

eMagazine



Articles:

National Financial Reporting Authority (NFRA) Quick Glimpse	- 03
Negotiable Instrument (Amendment) Act, 2018	-07
Overview of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017	-11
GST- Advance Rulings - Part 4	-12
Recent Amendments in Companies Act	-20

Columns:

From Chairman's Desk	02	Delhi Diaries	18
Students corner	08	Newsroom	22
Living Room	13	Regulatory Update	23
Words Worth Millions	13	Seminar Invite	24
GST Suits	14		
Brainy bits	16		

For Private Circulation Only

Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टकारे क्लेशं त्यजेत्। श्रेयसायै क्लेशं कुर्यात्।

Mission

"To develop high calibre professionals facilitating good corporate governance"

Connect with ICSI



<https://www.facebook.com/ICSI>



https://twitter.com/ICSI_CS



<https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/>



CS Veerash M.J.
Chairman
Mysore Chapter

-: Editorial Team:

CS Vijaya Rao

CS Sherene

CS Phani Datta

CS Parvati K.R

CS Ajay Madhaiah

CS Madhur N Agrawal

**Join
5600+ members'
strong**

"CSMysore" eParivaar

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

Dear Professional Colleagues,

Wishing you all a prosperous year ahead!

As you all aware, it takes sleepless nights, hardships, struggles in a period of 5 years or 60 months to achieve only one dream to be company secretary and thereafter years to be professionals.

It is with this humility and gratitude that I would like to extend my sincere thanks to all my friends from the CS community to have provided the platform to serve our chapter since my inception as chairman of the Management Committee. I believe that the good thoughts of the Management Committee and Chapter's team have turned into good words and actions, which have inspired us to reach out to student community to mould their characters to reach their destiny.

I am convinced that my professional colleagues believe that the future belongs to student community who believe in the beauty of their dreams. I would like to extend my heartfelt thanks to members of the Management Committee, the chapter, students, SIRC and ICSI HQ, officials of the other institutes, supporting members from the chapters and to my team members attached to Mysore Chapter for extending their support and encouragement hitherto.

Thank You

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

Click <http://goo.gl/PV90lr> and fill-in simple info.

You may send this link to your friends too!

Please write your comments and feedback to us:

enewsletter.icsimysore@gmail.com

Disclaimer

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

Chapter Activities

1. CAREER AWARENESS PROGRAM

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

S No.	Date	College Name	No. of Participants
1	17.01.2019	Maharani Commerce & Management College	90

2. REPUBLIC DAY CELEBRATIONS

Chapter celebrated the Republic Day in Chapter Premises on 26th January 2019. CS Veerash M.J., Chairman welcomed the gathering. CS Vijaya Rao, Secretary proposed the vote of thanks. CS Parvati K.R., Vice Chairperson, other managing committee members and students of the Chapter were present during the occasion.



Continued to page 6...



National Financial Reporting Authority (NFRA) – Quick Glimpse

How the requirement of an independent body to regulate the Audit Profession ascended

It is alarming when an indispensable and influential reform to align the Indian audit landscape with the global position was recognized and observed that an independent authority should be in place to strengthened and address the challenges in relation to auditors, audit firms and networks operating in India, a government-appointed expert committee also said in its report submitted on 31st Oct 2018 for regulating audit firms and the networks in India.

The non-performing assets (NPA) condition exemplifies all that what is wrong with auditing. Even banks are subject to different kinds of Audit (e.g. Concurrent/Branch/Stock audit etc.) yet NPAs are at disquieting levels. Recently there have been large-scale frauds in banking sectors which have mandated the Union Government to take the hefty steps on an exigent basis. The decision seems to have been prompted by the latest bank scam to have hit the headlines — 12,636 Cr Punjab National Bank frauds that went concealed or undetected by the auditors. These incidents like big banking frauds, the NPA crisis, and tax evasion have played major roles in bringing the NFRA into existence.

As per the Companies Act, 2013, “No other body or institute shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation.” NFRA shall: (a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949; and (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit. It has been further tasked with the job of recommending accounting and auditing standards,

ensuring compliance with them and overseeing the quality of service of the accounting and audit professions. However Institute of Chartered Accountants of India (ICAI) will retain its supremacy on training and qualifying chartered accountants, giving them license to practice and regulating them including examining audit excellence. It can exercise these powers over small companies. Proprietorship concerns, Firms, LLPs, Charitable Trust, AOP/BOI, Societies, etc. along with Private Companies and Unlisted Public Companies (Apart from that which are covered as under rule) would still be governed by ICAI and it would have the sole unrestricted power to provide rules and regulation for them. NFRA is not meant to replace the disciplinary jurisdiction of the ICAI.

It has been Five years now when the Companies Act, 2013 provided for the establishment of a National Financial Reporting Authority (NFRA) for regulating the audit profession, and now Government has finally taken steps to device NFRA. The Cabinet on March 1, 2018 approved for setting up of the National Financial Reporting Authority (NFRA), which has been an independent regulator for the auditing profession. NFRA is a regulatory body proposed for the institution and enforcement of accounting and auditing standards and inaccuracy of the work of auditors. **The Centre has appointed former IAS officer Rangachari Sridharan as chairperson of NFRA.**

The Ministry of Corporate Affairs (MCA) vide its notification dated November 13, 2018, has notified National Financial Reporting Authority (NFRA) Rules, 2018, determining the jurisdiction, function, and duties of the NFRA, including its powers. These rules may be called the National Financial Reporting Authority Rules, 2018.

In exercise of the powers conferred under sub-sections (2) and (4) of section 132, sub-section(1) of section 13g and sub-section(1) of section 469 of the

Companies Act,2013 (18 of 2013), the Central Government here by makes the following rules, namely:

"The NFRA will act as an independent regulator for the auditing profession which will include an individual or a firm including a limited liability partnership (LLP) incorporated under the Limited Liability Partnership Act,2003 (6 of 2009) or any other Act for the time being in force, who has been appointed as an auditor of a company or a body corporate under section 139 of the Act or under any other Act for the time being in force; it was one of the key changes brought in by the Companies Act, 2013,"

NFRA would be an oversight body for auditors and its jurisdiction would encompass all listed companies as well as large unlisted public companies. The Authority shall have the power to watch and enforce compliance with accounting standards and auditing standards, oversee the quality of service or undertake an investigation of the auditors of the following class of companies and bodies corporate, namely:-

- All Listed Companies/ Listed Body Corporate;
- Unlisted Companies which Paid up Capital is Rs.500 Cr. or More; OR Turnover is Rs.1000 Cr. or More; OR aggregate of Outstanding Loan, Debentures, and Deposit is 500 Cr. or More.
[Above Limits shall be check on as on the 31st March of immediately preceding financial year];
- All Banks/ Insurance/ Electricity Companies;
- Any Company or Person (Auditor), on a reference, made to the Authority by the Central Government in public interest;
- Foreign Subsidiary/Associate Company of Any Indian Company as mentioned in above points if Income/Net worth of such Foreign Subsidiary/Associate company exceeds 20% of consolidated Income/Net worth of above mentioned Indian companies.

Responsibility of Company(s)/Body Corporate(s)

Every existing body corporate other than a company governed by these rules shall inform the Authority within thirty days of the commencement of these rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement

of these rules. Once a Company falls under the above limits under NFRA, will be covered by NFRA for 3 more years **even if limits are reduced /listed status changes later on.**

Every Body Corporate other than Company as defined u/s 2(20) formed in India and governed under this rule shall, within fifteen days of the appointment of an auditor under sub-section (1) of section 139, inform the Authority in Form NFRA-1 the particulars of the auditor appointed by such body corporate.

Obligations for Auditor(s)

Every auditor referred above shall file a return with the Authority on or before 30th April every year in such form as may be specified by the Central Government and also further additional information / documents as and when sought by the authority with its reasons to believe so.

Functions, duties and Power of Authority

Authority will also sustain the details of particulars of auditors appointed in the companies and bodies corporate specified in rule 3; recommend accounting standards and auditing standards for approval by the Central Government; monitor and enforce compliance with accounting standards and auditing standards; oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service; promote awareness in relation to the compliance of accounting standards and auditing standards; co-operate with national and international organizations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

For monitoring and enforcing compliance with Accounting Standards/Auditing Standards, Authority will review the financial statements of such company or body corporate/auditor and if required seek further information/explanation (along with relevant documents) from company or its auditor by a written notice. In case of adverse findings, authority shall publish the findings of non-compliance on its website in public interest and records the reasons in writing. Further course of investigation is also suggested in case of violation of accounting standards.

If a company or any officer of a company or an auditor or any other person contravenes any of the provisions of these rules, the company and every officer of the company who is in default or the auditor or such other person shall be punishable as per the provisions of section 450 of the Act.

Conclusion

The ICAI will continue to have its controlling powers with respect to private companies and unlisted public companies below the above-prescribed threshold. Also, the Quality Review Board (QRB) will also be there to endure and piloting class audits in respect of private limited companies, unlisted public companies and such other audit of companies that are deputized by the NFRA. But any reform steps can't be successful unless it consists of proper mechanism and there is also acceptance among the stakeholders. But

keeping into mind the contemporary condition of sovereign bodies like CBI, RBI and even the Judiciary in the country, only consequences or desired outcomes will express what and how much it is going to be really aided. Although, the factual attainment of NFRA would absolutely depend upon the administration which would comprise in it else it would be purely giving the power from one Authority to another which is actually more contaminated.

- 1) http://www.mca.gov.in/Ministry/pdf/2018_CommitteeExperts_Report_08112018.pdf
- 2) http://www.economicstimes.indiatimes.com/articleshow/66454177.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

<https://www.thehansindia.com/posts/index/Hans-Classroom/2018-03-04/What-is-NFRA/363248>

...continued from page3

3. New Management Committee of Mysore Chapter of ICSI

The New Management Committee of the Chapter took charge for the period from 2019 to 2022 effective 19th January 2019. The Committee for the year has CS Veerash M J, CS Parvathi K R, CS Vijaya Rao, CS Harsha, CS Kiran Thyagaraja, CS Phani Dattta D N and CS Padmanabha as the members.





Negotiable Instrument (Amendment) Act, 2018

The Central Government notified amendment to the **Negotiable Instrument (Amendment) Act, 2018** which has come into effect from September 01, 2018.

Two sections i.e section 143A and 148 have been inserted to the existing Act.

Section 143 A provides **interim compensation to the complainant**.

Section 148 provides that where an appeal by the drawer (accused) against conviction under Section 138 of the NI Act, is preferred the Appellate Court **may** order the appellant to deposit such sum which shall be a **minimum of twenty percent** of the fine or compensation awarded by the trial Court

[**Suggestion:** Instead of giving discretionary powers which may cause more harm than good, The Parliament should have fixed percentage instead of a discretionary one. Such an effort will keep the possibility of dilatory tactics by the drawer to a minimum.]

The amendment by way of insertion of section 143A in the NI Act aims at providing 20 per cent of the cheque amount by the drawer of the cheque to the payee once the accused appears before the court and does not plead guilty. Earlier, there was no such relief available to the Payee under the Act. Further the Appellate Court as per section 148 may direct to release the amount deposited by the appellant to the complainant at any time during the pendency of the appeal. This amount shall be in addition to the compensation paid at the trial stage. The interim compensation at the trial as well as the deposit amount at the appellate stage (as the case may be) shall be paid within 60 days from the date of the order by the court trying the offence or the appeal. The court may further extend this period by an additional time of 30 days' subject to the sufficient reasons being shown.

Where the accused is acquitted by the Trial Court or the Appellate Court, (as the case may be) the payee/complainant shall be directed to repay the

interim compensation or amount deposited (as maybe applicable), to the drawer/appellant along with such interest as may be fixed by Reserve Bank of India at the beginning of the relevant financial year. This amount shall be repaid within 60 days of the court's order and this period may be further extended by another 30 days' subject to sufficient reasons being shown.

The section further provides that in case an accused does not pay the amount despite an order to do so, the same is recoverable like a fine under Section 421 of the CrPC.

Although the amended is likely to bring in better effectiveness and credibility of cheques drawn, yet the offence is still being categorized as a bailable offence with a maximum imprisonment of 2 years and/ or fine, if convicted. This, in our opinion requires to be made more stringent.

The applicability of the amended provisions - whether prospective or retrospective, is not categorically specified. However, with the settled position that procedural laws are retrospective in nature unless otherwise specifically stated, the amended provisions, may also have retrospective application in which case, the pending litigations in addition to the future ones may also get an impetus and relief to the genuine complaints.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about in specific circumstances



Commentary on Director Identification Number (DIN) and connected matters Series- 15

Provisions: Section 153 to 159 of Companies Act 2013 (Act) r/w Rule 9 to 12A of Companies (Appointment and Qualification of Directors) Rules 2014 deals with DIN related matters.

Commentary

What is DIN: DIN is a Unique Identification Number allotted to the individual who is intending to become director in an Indian Company.

The Central Government may specify any other identification number as DIN. However, as of now, no such identification number has been specified by the Central Government (w.e.f.09/02/2018).

Under LLP Act, DIN will be termed as DPIN i.e. Designated Partners Identification Number for the same DIN number. There is no difference between DIN and DPIN.

1. Who can apply: Only individual, who intends to be appointed as director or partner, of company or LLP respectively may apply for DIN/DPIN.
2. When shall apply: Since the word is used as 'intending to be appointed as director', DIN application shall be filed before appointment. In other words, "no DIN, no directorship".

If any company appointed any person as director without having DIN, that person shall not be eligible for appointment as director and that person shall be deemed to have vacated the office as specified u/s 167 r/w 164 of the Act. Same is reiterated under Section 152(3) i.e., "No person shall be appointed as a director of a company unless he has been allotted DIN"

In case at the time of incorporation of a Company/LLP, if proposed directors/Designated partner does not have DIN/DPIN, maximum three proposed directors in case of incorporation of a company and in case of incorporation of LLP, maximum 2 designated partners may apply DPIN.

3. How to apply: Application for DIN shall be filed in e-form-DIR-3.
4. Documents/information required for DIN: Following are the documents are required to be attached to the e-form-DINR-3:
 - i. Photograph;
 - ii. Proof of identity (PAN) – mandatory in case of Indian citizen;
 - iii. Passport in case of foreign national;
 - iv. Proof of residence (like Aadhar card, Voter Id, Driving License, Passport, any other document containing the address of the applicant);
 - v. Resolution proposing his appointment as director/Designated partner in an existing company or LLP. In other words before applying for DIN, an existing company or LLP, where such individual is going to be appointed, shall pass the resolution for his/her proposal for appointment;
 - vi. Specimen signature of the applicant, duly verified either by PCS or PCA or cost accountant in practice;

- vii. Name, fathers' name, present and permanent address, date of birth, mobile number, email id, citizenship, residential status, educational qualification, occupation, etc.

The first name and last name of the applicant is mandatory. In case the applicant's name does not contains last name, then his or her father's or grandfather's surname needs to be mentioned and a declaration in form-DIR-3A needs to be attached to the form.

5. Signing and Verification of DIR-3: Digitally signed by the applicant and verified by MD, Director, CEO, CFO, CS of such company or designated partner of LLP where the applicant is intended to be appointed

Earlier, Form-DIR-3 was required to be verified either by PCS/PCA/cost accountant in practice or by CS/MD/Director of the Company in which the applicant is to be appointed as director.

6. Challan Fees: Rs.500/- as per Rule 12 of the Companies (Registration of Offices and Fees) Rules, 2014.
7. Allotment of DIN: DIN form is processed and allotted under STP (Straight Through Process) mode i.e., automatic approval after making the successful payment.
8. Examination of the e-form: within a period of one month from filing, form shall be verified by the Central Government (CG).

In case of any defect or incompleteness in the form, the applicant shall be provided 15 days' time period to rectify the same (i.e., opportunity of being heard).

In case the defects still exist, then DIN application shall be

- Rejected and directed by the CG to file fresh application;
- Consider the application as invalid;
- Inform the applicant through letter by any mode (either physical or electronic)

9. Validity: DIN is valid for life-time of the applicant and shall not be allotted to any other person.

DIN allotted prior to implementation of the Companies Act, 2013 are also valid.

10. One Individual, One DIN: similar to PAN, Aadhar and any other unique identification number, an individual can hold only one DIN. In case he/she is having more than one DIN, then duplicate DIN shall be surrendered.

11. Changes in DIN details:

Any changes in information provided in DIN shall be intimated in e-form-DIR-6 along with supporting documents. The form shall be digitally signed by the applicant and certified by PCA, PCS or cost accountant in practice.

On verification and after satisfaction, the Central Government shall incorporate such changes and inform the applicant.

Such change shall also intimated by the DIN holder to company within 15 days of such change.

12. Directors KYC in form DIR-3-KYC:

Due date for filing –

- Who is having DIN as on 31st March of every financial year - before 30th April of next financial year (i.e., within next 30 days);

The form shall be digitally signed by the applicant and certified by PCA, PCS or cost accountant in practice.

If the DIR-3-KYC is filed within due date, then no fees is required to be paid. Thereafter, additional fees of Rs.5,000/- for each DIN shall be paid.

In case of non-filing of DIR-3 KYC, DIN shall be deactivated. However, on filing of DIR-3-KYC, DIN shall be re-activated.

Note: DIN deactivation and director disqualification both are different concepts.

13. Intimation of DIN allotted before 30/06/2007 to Company and RoC:

In case of anyone was allotted provisional DIN before 30/06/2007 but is a director in any one or more company based on provisional DIN then, such person and the company where he/she is director was required to comply with the following procedures after approval of DIN:

Step -1 - Individual shall intimate to the Company – one month – Form DIR-3B

Step-1 – company shall furnish such information to RoC – next 15 days – Form DIR-3C

14. Disclosure of DIN: While furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the DIN. In addition to DIN, name, designation, address of such person is also mandatory (as per Rule 7 of Companies (The Registration Offices and Fees) Rules, 2014).

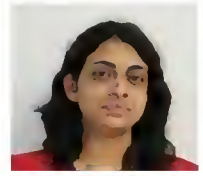


*To our Dear Students who are expecting
the Result this Month*



“Winning is fun.... Sure. But winning is not the point. Wanting to win is the point. Not giving up is the point. Never letting up is the point. Never being satisfied with what you’ve done is the point.”

—Pat Summitt



Overview of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017

The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 ('HIV Act')¹ was implemented to prevent and control the spread of Human Immunodeficiency Virus ('HIV') and Acquired Immune Deficiency Syndrome ('AIDS') and to safeguard the interest of human rights of persons affected by HIV.

Further, the HIV Act aims to prohibit the discrimination against persons with HIV and AIDS on several grounds such as, denial, termination, discontinuation or unfair treatment with regard to: a) employment, b) health care services, c) engagement in educational establishments, d) opportunity to stand for or hold public or private office, e) insurance.

The HIV Act strictly prohibits the HIV testing as a pre-requisite for obtaining employment or accessing health care or education.

Responsibilities of an Employer/ Establishment are as follows:

- adopt data protection measures to ensure the confidentiality of HIV related information,

- ensure safe working environment and take certain precautionary measures to prevent the spread of HIV ²,
- appoint³ a complaints officer for disposing the complaints,
- implement the HIV and Aids policy and display the policy on the notice board of the establishment and
- on an annual basis, organize workshops and awareness programmes to sensitize the employees.

Penal provisions:

The Act also forbids any individual from publishing information or advocating feelings of hatred against HIV positive persons and makes such acts punishable with imprisonment for a period not less than 3 (three) months and which may extend to 2 (two) years and a fine which may extend to Rs. 1, 00,000 (Rupees One Lakh), or with both

¹ Assent from President on April 20, 2017 and notified on September 10, 2018

² Establishments having 100 (one hundred) or more persons or establishments which are engaged in healthcare services and having 20 (twenty) or more persons

³ Appoint the complaints officer within 180 days of the commencement of the HIV Act.



GST: Advance Rulings – Part 4

Applicant: M/s. Asahi Kasei India Private Limited

Advance Ruling No. : GST-ARA- 35/2018-19/B- 108 Mumbai dated 07.09.2018

Brief Facts & Issues before the Authority

The Applicant is an Indian subsidiary of M/s. Asahi Kasei Corporation, Japan. The Group is engaged in fibres, textiles, petrochemicals, pharmaceuticals, polymers, electronic devices, construction materials and health care services. Its Indian subsidiary or the Applicant provides sales promotion and marketing support services to holding company (with separate duly executed 'Agreement'). However, the Applicant does not negotiate or enter into any kind of contract with any customer on behalf of the holding company for supplying any goods or services. The Applicant has approached the Maharashtra Authority for Advance Ruling with three questions, they were, 1) whether the services supplied by the subsidiary constitute a supply of 'Support services' or 'Intermediary service'? 2) whether its marketing services constitute a supply of 'Support services' or 'Intermediary service'? And 3) whether its services qualify as 'Export of Services' under GST Laws?

Applicant's Contentions

The Applicant has submitted that its 'Services' does not equate or embrace the character of 'Intermediary' as provided under Section 2 (13) of the Integrated GST Act, 2017. The applicant by relying on 'Advance Ruling of Godaddy India Web Services Pvt. Ltd. [2016 (46) STR 806 (A.A.R.)] dated 04.03. 2016' contended that its services fall within the ambit of the 'Composite Supply'. The second contention was its services would fall under "Tariff Entry 9985" as 'Business Support Services'

and final contention was those services satisfies all the conditions in order to qualify them as 'Zero Rated Supply' and also 'Export of Service'.

Concerned Officer's Contentions

Concerned Officer's contended that the existence of two different agreements and non-fulfilment of all the stated conditions for treating its 'Supply of services' as an 'Export of Services' as provided under Section 6 of Integrated GST Act, 2017.

Authority's Ruling

Since the Applicant does not arrange the supply of goods or services or absence of contracts, the Authority for Advance Ruling ruled out of its classification as 'Intermediary Services'.

For the second Question – Since services supplied under marketing services agreement to its holding company with the sole intention to expand its base in India shall constitute as 'Market Research Service' and does not fall or cannot be classified as 'Intermediary service'.

For the third question – Since contended services satisfy all the 'pre-requisite of 'Export of Service', would qualify as 'Export of Services.

Conclusion

No doubt, the latest 'Ruling' is a varied version of M/s. Vservglobal Private Limited's Advance Ruling, where the same Authority held that provision of back-office services to its holding companies held as 'intermediary services' and liable to be taxed. However, the latest 'Ruling' allays the fears of Indian subsidiaries who engaged in research and marketing services.

To be continued.....



Living Room...



PHILIA

Malls are decorated, special programs on Television, an array of novel gifts everywhere, red roses, Ferrero rocher chocolates , heart shaped balloons, I think this is more than enough to guess that these are all associated with the VALENTINE'S DAY. Movie makers and companies pushing "Love" as far as they could with their new release of films , launch of new brands etc and there is no end to the commercialization of this day of love. Things take a hit when people are engulfed by these outwardly expression and exhibition of love. The word "PHILIA" in Greek means " Brotherly Love".

Love that needs to be shown to a fellow human being . May be lending hand to a struggling rickshawala at the market, the little boy selling roses at the signal, offering a seat to a handicapped passenger in a bus travel, helping a fellow classmate with Accounts, placing a shoulder on a colleague when he or she is troubled, a broad smile at a neighbor who fought with you last evening for the parking lot. This is Love , "PHILIA LOVE , that can bring so much change at our working place, in our family, the colony we live and all the more in our perspective. HAPPY PHILIA DAY



Words Worth Million

"There are two types of people who will tell you that you cannot make a difference in this world: those who are afraid to try and those who are afraid you will succeed."

-Ray Goforth



GST Amendment Act, 2018 – Part I

As we are aware GST Amendment Act, 2018 has been made effective for the changes effective from 01.02.2019 vide Notification 02/2019 dtd:29.01.2019 for some of the Provisions. Considering the requirement of new Return formats to be notified, couple of changes in the GST Amendment Act, 2018 dealing with Returns have been deferred for its applicability. a quick glance of the key changes effective from 01.02.2019 are as per below:

Definitions

- 1) For Section 2(17), existing clause replaced as per below:

Old Clause: services provided by a race club by way of totalisator or a licence to book maker in such club

New clause: activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club

- 2) the Term “Business Vertical” in Section 2(18) has been omitted

All necessary changes have been brought under Registration provision accordingly for making it easier for obtaining multiple registrations in a state irrespective of having unique business verticals. Also, an equivalent provision brought in for shifting the existing ITC with the new registration in the same state in proportion of the Assets owned

- 3) insertion of an Explanation in Section 2(102) as per below:

Explanation– For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities;

Impact of above insertion, all the ancillary or incidental activities in relation to Securities are brought under the inclusive definition of the term Supply

Revision in scope of Supply – Section 7

- 1) Deletion of para (d) in Section 7(1). This para deals with Classification of activities to be Supply of Goods or Services as per Schedule II

Deletion of this para in Section 7(1) has an effect to say that, deeming fiction of Goods or Services to be a Supply has rather skipped from existing role to a clarificatory role after satisfaction of the Supply Norms as per Section 7(1)

- 2) Insertion of sub-section (1A) in Section 7 as per below:

“(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”;

As explained above, the scope of Schedule II has been made simple to follow the Supply scope as confined to Section 7(1) for deeming a supply to be a supply of goods or service after the criteria of Supply has been met with

Amendment to Section 9(4):

- 1) Earlier provision of Supply covering the Inward Supplies from an Unregistered Person has been made more simplified as per below:

“(4) The Government may, on the recommendations of the Council, by notification,

specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person

liable for paying the tax in relation to such supply of goods or services or both”

Existing provision for the Supplies from Un-Registered person has got a wide scope of its application subject to a ceiling of Rs.5000/- per day has been made more simplified to include only the Notified list of Goods/Services. Currently, Government has not issued any Notification in this regard for enabling the above insertion. Reference to Notification 01/2019 dtd:29.01.2019 is made effective in this regard

Amendments to Composition scheme: - Section 10

- 1) Clarity in payment of Tax under Section 10
A clause has been added in Section 10(1) to be read as *“in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate”*
The above clause made a reference to applicability of Levy as per Section 9 for the Rates to be applied for the supply of goods/services which would not have been applied subject to terms and conditions as per Section 10
 - 2) Eligibility for a Registered Person to opt for Composition benefit has been enhanced from “One Crore Rupees” to “One Crore Fifty Lakh Rupees”
This enhancement has made the composition benefit equivalent with erstwhile SSI benefit existing under Central Excise Regime
 - 3) Insertion of Proviso for Services
a new proviso has been inserted as below for allowing the Composition person to supply Services with a cap on the limit as per below:
“Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.”;
The above proviso permits the service provider to make supply of services in addition to the Restaurant service upto a sum of Rs.5lakhs or Turnover in a state
- #### **Amendment in ITC – Section 16:**
- 1) An explanation has been inserted in Section 16(2) towards receipt of services on

behalf of a recipient to any person. This mechanism enables a supply of service in a tri-party model

- 2) Reference to section 43A in addition to Section 41 which deals with allowance of ITC on Provisional basis

Amendment to Proportionate Credits – Section 17:

- 1) An explanation has been inserted in Sub-section 3 to provide for clarifying “Value of Exempt Supply” for credit denial shall not include the value of activities or transactions specified in Schedule III (reference to Amended schedule which deals with Neither Supply of goods nor services) with the exception of sale of land and sale of building
- 2) Section 17(5) has been completely revamped which deals with ITC restriction on Motor vehicles. Now ITC on Motor vehicle having seating capacity upto 13 including Driver is restricted except for the Specified services

Enhancement of Threshold for Registration: - Section 22

Threshold limit for Registration has been proposed to enhance upto a sum of Rs.40lakhs for other than special category states from existing limit of Rs.20lakhs and upto a sum of Rs.20lakhs in the case of Special category states from existing limit of Rs.10lakhs

Exemption for GST Audit for Certain organisation- Section 35

Applicability of GST Audit under Section 35(5) has been done away with Central Government/State Government or local authority whose books of accounts are to be audited by C&AG of India or an auditor appointed for auditing the accounts of local authorities under any law for time being in force

Though the above provision is a relaxation to all the Government authorities where C&AG audit is applicable, since the above provision is going to be effective from 01.02.2019 there shall be an ambiguity for F.Y 2017-18 where Annual Audit is compulsory and can the above Amendment is not made effective from 01.07.2017

Insertion of new clause under Schedule III

Two new clauses got inserted as per below:

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

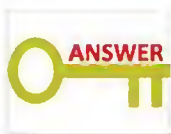
8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.”



M/s ABC Ltd., are into the business of manufacturing steel. They procure some inputs for generation of electricity in house for captive consumption. Can the input tax on inputs procured for generation of electricity be denied as per the GST provision”?

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



Opinion To Last Month's Brainy Bits

Facts to consider

- M/s ABC & Co., (hereinafter called as Service Recipient) received the Services from M/s PPC Security & Co., (hereinafter called as Service Provider)
- Service recipient has received the services of security from the service provider for his business purpose. Service recipient is

registered as a Regular person and not opted for benefit under Section 10 of CGST Act, 2017

- Service provider has not been registered under GST claiming the benefit of Threshold limit provided

- Bills are issued by the service provider for every month post provision of service at the end of the month

Relevant Provision

Section 2(17): Business

Section 2(33): Continuous supply of Service

Section 2(67): Inward Supply

Section 2(98): Reverse Charge

Section 9(3): Levy and Collection for Notified Goods/ Services

Section 13: Time of Supply for Services

Section 31: Issuance of a Tax Invoice

Notification No.29/2018 – CTR dtd: 31.12.2108

Conclusion

Services of Security were brought under Reverse charge mechanism w.e.f 01.01.2019. Notification No.29/2018 has given effect to the above service as per below:

Category of services	Service provider	Recipient
Security services (services provided by way of supply of security personnel) provided to a registered person:	Any person other than a Body corporate	A registered person, located in the taxable territory

In the given case study, service provider is other than a Body Corporate and recipient of service is a Registered person. Accordingly, the services provided by the Service provider are very much within the ambit of above entry

Now, since the above entry has been brought in effective from 01.01.2019 it is pertinent to examine the position of the services received for December 2018 for payment of GST on RCM basis. Services provided by the Service provider are considered to be a Continuous supply of service and reference to Section 31(5) is relevant in this regard. Accordingly, reference to Section 13(3) is also relevant for determining the TOS for RCM cases. In the given scenario, since the document has been issued by the service provider on 31.12.2018 there shall not be any triggering point of levy for the RCM in the hands of the service recipient for the December 2018 service

Disclaimer

The opinion & interpretation drawn above by is purely on the basis of understanding & interpretation drawn by the author. User is directed to read the statutory provision for having a better clarity on the Interpretation aspects. For further clarifications/ suggestions, please reach on praveen@gella.in





Delhi Diaries 11

Swiss Ribbons v. Union of India – Constitutional Validity of the Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code, 2016, which has been touted as the panacea to India's burgeoning NPA crisis was put to a test of fire by a set of writ petitions which challenged the constitutional validity of IBC. The IBC has emerged relatively unscathed from this test, and in the process its efficacy and credibility have been embellished. In this edition, we shall take a look at the impact and implications of this judgment.

The grounds of challenge as advanced by the Petitioners, can be broadly categorized into three heads irrespective of the priority accorded to each argument by the Petitioners:

1. The appointment, control and powers of various functionaries under the IBC are contrary to various judgments of the Supreme Court and also to the principles of natural justice.
 - a. The members and chairpersons of the NCLT/NCLAT have been appointed in a manner contrary to the judgment of the Supreme Court in *Madras Bar Association v. Union of India*.
 - b. The NCLT and NCLAT are operating under the aegis of the Ministry of Corporate Affairs and as such does not have the required operational independence.
 - c. The Resolution Professional has been accorded quasi judicial powers and the same is a violation of principles of natural justice.
 - d. Information Utilities under the code engage in a process of certification as to whether a default has occurred, which is akin to a preliminary decree, without any process of adjudication.
2. Discrimination between Operational Creditors and Financial Creditors.
 - a. Financial Creditors need not issue a notice before initiating insolvency proceedings whereas Operational Creditors have to.
 - b. The claim of an Operational Creditor can be opposed whereas the claim of a Financial Creditor cannot be opposed by the Corporate Debtor.
 - c. The Operational Creditor would have no voice in the Committee of Creditors unless they amount to 10% of the aggregate amount of debt owed.
3. Section 29A which prevents related parties from participating in the resolution process is overly broad.
 - a. Erstwhile promoters of a company are wrongly excluded from the resolution process.
 - b. Excluding erstwhile promoters and related parties is contrary to the stated purpose of swift resolution.
 - c. Persons who happen to be relatives of the promoters are needlessly debarred.

In opposition to the arguments raised by the Petitioners, the Union Government at the outset posited that the judiciary should exercise restraint in economic matters and then put forth rebuttals as follows.

1. The appointment of members of NCLT and NCLAT was done by a committee of two Supreme Court judges and two civil servants in accordance with the judgment of the Supreme Court in *Madras Bar Association v. Union of India*.
2. The differentiation between Financial and Operational Creditors is because of the difference in the nature of the contracts entered into with the respective creditors. Financial Creditors are better equipped to participate in the reorganization of the Corporate Debtor.
3. The Corporate Debtors also have notice of possible actions by Financial Creditors as the loan structure and defaults are clear to all involved.
4. Disputes regarding claims by Financial Creditors are not gone into at the outset because evidence of financial debts etc. are contained in documents of information utilities, banks and financial institutions and these disputes can be raised at the stage of filing of claims once the resolution process is underway.
5. Operational Creditors are typically interested in getting payment for supply of their goods or services whereas the Financial Creditor are typically interested in seeing that the entirety of that loan gets repaid.
6. The interests of the Operational Creditors are placed on par with the Financial Creditors and the Adjudicating Authority (the NCLT) ensures that this is done.
7. The Resolution Professional has no adjudicatory powers under the IBC but only collects information.
8. Section 29A does not disturb any vested or existing rights as a resolution applicant does not have any vested right that can be disturbed. The purpose of this provision is to ensure that the IBC does not become a tool in the hands of unscrupulous persons who will take advantage of the failure of their own company.

The Court considered the respective arguments on either side at length and dwelt upon the state of the legal system facilitating recovery of debts and restructuring of assets as existed prior to the introduction of the Insolvency and Bankruptcy Code. Several judgments lamented the long process involved and how wrongdoers were able to get away with large borrowings without any repercussions.

The Court also observed the restraint that it placed on itself in economic legislation, and acknowledged that this is not only a feature of Indian law but also in that bastion of judicial review of executive action, the United States.

The Attorney General assured the Supreme Court that circuit benches of the NCLAT would be set up around the country in six months and this assurance was recorded.

The most important outcome of this judgment was that the Court affirmed that there was no discrimination between Financial Creditors and Operational Creditors. In doing so, the Court also suggested that there was no bar on withdrawal of insolvency proceedings at any stage though it would be subject to the approval of the NCLT.

The Private Information utilities were held to provide only *prima facie* evidence of default and such information could not be said to be an information for default.

Affirming that the Resolution Professional has no adjudicatory powers the role of the Resolution Professional was distinguished from the role of the liquidator under the Companies Act.

On the question of Related Party it was clarified that Related Party means a person connected with the business activity of the resolution applicant.

Having thus upheld the code in its entirety, the Court took note of the immense impact of the IBC on resolutions.

Sometimes, no news is good news. The fact that the Supreme Court has chosen to not interfere with any part of the functioning of the IBC only shows the efficacy and the credibility of the IBC and the institutions and persons who stand as its bulwark.



Recent Amendments in Companies Act

On 2nd November 2018, the Companies (Amendment) Ordinance, 2018 was promulgated to amend certain provisions of the Companies Act, 2013. The Ordinance came into force with immediate effect - on the same date. The amendments aim at improving compliance and strengthening corporate governance.

Over 30 amendments have been made. These include modified penalties leviable for various offences. One of the objectives is to reduce the burden of routine matters before National Company Law Tribunals established under the Companies Act so as to unblock their work and enable them to handle serious offences.

Some of the amendments are discussed below:

I. Commencement of business

A new provision has been inserted namely, Section 10A - it states that a Company shall not commence any business or exercise any borrowing powers unless the following are complied:

- a. A declaration stating that every subscriber to the Memorandum has paid the value of shares agreed to be taken by him. This declaration shall be signed by a Director within 180 days of incorporation.

In case, such a declaration is not filed, the ROC can initiate an action for the removal of the name of the Company from the register of Companies.

- b. Every Company is required to have a registered office within 30 days from the date of incorporation to which all communications shall be sent.

In case, the ROC has a reason to believe that the Company is not carrying on any business/operations, it can suo moto initiate action for the removal of the Company's name.

- c. Conversion of a Public Company into a Private Company:

Currently, this process is being taken care of by the NCLT. Applications are to be sent to the Tribunal for this purpose. Such a conversion will have the effect of alteration of Articles of Association of the Company. (Section 14)

Amendment: As per the amendment, conversion of a Public Company into a Private Company will not be valid unless the Central Government (CG) has approved of such conversion. Hence, power in this regard has been shifted to the CG.

II. Registration of charges

When a Company creates a charge on any of its assets, it has a duty to register such a charge with the ROC within the stipulated timeframe. The provision is as under:

Section 77: Every company is required to register the charge within **30 days** of such creation. However, this time period may be extended upto **300 days** on application to the ROC.

Amendment:

- i. For charges created before the issuance of Ordinance: Such charges may be registered within **300 days** of such creation.
- ii. For charges created after the Ordinance: These charges are to be registered within **60 days** from the date of their creation.

Penal Provisions:

Section 86: If any Company contravenes with the provisions relating to registration of charges then:

- i. The Company would be punishable with a fine of 1,00,000 which could extend to 10,00,000.
- ii. Every officer of the Company who is in default would be punishable with imprisonment for a term which could extend to 6 months or with a fine of Rs. 25,000 which could extend to 1,00,000 or with both.

Amendment:

Additionally, if any person wilfully furnishes any false information, then he would be liable for punishment for fraud under Section 447.

III. Appointment of directors

Section 164: As per Sec 164 of the Act, certain disqualifications are specified that would prevent a person from being appointed as a Director. They are:

1. Person with an unsound mind
2. Person who is an undischarged insolvent
3. Person against whom an order has been passed by the NCLT/ Court stating his disqualification.

Additionally, Section 165 talks about the maximum number of directorships. It states that a person shall not be permitted to hold office as a director in more than 20 Companies (including alternate directorship) at the same time of which the maximum number of public companies are limited to 10.

Amendment:

An additional disqualification has been added. If a person holds office as a Director including alternate directorship in more than 20 Companies at the same time, he would become ineligible to be appointed as a Director.

Penal provision: In case a person accepts appointment as a Director in contravention of Section 165, he would be liable to a penalty of 5,000 for each day during which such contravention continues.

IV. Annual return

Section 92: Every Company is required to file its Annual Return within 60 days from the date of the AGM. In case AGM is not held, the return has to be filed within 60 days from the date on which AGM should have been held.

In case the above provisions are not complied, the Company will be at default. Punishment is as under:

- The Company would be punishable with a fine of 50,000 which may be extended to 5 lakh.
- Every officer who is in default would be punishable with an imprisonment for a

minimum term of 6 months or with a minimum fine of 50,000 which could extend upto 5,00,000 or with both.

Amendment:

The Company and its every officer in default would be *liable to a penalty* of 50,000.

In case of continuing failure, a further penalty of 100 for each day during which such failure continues subject to a maximum of 5 lakhs.

The earlier provision of imprisonment for the officers has been removed.

V. Financial statements

Section 137: Company is required to file its annual financial statements with the ROC within 30 days from the date of AGM.

In case of contravention, the Company would be punishable with a fine of 1,000 for every day during which the failure continues and such a fine may extend upto 10 lakh.

The MD and the CFO or any director entrusted with the responsibility of complying with these provisions would be punishable with imprisonment for a term which could extend to 6 months or with a fine of 1,00,000 which could extend to 5 lakhs or with both.

Amendment:

The same provisions will continue, however the following changes need to be noted:

- The Company would be liable to a penalty of 1,000 for every day during which the failure continues and such a fine may extend upto 10 lakh.
- The MD and the CFO or any director entrusted with the responsibility of complying with these provisions would be liable to a penalty of 1,00,000 with further penalty of 100 for each day during which the failure continues subject to a maximum of 5 lakhs.



EXPRESS NEWS

- **Venkataramanan quits Tata Trusts; Noel joins Ratan Tata Trust**
- **Global companies eye majority stake in VKL seasoning**
- **India withdraws Most Favoured Nation status to Pakistan after Pulwama attack**
- **Wholesale inflation eases to 10-month low in January**
- **New IL&FS Board pushes for asset-level resolution**
- **NCLT admits SFIO plea to wind up IBMA**

NCLT admits SFIO plea to wind up IBMA

The National Company Law Tribunal, Mumbai on Wednesday admitted Serious Fraud Investigation Office (SFIO) petitions for winding up the Indian Bullion Market Association (IBMA) and Juggernaut Projects, which are being probed in connection with the alleged Rs 5,600-crore National Spot Exchange (NSEL) scam.

Samsung wants to spoil its customers for choice in India

Korean major Samsung is taking another step in a bid to reclaim its lost crown from its Chinese rival Xiaomi by planning a multi-channel focused handset series, which is expected to contribute \$4 billion (over Rs 28,000 crore) in sales by the end of 2019.

MSREI buys majority stake in Pune's KSH Infra SPV for Rs 350 crore

In its maiden logistic and warehousing investment, Morgan Stanley Real Estate Investing (MSREI) has picked up majority stake in a special purpose vehicle owned by KSH Infra, a Pune-based warehousing and industrial logistics park developer, for Rs 350 crore. The global private real estate investment management arm of Morgan Stanley Investment Management and KSH Infra together plan to build additional 1.1mn sq ft in Pune market.

Government panel for raising minimum wage to Rs 375

An expert committee set up by the government has recommended setting the minimum wage at Rs 375 a day, higher than the existing rate of Rs 321 for agriculture or unskilled workers and Rs 371 for semi-skilled workers.





Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Acceptance of Deposits) Rules, 2014. which is to be known as Companies (Acceptance of Deposits) Amendment Rules, 2019.

Following explanation shall be inserted in rule 16 of principle rule;

“It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.”

The following sub-rule shall be inserted after rule 16 (A), sub-rule (2) ;

Every company other than Government Company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits. The return shall be filed in **Form DPT-3** within ninety days from the date of said publication of this notification.

Companies (Acceptance of Deposits) Amendment Rules, 2019 dated 22nd January 2019.

MCA has amended Companies (Prospectus and Allotment of Securities) Rules, 2014, which is to be known as Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019.

Following sub-rule shall be inserted in rule 9A, after sub-rule (10) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

“(11) This rule shall not apply to an unlisted public company which is;

- (a) a Nidhi;
- b) a Government company or
- c) a wholly owned subsidiary.”

Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019., dated 23rd January 2019.

Notifications

MCA has directed that all the companies, who avail supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days, shall file a half yearly return to the Ministry of Corporate Affairs stating the following;

1. The amount of payment due
2. The reasons of the delay

Such companies shall file the return in **MSME Form 1**.

S.O. 368(E), Dated 22nd January 2019.

MCA has appointed 30th January, 2019 as the date on which the provisions of section 465 of the Companies Act, 2013 in so far as they relate to the repeal of the Companies Act, 1956 shall come into force.

S.O. 560(E), Dated 30th January 2019.



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

**MYSORE
CHAPTER**

Invites you for the Two Days Seminar on

**“Emerging Compliance under Companies Act, 2013 and
Related Corporate Laws”**

Date: 15th & 16th March, 2019 (Friday & Saturday)

Time: 10.00 am to 05.00 pm

Venue: Mysore Chapter Premises

**Topics &
Speakers
details will be
shared soon**

PCH – 08

PDP – 16

Registration Fees (Including GST)

Members of ICSI - Rs.2,500/-

Students of ICSI - Rs. 1,000/-

Corporate Delegates - Rs.3,000/-

Mode of Payment

Cheque/DD in favour of “Mysore Chapter of ICSI”

NEFT details as follows:

Account No.: 64090481215

IFSC Code: SBIN0040521

Bank: State Bank of India

Branch: Metagalli Industrial Area Branch

MANAGING COMMITTEE MEMBERS		PROGRAMME CO-ORDINATOR
CS Veerash Mysore Jagadish Chairman	CS Kiran Thyagaraja Member	N. Dhanabal Chapter In-Charge
CS Parvati K R Vice – Chairperson	CS Phani Datta D N Member	Ph. No. : 0821-2516065 Mail ID : mysore@icsi.edu
CS Vijayarao Secretary	CS Padmanabha V Member	
CS Harsha A Treasurer		

ICSI – MYSORE CHAPTER
**ICSI House, # 125, NHCSL Layout, Off. KRS Road, Opp. J K Tyres, Metagalli,
Mysore - 570016**
Contact No. : 0821–2516065 ; Mail ID : mysore@icsi.edu

Vision

“To be a global leader in
promoting good”

Motto

सत्यं वद। धर्मं चर। इदंमे फेदं चरुफेदं अवेदं लेजु फेदं डेदु।

Mission

“To develop high calibre
professionals facilitating