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Mysuru Chapter



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corporate governance"

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CS Veerash M.J.
Chairman
Mysore Chapter

Dear Professional Colleagues

I am happy to meet and greet you all through the eMagazine. I am happy to inform you all that, we conducted Career Awareness Programme in Nataraja College, Mysuru for M.com., Students.

In the month of January 2020, Preferably Second week, we are planning to conduct a Two-day Residential Programme for our members and students, Topics and date will be finalized soon. Looking forward for your valuable participation.

Thank You,

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Chapter Activities

Career Awareness Program

On 12.11.2019, Chapter organised a Career Awareness Program at Sri Nataraja First Grade College, Mysuru. Around 75 students from Commerce Department attended the programme. CS Harsha A, Treasurer explained in detail about the course offered by the Institute and the criteria for eligibility for the course, examination, requirements of training etc.

She also highlighted the importance of making the right career choice so as to be successful in life. She then spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretary Course were distributed to the participants. CS Harsha A, also clarified the various doubts raised by the participants and thanked the management for providing this opportunity.





CONSUMER PROTECTION ACT, 2019- A NEW BEGINNING

Introduction

The Consumer Protection Act, 2019 has replaced the three decades old Consumer Protection Act, 1986. It may be noted that among other legislations, Consumer Protection Act continues to be principal law giving effect to protection of consumer interests in the country. While it is true that 1986 Act was amended several times, need was felt to overhaul and replace it with a new Act for the administration of consumer protection particularly in view of large number of e-commerce transactions being taking place these days.

The new Act proposes a plethora of key changes and also heralds a new era through formation of central regulator for the first time.

Key features of the Act of 2019

I. Introducing Central Consumer Protection Authority

One of the key features of the new Act is the proposed formation of Central Consumer Protection Authority known as Central Authority to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class. Section 10 of the new Act provides for the same from such date as may be notified.

Chapter III comprises of sections 10 to 27 which deals with various matters such as formation,

constitution, salary and allowances, procedures, appeals, powers etc.

II. Pecuniary limits of various fora revisited

Pecuniary limits of jurisdiction of various redressal machineries under the Act have been revised. The comparison between the pecuniary limits under the erstwhile Act and the new Act:

Forum/Court	Old limit	New limit
District Forum	Up to 20 Lakh	Up to 1 cr
State Commission	20Lakh to 1 cr	1 cr to 10 cr
National Commission	Above 1 cr	Above 10 cr

III. Enlarging the scope of the Act:

The scope of the Act has been enlarged so as to cover those persons also as 'consumer' who buys any goods or hires or avails any service through any online or offline mode including direct selling and multi-level marketing. For this purpose, a new explanation has been added under section 2(7) which defines consumer.

Further, e-commerce has been covered under the new Act which is a welcome move considering a large volume of shopping takes place these days through online platforms like amazon, flipkart etc. The Government has been authorized to make rules and provisions for prevention of unfair trade practices in the field of e-commerce. This would

ensure legal protection to consumers against exploitation and unfair practices by e-commerce platforms.

Another significant feature is that the new Act now provides for seven grounds for filing complaints as against six grounds in the earlier Act.

IV. Product Liability

Product Liability is a significant feature of the new Act. Earlier there was no separate provision to this effect and Civil Courts were the only remedy available. "Product Liability" has been defined to mean the responsibility of a product manufacturer or seller of a good or service to compensate for any harm caused to a consumer by such defective product manufactured or sold.

A separate Chapter VI has been dedicated to this new concept. The product liability provisions have tightened the screws on manufacturers and sellers of products in respect of any harm caused to a consumer from manufacturing or designing defect, not conforming to product warranty specifications, failure to contain adequate instructions of correct usage etc. Chapter VI comprises of sections 82 to 87 which contains detailed provisions relating to product liability.

V. Settlement of disputes through mediation

Mediation has been provided for the first time under the new Act. This enables the parties to settle their disputes amicably through mediation. Chapter V has been introduced for this purpose which provides that a consumer mediation cell to be attached to each of the district forums and state commissions at the state level and National

Commission at the national level. Procedure for mediation has been prescribed under section 79 of the Act.

VI. Complaint can be filed from consumer's place

Now a consumer can file a complaint under the Act in the appropriate consumer forum within whose jurisdiction he ordinarily resides or works for gain. Earlier it used to be at the place where the respondent carried on his business or worked for gain.

Concluding remarks

As is evident, Consumer Protection Act, 2019 has widened the reach of consumer protection regime in India. The changes made under the new Act has enlarged the scope of the Act and empowering the consumers. The new Act in several respects is a significant departure from the old Act as it attempts to touch upon the issues which remained unattended by the old Act of 1986. Further the new Act having replaced the old Act of 1986 seems to be modern piece of legislation as it has incorporated many welcome initiatives like e-commerce, mediation, product liability, Central regulating authority etc.

However, having said that, the true impact of the new Act remains to be seen. The implementation of various new concepts added will also pave the way for achieving the desired outcome.





Significant Beneficial Owners (SBO) Simple on paper but layers of complexity

A. Why Companies need to figure out who is SBO

We need to first understand who is a Significant Beneficial Owner - he is an individual who ultimately owns or controls more than 10% of a Company's shares or voting rights or who otherwise exercises control over the Company or has significant influence in the management of the Company. Not everyone wants to be identified as SBO. Many people would like to deliberately hide themselves as SBO due to various reasons like the use of funds may be for illicit purpose, terrorist activities or to save tax, for corporate crimes, corruption, bribery or money laundering. The corporate vehicle is considered as a channel by the defaulters for the use of funds for such illegitimate purposes. Hence, it is important for any country to find the SBO of any organization to prevent the misuse of corporate structure for such unlawful purposes.

B. Background of international leakage of data

In April, 2016 Panama Papers which were around 11.5 million documents that detail financial and attorney-client information for more than 214,488 offshore entities were leaked, this being the "biggest leak in the history of data journalism". The documents, some dating back to the 1970s were created by, and taken from, Panamanian law firm and corporate service provider "Mossack Fonseca." The reporters found that some of the Mossack Fonseca shell corporations were used for illegal purposes, including fraud, tax evasion and evading international sanctions. There was misuse of offshore Companies and became the subject matter for intense global scrutiny of such misuse. The journalists on the investigative team found business transactions by many important figures in world politics, sports and art. Named in the leak were 12 current or former world leaders; 128 other

public officials and politicians; and hundreds of celebrities, businessmen, and other wealthy individuals of over 200 countries. From India, names of Mr. Amitabh Bacchan and Mr. Vinod Adani, brother of Adanis were included.

In November, 2017 the Paradise Papers which were a set of 13.4 million confidential electronic documents relating to offshore investments were leaked to the German reporters. They contained the names of more than 120,000 people and Companies. There were names of 714 Indians including Minister of State for Civil Aviation Jayant Sinha, actor Mr. Amitabh Bachchan, former Member of Parliament of the Rajya Sabha, Vijay Mallya and many others.

C. Financial Action Task Force (FATF)

FATF was set up in the year 1989 which is an international body that sets standards for anti-money laundering and counter-terrorist financing. FATF has issued guidance for countries on beneficial ownership and for Financial Institutions (FIs) on implementing a risk-based approach towards handling customers. **India joined FATF in the year 2010.**

The FATF recommendations provide measures that address the transparency and beneficial ownership of legal persons, and it adds a series of recommendations that countries should adopt to prevent the misuse of legal persons from being misused for criminal purposes. These recommendations include:

1. Assessing the risks associated with legal persons and legal arrangements
2. Making legal persons and legal arrangements sufficiently transparent, and
3. Ensuring that accurate and up-to-date basic and beneficial ownership information is available to competent authorities in a timely fashion.

FATF recommendations No. 24 and 25 require the countries to ensure that competent authorities have timely access to adequate, accurate and up-to-date beneficial ownership information. As a result, measures to implement Recommendations No.24 and 25 are fundamental in order to implement an effective system.

D. Changes in UK Law

Company Law Committee (CLC) has noted that the English Companies Act, 2006 was amended in 2015 to requiring certain Companies and LLPs to create and maintain a 'Persons with Significant Control' Register and make it available to public, as well as file the information with the UK Companies House. A publicly accessible central registry of UK Companies beneficial ownership information has also been established. Regulatory concerns have been raised in India also, drawing on examples set by these jurisdictions.

E. The Companies Amendment Act, 2017 and notification of SBO Rules and revised Rules

Section 90 initially introduced in the Companies Act, 2013 ("the Act") empowered the Central Government to have investigated the beneficial ownership with regard to any shares.

Ministry of Corporate Affairs ("MCA") notified revised Section 89 (10) and 90 of the Act through Companies (Amendment) Act, 2017 ("the Amendment Act") on 13th June 2018 read with the Companies (Significant Beneficial Owners) Rules, 2018 ("the Principal Rules") which came into effect from 1st June, 2018 and amended through Companies (Significant Beneficial Owners) Amendment Rules, 2019 ("the Amended Rules, 2019") dated 08 February, 2019.

Such regulatory framework brought in mainly to identify individual (natural person) who hold significant stake indirectly in reporting company and who hide behind the screen. With these amendments, SBO became a key concern to the corporates.

It looks simple on paper but has layers of complexities like:

- Data protection regulations,
- Availability of data in time,
- Different regulations in different jurisdiction,
- Complex global organizational structures
- Barriers in off-shore tax havens jurisdiction

- **Meaning of Beneficial Interest:** Sub-section (10) of section 89 defines 'beneficial interest' for the purpose of section 90, as follows:

"For the purposes of this section and section 90, beneficial interest in a share includes, *directly or indirectly*, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—

- (i) exercise or cause to be exercised any or all of the *rights attached to such share*; or
- (ii) receive or participate in any *dividend or other distribution* in respect of such share."

- **Definition of SBO under Section 90 and Rule 2 (h)**

As per Section 90 (1) SBO is every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner")

Section 90 (1) uses the two expressions 'significant influence' and 'control'. But it adopted only the definition of 'control' under section 2(27) and it does not adopt the definition of 'significant influence' in section 2(6) and hence the Rule 2 (i) defines 'significant influence' now in Amendment of Rules, 2019.

As per Rule 2(h) of the Amendment Rules, 2019 a "SBO" in relation to a reporting company means an individual referred to in sub-section (1) of Section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

- holds indirectly, or together with any direct holdings, **not less than 10%** of the shares;
- holds indirectly, or together with any direct holdings, **not less than 10%** of the voting rights in the shares;
- has right to receive or participate in **not less than 10%** of the total distributable dividend, or any other distribution, in a

- financial year through indirect holdings alone, or together with any direct holdings;
- has right to exercise, or actually exercises, **significant influence or control**, in any manner other than through direct holdings alone.

Thus, the limit of 25% specified in the section has been reduced to 10%

There are Explanations (I) to (VI) that are given under definition of SBO in Rule 2 (h)

- **Direct holding:** For the purpose of Rule 2 (h) of the Amendment Rules, 2019, an individual shall be considered to hold a right or entitlement **directly** in the reporting company, if he satisfies any of the following criteria, namely-
 - (i) the shares in the reporting company representing such right or entitlement are held in the name of the individual;
 - (ii) the individual holds or acquires a beneficial interest in the share of the reporting company under sub-section (2) of Section 89, and has made a declaration in this regard to the reporting company.

If an individual does not hold any right or entitlement indirectly as per the above-mentioned clauses, then he should *not be considered to be a SBO*.

Therefore, as per this clarification, in order to be an SBO, a person must have an **indirect right or entitlement** and where the person has only direct holding, he shall not be termed as the SBO.

- **Indirect holding:** For the purpose of Rule 2(h) of the Amendment Rules, 2019, an individual shall be considered to hold a right or entitlement indirectly in the reporting company, if he satisfies any of the following criteria, in respect of a member of the reporting company, namely, where the Member of the reporting company is a
 - (i) Body Corporate (whether incorporated or registered in India or abroad), other than a LLP and the individual:**
 - (a) Holds majority stake in that member; or
 - (b) Holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member;

(ii) Hindu Undivided Family (HUF) (through Karta) and the individual is the Karta of the HUF.

(iii) Partnership entity (through itself or a partner) and the individual:

- (a) is a partner; or
- (b) holds majority stake in the body corporate which is a partner of the partnership entity; or
- (c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

(iv) Trust (through trustee) and the individual:

- (a) is a trustee in case of a discretionary trust or a charitable trust;
- (b) is a beneficiary in case of a specific trust;
- (c) is the author or settlor in case of a revocable trust.

(v) (a) a pooled investment vehicle; or (b) an entity controlled by the pooled investment vehicle based in member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member State is a member of the International Organization of Securities Commissions, and the individual in relation to the pooled investment vehicle -

- (A) is a general partner; or
- (B) is an investment manager; or
- (C) is a Chief Executive Officer where the investment manager of such pooled vehicle is a body corporate or a partnership entity.

vi) a pooled investment vehicle; or (ii) an entity controlled by the pooled investment vehicle, based in a jurisdiction which does not fulfil the requirements referred to in clause (v) of Explanation III, the provisions of clause (i) or clause (ii) or clause (iii) or clause (iv) of Explanation III, as the case may be, shall apply.

- **Definition of Acting Together**

If any individual, or individuals acting through any person or trust, act with a common intent or purpose of exercising any rights or entitlements, or exercising control or significant influence, over a reporting company, pursuant to an agreement or

understanding, formal or informal, such individual, or individuals, acting through any person or trust, as the case may be, shall be deemed to be **'acting together'**.

- **Definition of Shares for these Rules**

Global depository receipts (GDR), compulsorily convertible preference shares (CCPS) or compulsorily convertible debentures (CCD) shall be treated as "shares" for determining SBO.

F. Key changes in Amendment Rule, 2019

In the Principal Rules in Rule 2, in sub-Rule (1), for clauses (b) to (e), the following clauses have been substituted, namely:-

(b) "control" means control as defined in clause (27) of section 2 of the Act;

(c) "form" means the form specified in Annexure to these Rules;

(d) "majority stake" means;-

(i) holding more than one-half of the equity share capital in the body corporate; or

(ii) holding more than one-half of the voting rights in the body corporate; or

(iii) having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;

(e) "partnership entity" means a partnership firm registered under the Indian Partnership Act, 1932 (9 of 1932) or a limited liability partnership registered under the Limited Liability Partnership Act, 2008 (6 of 2009);

(f) "reporting company" means a company as defined in clause (20) of section 2 of the Act, required to comply with the requirements of section 90 of the Act;

(g) "section" means a section of the Act;

(h) "SBO" in relation to a reporting company means an individual referred to in sub-section (1) of Section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in the reporting company, namely:

- holds indirectly, or together with any direct *holdings*, *not less than 10%* of the shares;
- holds indirectly, or together with any direct *holdings*, *not less than*

10% of the voting rights in the shares;

- has right to receive or participate in not less than *10% of the total distributable dividend*, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

- has right to exercise, or actually exercises, *significant influence or control*, in any manner other than through direct holdings alone.

Thus, the limit of 25% specified in the section has been reduced to 10%

There are Explanations (I) to (VI) that are given under definition of SBO in Rule 2 (h)

(i) "significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies'.

In the Principal Rules, Rule 2A is inserted and Rule 3, 4 and 7 have been substituted as follows vide amendment in Rules on 08 February 2019

Rule 2A- Onus on company to find SBO

(1) Every reporting company shall take **necessary steps to find out** if there is any individual who is a SBO, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.

(2) Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company **shall in all cases** where its member (other than an individual), holds not less than ten per cent of its;(a) shares, or (b) voting rights, or (c) right to receive or participate in the dividend or any other distribution payable in a financial year, give notice to such member, seeking information in accordance with subsection (5) of section 90, in Form No. BEN-4.

Section 90 (4A) inserted by The Companies (Amendment) Act, 2019- Effective from 15th August 2019 [Companies (Amendment) Second Ordinance 2019 is repealed on 31st July 2019] states that every company **shall take necessary steps** to identify an individual who is a SBO in relation to the company and require him to comply with the provisions of this section.

Rule 3- duty of SBO to give Form BEN-1 and continual disclosure if change

- (i) Every individual who is a significant beneficial owner in a reporting company, shall file a declaration in **Form No. BEN-1** to the reporting company within 90 days from such commencement that is 08 February, 2019 and
- (ii) Every individual, who subsequently becomes a significant beneficial owner or where his significant beneficial ownership undergoes any change, shall file a declaration in Form No. BEN-1 to the reporting company, within 30 days of acquiring such significant beneficial ownership or any change therein.

Rule 4- Duty of Company to file Form BEN-2 upon receipt of BEN-1

Upon receipt of declaration under Rule 3, the reporting company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of 30 days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.

Notice seeking information about significant beneficial owners.-

A company shall give notice seeking information in accordance with under Section 90 (5) in Form No. BEN-4.

Rule 7—Mandatory to make Application to Tribunal

The reporting company **shall apply** to the Tribunal,

- (i) Where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or
- (ii) Where the information given is not satisfactory, in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including
 - (a) Restrictions on the transfer of interest attached to the shares in question;
 - (b) Suspension of the right to receive dividend or any other distribution in relation to the shares in question;
 - (c) Suspension of voting rights in relation to the shares in question;
 - (d) Any other restriction on all or any of the rights attached with the shares in question

Opportunity by Tribunal - Section 90 (8) reads that - On any application made under

Section 90 (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a **period of 60 days** of receipt of application or such other period as may be prescribed.

Aggrieved person can make application to Tribunal - Section 90 (9) reads that ---

The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under Section 90 (8), within a period of **one year** from the date of such order,

Provided that if no such application has been filed within a period of one year from the date of the order by the Tribunal, then such shares shall be transferred, without any restrictions, to IEPF Authority constituted under Section 125 (5) in such manner as may be prescribed

Rule 8- Non applicability of SBO rules to following entities

These rules shall not be made applicable to the extent the share of the reporting company is held by,

- (a) the authority constituted under sub-section (5) of section 125 of the Act that is IEPF (Investors Education & Protection Fund)
- (b) its holding reporting company, provided that the details of such holding reporting company shall be reported in Form No. BEN-2
- (c) the Central Government, State Government or any local Authority;
- (d) (i) a reporting company, or (ii) a body corporate, or(iii) an entity, controlled by the Central Government or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;
- (e) Securities and Exchange Board of India registered Investment Vehicles such as mutual funds, alternative investment funds (AIF), Real Estate Investment Trusts (REITs), Infrastructure Investment Trust (InVITs) regulated by the Securities and Exchange Board of India,
- (f) Investment Vehicles regulated by Reserve Bank of India, or Insurance Regulatory and Development Authority of India, or Pension Fund Regulatory and Development Authority.

G. Possibility of not having any SBO

The Principal Rules required the companies to identify its senior management officials as the SBO, where no SBO could be determined as per the provisions of the Rules. However, there is no such requirement as per the amended SBO Rule, 2019.

H. Register of SBO in Form BEN-3

Every company shall maintain a register of the interest declared by individuals under sub-section

90 (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed. In Form BEN-3 The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding Rs.50/- for each inspection.

I. **Forms to be filed** In the Principal Rules, Form No. BEN-1, Form No. BEN-2, Form No. BEN-3 and Form No. BEN-4, have been substituted.

Sr. No.	Form No.	Purpose	By Whom	To Whom	Time Period
1.	BEN- 1	Declaration by the beneficiary owner who holds or acquires significant beneficial ownership in shares	Every individual who is a SBO	To the company in which he holds the significant beneficial ownership	Within 90 days from commencement of these Rules i.e. February 08, 2019 and Within 30 days in case of any change in his significant beneficial ownership.
2.	BEN- 2	Return to ROC in respect of declaration under Section 90 of the Companies Act, 2013	The Reporting Company shall file form, if any declaration is received by the Reporting Company	With the Registrar in respect of such declaration	Within period of 30 days from the date of receipt of declaration by the company.
3.	BEN-3	Register of beneficial owners holding significant beneficial interest. The form specifies the details of the beneficial owner holding significant beneficial interest. However, the particulars of the shares in which significant beneficial interest is held by the beneficial owner does not form part of the said form as per the Amendment Rules.	The Reporting Company which has significant beneficial ownership	Maintain register of interest declared by individuals in Form BEN-3	Not specified
4.	BEN-4	Notice seeking information about significant beneficial owners	Reporting Company	To significant beneficial owners	Not specified

J. Penalties

- If **any person** fails to make a declaration as required he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than **Rs.1 Lakh but which may extend to Rs.10 Lakh** or with both and where the failure is a continuing one, with a further fine which may extend **to Rs.1000/- for every day** after the first during which the failure continues.
- If a **company**, required to maintain register of SBO under Section 90 (2) and file the information under Section 90 (4), or required to take necessary steps under Section 90 (4A) fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than **Rs.10 Lakh but which may extend to Rs.50 Lakh** and where the failure is a continuing one, with a further fine which may extend **to Rs.1000/- for every day** after the first during which the failure continues.
- If **any person** willfully furnishes any **false or incorrect information** or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable **to action under section 447 for Fraud**.

Conclusion It is not easy for any company to find SBO however with the right systems and processes in place, Company can identify him from the complex web of corporate structures and meet the compliance regulations. The Amendment Rules are to a large extent simplifying the challenges existed

with the Principal Rules. Under the Amendment Rules, 2019, clear criteria have been set out by the central government to identify individuals who will come under the ambit of the SBO regulations compared with an omnibus and opaque definition that was put out in June 2018 in the Principal Rules. The spirit of the Amendment Rules is to bring in more clarity and is in alignment with the Central Government's drive to inculcate transparency and accountability in the corporate set-up. The disclosures relating to SBO are expected to lead to transparency of shareholding structures and help the government identify benami transactions and prevent money laundering activities.

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INDEPENDENT DIRECTORS

On October 22, 2019 MCA has notified following four notifications amending certain requirements related to Independent Directors which shall be effective from December 01, 2019:

- A. The Notification of Institute by Central Government as per section 150 (1) and Rules as per Section 150 (3) of the Companies Act, 2013 (“CA 2013”),
 - B. The Companies (Appointment and Qualification of Director) Fifth Amendment Rules, 2019,
 - C. The Companies (Creation and Maintenance of databank of Independent Directors Rules, 2019, and
 - D. The Companies (Accounts) Amendment Rules, 2019
- A. The Notification of Institute by Central Government as per section 150 (1) and Rules as per Section 150 (3),**

Section 150 of CA 2013 provides for Manner of selection of Independent Director (ID) and maintenance of Data Bank of ID.

Section 150 (1) gives power to Central Government to notify anybody, institute or association having expertise in creation and maintenance of Data Bank containing name, address and qualification of persons who are eligible and willing to act as ID and put on their website for the use by the Company making appointment of ID.

Section 150 (3) gives power to MCA to prescribe Rules to follow by such body, Institute or association for creating and maintaining Data Bank for ID

According to the powers conferred on MCA under Section 150 it has notified **“Indian Institute of Corporate Affairs” situated at Manesar (Haryana) (“IICA”)** as such Institute, which shall create and maintain Data Bank for ID.

The link of the aforesaid Notification is as under:

http://www.mca.gov.in/Ministry/pdf/NotificationIICA_22102019.pdf

B. The Companies (Appointment and Qualification of Director) Fifth Amendment Rules, 2019 :

With this notification Rule 6 of the above referred Rules is substituted with the change of title of the Rules from “Creation and Maintenance of Data Bank of persons offering to become Independent Director” to “Compliances required by person eligible and willing to be appointed as an Independent Director”. The Rules are as follow :

1. Application to Indian Institute of Corporate Affairs, Manesar, Haryana (“IICA”)

- a. **Existing Independent Director** of a Company is required to apply to IICA **before 1st March 2020** for inclusion of his name in Data Bank for a period of one year or five years or for his life-time or from time to time renew the same; and
- b. **Any individual** who intends to get appointed as an Independent Director in a company (even if he has no DIN) is required to apply to IICA **after 1st December, 2019 and before his appointment as ID** for inclusion of his name in Data Bank for a period of one year or five years or for his life-time or from time to time renew the same.

2. Renewal with IICA

Every individual whose name has been included in the data bank with IICA shall file an application for renewal for a further period of 1 year or 5 years or for his life-time, within a period of 30 days from the date of expiry of the period up to which the name of the individual was applied for inclusion in the data bank of IICA, failing which, the name of such individual shall stand removed from the data bank of IICA. However individual who had made application to IICA and paid life

time fees for inclusion of his name in the data bank of IICA is not required to renew the application.

3. Declaration by ID

Every ID along with his declaration of meeting the criteria of independence as per Section 149 (7) of CA 2013 also now required to submit a declaration that his name is included in the Data Bank of IICA.

4. Proficiency Test & exemptions

Every individual whose name is included in Data Bank of IICA shall pass an online proficiency self-assessment test (**Proficiency test**) with score of not less than 60% in aggregate **within a period of one year from the date of inclusion of name in data Bank**, failing which his name shall stand removed from the databank of IICA.

However, Individual who has served (a) Listed Public Company or (b) Unlisted Public Company having a paid-up share capital of Rs. 10 Crore or more, as a Director or Key Managerial Personnel (KMP) for a period of not less than *10 years are not required to give Proficiency Test.

*Note: Period during which an individual was acting as Director or KMP in two or more companies at the same time shall be counted only once for calculation of the period of 10 years.

A person can give as many attempts as he wish to, for passing the Proficiency Test as there is no limit of number of attempt.

The link of the aforesaid Notification is as under:

<http://www.mca.gov.in/Ministry/pdf/CmpFifthAmndtRules 22102019.pdf>

C. The Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019

Section 150 (3) of CA 2013 gives power to MCA to prescribe Rules to follow for creating and maintaining Data Bank for ID, by any body, Institute or association which may be notified by Central Government under Section 150 (1).

Accordingly, MCA has prescribed the new Rules namely **“The Companies (Creation and Maintenance of databank of Independent**

Directors) Rules, 2019” which will be effective from **1st December 2019**, except **Rule 2** for “Definition” and **Rule 5** for “Panel” of 10 members nominated by the Central Government for the purpose of approving the outline of course and study material for Proficiency Test, which will be effective from **October 22, 2019**.

Rule 3 is Creation and Maintenance of Data Bank by IICA

(a) IICA shall create and maintain an **Online Data Bank** of persons, willing and eligible to be appointed as ID including individuals already serving as ID on the Board of companies, **which shall be placed on its websites**.

(b) The Online Data Bank shall contain **the following details of each person** whose name included in such data bank to be eligible and willing to be appointed as ID including individuals already serving as ID on the Board of companies;

- a) DIN , if applicable ;
- b) Income Tax PAN ;
- c) the name and surname in full;
- d) the father’s name ;
- e) the date of Birth ;
- f) gender ;
- g) the nationality ;
- h) the occupation ;
- i) Full Address with PIN code (present and permanent) ;
- j) Phone number ;
- k) E-mail ID;
- l) the educational and professional qualification;
- m) experience or expertise, if any
- n) any preceding criminal proceedings as specified under section 164(1)(d) that is conviction by a court for offence , involving moral turpitude or otherwise and sentenced to imprisonment thereof for a period not less than 6 months and a period of 5 years has not yet elapsed from the date of expiry of the sentence. However if a person is convicted by the Court for an offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, is not eligible to be

- appointed as a Director in any company ;
- o) the list of LLP in which he is or was a Designated Partner along with the name of LLP, nature of industry and duration with dates ; and
 - p) the list of companies in which he is or was director, along with the name of the company, the nature of industry , the nature of directorship like Executive or non- executive or Managing Director or ID or Nominee Director and the duration with dates.
- (c) IICA shall provide the information of online data bank **only to Companies** which requires to appoint ID.
 - (d) A person whose name has been included in the online data bank of IICA **may restrict his personal information to IICA to be disclosed** in the data bank.
 - (e) Any individual, whose name appears in the data bank of IICA, shall make **changes in his particulars within 30 days of such change** through web based framework which is made available by IICA for this purpose so that all the information of such person is updated.
 - (f) IICA will display on its Online Data Bank its **Disclaimer conspicuously** that the a company must carry out its own due diligence before appointment of any person as an ID.
 - (g) IICA shall with prior approval of the Central Government **fix a reasonable fees to be charged from :**
 - (i) Individuals for inclusion of his/ her names in the data bank of ID and
 - (ii) Companies for providing information of ID available on data bank

Rule 4 Duties of IICA:

- (a) IICA shall provide the **following facilities without charging any fees** with respect to every individual who is either already appointed as an ID on the Board of company or who intends to be an ID :
 - (i) conduct an online **proficiency self-assessment test** (Proficiency test) covering companies law, securities law, basic accountancy, and such other areas relevant to the functioning of an individual as ID ;

- (ii) prepare a **basic study material, online lessons**, including audio-visuals for easy reference of individuals taking the online Proficiency Test.
- (b) IICA shall daily share with the Central Government, a cumulative list of all individuals:
 - (i) whose names have been **included** in the data bank along with the date of inclusion and their Income Tax PAN or Passport number in case of foreign director;
 - (ii) whose applications for inclusion in the data bank have been **rejected** along with grounds and the dates of such rejection; and
 - (iii) whose names have been **removed** from the data bank along with grounds and the dates of such removal.

The link of the aforesaid Notification is as under:

<http://www.mca.gov.in/Ministry/pdf/CmpInpdtDirectorsRules 22102019.pdf>

D. The Companies (Accounts) Amendment Rules, 2019.

In the Companies (Accounts) Rules, 2014, in Rule 8 regarding “Matters to be included in Board Report“ in sub-rule (5)a new clause (iiia) is inserted and accordingly in the **Directors Report , the Board has to give a statement** regarding its opinion with regard to integrity, expertise and experience (including “proficiency”) of the Independent Directors appointed during the year. “proficiency” means the proficiency of the Independent Director as ascertained from the online proficiency self-assessment test (Proficiency Test) conducted by the **Indian Institute of Corporate Affairs at Manesar (Haryana) (IICA)** as notified under section 150(1) of the Companies Act , 2013

The link of the aforesaid Notification is as under:

<http://www.mca.gov.in/Ministry/pdf/CmpAccAmndtRules 22102019.pdf>

*Provisions in other countries

Directors in the UK can also obtain a Chartered Director qualification from the Institute of Directors (IoD). This experience-based assessment requires directors to show how they work within the context of their boards, use their knowledge and skills and discharge their duties.

Canada's Institute of Corporate Directors (ICD) offers the ICD.D designation. To apply, directors need to be an ICD member of good standing, have completed the ICD-Rotman Directors Education Program, have signed the ICD's Member Code of Conduct and have passed the ICD.D online examination. They also must pass an ICD.D oral peer examination and commit to a minimum of 14 hours ongoing governance education annually.

The Institute of Directors in Southern Africa (IoDSA) confers the Chartered Director (SA) professional designation. To receive the CD (SA) an applicant must comply with the entrance requirements, have been a practising director (or held equivalent office of an organisation of substance) for at least 3 years during the 5 years prior to application, and be sponsored by two individuals, preferably IoDSA members. Chartered directors must maintain their professional development through the IoDSA Continuing Professional Development (CPD) scheme.

Australian Institute of Company Directors (AICD) started in 1975 its course for being a company director. Since then about 40,000 have completed the course, which is widely seen as a base level of knowledge for a role as a board director. The course, following the facilitator-led and scenario-centric Harvard teaching model, focuses on two key capabilities — judgement and decision making. It takes five full days to complete, on top of 40 to 50 hours of preparation, mostly reading. Then there's a 3000 word assignment, an online quiz and a written exam, to pass the whole thing. The course can be taken part-time, full-time or residential, and via correspondence.

Conclusion: These new rules in India will serve two purposes, (A) **more accountability by Independent Director** (ID), the recent debacles of large corporates and banks have raised questions on the role of (ID) as why ID have failed to detect the signs of trouble in time. The ID should know their fiduciary capacity, duties, roles and responsibilities. ID are decision makers and help a company to choose the correct path when approaching major forks in the road. The decision

maker should be well versed to prevent any fiascos in the working of the Company where large stakes are involved. In order to improvise corporate governance system in India, Government thought it prudent to mandate measures to strengthen the competency, capacity and composition of boards. The Proficiency Test will cover Companies Law, Securities Law, basic Accountancy and such other relevant areas require for acting as ID. The entry standard is created by such proficiency test, and (B) **The Data Bank of ID will be a repository** available online from Indian Institute of Corporate Affairs (IICA) as one stop platform for the companies to find ID, which is a mandatory requirement. Many companies were appointing ID, who are ID only on paper and at times not having adequate skills of corporate laws. Currently, there is no requirement of minimum educational qualification for a person to be appointed as ID. However, the test will be simple and designed for ID to have the basic knowledge of corporate laws and those who are having basic knowledge of corporate working should have no wrath for this Proficiency Test. It's a welcome move by MCA though the Companies Act 2013 provides number of other measures like capping the number of directorship, meeting with quorum of disinterested directors, audit committee, Code of Conduct for ID and risk management principles. However, we also need ongoing development and training for ID on regular basis and there must be a strong disciplinary and complaints procedure if there is misconduct by ID.

Disclaimer *This legal update is not intended to be a form of solicitation or advertising. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular situation. This update is intended for knowledge sharing only.*



MSMEs and benefits for the company

We are emphasising on creation of maximum business opportunities for the #MSME so that the livelihood generation and their contribution to the economy increases substantially.

-Tweet by Shri Nitin Gadkari, 1st Oct 2019
Minister of Road Transport & Highways, Micro,
Small & Medium Enterprises
Government of India.

MSMEs, also popular as “the engine of growth” for India, has emerged as one stop solution to rampant unemployment by employing more than 50 million people, scaling manufacturing capabilities, curtailing regional disparities, balancing the distribution of wealth, and contributing to the GDP-MSME sector forms 8% of GDP. The newsletter will feature interesting articles written in engaging, fluent voice that entrepreneurs and stakeholders will find useful; pleasing balance of informational and creative articles; good balance of MSME articles along with affiliate information; and one of the few newsletters with a strong connection to enterprise development programs.

Mentioned in Welcome note for Newsletter by Shri
Giriraj Singh
MSME Hon'ble Minister of State (Independent
Charge)

This in my opinion sums up the aspirations of the present Central Government in terms of the vision, mission and focal points for further working of the Ministry. MSME has come up with a lot of schemes and benefits for the Company falling under the Micro, Small & Medium Enterprises and in particular to the Micro and Small Enterprises. Many units whether firm, LLP or Companies are unaware of the power available to them.

Main Benefits

For ease of doing business, the Government has come up with a host of benefits for MSME. The details can be found at <https://msme.gov.in/faq>. Few of the benefits are highlighted in this article for

ready reference. Maximum benefit can be yield by Micro and Small Enterprises. Any setup doing business in India can avail these benefits by checking their eligibility and enrolling under Udyog Adhar and the details of registration are given below under the head Eligibility and enrolment under Udyog Adhaar.

1. Newest Benefit -Receivables e-Discounting System (TReDS - Micro/Small/Medium)

MSMEs very often do not get their payment in time from the buyer of goods or services. In order to facilitate timely payments to MSMEs, Trade Receivables e-Discounting System (TReDS) has been developed to facilitate financing of trade receivables of MSMEs through multiple financiers. It is an electronic platform that facilitates discounting of both invoices as well as bills of exchange.

In order to facilitate timely payments to MSMEs, Ministry of Micro, Small & Medium Enterprises (MSME) has issued a notification

(<http://dcmsme.gov.in/publications/circulars/Notification1.pdf>) directing that all CPSEs and all companies having turnover more than Rs. 500 Cr. shall necessarily on-board themselves on the TReDS platform.

Currently, one may consider getting on-board on TReDS platform through Receivables Exchange of India Ltd (RXIL) OR Treds Ltd OR M1 Exchange

2. Interest Subvention Scheme for MSMEs 2018 (Micro/Small/Medium)

A 2 % interest subvention for all GST registered MSMEs having Udyog Aadhar Number [UAN], on fresh or incremental loans (both working capital and term loan up to extent of 100 Lakhs) was announced while launching outreach initiative for MSME sector on the November 2nd 2018 by Honourable Prime Minister. Ministry of MSME has decided that a new scheme viz. "Interest

Subvention Scheme for Incremental credit to MSMEs 2018" will be implemented over 2018-19 and 2019-20 with an allocation of Rs.975crore.

MSME exporters availing interest subvention for pre-shipment or post-shipment credit under Department of Commerce will not be eligible for assistance under Interest Subvention Scheme for Incremental credit to MSMEs 2018.

MSMEs already availing interest subvention under any of the Schemes of the State / Central Govt. will not be eligible under the proposed Scheme.

3. Credit Guarantee Fund Scheme (Micro/Small)

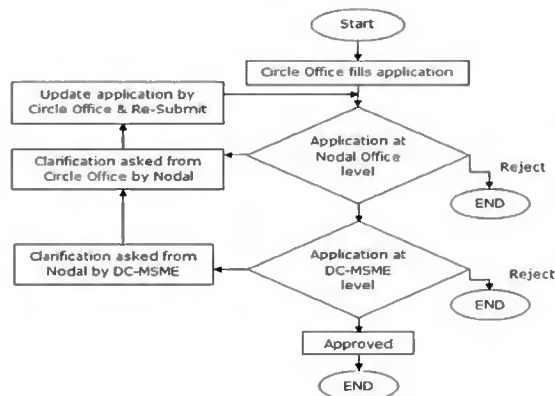
Of all the problems faced by the MSEs, non-availability of timely and adequate credit at reasonable interest rate is one of the most important. One of the major causes for low availability of bank finance to this sector is the high risk perception of the banks in lending to MSEs and consequent insistence on collaterals which are not easily available with these enterprises. The problem is more serious for micro enterprises requiring small loans and the first generation entrepreneurs.

Credit Guarantee Fund Scheme for Micro and Small Enterprises (CGS) was launched by the Government of India (GoI) to make available collateral-free credit to the micro and small enterprise sector. The Ministry of MSME, Government of India and SIDBI set up the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE) with a view to facilitate flow of credit to the MSE sector without the need for collaterals/ third party guarantees.

4. Credit Linked Capital Subsidy Scheme (CLCSS) for technology upgradation (Micro/Small)

Eligible MSEs can avail subsidy upto 15 per cent upfront capital subsidy up to a maximum cap of ₹ 15.00 lakhs (i.e., maximum investment in approved machinery is ₹ 1.00 crore) implemented by 12 nodal banks/agencies including SIDBI and NABARD. Presently, the Scheme facilitates subsidy to 51 sub-sectors/products including Khadi and Village Industries. As the Scheme progressed, the list of products/sub-sectors has been expanded by inducting new technologies/products/sub-sectors with the approval of the competent authority i.e., Technical Sub-Committee (TSC) and Governing and

Technology Approval Board (GTAB) of the CLCSS.



Detailed list of all schemes are mentioned here <https://msme.gov.in/all-schemes>.

Eligibility and enrolment under Udyog Adhaar

Under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 the following Manufacture units can register

1. If the investment in plant and machinery does not exceed Rs. 25 lakhs, then the Unit can be registered as a Micro enterprise
2. If the investment in plant and machinery is more than Rs. 25 lakhs but does not exceed Rs. 5 crore, then the Unit can be registered as a Small enterprise
3. If the investment in plant and machinery is more than Rs. 25 lakhs but does not exceed Rs. 10 crore, then the Unit can be registered as a Medium enterprise

Similarly, under the Micro, Small and Medium Enterprises Development (MSMED) Act, 2006 the following Service units can register

1. If the investment in plant and machinery does not exceed Rs. 10 lakhs, then the Unit can be registered as a Micro enterprise
2. If the investment in plant and machinery is more than Rs. 10 lakhs but does not exceed Rs. 2 Crore, then the Unit can be registered as a Small enterprise
3. If the investment in plant and machinery is more than Rs. 2 Crore but does not exceed Rs. 5 Crore, then the Unit can be registered as a Medium enterprise

The unit investment can be measured as per the Ministry of Small Scale Industries vide its notification No.S.O.1722(E) dated October 5, 2006. The online application can be filed here https://udyogaadhaar.gov.in/UA/UAM_Registration.aspx by the existing units after validating the 12 digit Aadhaar number of the applicant/owner. The

proof of belonging to SC, ST or OBC may be asked by appropriate authority, if and when required as the Social Category (General, Scheduled Caste, Scheduled Tribe or Other Backward Castes (OBC), Gender, Disability if any, PAN, exact entity name as per PAN must also be declared of the applicant/Entrepreneur. Other details sought are the

1. Location of Plant- The Applicant may add multiple plant location.
2. Official Address- The Applicant should fill complete postal address of the Enterprise including State, District, Pin code, Mobile No and Email.
3. Date of Commencement- The date in the past on which the business entity commenced its operations may be filled in the appropriate field.
4. Previous Registration Details (if any)- If the Applicant's enterprise, for which the Udyog Aadhaar is being applied, is already issued a valid EM-I/II by the concerned GM (DIC) as per the MSMED Act 2006 or the SSI registration prevailing prior to the said Act, such number may be mentioned in the appropriate place. EM- I is abolished now.
5. Bank Details- The Applicant must provide his/her bank account number used for running the Enterprise along with IFS Code of the bank's branch
6. The Enterprise must mention the Major Activity i.e. either "Manufacturing" or "Service". If the enterprise is involved in both type of activities and if major work involves in Manufacturing and small portion of activity involves in Service sector, then select your major activity type as "Manufacturing" and if major work involves in Services and small portion of activity involves in Manufacturing then select your major activity type as "Services"
7. Enterprise must select the National Industry Classification Code (2008 NIC Code) and includes all their activities. The NIC codes are prepared by the Central Statistical Organisation (CSO) under the Ministry of Statistics and Program implementation, Government of India.
8. Number of person employed

After filling all details, an OTP will be generated and Udyog Adhaar created.

Compliance under Companies Act 2013

Under the Companies Act 2013, by virtue of Specified Companies (Furnishing of information about payment to micro and small enterprise suppliers) Order, 2019 passed on 22 January, 2019 issued under Section 405 of the Companies Act, 2013, every specified company shall file a return as per MSME Form I annexed to this Order, by 31st October for the period from April to September and by 30th April for the period from October to March within thirty days from the date.

Every specified company shall file in MSME Form I details of all outstanding dues to Micro or small enterprises suppliers existing on the date of notification of this order within thirty days from the date of publication of this notification.

As per the order, all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty-five days from the date of acceptance or the date of deemed acceptance of the goods or services shall report the amount of payment due and the reasons of the delay to Ministry of Corporate Affairs.

I found a useful way of preparing the MSME data in Tally and the same link can be found here [https://help.tallysolutions.com/article/Tally.ERP9/Auditor Edition/India/Statutory Audit/MSME Outstanding.htm](https://help.tallysolutions.com/article/Tally.ERP9/Auditor%20Edition/India/Statutory%20Audit/MSME%20Outstanding.htm) (View MSME Transactions Summary). Here, those who use Tally can obtain the report of all the MSME whose payment has been delayed by 45. We Company secretaries not having access to financials on the day to day basis may not be aware of this option. I am making a special mention here and we have to use the technology whether it is Tally or any other accounting solution that our company may be using to make our compliance easy and accurate.¹

This Compliance has 2 fold benefits for the Small and medium Scale entrepreneurs. One there is maximum promotion of MSME benefit to small and micro scale supplier as the Companies need to request details from the Vendor. Secondly, the Private limited companies are forced to pay the Small and Micro MSME on time rather than make lengthy forms declaration on why the payments were delayed beyond 45 days.

¹ This author is not associated with Tally/Government and does not gain any benefit from mentioning the Tally in this Article. All views are personal to the Author

Some Suggestions to the Current setup of Compliance by Companies under CA 2013

Having worked on the MSME compliance first hand from preparing the data for return and then finally the return, I believe following aspects can be changed for the benefit of all parties involved:

1. Currently the Udyog Adhaar Memorandum can be viewed online and is available for verification by general public. However, the Unit can be searched based only on the Memorandum number. If the system is changed to PAN based search it will help the MSME Private companies that require to comply the half yearly return.
2. The ROC return needs clarity on what requires to be reported, outstanding unpaid as on last date or every default of payment beyond 45 days during the period. In case the ROC wants to know every default during the period, the Reporting Company must also state the date of payment as on the date

of reporting. E.g. The Company (say "X" has received a bill from Micro MSME (say "Y") on 10- Jun- 2019, the 45 days for X completes on 25-Jul-2019. Now the reporting date is 31- Oct-2019 for this transaction and the X has made the payment to Y on 26-Jul -2019. There is no provision to mention that the delay is only 1 day.

There are many reasons why the MSME is not paid on time within the framework of 45 days. The payment of interest beyond the 45 days' time period by Companies reeling with past losses may be too harsh for companies that are trying to find the break even when they are able to reasonably convince the cash rich MSMEs looking only at orders to provide them with extended credit periods without losses.



Words Worth Million

If the rate of change outside exceeds the rate of change inside, the end is insight...

-Jack Welch



GST: Advance Rulings – Part 14

1. *Whether promotion of research and publishing online research journal exempted from GST?*

M/s. World Researchers Association (AAR – Madhya Pradesh), Advance Ruling No. 15/2019 dated 25.09.2019

The applicant is an international non-profit organisation registered under Section 8 of the Companies Act, 2013 and also under Section 12AA of the Income Tax Act, 1961 to carry such promotional activities in the field of research i.e. life sciences, physical sciences, environmental sciences, earth sciences, disasters, agriculture among others and publishing of online research journals with respect to aforesaid fields. The applicant has raised aforesaid question stating Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and corresponding Notification issued under MP GST Act, 2017, at Entry No. 1, which clearly exempts charitable activities from the ambit of GST. After careful consideration of both the definitions under the Income Tax Act, 1961, CGST Act / MP GST Acts and Notifications, it was cleared that above said promotional activities don't fall or aptly fit under charitable activities. Hence, the Authority for Advance Ruling, held that applicant's activities are not in the nature of 'charitable activities and not eligible for exemptions.

2. *Whether the provisions of 'E-way Bill' fall under the Jurisdictions of AAR to avail of an advance ruling?*

M/s. Tamil Nadu Edible Oils Private Ltd. (AAR–Tamil Nadu) Advance Ruling / Order No. 21/ARA / 2019 Dated 21.05.2019

The applicant is in the business of refining of edible oils who undertakes delivery of goods pertaining to multiple invoices in a single goods carriage. For a generation of e-way bills, the Tamil Nadu GST Act, 2017, has prescribed Rs. 1 lakh limit. The applicant has sought an advance ruling on the question of whether the e-way bill is required for consignments pertaining to multiple invoices to multiple customers but

moved in the same conveyance having an invoice of less than the said limit but in aggregate, the value of the multiple invoices exceeds the specified limit.

Section 97(2) of the CGST Act / TNGST Act provides the scope of AAR i.e., the question on which the Advance Ruling can be sought for, they are, classification of any goods or services or both, applicability of a notification issued therein, determination of time and value of supply of goods or services or both, availment of input tax credit on tax paid or deemed to be paid, the liability to pay tax on any goods or services or both, requirement of registration under GST laws and among others. From the above, it was cleared that the Act specifically limits the jurisdiction of AAR to a greater extent. Hence, the Authority for Advance Ruling by rejecting the application held that the provisions of 'E-way Bill' do not fall under the Jurisdictions of AAR.

3. *Whether goods supplied through 'Public Distribution System (PDS) exempted from GST?*

Sri. Dipeet Agarwal, Proprietor, M/s. Soorya Narayan Agency (AAR – West Bengal) Advance Ruling / Order No. 31/WBAAR/2019-20 dated 11.11.2019

The applicant supplies consumer goods like biscuits, soaps, etc., earmarked for 'For PDS Supply Only' to PDS distributors by acting as an associate of the West Bengal Essential Commodities Supply Corporation Ltd. and sought an advance ruling on the aforesaid question. It also emerged from his application that price of whatever goods he supplies are pre-fixed by the Government but costs of packaging, loading, railway freight and demurrage are all borne by him. Since such supplies are not covered under the exemption notification and non-inclusion in the Schedule III of the CGST Act, 2017, the Authority for Advance Ruling held that goods supplied through PDS are liable to GST.

To be continued...



Being Conscious

We are often advised to practice qualities which make us more considerate and likable such as being kind, humble, fair, modest, competitive and mindful. But we often find it difficult to inculcate these behaviors in our day to day life.

So how can we be conscious at each step of our life? I believe a small step at a time can go a long way in achieving these habits.

For me being conscious while shopping was the first habitual change towards being conscious. Recent studies have indicated that the average no of use for apparels have reduced to only 10 times. I believe a small change of buying clothes only when it is required can help us save money and earth's resources & to arrest this problem.

Another area where we can make a contribution without much hassle is travel. This is something that Japanese people practice in their day to day life. While using escalators, they will use one side of the escalators to stand while the other side is kept free for people who are in a hurry.

I am sure all of us have picked up coins from roadside but at the same time we are hesitant to pick up a pen or a notebook. This usually happens because our mind is trained to assign higher value to currencies. Though it is difficult to pick up things from road & bring them into our homes, we can at

least try not to throw away items which can be readily reused like envelopes and wrapping papers.

We would certainly not add more salt to our food just because it is cheap. Similarly we should not give in to every temptation of ours to overeat at every occasion as it takes a heavy toll on our health in the longer run. One way to control this temptation is to eat light before going to any social gathering.

We also have a habit of buying latest gadgets and store them with great pride only until we buy the next gadget. Most of the times, these gadgets are not our needs but merely short term wants. A better way to deal with this impulse buying is to sleep over the thought before you actually buy it. Many of the times you will find that you would end up not buying it at all.

In conclusion, these small steps towards being conscious have the capacity to bring in positive energy in our lives by allowing us to be more considerate, caring and humble toward people, society and our environment

Resources:

Various YouTube Videos on Minimalism

Various Newspaper Articles since last two years





Mr.A a Trader of goods has a Turnover of Rs.18 lakhs during the previous Financial Year 2018-19. Till November 2019, he attains the Turnover of Rs.19, 50,000/- and seeks your opinion whether he has to obtain the registration in the state of Karnataka. He has no branches outside India and he also doesn't undertake any Exports related activity. Other than the Trading activity he has got no other business activity till November 2019. Examine the requirement for Registration under GST law

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



Opinion To Last Month's Brainy Bits

M/s ABC Ltd., received goods for Repair and return back. Value of repair activity is Rs.100,000/-. Confirm whether M/s ABC Ltd., need to issue E-way Bill for sending back the goods post repair activity to the customer concerned.

Facts of the Case

- M/s ABC Ltd., (hereinafter referred as ("Registered Person"), registered in the state of Karnataka
- Registered person receives goods from his customers for repair related activity
- Customers of the above registered person send the goods on the basis of a Delivery Challan prepared under Rule 55
- Registered person does value addition to the goods sent by their customers and post repair activity send back the goods to the respective customers
- Post job work/ repair activity the Registered person issues a Tax invoice for the job work carried out

Legal Provisions

- Section 31 – Tax Invoice
- Section 68 – Inspection of goods in movement
- Rule 46 – Tax invoice

- Rule 55 – transportation of goods without issuance of Invoice
- Rule 138 – E-way bill rules

Conclusion

The Registered person obtains the goods on the strength of a Delivery challan for undertaking the job work activity. Once the activity is over for movement of the goods, an EWB is required on the basis of the consignment value as per Rule 138 of CGST Rules, 2017. Though the registered person undertakes the activity of repair which is of Service in nature, post activity movement of the goods has to be undertaken either by the supplier of such goods on a challan or the registered person. Such movement of consignment post job work/ repair activity on the basis of the value estimated by the supplier while sending such goods requires a EWB to be issued. Either the supplier of such material for repair activity or the registered person shall post completion of the job work/ repair activity can raise a EWB and shall cause movement of such goods, though a Service activity is involved by the registered person



Delhi Diaries 21

Mukut Pathak v. Union of India – Disqualification of Directors

A couple of years ago, the Government, as part of a drive against shell companies, undertook an exercise of delisting several companies and disqualifying directors in cases where the companies had not filed annual returns and financial statements for a few years in terms of the Companies Act. At the time several companies and directors had approached various courts and had availed of amnesty schemes that came up in between. Such disqualified directors had also been prevented from using their Digital Signature Certificate (DSC) and their Director Identification Number (DIN).

This disqualification, in terms of Section 164(2)(a) of the Companies Act was challenged by a large number of directors in *Mukut Pathak v. Union of India* decided by the Delhi High Court on 04.11.2019 on the following grounds:-

- 1) They had not been given an opportunity of being heard prior to disqualification.
- 2) Section 164 of the Companies Act, 2013 is penal in nature and could not be applied retrospectively, insofar as it was applied to companies and directors which had failed to file financial statements for 2012-13 as well.
- 3) Upon a plain reading of Section 164(2) of the Companies Act, it would have the effect of disqualifying the director in respect of that Company which had failed to file returns for three years but could not be said to disqualify a director from any other Company.
- 4) The effect was only cause a director to be disqualified from being reappointed as a director and could not be said to have the

- 5) effect of causing the director to demit office.

Per contra the Respondent Union of India pointed out to the various opportunities that had been given to the directors to file the annual statements and claimed that despite so many opportunities being given, the Petitioners had failed to file the statements as required.

Specific attention was called to the Company Law Settlement Scheme 2014, which also gave an opportunity to the Companies to have themselves declared dormant companies after making an application with reduced fees.

Subsequently a notice was issued to the Petitioners in 2017, indicating that in the event the Company failed to comply with the statutory requirements, it would be deleted from the list of Companies. The notice was also deemed to be served on the directors of the Company.

Thereafter, another scheme was brought about in 2018 known as the Condonation of Delay Scheme 2018.

Yet another notice was issued by the Respondent Union Government, indicating its intention to strike off the name of the Company from the list of Companies.

These notices according to the Petitioners could not be considered to be show cause notices for the purpose of disqualification because the two events were very different with very different requirements.

The Court distilled the issues involved in these petitions to one of interpretation of Section 164 and

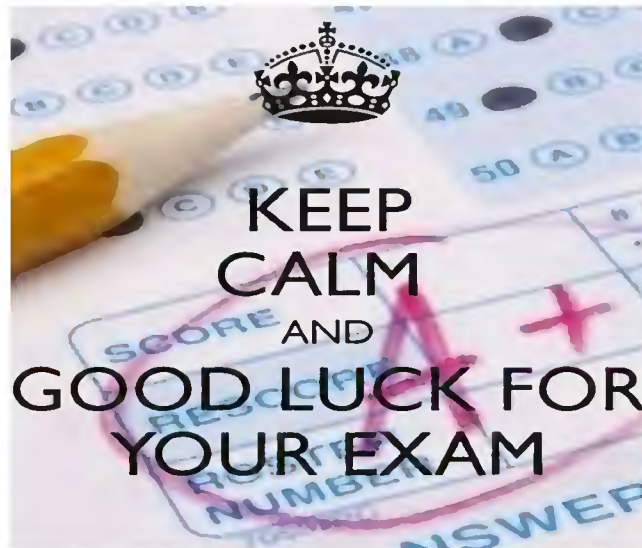
167 of the Companies Act, noting that there was no dispute that the said provisions would apply prospectively and not retrospectively. The Delhi High Court also noted the judgments of the Karnataka High Court, *Yashodhara Shroff v. Union of India* and the Madras High Court, *Bhagvan Das Dhananjaya Das v. Union of India* and Gujarat High Court, in *Gaurang Balvantlal Shah v. Union of India* on this very point.

However, the Court held that merely because an enactment draws on events that are antecedent to its coming in force does not render the said enactment retrospective. Drawing upon the analogy of an amendment in a Criminal legislation where a higher penalty is imposed on the second instance on which a person commits an offence, the Court noted that it would not be open to the person to claim that the first instance when the person committed the offence was prior to the amendment and hence the imposition of higher punishment for the second instance would violate his rights under Article 20 of the Constitution.

In *Sajjan Singh v. State of Punjab* (1964) 4 SCR 630 it was contended that the conviction of a person under the Prevention of Corruption Act for being in possession of assets disproportionate to his known sources of income could not be challenged on the basis that the assets were acquired prior to the act coming into effect. On this logic, the Delhi High Court differed with the judgments of the Karnataka High Court, Gujarat High Court and Madras High Court referred above and held that default in statutory filings for the financial year ended 31.03.2014 could be taken into consideration for the purposes of Section 164.

The Delhi High Court however, found that there was no basis for the cancellation of the DSC and the DIN of the Petitioners.

A difference of opinion between various high courts has to ultimately be resolved by the Supreme Court. It is hoped that the Supreme Court will give finality to this issue.





Tech News

Is technology boon or bane to the eco system?

World has come so far with massive development in technology. With this so called development are we leaving anything for the next generation and are we letting other co-habitat to live? Now, as responsible professionals we need to take a closer look at this.

Do we really need 5G network? From this, our data communication will be faster and of better quality than what we are experiencing now. Of course, we will see more technological development. But what are we doing to the other species and to our health? Is it a sustainable development? One of the main species is going to suffer or become extinct is birds due to the electromagnetic radiation which will be caused by these networks. Birds' uses the magnetic field of Earth to navigate. Birds migrate in search of food and mates. Insects and seeds become scarce during winter in the cold places hence they fly south to warmer places where vegetation and insets aren't in decline during winter. The electromagnetic radiation caused by the towers will be very harmful for them when they fly long distance as they come very close to the towers and sometimes get hit by the tower and die. It will impact on the humans as well as other living beings on earth. Without birds the insects like mosquitoes, spiders, worms' outrages, as their main predators gone. One might think that it's a very minor problem compare to the convenience we get. When we really take a closer look on this issue we can see that, crops will be raved by the pests, and to get rid of that we have to use more powerful pesticides which will give birth to more problems and we might need to adjust to a new food habits. Another thing is that birds are one among the species which

helps in pollination of the flowers and fruits, which makes them to bloom or to ripen the fruits.

It is also a type of pollution which is invisible to our naked eyes. In human beings if any person is exposed to the radiations above the prescribed limit then it may cause the diseases like skin rashes, cancers, parathyroid adenoma, tumours in the brain and problems in central nervous system etc., finally resulting to death or physical/mental problems in adults/children as well as in new born babies.

However in any case the 5G is a good development in technological field which helps to transmit the data within no time with most effectively and efficiently which may bring a new era in the technological field. It is safe if we use it within the limits.

Conclusion: As the government has taken various initiatives towards these issues the powers were delegated to "Central pollution Control Board" which is frequently testing the radiations emitting from cell towers and taking suitable measures.

We have to use 5G or any other technology without causing damage to the environment and it is our responsibility to use it safely. It is a gift from the nature and it is our responsibility to keep it safe for our future generations and guide them to do the same. We need to always think of sustainable development. Our convenience and luxury should not harm the nature and in turn the future generation. If we use it judiciously it can be a boon to everyone in the eco system.





Express News

- Cases involving Rs 3.75 lakh cr disposed of at IBC pre-admission stage
- PNB under-reported bad loans by Rs 2,617 crore in FY19
- PFS gets Rs 145 cr from resolution of stressed account Prayagraj Power Generation Company
- NLC India to invest Rs 17,000 cr, plans to develop Talabira coal blocks in Odisha

No plan to reduce headcount due to slowdown: Tata Motors

Tata Motors is not looking to reduce workforce due to the on-going slowdown in the domestic market, as it expects things to get better amid a wave of new products lined up for the launch over the next few months, a top company official has said.

NEC targets \$1B revenue in India set for 5G trials

NEC Corporation is aiming to more than double its revenue from India to \$1 billion in five years led by offshore support centres, smart city project and 5G.

Morris Garages bullish on Indian automobile sector, to invest Rs 3,000 crore

Morris Garages (MG), a British automobile brand now owned by SAIC of China, is bullish on Indian

market and plans to invest Rs 3,000 crore more in the country, a company official said.

MCA's 2019 Review: Steps for ease in business, insolvency resolution

In its year-end review, the Ministry of Corporate Affairs (MCA) on Sunday mentioned the various steps it undertook in 2019 for ease of doing business and creating a robust insolvency framework.

In pursuance to objective of providing greater 'ease of doing business' to all stakeholders, bring about greater transparency in corporate structure and fostering better corporate compliance so as to enhance the efficiency of the processes under Companies Act, 2013, the Ministry of Corporate Affairs (MCA) has taken several landmark initiatives/decisions during last one year (January-November 2019)," said an official statement.

