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Mysore Chapter

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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 E-magazine. I am happy to inform you all that, Chapter organized two day workshop i.e., Manthan 2019, where more than 70 Plus Professionals across India took part in the workshop and it was very successful. I would like to thank on this occasion to Mr CS Amith Guptha, Mr Manoj Singh Bisht, Mr Ansul Jain for accepting our invitation and came as panelist for our 2 day workshop, and special thanks to Mr Thirupal and Mr Karthik for their co-ordination with our management committee members to conduct this workshop.

CS Veerash Mysore Jagadish, Chairman of the Chapter, ICSI happy to inform that Mysore Chapter got 6th Rank in professional level examination this time. Overall more than 50 Plus Students have cleared examination this time which includes foundation, Executive and professional level.

Thank You,

-: Editorial Team:

CS Vijaya Rao

CS Phani Datta

CS Parvati K.R

CS Ajay Madhaiah

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Chapter Activities

1. Career Awareness Program

Mysore Chapter conducted 01 Career Awareness Program during the month of August 2019. The details are as follows.

S No.	Date	College Name	Speaker	No. of Participants
1	28.08.2019	Maharani Commerce & Management College	CS Veerash Mysore Jagadish	120

2. Independence Day Celebrations

On 15th August, 2019 celebrated Independence Day in Chapter Premises. CS Veerash Mysore Jagadish, Chairman, hoisted the National Flag and delivered the Independence Day address to the participants. CS Vijaya Rao, Secretary, delivered the vote of thanks. Mysore Chapter Managing Committee Members & Students had participated in the event.

3. MANTHAN 2019 – Two Days Workshop

Chapter organized Manthan 2019 - A Unique two days workshop on critical issues in corporate laws, at hotel Rio Meridian on 16th & 17th August, 2019. Around 80 well known company secretaries from all over India participated in the program. Intention of the program was to understand and discuss the critical issues of the company law along with other respective laws which goes with it namely SEBI, FEMA etc. As company law is getting amended frequently and notifications are issued almost on a daily basis, this is a much needed effort by the cream layer of the professionals to serve the corporate world better. In the two day program more than 100 issues were discussed and came to conclusion on how that should be interpreted and solved with the help of decided cases. CS Amit Gupta, PCS, Lucknow, CS Anshul Kumar Jain, General Manager, Reliance Industries Limited Bombay, CS Manoj Singh Bisht, Company Secretary, Reckitt Benckiser (India) Pvt Ltd. Delhi, CS Karthick V., PCS, Bangalore & CS Thirupal Gorige, PCS, Bangalore were the panellists for the program. Chairman of the chapter CS Veerash Mysore Jagadish welcomed the gathering and CS Vijaya Rao, Secretary did the vote of thanks.

Manthan Memories

CS Karthik V, CS Anshul Kumar, CS Veerash,
CS Amit Gupta, CS Manoj Singh Bisht, CS Vijaya Rao

CS Veerash, CS Amit Gupta

CS Parvati, CS Anshul Kumar

CS Kiran, CS Tirupal Gorige

CS Harsha CS Manoj Singh Bishtnnn

CS Pracheta, CS Kartik V

All the Participants

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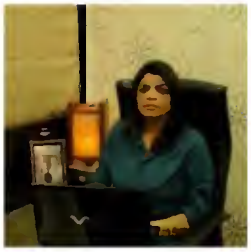

Companies Amendment Act 2019 sections notified on 14th August 2019

The Companies (Amendment) Act, 2019 ("CAA 2019") which was notified on 31*st July*, 2019 by which the Companies Act, 2013 ("CA 2013") was further amended. The Amendment Act incorporates provisions introduced by the Ordinance dated 2nd November 2018 along with certain new provisions. The effective date of provisions which were there in Ordinance dated 2nd Nov 2018 remains as 2nd November 2018 and for other provisions the effective dates are notified by Central Government vide Notifications.

Following few Sections which are not notified so far under CAA 2019 are now notified with effect from 15th August 2019, vide Notification dated 14th August 2019.

List of Sections of CAA 2019 and its related Sections in CA 2013 are listed as below

Serial No.	Section under CAA 2019	Section under CA 2013	Particulars
1	Section 6	Section 26	Relating to Prospectus
2	Section 7	Section 29	Relating to Dematerialization of shares
3	Section 8	Section 35	Relating to delivery of Prospectus
4	Section 14 (i) ,(iii) & (iv)	Section 90	Relating to SBO
5	Section 20	Section 132	Relating to NFRA
6	Section 31	Section 212	Relating to SFIO
7	Section 33	Section 241	Relating to Oppression & Mis Mgmt
8	Section 34	Section 242	Relating to Powers of Tribunal
9	Section 35	Section 243	Relating to consequences of termination of agreements
10	Section 37	Section 272	Relating to Petition of Winding up
11	Section 38	Section 398	Relating to filing of documents in electronic form

The amendments made vide the Notification dated 14th August 2019 is detailed as below

1. The Company was required to file the prospectus with Registrar of Companies (RoC) and RoC was required to register it and after registration only the Company can offer shares to public.
   Now the change is that the Company is required to file the prospectus with RoC and RoC is not required to register the same.
   (Section 26 and 35 of CA 2013 is amended)

2. All public companies (listed or unlisted) were required to issue/ allot or transfer their shares or securities only in Demat Form and not in physical form.
   Now the changes is that Ministry has power to prescribe any class of company (public or private) to issue / allot or transfer their shares only in Demat Form. However the Ministry has so far not prescribed any class of private limited companies.
   (Section 29 of CA 2013 is amended)

3. Under the provisions of Section 90 of the CA 2013 for Register of Significant Beneficial Owner (SBO) in a company, four changes are made
   3.1 One is insertion of new sub-section 4A which reads as follow:
   "(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.";
   3.2 Section 90 (9) is substituted with following:
   "(9) 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 sub-section (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 under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed."*
   3.3 Section 90 (9A)is inserted as follow
   (9A) The Central Government may make rules for the purposes of this section."
   3.4 Section 90 (11) for penalty any on-compliance of provisions of Section 90 (4A) newly inserted sub-section is also included.

New Changes is that now the Company need to show its bonafide efforts to find SBO, otherwise the Company will be liable for default under section 90 (11) of the CA 2013. Further the Ministry has power to make rules required to be made for this section which is regarding SBO.
One major change is that section 90 (9) is substituted. Earlier provision was that, the company or the person aggrieved by the order of the Tribunal may make an application in the Tribunal for relaxation of filing of the restrictions placed under sub-section 8. However with the amendment in this sub-section, the time limit is fixed as one year to make application to Tribunal and if the same is not made, such shares will be transferred to Investors Education and Protection Fund (IEPF).
(Section 90 of CA 2013 is amended)

4. On 1st October 2018, Section 132 (1) on National Financial Reporting Authority (NFRA) was enforced. NFRA was constituted to provide for matters relating to accounts and auditing standards under the Act.

Now the changes is that NFRA shall perform its functionsthrough such divisions as may be prescribed and each division of NFRA shall bepresided over by the Chairperson or a full-time Member authorised by theChairperson.There shall be an executive body of NFRA consisting of the Chairperson and full-time Members of NFRA for efficient discharge of its functions under this section except to make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or their auditors, as the case may be.

Earlier NFRA had power to debar the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949.

Now the changes is that NFRA can debar the member or the firm, for a minimum period of six (6) months or such higher period not exceeding ten (10) years from, being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or performing any valuation as provided under section 247.

(Section 132 of CA 2013 is amended)

5. Earlier powers were given to the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office (SFIO), if such powers are given by the Central Government, to arrest any person for offenses under Section 447 (Fraud) of the Act.

   Now the change is that the powers are given to any officer not below the rank of Assistant Director of SFIO, if such powers are given by the Central Government, to arrest any person for offenses under Section 447 (Fraud) of the Act.

   Earlier such arrested person was required to be taken in 24 hours to a "Judicial Magistrate" or **Metropolitan Magistrate.**

   Now the change is that such arrested person was required to be taken in 24 hours to a "Special Court or "Judicial Magistrate" or **Metropolitan Magistrate.**

   Following new sub section 14A is added under section 212 which reads as follow:

   > *(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability."*

   With this insertion Central Government is empowered to make an application before the Tribunal for disgorgement of asset, property or cash from any Director, KMP or other officer of the Company or **any other person or entity** who has taken undue advantage or benefit by fraud.

   (Section 212 of CA 2013 is amended)

6. Under Section 241 with respect to application to Tribunal for relief in case of Oppression, following four changes are being made:

6.1 Section 241 (2) with respect to application to Tribunal for relief in case of Oppression, the Central Government may make an application to the Tribunal, if it is of the opinion that the affairs of the company are being conducted in prejudicial manner affecting public interest.
Now the change is that such application is required to be made to Principle Bench of the Tribunal.

6.2 Sub Section (3) is inserted, which empowers Central Government to make application to Tribunal with a request to inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(a) any person concerned is guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed with business principles or prudent commercial practices;

(c) a company is or has been conducted and managed in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

6.3 Sub Section (4) is inserted, by which the person against whom a case is referred to the Tribunal under sub-section (3), shall be a respondent to the application.

6.4 Sub Section (5) is inserted, by which every application under sub-section (3)–shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry and the same shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908.

(Section 241 of CA 2013 is amended)

7. Under Section 242 with respect to Powers of Tribunal the following sub-section (4A) has been inserted:

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Now the change is that Tribunal shall record its decision in the matter where Central Government had made an application before Tribunal for enquiry, stating therein specifically as to whether respondent, is fit and proper person to hold office of director or any other office

connected with the conduct and management of any company.

(Section 242 of CA 2013 is amended)

8. Under Section 243 relating to consequences of termination or modification of certain agreements following two alterations were made.

8.1 sub-sections (1A) and (1B) are inserted:

(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

8.2 In section 243 (2) alteration is made where earlier it was mentioned that no Managing Director or other Directors or Manager whose agreement is terminated or set aside shall act as such in the Company without the leave of the Tribunal, for the periods of 5 years from the date of such termination or setting aside. If they act as such they shall be punishable with imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs.5 lakh or with both.

Now the change is that apart from Managing Director or other Directors or Manager whose agreement is terminated or set aside, the person who is declared by the Tribunal as not fit and proper person shall not act as Managing Director or Manager of a Company shall also be punishable with imprisonment for a term which may extend to 6 months or with a fine which may extend to Rs.5 lakh or with both.

With the amendments in section 241 to 243 read with Section 212 (14A) now the Central Government is empowered to initiate actions against not only the Directors, KMPs or other officers of a company on various grounds but also against any person or entity for fraud in a company by which they have taken undue advantage or benefit.

Further under Section 241 (3) the circumstances basis which the Central Government will form the opinion to initiate the case before the Tribunal requesting for inquiry and deciding whether the respondents are fit and proper person for management of the Company are very subjective and not defined anywhere like persistent negligence, breach of trust, sound business principles , prudent commercial practices, damage to interest of trade, industry or business and intent to defraud to its creditors , members or any other persons. These all circumstances are open for interpretation till the judicial pronouncement by Tribunal. This changes are suggested to give more powers to CG to oust fraudulent person to be in the management which is outcome of recent cases of corporate frauds.

(Section 243 of CA 2013 is amended)

9. Under Section 272 (3) relating to Petition for winding up, earlier the Registrar of Companies was entitled to present the Petition for winding up on any grounds mentioned under section 271 (1) except where the company has by special resolution resolved that the company be wound up by the Tribunal or where the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

   Now the change is that the Registrar of Companies can present the Petition for winding up of any company on all conditions mentioned under section 271 (1) except where the company has by special resolution resolved that the company be wound up by the Tribunal.

   (Section 272 of CA 2013 is amended)

10. Under Section 398 (1) (f) relating to filing of applications, documents, inspection, etc., in the electronic form, earlier any change in the prospectus was required to be registered with the Registrar.

    Now the change is that no registration is required for change in Prospectus of the Company. This amendment is pursuant to amendment in Section 26 and 35 of CA 2013 where registration of prospectus is no more required and only filing is to be done

    (Section 398 of CA 2013 is amended)

Conclusion:

These amendment are in line with the objective of government to bring transparency, good governance practice, remove defrauder from the management of the Company, oust and expel the Auditors for professional misconduct, Demat of shares of companies as Government may prescribe, which will be easy for Government to order transfer of the same to IEPF if the SBO is not identified where SBO exist.

However the apprehension remains for the wide powers given to the regulators under section 241 to 243 where apart from MD, KMP or Director even any person or entity can be made Respondents by the Central Government in case of matters related to fraud.

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Article

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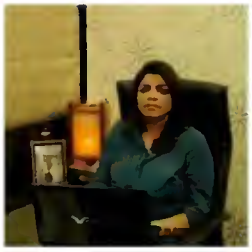

The Companies (Share Capital and Debentures) Amendment Rules, 2019---- Notified on August 16, 2019

Major changes in Issue of shares with Differential Voting Rights, ESOP and Debentures

Recently on June 27, 2019, SEBI vide Press Release No. 16/2019 had approved a framework for issuance of Differential Voting Rights (DVR) shares along with amendments to the relevant SEBI Regulations to give effect to the framework. It allowed listed tech companies to issue superior voting rights (SR) to promoters and founders up to a maximum of 74 % of the company's total voting rights. The amendment under the Companies Act, 2013 (CA 2013) allows unlisted companies also to issue DVR Shares and if later it wants to offer shares to public, it can do so by complying with the requirements of SEBI regulations.

On August 16, 2019, Ministry of Corporate Affairs(MCA) has issued a Notification amending the Companies (Share Capital and Debentures) Rules, 2014 which will be effective from 16th August 2019 and is called as the Companies (Share Capital and Debentures) Amendment Rules, 2019 (RULES).

The Techno and Innovative start up entities and its promoters were demanding these changes in issue of shares with Differential Voting Rights (DVR) since past few years as these start-ups have the potential Unicorn. After SEBI, now MCA has also recognized their demands and approved these changes to enable the promoters to hold substantial or controlling voting power while raising funds for growth and scaling up and do not cede their control.

Following are the details of the amendments in the RULES:

1. **Equity Shares with Differential Rights under Rule 4 has been substituted as follow:**

   1.1 The Company can now issue shares with Differential Voting Rights (DVR) up to **74% of the total voting power** including the voting power in respect of equity shares with differential rights issued at any point of time. The same was limited earlier to 26% of total post-issue paid up equity capital of the Company. [Sub-Rule (c)]

   1.2 The Company can issue shares with DVR even if it **does not have consistent track record** of distributable profits for the last 3 (three) years. [Sub-Rule (d)].

2. **Certificate of shares under Rule 5 has been amended as follow:**

   2.1 The Share Certificate may be issued by printing of facsimile signature of **Director or Company Secretary** now and it shall be presumed that Director or Company Secretary has signed the same and shall also be personally responsible for permitting the affixation of his signature on such Share Certificate.

3. **Issue of Employee Stock Options under Rule 12 has been amended as follow :**

   3.1 Start-up Companies are free to issue Employee Stock Option for a period of **10 (ten) years** from the date of its incorporation or registration (earlier it was 5 years) to an employee who is **a promoter or a person belonging to the promoter group** or a director who

either himself or through his relatives or through any body corporate, directly or indirectly, **holds more than 10%** of the outstanding equity shares of the Company.

3.2 Start-up Company is as defined in notification number **"GSR 127(E), dated 19th February, 2019** issued by the Department for Promotion of Industry and Internal Trade" (Earlier the notification number was "GSR 180 (E) dated 17th February 2016")

4. **Debentures under Rule 18(7) has been substituted as follow** :

Every company issuing redeemable debentures is required to comply with Debenture Redemption Reserve ("DRR") and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below:

(a) DRR shall be created out of profits of the company available for payment of dividend;

(b) The limits with respect to adequacy of DRR and investment or deposits shall be as under;-

(i) **DRR is not required** for debentures issued by All India Financial Institutions (AIFI) regulated by Reserve Bank of India (RBI) and Banking Companies, both public and privately placed debenture.

(ii) For other Financial Institutions within the meaning of section 2 (72) of the Companies Act, 2013, **DRR shall be as applicable** to NBFC registered with RBI.

(iii) For listed companies (other than AIFI and Banking Companies, **DRR is not required** for following cases:

In case of public issue or privately placed issue of debenture:

(a) For NBFCs registered with RBI and for Housing Finance Companies (HFC) registered with National Housing Bank and

(b) for other listed companies

(iv) For unlisted companies

(other than AIFI and

Banking Companies)

DRR is not required for NBFCs registered with RBI and Housing Finance Companies (HFC) registered with National Housing Bank, in case of privately placed debentures.

(v) For **other unlisted companies,** the adequacy of DRR shall be 10% of the value of the outstanding debentures.

(vi) The companies covered in Point (iii) and

(v) above, are required to invest or deposit, **a sum of at least 15%** of the amount of its debentures maturing during the year ending on 31st March of next year in any one or more methods of investments or deposits as provided below. Further, the amount remaining invested or deposited, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on 31st day of March of that year.

a. in deposits with any scheduled bank, free from any charge;

b. in unencumbered securities of the Central Government or any State Government;

c. in unencumbered securities / bonds mentioned in Indian Trusts Act, 1882;

Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.

(c) in case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule.

(d) the amount credited to DRR shall not be utilized by the Company except for the purpose of redemption of debenture.

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Article

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Scope of Valuation under Companies Act, 2013

The Ministry Corporate Affairs (MCA) has, since October 2017, notified Section 247 of the Companies Act, 2013 and introduced the Companies (Registered Valuers and Valuation) Rules, 2017. The MCA has designated the Insolvency and Bankruptcy Board of India (IBBI) as the authority for implementing the new regime of Registered Valuers apart from insolvency resolution professionals.

Transitional Provision

- Any person, who may be rendering valuation services under Act, on the date of commencement of these rules, may continue to render valuation service without a certificate of registration under these rules upto 31st January, 2019:
- Provided that if a company has appointed any valuer before such date and the valuation or any part of it has not been completed before 31st January, 2019, the valuer shall complete such valuation or such parth with three months thereafter.

That means valuation assignment after 30th April in CA, 2013 is to be done by a register valuer only

Valuation required under Companies Act, 2013 for unlisted companies

Section	Particulars
39(4)	Allotment of securities for consideration other than cash
54 [rule 8]	Issue of sweat equity shares
177(4)(iv)	For valuation of undertaking or assets of company
42	Private Placement of shares
62(1)(c)	Further issue of shares- Preferential issue of shares

67 **[rule 16]**	Provision of Money by Company for Purchase of its Own Shares by Employees or by Trustees for the Benefit of Employees
191 **[rule 17]**	Payment [other than in cash] to directors by way of compensation.
192(2)	Non Cash transaction involving directors
230(2)(c)(v)	Valuing under a Scheme of Corporate Debt Restructuring
230(11)	Offer of takeover of an unlisted co. as a result of Compromise or Arrangement
230(3)	Under scheme of Compromise or Arrangement with creditors and members [including swap ratio]
232(2)(d)	For reconstruction of com involving Merger, Amalgamation or Demerger
232(3)(h)	Valuation may be required by the Tribunal to provide exist for dissenting shareholders of transferor co.
236(2)	Purchase of minority shareholding [For Valuing Equity Shares held by Minority Shareholders]
281(1)	Valuing assets for submission of report by Company liquidator to NCLT

Following transaction in companies act where no register valuation required

- Rights Issue
- Bonus issue
- Buyback of shares
- Employee stock option plan
- Conversion of debt to equity
- Fairness opinion on scheme of Merger or Amalgamation

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Article

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GST: Advance Rulings – *Part 11*

1. Whether the supply of pump sets with installation Composite Supply or Works Contract?

   United Engineering Works (AAR – Karnataka) Advance Ruling No. KAR ADRG 15/2019 Dated 25.07.2019

   The applicant is manufacturing and supplying pump sets, has sought an Advance Ruling to determine the applicable GST Rate on supply of pump sets with its installation, electrification and energisation. Also, it has submitted that its supply as a composite with GST at 12 per cent. Upon deliberations, the AAR has found that composite supply means two or more taxable supplies of goods or services or both which are supplied as principal supply. Since installation service is in conjunction with the supply of pump sets, supplying of pump sets can be held as a Principal supply. Further, as per the agreement entered with the Government, the applicant is not involved in the drilling of bore wells, hence the AAR has held that supply of pump sets along with installation as composite supply rather than as works contract.

2. Whether GST leviable on construction work continued under Joint Development Agreement (JDA) post GST Implementation?

   Durga Projects & Infrastructure Private Ltd. (AAR – Karnataka) Advance Ruling No. KAR ADRG 17/2019 dated 25.07.2019

   The applicant is engaged in the construction and sale of residential apartments and complexes under JDA. In the above case, construction was commenced prior to the implementation of GST but work continued post-implementation. The applicant sought an advance ruling whether he is liable for GST towards work executed under JDA on land owner's portion where work commenced during pre-GST and continued under GST Law. If tax is applicable the valuation for payment of tax? Incidence of tax arises when a supplier of construction services at the time when it transfers the possession. Since possession happened under the GST regime, liable for tax. Accordingly, the AAR held that GST is leviable on construction work executed under JDA.

3. Whether contributions received from members to meet administrative expenses are supply under GST?

   Rotary Club of Mumbai Nariman Point (AAR – Maharashtra) Advance Ruling No. GST-ARA-142/2018-19/B-88 dated 30.04.2019

   The applicant is a club engaged in charitable activities, sought an advance ruling on two questions - Whether the amount collected as membership subscription and admission fees from members is liable to GST as a supply of services? and if the above receipts are liable to GST, can the Club claim ITC of the tax paid on banquet and catering services for holding members meetings and various events?
   Upon deliberations, the AAR found that contribution in the form of membership fees collected from members is not only meant for meeting administrative expenses but also to set up high ethical standards in the business, which satisfy eh definition of business and same can be held as consideration. Accordingly, AAR held that contributions for the supply of services and liable for GST and for the second issue, answered in negative.

4. Whether input tax credit can be availed on undiscounted supply?

   MRF Ltd. (AAAR - Tamil Nadu) Advance Ruling No. 5/AAR/2019 dated 22.01.2019

   The applicant has intended to enter into an arrangement with M/s. C2F0 India LLP for setting up an interactive automated data exchange which can be installed for data interaction relating to sale & purchase of goods and services between a Buyer (the Applicant) and a Supplier (any supplier of goods or input services of the Applicant) in compliance to various ethical, accounting and business standards and sought an advance ruling whether the company can avail the ITC of the full GST charged on the supply of invoice or a proportionate reversal of the sarne is required in case of post purchase discount given by the supplier of the goods or services. The AAR held that applicant can avail ITC only to the extent of the invoice raised by the supplier less the discount as per C2FO.

   Upon appeal, AAAR relying on Section 16 of the Central GST Act, 2017 opined that value of supply shall not include any discount as such. In the case of discount is given after the supply where such discount is established as per the agreement entered into on or before such supply and ITC attributable to the discount has been reversed. Since non-compliance of these conditions, the transaction value shall be the value on which GST charged. Accordingly, AAAR has set-aside the order of AAR and held that applicant can avail the ITC and also proportionate reversal of the credit is not required in the case of a post purchase discount is given by the supplier through C2FO.

5. Whether input tax credit available on cranes given on hire from Head Office to Branch and payments are netted off against receivables?

   Sanghvi Movers Ltd. (AAR - Tamil Nadu) Order No. 26/AAR/2019 dated 21.06.2019

   The applicant provides Cranes on lease to clients without transferring its rights. Its head office situated in Maharashtra owns the said cranes and provides it to its Branch Office in Chennai on monthly rental basis which further given on lease. The applicant has sought an advance ruling, whether Integrated GST payable on such inter-state inward supply of leasing service from head office for providing further supply on lease or hire charges would be admissible as Input Tax Credit? Since separate registrations for the head office and branch office, they can be treated as separate or distinct persons. It is further evidence that head office raises tax invoice to provide crane services and branch office instead of paying full consideration to head office netted against receivables in the books of account of the branch office, i.e. deemed payment. Since payments are netted off against receivables, the AAR held that ITC is not available on cranes given on lease.

To be continued....

Jewels under the saddle

Integrity and Self Respect

These days all of us here so many stories in the social media, be it in Facebook, Whatsapp or someone might tweet. Some really have life lessons. One such story I came across is really a lesson. It can be applied to any part of our life especially to our field of work. I don't know who the author is but it said if you agree with this please share. So I owe it to the author.

Once upon a time, a merchant on a casual jaunt through a market came across a fine specimen of a camel for sale. The merchant and the camel seller, both skilled negotiators, struck a hard bargain. The camel seller pleased with his skill of worming out what he felt was a very good price, parted with his camel and the merchant chuffed that he had struck a fantastic bargain, proudly walked home with the latest addition to his large livestock.

On arriving home, the merchant called to his servant to come and help him take out the camel's saddle. The unwieldy heavily padded saddle being too difficult for the servant to manage on his own somehow took out the saddle. Hidden under the saddle, the servant found a small velvet pouch which on opening he discovered to be filled with precious jewels!! The servant was overexcited!!! "Master you bought a camel.....but see what came FREE along with it!!!"
The merchant was astonished as he looked at the jewels in his servants' palm. They were of extraordinary quality sparkling and twinkling in the sunlight. "I bought the camel" he said, "not the jewels. I must return them to the camel seller immediately." The servant was aghast.....his master was really foolish. "Master.....no one will know."
But the merchant headed right back to the market and handed over the velvet pouch back to the camel seller. The camel seller was very happy, "I had forgotten that I hid these jewels in the saddle for safe keeping." "Here, choose one of the jewels for yourself, as a reward."
The merchant said "I paid a fair price for the camel and the camel only, so NO thank you; I do not need any reward." But as much as the merchant refused, the camel seller insisted.
Finally the merchant said, sheepishly smiling, "Actually when I decided to bring the pouch back to you, I already took two of the most precious jewels and kept them for myself."
At this confession the camel seller was a bit flabbergasted and quickly emptied the pouch to count the jewels. However he was very confused. "All my jewels are here. What jewels did you keep? "The two most precious" said the camel seller.
"My INTEGRITY and my SELF-RESPECT."

How would you explain integrity to a young child?

Roger Jenkins explained it as "The ability to do the right thing or choosing to do the right thing when you could get away with doing the wrong thing."

Gella Praveen Kumar
B.Sc., MBA, FCA, Grad CMA
Faculty at ICAI for GST training
Practising Chartered Accountant
Gella & Co. Bangalore

Sabka Vishwas (Legal Dispute Resolution Scheme, 2019)

Taxing authorities come with different set of amnesty schemes to clear the old baggage of pending litigations either at Department or Assessee end. This helps in reducing the administrative cost of monitoring old legal issues and focus on the current tax laws. Many a times the legal battles are set forth by the authorities concerned on frivolous matters which are Revenue neutral in nature. Any Assessee willing to get along with the concerned amnesty scheme doesn't confirm that stand taken by the Department for recovery of Revenue from the concerned Assessee holds good and doesn't disapprove the stand taken by opponent. Same is applicable when Department discharge their baggage of Dispute and NO Assessee can set a precedent to disapprove the Revenue authorities

Usually the said Amnesty schemes come along with a promise of giving relief from Interest and Penalty applicable as an absolute waiver. This Amnesty scheme proposed by the Hon'ble Finance Minister has given a relief for Duty/ Tax payable. Ideally a relaxation for the Interest or Penalty served upon the Assessee concerned gives an indication of willingness to forego the Revenue loss by the Government authorities and not the basic right of Tax/Duty recoverable. However, this schemes formulated by the authorities have grossly erred in giving a relief in Tax/Duty recoverable. Based on the category of litigation the relief to be provided for Duty/Tax ranges from 40% to 70%. Ideally a dis-honest tax payer who has collected the Duty/Tax as the amount collected and disclosed in the relevant returns as money collected and not paid shall also be entitled under Section 124(1)(c) of this scheme, where relief is provided from 40% to 60%. Assuming this dishonest tax payer doesn't even disclose the facts of Duty/Tax collected but not paid and the same is identified by the authority concerned in an Audit/ Enquiry or an Investigation there is a relief provided under Section 124(1)(d), where relief is provided from 50% to 70%. But, for the above unhealthy permission these sorts of schemes are a welcome indicator once in a while for trade facilitation and acceptance of the need of the hour by the Government authorities.

A. Introduction

The scheme currently extends to Central Excise and Service Tax registered Assessee and also to 26 other allied laws. The scheme has been active from 01.09.2019 to 31.12.2019. All the applications have to be filed electronically at https://cbic-gst.gov.in. Benefits available for an applicant who makes an application under this scheme are as per below:

- Except Voluntary disclosure relief is provided for the Duty/ Tax payment ranging from 50% to 70%
- Complete relief from Interest or Penalty once application is made and payment of tax dues if any are paid under this scheme
- Complete automation of the application process and opportunity of Personal Hearing provided for tax differences if any computed by system
- ZERO tolerance for any intervention by the officers concerned with the audit

B. Persons ineligible for this scheme

Following category of Persons are declared to be ineligible for this scheme under Section 125:

a. who have filed an appeal before the appellate forum and such appeal has been heard finally on or before the 30th day of June, 2019;

b. who have been convicted for any offence punishable under any provision of the indirect tax enactment for the matter for which he intends to file a declaration;
c. who have been issued a show cause notice, under indirect tax enactment and the final hearing has taken place on or before the 30th day of June, 2019;
d. who have been issued a show cause notice under indirect tax enactment for an erroneous refund or refund;
e. who have been subjected to an enquiry or investigation or audit and the amount of duty involved in the said enquiry or investigation or audit has not been quantified on or before the 30th day of June, 2019;
f. a person making a voluntary disclosure:
    i. after being subjected to any enquiry or investigation or audit; or
    ii. having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but has not paid it;
g. who have filed an application in the Settlement Commission for settlement of a case;
h. persons seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944.

C. Relief under this application:

Applications to be made under this scheme are to be made online only. There are four categories of applicants identified under this scheme as below:

Category1: Litigation

Applicants in whose case Tax dues are relatable to show cause notice or one or more appeals arising out of such notice and pending as on 30.06.2019 shall have relief for the tax dues as per below:

Tax Dues less than or equal to Rs.50lakhs	70%
Tax Dues greater than Rs.50lakhs	50%

Category2: Arrears

Applicant in whose case tax dues are related to Arrears where show cause notice or appeal arising out of notice has been served and the time-limit for filing appeal has been lapsed shall have relief from tax dues as per below:

Tax Dues less than or equal to Rs.50lakhs	60%
Tax Dues greater than Rs.50lakhs	40%

The above category also includes an applicant who has indicated the tax dues as payable, but not paid in a return filed.

Category3: Investigation/ Audit/ Enquiry

Applicant in whose case an Investigation/ Audit/ Enquiry has been conducted on or before 30.05.2019 and the tax dues have been quantified, the relief provided is asper below:

Tax Dues less than or equal to Rs.50lakhs	70%
Tax Dues greater than Rs.50lakhs	50%

Category4: Voluntary disclosure

An applicant who files his application for the tax dues voluntarily not having exposure on account of Audit/Enquiry or any litigation in relation to such tax dues, then he shall pay entire such Tax dues without any relief. Further, there shall be a complete waiver of Interest & Penalty int this regard

D. Other procedural aspects:

Following aspects have been clarified by way of various provisions in relation to this scheme:

- On making the application, system shall compute the Tax dues relevant for payment
- Designated committee shall issue a statement of Tax dues payable on the basis of information provided by the applicant and opportunity for being heard in person shall be provided
- No quantification of Tax due shall be required for an application made under voluntary category
- Once the statement in electronic form is confirmed by the designated committee, the applicant shall be required to pay the amount of Tax dues within 30days failing which the application shall be deemed to be not applied for
- Applicant shall be permitted to adjust the Duty/Tax deposited at Appeal stage or during the Audit Enquiry and the balance amount shall be required to be paid by the applicant

- If the Taxes/ Duty deposited is more than the amount quantified by the Designated committee, the applicant shall not have a right to claim refund for such excess amount under this scheme
- Applicant shall be required to file an application for withdrawal of Appeal/ petition pending at High court or Supreme Court and such permission granted has to be filed along with the application. In other cases, application made under this scheme shall deemed to be withdrawal of appeal filed at another forum
- A discharge certificate shall be issued within 30 days from the date of payment of the Tax dues confirmed as per the statement issued
- Any payment to be made under this scheme shall not be permissible to be paid through Input Tax credit

BRAINY BITS

Mr.X an Accountant of M/s ABC Ltd., has carried out the activity of Input Tax credit reconciliation of Input Tax availed on the basis of purchase bills accounted in Books of Accounts vis-à-vis GSTR1 filed or uploaded by the suppliers. Mr.X has identified suppliers who have not filed their Outward supply details properly for the supplies made to M/s ABC Ltd., and he sought the expert opinion for examining the eligibility of ITC for those supplies where discrepancy exists in the credit availed

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

Facts of the case:

- Mr.X (hereinafter called as Service provider) got registered under GST as a regular service provider
- Service provider has been engaged by an entity located outside India for undertaking market research and support services in India. Entity located outside India has engaged the service provider for the intended services
- Remuneration is paid by the entity abroad to the service provider in foreign currency for the services engaged

Legal Provision:

Section 2(6) "export of services":

means the supply of any service when,––

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

Section 2(13): Intermediary

means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

Section 13 of IGST Act, 2017:

The place of supply of the following services **shall be** the location of the supplier of services, namely: –

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) **intermediary services**;

(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Conclusion:

- Service provider is rendering services in the nature of market analysis and support services in India as an Agent of the entity located outside India
- Services received by the entity located outside India for the customers located in India and the remuneration is made in foreign currency
- Since the service provider is acting on behalf of the entity outside India, he shall be construed to be an Intermediary as per Section 2(13)
- As per Section 13(8) of IGST Act, 2017 the Place of Supply shall be the place where the Service provider is registered
- Combined reading of Section 13 and Section 2(6) of IGST Act, 2017 service provider shall not be entitled for rendering service without payment of GST as per Section 16 of IGST Act, 2017 for Zero-Rate supply

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Solved cases of Supreme Court and NCLAT

Delhi Diaries 18

Can a Company that has already been struck off the record of the Registrar of Companies, be wound up?

Common issues that spring up in insolvency matters are as to whether there is a dispute, whether there is a debt, and consequently, whether there is a creditor, etc. However the one aspect that we commonly take for granted when considering any case under the Insolvency and Bankruptcy Code, is that there is a Company in existence which stands in the position of the Corporate Debtor. But what happens when a company has been struck off the record of the Registrar of Companies? Would an action for insolvency be maintainable even against a company that does not exist anymore? The NCLAT has answered this question in its recent decision in *Hemang Phophalia v. The Greater Bombay Cooperative Bank Ltd.* C.A. (Ins.) 765/2019.

In *Hemang Phophalia*, the case before the NCLAT was an appeal that arose out of an application filed by a financial creditor under Section 7 of the Insolvency and Bankruptcy Code. It so happened that that Corporate Debtor in the matter had been struck off from the Register of Companies under Section 248 of the Companies Act, 2013. Nevertheless the application under Section 7 was admitted by the NCLT and the same came to be challenged before the NCLAT by the ex-director and shareholder. On the basis of the said deletion of the name from the register, the shareholder and ex-director of the Corporate Debtor contended that an application under Section 7 against a non-existent company was not maintainable.

It was further contended by the ex-director that the Company has been defunct for period of more than four years, had no employees and had no assets and hence could not be made a going concern even by the Resolution Professional and therefore an insolvency petition against such an entity was meaningless.

The NCLAT adverted to Chapter XVIII of the Companies Act which pertains to Removal of Names of Companies from the Register of Companies.

Section 248 of the Companies Act provides as follows:

> 248. Power of Registrar to remove name of company from register of companies.-
>
> (1) Where the Registrar has reasonable cause to believe that—
> (a) a company has failed to commence its business within one year of its incorporation; [or] [***]
> (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455, he shall send a notice to the company and all the directors of the company, of his

intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

...

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company: Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

Hence sub section (6) clearly indicates that even in the case of a Company whose name has been struck off the records the assets can still be applied towards discharge of its liabilities.

Further, the NCLAT relied upon Section 250 which elaborates upon the effect of the removal of the name of a company from the Register of Companies by which it is embellished that the effect of such deletion is that Certificate of Incorporation issued to the Company shall be deemed to have been cancelled from such date except for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

The clincher as far as the present issue is concerned may be found in Section 252 which pertains to appeals, particularly sub section (3) thereof which provides:

252(3): If a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248, may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the Company had not been struck off from the register of Companies."

The NCLAT relied upon the fact that the Tribunal being the authority empowered to pass directions in respect of dues to workmen or creditors even after 20 years after the Company was struck from the register of Companies and also that the Tribunal was the Adjudicating Authority in terms of Section 60(1) of the Insolvency and Bankruptcy Code, 2016. Hence the NCLAT held that a petition under Section 7 or Section 9 of the IBC was maintainable against the assets of a Company even after its name had been struck from the register. It is for the Resolution Professional to then determine as to what if any assets of the company are available.

However, there is further nuance to this issue. A Company whose name has been struck no longer exists as a Corporate Entity. As such it cannot initiate a petition under Section 10 of the IBC for voluntary winding up even though petitions under Section 7 or Section 9 of the IBC filed by the Financial and Operational Creditors respectively are maintainable.

Words Worth Million

I also believe that a person who does not have respect for time, and does not have a sense of timing, can achieve little.

- Vikram Sarabhai

News Room

GST: Aadhaar verification to be mandatory for new dealers from January 2020

In order to check malpractices in GST, the GST Network decided to make Aadhaar authentication or physical verification mandatory for new dealers from January 2020.

"Aadhaar authentication of new dealers will be mandatory. Earlier it was optional. But we have noticed in two years that there's good number of fly-by-night operators. They make fake invoices," Bihar deputy chief minister Sushil Kumar Modi, who heads the group of ministers of GST Network told reporters after a meeting here.

Regulatory Updates

Companies Act, 2013

Compiled by:
Matruka B.M.
Professional student Mysore

Updates on Amended Rules

MCA has amended Companies (Share Capital and Debentures) Rules, 2014, which is to be known as Companies (Share Capital and Debentures) Amendment Rules, 2019.

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

In the principal rule, in rule 4, sub-rule (1), the following clause shall substitute clause (c),

"(c) The voting power in respect of shares with differential rights of the company shall not exceed seventy four per cent of total voting power including voting power in respect of equity shares with differential rights issued at any point of time"

In the principal rules, in rule 18, for sub-rule (7), the following sub-rule shall be substituted,

"(7) The company shall comply with the requirements with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year ending on the 31st day of March of next year, in accordance with the conditions given below,

DRR shall be created out of the profits of the company available for payment of dividend.

(a) The limits for maintaining Debenture Redemption Reserve and investment or deposits, shall be as under;

(i) DRR is not required for debentures issued by All India Financial Institutions regulated by RBI and Banking Companies for both public as well as privately placed debentures;

(ii) Other Financial Institutions shall maintain DRR just like Non-Banking Finance Companies registered with RBI.

(iii) For listed companies (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)), Debenture Redemption Reserve is not required in the following cases –

(A)In case of public issue of debentures –

A. for NBFCs registered with Reserve Bank of India under section 45-IA of the RBI Act, 1934 and for Housing Finance Companies registered with National Housing Bank;

B. for other listed companies;

(B) In case of privately placed debentures, for companies specified in sub-items A and B

(iv) for unlisted companies, (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)) –

(A) for NBFCs registered with RBI under section 45-IA of the Reserve Bank of India Act, 1934 and for Housing Finance Companies registered with National Housing Bank, Debenture Redemption Reserve is not required in case of privately placed debentures.

(B) For other unlisted companies, the adequacy of Debenture Redemption Reserve shall be ten per cent of the value of the outstanding debentures;

(v) In case a company is covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by a company covered in item (A) or item (B) of subclause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), invest or deposit, as the case may be, a sum which shall not be less than fifteen per cent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi):

Companies (Share Capital and Debentures) Amendment Rules, 2019 dated 16th August 2019.

MCA has amended Companies (Incorporation) Rules, 2014, which is to be known as Companies (Incorporation) Seventh Amendment Rules, 2019.

MCA has introduced revised forms RD-1 and RD GNL-5, these new forms shall substitute the existing forms.

Companies (Incorporation) Seventh Amendment Rules, 2019, dated 28th August, 2019.