

eMagazine



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For Private Circulation Only



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Dear Professional Colleagues,

Happy to interact with you again through this monthly e-magazine.

The results of the examinations held in June 2017 for Executive & Professional course were announced on 25th August 2017. I convey my best wishes for all those students who are successful in the exams.

Chapter has celebrated the 71st Independence Day. CS Jayasheela Bhat, Senior Member of the Chapter was the Chief Guest. On 15th September, 2017 Chapter in association with University of Mysore conducting a one day workshop on "New Regimes of Indian Business Environment" for the lecturers of colleges under University of Mysore. Also the preparation for the ICSI Golden Jubilee function scheduled on 4th October, 2017 is going on. Shri. Pratap Simha, Member of Parliament, Mysore Constituency has given consent to be the chief guest. I request you all to participate in the said events and make it a huge success.

This is a season of Festivals and it is a time for celebration and happiness and I pray for the blessings of the Almighty on all of us. I wish all of you a very Happy Dussehra & Navaratri.

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Chapter Activities

CAREER AWARENESS PROGRAM

Chapter has conducted two career awareness programs during the month. The details are as follows.

S No	Date	College Name	Addressed By	No. of Participants
1	03.08.2017	Vidyavardhaka First Grade College	CSManjunath S	200
2	17.08.2017	Sharada Vilas Degree College	CSManjunath S	75

INDEPENDENCE DAY CELEBRATION



On 15.08.2017, ICSI-Mysore Chapter celebrated 71st Independence Day in Chapter Premises. CS Jayasheela Bhat, Senior Member of the Chapter hoisted the National Flag. CS Pracheta M., Vice-Chairperson welcomed the gathering. CSManjunath S, Secretary delivered the vote of thanks. CS Veerash M. J, Treasurer of Mysore Chapter, Members & Students of Mysore Chapter were participated in the event.

STUDY CIRCLE MEETING



On 15.08.2017, Chapter organized a study circle meeting on Companies Amendment Bill in Chapter Premises. The discussion was moderated by CS Pracheta M., Vice Chairperson of the Chapter. The session was well attended by Members & Students of the Chapter.



Non Ratification of a Statutory Auditor -is it the same as Removal?

Introduction:

Hence three year has passed when various provisions of Companies Act, 2013 came into effect, section 139 & 140 are one of them. As per the provisions under the Companies Act, 2013 tenure of appointment of auditor shall be 5 years and in every Annual General Meeting shareholders will ratify the continuation of the appointment of auditor. Due to implementations of new sections and rules of the Companies Act, 2013 if in any AGM auditor is not ratified then it will be consider as removal of auditor.

Statutory Provisions:



As per Section 139(1):_Subject to the provisions of this Chapter, every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as may be prescribed:

Provided that the company shall place the matter relating to such appointment for **ratification by members at every annual general meeting.**

As per Section 140.(1)_The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

Provided that before taking any action under this sub-section, the **auditor concerned shall be given a reasonable opportunity of being heard.**

Question for discussion is **Whether Company simultaneously needs to follow provisions of section 140(1) for removal of auditor in case of non-ratification of auditor u/s 139.** As the Section 139 exclusively gives the power to shareholders for ratification of continuance of auditor so in case shareholders are not contented with the auditor they can pass resolution for non-ratification of auditor and such auditor shall dis-continue as auditor of the Company.

Ruling by NCLT:

Statutory Audit



NCLT, Hyderabad Bench ('the Bench') thereof passed an order on 17th March, 2017 on the question whether "Company could remove its statutory auditor without prior approval from Central Government".

This case involved SPC & Associates, Chartered Accountants & DVAK & Co. Hence, the question was where NISC Export Services Pvt Ltd (here after referred as Company) appointed petitioner CA firm as its Statutory Auditor for period of five years but did not ratify their appointment in its subsequent

AGM and appointed another CA firm as its statutory auditor, since company did not obtain prior approval of central Government, removal of petitioner was to be held illegal or not?' Whether as Principle of natural justice auditor should be provided sufficient opportunity of being heard before his non-ratification or not. Here, after analyzing the provisions of the Companies Act, 2013,

Upon perusal of all the materials, submissions made by all the parties, The NCLT Bench has held that:

- The Petitioner was not ratified in AGM held on 26.09.2016, as Principles of Natural Justice demands that he should have been provided with sufficient opportunity before his non-ratification. Auditor acts as a bridge between management and shareholders of the Company and is an important professional in the whole eco system of the corporate world. Therefore, removal/ non-ratification of the Auditor without prior notice/ seeking his comments would not be proper.
- The NCLT Bench decided the case with following declarations/ directions:
 - i. The removal of petitioner firm as the auditor of the Company and the appointment of a new auditor of the Company is improper.
 - ii. We direct the company to continue the Petitioner firm as the Auditor of Company till the next AGM and subsequently necessary course of action can be taken by Company regarding the continuation of Petitioner firm, in accordance with law
 - iii. We further direct that Company to take necessary steps to re-appoint the petitioners' firm as Auditor of the Company.
 - iv. We direct the new auditors firm to submit all the records available in their possession, if any, and to cooperate with the Petitioner firm to conduct the audit of books of account of the Company.

Interpretation Note:

The provisions of Companies (Amendment) the Lok Sabha on 15.03.2016 which seeks "to amend Section 139 of the Act to do Bill, 2016 introduced with the requirements of the annual ratification by members with respect to appointment of Auditors" The Hon'ble High Court has observed that the provisions of the Companies Act, 1956 underscore that statutory auditor cannot lightly be removed and the statutory procedure has to be followed to the provisions recognized that Auditors are expected to function as independent professionals and not simply toe the line of the management of a company. The Central government will have to be satisfied that the reasons are genuine keeping in view the best interest of the company and consistent with the need to ensure professional autonomy to its auditors. ***The 3 tier statutory protection is given to the Auditors.***

After studying the provisions of Companies Amendment Bill, 2016 and the observation of High Court it can be interpreted that auditor is appointed for 5 year under Companies Act, 2013 but the powers are given to the shareholder to check yearly whether auditor is qualify to continue or not by ratification in every AGM. To address the issue of exploitation of the provision of ratification and safeguarding of the freedom of professional it is recommended in Companies Amendment Bill, 2016 to remove the provisions of ratification of Auditor. Further, Principles of Natural Justice demands that auditor should have been provided with sufficient opportunity of being heard about his non-ratification. Auditor acts as a bridge between management and shareholders of the Company and is an important professional in the whole eco system of the corporate world. Therefore, removal/ non-ratification of the Auditor without prior notice/ seeking his comments would not be proper.

Further, frequent change of auditor is not advisable for the effective auditing. Preparation of financial statement, transparency in audit policies/ procedures, etc. will be negatively affected. Therefore, Companies Act, 2013 added the provisions for tenure of Auditor as 5 years.

Conclusion

Hence, considering the intention of the statute one can opine that auditor should be given suitable opportunity of being heard as principle of natural

justice and company shall follow provisions of the act for prior approval of Central Government for removal of the Auditor.

Hence, where company appointed petitioner-CA firm as its Statutory Auditor for a period of five years but did not ratify their appointment in its subsequent AGM and appointed another CA firm as its statutory auditor, since company did not obtain

prior approval of central Government, removal of petitioner was to be held illegal.

Hence one can opine that, Company couldn't remove its statutory auditor without prior approval from the Central Government.

Web Yatra



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We all love holidays. It will give more fun and enjoyment to us. Starting from school going kids to working employees to senior citizens all are interested holidays and waiting for it. We all like holidays, because we can take rest, enjoy a lot with our friends and family members and travel to unexplored places. A single holiday has the ability to change our routine and give more relaxation to us.

One of the important tasks while taking holiday to other places or cities is to find right place to stay. However, with the advancement in technology, now we can book hotel room or rent a house through online facilities. With season of holidays coming ahead it would be still more difficult to find proper place to stay. Out of many such websites and apps, www.airbnb.co.in is one of the easiest website that we can rely on.

This site helps us to find rooms and service apartments in more than 191 countries of the world. We can book rooms or service apartments just by entering the details like

how many persons are to be checked in and number of days. The site offers service apartments at affordable rates that ranging from luxurious to economical once.

The site also gives full description of the apartment including the various amenities available, sleeping arrangement, price, house rules, safety features and cancellation policies. It also gives a map of neighbourhood, so that you can plan your vacation in a proper manner.

You can speak to the owner of the apartment before confirming your bookings. The best thing about the website is that, payment has to be made online only and you don't have to pay at the time of check in or check out or anything to the owner of the apartment.

This site is very useful for domestic as well as for international travels, particularly for group travel where everyone in the group can stay in one place.

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THE THREE SENSES OF CS

As qualified professional Company Secretaries, we take our pledge as torch bearers of governance and compliance. However, as we set about armed with our Institute's membership, we encounter the cold hard truths of corporate reality and some problems seem out of syllabus. While the entrepreneur seeks to arrive at his commercial goals expeditiously, the law maker expects us to ensure compliance in letter and spirit. This gap apparently looks like a puddle, but becomes an ocean as we set about our professional duties as an employee or practitioner.

To cross this ocean, we may need some new skills or senses, in addition to what we already possess. Let us designate these senses as common sense, civic sense and core sense, and attempt to understand them with the help of some mythological illustrations. The Ramayana mentions Hanuman's leap over the ocean, in obedience to his master Sri Rama's order to find Sita, who was captured by the demon Ravana in his island, Lanka. The obstacles he faced and the skills used to overcome them can be a great source of learning for us, as we attempt to bridge the gap, in the course of our professional obligations, between the promoter and the law enforcing authorities.

Common Sense (CS1)

The first demon Hanuman tackled was Mainaka, a golden mountain who rose up out of the sea and offered Hanuman a place to rest. If Hanuman accepted the hospitality, he may have become stuck in the comfort and failed in his journey; but common sense guided him and he politely refused the offer, respecting Mainaka by resting his foot on the hill for an instant and then deftly moving on.

This is a classic example of the exercise of common sense, and gives us a valuable piece of advice on how to act in spite of distractions. When one sets

about a professional task, it is possible that he may be beset with deviations of several kinds. It could be a colleague's promotion, friend's marriage or even the boss himself throwing a party. One could simply acknowledge the occasion with a token presence and resume work on hand. This would save the relation as the invitation was honoured and a lot of trouble afterwards, as one completes the task on hand in time.

Common Sense guides us to attend to small things, balance our work and personal life, not bite off more than we can chew (take as much work as we can reasonably handle) and so on. At every step, the professional needs to switch on this first sense (CS1) to keep his house in order and control his life.

Civic Sense (CS2)

The second demon, Surasa, was a fierce water serpent who emerged from the water to swallow Hanuman up as he was flying over the ocean. To escape, he first tried making himself so big that she could not swallow him, and then escaped by shrinking himself to the size of a dust mote and flying out from Surasa's mouth. By transforming his shape, he was, in a way, exercising Civic Sense.

Man is a social animal, and to live in society, one needs to adjust and adapt his behaviour to the environment that he places himself in, without compromising on his character. Many situations confront a professional and it is necessary to remain prepared to present our response to suit the recipient. If you come across an envious teammate or a corrupt official, you are called upon to illustrate your firmness and ability to stand up for your beliefs; but when you greet a senior bureaucrat or teacher; you need to demonstrate your humility. This capacity to adapt one's self to

suit the people and circumstances around him helps in remaining on the good side of one and all.

Civic Sense directs us to be polite, keep our surroundings clean, take care of our property, cooperate with the administration and so on. At every stage, the professional needs to activate this second sense (CS₂) to maintain a flexible approach and balanced perspective before different viewpoints influencing him.

Core Sense (CS)

The third demon, Śmhaka, traps Hanuman's shadow and drags him back, so that she can eat him. There was no escape as Hanuman is inseparable from his shadow and Śmhaka kept dragging him back from success. The only resort was to accost Śmhaka, which he does and vanquishes the demon in the ensuing battle.

One's personality, which may be compared to his shadow, consists of his belief system and the principles that he upholds and values. Sometimes the performance of one's duties entails satisfying a related person (may or may not be his immediate employer), which could be incompatible with his moral structure; this is when we can say that Śmhaka has his tail. When one's state of affairs is so placed that involves compromising on his ethics, he can either lower his standard or meet the consequences. Core Sense encourages us to recognise our fears and deal with them, to become complete.

Core Sense motivates us to be guard our ideals, mould our habits consciously, and practise internal awareness and so on. At every instant, the professional needs to energise this third sense (CS₃) to protect against threats to his integrity to ensure harmony in every aspect of his life and inspire all who come into contact with him.





Credit Guarantee Scheme

Meaning of Credit Guarantee Scheme

Availability of bank credit without the hassles of collaterals / third party guarantees would be a major source of support to the first-generation entrepreneurs for setting up a unit of their own Micro and Small Enterprise (MSE) and capital requirement of underserved market.

In view of above, Ministry of Micro, Small & Medium Enterprises (MSME), Government of India launched Credit Guarantee Scheme (CGS) so as to strengthen credit delivery system and facilitate flow of credit to the MSME sector. To operationalize the scheme, **Government of India and SIDBI set up the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE).**

The Credit Guarantee scheme (CGS) seeks to reassure the lender that, in the event of a MSME unit, which availed collateral free credit facilities, fails to discharge its liabilities to the lender, the Guarantee Trust would make good the loss incurred by the lender up to 50/75/ 80/ 85 per cent of the credit facility as the case may be.

The purpose of Credit Guarantee Scheme is to enhance the credit guarantee scheme (credit guarantee fund for micro units development refinance agency or MUDRA) for small business so that they can access more funds to fulfil their growth potential,"

Guarantees for loans has been increased from Rs. 1 crores to Rs. 2 crore, which will be given by the government as per above.

Credit Guarantee Scheme is not new, but new in NBFC.

The Modi Government has included NBFCs for the Credit Guarantee scheme and solve the real problems of SMEs borrowers and, thereby, help Micro and Small Enterprises in further widening their canvas.

Now, Non-Banking Financial Institution (NBFCs) are also eligible to extend collateral free and/ or third party guarantee free credit facilities extended to MSMEs.

It may be noted that credit facilities extended to MSMEs, as defined under MSMED Act, 2006 (except for credit facilities extended to Retail Traders, educational institutions and agricultural activities) would be eligible for coverage under the proposed scheme.

Obtention of Udyog Aadhar Number is mandatory for any prospective borrower to be eligible for coverage under the proposed guarantee scheme.

Eligible NBFCs are requested to approach CGTMSE for completing the formalities with regard to registration as Member Lending Institution of CGTMSE and onetime execution of specified documents with the Trust.

Bringing NBFCs under the purview of this scheme is a positive step since it leads to more access to funds for SMEs and MSMEs. This will help borrowers on P2P platforms have greater access to funds at lower and affordable interest rates.

Key Features of the proposal

Eligibility NBFCs:

NBFCs meeting the eligibility criteria given below

- Systemically Important NBFCs registered with RBI and meeting specified prudential norms
- Should be in profit for last three years. Credit rating for long term bank credit not lower than BBB
- Lending to Micro and Small Enterprises (MSEs)
- Experience of minimum 5 years to establish their lending and recovery track record (could be relaxed to 3 years)
- Should have minimum Rs. 100 crore MSE loan portfolio
- NPA level less than 5% for MSE portfolio as per the latest audited results.

- Average recovery ratio for the MSE portfolio for the last three years should be over 90%. May be relaxed in deserving cases

Coverage of loans: Loans above Rs.10 lakh and up to Rs. 200 lakh sanctioned after signing of agreement with CGTMSE to new as well as existing MSEs in manufacturing as well as service sector carrying out activities as currently permitted for coverage by CGTMSE.

Form of Guarantee: It will be a portfolio guarantee as against transaction guarantee for the present operated by CGTMSE.

A typical portfolio will have a 3-4 year life, till which the guarantee liability will be alive.

The Government has motive to server underserved segment and same shall be catered by including NBFCs along with Banks.

Living Room

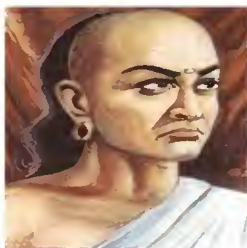


Chanakya -the Great Teacher

Chanakya who lived around 4th century BC is one of the greatest teachers who taught 'Arthshastra' an ancient Indian treatise on statecraft, economic policy and military strategy. He had mastered in this field and his virtues can be still followed today. There are many stories about Chanakya also called as Kautilya and Vishnugupta. His work on Arthshastra and Neetishastra are still applicable. Here is one story which should be followed by everyone.

Once, a Chinese traveller came to meet Kautilya (Chanakya). It was dusk and darkness had just started to set in. When the traveller entered Chanakya's room, he saw that Chanakya was busy writing some important papers under the lighting of an oil lamp. Chanakya smilingly welcomed his guest and asked him to sit. He then quickly completed the work that he was doing. Once he completed the work he extinguished the oil lamp under which he was writing and lit another lamp.

The Chinese traveller was surprised to see this. He thought that may be this was a custom followed by Indians when a guest arrives at their home. He asked Chanakya, "Is this a custom in India, when a guest arrives at your house? I mean, extinguishing one lamp and lighting the other?" Chanakya replied, "No my dear friend. There is no such custom. Actually, when you entered, I was working. It was an official work, pertaining to my empire, my nation. The oil filled in that lamp has been bought from the money from the National treasury. Now, I am talking to you. This is a personal and friendly conversation, not related to my nation; so I cannot use that lamp now, as it will lead to wastage of the money of the national treasury. Hence, I extinguished that lamp and lit this other lamp, since the oil in this lamp has been bought from my personal money."



"Once you start working on something, don't be afraid of failure and don't abandon it. People who work sincerely are the happiest."

- Chanakya



A of Bangalore Sells Butter to Cof Chennai for Rs. 2000. He also charges Rs. 100 for packing the same. The rate of tax is 12% and 18% respectively. What is the total IGST charged?

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



Opinion To Last Month's Brainy Bits

The dealer is registered in Bangalore for the state of Karnataka. Therefore in Tamilnadu he is an unregistered person.

The hotel being a small hotel with tariff within the threshold limit is not liable to pay GST.

As both parties are unregistered and also not liable to be registered, no tax liability arises. As there is no tax liability, there is no question of paying any tax under RCM.



Update on Secretarial Standard

The Revised SS-1 (Meeting of the Board of Directors) and SS-2 (General Meeting) as approved by the central government under section 118(10) of the Companies Act 2013 shall be applicable for compliance by all the companies (except the exempted class of companies) w.e.f. 1st Oct. 2017. The existing SS-1 and SS-2 shall continue till 30th Sept. 2017.



GST E Way Bill

Rules: The Central Goods and Services Tax Rules, 2017

Amended Rules: The Central Goods and Services Tax (Sixth Amendment) Rules, 2017.

W.e.f: On such date as the Central Government may, by notification in the Official Gazette, appoint.

Rules: 138, 138A, 138B, 138C, 138D

Information to be furnished prior to commencement of movement of goods and generation of e-way bill R 138

Every registered person who causes movement of goods of consignment value exceeding *fifty thousand rupees*

1. In relation to a supply; or
2. For reasons other than supply; or
3. Due to inward supply from an unregistered person, shall, before commencement of such movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically

Form GST EWB - 01

Where the goods are transported by the registered person as a consignor or the recipient of supply, whether in his own conveyance or a hired or by railways or by air or by vessel, the said person or the recipient may generate the e-way bill electronically – [Part B]

Where the e-way bill is not generated and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01 and the e-way bill shall be generated by the transporter - [Part A]

If Consignment less than Fifty Thousand Rupees

The registered person or the transporter may, at his option, generate and carry the e-way bill even if the Value of the consignment is less than fifty thousand rupees.

In case of an unregistered person, either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01.

Details of Conveyances

Where the goods are transported for a distance of less than 10 Kms. within the State or UT from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in FORM GST EWB-01 - [Part B]

Transportation by Railways or Air or Vessels

Details of consignment shall be furnished by the consignor or the recipient of the supply in FORM GST EWB-01 - [Part A]

A Unique E-way Bill Number / EBN

Upon generation of the e-way bill, a unique e-way bill number shall be made available to the supplier, the recipient and the transporter.

Details of conveyance Conveyance to Conveyance

Any transporter transferring goods from one conveyance to another in the course of transit, shall update the details of conveyance in the e-way bill in FORM GST EWB-01.

Where the goods are transported for a distance of less than ten Kms. within the State or UT from the place of business of the transporter finally to the

place of business of the consignee, the details of conveyance may not be updated in the e-way bill.

Compliance - Not in accordance with the Rules

Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions and the value of goods carried is more than fifty thousand rupees, the transporter shall generate FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan and may also generate a consolidated e-way bill in FORM GST EWB-02.

Cancellation of E-Way Bill

Where an e-way bill has been generated but goods are either not transported or are not transported as per the details furnished, the e-way bill may be cancelled electronically, either directly or through a Facilitation Centre, within 24 hours of generation of the e-way bill:

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.

Distance & Validity of E-Way Bill

An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned below:

Sr. No.	Distance	Validity
1.	Up to 100 km	One day
2.	For every 100 km or part thereof thereafter	One additional day

The Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods. Further, the e-way bill generated under said rules of any State shall be valid in every State and UT.

Communication of Acceptance by the Recipient

Where the recipient does not communicate his acceptance or rejection within 72 hrs of the details being made available to him, it shall be deemed that he has accepted.

Where E-Way Bill is not required

1. Where the goods being transported are specified in Annexure.
2. Where the goods are being transported by a non-motorized conveyance;
3. Where the goods are being transported from the port, airport, air cargo complex & land customs station by Customs;
4. In respect of movement of goods within such areas as are notified by the Central Government as the case may be.

Documents and devices to be carried by a person-in-charge of a conveyance R 138A

The person in charge of a conveyance shall carry—

1. The invoice or Bill of Supply or Delivery Challan, and
2. A copy of the E-Way Bill or the E-Way Bill Number, either physically or mapped to a Radio Frequency Identification Device..

Invoice Reference Number

A registered person may obtain an Invoice Reference Number from the common portal by uploading [Part A of FORM GST EWB-01] a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

Verification of documents and conveyances R138B

The Commissioner or the Commissioner may authorize the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra- State movement of goods.

The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the E-Way bill has been mapped with the said device.

Inspection and verification of goods R138C

A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within 24 hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within 03 days of such inspection.

Further physical verification

Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently.

Facility for uploading information regarding detention of vehicle R138D

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.

Exempted Goods

The government has exempted a list of 153 Items of mass consumption, such as, fruits, vegetables, food grains, meat, bread, curd, books, and jewellery, contraceptives, judicial and non-judicial stamp paper, newspapers, khadi, raw silk, Indian flag,

human hair, kajal, earthen pots, cheques, municipal waste, puja samagri, LPG, kerosene, heating aids, and currency.

Prescribed Forms

S. No.	Form	Prescribed For
1.	Form GST EWB-01	E-Way Bill
2.	Form GST EWB-02	Consolidated E-Way Bill
3.	Form GST EWB-03	Verification Report
4.	Form GST EWB-04	Report of detention
5.	Form GST INV – 1	Generation of Invoice Reference Number
6.	Form GST ENR-01	Application for Enrolment under section 35 (2) [only for un-registered persons]
7.	Form -GST-RFD-01	Application for Refund

Source: Notification No.27 /2017 Central Tax, Dated 30th August, 2017



Words Worth Million

You have to grow from inside out. None can teach you, none can make you spiritual. There is no other teacher but your soul.

Swami Vivekananda



EMPLOYEES AND NON-COMPETE AGREEMENTS

Employees leaving a firm or a company are often a source of some anxiety for the company. First, there is the question of replacement of the leaving person with another employee with a comparable skill set. Second, it is often necessary to train the new employee in domain skills as well the company's internal processes to make the transition as smooth as possible. If the leaving employee is in a client facing position, they may have to put in some effort and learning to fulfil the company's end of the client relationship.

Apart from all of the above, there also is the possibility that the leaving employee, who may have significant domain related knowledge, information, recognition by clients, and skills is joining a competing firm or company or setting up a business that competes with her former company. The contractual solution which was arrived at was the non-compete agreement. However, non-compete agreements must be structured with some nuance so as to not run afoul of the law and be rendered invalid.

Section 27 of the Indian Contract Act, 1872 provides that agreements in restraint of trade are void:

“S 27. Agreement in Restraint of Trade, void. Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind is to that extent void.”

This has been interpreted by the courts as meaning that a restraint on trade after the termination of employment contract would be void. However, such a restraint during the period of the contract would be valid as it is in furtherance of fulfilment of the contract. ¹ i.e. an agreement which states that the employee shall not enter into a contract of employment with a competitor, or run a competing business while employed in a company is valid. This provides a small buffer for the company as a person would take some time to commence the new competing activity and the time gap would reduce the impact of such transition.

Another device that companies employ is the concept of mandatory leave or what is known in common parlance as “Gardening leave”. Here the employee who has notified the company of his resignation is granted leave for a period which typically extends to a few months. The employee though not engaged in any work in this period,

¹ Judgment of the Bombay High Court in *Taprogge Gesellschaft MBH v. IAEC India Ltd.*, AIR 1988 Bom 157

remains on the payroll of the company and receives salaries and emoluments as necessary. A contractual non-compete restraint in this period would be valid.

However, in the case of time bound or project bound contracts, when the employee leaves the company beforehand, a reasonable restraint can be enforced to the extent that the unexpired part of the term of service would be essential for the fulfilment of the contract.

The leading judgment on this point is *Niranjan Shankar Golikari*² where an Indian company had entered into a contract with a German company for transfer of technical know-how. The know-how would be kept secret for a period of three years and then transferred entirely to the Indian Company. A person was employed as a shift supervisor under a contract valid for five years during which he would not engage himself in any business or serve in any capacity in any business competing with the company. However, the said employee, after receiving training, tendered his resignation and attempted to join a rival company in a similar position. The matter was litigated up to the Supreme Court where ultimately the court held that the restraint was reasonable and in furtherance of the contract. It is pertinent to note that if the person was permitted to join the rival company, the know-how purchased from the German company would in effect end up with the said rival company.

Though not strictly within the definition of employment, it is useful to consider the case of the

famous cricketer, Zaheer Khan.³ Zaheer Khan had entered into an agreement with a sports management company for marketing and managing his brand endorsements. However, the terms of the contract were such that even after the termination of the agreement, if he received an offer from a third party, he would have to submit it to the Company which could then choose to match the offer. The Court held that this was a restraint of trade void to the extent that it operated beyond the term of the contract.

The crucial difference between the two cases discussed above is that in the case of *Niranjan Shankar Golikari* the know-how which was really the bone of contention belonged to the company. The employee, in the first case, obtained that know how only by virtue of his employment with the company. In the second case, the advertising value of Zaheer Khan was built by his cricketing achievements. The sports management company merely managed that advertising value and could not be said to have created it.

Hence a company which seeks to restrain an employee from joining a rival would have to show that the employee has gleaned know-how, sensitive information and trade secrets from the company and hence deserves to be restrained beyond the period of service.

² *Niranjan Shankar Golikari v. Century Spg. And Mfg. Co. Ltd.* [1967] 2 SCR 367.

³ *Percept D'Mark (India) P Ltd. v. Zaheer Khan*, (2006) 4 SCC 227

News Room



[Express News](#)

- States agree to cut VAT on petrol products in relief for manufacturers
- Modi-Abe meet: Industrial townships to come up in Gujarat, Rajasthan, Andhra, TN
- FMOG sales see spurt in July after GST slump
- Amazon, Bank of Baroda join hands to offer micro loans at 18-30% interest
- Wipro bags 7-yr data centre services deal from European energy firm innogy

Mistrys to vote against Tata Sons move to become a private limited company

Cyrus Investments, one of Shapoorji Pallonji family's holding companies, has objected to Tata Sons' attempt to convert the primary holding company of the \$104-billion Tata Group to a private limited company from a public limited one, saying it amounts to oppression of minority shareholders. The Mistry family holds 18.4 per cent equity stake in Tata Sons.

Flipkart eyes four times Amazon's smartphone sales this festive season

Flipkart, which claims to have 65% share in the online smartphone sales in the country, will offer a

number of deals to woo customers during its 5-day 'Big Billion Days' sale beginning Sept 20

Modi's digital payment push is struggling to take off in rural India: Audit

An internal NCPI-commissioned study shows that adoption of BHIM and BHIM-Aadhaar are being hindered by implementation and design issues in semi-urban and rural areas.

Bitcoin goes on a tailspin, dives 50% in India in just 13 days

According to the data available with Zebpay, the value of the currency in India has declined from Rs 3,40,116 per unit on September 2 to hit a low of Rs 2,29,417 on September 15, indicating a fall of 48 per cent in less than two weeks





Companies Act, 2013

Updates on Amended Rules

MCA has amended National Company Law Appellate Tribunal Rules, 2016, Which is to be known as National Company Law Appellate Tribunal (Amendment) Rules, 2017, Rule 63 has been amended, according to which subject to the provisions of section 432, any party may appear before the Appellate Tribunal either in person or authorize one or more professionals like CS, CA, CWA or an advocate to appear before the Tribunal on their behalf.

An officer or an advocate may be appointed by central government, RD or ROC or official liquidator to represent any proceedings before the tribunal.

National Company Law Appellate Tribunal (Amendment) Rules, 2017, dated 23rd August, 2017.

MCA has amended Companies (Incorporation) Rules, 2014, which is to be known as Companies (Incorporation) Second Amendment Rules, 2017. Rule 28 and Rule 30 has been amended which relates to the shifting of registered office of the company within in the same state but in the jurisdiction of different ROC and seeking the approval for alteration of MOA with respect to the change of place of registered office from one state government or union territory to another respectively.

Form INC 23 shall be filed in the above circumstances and an advertisement shall be published in the vernacular newspaper in the principal vernacular language and in an English

Newspaper having widest circulation in the district, where the registered office of the company is situated

Companies (Incorporation) second Amendment Rules, 2017, dated 27th July, 2017.

Notifications

Central government has designated court of Additional District and Sessions judge, patna as special court to facilitate speedy trial of offences punishable with imprisonment of two years or more.

S.O.(E), 31st August, 2017.

Central government has delegated Regional directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong the powers and functions vested in it under subsection (2) of section 66 of Companies Act, 2013.

S.O.(E), 6th September, 2017.

Circulars

MCA has amended Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 which is to be known as (Appointment and Qualification of Directors) Amendment Rules, 2017. As per the new rule an unlisted public company working in the form of a joint venture, a wholly owned subsidiary or a dormant company is not required to appoint Independent Directors.

General Circular 09/2017, dated 5th September, 2017.