

An aerial night view of a city with a network overlay. The network consists of white lines connecting various nodes, some of which are circular icons representing different concepts like a globe, a Wi-Fi signal, and a person. The city lights are visible in the background.

**DEVELOPMENTS IN
CORPORATE LAW
AND LABOUR LAW**

IN MARCH

2019

ABOUT ACUITY LAW

Acuity Law was founded in November 2011. Acuity Law comprises of a team of young and energetic lawyers led by Souvik Ganguly and Gautam Narayan, who have deep and diverse experiences in their chosen areas of practice. We have advised Indian and multinational companies, funds, banks and financial institutions, founders of companies, management teams, international law firms, domestic and international investment banks, financial advisors and government agencies in various transactions in and outside India.

Acuity Law takes pride in rendering incisive legal advice taking into consideration commercial realities. Our areas of practice are divided not two departments.

The Corporate practice is led by Souvik Ganguly and the Disputes practice is led by Gautam Narayan.

As part of the Corporate practice, Acuity Law advises on:

- Mergers and acquisitions;
- Distressed mergers and acquisitions;
- Insolvency Law;
- Private Equity and Venture Funding;
- Employment and labour laws
- Commercial and trading arrangements; and
- Corporate Advisory

As part of the Disputes practice, Acuity Law under the leadership of Gautam Narayan advises and represents clients on domestic and cross - border:

- Civil disputes;
- Criminal law matters; and
- Arbitration matters

Acuity Law actively follows legislative and policy developments in its chosen areas of practice and shares such developments with clients and friends on a regular basis.

If you want to know more about Acuity Law, please visit our website www.acuitylaw.co.in or write to us at al@acuitylaw.co.in.

INTRODUCTION

This newsletter covers developments with respect to corporate and labour laws during the month of March 2019.

In relation to corporate laws, we have covered case law with respect to timeline for completion of investigation by Serious Fraud Investigation Office under Companies Act, 2013 (“CA 2013”); notifications by the Reserve Bank of India (“RBI”) with respect to relaxation of norms for opening offices by foreign entities in defense, telecom, private security and information broadcasting sectors; and RBI’s Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations and RBI (Prevention of Market Abuse) Directions, 2019.

In relation to labour law, we have covered a Supreme Court judgment which clarifies whether special allowances fall within the ambit of basic wages for deductions towards provident fund by an employer .

Please see below summaries of the relevant developments.

1. ADARSH SCAM: CA 2013 DOES NOT STIPULATE TIME PERIOD FOR COMPLETION OF INVESTIGATION BY SERIOUS FRAUD INVESTIGATION OFFICE

CORPORATE LAW

Matter: Serious Fraud Investigation Office Vs. Rahul Modi and Another

Order Date: 27 March 2019

Summary:

This matter is a part of the cases related to the ongoing investigation of the Adarsh scam. In this judgment, the Supreme Court clarified that the time period of 3 months specified under section 212 of CA 2013 for Serious Fraud Investigation Office (“SFIO”) to submit its investigation report is directory in nature and not the mandatory timeline for completion of investigation by the SFIO.

On 20 July 2018, the central government had directed the SFIO to investigate the affairs of the Adarsh group and submit its report to the central government within 3 months. On 10 December 2018, the SFIO approved the arrest of three persons. The arrest was challenged on the grounds that the prescribed period of 3 months for SFIO to submit its report to the central government had expired.

The Supreme Court held that the time period of 3 months was directory in nature. Further, the investigation by SFIO will not be said to have ended merely if the report is not submitted by the SFIO with the prescribed period of 3 months. The crux of the Supreme Court’s ruling is that if there are no negative or adverse consequences for failing to adhere to a procedure specified under a legislation then the provision is generally directory and not mandatory in nature.

The Supreme Court has further articulated that if section 212 of CA 2013 contemplated that investigation by SFIO will end after the expiry of the prescribed period then CA 2013 would have provided the process for re-transfer of the investigation from the SFIO to the original investigating agency. Therefore, investigation by SFIO can be said to be have been completed only once its final report is submitted.

We find that the judgment of the Supreme Court is well reasoned. The clarification will help facilitate the SFIO in its many ongoing investigations.

2. RBI RELAXES NORMS FOR OPENING OFFICES IN INDIA BY FOREIGN ENTITIES IN DEFENSE, TELECOM, PRIVATE SECURITY AND INFORMATION BROADCASTING SECTORS

Notification: RBI notification number RBI/2018-19/154 (A.P. (DIR Series) Circular No. 27) dated 28 March 2019 available [here](#).

Summary:

The RBI has eased the norms for opening of office (branch office, liaison office, project office or any other place of business in India) by foreign entities in defense, telecom, private security and information broadcasting sector as follows:

- Prior approval of RBI will no longer be required where government approval or license/permission by the concerned ministry/regulator has already been granted. To clarify, the said permission does not include general permission granted under the automatic route of the foreign direct investment laws of India.
- For the defense sector, opening a project office will not require a separate reference or approval of Government of India if the applicant has been awarded a contract by or entered into an agreement with the Ministry of Defense or service headquarters or defense public sector undertakings.

3. RBI MASTER DIRECTION - EXTERNAL COMMERCIAL BORROWINGS, TRADE CREDITS AND STRUCTURED OBLIGATIONS

Notification: RBI notification number RBI/FED/2018-19/67 (FED Master Direction No.5/2018-19) dated 26 March 2019 available [here](#).

Summary:

The RBI has issued the Master Direction – External Commercial Borrowings, Trade Credits and Structured Obligations on 26 March 2019, in supersession of the existing Master Direction – External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorized Dealers and Persons other than Authorized Dealers dated 1 January 2016.

The RBI Master Direction consolidates all circulars and notifications with respect to the revised framework for external commercial borrowings, trade credits and structured obligations.

4. RBI (PREVENTION OF MARKET ABUSE) DIRECTIONS, 2019

Notification: RBI notification number FMRD.FMSD.12/2019 dated 15 March 2019 available [here](#)

Summary:

The RBI had, in its Statement on Developmental and Regulatory Policies of the Second Bi-monthly Monetary Policy dated 6 June 2018 announced that it will introduce regulations, in line with the best global practices, to prevent abuse in markets regulated by RBI. Accordingly, the RBI has issued the RBI (Prevention Of Market Abuse) Directions, 2019 which deal with prevention of market abuse with respect to transactions of all participants in markets for financial instruments.

Do note that these directions are not applicable to the transactions which are executed through the recognized stock exchanges as they are covered by the regulations of the Securities and Exchange Board of India. Further, these directions are not applicable to the banks and the central government in furtherance of monetary policy, fiscal policy or other public policy objectives.

Pursuant to these market directions, a market participant (person transacting or facilitating a transaction in the markets for financial instrument) are prohibited from undertaking:

- market manipulation;
- transactions on an electronic trading platform that may disrupt or delay its functioning;
- actions primarily intended to influence benchmark/reference rate;
- activities which use non-public price-sensitive information for the benefit of itself or others;
- activity which uses price-sensitive customer information for transacting, on its own account, in a manner that adversely affects the outcome for the customer; and
- creating or transmitting false or inaccurate information, or, withholding information that is required to be reported or made public, that influences or is likely to influence the price of any financial instrument.

The RBI may ban market participants who have committed market abuse from the markets for a maximum period of one month at a time.

1. WHETHER SPECIAL ALLOWANCES FALL WITHIN THE AMBIT OF BASIC WAGES FOR DEDUCTIONS TOWARDS PROVIDENT FUND BY AN EMPLOYER

LABOUR LAW

Matter: The Regional Provident Fund Commissioner (II) West Bengal vs. Vivekananda Vidyamandir And Others

Order Date: 28 February 2019

Summary:

This is an important judgment of the Supreme Court which clarifies the scope of basic wages for computation of deduction towards provident fund by an employer under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. This judgment will help address ambiguities on whether special allowance given by an employer to an employee falls within the scope of basic wage.

In the present matter the Supreme Court considered multiple appeals with respect to a common question of law: whether special allowances paid by the employers to their employees constitute basic wages.

The Supreme Court reiterated that the principle of universality should be relied on to determine whether a certain allowance falls within the ambit of basic wage. Basic wages are payments which are universally, necessarily and ordinarily paid across the board to all employees.

Therefore, in order for special allowances to not be included within the scope of basic wages such allowances should: (a) not be common across the board to all employees; (b) paid to those who avail an opportunity for instance overtime allowance; (c) paid by way of a special incentive or work; or (d) linked to employee's productivity. Given that, employers should assess special allowances provided to employees and restructure them accordingly to ensure that special allowances do not constitute basic wages.