

eMagazine



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Vision

"To be a global leader in promoting good corporate governance"

Motto

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Mission

"To develop high calibre professionals facilitating good corporate governance"

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CS Manjunath S.
Chairman
Mysore Chapter

Dear Professional Colleagues,

Greetings!

I am very happy to meet you all through this e-magazine. I hope all the students would have done their best during the June 2018 Exams.

The managing committee in its previous meeting is planning to conduct credit hour programmes for Members. We welcome the move by the Ministry of corporate affairs in introducing Director KYC form to update their database of Directors.

Thank You

-: Editorial Team:-

CS Vijaya Rao

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CS Phani Datta

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Chapter Activities

1. Career Awareness Programs

Chapter conducted 3 Career Awareness Programs during June 2018. The details are as follows.

S No.	Date	Venue	Speaker(s)	No. of Participants
1	04.06.18	Cresta College, Mysore	CS Manjunath S.,	50
2	26.06.18	Christ First Grade College, Mysore	CS Manjunath S.,	60
3	27.06.18	Teresian Women's College, Mysore	CS Manjunath S.,	190

2. PCS Day Celebration

Chapter celebrated the PCS Day on 15th June, 2018, 5.30 pm to 7.30 pm at the Chapter premises. Members and students participated in the celebration.

The Chairman of the Chapter CS Manjunath S. welcomed the members and highlighted the importance of CS in the present corporate environment and the role of PCS. During the event, an open discussion held on Latest Companies Act Amendments & Representation before NCLT by PCS. Members and students participated in the discussion actively. The Secretary of the Chapter CS Veerash M.J. delivered the vote of thanks. The celebration was concluded with high tea.





Director KYC

Short Summary

As per the statement given this month by MCA Secretary Sh. Injeti Srinivas, MCA has formally announced the Annual KYC Drive through the e-form DIR-3KYC. As part of updating its registry, MCA would be conducting KYC of all Directors of all companies annually through a new e-form viz. DIR-3 KYC to be notified and deployed shortly. MCA has notified Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018. These Rules came into effect from 10th July 2018.

- A. Who has to File DIR-3 KYC?
Every Director who has been allotted DIN on or before 31st March of a financial year submits e-form DIR-3KYC with central government.
- B. What is the due date for DIR-3 KYC?
Due date for filing DIR-3KYC is 30th April of immediate Financial Year
- C. What is the due date for DIR-3 KYC for the F.Y. ended 31.03.2018?
Due date for filing DIR-3KYC is on or before 31st August, 2018
- D. What is the mandatory Information to file in DIR-3 KYC?
- Unique Personal Mobile Number
 - Personal Email ID.
 - *OTP on Email ID and Mobile No.*
- E. Certification of DIR-3 KYC
- DSC of Director
 - DSC of practicing professional (CA/CS/CMA)
- F. Whether Disqualified Directors required to file DIR-3 KYC?
Yes, Filing of DIR-3 KYC would be mandatory for Disqualified Directors also
- G. What are the Effects of director fails to file DIR-3 KYC?
If any director fails to file e-form DIR-3 KYC in any financial year on or before 30th April, then MCA21 system will mark all approved DINs (allotted on or before 31st March 2018) against which DIR-3 KYC form has not been filed as 'Deactivated' with reason as 'Non- filing of DIR-3 KYC'
- H. What are the consequences of filing DIR-3 KYC after the due date?
After the due date of filing DIR-3 KYC in respect to such deactivated DINs shall be allowed upon payment of a specified fee of Rs. 5,000 without prejudice to any other action that may be taken
- I. If a person not holding Directorship anywhere for the whole year or years whether such person required to file DIR-3 KYC every financial year?
Yes even a person who is not holding directorship in any Company, such person also required to file DIR-3 KYC every financial year on or before 30th April of immediate Financial Year.
- J. Whether it is mandatory for a person to have DSC to file DIR-3 KYC?
Yes it is mandatory to affix DSC of Director on his e-form DIR-3 KYC.
- K. Who has to File DIR-3 KYC?
Every Director who has been allotted DIN as on or before 31st march of a financial year submits e-form DIR-3 KYC with central government.
- L. Whether email ID / Mobile No. of any other person can be mentioned in DIR- 3 KYC?
In e-form DIR-3 KYC it is specifically mentioned that "Mobile No. and email ID shall be of the Director himself

only” So it is Personal Mobile and Personal Email ID of the directors not any other persons. Otherwise it shall be default under Rule 12.

NOTE

- ✓ In case of Indian National, Passport is not mandatory.
- ✓ In case of a Foreign National, Passport is mandatory

Most Important for Professionals

Professionals have to give declaration that he/ she are engaged for Certification / verification of this form.”

Following should be course of action for the professional if he certifies the e- form DIR-3 KYC.

- ✓ Obtain Engagement Letter from the Director
- ✓ Mention all the details mentioned in DIR-3 KYC in the engagement Letter
- ✓ Confirm that the Mobile No. and email ID belongs to the Director only
- ✓ Keep copy of attachments and form in his record.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com).

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Words Worth Million

"The difference between winning and losing is most often not quitting."

- Walt Disney



All You Need to Know about the Ripple – Crypto currency!!!!

Cryptocurrency is a type of virtual/digital currency that makes use of cryptography as security. It is organic in nature because it is not controlled by any government or financial institution. For this reason, it cannot be manipulated by any government.

The first type of Cryptocurrency to be released was Bitcoin in 2009. According to reports, there are more than 17 million bitcoins in circulation as of May 2018 and its worth 140 billion dollars. The success of Bitcoin has led to the increase in the number of digital currencies which are competing such as Ethereum, Litecoin, Peercoin, Monero to mention just but a few.

Indian context

Cryptocurrencies trade is carried in unregulated digital Exchanges which actually eleven in number, Basically Venture capitalist are investing in these exchanges, there might be burst from these exchanges as India suffers from bad IT infrastructure and lack in digital security. In that case investor will lose their money. As we know Bitcoin is in its bubble stage speculators have shown their interest in other form of crypto currencies. The RBI and Finance ministry has come up with timely warning about the dealing of cryptocurrencies

The RBI as the central bank issues payment related warnings on venture capitalist. Regarding the assets, The SEBI and government are giving warnings, similarly The tax Department is Checking the investor Transaction for tax implication Purpose .

What can I actually do with cryptocurrencies?

Cryptocurrency is used for different purposes such as

- **Mining** : cryptocurrency mining is the process of solving complex mathematical puzzles. If a puzzle is successfully solved you will be rewarded with coins. Cryptocurrency mining is very in iprofitable.

- **Mode of payment** cryptocurrency can be used as a mode of payment. In different countries, bitcoin has been adopted as convertible digital money hence it can be used as a mode of payment just like cash.

- **Investment** Cryptocurrency is the hottest investment opportunity today. Bitcoin is the most common digital coin that many people have invested in. However, there are many other cryptos that you can invest in

- **Buying Goods** Nowadays many companies accept bitcoin as a medium of exchange. With bitcoin, you can pay for different goods such as jewelry, flight, accommodation etc.

Is it Legal?

Cryptocurrency is decentralized which means it is not controlled by any government but it is self-sustaining. Most countries have accepted the use of cryptocurrency as a medium of exchange and hence it is not illegal to use it in these countries.

However, some countries have banned its use hence it is illegal to use cryptocurrency in such countries. Some of the countries that have banned the use of digital money include Russia, Bangladesh, China, Vietnam, and Ecuador among others.

The Future of Cryptocurrency

Almost every day a new kind of cryptocurrency is founded while others collapse. The market of crypto is uncertain but the fact remains that digital currency is here to stay. Since its inception, it has impacted the world market and it will continue to.

Cryptocurrency is revolutionizing the world and financial institutions and governments are likely to legalize it There are only two options for you now, either you avoid it or you embrace it and become part and parcel of writing the history of cryptocurrency. Most importantly, as the legal currency continue to inflate and economic recessions, cryptocurrency is likely to be the escape route against such economic hardships.

As said, we company secretaries have to watch out for any regulations setting up by the government, MCI and SEBI.

In our compliance audit we will have to look in to the compliance of these transactions as it might come under the purview of company secretaries' audit.



CS Nishvitha, BA.LLB
Legal and Company Secretary



Overview of the Payment of Bonus Act

The Payment of Bonus Act ('Act') is applicable to:

- Every factory
- Every other establishment employing 20 (Twenty) or more persons.

The Government can, however, apply the Act to any establishment employing less than 20 (Twenty) but not less than 10 (Ten) persons.

The Government of Karnataka has applied the Act to factories and other establishments employing 10 or more persons.

Eligibility Every employee

- who is drawing a salary or wages not exceeding Rs. 21,000 per month and
- has worked for a minimum period of 30 days in a particular year is entitled for bonus.

Part-time employees are also eligible for bonus.

Calculation of Bonus

This means all employees whose salary is less than Rs. 21,000 per month fall under the criteria of bonus. If the salary of an employee exceeds Rs.

7000, then bonus should be calculated on Rs. 7000 per month or minimum wages whichever is higher.

Minimum & Maximum Bonus

The employer is bound to pay a minimum bonus of 8.33% and maximum bonus of 20 % of basic wages to his employees.

Time limit for payment of Bonus

Bonus must be paid within a period of 8 months from the close of accounting year as per Income Tax Act i.e., April to March.

Disqualifications from receiving Bonus

Employee is disqualified from receiving Bonus if he is dismissed from service for-

- a) Fraud, or
- b) Riotous or violent behaviour while on the premises of the establishment
- c) Theft, misappropriation or sabotage of any property of establishment.



The Boss

The Big Boss

The title flashes images of celebrities, socialites, controversies, fights, tasks and TV host but to most BOSS is the infuriating figure that they come across every morning. Very often, Boss always connotes hurdle, rude, a ring master, a bully, is always right and expects only a “yes boss” for an answer. Everyone today feels the heat in a work environment and the need to be in the “Good Books” of a boss for success, promotions, on sites awards, recommendations, increments . What a sad state of affairs today’s working culture have turned to? It irks me to the core that the working class

today fails to understand the basic difference of being faithful to the Job and faithful to people. Seldom do they realize that it prevents them from growing personally and they become people pleasers than performers. But greater is the one who treats his conscience as his BIG BOSS and the fear of God as his propelling force. When our conscience is our BOSS success is slow, the path is narrow and rough; none to pick up the slack but there is happiness and contentment. That is the true joy of working and YOUR TRUE BOSS knows the best that you are ALWAYS RIGHT.





"Knowledge is of two kinds. We know a subject ourselves, or we know where we can find information on it."

In the present day scenario, one has an access to vast ocean of information. The sheer volume of information available to today's researcher is absolutely incredible. Many universities and Colleges have good state of the art library facilities. More importantly, if we are connected to internet then we drift away in the vast ocean of information, where we get pages upon pages of information for any subject matter.

But the problem arises only when we want to download that information. Many websites want us to become member or subscribe to them for downloading the information, which is useless if we need only selected pages. Well, we can copy them and paste them to a word document and it can be used for further needs. Even then this is a tedious

work. So an easy solution for this is to get the Webpage in .pdf format using www.printfriendly.com

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First, you need to copy the link of the website which you want to print/download. Example if I need the information on Business Responsibility Report then I just Google the same and find an article in *Times of India*. I click on the article and copy the link which will be

<https://timesofindia.indiatimes.com/business/india-business/sebi-asks-top-500-listed-cos-to-adopt-integrated-reporting/articleshow/57003235.cms>

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to add the same as extension for Google Chrome. Persons who are bloggers/ developers can add the printfriendly button to their blogs/websites using the procedures shown in the website.



Commentary on Regular Director – Series 8

PROVISIONS

A. Section 160 of the Companies Act, 2013 (hereinafter referred as 'the Act') read with Rule 13 of Companies (Appointment and Qualification of Directors) Rules, 2014 as amended thereon:

(1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent of total valid votes cast either on show of hands or on poll on such resolution.

Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.

(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.

B. Rule -13 Notice of Candidature of a Person for Directorship

The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-

(1) by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and

(2) by placing notice of such candidature or intention on the website of the company, if any:

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than seven days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

Commentary

1. Not Applicable to:

- i. Private companies;
- ii. Wholly owned Government Companies and wholly owned subsidiaries of such Government Companies and

- iii. Section 8 companies whose articles provide for election of directors by ballot.
2. Mandatory: For specified companies, it is mandatory to appoint a person (other than retiring director) as the director at EGM/AGM as the word used is 'shall'. Retiring directors refers only to a director appointed by the company in the GM and retiring.
3. Subject to other provisions of Act: All the provisions of the Act, which are applicable to other Directors (viz., duties, powers, obligations, disqualification, vacation of office etc.) are also applicable to regular director. Power is not derived from the AOA.
4. Meaning of any Person: Person refers to individual only as individuals alone are eligible to become directors of the company in line with Section 149(1) r/w Sec.153 of Act.
5. Authority to appoint: A person can be appointed as director under this provision only at the EGM/AGM by passing an ordinary resolution.
6. Procedure:
 - a. Who can give notice
 - i. Member (corporate or non-corporate) can give notice for himself or for other member or even for outsider;
 - ii. Outsider can give notice for himself only;
 - iii. Number of directors – Member or outsider can propose any number of directors;
 - iv. Question arises whether preference shareholder can give notice under this provision considering the provisions of Sec.47?
 - v. There is no minimum shareholding requirement for the member to give notice. Even member holding one share also can give notice.
 - b. Where to send the notice
To the registered office of the Company and not to the corporate office or factory or any other office.
 - c. Notice must be in writing signed by candidature, oral is not acceptable.
 - d. When to send notice to the Company
 - i. At least 14 days (14 clear days or more) prior to the date of General Meeting.
 - ii. It can be deposited at any time during the business hours of relevant day or even last day.
 - iii. A notice given to the members not less than 7 days in advance of the election is valid notwithstanding that it does not comply with the requirements of 21 days' notice as stated u/s 101 of the Act. Appending an explanatory note to the notice is valid compliance with Sec.101 of the Act.
 - iv. The notice of candidature is not required to comply with Sec.111 of the Act.
 - e. When Company need to inform to the members :
 - i. The Company shall serve the notice to the members individually at least 7 days (7 clear days or more) before General Meeting **AND** place it on the website of the Company if any **OR**
 - ii. Advertisement in two newspapers at least 7 days (7 clear days or more) before the meeting in local language in local paper and English language in English paper circulating in that *District*.
 - f. Deposit of Rs. 1 lakh :
 - i. Along with the notice, an amount of Rs.100,000/- shall be deposited.
 - ii. Nidhi Companies – Rs. 10,000 instead of Rs. 1 Lakhs
 - iii. The company need to comply with the provisions of Income Tax Act for accepting the deposit in cash and FEMA Act compliances is not necessary in case of Non-resident or Foreign national's appointment under this provision as per RBI circular No 59 dated 13/04/2016 for deposit and refund as well.
 - iv. Companies Amendment Act 2017 w.e.f. 09/02/2018
Deposit of amount is not applicable in case of

- appointment of an independent director or a director recommended by the Nomination and Remuneration Committee if any as constituted under Section 178(1) of the Act or a director recommended by the Board of Directors of the Company, in case the Company is not required to constitute Nomination and Remuneration Committee. Otherwise provision is applicable to all kinds of director's appointment.
- v. Question arises in case amount deposited through cheques – whether cheque should be realized or cheque appearing in the BRS Statement is sufficient to start the process of appointment.
 - vi. Deposit of Rs. 1 Lakhs is to discourage frivolous notices to contest for election as director of the Company.
 - g. Refund or forfeiture of deposit : Deposit can be refunded if :
 - i. the person gets elected as director or
 - ii. if he gets more than 25% of **total valid casted** on such resolution
 - iii. in relation to Section 8 companies
If depositor fails to secure more than 25 % of the total valid cast votes, in such case decision on whether to refund or forfeit the deposit amount is left to the Board of Directors of such Company (General Circular No.38/2014 dated 14/10/2014).
 - iv. Otherwise, it will be forfeited and will be treated as other income in the hands of the Company.
 - h. Section 152 (2) r/w Sec. 160 – Every director of the Company shall be appointed by the Company in General Meeting unless otherwise stated in the Act (example: re appointment of
 - i. Additional Director or casual vacancy director appointment requires Compliance of this provision)
 - j. Sec. 152(6) (e) r/w Sec. 160 – The vacancy of retiring director may be filled up by appointing retiring director or some other person. In case of some other person, then the company shall comply the provisions of Sec.160 of the Act.
 - k. Sec. 2(71) r/w Sec.160 – Amendment of the AoA in contravention of Sec.160 making company subsidiary by passing special resolution is invalid u/s 6 of the Act.
 - l. Others
 - i. Forms: Within 30days of appointment, the company needs to file Form DIR 12 along with consent letter in Form DIR 2.
 - ii. Regular Director needs to disclose the interest in Form MBP 1 within 30days from the date of appointment in line with Sec.184 and the company need to update the relevant Statutory Registers.
 - iii. Regular director do have same rights, powers, duties similar to any other directors.





GST Laws - Proposed Amendments

Introduction

On 1st July 2018, the Country has celebrated its first anniversary of the implementation of the GST Laws. Barring a few cases such as compliance and refunds, there were hardly any disruptions during the last twelve months. Certainly, the GST laws have changed the landscape of the Indian economy. During its first year of introduction, GST Laws have seen considerable amount of amendments, particularly, administration, Supply, Reverse Charge Mechanism, Composition Scheme, Classification, Time & Determination of value of Supply, Job work, Input Tax, Registration, Returns, Payment of Tax, Refunds, E-way Bill Mechanism, etc.

As a proactive measure and to ease the further burden on the common man, the Central Government on 9th July 2018 again proposed one more round of major changes to the GST Laws and sought stakeholders' comments and suggestions latest by 15th July 2018 (*Link has been provided in the last page*). According to the 'Proposed Draft Amendments,' there are 46 issues under consideration to amend suitably after considering the stakeholders' views. Out of 46 proposed changes, 38 is relating to the Central GST Act 2017, 06 changes and explanations relating to the Integrated GST Act 2017 and 02 relating to the GST (Compensation to States) Act, 2017. The proposed changes include a newer version of the Reverse Charge Mechanism, non-availability of transitional credit for cess, the revival of services definition for composition scheme, simplified GST return filing process etc. Unlike earlier, this time, the Central Government has one more advantage i.e. Parliament's Monsoon Session has been slated to commence from 19th July 2018 to 10th August 2018 and all-powerful GST Council's

28th Meeting is also scheduled to be held on 21st July 2018 at New Delhi. Hence, those Amendments are just a matter of time. Let us have a look on certain key amendments.

Proposed Amendments – Key Takeaways

- **Reverse Charge Mechanism (RCM):** To consider a recent suggestion by Group of Ministers (GoM) on GST, it is proposed to delete the present Section 9 (4) and introduce a new Section 9(4), in turn same will permit the Central Government subject to GST Council's recommendations, may notify a specific class of registered persons and goods that would be covered under the RCM mechanism.
- **Inclusion of 'Supply of Services' under Composition Scheme**
Presently, registered persons engaged in the supply of services except restaurant services are not eligible for composition scheme. With a view to enabling the service providers to avail of the benefit of composition scheme, it is proposed to insert a new proviso in order to allow them to register or switchover to the Composition Scheme. Threshold limit in other cases also proposed to increase in line with GST Council's recommendations such as from Rs. 1 crore to Rs. 1.5 crore. It seems that the Central Government has considered the industry's long-term demand where a manufacturer or trader can opt for composition scheme even if they supply services with a rider say 'supply of services' should not be more than 10 per cent of the total turnover or Rs. 5 lakh whichever is lower in the previous financial year.
- **Input Tax Credit**

The Central Government has proposed total five changes and one explanation with respect to Input Tax Credit (ITC).

- ✓ Extending 'deeming provision' for 'services'.
- ✓ Removal of liability to pay interest in case where the recipient has been made liable to pay an amount equal to the ITC availed in case he fails to pay to the supplier of goods or services or both the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier.
- ✓ Changes with respect to the negative list of ITC by including Supply of food, transport and insurance provided to employees if it is obligatory for the employer, Purchase of a motor vehicle if it used for transportation of money for or by a banking company or a financial institution.

- **e-Commerce Operator & Registration**

Presently, an e-commerce operator is required to register under GST compulsorily irrespective of his aggregate turnover in a financial year i.e. Rs. 20 lakhs. Now, it is proposed to amend the said provisions by allowing only those e-commerce operators who are required to collect tax at source (TCS) u/s. 52 are required to register mandatorily. In other words, other e-commerce operators who are not required to TCS u/s. 52 are not required to register if their aggregate turnover in a financial year did not exceed the aggregate turnover.

- **Tax Invoice, Credit and Debit Notes:** Presently, a registered person is required to issue credit/debit note invoice-wise. Now it is proposed to allow issuance of consolidated credit/debit notes. A registered person will be permitted to issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year without linking the same to individual invoices.

- **Revision of GST Returns / Returns:** Like pre-GST regime and as a business-friendly measure, now it is proposed to allow taxpayers to revise or amend their GST returns. Further, totally a new Section 43A has been proposed to introduce to enable the 'New Return Filing Procedure' as proposed by the 'Returns Committee' and vetted by the all-powerful GST Council. It is reported that the said New Return Procedure' will take off from 1st January 2019.
- **GST Practitioner & extended services:** It is proposed to allow GST Practitioners to perform other functions such as filing a refund claim, application for cancellation of registration etc.
- **GST on Transportation of goods to a place outside India:** As a taxpayer-friendly measure, it is proposed that the transportation of goods from a place in India to a place outside India by a transporter located in India would not be chargeable to GST levy.

A word of caution

Whether all the said amendments will be brought in retrospectively or prospectively? If it is brought in with retrospective effect, then, no doubt, again stage will set for chaos among the trade and businesses. After having considerable amount but painful experience on introducing certain Income Tax provisions retrospectively, it is believed that the Central Government may not opt for a retrospective route.

Concluding Remarks

It is reported that about 50 writ petitions on various issues like Constitutional Validity of Advance Ruling Mechanism under GST Laws, GST Appellate Authority (GSTAT), Transitional Credits, etc were filed with various High Courts across the country. The Central Government itself has a very good opportunity to look after all those issues and may bring suitable amendments in the upcoming Monsoon Session instead of acting on Courts Directions.

Link to submit suggestions and comments - <https://www.mygov.in/group-issue/stakeholder-consultation-proposed-changes-gst-laws/>



Gella Praveen Kumar
B.Sc., MBA, FCA, Grad CMA
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M/s ABCL is registered under GST for providing Rent-a-cab service. Part of their Business, they also provide Ambulance services to Factories situated away from the City precincts. M/s ABCL provides all sort of passenger transportation vehicles to the Corporate entities and charge 18% GST on such supply services including the Ambulance supply service.

One of the Customer who paid the GST on Ambulance service to M/s ABCL from Nov'17 to Mar'18 has sought for refund of the GST collected from them since the same is covered under an Exemption Notification. Examine whether M/s ABCL can claim refund of such GST collected & paid to Government pertaining to Ambulance Service

Please send your opinion to,

enewsletter.icsimysore@gmail.com



Opinion To Last Month's Brainy Bits

Facts to consider

- M/s ABC & Co., (hereinafter referred as RP) registered under GST in the state of Karnataka
- RP has to make a taxable supply in the state of Telangana, which cannot be supplied from Karnataka considering the nature of business undertaken by RP
- RP has sought for a CTP in the state of Telangana for the Management Event and made Inward cum Outward supply of goods & services
- Accumulation of ITC is higher than output tax payable

Relevant Provision

- Section 54 – Refund of Tax
- Rule 89 – Application for refund of tax, interest, penalty, fees or any other sum
- Notification 05/2017 dtd:28.06.2017

Conclusion

RP can make an application for Refund u/s 54 (3) read with Notification 05/2017 towards Inverted Duty structure alone and not otherwise. Accordingly, only if the Tax paid on the Purchase is higher than the Outward supply, the RP is eligible to claim the ITC as per Rule 89. Also, due care should be exercised to confirm the details of unsold inward supply exists if any in this regard before making for the Refund application and closure of CTP



Delhi Diaries 4

Solved cases of Supreme Court and NCLAT

Action Taken by the Government of India When A Company is Prejudicial to Public Interest

An important issue that afflicts the public at large and has the potential to change the very status of companies in India has been sought to be addressed by the NCLAT in *Union of India, Ministry of Corporate Affairs v. Gitanjali Gems Ltd. and Ors.* in its judgment dated 12th July, 2018.

Though we shall not go into the details of the scam alleged to have been perpetrated by Mr. Nirav Modi, against Punjab National Bank and other banks, it is important for the purpose of this article to set out that the scam is supposed to involve fraud to the tune of Rs. 11,400 Crores. The scam is said to have been conducted by Nirav Modi with his associates through a chain of companies and partnerships most of which purport to be in the diamond trading business.

It is pertinent to note that several of these companies have subsidiary companies incorporated all around the world.

Since the group companies and its directors have caused wrongful loss of Rs. 11,400 Crores by fraudulent means and FIRs had been filed against the group companies and the directors, in a bid to realize as much of the money as possible, the Union of India sought to invoke Sections 221, 222, 241, 242, 246 read with Section 339 of the Companies Act, 2013 seeking various reliefs which may be categorized into the following groups:

- (i) Disclosure of all assets held by the group companies and their directors.
- (ii) Restraint on trading or creating encumbrance on any property of the group companies or their directors.
- (iii) Freeze of securities deposited by the group companies and their directors.

Separately the Union Government also ordered investigation of these group companies by the Serious Fraud Investigation Office under Section 212 of the Companies Act,

The NCLAT considered several points including on the maintainability of the petition on the ground that Section 221 did not contemplate freeze of assets of individuals but only against Companies. It was also contended by the group companies and their various directors that as the Union Government had already initiated investigation through the SFIO, such an action seeking disclosure of details was not permissible.

The NCLAT adverted to specific provisions of the Companies Act and extracted them verbatim. Upon a bare glance at the aforementioned provisions of the Companies Act, it is evident that the provisions for restraint on the transfer of assets of the Company and provisions for action against the associated individuals are distinct. However, the perennial conundrum of Company Law has been the difficulty in separating the corporate identity from the identity of the people in charge of the company. However, the NCLAT chose to read all the aforementioned provisions as being directed towards a common purpose, namely dissuading the sort of fraud that is alleged to have taken place in the present case wherein the companies are a front for misappropriating public money.

The NCLAT also derived its powers from the wide ambit of Section 242. Section 242 (4) empowers the Tribunal, on the application of any party to the proceeding to make any interim order which it thinks fit for regulating the conduct of a company's affairs upon such terms and conditions as appears to it to be just and equitable.

It is therefore only natural that an application by the Union Government alleging that the affairs of a Company are prejudicial to public interest would fall within the scope of this provision.

Liability of officers and directors are covered under Sections 337, 338, 339, and 340 of the Companies Act. Reading Section 242(4) along with Sections 339, 340 and 221, the NCLAT held that it was well empowered to pass orders of restraint not only against Companies but also against individuals and also order freezing of their assets. The NCLAT restored the freeze on the assets of the directors and individuals while making allowance for the withdrawal of Rs. 1,00,000 per month from any of their accounts.

There is no doubt that this judgment of the NCLAT will be contested by the directors before the Supreme Court and it remains to be seen how the apex court may view the question especially in light of the sensational nature of the case.

It is the opinion of the present author that the ground of "public interest" is too broad to seek such severe restraint on the assets of a company and its directors, however justified it may have been in the present case.

News Room



Express News

- **Aurobindo Pharma acquires Apotex's businesses in 5 countries for 74 million euros**
- **FDI in services sector slumps 23% in 2017-18**
- **FPIs selling spree continues; withdraw Rs 1,200 crore from debt markets**
- **India becomes vice-chair of Asia Pacific region at global customs body**
- **RBI to hike key policy rates by another 25 bps in August, says BNP Paribas**

Government sets up 10-member panel to review penal provisions under Company Law

The government today said it has constituted a 10-member committee to review the penal provisions under the Company Law and examine decriminalisation of certain offences.

The high-level panel, chaired by Corporate Affairs Secretary Injeti Srinivas, would submit its report in 30 days to the government.

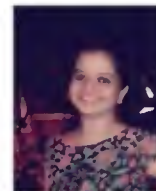
Tighter rules coming up for CAs, valuers and monitoring agencies

Sebi has proposed amendments to tighten laws governing auditors and other third-party Individuals hired by listed companies for auditing financial results, among other things.

The Kotak Committee, formed to come up with proposals for improving corporate governance, last year recommended that the Securities and Exchange Board of India (SEBI) should have clear powers to act against auditors and other third-party individuals or firms with statutory duties under the securities law.

Natural gas, ATF in GST this week?

The GST Council, headed by Union Finance Minister and comprising representatives of all states and Union Territories, is slated to meet on July 21 and a proposal to bring natural gas and ATF under the new indirect tax regime may come up for discussion



Companies Act, 2013

Updates on Amended Rules

MCA has introduced new rules, which is to be known as Companies (Significant Beneficial Owners) Rules, 2018. This rule is related to the filings to be done by the significant beneficial owners.

As per this rule

(1) Every significant beneficial owner shall file a declaration in Form No. **BEN-1** to the company in which he holds the significant beneficial ownership on the date of commencement of these rules within ninety days from such commencement and within thirty days in case of any change in his significant beneficial ownership.

(2) Every individual, who, after the commencement of these rules, acquires significant beneficial ownership in a company, shall file a declaration in Form No. **BEN-1** to the company, within thirty days of acquiring such significant beneficial ownership or in case of any change in such ownership

In case any declaration under rule 3 is received by the company, it shall file a return in Form No. **BEN-2** with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it.

The company is required to maintain a register of significant beneficial owners in Form No. **BEN-3**.

Companies (Significant Beneficial Owners) Rules, 2018, Dated 13th June, 2018.

MCA has amended Companies (Registered Valuers and Valuation) Rules, 2017 which is to be known as Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018.

Following clause shall substitute rule 19, in sub-rule 2, after clause (g) of principle rule.

“(h) Presidents of, the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India, the Institute of Cost Accountants of India as ex-officio members.”.

Companies (Registered Valuers and Valuation) Second Amendment Rules, 2018, Dated 13th June, 2018.

Notifications

MCA has notified following sections of Companies (Amendment) Act, 2017 and has appointed 15th August 2018 as the date on which the sections of the said Act shall come into force.

1. Section 15
2. Section 16
3. Section 75
4. Section 76

S.O. (E), Dated 5th July, 2018.

MCA has notified following sections of Companies (Amendment) Act, 2017 and has appointed 13th June 2018 as the date on which such sections of the said Act shall come into force.

1. Section 22
2. Section 24
3. Section 25
4. Section 26
5. Section 71

S.O. 2422(E), Dated 5th July, 2018.