

eMagazine



STRIKE OFF UNDER COMPANIES ACT 2013.....04

ILLITERACY AND CONTRACTIBILITY.....08

SECTIONS EFFECTED BY NCLT PART I...9

COLUMNS:

FROM CHAIRMAN'S DESK ..02|

CHAPTER ACTIVITIES...03| LIVING ROOM ..07| WORDS WORTH MILLIONS...07

I & E LAW CAFÉ ...11| BRAINY BITS....13

NEWSROOM ... 14| LEGAL ROUNDUP...15

For Private Circulation Only



CS VJ Balakrishnan

Chairman,

Mysore Chapter

-: Editorial Team:-

CS Vijaya Rao

CS Sherene

CS Pracheta M

CS Phani Datta

CS Ajay Madhaiah

CS Veerash

CS Madhur N Agrawal

Join

5600+ members' strong

“CSMysore” eParivaar

<http://www.groups.google.com/group/csmysore>

Dear Readers,

Hope Ugadi was celebrated by all of you in a grand scale. The financial year 2016-17 has come to an end and the new financial year 2017-18 has just commenced. Lots of opportunities in the offing and we have to utilize.

There was an interactive session in MGM Hotels & Resorts on 10th and 11th March, 2017 organized by SIRC, Chennai. All the chapters of SIRC had the privilege of meeting with the President, Vice President, Chairman SIRC, and other council members. It was a very productive session in which both chapters as well as professional related issues were discussed.

Umang 2017, the annual student event was conducted in the Chapter premises on 18th March 2017 and it was inaugurated by CS Ganapathi G.M., Chairman SIRC. I thank all the participants for making event very successful. Congratulations to the students for organizing and presenting Umang 2017

Thanking you,

Now it's easy to receive the eMagazine directly into your personal mail id.

Click <http://goo.gl/PV9Olr> and fill-in simple info.

You may send this link to your friends too!

Please write your comments and feedback to us:

enewsletter.icsimysore@gmail.com

Disclaimer

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.

Special Thanks to:

CS Dattatri H M

CS Omkar Gayatri

Chapter Activities

1. Career Awareness Program

Chapter has conducted one career awareness programs during the month. The detail is as follows.

S No	Date	College Name	Addressed By	No of Participants
1	01.03.2017	Maharani Women's College - B.Com	CS Veerash M J	120

2. NPA and SME LISTING

Chapter in association with Mysore Chamber of Commerce and Industry, CII-Mysore & ICAI-Cost Mysore branch organised a session on NPA & SME Listing on 10th March, 2017 at Hotel Rio Meridian, Mysore. Members & various industrialists participated in the session. Mr Ankit Jain from Mumbai was the speaker for the program and explained about early symptoms of NPA, restructuring and other key issues. He also explained about the SME listing and practical overview of the listing regulations.

3. Umang 2017



The students of the Chapter had organised 11th Annual Talents' Day - UMANG'17 on Saturday, the 18th March, 2017 at Chapter Premises. The program was inaugurated by CS Ganapathi G M, Chairman, ICSI-SIRC. In his inaugural address, CS Ganapathi G M explained about the various initiatives taken by the institute for the students benefit. CS Balakrishnan V J., Chairman of Mysore Chapter welcomed the gathering and Secretary of the Chapter CS Manjunath S, submitted the Secretary Report for the year. The toppers of December 2016 CS Exam students were felicitated during the inauguration session.



Students of different colleges around Mysore and students of CS, CA and CMA had participated in the various Competition viz.

Essay Writing, Best Manager, Debate, Pick and Speak & Quiz.

Winners of the competition were: Essay Writing JSS Law College 1st Place, St. Joseph's 2nd Place, Best Manager JSS Law College 1st Place, Debate MICA 1st Place, Basudev Somani College 2nd Place, Pick and Speak JSS Law College 1st Place, St. Joseph's 2nd Place, Quiz JSS Law College 1st Place, St. Joseph's 2nd Place.

The Winners of the competitions were awarded at the Vaedictory session. The event was coordinated by the professional student Ms. Chandana K Tikoti & Team.



Strike Off Under the Companies Act 2013

Suo Moto of Name of Company from Registrar of Companies (RoC) (hereinafter after referred as strike off)

Section 248 (1) of the Companies Act, 2013 (the Act) deals with the Suo Moto Strike off of Company by the ROC. Where RoC has sufficient cause to believe that:

- a. A company has failed to commence its business within one year of its incorporation; **OR**
- b. A company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455

ROC may suomoto send notice (Form STK-1) to the company and its directors affirming its intention to remove the name of company from the Registrar of Companies and requesting them to represent their case along with relevant documents, if any within a period of 30 days from the date of notice.

The process for suomoto strike off is as follows:

1. RoC to send notice to the Company and Directors in form STK-1
2. Company and Directors to send representations to RoC within a period of 30 days
3. ROC to issue notice in form STK-5 in :
 - a. Ministry of Corporate affairs (MCA) Website
 - b. Publish in the Official Gazette
 - c. Publish in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper where the registered office of the Company is situated
 - d. Intimation to concerned regulatory authorities for objections to be raised, if any, within 30 days:
 - i. Income-tax Authorities,
 - ii. central excise authorities
 - iii. service-tax authorities
4. On expiry of time mentioned in notice, unless the contrary is shown, registrar shall strike off the name of the company from RoC and publish notice in the official gazette in Form STK 7 and the same shall also be placed on the MCA website.

Strike off Name of Company from RoC on application by Company :

Company may apply to Roc for Strike off name of Company under Section 248 (2) of the Act.

1. Conditions to be satisfied before making an application for striking off are as follows
 - a. Extinguishment of all liabilities
 - b. Special resolution or consent of 75% members in terms of paid-up share capital
2. Grounds of application for striking off
 - a. A company which has failed to commence its business within one year of its incorporation; **OR**
 - b. A company which is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455;

3. Companies which cannot make application to RoC for strike off

Sr. No.	Conditions	Source
a.	Listed Companies	Rule 3
b.	De-listed Companies due to non- compliance of Listing Agreement or any other statutory Laws	Rule 3
c.	Section 25/Section 8 Companies	Rule 3
d.	Vanishing companies	Rule 3
e.	Companies where investigation/ inspection ordered and yet to be taken up or pending	Rule 3
f.	Companies where notice u/s 234 of the Companies Act, 1956 or Section 206 or 207 has been issued by ROC and reply is pending or report under section 208 not yet submitted or is pending	Rule 3
g.	Companies where prosecution for an offence is pending in court	Rule 3
h.	Companies whose application for compounding is pending before the competent authority for compounding the offences committed by the company or any of its officers in default	Rule 3
i.	Companies accepted deposits which are outstanding or default in repayment	Rule 3
j.	Company having secured loan	Rule 3

4. The process for making application to RoC for strike off:

- a. Board Approval
- b. Shareholders' Approval in the form of special resolution OR Consent of 75% of Members
- c. Filing of e- Form MGT-14
- d. Application to RoC in e-form STK-2 with following attachments:
 - i. Indemnity bond duly notarised by every director of the company in Form STK 3;
 - ii. An affidavit in Form STK 4 by every director of the company;
 - iii. a statement of accounts containing assets and liabilities of the company made up to a day, not more than thirty days before the date of application and certified by a Chartered Accountant
 - iv. Copy of Board Resolution and Special Resolution or consent
 - v. a statement regarding pending litigations, if any

5. Manner of publication of notice: Notice shall be published by registrar in form STK-6 at

- a. MCA Website
- b. Publish in the Official Gazette
- c. Publish in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper where the registered office of the Company is situated
- d. Intimation to concerned regulatory authorities for objections to be raised, if any, within 30 days:
 - i. Income-tax Authorities,
 - ii. central excise authorities
 - iii. service-tax authorities

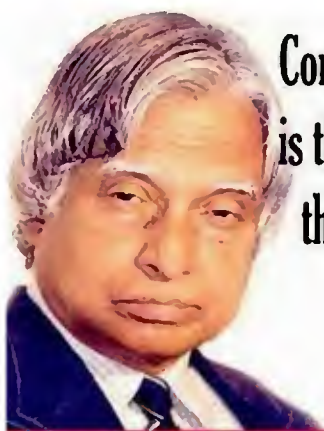
6. Approval which are required to make application to RoC for strike off:

- a. Board Approval
- b. Shareholders' Approval by passing Special resolution or consent of 75% of the members of the company in terms of paid up share capital as on the date of application[New Provision]

- c. No Objection Certificate from the following authorities if any[New Provision]:
 - i. Companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934
 - ii. Housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987
 - iii. Insurance companies as referred to in the Insurance Act, 1938
 - iv. Companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992;
 - v. Companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 ;
 - vi. Asset Management Companies as referred to in the Securities and Exchange Board of India Act, 1992
 - vii. Any other company which is regulated under any other law for the time being in force

- 7. Restrictions for a Company not to make application any time in the previous 3 month if the company has: [New Provision]
 - a. changed its name or shifted its registered office from one state to another;
 - b. made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
 - c. engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirements;
 - d. made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded;
 - e. is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

The point to be noted here is that can the companies which are given the status of Dormant Companies apply for strike off of name??



**Confidence and Hard-work
is the best medicine to kill
the disease called failure.
It will make u a
successful person**

-APJ Abdul Kalam



True Meaning of Hard Work

A young man went to seek an important position at a large printing company. He passed the initial interview and went to meet the director for the final interview. The director looked at his resume, and asked, Have you ever received a scholarship for school? No, the man replied. It was your father who paid for your studies? Yes. Where does your father work? My father is a blacksmith.

Then, the director asked the young man to show him his hands. They were soft and perfect. Have you ever helped your parents at their job? the director asked. Young man said I never helped as they wanted me to study more books all the time. Director requested him to go home and wash his father's hand and asked him to come back tomorrow. That night, when he returned home, he asked his father if he would allow him to wash his hands. His father felt rather strange about the request, but agreed. The young man washed his father's hands, little by little. It was the first time that he noticed all the wrinkles and scars on his father's hands. Some bruises on his hands were so painful that his skin shuddered upon being touched. It was the first time that the young man recognized what it meant for this pair of hands to have worked every day to be able to pay for his studies.

After cleaning his father's hands, the young man stood in silence, then began to tidy up his father's workshop. That night, the father and son talked for a long time.

The next morning, the young man returned to the director's office. The director noticed the tears in his eyes. Can you tell me what you did, and what you learned yesterday? he asked the young man. I washed my father's hands. When I finished, I stayed and cleaned his workshop. He continued, Now I know what it is to appreciate and recognize that, without my parents, I would not be who I am today. By helping my father, I now realize how difficult it is to do something on my own. I have come to appreciate the importance and the value in helping the family. The director looked at him with an earnest expression.

This is what I look for in my people. I want to hire someone who can appreciate the help of others, a person who knows the hardship of others. You are hired.

Words Worth million

A dream doesn't become reality through magic; it takes sweat, determination, and hard work.

-Colin Powell



Illiteracy and Contractibility

A few days back, when my servant maid informed that she was purchasing a property, I was happy for her, but when she showed me the purchase document; the terms were slightly different from what she was telling. While the harm was negligible in this case, it led me to think on the legality of an executed contract by an illiterate person and the established law on that point. In this article I attempt to summarize my findings, with an intention to tickle the interest of the readers on the subject.

A basic reading of the Contract Act makes it clear that 'Free Consent' and 'Meeting of Minds' (*consensus ad idem*) are essential for a contract to be valid and legally enforceable. Normally, in case of contracts with illiterates, the contract is explained to them by the solicitor before them signing or affixing thumb impression on the contractual document. However, where an illiterate or a semi-literate person enters into a contract, without understanding the terms in Toto, then the validity of the contract is questionable and the other party exposes himself to risk on two counts.

DOCTRINE OF PROCEDURAL UNCONSCIONABILITY: Pursuant to this doctrine, a contract may be deemed unenforceable if there exists "a lack of knowledge, lack of voluntariness, inconspicuous print, complex legalistic language, disparity in sophistication or bargaining power of the parties and/or a lack of opportunity to study the contract and inquire about the contract terms." The doctrine of procedural unconscionability can be applied to contracts entered by illiterates and render them unenforceable because the illiterate, who cannot read the contract, necessarily has a "lack of knowledge" of the terms of the contract.

NON EST FACTUM: *non est factum* literally means "it is not his/her deed." The illiterate contracting party could take the plea that he was not consenting to the terms of the contract as recorded and that the terms explained to him were something else. Hence there was no meeting of minds and free consent on his part, as envisaged under the provisions of the Act.

This argument throws up two questions whether every contract with an illiterate person shall end up voidable and whether the illiterate himself has no responsibility to understand the contract.

Let us first examine the second question, viz. Responsibility of the Illiterate while entering into Contracts. It is established that Law does not excuse the illiterate who neglects to learn the contents of the written contract, which is his duty as a contracting party with a sound mind. He may ask someone to read the contract to him or her and to explain it, if necessary. Simply being illiterate does not render a person incapable of either contracting or giving real consent to a contract.

This brings us to the second question of legality of a contract executed by an illiterate. If the other party to the contract proceeds to take undue advantage of the illiterate, by wilful misrepresentation with an intention to defraud, then certainly the contract can be set aside by a Court of Law. In such cases, there is certainly a proper basis for invalidating the contract. So, the validity of a contract is not decided purely by illiteracy alone, but by a combination of other factors like misrepresentation, coercion, undue influence or mistake of law or fact, whether unilateral or mutual.

In conclusion, the Judiciary has a responsibility to protect the interests of every person who seeks justice; it may be the signer of a document or an innocent third party, who may have acted on the apparently regularly and properly executed document. It is therefore necessary that in every case that pleads illiteracy to invalidate a contract, the illiterate has the burden of proving, not only that there was a lack of consent, but also that there was no negligence on his part. Consequently, a heavy onus is placed on the person seeking to avail himself of relief on the grounds of illiteracy under Law.

References:

<http://corporate.findlaw.com/business-operations/duty-owed-to-illiterates.html>

https://en.m.wikipedia.org/wiki/Non_est_factum



Sections Effected by NCLT Part I

[Focus on Section 7(7)]

Introduction: The Ministry of Corporate Affairs (MCA) vide Notification dated. 21 July 2016, has notified the National Company Law Tribunal Rules, 2016/ NCLT Rules, 2016. It may be noted that NCLT Rules 2016 consists of a set of 165 Rules divided into 20 parts along with applicable forms for applications/ petitions, schedule of fees and list of documents to be attached with various applications/ petitions, etc.

The National Company Law Tribunal (NCLT) is a part of the Companies Act, 2013 which was notified by MCA on 1 June 2016 to replace the Company Law Board (CLB). NCLT is initially located at ten places across India, equipped with requisite infrastructure and support staff, including Delhi, Mumbai, Kolkata, Hyderabad and Chennai. NCLT will prove to be an effective platform for adjudication of disputes on corporate law matters through the disposal of such cases in a time bound and speedy manner.

The Ministry of Corporate Affairs (MCA) prior to the notification of National Company Law Tribunal Rules, 2016 vide Notification dated 1 June 2016, has notified 33 sections which came into force after the constitution of NCLT, Section 7(7) is a small part of the notifications that, I have taken up today other parts will surely be discussed in other articles.

Provision of Section 7(7): Without prejudice to the provisions of sub - section (6) where a company has been got incorporated by furnishing any false or incorrect information or representation or suppression of fact or information in any document or declaration filed or made for incorporating such company or by any fraudulent action NCLT may on application made to it, on being satisfied that the situation so warrants -

- (a) Pass such order as it may think fit, for the regulation of the management of the company including changes, if any, in its MOA & AOA in public interest or in the interest of the company and its members and creditors or
- (b) Direct that liability of the members shall become unlimited or
- (c) This clause came into force on 15th December 2016 vide a notification by MCA. Direct removal of the name of the company from the Registrar of Companies (ROC) or
- (d) **This clause came into force on 15th December 2016 vide a notification by MCA.** Pass an order in writing for winding up of the company or
- (e) Pass such other order as it may deem fit. Provided that before making any order under this sub-section (i) Company has been given reasonable opportunity of being heard and (ii) The tribunal shall take into consideration the transaction entered into by the company, including the obligations, if any, contracted or payment of any liability.

Documents to be filed: As per Rule 66 of the National Company law Tribunal Rules, 2016 an application in NCLT should be in form NCLT - 1 and shall be **accompanied by** such documents as are mentioned in **Annexure - B**. It also says that an application shall also contain (i) name, date of incorporation, name & address of the subscribers, promoters and first directors AND (ii) details of false or incorrect information or representation or material facts or information suppressed. (iii) Details of such documents in or declaration

Filed or made for incorporating such company (IV) involvement of promoters, subscribers and the first directors in committing fraud during the course of incorporation.

Annexure B documents: (a) Copy of AOA and MOA, (b) Document in proof of false or incorrect information or fraudulent action. (c) Affidavit verifying the petition can be in **NCLT - 6** a format of the affidavit. (d) Bank draft evidencing payment of application fee. (e) Memorandum of appearance with the copy of Board Resolution or the executed Vakalatnama.

Recent Changes in incorporation: This section has undergone a lot of changes from the year 2014 to 2017. The challenge that Companies Act, 2013 brings with it is the professional needs to be updated all the time. The MCA has brought **changes in the incorporation recently effective from 30th January 2017 through Companies (Incorporation) Amendment Rules, 2017** through which **certificate of incorporation** should also contain a **PAN no of the Company** given to it by the income tax department. **There is a change in the form INC - 11.** The Companies (Incorporation) Rules, 2014 (principal notification) was published in the Gazette of India, Extraordinary Part II, Section 3, Sub-section (i) vide number G.S.R. 250(E) dated 31st March 2014 and subsequently amended vide the following notifications:- Sl. No. Notification Number Notification Date 1. G.S.R. 349(E) 01-05-2015 2. G.S.R. 442(E) 29-05-2015 3. G.S.R. 99(E) 22-01-2016 4. G.S.R.336 (E) 23-03-2016 5. G.S.R.743 (E) 27-07-2016 6. G.R.R.936 (E) 01-10-2016. The official link of Companies (Incorporation) 5th Amendment Rule, 2016 is given below http://www.mca.gov.in/Ministry/pdf/5th_Amendment_Rules_29122016.pdf

Conclusion: The NCLT Rules, 2016 getting notified is a welcome move and it will create good opportunities for professionals in practice or in employment. The responsibility of the professionals will also increase leaps and bound. It is rightly said that "with great power comes great responsibilities"

WHAT IS FINANCIAL LITERACY?

Financial literacy month is observed in the month of April 2017. In March 2008, OECD launched the international Gateway for financial education.

Financial literacy is the ability to understand how money works in the world: how someone manages to earn or make it, how that person manages it, how he/she invests it and how that person donates it to help others. More specifically, it refers to the set of skills and knowledge that allows an individual to make informed and effective decisions with all of their financial resources.

(Source: Internet)



I&E Law Café – 37

Paradigm Shift – in definition of “Industry”

***Bangalore Water Supply and Sewerage Board v. Rajappa* to be reconsidered by a larger bench of Supreme Court**

The Supreme Court in *BWSSB v. Rajappa* defined Industry for the purposes of the Industrial Disputes Act, 1947, as far back as 1978. Being a decision of a Seven-Judge bench, it has held the field for almost forty years. The judgment defined Industry broadly to cover hospitals, research institutions etc.

However, there have since been some doubts raised regarding this judgment and the Court has referred it to a bench of Nine Judges to examine it.

Definition under Industrial Disputes Act, 1947

The definition of Industry under the Industrial Disputes Act, as of 1978 was as follows:

“Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.”

Expanded Definition by Supreme Court

Justice Krishna Iyer in his judgment in *BWSSB v. Rajappa* sought to take a more socially oriented view rather than a technical view by holding “The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition and provided a broad view of Industry as follows:

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee, (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to, celestial bliss e.g. making, on a large scale, prasada or food), prima facie, there is an industry in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the Organisation is a trade or business, it does not cease to, be one because of philanthropy animating the undertaking.

Hence the definition of Industry was expanded to include (i) professions, (ii) Clubs (iii) educational institutions (iiia) co-operatives, (iv) research institutes (v) charitable projects etc.

However the Parliament in 1982 sought to set the clock back partially by bringing about an amendment to the Industrial Disputes Act specifically excluding the following categories from the definition of Industry:

1. Agricultural operations
2. Hospitals or dispensaries; or
3. Educational, scientific, research or training institutions; or
4. Institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
5. khadi or village industries; or
6. any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defense research, atomic energy and space; or
7. any domestic service; or
8. any activity, being a profession practiced by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or
9. any activity, being an activity carried on by a co- operative society or a club or any other like body of individuals, if the number of persons employed by the co- operative society, club or other like body of individuals in relation to such activity is less than ten;

But though this amendment was passed by both houses of Parliament, it was not notified and hence remained a dead letter.

Later Dilemmas

In 1995 the Supreme Court in *Chief Conservator of Forests v. Jagannath Maruthi Kondhare*, while considering whether the definition of Industry as provided by the *BWSSB* case would apply to the Forest Department of Maharashtra held that the Social Forestry division of the Forest Department could not be considered as a Sovereign Function and hence would have to be considered as an Industry. However in 2001, in *State of Gujarat v. Pratamsingh Narsinh Parmar* the Court held that the Forest Department of the State of Gujarat could not be termed to be an Industry and as such a clerk employed by it would not be a workman.

To bring some uniformity in the law and to find common ground between these conflicting opinions, a five judge bench of the Supreme Court in 2005 in *State of U.P. v. Jai Bir Singh* noted the deficiencies in *BWSSB* case and the possibility that the definition provided there may be overly broad and referred the matter to a seven judge bench. On January 2nd, 2017 a seven judge bench of the Supreme Court referred the matter to an even larger bench of nine judges.

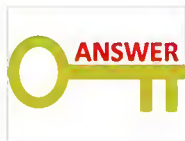
The takeaway from the above is that the broader definition of industry holds the field for the time being. Several functions which were considered sovereign in 1978 are today discharged by private companies. Even by this broad definition of industry such organizations would not be covered. For eg. Enrollment in a government identity database is considered a core function, and it was inconceivable in 1978 that a private agency would be deputed for this purpose. Today, private agencies are at the very core of the Aadhaar enrolment process. The definition of Industry is therefore a question of great significance for a large number of companies and employees who would be affected by it.



Assuming GST is going to be in existence from July 2017 below example has been set. Value & Tax have been assumed arbitrarily for interpreting the provisions of the CGST Act:

PQR Ltd., a Registered person under GST has supplied goods worth Rs.100,000/- and GST charged on Invoice for Rs.10,000/- during first week of January 2018. Recipient has received the goods during Second week of January 2018 stating subject to QA approval and accounted for the same. However, due to deficiency in Quality of the goods supplied Quality & Inspection team of the Recipient have denied to accept the goods and the same has been intimated to the Registered person during last week of January 2018.

Now the Accountant of PQR Ltd. seeks your guidance for issuance of Credit Notes and disclosure requirements of the same in the Outward Supply to be filed for January 2018. Kindly give your suggestion.



Opinion To Last Month's Brainy Bits

Assessee [herein after referred as Registered Person] has registered in the State of Karnataka. The Registered Person is having an Immovable Property which he has let it out for Rent. Such Activity shall be a deemed to be a Supply if such Renting Activity is carried out in the Course or Furtherance of Business [Reference to Section 7 of CGST Act, 2017].

Now to examine whether the Registered Person has to Charge a Tax and if so what Tax to be applied we have to refer to Section 12(3) of IGST Act, 2017 and accordingly Place of Supply [POS] shall be The location of Immovable Property i.e. Maharashtra. Accordingly since the Supplier i.e. Registered Person is in Karnataka and POS is in Maharashtra, the same shall be treated as an InterState trader or Commerce as per Section 7 of IGST Act, 2017 and accordingly IGST shall be applied.

Now, if the Registered Person happens to provide Management Consultancy in the above example, then one has to refer to Section 12 of IGST Act, 2017 for determining the POS. The nature of management consultancy shall be most applicable to Section 12(2) which specified the POS as below:

- a. Made to a registered person shall be the location of such person
- b. Made to any person other than the registered person shall be,
 - i. The location of the recipient where the address on record exists; and
 - ii. The location of the supplier of services in other cases.

Accordingly one has to determine the POS on the basis of Recipient details availability.

Opinion received by,

G Praveen Kumar

Faculty IDTC of ICAI

Please send your opinion to,

enewsletter.icsimysore@gmail.com

News Room



EXPRESS NEWS

- Coal India trade unions fear wage revision delay as board member terminated.
- Food set to get cheaper as service charge on restaurant bills could go
- Suzuki, Toshiba, Denso to start India lithium-ion battery venture
- Retirement body Employees Provident Fund Organisation (EPFO) has reduced the rate of interest to 8.5% in 2016-17 from 8.8 per cent in 2015-2016.
- Tackling NPAs: RBI issues new framework effective from April 1

GST outreach programme: CBEC sanctions Rs 1 cr each to 23 zones

Racing against time for GST rollout, Central Board of Excise and Customs (CBEC) chief Vanaja N Sarna has sanctioned Rs 1 crore to each of 23 zones to conduct an outreach programme about the new tax regime.

Proxy firms lock horns over Crisil Esops

A proposal to revise the exercise price of employee stock option plan (Esop) by rating major CRISIL has evoked conflicting reactions from the proxy advisory firms.

Pradhan Mantri Garib Kalyan Yojana (PMGKY)

After receiving a lukewarm response to the Pradhan Mantri Garib Kalyan Yojana (PMGKY), the income tax (I-T) department has zeroed in on 60,000 persons who deposited excessive cash after the note ban. These include those dealing in high-value property and petrol pump owners.

Textile sector seeks 5% taxes under GST across all value chains

The textile industry has urged the government to apply the lowest GST rate of 5 per cent across all value chains in the textile and apparel sector, to avoid any possibility of tax evasion.

Aluminium PSU National Aluminium Company (Nalco) is evaluating possibilities of putting up a 150 Mw capacity wind power plant in Odisha. The investment on the proposed green power project may exceed Rs. 900 crore considering the thumb rule for every MW capacity created in wind energy, Rs. 6-6.5 crore is needed.



Regulatory Updates

Companies Act, 2013

Updates on Amended Rules

MCA had notified Indian Accounting Standards (Ind AS) , in Indian Accounting Standard (Ind AS) 102, ie. Share-based Payment they have brought in some amendments.

Companies (Indian Accounting Standards) (Amendment) Rules, 2017 dated 17th March, 2017

To support demonetization drive, MCA has amended audit related rules, In the Companies (Audit and Auditors) Rules, 2014, in rule 11, after clause (c), the following clause shall be inserted, namely: (d) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.

Companies (Audit and Auditors) Amendment Rules, 2017 dated 30th March, 2017

For the purpose of sections 173, 175, 177, 178, 179, 184, 185, 186, 187, 188, 189 and section 191 read with section 469 of the Companies Act, 2013, In the Companies (Meetings of Board and its Powers) Rules, 2014, in rule 15, in sub-rule (3), in clause (a) (a) in item (i), item (ii), item (iii) and item (iv), for the words exceeding ten per cent. wherever they occur, the words amounting to ten per cent. or more shall be substituted; and (b) in item (iii), for the words ten per cent. of turnover the words ten per cent. or more of turnover shall be substituted.

Companies (Meetings of Board and its Powers) Amendment Rules, 2017 dated 30th March 2017

MCA has introduced a new form CHG 1 with respect to creation or modification of charges by way of amendment to Companies (Registration of Charges) Rules, 2014

Companies (Registration of Charges) Amendment Rules, 2017 dated 07th April 2017

MCA had notified rules relating to removal of the names of the Companies from the records of ROC, now MCA has amended the rules relating to the same by way of insertion of the of the form STK 5A which shall be the format of Public Notice.

Companies (Removal of Names of Companies from Registrar of Companies) Amendment Rules, 2017 dated 12th April 2017

MCA had notified Compromises, Arrangements and Amalgamations rules, now they have brought in an amendment by way of insertion of a new rule 25A with respect to Merger or Amalgamation of Foreign Company with an Indian Company or vice versa, with this we can practically give effect to cross border merger and amalgamations.

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 dated 13th April 2017

Notifications

MCA by way of notification has made Amendment in Schedule III to the Companies Act, 2013, Schedule III is the format of preparation of financial statements.

G.S.R (E) dated 30.03.2017

MCA has notified Section 234 with effect from 13th April 2017, Section 234 speaks about mergers or amalgamations with Foreign Companies.

S. O.(E) dated 13th April 2017

Important News

- MCA is actively considering Aadhaar Integration for availing various MCA21 related services. As a preparatory step, all individual stakeholders viz. DIN holders/Directors/Key Managerial Personnel/Professionals of the Institute of Company Secretaries of India-Institute of Chartered Accountants of India-Institute of Cost Accountants of India (whether in employment or in practice) are requested to obtain Aadhaar as early as possible for

integrating their details with MCA21 and also ensure that the information in Aadhaar is in harmony with PAN. When implemented, all MCA21 services shall be available based on Aadhaar based authentication ONLY. The date of Aadhaar integration with MCA21 would be announced shortly. Stakeholders are requested to plan accordingly on PRIORITY so as to avoid future inconvenience.

- Form INC-22, AOC-4 Addendum and SCP are likely to be revised on MCA21 Company Forms Download page w.e.f 15th April 2017. Stakeholders are advised to check the latest version before filing.

Insolvency and Bankruptcy Code, 2016

Notification

MCA has notified Commencement of Section for Voluntary Liquidation (S-59) and Information Utilities (209-2016) And S-234, 235 (Agreement with foreign Countries) under IBC, 2016

SO 1005 (E) dated 30th March 2017

Regulations

MCA has notified under Insolvency and Bankruptcy Code, 2016, following two important regulations to be effective from 31st March 2017;

- Insolvency and Bankruptcy Board of India (Voluntary liquidation Process) Regulations, 2017
- Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

GST

Updates

President's assent is received for the below mentioned enactments on the 12th April, 2017

- The Central Goods and Services Tax Act, 2017
- Integrated Goods and Services Tax Act, 2017
- Union Territory Goods and Services Tax Act, 2017
- GST (Compensation to States) Act, 2017