



THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

EASTERN
INDIA
REGIONAL
COUNCIL

ICSI-EIRC NEWSLETTER

December, 2020

From the Desk of the Chairman, EIRC



“Play by the rules, but be ferocious.” – Phil Knight



Dear Professional Colleagues,

We have reached the end of the year 2020 – a tumultuous year indeed for all the people on earth. The major part of this year – we have seen changes and witnessed events

that none of us could ever imagine in our wildest dreams ever. As we move into New Year 2021 and commence our celebrations, we should take a moment and thank the heroes – doctors, soldiers, paramedics, security forces, law enforcement officials, for their tireless support to combat the Covid-19 Pandemic. We also hope that the Year 2021 ushers in fresh wave of optimism and positivity amongst us all.

As we have been reading and hearing the news of the Covid-19 vaccine, we are also hearing the news regarding the second outbreak of Covid-19, a new strain from the UK. India and its citizens must take utmost care and follow all necessary safety SOPs to safeguard ourselves from the new strain of virus. India has also been developing its own vaccine and I am sure we will all receive a very positive news in the next few months to come.

The Institute has continued not to hold physical seminars and workshops keeping in mind that the pandemic is still around and amongst us.

During this phase, several members of the ICSI had also conducted several webinars from their end to update the stakeholders regarding the latest developments. Our members have also contributed articles, which we have presented in our professional newsletter for the benefit of the stakeholders.

The response to the first ever online Management Skill Orientation Programme (MSOP) was very good. In pursuance to that, the EIRC of ICSI will organize the Second MSOP in a virtual mode which will commence on January 5, 2021 and it will end on January 21, 2021. As always, the students will be trained by various eminent faculties as they move their step once ahead, to attain the membership status of the Institute.

We organized several Career Awareness Programmes and counselling sessions

through virtual mode for the benefits of students at various schools and colleges in and around Kolkata and the overall Eastern Region.

To keep the members updated and upgraded with various new and critical topics, the ICSI has organized many Certificate Courses. We hope that members have registered in these courses as not only they will help add value to the professional but also to the profession.

The EIRC of ICSI has been conducting online CSEET classes for the 3rd batch for the January 2021 Exams. The registration for the June, 2021 CS Executive Programme both Groups is still open and students are encouraged to register for the classes at the earliest.

We had received so many Articles/Write-ups not only on delegated theme but also on other topic which will be addition in the knowledge for our readers. Your Regional Council is continuously working for the upliftment of the profession, members, students and stakeholders.

I would like to extend my sincere gratitude to my entire Regional Council for their continuous support. I believe that the EIRC of ICSI will definitely meet the expectation of their members and students.

Lastly, I would like to convey a message to our all readers that never lose hope. With your hard work and dedication, you can convert threats into opportunities, your weakness into strength. So, work hard and put your all efforts and dedication into what you are doing as it will never go into vain, and I hereby extend my best wishes to all the readers of this ICSI-EIRC Newsletter.

I take this opportunity to appeal to all the members, once again, to enroll to CSBF for not only strengthening the future of our family but also to strengthen the corpus of CSBF.

Please feel free to share your views and suggestions for the betterment of the Newsletter to me. My coordinates are given below:

With Warm Regards,

CS PRIYADARSHI NAYAK

Chairman, EIRC of ICSI

E-Mail: nayakfcs@gmail.com

Kolkata, The 31st of December, 2020

Motto

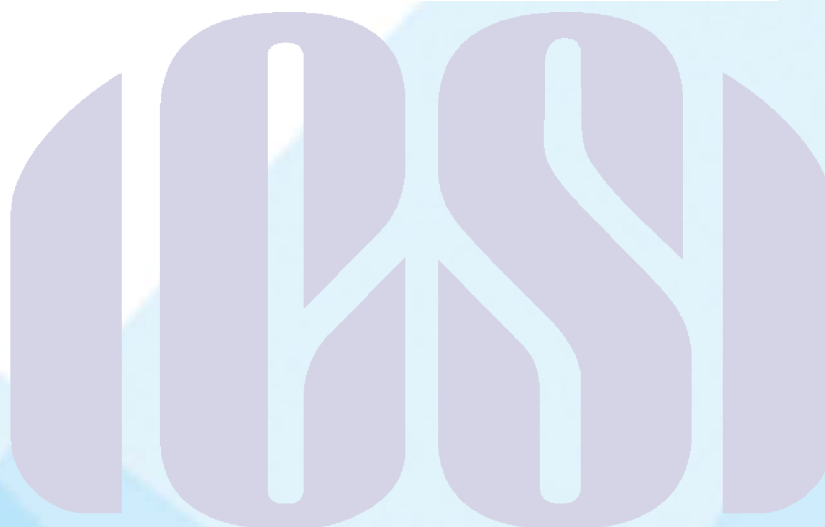
सत्यं वद। धर्मं चर।
इष्टकारे त्रेह त्पत्तेः ब्रह्मिणेह ह्यु त्रेह त्रयः।

Vision

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

Mission

"To develop high calibre professionals
facilitating good corporate governance"



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THIRD COUNTRY EXPORTS- FINANCIAL ARRANGEMENT - APPLICABILITY OF GST

By TIMIR BARAN CHATTERJEE

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Mentor and Partner - TCN Global and Economic Advisory Services LLP*



1. What is 3rd Country Exports

General Understanding of **Exports** is that Goods and Services that are Produced in one **country** and sold to buyers in another. **"Third-Country Exports"** means **exports** made by an **Exporter** in one **Country** & Arranging Supply from a **Third Country** to the Importer (Buyer) in Some other **Country**. In other words **"Third-Country Exports"** means exports made by an **Exporter in one Country & Arranging Supply from a Third Country to the Importer (Buyer) in Some other Country**.

For example, Indian Business Entity, after getting Export Order from Germany, Sources the Goods from say China and asks Chinese Supplier to make Shipment Directly to Germany. In this case the Goods are not Entering into India, but Directly Transported to USA.

2. What is the total value of Exports made by all the countries in the world (2019)

Approx \$24.829 Tn (approx Rs. 1860 Lac Crores) was the world's total exports of Merchandise goods during 2019. The country wise positions is as under:

EU - 7698 Bn- 1st position
China - 2643 Bn 2nd position
USA - 2498 Bn 3rd position
Germany - 1810 bn 4th position
Japan - 904 bn 5th position
Singapore - 645 bn 9th position
India - 546 bn 12th position

3. Financing of 3rd Country Exports

A significant portion of the above exports represents 3rd country exports. For example countries like Singapore, UAE, Hongkong etc do maximum amount of 3rd Country exports as compared to the actual exports from their own country. The entire transactions i.e. imports and exports take place outside the physical boundary of the country. Financially it is very cost effective and is financed as under:

X in India received an Export Order amounting to \$100 from Y in Germany. X contracted to supply the above product from Z in China directly to Y in Germany at \$ 98. In this case, Y will issue LC in favour X for \$100 against which X's Bank will issue LC in favour of Z in China for \$98. This is called back to back LC. On completion of the transactions, X will make a profit of \$2 and remit the same to India or it may keep the money outside subject to compliance of RBI FEMA guidelines.

4. Whether GST is Applicable on the sale of goods to the company in Germany, where goods sold are shipped directly from China to Germany without entering India.

To move forward, we shall try to answer following:

- Whether the Transaction between Indian Business Entity & US Customer is Treated as Exports under GST?**
- Whether the Transaction is Treated as Supply & GST Applicable on Third Country Exports?**
- How Invoice will be Raised for the Transaction?**

Export of Goods: As per Section 2 (5) of IGST Act, 2017 : Export of Goods is Defined as

"Taking Goods out of India to a place outside India"

Since in the above **Third Country Exports, Goods are not Physically moved from India**, therefore is **not Considered as Exports**.

Whether the Transaction is Treated as Supply & GST Applicable on Third Country Exports?

Entry No. 07 : CGST (Amendment) Act 2018 :

Schedule III lists out certain transactions which are treated neither as 'supply of goods' nor 'supply of services'.

Vide CGST (Amendment) Act 2018, Entry No. 07 has been inserted to give effect to the following.

Entry No. 07: Earlier there was no provision to deal with a situation of supply of goods from a place in non-taxable territory to another place in non-taxable territory without such goods entering into India.

Now with the insertion of Entry No. 7, it has now become clear that such supply shall not be a 'Supply within the meaning of section 7(2)(a)'.

Supply of Goods **from Non-taxable territory to another place in Non-taxable territory without entering into India** are **treated neither as 'supply of goods' nor 'supply of services'**.

In this Case Transaction between Indian Entity & German Customer is **not Treated as Supply** & therefore **GST is Not Applicable**.

4. How Invoice will be Raised for the Transaction?

As discussed above, since the Transaction is Not Treated as Exports and also **Not Treated as Supply under GST and therefore No GST is applicable. Tax Invoice under Sec 31 of CGST Act is not Required to Raise – Commercial Invoice can be Raised for the Transaction. In this regard it may be noted that the Indian entry will not be entitled to avail input tax credit in respect of goods and services (travelling, office rent, communication expenses, legal charges, bank charges etc) consumed in India to carry out the above 3rd country related exports.**

5. Two Different Opinions :

Different Advance Ruling are Pronounced on the matter as Follows :

- In Re Synthite Industries Ltd (AAR Kerala);** Order No. CT/2275/18-C3; 26/03/2018

Advance Ruling: Not Liable to GST on the sale of goods procured from China and directly supplied to USA without entering into India.

- In re Sterlite Technologies Ltd (GST AAR Gujarat);** Advance Ruling No. GUJ/GAAR/R/04/2020; 17/03/2020

Advance Ruling: GST Liable on Goods Purchased & Sold Outside India.

Opinion of the Author :

As per **paragraph 7 to the Schedule-III to the CGST Act 2017** (as amended by CGST (Amendment) Act 2018 which **enlists the transactions which shall not be regarded as supply**.

Paragraph 7 to the Schedule-III to the CGST Act 2017 is reproduced here – **"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"**.

Therefore, it **should not be treated as supply** under the provisions of the GST law and therefore **No GST is Applicable**. ■

SEBI SETTLEMENT SCHEME, 2020 – ONE TIME SETTLEMENT SCHEME

By SHWETA DUBEY
Corporate Division Head of Luharuka & Co.



On 27th July 2020 SEBI introduced **SEBI Settlement Scheme, 2020, in terms of Regulation 26 of SEBI (Settlement Proceedings) Regulations 2018**, giving a onetime settlement opportunity to the entities that have executed trade reversals in the stock options segment of BSE during the period from April 1, 2014 to September 30, 2015 against whom any proceedings are pending. SEBI observed that the trades were executed with a pre-determined manner which resulted in artificial/false/misleading appearance of trading in the stock options market and such trades were fraudulent in nature and liable for penalty. The entities who do not avail the one-time opportunity for settlement within the prescribed period, may be subjected to enforcement actions including Adjudication proceedings and imposition of monetary penalties.

Eligibility of the Scheme:

The Scheme shall be applicable in respect of the entities who have **executed trade reversals on the stock options segment of BSE during the period beginning from April 1, 2014 to September 30, 2015 against whom any proceedings are pending.**

What are Trade Reversals?

Reversal trades were considered those trades in which an entity reverse its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are alleged to be non genuine trades as they are not executed in normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volume, hence were deceptive and manipulative. Artificial volume is considered to be the volume (no. of units) reversed in both legs of said reversal trades while keeping out the volume, if any, which is not reversed.

Requirement of this Scheme:

SEBI came across several instances wherein a set of entities were consistently making losses by their trading in options on individual stocks which are listed on Bombay Stock Exchange (BSE). Trading of these entities appeared abnormal because they were consistently seen to be making significant losses by their trades, which were reversed with the same counterparties either on the same day or the next day.

Validity of this Scheme:

The period of the Scheme commenced on August 01, 2020 and was to end on October 31, 2020. However, in view of the large scale disruption caused by Covid-19 pandemic, competent authority in the current Public Notice, extended such period of the Scheme till **December 31, 2020**. Representation has been made for the extending the validity till **March 31, 2021**.

Applicable fee on this Scheme:

An entity which is interested in availing the Scheme shall along with the Settlement application, also submit an application fee of Rs. 15,000 in case of individuals and Rs. 25,000 in case of body corporate. A uniform consolidated Settlement factor of 0.55 in all cases wherein the entities had executed reversal trades would be applicable while arriving Indicative Settlement Amount.

Mode of application: The One-time settlement under the Scheme can do so in the specified format, available on the SEBI website and also on the BSE website. Remittance of settlement amount shall be done through online platform as available on the website of SEBI. The link is given in the Scheme document issued by SEBI.

<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>

Consequences in case this Scheme is not Availed:

The entities who do not avail the onetime settlement opportunity within the prescribed period, shall be liable for action as per section 15-I of the SEBI Act, 1992.

Our Comment:

The entities that have executed trade reversals in the stock options segment of BSE during the period from April 1, 2014 to September 30, 2015 and against whom any proceedings are pending should avail this opportunity to get a relief from further penal actions. But the present scheme is not justifying the intention introduced behind this Scheme. The amount to be paid by the entities under the Settlement Scheme 2020 are hefty in terms of cost to be paid as Settlement Amount. The entities are moving to High Courts filing writ petitions against the Notice – The SEBI Settlement Scheme, 2020 marking it as arbitrary and unjustified. One of the recent writ petition filed was Harendra Champaklal Vora HUF v/s. Union of India, Ministry of Finance. ■

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UNDERSTANDING GOOD GOVERNANCE FOR THE MASSES: PANCHAYAT GOVERNANCE

By CS SHREYA GHOSH

Manager & Company Secretary, Antrang Finance Ltd. (Associates of LIC Ltd.)



The present world is crippled with numerous problems starting from extremism, unemployment, regionalism, illiteracy, corruption and nepotism, etc. To combat them there is need for empowerment of people and participative development.

After independence, what came in India was not direct democracy, but the model of parliamentary democracy for the country as well as its constituent provinces called states. The resulting model is also called a republic, wherein the people elect representatives to make the laws and an executive enforces those laws and the laws must respect the boundaries laid down by the Constitution. Mahatma Gandhi's view about self-sufficient and self-governing village panchayats were a method of going back. Illustrious founding fathers of the Indian Constitution had enshrined village panchayats in Article 40 under the Directive Principles of State Policy. It cast an obligation upon the State to take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

From this point of view at the grassroots' level, democratic decisions taken by the elected bodies at local level should be more valuable.

What is Panchayat Governance?

In India for over centuries, Panchayat have been an intimate part of the Indian culture. Panchayat system is one of the most unique democratic institution. After independence, there were made a lot of effort to strengthen the institutions of local self-governance. But participation of people at local level was not so strengthening.

In 1977, the Left Front formed the government in the state of West Bengal and their key priorities were land reform and decentralisation of administration. The then government had introduced Operation Barga, in which share-croppers were given inheritable rights on lands they tilled. Operation Barga aimed to record the names of the sharecroppers (Bargadars), who formed a major part of the agrarian population in West Bengal and to educate them about their cultivation rights. This operation depended heavily on collective action by the sharecroppers and was qualitatively different from the traditional Revenue Court approach, which was biased in favour of the richer and more influential landowners. By giving these farmers more rights, and protecting them from exploitation by the landowners, they were assured of a relatively stable livelihood, which would improve their living standards as well. The launch of Operation Barga and the legal amendments introduced, changed the landlord-bargadar relationship. First, through anti-eviction measures, the landlords were largely prevented from forcibly throwing the bargadars off the land. Second, the state guaranteed that the bargadars would receive a fair share of the crop (75 per cent if the bargadar provided the non-labour inputs and 50 per cent if the landlord provides those inputs). This prevented exploitation of the sharecroppers by the landowners. The change in the tenancy condition in the state through Operation Barga had brought some degree of economic stability among farmers. Empowering the farmers which constitute the majority of the country's population brought in the wave of amendments for the rural sector of the country.

In 1992 on the recommendations of the LM Singhvi Committee, Panchayat Raj Institutions (PRIs) were granted constitutional status as the third level of India's federal democracy through the 73rd Amendment Act. The 73rd Constitution Amendment Act was not to make a pressure on the masses. Rural poverty was

still much too large and thus the existing structure of government needed to be reformed and thus PRI was introduced.

The PRI system has three levels: Gram Panchayat (village level), Mandal Parishad or Block Samiti or Panchayat Samiti (block level), and Zila Parishad (district level). The three-tier Panchayati Raj system ensured people's participation in rural reconstruction in general and that of women in particular. The Act provides for the reservation of not less than one-third of the total number of seats for women (including the number of seats reserved for the SCs and STs). Further not less than one-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women. This would be rotated among different Panchayats at each level. It is an attempt to ensure greater participation of women in election process directly and indirectly. It would be the nursery of creating women politicians for national politics.

Currently, the Panchayati Raj system exists in all states except Nagaland, Meghalaya, and Mizoram, and in all Union Territories except Delhi.

The main object of The Panchayati Raj Institution (PRIs) was to achieve the democratic decentralization to accelerate socio-economic development and social justice. The enactments of the 73rd Constitution Amendment Act and the subsequent state – wise Panchayat Raj Acts in India have brought to frontline the significance of democratic processes. This change in the Indian political system is the result of a growing conviction that big government cannot achieve growth and development in a society without people's direct participation and initiative. Contextually and theoretically too, the new PRI system has been created as a model of self-governance. The main objective of decentralization is to execute and implement schemes and programs to meet the local needs to mobilize people, to channelize their energies towards socio-economic reconstruction and to involve them in all the activities of the communities through the new institutions.

What is the importance of good governance in Panchayati Raj Institutions (PRIs)?

The key ingredient for socio-economic development of the country is good governance. The concept of governance is the way those with power use that power. It orbits around the responsibility of government and governing bodies to meet the needs of the masses as opposed to select groups in society. It is seen as a set of values, policies and institutions through which the society manages economic, political as well as social process at different levels. According to the UNDP policy, the Governance for sustainable human development relates to the quality of relationship between the government and the citizens whom it serves and protects. Any government to rule effectively and in a citizen-friendly manner has to ensure good governance. Good governance should demonstrate the capacity to usher in decentralization of powers that would prevent the sense of alienation among the elected representatives. It would promote welfare state in its true connotations where in people would be looked after by government as part and parcel of government machinery. It demands transparent administration by letting both not only decision-making criterion and programmes drawn up open to the public but also by involving them. A good governance is epitomized by and can be secured by sound, responsive and competent administration, respect to basic human rights and values, strengthen democratic, institutional as well as structural frame work to ensure accountability and transparency. Governance needs to be citizen-oriented,

citizen-centric, and citizen-friendly.

In order to bring new developments in the system, it is much called for the governance system to include the required kind of changes, keeping in mind the need of the day. The government is primarily an information processing system, analyzing and interpreting data and making decisions based on them. We need to recognize that the goals of modern government are much more than economic efficiency. The need and demand for good governance has increased with the rapid expansion of the economy and the growing awareness and assertion of rights by an increasingly educated population. Participatory Good governance is critical for ensuring social inclusion, only through Panchayats which are constitutionally mandated local democratic institutions that can ensure public, people participation and accountability. Developing strong panchayati raj institutions it is essential to improve good governance and delivery of services which involves redistribution of power, institution building and development process that improve accountability to the people. Development is looked upon as holistic in nature, which creates an environment to foster a long, healthy, creative life among people and make the governance process which are locally relevant, democratic, participative and responsive.

What are the problems restricting better governance in the Panchayats?

In a democratic set-up, accountability is inevitable at all levels. Control over administration at the grass-root level is essential prerequisite for its success. In Panchayati Raj, mechanism of Gram Sabha not only makes administration accountable to the people but also expresses the will and aspirations of the people to be fulfilled by the Gram Panchayat administration. The transparency, which is the sine-qua-non of Gram Sabha, ensures a check in arbitrariness in decision-making and fine tune the administration of the Gram Panchayats to the needs of the community at large. This power will make the Panchayats think twice before taking any arbitrary or biased decisions by-passing the established norms or by manipulating the norms or records. But, in practice, it is observed that there are the following issues:

1. The resolutions of the Gram Sabha depend on the will of the Gram Panchayat.
2. Influential sections dominate the proceedings of the Gram Sabha
3. The vigilance committees cannot effectively watch and supervise the working of Gram Panchayats in most of the states.
4. The Gram Sabhas are not meeting regularly.
5. The women voters and elected representatives attend the meeting of lower tiers of PRIs. However, at the upper level they attend the meetings and also take part in decision-making.

A study conducted on transparency in Panchayats in West Bengal has found very low profile of the attendance of the people in the Gram Sabhas and meetings. The main reason for low attendance is that the Panchayats are not interested (mostly) in making people interested in the activities of Panchayats. Less involvement of common masses in the functioning of the local bodies certainly reduces the chances for being transparent in the eyes of the people. There are several examples of embezzlement of funds at Gram Panchayat level. It has been aptly observed that in general, the Panchayat members do not maintain close liaison with the people of their constituencies and do not feel interested in making the people aware of their activities. The public view is that these institutions are nothing but extension of the block level government offices. The sense of belonging of the common people with the Panchayat bodies is weakening. It is hoped that effectively of Gram Sabha, changing social relationships and emerging social movement will take care of the success of PRIs and ensure good – governance in the country side.

What are the ways of elevating good governance for the masses through Panchayat Governance?

- ❖ The foremost thing required is to demarcate clearly the role of each tier of the Panchayati Raj to pin down their respective responsibility.
- ❖ Secondly, the responsible officials to exhibit their will to transfer the

powers and functions in the true spirit of the Amendment to achieve the desired objective of democratic decentralization and ultimately, contributing to good governance at the grass-root level.

- ❖ Thirdly considering the fact that the financial viability of any administrative system is the sine-qua-non for its effective functioning, the financial health of PRIs needs to be improved, then strengthened. The rural institutions should come up with the strong will power to tap and augment their financial resources.

Thus, to consolidate, the ways in which panchayat governance can be elevated for the masses are as follows:

1. The functions assigned to each tier should be well-defined and clear so as to avoid confusion.
2. The recommendations of the respective State Finance Commissions relating to sharing of taxes, levies and fees, etc. to improve the fiscal position of PRIs should be honestly accepted.
3. Timely action there on should be assured to make these panchayat bodies self-reliant. On the other hand, the Panchayats should also not hesitate in raising their own resources by following need-based and progressive taxation policies. Thus, financial empowerment is a must for making these bodies real instruments of rural development.
4. Special campaign by joint efforts of governmental and non-governmental agencies should be launched to generate awareness among the elected representatives of PRIs about different aspects of 73rd Amendment Act – the powers, functions and responsibilities.
5. In view of the fact that women in PRIs are to shoulder greater responsibilities, there emerges the need to organize orientation/training programs for them to change their mindset and prepare them to shoulder responsibilities in decentralized governance. Different training modules are required to be developed for elected women representatives at the district level, block level and enable them to exercise power and responsibilities effectively.
6. Training should be made mandatory for both officials and non-officials. The training modules for lower tier should include Panchayat Act, rules, procedure, planning, managing general rural development schemes and programs, general government working and some knowledge of technical issues related to land – water management. The modules for middle and top tiers should focus on imparting knowledge of the area needs, potentials, resources and resource gaps; knowledge of state and national goals, plans, schemes and resources flow; responsiveness to people's needs and knowledge of their aspirations; knowledge of participatory planning and local mobilization techniques; knowledge of the government's administrative system at district and state level and the market system in the area; planning and project-planning expertise; concept and components of decentralized planning; knowledge of different departments and agencies working at district and block levels; and knowledge about the computers.
7. People's right to information and accessibility to the Panchayats must be ensured making the functioning of PRIs transparent.
8. The delivery of goods and services through PRIs should be expedited and there should not be any compromise on the quality aspect. Those who have developed the tendency of adopting corrupt practices or indulging in embezzlements must be brought to book by taking stern action against them. The nexus between the local bureaucracy and the heads of Panchayats for mutual gains should be firmly checked.
9. Good governance can be ensured through active and effective participation of the people by imbibing moral values. ■

Reference:

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3. Good Governance at grassroots by G. Palanithurai

SIGNIFICANCE OF CORPORATE SOCIAL RESPONSIBILITY IN TIMES OF COVID-19 PANDEMIC

By MAHIMA JHAWAR
CS Management Trainee, Skipper Limited



"Corporate social responsibility is the commitment of business to contribute to sustainable economic development – working with employees, their families, the local community and society at large to improve the quality of life, in ways that are both good for business and good for development."

- World Bank

INTRODUCTION

The COVID-19 Pandemic has caused a crippling effect on the entire world economy. Since the onset of this crisis from the month of March 2020, the mankind has been trying to overcome its menacing results. The disastrous impact of this deadly disease has resulted in steady acceleration of death rates and unemployment rates, suspension of business operations, social disruptions, loss of livelihood, extreme poverty, economic distress and numerous hardships. The Nationwide lockdown and Unlock guidelines along with phased re-openings of various activities announced by the Ministry of Home Affairs followed by multifarious reliefs and incentives has been the swift response of the Government of India to curb this calamitous situation.

Owing to the inclusion of Corporate Social Responsibility provisions in the Companies Act, 2013, the specified companies have been undertaking noteworthy Corporate Social Responsibility initiatives and have been constantly playing a pivotal role in enhancing social well-being and in uplifting the weaker sections of the society. In order to sought further assistance to control the repercussions of this coronavirus disease, the Central Government has amended the relevant provisions with respect to Corporate Social Responsibility in the Companies Act, 2013 to give an opportunity to the companies to serve the community and help the humankind in this dreadful circumstance and also avail the benefit of such incentives for discharging CSR activities expeditiously.

LEGAL PROVISIONS

Companies Act 2013

According to Section 135 of the Companies Act, 2013, every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year is required to spend in pursuance of its Corporate Social Responsibility policy at least two per cent of the average net profits of the company made during the three immediately preceding financial years and where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.

Furthermore, Schedule VII of the Companies Act, 2013 exemplifies activities which may be included by the respective companies in their Corporate Social Responsibility Policies which includes activities relating to but is not restricted to eradication of hunger, poverty and malnutrition, promotion of health care including preventive health care, education and gender equality, disaster management etc.

ELIGIBILITY NORMS FOR CSR CONTRIBUTIONS WITH RESPECT TO COVID-19

The amendments as set forth in the circular and notifications issued by Ministry of Corporate Affairs with respect to CSR spending for COVID-19 is illustrated below:

- ❖ Ministry of Corporate Affairs vide circular dated 23rd March, 2020 issued a clarification pursuant to which spending of CSR Funds for COVID-19 shall be considered as a CSR Activity as per the Act. The funds spent for various activities in relation to COVID-19 under items as mentioned in Schedule VII such as preventive health care and sanitation, disaster management, etc shall be considered an eligible CSR expenditure as per the Act.
- ❖ Ministry of Corporate Affairs issued a clarification on 28th March, 2020 which enumerated that any contribution made to the PM CARES Fund shall qualify as

CSR expenditure under the Companies Act 2013 read with Schedule VII. The Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) was set up by the Government on 28th March 2020 with the objective to provide relief to those affected by any kind of emergency or distress situation. The fund amount is utilized by the Government for taking relief measures against the coronavirus outbreak and corresponding pandemic like situations in the future.

- ❖ Ministry of Corporate Affairs vide circular dated 10th April 2020 brought to attention of the stakeholders that any contribution made to State Disaster Management Authority to gear up against COVID-19 pandemic shall also qualify as CSR expenditure.
- ❖ Ministry of Corporate Affairs on 26th May, 2020 issued a notification in pursuit of which new insertion was made in Schedule VII of the Act. The new amendment stated that any amount of contribution to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) shall also qualify as CSR expenditure.

QUALIFICATION OF RESEARCH AND DEVELOPMENT ACTIVITY OF NEW VACCINE, DRUGS AND MEDICAL DEVICES FOR COVID-19 AS CSR EXPENDITURE

MCA has introduced Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 on 24th August, 2020 on account of which if any company which is engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business undertakes research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 can consider such expenditure incurred under the ambit of CSR as per Companies Act, 2013 subject to the fulfilment of below mentioned conditions :

- ❖ Such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in Schedule VII to the Act.
- ❖ Details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report in conformity with Section 134 of Companies Act, 2013.

Prior to the aforesaid amendment, as per Companies (Corporate Social Responsibility Policy) Rules, 2014, activities which were undertaken in pursuance of normal course of business of a company could not be considered under the scope of CSR.

However, the Government has granted a boon to such Companies to avail the benefit of considering the cost and expenses incurred in research and development activity of new vaccine, drugs and medical devices in their normal course of business for the development of COVID-19 vaccine as a CSR expenditure under the Act. The Government's constant endeavor to stimulate and boost such companies to develop vaccine to fight this corona virus battle resolutely shall prove to be fruitful step to achieve desired results.

CONCLUSION

The outbreak of this pandemic has led to a complete transition from an ordinary and healthy living to a meticulous living approach with a constant threat to life. The corona virus has been firmly multiplying its devastating effect on the world population since its emergence. In spite of such difficulties, Government of India has been diligently striving to combat this tough situation. The amendments, notifications, circulars issued by the Government have been a driving force for the Companies to provide their valuable support to the society. The contributions and active participation of companies towards Corporate Social Responsibility activities for tackling COVID-19 situation as a result of such amendments has been increasing manifold and shall continue to extend thus making the country more and more resilient. ■

CIRCULARS / NOTIFICATIONS & JUDICIAL UPDATES

Compiled by **CS RAJAT AGRAWAL**
Practising Company Secretary



CIRCULARS / NOTIFICATIONS & JUDICIAL UPDATES

- 1. Notification Date of Companies (Amendment) Act, 2019** – MCA vide its notification dated 21st December, 2020 has notified 21st December 2020 as commencement date for various section of Companies (Amendment) Act, 2020.
- 2. Relaxation w.r.t. Form CRA-4 (Form for Filing Cost Audit Report)** – Relaxation of additional fees and extension of last date of filing of Form CRA-4 (form for filing of cost audit report) for FY 2019-20 under the Companies Act, 2013.
- 3. Companies (Appointment and Qualification of Directors) Fifth Amendment Rules 2020** – Time line is changed to 2 years i.e. now an independent director can give exam within period of 2 years after his name is enrolled in the Data bank. An ID was exempted for giving examination if he has served as a director as prescribed in rules for a minimum period of 10 years, the limit is reduced to 3 years. Exam passing percentage is reduced to 50% from 60%.
- 4. Govt Introduced new Rule 86B restricting the use of Input Tax Credit for discharging the output tax liability** - This rule is applicable on the registered person whose value of taxable supply other than exempt supply and export, in a month exceeds fifty lakh rupees. Rs 50 lakhs limit to be checked for each month. As per said Rule, taxpayer cannot use Input Tax Credit in excess of 99% of output tax liability.

JUDICIAL UPDATES

- 1. Company dissolution may be set aside within 2 Years from the date of Dissolution**
Case Name : Action Ispat and Power Pvt. Ltd. v. Shyam Metals and Energy Ltd. (Supreme Court of India)
Appeal Number : Civil Appeal No. 4041 of 2020
Date of Judgement / Order : 09/10/2020

2. NDTV Promoters Prannoy & Radhika Roy Guilty Of Insider Trading: SEBI

Case Name : In Re. Mr. Prannoy Roy & Mrs. Radhika Roy (SEBI)

Appeal Number : Order No. WTM/SM/IVD/ID2/9711/2020-21

Date of Judgement / Order : 27/11/2020

3. Physically record statement in alleged GST evasion case: HC directs Byju's CFO

Case Name : P V Rao v. Senior Intelligence Officer, Directorate General of GST Intelligence & Ors. (Delhi High Court)

Appeal Number : W.P.(C.) No. 8975/2020

Date of Judgement / Order : 18/11/2020

4. Logix Infrastructure Guilty of Not PITC Benefit to Homebuyers: NAA

Case Name : Sh. Rajender Meena v. Logix Infrastructure Pvt. Ltd (National Anti-Profiteering Authority)

Appeal Number : Case No. 72/2020

Date of Judgement / Order : 13/11/2020

5. ITC Allowed w.e.f. 01.02.2019 on Leasing, Renting or Hiring of Motor Vehicles, for Transportation of Persons

Case Name : In re Tata Motors Limited (GST AAR Maharashtra)

Appeal Number : Order No. GST-ARA-23/2019-20/B-63

Date of Judgement / Order : 15/12/2020

6. Section 68 Addition for Share Capital unjustified if Creditworthiness Proved

Case Name : Shri Anant Jignesh Shah, Proprietor of M/s. Nakoda and company v. The Union of India (Gujarat High Court)

Appeal Number : R/Special Civil Application No. 12712 of 2020

Date of Judgement / Order : 06/11/2020

ATTENTION MEMBERS

To publish the ICSI-EIRC Newsletter more informative, members are requested to contribute the Article on current topics / Check-Lists / Corporate and Legal Updates / Juridicial Pronouncements etc. to Shri Tamal Kar, Assistant Director at : tamal.kar@icsi.edu

GST UPDATES

Compiled by CA CS ANUP KR LUHARUKA
FCA, FCS, DISA (ICAI), Insolvency Professional
Registered Valuer (Sec or Fin Assets)



Waiver of Penalty payable for Non-Compliance: Notification No. 89/2020 – Central Tax dated 29/11/2020

The Council has waived the amount of penalty payable by any registered person under section 125 (General Penalty) of the said Act for Non-Compliance of the provisions of Notification No. 14/2020 – Central Tax, dated 21st March, 2020 between the period from 01/12/2020 to 31/03/2021, subject to the condition that the said registered person complies with the provisions of the said notification from the 01st day of April, 2021.

HSN Digit required on Tax Invoice : Notification No. 90/2020 – Central Tax dated 01/12/2020

The Council has amended principal N. No. 12/2017 – Central Tax, dated the 28th June, 2017, and last amended vide notification No. 78/2020-Central Tax, dated the 15th October, 2020 that a registered person for such class of supply (chemical related items) shall mention eight (8) number of digits of HSN Codes in a tax invoice issued by him under the said rules.

Extension of Due Date for Compliances u/s 171 : Notification No. 91/2020 – Central Tax dated 14/12/2020

The Council has amended principal N.No. 35/2020 – Central Tax, dated the 3rd April, 2020, and last amended vide notification No. 65/2020-Central Tax, dated the 1st September, 2020 and has extended the due date for compliances u/s 171, ie, compliances and actions in respect of anti-profiteering measures under GST to 31st of March, 2021.

CBIC appoints 1st January, 2021 on which various sections of Finance Act, 2020 shall come into force : Notification No. 92/2020 – Central Tax dated 22/12/2020

The Central Government has stated that the provisions of Sections -119,120,121,122,123,124,126,127 and 131 of Finance Act, 2020 shall come into force from 1st January, 2021.

Filing of Annual Return Optional for Small Taxpayers : Notification No. 77/2020 – Central Tax dated 15/10/2020

Filing of Annual Return by registered persons whose aggregate turnover is below Rs. 2 crores for the financial years 2017-18 and 2018-19 has been made optional vide Notification No – 47/2019-Central Tax dated 09/10/2020. However, the same benefit is extended for FY 2019-20.

HSN Digit required on Tax Invoice : Notification No. 78/2020 – Central Tax dated 15/10/2020

Stating the HSN Code in the Tax Invoice is amended with effect from 1st April, 2021. The following shall be substituted namely;

Sections	
Section 119	It sought to insert the words “or services” after the words “of goods” in section 10 of the Central Goods and Services Tax Act.
Section 120	It omitted the words “invoice relating to such” from the section 16(4) of the Central Goods and Services Tax Act.
Section 121	It stated that the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25.

Section 122	It seeks to amend section 30 of the Central Goods and Services.
Section 123	It seeks to amend the provision of Section 31 of the CGST Act which relates to time of supply of goods.
Section 124	It seeks to amend Section 51 of the CGST Act which relates to the provisions of TDS.
Section 126	It seeks to amend section 122 of the Central Goods and Services Tax Act which relates to the offences and penalties.
Section 127	It seeks to amend section 132 of the Central Goods and Services Tax Act which relates to the power of the GST authorities to arrest the taxpayers.
Section 131	It states that In Schedule II to the Central Goods and Services Tax Act, in paragraph 4, the words to Schedule II “whether or not for a consideration,” at both the places where they occur, shall be omitted and shall be deemed to have been omitted with effect from the 1 July, 2017.

Waiver of late fee for delay in furnishing Form GSTR-4 for FY 19-20 for persons having principal place of business in Ladakh : Notification No. 93/2020 – Central Tax dated 22/12/2020

The CBIC has waived late fee on failure to furnish Form GSTR-4 (Return filed by Composition Dealers) for FY 2019-20 from 1st November, 2020 till 31st December, 2020 for the registered persons having principal place of business in the Union Territory of Ladakh.

Fourteenth Amendment to the CGST Rules, 2017 : Notification No. 94/2020 – Central Tax dated 22/12/2020

❖ **Restricting the use of ITC amount for discharging output tax liability in GST** – If taxable supplies during the month (Exclusive of Exempt Supply & Zero Rate Supply) exceeds Rs. 50 lakhs, then Rule 86(B) would be applicable where ITC can be used only upto 99% of the Output Tax Liability. However, few exceptions are stated below:

- The taxpayer (proprietor/ karta/ managing director/ partner/WTD Members of managing committee of Association/Board of Trustees) have paid income tax exceeding 1 lakh in each of the 2 preceding financial years or
- Where taxpayers have received refund of unutilized input tax credit exceeding 1 lakh in the preceding financial year on account of exports or supplies to SEZ or
- Where taxpayers have received refund of unutilized input tax credit exceeding 1 lakh in the preceding financial year on account of inverted duty structure or
- The taxpayer has discharged his liability towards output tax through the Electronic Cash Ledger for an amount which is more than 1% of the total output liability, applied cumulatively, upto the said month in the current financial year or
- The taxpayer is
 - Government Department
 - Public Sector Undertaking

- Local authority
- Statutory body
- ❖ **Amendment to Rule 36(4)** – ITC to be availed by a registered person in respect of invoice or debit notes, the details of which have not been furnished in FORM GSTR-1 or using the invoice furnishing facility shall not exceed 5 per cent of the eligible credit. Earlier, this limit was 10%.
- ❖ **New grounds for Cancellation of registration under GST** – If there is significant difference or deviation in outward supplies in GSTR 1 and 3B or between 2A and GSTR 3B, then it would result in contravention to the provisions of the Act or the Rules. His registration shall be suspended (Form GST REG-31) and an intimation shall be sent to the taxpayer in his e-mail ID requiring him to explain within 30 days as to why his registration shall not be cancelled.
- ❖ **No opportunity of being heard to taxpayers for suspension of registration** – If the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may without providing the said person a reasonable opportunity of being heard, suspend the registration of such person with effect from a date as determined by him pending the completion of the proceedings for cancellation of registration under Rule 22.
- ❖ **Increase in Time Limit for granting GST Registration** – Where a person has applied for GST registration, the proper officer shall have 7 days' time instead of 3 days to either grant the registration in FORM GST REG-06 or issue a deficiency notice in FORM GST REG-03.
- ❖ **Biometric authentication for grant of GST registration** – The authentication done until now while applying for GST registration was based on Aadhar number authentication. However, now the Authorized Representatives or Authorized Signatory will have to get biometric based Aadhar authentication and photograph submitted. In case a person wishes not to opt for Aadhar authentication, biometric information along with photograph and other KYC documents are to be submitted. Only after verification of such documents, the registration would be granted. Such activities would have to be physically carried out at one of the Facilitation centers as notified by the Commissioner. The effective date is yet to be notified.
- ❖ **Physical verification for grant of GST Registration** – Where a person has not opted for Aadhar authentication or fails to undergo Aadhar

authentication or where the proper officer deems fit that there shall be physical verification of the place of business of the person applying for GST registration, then in such a case, one of the following steps will be carried out:

- (a) registration shall be granted in FORM GST REG-06 (where documents are in order) or
- (b) deficiency memo shall be issued (where further documents or clarifications are required) in FORM GST REG-03

Either one of the above activities needs to be carried out within 30 days of the submission of application.

❖ **Deemed Approval :**

If physical verification is not carried out, if registration is not granted within 7 days of receipts of application, the application shall be deemed to be approved.

If physical verification is carried out, if registration is not granted or a deficiency memo is not issued within 30 days of receipt of application, the application for registration shall be deemed to have been approved.

❖ **Validity of E-Way Bill** – Earlier the validity of the e-waybill was 1 day for each 100 Km. Now this limit has been changed to 200 Km w.e.f 1st January, 2021.

❖ **Restriction on generation of E-way bill** – Where the GST registration of a taxable person has been suspended, such person is now restricted from furnishing Part-A of E-way bill.

❖ **Restriction in filing of GST returns –**

- (a) **For monthly filers** - Such registered person shall not be allowed to file GSTR 1 in case he has not furnished his return in FORM GSTR 3B for the preceding two months.
- (b) **For quarterly filers** - Such registered person shall not be allowed to file GSTR-1 or use invoice furnishing facility in case he has not furnished return in FORM GSTR 3B for preceding tax period.
- (c) **For monthly filers on whom there is a restriction on utilization of ITC** - Such registered persons shall not be allowed to file GSTR-1 or use invoice furnishing facility in case he has not furnished return in FORM GSTR 3B for preceding tax period. ■

RESTORATION OF MEMBERSHIP

The members can restore their membership online only by making an application in Form BB (available on the website of the Institute www.icsi.edu) together with payment of the annual membership fee for the year 2020-2021 including GST @ 18% (Associates admitted on or after 1-4-2019 – Rs. 1770/-, Associates admitted till 31-3-2019 – Rs. 2950/- and Fellow – Rs. 3540/-) with the entrance fee of Rs. 2360/- and restoration fee of Rs. 295/-.

Particulars	Associate (admitted till 31.03.2019)	Associate (admitted on or after 01.04.2019)	Fellow
Annual Membership fee*	Rs. 2950	Rs. 1770	Rs. 3540
Entrance fee*	Rs. 2360	Rs. 2360	Rs. 2360
Restoration fee*	Rs. 295	Rs. 295	Rs. 295

* Fee inclusive of applicable GST @ 18%

MODE OF REMITTANCE OF FEE

The fee can be remitted through ONLINE mode only using the payment gateway of the Institute's website www.icsi.edu through members' login portal. Payment made through any other mode will not be accepted.

Steps to make online payment for Restoration Membership

- Login to portal www.icsi.edu
- Click **Online services** in the Menu and then click on **Member**
- Fill the User name : Enter your membership no. (eg. A1234)
- Password. Fill the password. In case you do not have a password, you may retrieve the password in case your email id and mobile number is correctly registered (you can check at <https://www.icsi.edu/member/members-directory/>) in the Institute's record.
- After login, go to **Members Option** (from top menu) then click on **Manager Account** → **Restoration of Membership for FY 2020-21** (on the left side under Place your Request)
- Download and Upload the duly filled and signed Form BB
- The amount payable will be auto filled
- Click on proceed for payment

For specific assistance raise a ticket at <http://support.icsi.edu>

CHAPTERS' NEWS

BHUBANESWAR CHAPTER

Date	Name of the Programme	Topic with Speaker	Venue	Total Participants
07/12/2020	Physically Exchange of ICSI Academic Collaboration MoU with Birla Global University, Bhubaneswar	Prof (Dr) Purnendu P Mathur, Vice Chancellor, Birla Global University, Bhubaneswar	BGU Auditorium, Bhubaneswar	10
17/12/2020	ICSI Best Grade "C" Chapter of the Institute for the Year 2019 presented to the Managing Committee of the Bhubaneswar Chapter on 17th December 2020 during the 48th National Convention of Company Secretaries at Indore held on December 17-19, 2020.	—	Indore	—

CHAPTER'S WORKSHOP AT A GLANCE

Physical Exchange of Academic collaboration MoU with Birla Global University, Bhubaneswar on 7th December 2020. The MoU was signed Virtually on 30th September 2020.

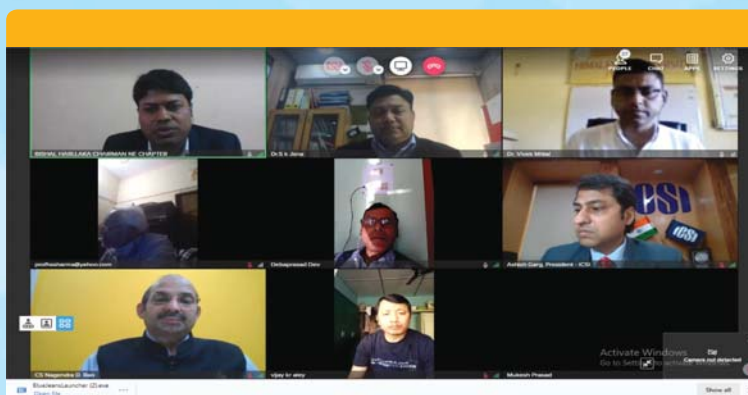


Best Grade "C" Chapter of the Institute for the year 2019 presented to the Managing Committee on 17th December 2020 at Indore.



NORTH EASTERN (GUWAHATI) CHAPTER

Date	Name of the Programme	Topic with Speaker	Venue	Total Participants
02.12.2020	MOU Signing Ceremony with Himalayan University,	Academic Collaborations Dr.H.S. Sharma, Vice-Chancellor, Himalayan University, Dr. Vivek Mittal, Registrar, Himalayan University, CS Ashish Garg, Hon'ble President, The ICSI CS Nagendra D Rao, Vice-President, The ICSI CS Bishal Harlalka, Chairman, NE Chapter of EIRC of ICSI CS Pradeep Sharma, Secretary, NE Chapter of EIRC of ICSI Dr. S.K. Jena, Director, The ICSI	Arunachal Pradesh	—



HOOGHLY CHAPTER

Date	Name of the Programme	Topic with Speaker	Venue	Total Participants
29.11.2020	Half Day Seminar on "Post Pandemic Revival Roadmap and Role of Professional & Clarification of Queries under Companies Act, 2013"	"Post Pandemic Revival Roadmap and Role of Professional" CS Aditya Purohit, Company Secretary, Salarpuria Group	Conference Hall of Hooghly Chapter	06

Total No. of Career Awareness Programmes organised during December, 2020

01

CHAPTER'S WORKSHOP AT A GLANCE



JAMSHEDPUR CHAPTER

Date	Name of the Programme	Topic with Speaker	Venue	Total Participants
19.12.2020	Annual Meeting of Management Committee	For New Office Bearers for the Year 2021	Virtually	09

Total No. of Career Awareness Programmes organised during December, 2020

01

RANCHI CHAPTER

Date	Name of the Programme	Topic with Speaker	Venue	Total Participants
08.12.2020	Chapter Round of 19th All India Debate Competition	CS Neha Pandey, Chairperson of Ranchi Chapter of ICSI	Ranchi Chapter of EIRC of ICSI (Virtual mode)	02
09.12.2020	Commencement of CSEET oral tuition Jan'21batch	-	Online classes in collaboration with EIRO of ICSI	04

CHAPTER'S WORKSHOP AT A GLANCE



SILIGURI CHAPTER

Date	Name of the Programme	Topic with Speaker	Venue	Total Participants
06.12.2020	19th All India Debate Competition- Chapter Level	Effectiveness of Independent Directors on Corporate Boards	Siliguri Chapter	02

T.CHATTERJEE & ASSOCIATES (TCA)

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