Volume 77, January 2021

Chir Amrit Legal LLP

The Newsletter

TABLE OF CONTENTS

Revised threshold for 'Real Estate Agents' and 'dealers in precious metals, precious stones' coming under PML Act, 2002

The Central Government on December 29, 2020, in exercise of the powers conferred by sub-clause (iii) and (iv) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-Laundering Act, 2002 ("**PMLA**"), rescinded the notification of the Government of India, Ministry of Finance, Department of Revenue, No. 8/2017, dated November 15, 2017, except with respect to things done or omitted to be done before such recession.

The government notified that the real estate agents with annual turnover of Rs. 20 lakh rupees or above and dealers in precious metal and precious stones, carrying cash transactions with a customer equal to or above Rs. 10 lakhs, shall be considered as "persons carrying on designated business or professions" under Section 2(sa) of the PMLA, 2002.

Earlier, all the real estate agents as defined under Section 2(zm) of the Real Estate (Regulation and Development) Act, 2016 were considered under the definition of "persons carrying on designated business or professions". However, now, the said applicability has been restricted to real estate agents with annual turnover of 20 Lakh Rupees.

Further, a dealer is someone who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment, or for commission remuneration or other valuable consideration. Precious metals as per PMLA mean gold, silver, platinum, palladium or rhodium or such other metals, as may be notified by the Central Government. Precious stones mean diamond, emerald, ruby, sapphire or any such other stones as may be notified by the Central Government. The amendment aims to cover the loophole wherein cash transactions up to 2 Lakh Rupees were allowed without KYC-PAN and Aadhaar in the gems and jewellery sector.

Presumptive income cannot be estimated u/s. 44AD for Partners' Remuneration and Interest: HC

In the case of **Anandkumar v. ACIT Appeal No. 388 of 2019**, the Hon'ble High Court of Madras (**"Court"**) had to decide whether the Appellate Tribunal was right in law in holding that interest and salary received by the assessee from firms in which he was a partner cannot be construed as business income u/s. 28(v) and therefore not eligible for applying the presumptive interest rate of 8% under section 44AD of the Act.

Section 44AD of the Act is a special provision for computing profits and gains of business on presumptive basis. Important aspect to be noted in Section 44AD is that the assessee who claims such a benefit should be an **eligible assessee** engaged in an **eligible business** as defined in clause (*a*) and (b) respectively of the explanation to the section and 8% of the presumptive rate of tax is computed on the total turnover or gross receipts.

The brief facts of the case are that the Assessee had applied presumptive rate at 8% u/s 44AD on remuneration and interest received from partnership firms. AO denied the benefit of section 44AD as the assessee was not carrying on business independently but only a partner in the firm and also did not have any turnover and receipts on account of remuneration and interest from the firms cannot be construed as gross receipts as mentioned in the Section.

Aggrieved by the assessment order, the assessee filed an appeal before the CIT (A) after the dismissal of which he preferred appeal before the Tribunal which also got dismissed. Then the matter travelled to the Hon'ble Court which decided in favour of the Revenue by analyzing that:

1. In the statement issued by the ICAI on CARO 2003, the word '**turnover**' to mean the aggregate amount for which sales are effected or services rendered by an enterprise. Admittedly, the assessee has not done any sales nor rendered any services and the same cannot be termed as turnover.

2. The **intention of Section 40(*b*)** (as rightly observed by Tribunal) is that the remuneration and interest paid to the partner have to be construed indirectly as type of distribution of profits of a firm or otherwise the firm would have been taxed. Therefore, when the legislature in its wisdom chose such payments to be a part of profits from business the same can never translate into gross receipts or turnover of a business of being partners in a firm.

3. The **explanatory notes vide Circular No. 5/2010 dated 3-6-2010** stated that the reason for enlargement of scope of Section 44AD was to include small businesses having substantial income which are outside the tax net and also exempt such assesses opting for the scheme from maintenance of books of accounts related to such business.

4. As already seen in Section 44AD, the words used are 'total turnover' or 'gross receipts' and it pre-supposes that it pertains to a sales turnover and no other meaning can be given to the said words and if done so, the purpose of introducing Section 44AD would stand defeated.

5. That apart, the position becomes much clearer if we take note of sub-Section (2) of Section 44AD which states that any deduction allowable under the provision of Section 30 to

38 for the purpose of sub-section (1) be deemed to have been already given full effect to and no further deduction under those sections shall be allowed. Thus, conspicuously section 28(*v*) has not been included in sub-section (2) of Section 44AD which deals with any interest, salary, bonus, commission or remuneration by whatever name called, due to or received by, a partner from such firm.

6. Thus, for all the above reasons, we find that the Tribunal rightly rejected the plea raised by the assessee and confirmed the order passed by the CIT(A) and the Assessing Officer.

e-Voting facility provided by Listed Entities

Securities and Exchange Board of India ("**SEBI**") *vide* it circular no SEBI/HO/CFD/CMD/CIR/P/2020/242 dated 09.12.2020, came out with a mechanism to make the e-voting process more secure, convenient and simple for shareholders. As per the circular, to increase the efficiency of the voting process, it has been decided to enable e-voting for all demat account holders by way of a single login credential through their demat accounts and websites of depositories. Currently, there are multiple e-voting service providers ("**ESPs**") providing e-voting facility to listed entities in the country. This necessitates registration on various ESPs and maintenance of multiple user IDs and passwords by the shareholders. The same shall be implemented in a phased manner as under:

Under Phase 1, the shareholders can directly register with depositories or alternatively, demat account holders will have the option of accessing various ESP portals directly from their demat accounts.

Under Phase 2, the depository shall validate the demat account holder through a One Time Password (OTP) verification process *viz* Direct registration with depositories where depository will authenticate the OTP through registered email ID or mobile number or through demat account with depository participants where the demat holders can access the websites of the Depositories through their demat accounts.

Phase 1 will be implemented within six months, while phase 2 would be put in place within 12 months from the completion of the phase 1 process.

The aforementioned facility shall be available to all individual shareholders holding the securities in demat form.

Apex Court upheld the levy of GST on Lotteries & Gambling is valid

In the landmark case of **Skill Lotto Solutions (P.) Ltd *v.* Union of India** *[2020] 122 taxmann.com 49 (SC),* the Hon'ble Supreme Court upheld the validity of levy of GST on Lottery and Gambling. The petitioner, an authorized agent, for the sale and distribution of lotteries organized by the State of Punjab had filed writ petition challenging the definition of goods u/s 2(52) of CGST Act, 2017 and consequential notifications to the extent it levies tax on lotteries. The petitioner sought a declaration that the levy of tax on the lottery is discriminatory and violative of Articles 14, 19(1)(g), 301, and 304 of the Constitution of India. While deciding the issue, the Hon'ble SC held that the inclusion of actionable claim in definition of 'goods' u/s 2(52) of the CGST Act is not contrary to the legal meaning of goods and does not conflict with Article 366(12) of the Constitution of India. Further, the Parliament by Constitutional amendment inserted Article 246A fully empowering the Union and State to make laws w.r.t. goods and services tax. So, the contention of the Petitioner that the Union does not enjoy an absolute power to make an inclusive definition of something to be taxed which is not taxable otherwise is not maintainable.

The Court also stated that when the Parliament has specifically included lottery, betting and gambling for purpose of imposing GST and not taxed other actionable claims, it cannot be said that there is no rationale or reason for taxing above three and leaving others. Lastly it referred to Section 15 of the CGST Act read with Rule 31A of the CGST Rules for determining the value of the lottery and held that when there are specific statutory provisions enumerating what should be included in the value of the supply and what shall not be included in the value of the supply, the Court cannot accept the submission of the Petitioner that prize money is to be abated for determining the value of taxable supply as the same has been contemplated in the statutory scheme.

Other Important Updates

1. **MCA notifies certain provisions of Companies (Amendment) Act, 2020**
   The Ministry of Corporate Affairs (MCA) vide notification No. S.O. 4646(E) dated 21.12.2020, notified that certain provisions of the Companies (Amendment) Act, 2020 shall come into force from 21.12.2020. The said provisions are as follows:

   Section 1, Section 3, Sections 6 to 10 (both inclusive), Sections 12 to 17 (both inclusive), Clauses (a) and (b) of section 18, Sections 19 to 21 (both inclusive), Clause (i) of section 22, Section 24, Section 26, Sections 28 to 31 (both inclusive), Sections 33 to 39 (both inclusive), Sections 41 to 44 (both inclusive), Sections 46 to 51 (both inclusive), Section 54, Section 57, Section 61 and Section 63.

2. Sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of Finance Act, 2020 has been brought into effect from 22.12.2020. (Notification No. 92/2020-Central Tax dated 22.12.2020)

3. Time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 extended till 28.02.2021. (Notification No. 95/2020-Central Tax dated 30.12.2020).

4. **Amendment to Companies (Incorporation) Rules, 2014:** Ministry of Corporate Affairs ("**MCA**") has vide Companies (Incorporation) Third Amendment Rules, 2020 notified Rule 9A for extension of reservation of name in certain cases.

5. **Additional Payment Mechanism for Payment of Balance Money in Calls for partly paid specified securities issued by the listed entity:** SEBI vide Circular *(SEBI/HO/CFD/DIL1/CIR/238/2020)* dated December 08, 2020, introduced additional payment mechanism, including Application Supported by Blocked Amount (ASBA), for making subscription and payment of balance money for calls in respect of partly paid securities issued by listed entities.

6. **National Faceless Penalty Scheme:** The Hon'ble Central Board of Direct Tax vide Notification No. 02/2021-Income Tax and 03/2021-Income Tax had notified Faceless Penalty Scheme, 2021("**Scheme**") dated 12.01.2021. The aforesaid Notification No. 2/2021 discuss details of scheme like scope etc, whereas Notification No.3/2021 talk only about procedure to be followed while initiating Faceless penalty proceeding. The penalty under the Scheme shall be imposed in respect of such territorial area, or persons or class of persons, or income or class of income or cases or class of cases, or penalties or class of penalties as may be specified by the CBDT. The said scheme will digitize issuing of penalties on Assessee under the faceless taxation regime.

FAQ`s on Labour Reforms

1. When are the new labour codes getting enforced?

The official date for applicability of the labour codes is yet to be stated. However, according to various sources, the Government intends to enforce the new codes from 1st April, 2021. The draft rules of these code are already published for public opinion and consultation.

2. What is the registration requirements under the new labour codes?

A single registration is required on Shram Suvidha Portal for all establishments and the proof of registration under previous labour laws is also sufficient.

3. On which establishments the new law relating to EPF is applicable?

The law in relation to EPF under the Social Security Code is applicable on all establishments employing more than 20 employees.

4. On which establishments the new law relating to ESI is applicable?

The law in relation to ESI under the Social Security Code is applicable on all establishments employing more than 10 employees.

5. On which establishments the new law relating to Gratuity is applicable?

The law in relation to Gratuity under the Social Security Code is applicable on all factories, shops and establishments employing more than 10 employees.

6. On which establishments the new law relating to Bonus is applicable?

The law in relation to Bonus under the Code on Wages is applicable on all establishments employing more than 20 employees. Exemption is given to universities & educational institutions, hospitals and social welfare institutions established for not for profit.

7. Is there any change in the threshold for applicability of Industrial Standing Orders?

Yes, the threshold for applicability of industrial standing orders has now been increased from 100 to 300 workers.

8. Is there any difference between employee and worker under the new labour codes?

Yes, a worker is any person employed in any establishment to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes working journalists and sales promotion employees but does not include a person who is employed mainly in a managerial, administrative or supervisory capacity drawing wage > Rs. 18,000/- p.m. Whereas, an employee is anyone employed on wages by an establishment to do any skilled, semi-skilled, unskilled, manual, operational, supervisory, managerial, administrative, technical, clerical or any other work, whether the terms of employment be express or implied.

9. Is it now mandatory to issue appointment letter to all employees?

Yes, under the Occupational Safety Health and Working Conditions Code, 2020, it is now mandatory for all establishments to issue appointment letters to all its employees.

THE CODE ON WAGES, 2019

By Adv. Harsha Totuka and Adv. Akshansh Sharma

The Code on Wages, 2019 ("**Wage Code**") was the first code in the series of 4 labour codes which has received the assent of the President in August 2019. The effective date is yet to be notified and it is expected that it may come into force from the coming financial year, i.e. April 01, 2021. The Wage Code intends to consolidate, simply and rationalize the provisions of 4 central labour legislations relating to wages viz. the Payment of Wages Act, 1936, Minimum Wages Act, 1948, Payment of Bonus Act, 1965, and Equal Remuneration Act, 1967. The Wage Code regulates wage and bonus payments in all kinds of employments and further aims at providing equal remuneration to employees performing a work of a similar nature in every industry, trade, business, or manufacture. In this regard, several changes were brought in through the Wage Code to facilitate deregulation and promote ease of doing business. The Wage Code intends to streamline the process of labour law compliance in the country by providing a uniform legislation for the same. The Draft Rules under the Wage Code ("**Rules**") were published on July 07, 2020 to seek feedback from public. In this context, this article highlights the key changes brought in by the Wage Code.

1. Definition of Wages

1.1. The definition of 'wages' is at the root of the labour laws and each labour law has a different definition of the term 'wages'. This complexity led to perplexity and befuddlement in interpretation of labour laws. The Wage Code provides a uniform definition of 'wages' which has been used in other 3 Labour Codes. The definition has four (4) parts to it:

(a) Means: all remuneration whether by way of salaries, allowances or otherwise, expressed in terms of money or c

being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in

respect of his employment or of work done in such employment.

(b) Includes: Basic pay; dearness allowance; and retaining allowance, if any

(c) Excludes:

- Statutory Bonus
- Value of any house-accommodation
- Contribution paid to any pension or provident fund and interest thereon
- Conveyance allowance or the value of any travelling concession
- Sum paid to defray special expenses
- House rent allowance
- Remuneration payable under any award or settlement
- Overtime allowance
- Commission payable to the employee
- Gratuity
- Retrenchment compensation, other retirement benefit or any ex gratia payment made on termination

(d) 50% Rules: If excluded payments (except gratuity and retrenchment compensation) exceed 50% of all remuneration, the excess shall be deemed as wages.

(e) 15% Rule: If an employee is given any remuneration in lieu of whole or part of the 'wages' payable to him, any such remuneration paid in *kind* by the employer to his employee shall be deemed to form part of wages to the extent it does not exceed 15% of the total wages payable to such employee.

1.2. This definition provides a clear list of exclusions and refrains for providing subjective exclusions such as 'any other similar allowance' which were present in the earlier regime. Another important change is that only statutory bonus has been excluded and any other payment in the name of bonus has not been excluded.

2. Payment of Wages

2.1. Applicability: The Payment of Wages Act, 1936 was applicable only on the employee earning wages up to Rs. 24,000/- per month. However, this threshold limit has been removed in the Wage Code and now, its provisions shall be applicable on all employees of all the establishments. The terms *employee, employer* and *worker* have been given the same meaning as given in other 3 labour codes.

2.2. Wage Period: The Wage Code provides express provisions for the employer to fix a wage period for the employees on a daily, weekly, fortnightly, or monthly basis. The date of payment of the wages has been prescribed in the following manner:

S. No.	Wage Period	Timeline
1.	Daily Wages	End of the Shift
2.	Weekly Basis	Last working day of the Week (before the

		weekly holiday)
3.	Fortnightly basis	2 days from the end of the fortnight
4.	Monthly Basis	7 days from the end of the month
5.	Wages upon termination	2 working days

2.3. Deductions from Wages: The provisions with pertaining to deductions from the wages under the Wage Code are mostly same as mentioned under the Payment of Wages Act, 1936.

3. Minimum Wages

3.1. Applicability: The Minimum Wages Act, 1948 was applicable only to scheduled employments, however this limitation with respect to applicability has been removed under the Wage Code and now it is applicable to all the kinds of employment.

3.2. Minimum Wages: The definition of wages under the Minimum Wages Act 1948 included HRA within the definition of wages; whereas under the Wage Code same has been excluded. Accordingly, the employers would have to ensure that the basic wage itself of the employee if equal to minimum wage or more.

3.3. Floor Wage: The Minimum Wages Act 1948 requires a state government to fix a minimum wage limit for an employee in that state. However, the Wage Code has introduced a new provision wherein the Central Government by considering the living standards of the workers, shall fix a floor wage in consultation with the Central Advisory Board. Therefore, now the respective state governments cannot set the minimum wage limit for their respective state less than the floor wage.

4. Payment of Bonus

4.1. Applicability: The Payment of Bonus Act, 1965 was applicable to those employees whose monthly income does not exceed the threshold of Rs. 21,000/-. While the Wage Code provides for the concept of threshold, however, the exact threshold will be prescribed at a later date by the Central or State government. The provisions related to bonus are not applicable to (i) Employees employed in Government Establishments; (ii) Universities & Educational Institutions; and (iii) Hospitals and social welfare institutions established for not for profit.

4.2. Payment of Bonus: The payment of bonus shall not be made in cash but should be credited to the bank account of the employee. Similar to the earlier regime, the amount of bonus shall not be less than 8.33% of the wages or Rs.100, whichever is higher. Moreover, the maximum

amount of bonus shall not exceed 20% of the wages of the employee.

4.3. Disqualification for Bonus: The Payment of Bonus Act, 1965 disqualified an employee from receiving bonus if such employee has been dismissed from service for committing fraud, or for riotous or violent behaviour while on the premises of the establishment, or for committing theft, misappropriation or sabotage of any property of the establishment. In addition to the previous disqualifications the Wage Code has added another instance which disqualifies an employee from receiving bonus i.e. if he has been convicted for sexual harassment offence.

4.4. Calculation of Wages for Bonus: The industry practice of calculating bonus has been on basic wages as the definition under the Payment of Bonus Act, 1965 contained an exclusion 'any other allowance which the employee is for the time being entitled to'. While the Hon'ble Supreme Court in **S. Krishnamurthy v. Presiding Officer** had held that the said exclusion only covers temporary allowances and hinted that the wages for bonus would include allowance, the industry practice was to exclude such allowances. As per the Wage Code, there is no such broad exclusions and only the allowances specifically excluded (subject to the 50% rule) are to be dis-regarded for the purpose of calculating wages. This will, on one side, lead to higher bonuses for employees; however, on the hand, many employees will be excluded from the purview of the bonus entitlement.

4.5. **Limitation for filing Claim**: The Minimum Wages Act, 1948 provides the limitation period of 6 months, while the Payment of Wages Act, 1936 and the Payment of Bonus Act, 1956 provides for the limitation period of 1 year for filing claim. However, the Wage Code has increased the limitation period for filing the claims up to 3 years.

4.6. **Returns and Records:** Under the Wage Code, every employer is required to maintain certain registers with details of employee, muster role, wages & any other prescribed details. Employer shall also issue wage slips to the employees. However, if the employer is not employing more than 5 employees for agriculture or domestic purpose then such employer shall be exempted from maintaining registers and issuance of wage slips.

Furthermore, the employer is required to display a notice on the notice board at a prominent place containing the details of the abstract of Wage Code, category wise wage rates of employees, wage period or date and time of payment of wages and name and address of the Inspector-cum Facilitator having jurisdiction.

4.7. **Web Based Inspection Schemes:** The Wage Code seeks to eliminate arbitrariness and malpractices in inspections by introducing a web-based inspection scheme wherein the appropriate government can call for inspection related information under the Wage Code

electronically. As per the Rules, such web-based inspection scheme shall be formulated by the Chief Labour Commissioner with the approval of the Central Government.

4.8. **Compounding of Offence:** The Wage Code also provides for the provision of compounding of offence committed under the Code by paying fifty per cent of the maximum fine provided for such offence. However, in case the violation of a similar nature is committed again within a period of five years from the date on which the first violation, then the subsequent offence cannot be compounded.

Way forward

The Wage Code aims to facilitate implementation by removing immaterial provisions and provides uniform definitions, reduces overlapping enforcement authorities, reporting and filing requirement and thus come up with easier compliance requirements and costs associated therewith for the employer. However, it will be interesting to see how the government handles the enforcement of these labour reforms, checks evasion by employers and breaks the shackles of poor implementation and administrative hurdles. One can hope that in the long run, new labour Codes will have positive impact on the Indian economy and will bring transparency and accountability in the enforcement of Labour Laws.

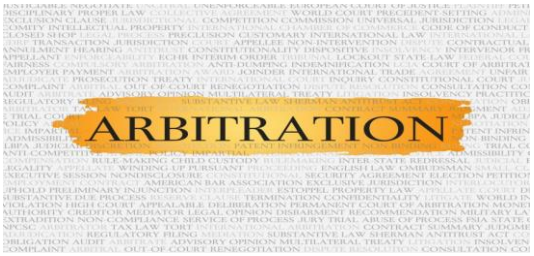
Conundrum resolved: Arbitrability of tenancy deputes under Indian Law

By Adv. Rajat Sharma

The Supreme Court has recently in the case of **Vidya Drolia & Others v. Durga Trading Corporation** [Civil Appeal No. 2402 of 2019] reconsidered the arbitrability of tenancy disputes arising under the Transfer of Property Act, 1882 (**'TP Act'**). The Court by way of this judgment has overruled many of its own as well as other High Courts' judgments, as has set out the broad principles to determine the arbitrability of disputes. Basis these principles, Court held that tenancy disputes under TP Act and not any special statute such as state-specific rent legislations, etc., are arbitrable.

In this article we will first shed some light on the critical judgments passed so far that have dealt with the arbitrability of landlord-tenancy disputes.

1. Natraj Studios (P) Ltd v. Navrang Studios [(1981) 1 SCC 523]- In this case, the Bombay Rent Act, 1947 was applicable on the landlord tenant dispute. The Bombay Rent Act is a special legislation which confers exclusive jurisdiction on the Small Causes Court. Hence, the dispute was held non-arbitrable.
2. Booz Allen Hamilton Inc. v. SBI Home Finance Limited and Others [(2011) 5 SCC 532]- In this case, the Supreme Court held that if a special statute is applicable on a tenancy matter, the dispute is non-arbitrable. Under a special legislation, the tenant enjoys special protection and specified courts have jurisdiction of these matters.



3. Himangni Enterprises v. Kamaljeet Ahluwalia (2017) 10 SCC 706- In this Supreme Court held that landlord-tenant disputes governed by the TP Act would not be arbitrable as disputes arising under the TP Act constitute a right in *rem* and it would be contrary to public policy

Vidya Drolia & Others v. Durga Trading Corporation

In this case, parties under the dispute entered into a tenancy agreement in respect of certain godowns and other structures. The maximum period of tenancy was 10 years after which the appellant (Tenant) was required to deliver vacant and peaceful possession of the premises. The tenancy agreement also stated that any dispute arising out of the agreement shall be resolved through a three- member arbitration tribunal. After the expiry of the 10 years' period, the appellant did not vacate the land. Thus, the respondent (landlord) invoked the arbitration clause in the tenancy agreement. An application under section 11 of the Arbitration and Conciliation Act, 1996 (**'Arbitration Act'**) was filed before the Calcutta High Court seeking appointment an arbitrator. The appellant objected the said application stating that

the dispute is not arbitrable. However, the Calcutta High Court appointed an arbitrator to adjudicate the dispute.

While the arbitration proceedings were ongoing the above referred case of ***Himangni Enterprises*** was passed wherein it was held that if the application of special rent Acts is exempted on certain premises, then the TP Act shall be applicable for the same. Under TP Act, the dispute has to be tried in a civil court. Hence, the Arbitration Act shall not be applicable.

In the light of the said judgement, a review application was filed by the appellant before the Calcutta High Court, but this review was dismissed. Hence, an appeal was filed in the Supreme Court.

At first, when a two-judge bench heard the appeal in 2019 ("**Vidya Drolia I**"), the Court held that a dispute between landlord-tenant governed by TP Act was never covered under either Natraj Studios (as this was a case under Bombay Rent Act) or Booz Allen (as this was a case involving enforcement of mortgage which was a right *in rem*). The Court differed with its judgment in Himangni Enterprises and held that the decision was not based on sound reasoning. It held that merely because the government could withdraw the exemption (from the applicability of Delhi Rent Act) would not render the dispute inarbitrable.

The Court agreed that if the Delhi Rent Act becomes inapplicable, the dispute would be governed by TP Act. However, Court was not convinced that an arbitrator could not decide landlord-tenancy matters governed under TP Act. While categorically analysing sections 111, 114 and 114A of the TP Act, which cover landlord-tenant's rights and liabilities, the Court held that the disputes under TP Act can be decided by an arbitrator, and there is nothing in the TP Act that prohibits arbitrability.

Having thus found itself in disagreement with its judgment in Himangni Enterprises, the Court referred the matter to a larger bench of three judges, which concluded in the present Vidya Drolia (II) judgment.

In the Vidya Drolia (II) Judgment, the Court laid down a test to determine the arbitrability of disputes and held that a dispute would be inarbitrable when:

1. it relates to actions *in rem* (affecting people in general) or actions that do not pertain to subordinate rights *in personam* (affecting/against specific individual) that arise from rights *in rem*.
2. it affects third party rights; require centralized adjudication, and mutual adjudication would not be appropriate and enforceable;
3. it relates to the inalienable sovereign and public interest functions of the state; and
4. it is expressly or by necessary implication non-arbitrable as per mandatory statute(s).

In view of the above principles and referring to Sections 111, 114 and 114A of the TP Act, Court held that there is

nothing in the TP Act that expressly or impliedly bars arbitration. Such disputes were not actions *in rem,* but actions *in personam* that arose from rights *in rem*. They did not affect third-party rights or have *erga omnes* effect. They also do not relate to any sovereign functions of the state.

As regards the grounds based on public policy, the Court held that the same could well be raised before the arbitrator as they could be raised before a civil court. As under other acts of legislature, the arbitrator would be bound by the TP Act, and would have to decide disputes in line with the benefits and protections provided to tenants. The Court further held that an award passed in a landlord-tenant dispute would be enforceable like a decree of civil Court. Accordingly, it held that landlord-tenant disputes covered under the TP Act would be arbitrable. The only exception where tenancy dispute is non arbitrable are the disputes governed by rent control legislation. Such disputes can only be adjudicated and enforced by specific court or through exclusive jurisdiction and cannot be referred to arbitration.

The judgment appears to be a positive step as the same settles the much debated issue of arbitrability of landlord-tenant dispute and by and large brings clarity over the disputes which may be referred to arbitration.

Chir Amrit Legal LLP
Jaipur | Mumbai | Delhi

WE ARE ON THE WEB

www.chiramritlaw.com

For any queries regarding 'THE NEWSLETTER', please get in touch with us at:
newsletter@chiramritlaw.com

Disclaimer:

The views expressed and the information provided in this newsletter are of general nature and are not intended to address the circumstances of any particular individual or entity. Further, the above content should neither be regarded as comprehensive nor sufficient for making decisions. No one should act on the information or views provided in this publication without appropriate professional advice. It should be noted that no assurance is given for any loss arising from any actions taken or to be taken or not taken by anyone based on this publication.

Reach us at:

Jaipur- 6th Floor, 'Unique Destination', Opp. Times of India, Tonk Road, Jaipur - 302 015 Off: +91-141-4044500

Surat– 202, 2nd Floor, SNS Square, Opp. Reliance Market, Vesu Main Road, Vesu, Surat— 395007

New Delhi– 301-302, 3rd Floor, Good Earth City Centre, Sector-50, Gurugram, Haryana - 122018

Mumbai– G-4, Ground Floor, Court Chambers, 35 Sir Vitthaldas Thackarsey Marg, New Marine Lines, Mumbai, Maharashtra - 400020