistency with the Central legislation, shall be severable. [*UCO Bank* v. *Dipak Debbarma*, decided on 25-11-2016, Supreme Court]

In another judgment, SARFAESI Act was held to be applicable in the State of Jammu and Kashmir, by the Supreme Court of India. The case filed before the Court was an appeal against the judgment given by the High Court of Jammu and Kashmir, which pertains to the applicability of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in the State of Jammu and Kashmir. The High Court of Jammu and Kashmir had held that certain provisions of the SARFAESI Act were in contravention to the provisions of Section 140 of the Transfer of Property Act of Jammu and Kashmir, 1920 and were outside the scope of *'the legislative competence of the Parliament.'*

The Apex Court in its judgment, however reversed the order given by the Jammu and Kashmir High Court, stating that *'Jammu and Kashmir has no vestige of sovereign outside the Indian Constitution and its own, while citizens of the state are first and foremost citizens of India.'* The Court also stated that the *'judgment begins from the wrong end and therefore reaches the wrong conclusion.'* It was observed that Entries 45 and 95 of List I of the Constitution grant the Parliament the exclusive power to enact laws with respect to banking. The Court also held that if any State law contravenes the SARFAESI Act, then SARFEASI Act, being a Central Act, will always take precedence by virtue of Article 246 of the Constitution as extended to the State of Jammu and Kashmir. [*State Bank of India* v. *Santosh Gupta*, decided on 25-11-2016, Supreme Court]

Foreign award cannot be enforced in absence of arbitration agreement: The present case was filed before the High Court of Delhi with regard to the enforcement of an arbitral award. The case dealt with two companies involved in the sale of palm oil that were at a preliminary stage of negotiations. The seller sought to enforce the arbitral award which was rendered by the Arbitral Tribunal, presuming the existence of a binding contract between the two parties. The Tribunal held that there was 'strongest evidence' that the contracts were indeed in existence, based on the dealings between the parties.

The matter for adjudication before the High Court was whether there exists an arbitration agreement between the parties. The Court, relying upon its previous judgments and after analyzing the facts, held that according to Section 44(a) of the Arbitration and Conciliation Act, 1996, it is mandatory for an agreement to be in writing and since the contracts had not been signed by one of the two parties, there was no valid acceptance

of the other party's proposal and therefore there existed no written contract between the parties. It held that since there was no valid contract between the parties, the question of existence of any arbitration clause would not arise and therefore, declined to enforce the foreign arbitral award. [*Virgoz Oils & Fats Pvt. Ltd.* v. *National Agricultural Co-Operative Marketing Federation of India*, decided on 5-12-2016, Delhi High Court]

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