

Info Capsule

THE SPECIFIED BANK NOTES (CESSATION OF LIABILITIES) ACT, 2017¹

The Government of India notified the Specified Bank Notes (Cessation of Liabilities) Act, 2017 in the public interest for the cessation of liabilities on the specified bank notes and for matters connected therewith or incidental thereto. The main objectives of the Act are:

- to provide clarity and finality to the liability of the Reserve Bank of India and the Government of India for the Specified Bank Notes;
- to provide an opportunity to those persons who were unable to deposit the Specified Bank Notes within the time provided; and
- to declare holding, transferring or receiving Specified Bank Notes as illegal, with provisions for penalty for contravention of any of the provisions of the Act.

INVESTOR EDUCATION AND PROTECTION FUND AUTHORITY (ACCOUNTING, AUDIT, TRANSFER AND REFUND) AMENDMENT RULES, 2017²

[Notification No. Gsr 178(E)[F.No.05/23/2016-IEPF], Dated 28-2-2017]

- The Central Government, in exercise of the powers conferred by sub-sections (1), (2), (3), (4), (8), (9), (10) and (11) of section 125 and sub-section (6) of section 124 read with section 469 of the Companies Act, 2013 (18 of 2013), makes further amendments to the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 with effect from 28th February, 2017.
- By making amendments to the Investor Education And Protection Fund Authority (Accounting, Audit, Transfer And Refund) Rules, 2016 following major changes have been made:-
 - The definition of “company “and “corporate action” has been substituted under the IEPF rules, 2016.
 - A detailed manner of transfer of shares has been introduced as required in pursuance of sub – section (6) of section 124 of the Companies Act, 2013 wherein the board shall authorise the Company Secretary or any other person to sign the necessary documents.; and
 - A detailed procedure for refund to claimants from the fund has been revised.

¹ Available at: <http://www.egazette.nic.in/WriteReadData/2017/174437.pdf>

² Available at: http://www.mca.gov.in/Ministry/pdf/IEPF_Refund_Amendment_Rules_03032017.pdf

COMPANIES (TRANSFER OF PENDING PROCEEDINGS) AMENDMENT RULES, 2017 DATED 28.02.2017³

- The Central Government, in exercise of the powers conferred under sub-sections(1) and (2) of section 434 of the Companies Act, 2013 (8 of 2013) read with sub-section (1) of section 239 of the Insolvency And Bankruptcy Code, 2016 (31 Of 2016) makes further amendments to the Companies (Transfer of Pending Proceedings) Rules, 2016.
- Through this amendment notification the petitioner shall now be allowed a time period of **SIX MONTHS, as stated in the proviso of Rule 5 of COMPANIES (TRANSFER OF PENDING PROCEEDINGS) RULES, 2016** instead of previously stated sixty days for submission of all information, in case of transfer of pending proceedings of winding up on the ground of inability to pay debts, required for admission of the petition under sections 7, 8 or 9 of the Insolvency Bankruptcy Code including details of the proposed insolvency professional to the Tribunal

CASE LAW - COMPETITION COMMISSION OF INDIA

ANAND PARKASH AGARWAL, S/O LATE LAKSHMI NARAIN, vs. DAKSHIN HARYANA BIJLI VITRAN NIGAM, HARYANA ELECTRICITY REGULATORY COMMISSION, STATE OF HARYANA, COMPETITION COMMISSION OF INDIA [APPEAL NO. 33/2016]

An appeal has been filed by Appeal No. 33/2016, Anand Parkash Agarwal, S/o Late Lakshmi Narain, vs Dakshin Haryana Bijli Vitran Nigam, Haryana Electricity Regulatory Commission, State of Haryana, Competition Commission of India.

This appeal is directed against the order dated 10.02.2016 passed by the Competition Commission of India (hereinafter referred to as 'the Commission') under Section 26(2) of the Competition Act, 2002 (for short, 'the Act') holding that no case of contravention of the provisions of Section 4 of the Act has been made out and, therefore, the matter be closed.

The Appellant, Shri Anand Prakash Agarwal, is a consumer of electricity supplied to his residence at Gurgaon by Respondent No. 1 i.e Dakshin Haryana Bijli Vitran Nigam (DHBVN) . DHBVN is a licensed supplier of electricity in the State of Haryana to the consumers within its area of operation.

Haryana Electricity Regulatory Commission (HERC), an independent statutory body corporate, performing functions as an autonomous authority responsible for regulation of the power sector in Haryana in terms of the Electricity Act 2003 (henceforth, "the Electricity Act") and Haryana Electricity Reform Act, 1997, has been arrayed as Respondent No. 2.

The State of Haryana, through its Additional Chief Secretary, Power Department has been arrayed as Respondent No. 3.

The Appellant had filed an application for impleading the Commission as respondent, which was allowed, vide our Order dated 6.9.2016 and in the amended Memo of Parties, the Commission figures as Respondent No. 4.

The facts of the case are as follows:-

The Appellant filed information in terms of Section 19(1)(a) of the Act with the Commission in December, 2015. In the information filed, it was claimed that DHBVN, which was the sole supplier of electricity in the area of residence of the informant, was charging Fuel and Power Purchase Cost Surcharge Adjustment (FSA), which was in the nature of cost pass through, for the uncontrollable cost incurred in the supply chain on account of variations in the input cost prices of fuel, as one of the components of the price of electricity supplied. It was contended that, DHBVN was charging higher FSA from the consumers whose consumption of electricity was higher and thereby directly imposing an unfair and discriminatory price upon consumers and cross subsidizing the FSA cost.

Another argument was that, FSA had been steadily increased post 2008 with the approval of HERC, while the fuel costs had steadily declined thereafter, which was not only unfair but it also meant cross subsidization on account of lower consumption of electricity during various seasons which were either not extremely hot or cold, which is in contravention of mandated uniform FSA. The FSA, stated to be unrelated to the economic value of the supplied electricity, was claimed to be demonstrating exploitative conduct of DHBVN and constituted abuse of dominance in contravention of Section 4 of the Act.

The Appellant further alleged that, HERC had been approving the FSA charge exceeding the mandated ceiling prescribed under the Regulations framed by the HERC and was permitting inclusion of the holding/interest costs in the FSA charge on account of unrecovered FSA charges, in contravention of its own Regulations for the charge of the FSA.

Team ICSI

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