Edition 184

August 2019

eMagazine

Mysore Chapter

WISHING YOU A VERY HAPPY

INDEPENDENCE DAY

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THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

CS Veerash M.J.
Chairman
Mysore Chapter

Dear Professional Colleagues

I am happy to meet and greet you all through eMagazine. As we are conducting a two day residential programme, looking forward for good no. of participants and I am confident that these two days will be very helpful in gaining more knowledge with fellow professionals. We the Mysore chapter committee members are very happy to receive all our participants who are coming and participating in Manthan 2019.
I would like to wish very best to all students for the result which is coming on 25th Aug 2019.
I am very happy to inform that around 25 plus students have cleared the Foundation examination in Mysore. Congratulations to all who raised their bar to next level.

Thank You,

-: Editorial Team:

CS Vijaya Rao

CS Sherene

CS Phani Datta

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Chapter Activities

1. **Career Awareness Program**

Chapter conducted 01 Career Awareness Programs during the month of July 2019. The details are as follows.

S No.	Date	College Name	Speaker	No. of Participants
1	26.07.2019	Vidya Vikas First Grade College	CS Phani Datta D N	125

2. **GST Day Celebration**

Chapter celebrated the GST Day on 01st July, 2019 at the Chapter premises. Members and students participated in the celebrations. The Chairman of the Chapter CS Veerash Mysore Jagadish welcomed the members. CS Vageesh Hegde, Practising Chartered Accountant was the speaker and addressed on the topic "GST Reconciliation and Recent Developments". Members and students participated in the discussion actively. The Secretary of the Chapter CS Vijaya Rao delivered the vote of thanks. The celebration was concluded with high tea.

3. **Van Mahotsav**

As a part of Student month activities, Chapter organized Van Mahotsav Tree plantation ceremony at the Chapter Premises. Students and Members of Managing Committee participated in the event.

4. **Independence Day Celebration**

Article

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Leveraging Secretarial Audit for building a compliance credible organization

The perspective

Secretarial Audit is an audit to check compliance of various legislations including the Companies Act and other corporate and economic laws applicable to the company. Secretarial Audit helps to detect the instances of non-compliance and facilitates taking corrective measures. It audits the adherence of good corporate practices by the company. It is therefore an independent and objective assurance intended to add value and improve operations of the Company. It helps to accomplish the organization's objectives by bringing a systematic, disciplined approach to evaluate and improve effectiveness of risk management, control, and governance processes. Secretarial Audit thus provides necessary comfort to the management, regulators and the stakeholders, as to the statutory compliance, good governance and the existence of proper and adequate systems and processes. It is a matter of great pride that India is the first country to have mandated Secretarial Audit

To which companies Secretarial Audit is Mandatory

As per section 204 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, following companies are required to obtain 'Secretarial Audit Report' from independent practicing Company Secretary;

(1) Every listed company

(2) Every public company having a paid-up share capital of Fifty Crore rupees or more; or

(3) Every public company having a turnover of Two Hundred Fifty Crore rupees or more.

"Turnover" means the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year. As per Section 2 (91) Secretarial Audit is also mandatory to a private company which is a subsidiary of a public company, and which falls under the prescribed class of companies.

The LODR (Amendment) Regulations, 2018 based on the recommandation of the Kotak Commette brought many changes on corporate governance. These changes included the requirement of annexing a secretarial audit report for both the listed entity and its material subsidiary in a specified format. Regulation 24A was inserted to be effective from the year ended on March 31, 2019.

SEBI vide its circular dated 8th February, 2019 specified the format for annual secretarial compliance report which is required to be annexed to the annual report for the financial year 2018-19. While the amendment does not refer to two separate reports i.e. annual secretarial report and annual secretarial compliance report, however, the circular provides for the same. It states that listed entities and their material unlisted subsidiaries can continue to follow the format given under section 204 of the Companies Act, 2013 read with its rules (MR-3), the listed entity in addition, will still be required to annex a separate report i.e. '*annual secretarial compliance report'* for due compliance under Reg. 24A.

Who can be appointed as Secretarial Auditor

Only a member of the Institute of Company Secretaries of India holding certificate of practice (company secretary in practice) can conduct

Secretarial Audit and furnish the Secretarial Audit Report to the Company.

Offences & Penalties

Section 204(4) of the Companies Act, 2013 provides that, if a company or any officer of the company or the Company Secretary in practice, contravenes the provisions of section 204 of the Act, the Company, every officer of the company or the Company Secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. Offences & Penalties Provisions of Section 143 of the Companies Act, 2013 mutatis mutandis apply to PCS in conduct of Secretarial Audit, if the PCS, in the course of the performance of his duties as Secretarial Auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees, he shall immediately report the matter to the Central Govt. If the PCS does not comply with such provisions, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty five lakh rupees.

Scope of Secretarial Audit

A secretarial auditor has to check compliances by the company under the following laws and rules made there-under;

i. The Companies Act, 2013 (the Act) and the rules made there-under;

ii. The Securities Contracts (Regulation) Act, 1956 ('SCRA') and the rules made there-under;

iii. The Depositories Act, 1996 and the Regulations and Bye-laws framed there-under;

iv. Foreign Exchange Management Act, 1999 and the rules and regulations made there-under to the extent of Foreign Direct Investment, Overseas Direct Investment and External Commercial Borrowings;

v. The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 ('SEBI Act'):-

a. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;

b. The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;

c. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;

d. The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;

e. The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;

f. The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;

g. The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and

h. The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

vi. Secretarial Standards issued by The Institute of Company Secretaries of India.

vii. The Listing Agreements entered into by the Company with Stock Exchange(s), if applicable;

viii. Other laws as may be applicable specifically to the company.

Thus we can say that Secretarial Audit is a compliance audit as a part of total compliance management in an organization. It helps to detect non-compliance and to take corrective measures.

Need of Secretarial Audit

- Today, in India, the Corporate Sector is governed by a complex web of laws, rules and regulations viz., Company Law, Competition Law, Economic Laws, Securities and Capital Market Laws, Consumer Protection Laws, Industrial and Labour laws, Pollution Control Laws, Foreign Exchange Legislation, etc. Desired corporate results cannot be achieved unless their implementation is geared up. In fact, lack of implementation of laws, with no mechanism of audit to check their compliances have resulted in various frauds/scams.
- There have also been a large number of cases of mismanagement and misuse of

public funds by several listed companies. Government, multilateral institutions, Banks and companies all have realized that the eye of the storm lies not in the adequacy of legislation but in its implementation and compliance.

- The law enforcement agencies have not been able to tackle these problems and ensure effective enforcement of laws. Several companies that have fallen sick had committed violations of various statutory compliances.
- Clause 49 Sub-clause I(C) (iii) of the Listing Agreement provides that "The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances." Accordingly, all listed companies have to have a system for reporting to the Board compliances with laws applicable to them. Hence, a Legal Compliance Reporting System is necessary.

Secretarial Audit is an effective tool for corporate compliance management. It helps ensure timely corrective measures when non-compliance is detected. The major purpose of Secretarial Audit is to help to create a culture of periodic assessment of risk from noncompliance and take appropriate steps to implement modified process of work and reduce the risk element from non-compliance. The reporting serves as a bridge between the external assurer i.e. the secretarial auditor and the stakeholders. The benefits that accrue from the Secretarial Audit are as under:

- Secretarial Audit assures the promoters of a company that those in-charge of its management are conducting its affairs in accordance with the requirements of laws and the owners stake is not being exposed to unintended risks.

- Secretarial Audit provides comfort to the Non-executive & Independent Directors that appropriate mechanisms and processes are in place to ensure compliance with laws applicable to the company, thus mitigating any risk from a regulatory or governance perspective.

- Secretarial Audit being proactive measure for compliance with a plethora of laws, will have a salutary effect of substantially lessening the burden of the law enforcement authorities.

- Secretarial Audit helps the investors in taking informed investment decision, as it evaluates the company in terms of compliance and governance norms being followed by the company.

- It is an effective due diligence exercise for the prospective investors or joint venture partners. Further Financial Institutions, Banks, Creditors and Consumers can measure the law abiding nature of company management.

Compliance Credible organization – an imperative

Credibility – it's a term that is bandied about a great deal today without a lot of explanation. What does it really mean, not just in the broadest sense, but for your organization? Merriam-Webster defines it as, "The quality or power of inspiring belief; the capacity for belief**".** Credibility is the "quality or power of inspiring belief", but whose belief? Your customers. Your suppliers or vendors. Your clients. Even your staff. Remember that people do business with those they trust and like. A credible business is liked and trusted. Therefore, trust is one of several components that go into creating trust. It is more important than ever before that organizations are able to build credibility with their customers and clients, vendors, suppliers, partners and others. Increasingly, this means taking the steps needed to ensure statutory compliances.

Compliance means conforming to a rule, such as a specification, policy, standard or law. Regulatory compliance describes the goal that organizations aspire to achieve in their efforts to ensure that they are aware of and take steps to comply with relevant laws, policies, and regulations. A credible organization reflects tents of trust, fairness, transparency, accountability and zero tolerance responsiveness to statutory compliances.

Creating Value that is not only profitable to the business but sustainable in the long-term interests of all stakeholders necessarily means that businesses have to run – and be seen to be run –

with a high degree of ethical conduct and good governance where compliance is not only in letter but also in spirit.

Secretarial Audit – A tool for building a compliance credible organization

Secretarial Audit is a tool of risk mitigation and will allow companies to effectively address compliance risk issues. It helps the companies to build their corporate image. Companies that go the extra mile with their compliance programs lay the foundation for good governance. Companies with an effective compliance management programme have lesser chance of receiving penalties, both monetary and by way of imprisonment. Companies that imbibe business and personal ethics and an effective compliance management programme within their work culture often enjoy employee and customer loyalty and public respect for their brand, which can translate into better market capitalization and shareholder returns. Recognition for the company as a good corporate citizen. The Secretarial Audit provides an in-built mechanism for enhancing corporate compliance generally and help restore the confidence of investors in the capital market through greater transparency in corporate functioning.

Secretarial Audit provides an effective mechanism to ensure that compliance of various legislations and regulations including the Companies Act and other corporate and economic laws applicable to the company has been diligently done. This would give necessary comfort to the Management, Regulator, and the stakeholders. It is essentially a pre-emptive check to monitor compliance with the requirements of stated laws.

A secretarial non-compliance, a legal suit or other legal, ethical and governance problems can give rise to catastrophic effects on the continuing viability of the company. The Statute prescribes mandatory Secretarial Audits of bigger companies to provide necessary comfort to the Stakeholders. Many companies voluntarily conduct Secretarial Audit to minimize the possibility of various issues which may disrupt their companies' progress.

The Secretarial Audit lays the groundwork for the establishment of an ongoing Secretarial and Legal compliances and a prevention program to ensure the company's goals, structure and ongoing operations are consistent with the latest developments in business and the law governing the Corporate Entities. The audit entails examining and reporting on compliance of laws. It covers the entire gamut of laws applicable specifically to a company and therefore it is much wider and much deeper than a financial audit

A comprehensive Secretarial Audit would examine a wide range of issues which may be as mundane as whether or not the company is qualified to do business in various jurisdictions or as complex as an analysis of the company's Board Compliances in order to ensure consistency with current requirement under the Companies Act, 2013 and the all the events/ Corporate action occurred during the year are in compliance with the Companies Act, 2013. The topics for audit would include choice and structure of the entity; the decisions of the board of directors and documentation (or lack thereof) relating to those decisions; observance of the Secretarial Standards and Board processes, protection of intellectual property; forms and methods of maintaining records, pending and threatened litigation, insurance coverage; listing under securities laws and compliance, and related trade regulations; labour laws, environmental laws; and a review of compliance of all industry specific laws.

Naturally, the extent and complexity of the Secretarial Audit would vary depending on the size of the company in terms of the horizontal and vertical scales i.e. size of business, area of operations, turnover, product line, age of the company and type of businesses, such as trading, services, Manufacturing, the number of shareholders and employees, the extent to which the company does business as a "regulated industry," and a host of other factors.

A dispensation with such an independent secretarial audit could well lead to significant problems for the company and its stakeholders. The risks of non-compliance with these many laws and regulations include:

• Failure to keep proper books and records or non-compliance with the provisions of corporate laws and securities laws, executing certain unviable or undesirable corporate actions or transactions with related parties or loan to directors, issue, allotment and transfer of Security or otherwise, without proper authority of the Board of Directors or the

General Meeting or the Memorandum of Association, etc., could lead to the ability by third parties to play with the stakeholder's limited liability protection.

• Failure to obtain proper approvals/permissions/licenses could lead to fines, penalties or/and imprisonment in some cases, even closure of the business by government or governmental agencies.

• Failure to comply with certain laws and regulations may lead to initiation of action by the regulators like MCA, SEBI, RBI or others which may jeopardize the very stability of the financial and manufacturing operations.

• Failure to adopt proper environment law compliance and policies which are reviewed periodically could give rise to governmental and civil liability.

• Failure to keep accurate records and minutes of its decision-making procedures, such as proving that directors are exercising informed judgment, could subject the company and its board to liability to its shareholders and investors.

• Failure to monitor the company's reporting requirements may put the company into default with lenders or investors.

• Secretarial Audit helps in detecting and reporting any non-compliance before it takes seriously alarming shape.

Secretarial Audit-Periodicity

Proactive Secretarial Audit on a continuous basis would help the company in initiating corrective measures and strengthening its compliance mechanism and processes. It is advisable that the Secretarial Audit be carried out periodically (quarterly / half yearly/annually) and adverse findings if any, be reported to the Board immediately.

Reporting with Qualification

The qualification, reservation or adverse remarks, if any, shall be stated by the PCS at the relevant places in his/her report. It is recommended that the qualifications, reservations or adverse remarks of PCS, if any, should be stated in Bold or Italic format in the Secretarial Audit Report.

If the PCS is unable to form any opinion on any matter, he / she shall state that he/she is unable to form an opinion on that matter and the reasons thereof. If the scope of work required to be performed, is restricted on account of limitations imposed by the company or on account of circumstantial limitations (like certain books or papers being in custody of another person or Government Authority) the Report shall indicate such limitations. If such limitations are so material as to render the PCS incapable of expressing any opinion, the PCS should state that: "In the absence of necessary information and records, he / she is unable to report compliance(s) by the Company".

Guide for conducting Secretarial Audit

The object of the Secretarial Auditor's Report is to undertake evaluation and form an opinion and to report to the shareholders as to whether, and if so, to what extent, the company has complied with the laws comprising various statutes, rules, regulations, about the board process, existence of compliance management system. This requires knowledge of the corporate laws and economic laws applicable to the company. Thus, for conducting Secretarial Audit, a Company Secretary in Practice is expected to have expert knowledge of all corporate laws. To be able to give an effective report, a Company Secretary in Practice is expected to have the following:

Knowledge: While conducting the Audit, the secretarial auditor should have the knowledge of exact nature and activities of the Company, about the laws which are applicable to the Company. He should have understanding of existence of compliance system, Board process & procedures, selection and evaluation process for the Board.

Team: He is required to ensure that he has a team of appropriately trained staff, who can support the preparation of the report. Most importantly they should be informed of the basic audit requirements and ethics. Related legislative and administrative updates should be shared and communicated with the team to build and maintain the expertise.

Documentation & backup: He is expected to develop a manual & checklists which will help in

evaluation process. He is required to keep proper records of documents and checklists filed during the course of audit.

Reliance upon management representations and declaration: He may rely upon the management representation letter or declaration up to a certain extent.

Third party supporting and evidences: It would always be helpful to check filing made by the company at MCA & other authorities independently. Verification and enquiries can also be made with the other statutory and internal auditors and consultants and Independent Directors of the Company

Adhering to the timelines: Schedule set to conduct the audit process should be strictly adhered to in order to gain the confidence of the client and boost the expertise level of the team.

Honesty and impartiality: A Company Secretary in Practice has the professional duty to provide an unbiased and objective view. Company Secretary in Practice should be independent from the company being audited. The Secretarial Auditor is expected to ensure that activities of the client company are in accordance with the applicable procedure and that supporting evidence maintained by the company is genuine.

Maintaining Audit Diary: The Audit exercise needs to be planned and executed professionally and verifications done by the team members should be recorded daily. Such maintenance of diary would help in keeping audit trail that would come in handy to ensure the quality of audit.

The way forward

The threshold limits for Secretarial Audit for public companies with paid-up capital of Rs. 50 crore or turnover of Rs. 250 crore should be lowered as compliance with laws is not restricted to just bigger public companies. In fact, monitoring of compliances of the smaller public companies and private companies is a bigger challenge. In terms of the Companies Act, 1956, it mandated compliance certificate for smaller companies from a company secretary. Now that has been done away with. On the other hand the number of compliances itself have increased enormously. In this scenario compliance oversight is a challenge and an audit of compliances is essential at least for companies which have accessed public funding whether in the form of loans from banks and financial institutions beyond a certain limit or have accepted deposits from public.

Conclusion

Secretarial Audit is an independent, objective assurance intended to add value and improve an organization's operations. It helps to accomplish the organization's objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of the framework of statutory compliances, risk management, control, and governance processes which can be effectively leveraged to build a compliance credible organization. Secretarial Audit is to be on the principle of "Prevention is better than cure" rather than postmortem exercise and to find faults. It strengthens the image and goodwill of a company in the minds of regulators and stakeholders. It acts as an effective compliance risk management tool or a governance tool.

Effective implementation of Secretarial audit will certainly lead to reduction in corporate frauds and malpractices. As Governance professionals Company secretaries should profess the compliances of law in letter and spirit, ethical conduct of business, sensitivity to environment/ society etc. A true professional should convey the message to the management on correcting the processes and system wherever required to help build a compliance credible organization

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Article

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The Code on Wages, 2017

[1]The Union Cabinet has approved the introduction of a bill that will codify relevant provisions of four existing laws and intends to increase the legislative protection of minimum wage to the entire workforce.

As per sources, The Codes on Wages Bill, 2019 will be introduced in the ongoing Budget Session of parliament and would benefit about 50 crore workers.

The Code of Wages Bill is the first in the series of four labour codes. It seeks to subsume relevant provisions of The Minimum Wages Act, 1948, Payment of Wages Act 1936, Payment of Bonus Act, 1965 and Equal Remuneration Act 1976.

Many states have multiple minimum wages and the code simplifies it by doing away with the type of employment as one of the criteria. There are 2000 rates of minimum wages and the code reduces the number substantially. The fixation of the minimum wage will primarily be based on geography and skills.

At present, the provisions of the Minimum Wages Act and Payment of Wages Act apply on workers below a particular wage ceiling working in scheduled employments only.

The code is supposed to ensure the right of sustenance of every worker and intends to increase the legislative protection of minimum wage from existing 40 per cent to 100 per cent of the workforce.

The said bill would ensure that every worker gets minimum wage. A statutory floor wage would be introduced, which will be computed based on minimum living conditions.

The states would notify the payment of wages to workers through digital mode.

[1] Business Standard staff and is auto generated from a syndicated feed. First Published: Wed, July 03 2019. 20:32 IST

The definition of wages, now are different under different labour laws, it has been simplified to reduce litigation and will entail a lesser cost of compliance for an employer and the rules to be framed would prescribe one template.

The changes will bring transparency and accountability and the bill was a step for ensuring statutory protection of minimum wage.

The Code of Wages Bill was earlier introduced in the Lok Sabha on August 10, 2017, and referred to the Standing Committee which gave its report in December 2018. The bill lapsed due to the dissolution of 16th Lok Sabha.

Some of the industry sources said a new bill has been drafted considering the recommendations of the Standing Committee and suggestions of stakeholders.

Key Highlights of the Bill

- The Code replaces four existing laws: (i) the Payment of Wages Act, 1936, (ii) the Minimum Wages Act, 1948, (iii) the Payment of Bonus Act, 1965, and (iv) the Equal Remuneration Act, 1976.

- The central government will set minimum wages for certain employments including railways, and mines. State governments will set minimum wages for all other employments.

- The Code provides for a national minimum wage to be set by the central government. States cannot set minimum wages lower than the national minimum wage. Further, the central government may set separate national minimum wages for different states or regions of the country.
- Minimum wages must be revised by the central or state governments at an interval of five years.

- The overtime rate will be at least twice the normal rate of wages of the employee.

Key Issues and Analysis

- Central government may set a national minimum wage. Further, it may set separate national minimum wages for different states or regions. In this context, two questions arise: (i) the rationale for a national minimum wage, and (ii) whether the central government should set one or multiple national minimum wages.

- States have to ensure that minimum wages set by them are not lower than the national minimum wage. If existing minimum wages set by states are higher than the national minimum wage, they cannot reduce the minimum wages. This may affect the ability of states to reduce their minimum wages if the national minimum wage is lowered. This could potentially be a threat to the work force where Minimum Wages are reduced

- The time period for revising minimum wages will be set at five years. Currently, state governments have flexibility in revising minimum wages, as long as it is not more than five years. It is unclear why this flexibility has been removed, and five years has been set for revision.

- The Equal Remuneration Act, 1976, prohibits employers from discriminating in wage payments as well as recruitment of employees based on gender. While the Code prohibits gender discrimination on wage-related matters, it does not include provisions regarding discrimination during recruitment.

[2]The table below compares provisions of the Code with the current wage laws.

Table 1: Comparison of current wage laws with the proposed Code

Provision	**Current laws**	**Code on Wages, 2017**
Coverage	**Minimum Wages Act**: Minimum wages are fixed for scheduled employments with more than 1,000 employees. **Payment of Wages Act:** Applies to employees whose wages do not exceed Rs 24,000 per month. **Payment of Bonus Act:** Applies to employments with 20 or more persons and for employees whose wages do not exceed Rs 21,000 per month.	Minimum wages will be paid to all employees. Provisions regarding payment of wages will apply to all employees. Bonus will apply to employees whose wages do not exceed a monthly amount notified by central or state governments.
Revision of minimum wages	**Minimum Wages Act:** Minimum wages must be revised by the central or state governments at least once every five years.	Mandates that minimum wages be revised in five-year intervals.
National minimum wage	No provision.	The central government may set a national minimum wage and may set different national minimum wages for different states and

[2] Sources: The Minimum Wages Act, 1948; The Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; The Equal Remuneration Act, 1976; PRS.

		regions.
Overtime wage	**Minimum Wages Act:** Allows the relevant central or state governments to set overtime wage.	Sets overtime wage at two times the normal wages.
Gender discrimination	**Equal Remuneration Act:** Prohibits gender discrimination in wage payment. Prohibits gender discrimination in recruitment, transfers, and promotions.	Prohibits gender discrimination in wage payment. No provision.
Inspections	**Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act, and Equal Remuneration Act:** Inspectors are appointed to carry out (i) surprise checks, and (ii) examine persons and require them to give information, among other powers.	Appointment of a Facilitator to carry out inspections and provide information to employers and employees for better compliance. Inspection will be done on the basis of an inspection scheme, which will include a web-based inspection schedule. The inspection scheme will be decided by the central or state governments.
Penalties	**Minimum Wages Act:** Offences include (i) paying employees less than minimum wages, and (ii) not providing for a day of rest in the week. Penalties include fine up to Rs 500 and imprisonment up to six months. **Payment of Wages Act:** Offences include (i) non-payment of wages at specified time period, (ii) unauthorised deductions from wages. Penalties include fine up to Rs 7,500. **Payment of Bonus Act:** In case a person or company does not comply with the Act, they can be punished with imprisonment up to six months or fine up to Rs 1,000. **Equal Remuneration Act:** Offences include: (i) non-maintenance of documents in relation to employees, and (ii) discrimination against women in recruitment. Penalties include fine up to Rs 20,000 or imprisonment up to one year.	Employers who pay less than what is due under the Code will pay a fine of up to Rs 50,000. If an employer is guilty of repeat offence within five years, penalties include imprisonment up to three months or a fine of up to Rs 1 lakh or both. Employers who do not comply with any other provision of the Code will pay a fine of up to Rs 20,000. If an employer is guilty of the same offence again within five years, penalties include imprisonment up to one month or a fine of up to Rs 40,000 or both.

The BJP Government under the Hon'ble Prime Minister Mr. Narendra Modi has always been an advocate for ease of doing business, the new labour codes provide for the ease of business, by

strengthening the role of the employers. However, in the name of simplification and efficiency, they erode all the gains the working class who have fought for their rights in the past, a close analysis of these codes explains that they are more pro-employer than the employee and rather than decreasing, they will end up increasing exploitation.

The draft Labour Code in its new avatar in the next phase on Social Security and Welfare seeks to replace 15 laws on social security, including the Employee Provident Fund Act, Employee State Insurance Act, Maternity Benefit Act, Payment of Gratuity Act, Employees Compensation Act, Building and Other Construction Workers Act **(BOCW)** and various other Welfare Cess/Fund Acts. This code is proposed to be applied to both organised and unorganised workers.

The existing Building and Other Construction Workers (BOCW) Act will be repealed under the Social Security Bill, and many benefits currently available under it for construction workers would not exist under the social security code.

Repealing BOCW will have a disastrous impact on construction workers as registrations of workers under the Act will lapse. It will also lead to the closure of state boards. All the construction workers will have to newly register themselves with the proposed state welfare boards. These state boards will also include other unorganised sector workers and all of them will be registered at the same place.

The National Campaign Committee for Construction Labourers has written letters to Prime Minister Narendra Modi, the labour minister and all other members of parliaments to make them understand the benefits of the BOCW Act and how there is a dire need to reconsider the proposed labour code bills.

India needs comprehensive legislation which includes regulation of work, social security and grievance redress for workers in the unorganised sector. The government must re think pros & cons instead of introducing another bill in a hurry like the GST

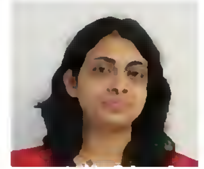
Words Worth Million

Either I will come back after hoisting the Tricolour, or I will come back wrapped in it, but I will be back for sure.

- Capt. Vikram Batra

Article

CS Nishvitha, BA.LLB
Company Secretary



Karnataka Public Safety (Measures) Enforcement Act

The Karnataka Public Safety (Measures) Enforcement Act (hereinafter referred as 'Act') effective December 07, 2017 was enacted to provide the Public Safety Measure at the Establishments[3] in Karnataka.

Applicability

This Act extends to areas under a) Bruhat Bengaluru Mahanagar Palike; b) corporations constituted under the Karnataka Municipal Corporations Act, 1976; and c) any other area notified by State Government.

Public safety measures

Every owner or manager or person running an establishment is responsible to maintain the following public safety measures to ensure the safety and security of public visiting their establishments:

i) Access controls[4] through physical and technical means;
ii) Surveillance through Closed circuit television surveillance ('CCTV') cameras with a provision for storage of video footage for thirty days;
iii) The technical equipment; adhering to the specifications notified by the Government; and
iv) Any other technical equipment as notified by the Government from time to time to enhance public safety.

Establishment shall:

- bear the cost of providing public safety.
- employee a person or through outsourcing agency operate the electronic devices like Access control and CCTV camera.
- have the CCTV data stored for thirty days.
- run the CCTV 24x7 even when it is closed.
- file periodical returns on proper maintenance of relevant equipment in the establishment. The returns must be filed in Form no. 15 either in physical or electronic mode to the Inspector of Police having jurisdiction once in three months.

Constitution of the Sectoral and Supervisory Committee

The Rule 3 of the Act states that the Commercial Establishment or group of Establishments in the locality may constitute a sectoral committee. This committee will be responsible to aid and assist supervisory committee for implementation of the Public safety measures.

The Supervisory Committee will be constituted by the Jurisdictional Commissioner of Police in the respective cities. The Supervisory Committee may visit the establishment to inspect the public safety measures implemented, issue show-cause to the establishment for non-compliance, pass a sealing

[3]Establishment means a place frequented by large number of people with a likelihood of public gathering of hundred people or more at a time or Five Hundred per day such as Commercial establishments, industrial establishment, religious places, educational institutions, hospitals, sports complexes, railway stations, bus stations, places of organized congregations, such other establishment notified by Government.

[4]Technical specifications under Rule 4 of the Act- a) Door Frame Metal Detector Checkmate (DFMDC) b) Hand Held Metal Detector (HHMD) c) Vehicle Bottom Search Mirror d) Baggage Scanner e) Sniffer Dogs (item no. c to e will be applicable for the establishment specified by the Supervisory Committee).

order within seven (7) days from the date of the receipt of the explanation for the show cause notice.

As per Section 6 of the Act, the Asst. Commissioner of Police (ACP) or Sub-Divisional Police Officer (SDPO) of the concerned area is empowered to issue a show-cause notice to the owner or manager or concerned person in an establishment, giving fifteen (15) days' time for compliance.
In an event of default, the following compounding fee shall be levied:

a) for the first month of default- Rs. 5,000/-
b) for the second month of default- Rs. 10,000/-

The party aggrieved by the order of the ACP or SDPO may appeal to the Jurisdiction Deputy Commissioner within 30 days from the date of order or action[5].

[5] Section 7 of the Act.

Article

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GST: Advance Rulings – *Part 10*

Issues & Jurisdiction - Before the Authority

Sub-section (2) of Section 97 & Sub-Section (1) of Section 100 of the Central GST Act, 2017 deals with certain definite questions that are eligible to raise before the AAR/AAAR. They are:

1. *Whether an applicant is required to be registered or not.*
2. *Classification of any goods or services or both.*
3. *Applicability of a Notification issued under the Central GST Act, 2017.*
4. *Determination of time and value of supply of goods or services or both.*
5. *Admissibility of Input Tax Credit (ITC).*
6. *Determination of the tax liability on any goods or services or both, etc.*

1. Applicant – M/s. Tamil Nadu Edible Oils (P) Ltd., Advance Ruling No. 21/ARA/2019 dated 21.05.2019

The applicant is a Chennai based dealer of Edible Oils. The applicant has moved AAR – Tamil Nadu on the following question - *Whether e-way bill is required for consignments pertaining to multiple invoices to multiple customers moved in the same conveyance, in which the value of each invoice is less than the limits for generation of e-way bill but in aggregate, the value of the multiple invoices exceeds the specified limit?*

As said in the introductory para, the GST Law restricts the AAR to decide a certain set of issues under Section 97 (2). Since the above said issue before the Authority is sought on the 'provisions of e-way bill' not in the ambit of the authority, the Application was rejected stating the lack of jurisdiction.

2. Applicant – Sri. Rajendrababu Ambika, Advance Ruling No. 22/AAR/2019 Dated 22.05.2019

The applicant under the name & style M/s. Sri. Dhanalakshmi Welding Works is engaged in the business of manufacturing, erection, commissioning, reconditioning, repairing and maintenance of milk dairy machinery and equipment. The applicant has moved AAR – Tamil Nadu with four questions, they were –

1. *Whether their dairy machinery works is liable to tax at 12 % (HSN 8434) or 18 % (HSN 8413)*
2. *In dairy machinery works includes milk processing, milk chilling, refrigeration system, milk handling equipment, milk packing equipment and milk allied product making machinery. For such supply and erection of dairy machinery, it involves service charges also. If so what will be the rate of tax on the service charge component?*
3. *Whether their nature of activities fall under works contract or not. If so what will be the rate of tax and its HSN code? Also inform the details of entries to be made in monthly return GSTR I ?*
4. *Whether E-way bill procedures applicable for their business activities?*

After examining the statement of facts, supporting documents filed by the Applicant and comments furnished by the Commissioner, the AAR has given the following Ruling -

1. Due to absence of supply related details, the applicable classification as far as dairy machinery concerned did not pronounce.
2. The activity of Supply undertaken by the applicant is classifiable under SAC 998717 and the applicable rate of tax is 9% under

Central GST and at 9% under State GST as amended.

3. Since question No (3) & (4) are purely in procedural aspects, did not answer. The AAR also held that the activity of the above applicant did not qualify as 'Works Contract' defined under Section 2 (119) of the CGST or State GST Act, 2017.

3. Applicant – M/s. Bauli India Bakes & Sweets (P) Ltd., Advance Ruling No. GST – ARA—108/2018-19/B-36-Mumbai Dated 08.04.2019

The applicant is a registered company was early engaged in the business of trading in bakery products and later setup a factory for manufacture of such goods with all due permission from the erstwhile Central Excise Department during December 2016 and started the commercial productions during September 2017. With the implementation of GST w.e.f 1st July, 2017 the applicant moved the AAR – Maharashtra with two questions, they were -

1. *Whether the ITC availed by the applicant in case of capital goods received prior to 1st July 2017 is admissible to the applicant?*
2. *Whether while determining the liability to pay tax on the outward supplies made by the applicant, the applicant can adjust the ITC in respect of capital goods procured by it prior to 1st July, 2017?*

Since the above said issues or questions were relating to availment of ITC paid on the capital goods i.e. plant and machinery under pre-GST regime and outside the purview of the AAR, the AAR has rejected the application.

To be continued….

Angry Mother Nature

Mother Nature is protecting everything under her care, but she also has her way of warning us when we do not take care of her in return. So let us pledge on this auspicious Independence Day to take care of her, she will never betray us

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Commentary on Disqualifications for Appointment of Director Part-II
Series- 19

This Article deals with the provisions relating to the sub section (2) and (3) of Section 164 of the Companies Act, 2013 r/w Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Provisions: Section 164(2) of the Companies Act, 2013 ('the Act'):

Section 164(2)

(2) No person who is or has been a director of a company which-

- (a) has not filed financial statements or annual returns for any continuous period of three financial years; or
- (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2)

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Rule 14 of the Companies (Appointment and Qualification of Directors) Rules, 2014:

(1) Every director shall inform to the company concerned about his disqualification under sub-section (2) of section 164, if any, in Form DIR-8 before he is appointed or re-appointed.
(2) Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in sub-section (2) of section 164, the company shall immediately file Form DIR-9, to the Registrar furnishing therein the names and addresses of all the directors of the company during the relevant financial years.
(3) When a company fails to file the Form DIR-9 within a period of thirty days of the failure that would attract the disqualification under sub-section (2) of section 164, officers of the company specified in clause (60) of section 2 of the Act shall be the officers in default.
(4) Upon receipt of the Form DIR-9 under sub-rule (2), the Registrar shall immediately register the document and place it in the document file for public inspection.

(5) Any application for removal of disqualification of directors shall be made in Form DIR-10.

Commentary

1) The disqualification under 164(2) of the Act may be considered as failure to perform the duties as a director towards his Company, members, employees, shareholders, and community as per Sec.166 of the Act.

a) **Applicability** Applicable to all types of companies i.e. Private Companies, Public Companies and OPC, unlike under erstwhile Companies Act 1956, it was applicable only to public companies.
b) Applicable to all kinds of directors including Small Shareholders Director.
c) However, the disqualification under this sub-section was not applicable to Nominee Directors nominated by specified institutions (Circular No.8/2002, dated 22/03/2002).
d) Independent Directors - By combined reading of section 149(12) and 164(2) of the Act, question arises, whether disqualification is also applicable to Independent Directors?
e) In case of Government Company, Section 164(2) of the Act is not applicable.
f) Further, if any director is appointed by virtue of any other Act, which is having overriding effect over the Companies Act, 2013, then for such director, disqualification is not applicable.

2) Mandatory: As the wording used is 'shall'. Hence no other body or authority or shareholders or company or Board has power to relax the disqualification.

3) Ipso facto – On the happening of any event as specified in Section 164(2) of the Act, the directors have to vacate the office ipso facto.

Whenever the director incurs disqualification under Section 164(2) of the Act, he shall automatically vacate office of director in all other companies except the Company in which he/she is disqualified (defaulting company) as per proviso to Section 167(1)(a) of the Act. In other words a disqualification under Section 164(2) will trigger automatic vacation of office of directors in other companies only and not in the company in respect of which such disqualification has incurred.

The disqualified director can neither be re-appointed in that company in which he disqualified nor appointed in any other Company nor continue to hold office in the other companies other than the defaulting company. However there are different interpretation on this matter.

4) Grounds for disqualification of director under Section164(2) of the Act:

a) *Where a company has not filed Financial statements* ***or*** *Annual returns for any continuous period of three financial years –*

In case a company fails to file its financial statements or annual returns for a continuous period of three financial years, then the directors of such company as on the last date within which filings should have been made, shall be disqualified (i.e due date of filing shall be the date of default). There is no time limit of one year for disqualification unlike other clause.

The person who ceased to be the director of such company, on or before the date of default shall not be disqualified.

Since the term used herein is "or", the default in filing either financial statements for 3 consecutive years or annual return for a consecutive period of 3 years will leads to disqualification of director.

The failure to file Financial Statements or annual returns should be for a continuous period of three financial years. Any intermittent failures for three years will not attract disqualified.

Subsequent filing or ratification is not relevant.

b) *Where a Company has failed to*
(i) repay the deposits accepted by it; or

(ii) pay interest deposits accepted by Company; or
(iii) redeem any debentures on the due date; or
(iv) pay interest due on debentures; or
(v) pay any dividend declared;

and such failure to pay or redeem continues for one year or more, then all the directors shall be disqualified for a period of five years from the date of effective default.

Deposit as well as Debentures used herein covers both secured as well as unsecured. Further, dividend used herein covers both interim dividend as well as final dividend.

Dividend declared but not paid is only covered, however dividend not claimed, not declared or not transferred to separate bank account or to IEPF is not covered in this provision.

Failure to pay interest on banks or Financial Institutions Loans does not attract disqualification.

Words 'deposit', 'dividend' and 'Debenture' shall carry same meaning as defined u/s 2(31), 2(35) and 2(30) of the Act respectively.

5) **Commencement of 5 years term of disqualification:** In Section 164(2)(a) of the Act, the period of five years shall be counted from the last date by which the returns should have been filed for the third year.

The disqualifications are not applicable to the person who are the directors during the relevant period and who ceased to be directors before the last date of filing. However, the default which was incurred during such directors' tenure, they are liable.

In Section 164(2)(b) of the Act, the period of five years shall be counted from the date of effective default. If failure continues for one year or more – provision is applicable, if default is rectified within a year. Then there is no disqualification.

All the persons who are directors from the due date (date of default) to expiry of one year after the due date (effective date of default) are disqualified. If any director resigns before effective date of default, then no disqualification.

6) **Disqualification for newly appointed director(s)**

If a person is appointed as a director of a defaulting company u/s 164(2) of the Act, such person shall not be disqualified immediately. Time period of 6 months is provided for rectification.

7) **Whether the Section 164 (2) of the Act has prospective or retrospective effect?**

In simple words, default u/s 164(2)(a) to be considered from the financial year 2014-2015. Various judicial precedents supports this view.

However, for directors of public companies or private company which is a subsidiary of public company, the disqualification shall be considered for defaults as specified u/s 274(1)(g) of the erstwhile Companies Act, 1956 as well as defaults u/s 164(2) of the Companies Act, 2103.

8) **Additional clauses relating to disqualification of directors for private companies**

Any private company, which is not a subsidiary of a public company, by its articles of association, may prescribe such other additional clauses for disqualifying a person to be appointed as director of such company. Provided that, such additional clauses shall not be derogatory to Section 164(1) and (2) of the Act. However public companies cannot have additional disqualifications.

However, there are no express provisions in the Act to preclude the public company or a private company which is a subsidiary of a public company to have any additional clauses on directors' qualifications.

9) Duty towards Intimation on Disqualification and Duty of RoC and Removal of Disqualification:

Duty of Director: Every director whenever he is being appointed or re-appointed, he shall inform to the company *in Form-DIR-8* about his disqualification.

Duty of the Company: A Company which is in default as per section 164(2) of the Act, then such Company shall immediately inform ROC in Form DIR-9 furnishing the list of names and addresses of all the directors during the relevant financial years.

If the company fails to file DIR-9 then within 30 days of the failure, then the officers in default the company as specified in Section 2(60) shall become officers in default.

Duty of the RoC: On receipt of DIR-9, RoC shall register the same place the document for public inspection.

Removal of Disqualification: An application in Form DIR-10 shall be filed to remove disqualification of director u/s 164(2).

10) All Directors vacates The promoters of the company or Central Government may appoint directors in line with Section 167(3) of the Act.

11) Section 152(4) Every person proposed to be appointed as a director shall file a declaration that he is not disqualified to become a director under this Act.

12) Auditor's Duty

a. The auditors' report of every company shall contain a clause stating that whether the directors of the reporting company are disqualified as at the end of the reporting period or not.
b. By virtue of exemption notification dated 05/06/2015, it may also be noted that where none of the directors of a Government company have been directors in a public or private company (other than Government company), the disqualification mentioned under section 164(2) would not get attracted since the disqualification under the said section is defined in respect of a person who is director of a public or private company (other than Government company).

Gella Praveen Kumar
B.Sc., MBA, FCA, Grad CMA
Faculty at ICAI for GST training
Practising Chartered Accountant
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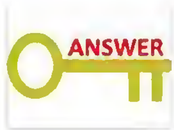
Mr.X an Individual has got registered under GST as a regular service provider. Mr.X does market research and support services on behalf of an entity located outside India to its customers in India. Mr.X raise the professional fee bill in Foreign currency and receives the same in convertible foreign currency. Can Mr.X consider the same as Zero Rate supply and get relief from charging GST to its customer situated abroad

Please send your opinion to,
enewsletter.icsimysore@gmail.com



Opinion To Last Month's Brainy Bits

Facts of the case

- M/s XYZ ltd., (hereinafter referred as Supplier) is registered under Section 10 of CGST Act, 2017 for Composition benefit
- Supplier has to comply with the GST provisions with regards to payment of tax on his Turnover
- Turnover of the supplier includes money received by way of Interest on Fixed Deposit for a sum of Rs.15,000/- for the month of March 2019
- Supplier has no other business activity other than Trading and receipt of Interest during March 2019

Relevant citation

Section 10 of CGST Act, 2017: Rate prescribed for various supplies as per below:

i) Manufacturer: 2% of the Turnover in the state
ii) Hotel or Restaurant: 5% of the Turnover in the state
iii) Other supplies: 1% of the Turnover in state

FINANCE (NO. 2) ACT, 2019

[Explanation. –– For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount **shall not be taken into account for determining the value of turnover in a State** or Union territory.**]**

Order No. 01/2017

Notification 12/2017 dtd:28.06.2017 – list of services exempted covering Interest income

Conclusion

The above scenario of providing Exempt services is one of the condition laid out Under Section10 restricting the supplier to opt for Composition scheme initially. However, doubts have been raised about the Income derived by way of Interest income from Fixed Deposits. The same has been clarified during October 2017 by the department giving relaxation for Interest income drawn in addition to supplies by way of Hotel or Restaurant service for having eligibility under Composition scheme. However, CGST Amendment Act, 2018 has brought in a new clause w.e.f 01.02.2019 allowing the Composition registered person for making supply of Exempt services in addition to the one permitted by way of Order No.01/ 2017 giving a threshold limit of 10% of Turnover in a state or Rs.5lakhs whichever is higher.

Considering the above Finance Act, 2018 amendment, section 10 has been altered suitable vide Finance Act, 2019 for bringing the clarification provided by way of Order No.01/2017 into the main section itself. Accordingly, the supplier need not be required to pay any GST on the supply recorded by way of Interest income from Fixed deposit or extending loans/advances.

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Solved cases of Supreme Court and NCLAT

Delhi Diaries 17

Pioneer Urban Land and Infrastructure Ltd v. Union of India – Homebuyers are Financial Creditors in Respect of Real Estate Companies

The Real Estate Industry, once at the forefront of growth, riches, employment and opportunities has been in an extended dull period in the last few years. The direct effect of this has been that a lot of homebuyers were left in a difficult situation of having invested in property but not being able to take possession of the same and hence paying rent on the one hand and EMIs on the other. Governments at the state and central level have stepped with various legislative and regulatory measures to provide some relief to such homebuyers.

The foremost of the legislative interventions is the Real Estate (Regulation and Development) Act, 2016 ("RERA"). However, the Government took the additional step of bringing about an amendment to the Insolvency and Bankruptcy Code, 2016 explaining that

> " (i) any amount raised from an allottee under real estate project shall be deed to be an amount having the commercial effect of a borrowing
>
> (ii) the expressions, "allottee" and 'real estate project' shall have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of the Real Estate (Regulation and Development) Act, 2016"

This amendment was challenged by some of the real estate developers on the following ground.

1. Such an amendment treats unequal equally, in that the actual financial creditors such as banks enter into transactions that are fundamentally different from the transactions between homebuyers and developers and to put homebuyers on the same footing as banks etc. would be arbitrary.
2. Such an amendment has no nexus with the objects sought to be achieved by the code.
3. Builders would be jeopardized by the large number of petitions by homebuyers under Section 7 of the Code.
4. A resolution plan would be fundamentally unachievable if a large number of homebuyers occupy a position on the board. The interests of the homebuyers are not in sync with the interests of other financial creditors as what other creditors want is repayment

whereas the homebuyers would want possession of their homes.

5. The deeming fiction of Section 5(8)(f) was unnecessary as the concerns of homebuyers had been addressed in RERA.
6. The characteristics of financial creditors explained in *Swiss Ribbons* are not met. Homebuyers are not financial creditors.
7. Explanation cannot change the meaning of an enactment. By way of an explanation, a non-financial creditor cannot be made a financial creditor.
8. If at all, a homebuyer should be an operational creditor, and if they are treated as a financial creditor, a valuable right, i.e., the right to resist the insolvency petition on the grounds of a pre-existing dispute is taken away.
9. The perception of financial creditors and of the Indian real estate industry was also relied upon to show the ill effect that could be visited upon the industry if homebuyers are treated as financial creditors.

On the other hand, the Government of India relied upon the report of the insolvency committee and argued that the amendment had the backing of the relevant experts. It was further contended on behalf of the Union Government that the monies received from the initial allottees is what drives a real estate project and hence they are financial creditors within the meaning of the code as existed even prior to the amendment in question. Further, the allottees are required to make payment of certain sums at each step of the construction process and as such though they are much smaller than the other financial creditors in terms of the money advanced to the builder, the transaction is not much different from that of loan. The only difference being that in the case of the other financial creditors, the repayment is in terms of money and in the case of the allottees, the repayment is in terms of housing unit delivered to them. There is a similar component of time value of money involved in the case of allottees and other financial creditors in that the allottees are typically able to avail of the housing units at a lower price that those purchasing finished housing units.

The Additional Solicitor General appearing for the Union of India addressed the following arguments in addition:

1. The Government must be given some play in the joints with respect to economic legislation. This has buttressed in respect of IBC in the judgment of the Supreme Court in *Swiss Ribbons*.
2. No right to resist the insolvency petition is taken away as it is still open to the developer to contend that no amount is due from him to the allottee.
3. The sledgehammer of insolvency can be stopped at 5 steps and it is not a sudden phenomenon that will unexpectedly change the management of the real estate developer.

Examining the above arguments, the court agreed with the Union of India, in that the deeming provision in the explanation of Section 5(8)(f) was not a fiction that introduced something that was not there prior but only clarified with a view to do away with ambiguity. Hence the court upheld the amendment.

With a view to enable the tribunals to deal with the influx of cases that are likely to come before them, the Supreme Court also directed the Union Government to file an affidavit detailing the steps taken by them to deal with the increased number of cases.

It is intriguing that the neither side sought to rely upon the tax treatment of monies received from homebuyers, as to whether they were treated as debt or liabilities or otherwise as that would have gone a long way in determining the position of allottees *vis a vis* financial creditors prior to the amendment.

Regulatory Updates

Compiled by:
Matruka B.M.
Professional student Mysore

Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Appointment and Qualification of Directors) Rules, 2014, which is to be known as Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019.

These rules shall come into effect on the date of their publication in the Official gazette.

In the principle rule, after the proviso of rule 12A, the following provisos shall be inserted,

"Where an individual who has already submitted e-form DIR-3 KYC in relation to any previous financial year, submits web-form DIR-3 KYC-WEB through the web service in relation to any subsequent financial year, it shall be deemed to be compliance with the provisions of this rule for the said financial year."

If an individual desires to update his personal mobile number or the e-mail address, he shall update the same by submitting e-form DIR-3 KYC only.

The fee for filing such forms shall be payable as provided in Companies (Registration Offices and Fees) Rules, 2014.

Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2019, dated 25th July 2019.

Circulars

MCA has extended the time limit for filing e-form BEN-2 upto 30.09.2019 without payment of additional fee.

General Circular No. 08/2019, dated 29th July, 2019