

Edition 172

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Mysore Chapter

eMagazine

DIRECTORS'

KYC



We wish all our readers

A very Happy 73rd Independence Day

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Dear Professional Colleagues,

It's a joy to meet you all through the E-magazine.

We are happy to inform you that during the month of July 2018, the foundation exam results were announced and around 28 students from Chapter, have passed the exam and we hope that similarly students will pass out in large number in the Executive and professional exam too. I wish all the students the best of luck as they eagerly await the results in August.

The chapter conducted career awareness program in Hassan district for 7 colleges and educated the students about CS professional course and in the days to come the chapter has planned to conduct students moot court competition and credit hours program for the members and we are looking forward for your active participation and support for the same.

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Chapter Activities

1. Career Awareness Programs

Chapter conducted 11 Career Awareness Programs during July 2018. The details are as follows.

S No.	Date	Venue	Speaker(s)	No. of Participants
1	03.07.2018	Marimallappa Women's' College	CS Manjunath S	54
2	06.07.2018	Central Commerce PU College, Hassan	CS Manjunath S	100
3	06.07.2018	BEST PU College, Hassan	CS Manjunath S	60
4	06.07.2018	Pradhana Government Degree College, Hassan	CS Manjunath S	80
5	06.07.2018	Central Commerce First Grade College, Hassan	CS Manjunath S	70
6	06.07.2018	St. Joseph's PU College, Hassan	CS Manjunath S	150
7	07.07.2018	AVK PU College, Hassan	CS Manjunath S	70
8	07.07.2018	St. Joseph's First Grade College, Hassan	CS Manjunath S	250
9	11.07.2018	St. Joseph's College for women	CS Manjunath S	125
10	26.07.2018	Mahajana First Grade College	CS Manjunath S	65
11	31.07.2018	Sree Nataraja First Grade College for Women	CS Manjunath S	110

2. Van Mahotsav

As part of student's month, Chapter in association with Saibaba School, Jayalakshmiipuram observed Van Mahotsav on 02nd July, 2018 by planting saplings. CS Manjunath S., Chairman, & Students and the teachers and students of Saibaba School were present during the occasion.

3. Felicitation & Guidance Program for Foundation Passed Students

In order to motivate the students, a felicitation program was arranged by the Chapter on 27.07.2018 for the Foundation Examination passed students. 26 students from the Centre cleared the Foundation level examination. CS Manjunath S., Chairman welcomed the students, parents & members. CS Veerash M.J., Secretary, delivered the thanking notes to the participants. CS Harsha, Treasurer and Members were present during the occasion.

4. Chapter Level Company Law Quiz Competition

On 27.07.2018, chapter conducted the Company Law quiz competition at the chapter level. Two students Mr. Prajwal R & Mr. Ghanikanth were adjudged as winner and runner-up respectively. Both the students will be representing the Chapter in the Regional Level competition scheduled at SIRO on 13th August, 2018. CS Phani Datta D.N., Member of the Chapter acted as the quiz master.



Felicitation & Guidance Program for
Foundation Passed Students



Van Mahotsav



Career Counselling



Bhavya M Executive Student won second prize in instrument playing competition at Vidya Vikas Engineering Collage Mysore



An Analysis: Beneficial Ownership under the Companies (Amendment Act), 2017

The Government's quest to trace benami properties and its real owners leads to some significant amendment in the Companies (Amendment) Act, 2017 (CAA17) very recently on 13th of June 2018 in the form of –

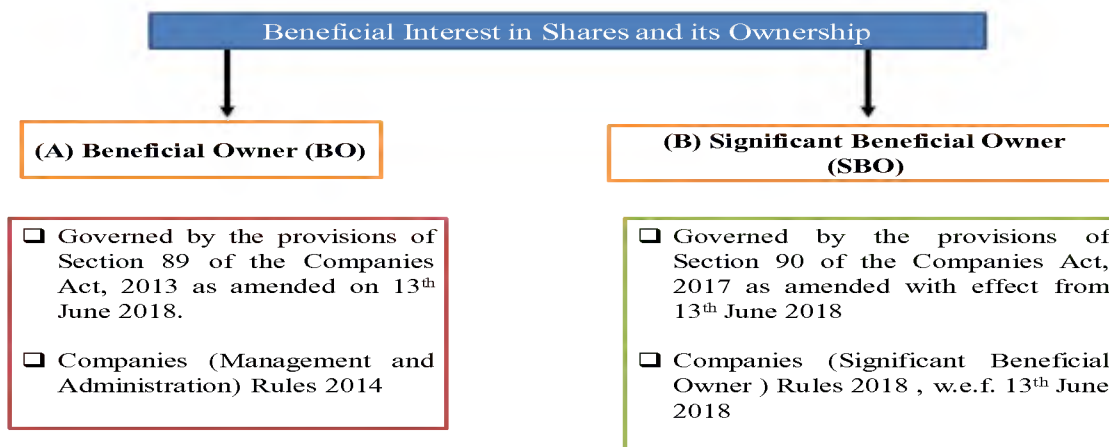
1. Amendments to Section 89 of the Companies Act 2013 (CA13) "**Declaration in respect of beneficial interest in any share**";
2. Substitution of Section 90 of CA 13 "**Investigation of Beneficial ownership of shares in certain companies**" with a new

Section 90 "**Register of Significant Beneficial Owner/s in a Company**"

3. Introduction of the Companies (Significant Beneficial Owners) Rules, 2018 ("Rules"), "**SBO Rules 2018.**"

By the above amendment we need to have a re-look on Beneficial Ownership as contained in Sec.89 in conjunction with the newly introduced Significantly Beneficial Owner/s (SBO) under Section 90 of the Amendment Act 2017.

1. Governing Provisions relating to Beneficial and Significantly Beneficial Owners



2. Definition of Beneficial Owner [Sec.89(10) of CAA 17]

Definition	
	<p>S.89(10) For the purposes of section 89 and section 90, beneficial interest in a share includes directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—</p> <ol style="list-style-type: none"> (i) exercise or cause to be exercised any or all of the rights attached to such share; or (ii) receive or participate in any dividend or other distribution in respect of such share..

3. Definition of Significant Beneficial Owner [Sec.90(1) of CAA17 R/w. Rule 2(e) of the SBO Rules 2018

3.1 Under Companies Act 2017

Definition

Section 90(1)

Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India

- holds beneficial interests, of **not less than twenty-five per cent.** or such other percentage as may be prescribed, in shares of a company
- or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company

3.2 Rule 2(e) of the SBO Rules

3.2.1 (i) If he is an individual -

Individual referred to in sub-section (1) of section 90 (holding ultimate beneficial interest of not less than ten per cent.) read with sub-section (10) of section 89, but whose name is not entered in the register of members of a company as the holder of such shares, and the term 'significant beneficial ownership' shall be construed accordingly.

3.2.2 Other than individual [Explanation I to Rule 2(e)]

(ii) Member is a Company

the SBO is the natural person, who, whether acting alone or together with other natural persons, or through one or more other persons or trusts, **holds not less than ten per cent. share capital of the company** or who exercises significant influence or control in the company through other means;

(iii) Where no natural person is identified in (i) or (ii)

SBO is the relevant natural person who holds the position of senior managing official.

(iv) Member is a Trust

The identification of SBO (s) shall include identification of the author of the trust, the trustee, the beneficiaries **with not less than ten per cent.** interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

4. Key Compliances related to BO and SBO

4.1. Beneficial Owner/s

Rule 9 of Companies (Management and Administration) Rules 2014

Sec.89(2)- Holds or acquires beneficial interest to File MGT.4;

Sec.89(3)- Any change in beneficial interest to Files MGT.5;

Sec.89(7)- Company to file return under sub-section (6) [Declaration of beneficial ownership] in MGT.6

4.2. Significantly Beneficial Owner/s

Declaration by SBO [S.90 R/w. R3 of SBO Rules, 2018] Form BEN-1 to Concerned Company ✓ on the date of commencement of the Final Rules within ninety days from such commencement; And ✓ within thirty days in case of any change in his significant beneficial ownership.	Filing of Return by Co [R/w. R4 of SBO Rules, 2018] Form BEN-2 filed by Company The declaration of beneficial interest received by the company, is required to be filed in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of declaration by it.	Register of SBO(s) [R/w. R5 of SBO Rules, 2018] Register in Form BEN- ✓ Maintain a register of SBOs Also, ✓ Register shall be open to for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.	Notice seeking information about SBO [S.90(5) R/w. R5 of SBO Rules, 2018] Register in Form BEN- ✓ company is required to give notice seeking information in accordance with under sub-section (5) of section 90 ✓ In Form BEN-4
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5. Onus of Compliance

5.1. Company

No doubt the above changes put the Company and its Key Officers responsible for ensuring compliances on a continuous basis and non-compliance would have penal consequences are provided under Section 89(6) and (7) and under Section 90(11) and the Company may also be required to move an application with NCLT under Section 90(7) of the SBO Rules, if the situation warrants so, however it is at the discretion of the Company to do so.

Considering the serious natures of the amendments and also keeping in mind other legislations which deal with similar matters prominently Benami Transaction (Prohibition) Amendment Act 2016, Prevention of Money-Laundering Act 2002, the Compliance Officer may consider-

- Prudent to send notice in BEN-4 to all holders holding more than 10% of the equity shares of the Company.
- Follow-up with subsidiary or associate companies to file BEN-1 within the prescribed time.
- Providing the Board with periodic updates on compliances under this Section;
- The SRC Committee may be made responsible for over-sight and directions related to this compliance related to Beneficial Ownership.
- The Board of Directors how non-compliances will get covered under "Officers in Default"

- The Company Auditors may also have to check, especially under MGT-7, both Statutory as well as Secretarial Auditors.
- Listed Entities may devise a similar compliance procedure as related Regulate, Monitor and Report Insider Trading.

5.2. BO and SBO

The BO and SBO are also required to comply and non-compliances invites very stiff penalties for both the categories as prescribed.

6. Some concerns in the drafting

- The SBO Rules provide a lesser threshold of 10% whereas the Act prescribes 25% related to SBO. The Rules are subordinate to the Act however since it is already issued the lower threshold stands as on date.
- Certain words used have not been defined and hence their interpretation may cause serious issues for e.g.-
 - Significant Influence or Control** has not been defined under Explanation I to Rules 2(e) of SBO Rules. This could lead to serious challenges, especially in group companies, 100% foreign subsidiaries, etc.
 - Senior Managing Official**, under Rules 2(e), this could be other than KMPs as well.
- The Act or the SBO Rules is silent in case no BEN-1 is filed with the Company or no reply is received on BEN-4 as it is not mandatory for the Company to approach NCLT?
- Even in the case of Beneficial Owner, Sec.89(8) no right shall be exercised in case

the beneficial owner fails to give declaration as required? What happens to voting rights, dividend, rights, bonus shares, etc.? How will the Company treat the withdrawal of rights?

6.5. The definition of Control under Section 2(27) talks about acting individually or in concert. There could be many situations where the decision may be similar, say in

appointing directors, but in reality, it may not be a conscious action of concert, but more in the overall benefit of the Company or in the investors benefit. On decisions in group companies even having common directorship but decision is purely based on commercial reasons.

Words Worth Million

"If there is one place on the face of earth where all the dreams of living men have found a home from the very earliest days when man began the dream of existence, it is India."

—Romain Rolland, French Nobel Laureate





GST – Transition, Transformation & Way forward – Part 1

Introduction

Goods & Services Tax (GST) has seen the decade-long deliberations by the lawmakers, industry and trade. W.e.f. July 1 2017, new Indirect Tax regime completely transformed the Indian economy by integrating it in the form of 'GST laws' and put the nation on the track of "One Nation - One Tax – One Market". Implementation of GST can be termed as a game changer as far as Indian Economy concerned. Due to GST, India has jumped to 100th rank in the 'Ease of Doing Business'. Very recently, the International Monetary Fund (IMF) in its 'Annual Country Report' described the GST as a 'Milestone Reform' but pushed for a simplified structure. The 'Report', further reads as 'a dual rate structure with a low standard rate and an additional higher rate on select items will be progressive and preserve revenue neutrality'. Like any major disruptions, GST has caused chaos all over say the reduction in domestic output, employment opportunities, the shutdown of MSME Units and fall in exports. However, the economy gradually stabilized by the end of last quarter. May require few more months coupled with Policy changes to settle down fully.

Whether GST succeeded? Status quo? Way forward? ***GST- Transition, Transformation & Way forward (in three Parts)*** is an attempt to through some light on how the economy has transformed from old rigid, complicated indirect tax regime to becoming a 'Good and Simpler Tax Regime'.

The Necessity of

Existence of deficiencies in the erstwhile Indirect Tax laws, to name, double taxation due to non-

integration of VAT and Service Tax, non-availability of CENVAT credit, cascading effect of taxes due to

CST on Inter-state purchases, existence of multiple duties, to be precise 17, across the board, compelled the Central Government and State Governments to look alternative integrated taxing statute.

Initial Steps....

Like the Companies Act 2013, the GST laws also saw a decade of deliberations, public discussions, planning and implementation. In a first instance, the Kelkar Task Force on Fiscal Responsibility and Budget Management (FRBM), during 2005, recommended the introduction of a comprehensive tax on all goods and service replacing CENVAT and State VATs. The Task Force has recommended to replace all indirect taxes but Customs with Value Added Tax on all goods and services. In that direction, an announcement was made by the then Union Finance Minister in his Union Budget 2007-08 that GST would be introduced w.e.f April 1, 2010. Subsequent to this, a Joint Working Group (JWG) had been set up during May 2007, with the then Adviser to the Union Finance Minister and Member-Secretary of the Empowered Committee as its Co-conveners and Four Joint Secretaries of the Finance Ministry and all Finance Secretaries of the States as its members. During April 2008 with certain modifications, a final draft or model law with a roadmap for the GST was prepared. The Central Government again set up a 'Committee of Principal Secretaries or Secretaries of Finance or Taxation and Commissioners of Trade Taxes of the States' to consider the draft and insisted to submit its views. Based on discussions between the Empowered Committee and the Central Government, the Empowered Committee released its First Discussion Paper on GST during November 2009. This sets out the stage for the GST Laws.

Authority drew from....

Constitution of India is the foundation to legislate all laws including tax laws. The authority to levy tax has been provided in Article 246 which distributes the power to levy taxes between the Central Government and the State Governments. Originally, the Central Government had the powers to levy a tax on the manufacture of goods (except alcoholic liquor for human consumption, etc) while State Governments had the power to levy a tax on the sale of goods. In case of Inter-state sales, the Centre had the power to levy CST. Similarly, the Central Government alone was empowered to levy a tax on Services. To address the said issues, the Constitution (122nd Amendment) Bill was introduced in the 16th Lok Sabha on 19th December 2014 to provide for a concurrent levy of taxes by the Central Government, the States and the Union Territories. The Lok Sabha passed the Constitutional Amendment Bill in May 2015. The Bill was referred to the 'Select Committee of Rajya Sabha'. Subsequently, the Bill with certain amendments as recommended by the Select Committee was passed in the Rajya Sabha and later by the Lok Sabha in August 2016. Thereafter, the Bill was ratified by the required number of States and finally received the Presidential Assent on 8th September 2016 and has since been enacted as the Constitution (101st Amendment) Act, 2016 w.e.f. 16th September 2016.

Key Organs

GST Council

While framing the Constitutional Amendment Bill, the concept of an independent Constitutional Body, named as 'GST Council' brought in. The Council consists of Finance Minister of India (as Chairman) and Finance Ministers of all the States (as its Members). Article 279A of the Constitution provides for following roles and responsibility:

The GST Council shall make recommendations to the Union and the States with respect to

1. Taxes, cesses and surcharges levied by the Union, the States which may be subsumed in the GST.
2. Goods and services that may be subjected to, or exempted from the GST.

3. Model GST Laws, principles of levy, apportionment of IGST etc.
4. Threshold limit of turnover below which goods and services may be exempted from GST.
5. The rates including floor rates with bands of GST.
6. Special rate or rates to raise additional resources during any natural calamity.
7. Special provision with respect to the North Eastern States.
8. Any other matter relating to the GST, as the Council may deem to be fit.

Since its constitution, the all-powerful GST Council has met twenty-nine (29) times i.e. till August 2018 and took several important key decisions to make GST as a 'Good & Simpler Tax'.

Goods and Services Tax Network

Goods and Services Tax Network (GSTN) is a company incorporated u/s. 8 of the Companies Act, 2013. In other words, it is a 'not for profit' organization, where the Central Government holds 24.5% equity and all States together holds another 24.5%. Remaining 51% of equity is held by financial institutions like HDFC, ICICI, LIC etc. The GSTN has been set up to provide Information Technology infrastructure and services to the Central and the State Governments, taxpayers and other stakeholders. It is reported that the GSTN is supporting in raising 3 billion invoices per month and processing returns of 70 lakh registered taxpayers. The key roles of GSTN are -

1. To create common and shared IT infrastructure for GST functions.
2. To facilitate registrations, returns, tax payment, settlement of IGST payment, generation of business intelligence and analytics, etc.

Considering the nature of "State" functions of GSTN, the GST Council, in its 27th Meeting held on May 4 2018, decided to acquire remaining 51% stake from Financial Institutions equally by the Central Government and the State Governments. The process has been initiated to convert it as a fully Government owned company which will take another 3 to 4 months to complete.

National Anti-Profitteering Authority (NAA)

Anti-profitteering measures enshrined in the GST laws provide for an institutional mechanism to ensure that the full benefits of reduced GST rates, input tax credits available to the registered dealers of free flow to the end consumers. The Authority comprises a Standing Committee, Screening Committees in every State and the Directorate General of Safeguards in the Central Board of Excise & Customs. A five-member standing committee duly constituted to receive complaints of undue profiteering by entities. The Standing Committee on Anti-Profitteering will act as a complaint processing machinery and will refer any cases it finds fit for an investigation to the Directorate General of Safeguards (DGS).

Accordingly, the Central Government has constituted the NAA w.e.f. 16.07.2017. Since its inception, NAA has issued Five (05) Orders and sought details from many big entities, sent out informal letters, issued notices in number of cases. With the latest tax rate cuts, it is expected that the NAA will turn the heat on other sectors too.

Transition, Transformation & Way forward....

As stated above, the current Article covered the brief introduction to GST Laws, Necessity & Initial steps taken to introduce, Constitutional Authority, Key Organs and their roles. Part - 2 and 3, will cover remaining issues such as how the country has transformed itself from old rigid, complicated indirect tax regime to a new 'Good and Simpler Tax Regime' in a true sense.

Till then, happy shopping..!!





Building Your House



An elderly carpenter was ready to retire. He told his employer of his plans to leave the construction business to live a more leisurely life with his wife and his extended family. He would miss the pay check each week, but he wanted to retire. They could get by.

The contractor (employer) was sorry to see such a good worker go and asked if he could build just one more house as a personal favour. The carpenter said yes, but it was easy to see that his heart was not in his work. He resorted to shoddy workmanship and used inferior materials. It was an unfortunate way to end a dedicated career.

When the carpenter finished his work, his employer came to inspect the house. Then he handed the front-door key to the carpenter and said, "This is your house... my gift to you."

The carpenter was shocked!

What a shame! If he had only known he was building his own house, he would have done it all so differently.

So it is with us. We build our lives, a day at a time, often putting less than our best into the building. Then, with a shock, we realize we have to live in the house we have built. If we could do it over, we would do it much differently.

But, you cannot go back. You are the carpenter, and every day you hammer a nail, place a board, or erect a wall. Someone once said, "Life is a do-it-yourself project."

Your attitude, and the choices you make today, helps build the "house" you will live in tomorrow. Therefore, build wisely!





“All of the top achievers I know are life-long learners, looking for new skills, insights, and ideas. If they’re not learning, they’re not growing and not moving toward excellence.”

– Denis Waitley, American Author and motivational speaker

It is said that there is no age bar for learning. You will always be a student till the end of your life. Education plays a crucial role in shaping the future of any person. There is a saying in Sanskrit

“ विद्यां ददाति विनयं विनयाद् याति पात्रताम् ।

पात्रत्वात् धनमाप्नोति धनात् धर्मं ततः सुखम् ॥”

Which means that complete knowledge gives discipline, from discipline comes worthiness, from worthiness one gets wealth, from wealth (one does) good deeds, from that (comes) joy.

In India every child has a right to free and compulsory education. But somehow there is a large portion of the population which is not able to encash this right. So to bridge the gap Ministry of Human Resource Development, Government of India and AICTE have come up with a website called “SWAYAM” (<https://swayam.gov.in/>) which offers free online courses for all.

Study Webs of Active-Learning for Young Aspiring Minds (SWAYAM), is a free online portal which offers study material free of cost and digital classrooms for them. The objective of this effort is to take the best teaching learning resources to all, including the most disadvantaged. The courses hosted on SWAYAM are in 4 quadrants – (1) video lecture, (2) specially prepared reading material that can be downloaded/printed (3) self-assessment tests through tests and quizzes and (4) an online discussion forum for clearing the doubts.

SWAYAM offers courses in more than 13 disciplines under various hierarchy of education. The courses

are sub divided into different learning paths like school, certification program, undergraduate and post-graduate program. You will have to enroll for the course to access the study material, which are free to download and print. When you select a course,(for example organizational behavior) the overview of the same will be displayed as:

ORGANISATION BEHAVIOUR

Best Date: 6/16/2014 End Date: 30/10/2014

No. of Chapters: 4

Total no. of Assignments: 0

Total no. of Quizzes: 1

Total no. of Tests: 0

Total no. of Assignments: 0

Total no. of Quizzes: 0

Total no. of Tests: 0

Total no. of Assignments: 0

Total no. of Quizzes: 0

Total no. of Tests: 0

Further, the overview will contain an introductory video from the Faculty, syllabus and schedule of the course, description of the faculty and most frequently asked questions about the course.

Candidates who are pursuing regular PG/UG courses can select the courses that are relevant to their academic and earn relevant credits for the same by completing all the assignments, tests and quizzes. Upon successful completion of the course certificates will be awarded for the same. SWAYAM is very useful platform for those candidates who are doing their UG/PG studies through open universities and doing correspondence course. They can easily access the study materials as well as tutorials through this.

Further, SWAYAM is also available on popular app stores like Google Play Store, iPhone App Store and Microsoft Store for downloading for free.



Commentary on Small Shareholders' Director – Series- 9



Provision

- A. **Section 151** of the Companies Act, 2013 (hereinafter referred as 'the Act') read with Rule 7 of Companies (Appointment and Qualification of Directors) Rules, 2014 as amended thereon:

A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

Explanation.—for the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

- B. **Rule -7:** Small Shareholders' Director

- (1) A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders:

Provided that nothing in this sub-rule shall prevent a listed company to opt to have a director representing small shareholders suo motu and in such a case the provisions

of sub-rule (2) shall not apply for appointment of such director.

- (2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a

notice of their intention with the company at least fourteen days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director:

Provided that if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice:

- (3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating –
(a) his Director Identification Number;
(b) that he is not disqualified to become a director under the Act; and
(c) his consent to act as a director of the company
- (4) Such director shall be considered as an independent director subject to, his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.
- (5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-
(a) such director shall not be liable to retire by rotation;
(b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
(c) on the expiry of the tenure, such director shall not be eligible for re-appointment.

- (6) A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.
- (7) A person appointed as small shareholders' director shall vacate the office if –
- (a) the director incurs any of the disqualifications specified in section 164;
 - (b) the office of the director becomes vacant in pursuance of section 167;
 - (c) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.
- (8) No person shall hold the position of small shareholders' director in more than two companies at the same time:
Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.
- (9) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly
4. 'Such other sum as may be prescribed': No such amount is notified as of now.
5. Who may appoint
- i. A Small shareholders may be elected by the company suo moto or
 - ii. Small shareholder may also be elected at the option of the small shareholders.
6. Who is small shareholder director: Small shareholder himself or any shareholders of the company who is not small shareholder can also be nominated for the appointment as small shareholders representative in line with Rule 7(2).
7. Requirement of notice :
- i. Notice shall be given at least by 1,000 small shareholders or at least by 1/10 of the **total number** of such shareholders whichever is *lower*. 'Such shareholders' means the small shareholders as defined in Section 151 only.
 - ii. Notice shall be given at least fourteen days (clear days) before *the meeting*.
 - iii. Notice shall specify Name, address, folio number and shares held by the small shareholders and the person(s) who is being proposed along with their signatures and a statement stating (a) his Director Identification Number; (b) he is not disqualified to become a director; and (c) his consent to act as a director of the company in Form-DIR-2.
8. Manner of Appointment Resolution:
- i. On receipt of notice, a small shareholder director may be appointed by members by passing an Ordinary Resolution.
 - ii. As Sec. 110 r/w 22 of Companies (Management and Administration) Rules 2014 :
 - a. Said rule requires election of small shareholders representative by resolution passed by postal ballot.
 - b. Question arises whether only small shareholders need to vote or even other shareholders can also vote for the resolution as the company has to send postal ballot to all shareholders?
 - c. Another question arises when the company is sending postal

Commentary

1. Applicability: Applicable only to listed companies.
2. Mandatory: It is not mandatory to appoint a small shareholder director as word is 'may'. However if the company is in receipt of notice, the company is bound to appoint and the company can't reject the proposal.
3. Who is a small shareholder:
 - i. A shareholder who is holding shares having face value of not more than Rs. 20,000/-.
 - ii. Holding shall be interpreted as a member whose name appears in the register of members of the company.
 - iii. Preference shares shall be considered only if dividend condition as stipulated u/s 47 of the Act is met, otherwise preference shareholders do not have right to vote and can't be considered consequently.

ballot, question of holding general meeting as stipulated under Rule 7(2) does arise ?.

- iv. Such director shall be considered as Independent Director. Hence, he/she shall fulfill the provisions of Section 149(6) of the Act and shall give a declaration of his appointment. If he fails to fulfill criteria of independence, then his office shall be vacated.
9. Restrictions/exceptions applicable for small shareholder director:
- i. He/she shall not be liable to retire by rotation;
 - ii. His/she shall not hold office as small shareholder director for a period more than 3 *consecutive* years;
 - iii. After the expiry of the tenure, the small shareholder director shall not be re-appointed as small shareholder director;
 - iv. At a time, a person can hold the position of small shareholders' director in maximum two companies. However, there shall not be any competing business or any conflict with the both such companies. Ceiling limit provided u/s 165 still be applicable for director.
 - v. Once a small shareholder director ceases to hold the office as a small shareholders' director, thereafter he/she shall not be appointed or associated either directly or indirectly in any capacity or in any

manner for a period of 3 years from the date of his cessation.

10. Others:

- i. Forms: within 30 days from the date of appointment, the Company need to file Form DIR 12 along with consent letter in Form DIR 2.
- ii. Small shareholder director shall disclose his interest form-MBP-1 in line with the provisions of Section 184 of the Companies Act, 2013 and the company need to update the relevant Statutory Registers.
- iii. Small shareholder director do have same rights, powers, duties similar to any other directors.
- iv. Question arises whether provisions stated in Section 160 is also applicable to appointment of small shareholder director?
- v. Whether he can be appointed as MD or Whole time Director of the Company being small shareholder director?





Outdoor Catering – Catering with care: Applicable GST changes



A year has been spent working on GST and certain practices towards adoption of Rate, procedural aspects for Documentation & Compliance, availment of Input Tax credit etc., have been understood to be settled the way GST law has been set. Does it mean we have reached serenity in thinking so to do, answer is definitely a big NO due to the amendments peeping here and there.

Recent GST council discussion held during July 2018 has proposed for couple of Rate changes for services and scheme of operation with regards to “Outdoor catering service”. A much more simplified proposal intriguing invoke of Section 14 can be seen in that amendment. Also, this proposal of amendment has tweeted itself challenging

Old Entry	New Entry
<p>Read as up to 27.08.2018:</p> <p>Entry: 7 (v): <i>“Supply, by way of or as part of any service or in any other manner whatsoever in <u>outdoor catering wherein goods, being food or any other article for human consumption or any drink (whether or not alcoholic liquor for human consumption), as a part of such outdoor catering and such supply or service is for cash, deferred payment or other valuable consideration”</u></i></p> <p>Rate Applicable: 18% Terms & Conditions: NIL</p> <p>Choice for lower/ higher rate: There is no choice of lower or higher rate. However, choice of availment of Input Tax credit or not, rests with the service provider in the present scenario</p>	<p>On or after 27.08.2018 Notification 13/2018 CT(R) dtd:26.07.2018 Entry: 7 (i): <i>“Supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a...</i> <i>Explanation 1.- This item includes such supply at a canteen, mess, cafeteria or dining space of an institution such as a school, college, hospital, industrial unit, office, by such institution or by any other person based on a contractual arrangement with such institution for such supply, provided that such supply is not event based or occasional”</i></p> <p>Rate Applicable: 5% Terms & Conditions: Provided that credit of input tax charged on goods and services used in supplying the service has not been taken</p> <p>Choice for lower/ higher rate: Supplier can avail the ITC whereby the Rate of supply shall stand revised to 18% as per entry 7(v)</p>

Note

The above amendment brought in effective from 27th of July 2018, there has been a relaxation in the rates provided by the Outdoor Catering activity from 18% to 5%, which is a welcome move. However, few riders have been enforced for the above change as per below:

- Benefit of Input Tax credit should not have been availed for the above said supply
- Eligibility of Input Tax credit on common Inputs or Input Services is permissible subject to Provisions of Section 17(2) of CGST Act, 2017
- The above supply by way of Outdoor catering should be in pursuance of a contract with such institution and not an event-based supply

GST charged by the Supplier on Outdoor catering activity has been enlisted in Section 17 of CGST Act, 2017 for imposing restriction on availment of Input Tax credit, subject to restrictions & conditions thereof. Accordingly, all the recipients of the Outdoor catering service are accounting for 18% GST as a cost forming part of the supply in their Books of Accounts.

Post amendment, there is a possibility for reduction in Tax Rate for the above supply from 18% to 5% in the hands of the recipient. However, an exercise has to be carried out by the Service provider to examine the impact/effect of Input Tax credit restriction for the reduction in the Supply rate from 18% to 5%. Most of the service providers in the MSME segment opt out of the Input Tax credit, considering the compliance cost involved therein

If one has to examine the Service provider perspective for availability of Input Tax Credit prior to and post above amendment, list of some Inward supply on which Input Tax credit commonly availed are as per below:

- Purchase of goods
- Transportation services
- Rental service
- Professional or other support services

As discussed, above availment of the Input Tax credit is a choice available with the Service provider prior to the above amendment. However, post 27th July 2018, service provider can choose to charge a lower rate with No Input Tax credit or a higher rate with benefit of Input Tax for the Institutional supplier on a regular basis.

Challenge for the Tax Invoice issued pertaining to July 2018

We shall now try to explore the challenges by the supplier, where there is an expectation from the user industry i.e. the institution receiving the catering services under contractual obligation for demanding to charge GST @5% for the supplies made from July 2018 onwards.

Is it possible for a supplier to levy GST @18% for the period 01st July 2018 till 26th July 2018 and then opt to charge 5% from 27th July 2018 onwards, though earlier a single Tax Invoice used to be issued on periodical basis. This can be explained from the analogy drawn from the definition as per Section 2(33) of CGST Act, 2017 which defines "Continuous Supply of Services". The same has to be read with Section 31(5) of CGST Act, 2017 for determining when to Issue a Tax Invoice.

Combined reading of the above provisions, Tax Invoice can be issued as per the milestones determined as per the contractual arrangement. Accordingly, the Service provider has to issue a single Tax Invoice for the period July 2018, though there is a change in effective rate of tax.

However, one has to refer to Section 14 of CGST Act, 2017 which governs the applicable rate in case of change in rate of tax for goods/ services. As per the above provision, new tax rate is applicable to the service provider if he is issuing the Tax Invoice post completion of the Tax period and payment for the same is received as per the mile stone post submission of the Tax Invoice.



Accordingly, a Service provider who is not hitherto availing benefit of Input Tax credit has a choice of issuing the Tax Invoice @5% for the supplies made during July 2018.

In all possibilities, this amendment has been a negotiation factor for both the Service Provider and Recipient and overall there should be a reduction of cost in the Recipient hands in case of Outdoor

Catering services availed from a Service provider who is not availing the benefit of Input Tax credit. This factor of negotiation is a fruitful one, only if the MSME service providers are open up for exploring the cost variants with aid of Input Tax credit availment scheme.

To conclude

Supplier, who have institutional supplies and event-based supplies are going to have a challenging task, where the supplier opts to pay GST @ 5% for the institutional supplies on regular basis under a contractual obligation and a regular rate of tax @ 18% for the event-based supplies. This mechanism is going to complicate the mechanism of Input tax

credit segregation & identification requirement as per Section 17 of CGST Act, 2017. Kindly, note that the Event based supplies, cost born on the Inward supplies by way of GST is going to be a cutting edge for a better pricing mechanism if Input Tax mechanism has been opted for

Disclaimer

The above views expressed are as per the understanding of the present GST provisions by the author. Any corrections or suggestions may be sent to praveen@gella.in



M/s ABC Ltd., has bought goods from M/s. PVC Ltd., for Rs.20,00,000/- applicable GST@28%. The consignment has been received by M/s ABC Ltd., during the month of March 2018. During the Inspection process, 10% of the goods are found defective and during Production process another 20% of the total goods received found defective.

Advise whether M/s ABC Ltd., should raise a Tax Invoice under GST law for sending back the goods to M/s PVC Ltd.,

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



Opinion To Last Month's Brainy Bits

Facts to consider

- M/s ABC & Co., (hereinafter referred as RP) registered under GST in the state of Karnataka
- Services provided by RP has a diversified set of passenger transportation including ambulance service
- Vehicles used for passenger transportation and Ambulance service have different identify and features in built
- RP has been charging GST @18% on all the fee being collected from Customers
- There is a separate entry for Ambulance Service under SAC:9993 compared to other services

Relevant Provision Facts to consider

- M/s ABC & Co., (hereinafter referred as RP) registered under GST in the state of Karnataka
- Services provided by RP has a diversified set of passenger transportation including ambulance service
- Vehicles used for passenger transportation and Ambulance service have different identify and features in built
- RP has been charging GST @18% on all the fee being collected from Customers
- There is a separate entry for Ambulance Service under SAC:9993 compared to other services

Relevant Provision

- Section 2(47) – Exempt Supply
- Section 9 read with Section 11 – Absolute exemption
- Section 54 – Refund of Tax
- Notification 12/2017 CT(R) dtd:28.06.2017

All the Section reference are made to CGST Act, 2017 unless specified

Conclusion

A careful examination of the entry for Ambulance service though the same is taxable under Section 9, an Exemption under Section 11 has been provided for the same vide Notification 12/2017 CT(R). entry for Ambulance Service is an Absolute exemption and not a conditional one. Accordingly, the RP cannot collect any tax from the service recipient in this regard.

Taxes collected by RP is without any authority of law.

Now, to examine for the Refund of the Taxes paid by RP we need to refer to Section 54(8)(e) is the only clause to be explored by RP. However, since the RP has issued a Tax Invoice and recovered the relevant Tax from the recipient of the service, establishing the fact that "Incidence of tax not passed on" by RP is not possible in this scenario.





Delhi Diaries 5

Solved cases of Supreme Court and NCLAT

Moratorium on Recovery Claims against Personal Guarantor of a Company under Liquidation – The Sequel

Background

In April this year, this column carried an article titled “Moratorium on Recovery Claims Against Personal Guarantor of a Company under liquidation”. It has become necessary to devote another edition of this column to the same topic as subsequent developments on the issue have effectively reversed the position of law that was explained in April.

Readers may recollect that in *State Bank of India v. M.V. Ramakrishnan* (CA 213/2017, judgment dated 28.02.2018) the NCLAT had held that assets of the Personal Guarantor are also protected by the moratorium so as to facilitate the effective resolution of the insolvency in light of the fact that as per Section 31 of the Code, any resolution plan approved would be binding upon the guarantors as well.

Considering the impact of this judgment, the Insolvency Law Committee of the Ministry of Corporate Affairs in its report dated 26.03.2018 recommended *inter alia* as below:

“(iv) to clear the confusion regarding treatment of assets of guarantors of the corporate debtor vis-à-vis the moratorium on the assets of the corporate debtor, it has been recommended to clarify by way of an explanation that all assets of such guarantors to the corporate debtor shall be outside scope of moratorium imposed under the Code;”

The State Bank of India appealed to the Supreme Court against the said decision of the NCLAT on the ground that a Corporate Debtor and a personal guarantor are separate entities and it cannot be presumed that a personal guarantor is also

undergoing bankruptcy proceedings by virtue of the fact that the Corporate Debtor is undergoing insolvency proceedings. SBI also highlighted that Part III of the Code which is yet to be brought into force. Part III of the Code provides for insolvency of a Personal Guarantor and contemplates a separate mechanism for moratorium under Section 101.

In this regard a question was raised as to whether the Court could be called to look into a legislation that had not been brought into force. The Court relied upon its judgment in *State of Kerala and Ors. v. Mar Appraem Kuri Co. Ltd. and Anr.*, (2012) 7 SCC 106 wherein it had been held that once a law has been made by the legislature, irrespective of whether it has been brought into force, it may be treated as being on the statute book and thus the Court was right in contrasting Section 14 of the Act with Section 96 and 101.

While this Petition was pending, and pursuant to the recommendation of the Insolvency Law Committee mentioned above, the Government of India *vide* Ordinance dated 06.06.2018 brought about an amendment to the IBC inserting the following clarificatory provision:

“14. Moratorium.—

xxx xxx xxx

(3) The provisions of sub-section (1) shall not apply to—

(a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(b) a surety in a contract of guarantee to a corporate debtor.”

Thus it was clarified that the moratorium would not apply to a guarantor of a corporate debtor.

However, the question then arose as to whether this amendment would be retrospectively applicable to the facts of this case. While normally an amendment in the law pertaining to substantive law is applicable only prospectively, a validating amendment or a clarificatory amendment is understood to be retrospective in nature.

The Supreme Court brought an end to this roller coaster by its judgment dated 14.08.2018 in *SBI v. V. Ramakrishnan*. The Supreme Court relied upon *CIT v. Shelly Products*, (2003) 5 SCC 461 and *CIT v.*

Vatika Township, (2015) 1 SCC 1 to hold that Declaratory Statutes and Clarificatory amendments are retrospective in nature and hence in this case, the amendment inserting Section 14(3) would be applicable to the parties before it as well.

Thus the position of law has now taken a complete about turn and hence moratorium under Section 14 of the Act, in respect of proceedings against a Corporate Debtor, would not be applicable to proceedings against the Personal Guarantor.

News Room



- Positive growth in steel sector, trend to continue: Tata Steel
- Govt notifies incentives to oil PSUs in pre-NELP blocks
- NTPC to set up a subsidiary for coal mining soon
- Comfortable forex reserves to deal with rupee volatility: Jaitley
- BSE to launch liquidity enhancement plan on single stock options, index options from Sep

Hyderabad has second most 'vanishing' firms in country

Vanishing companies are those that have raised money through an IPO and have failed to comply with the listing requirement and are not traceable. MCA could trace only 161 companies of total 238. The 14 companies from Hyderabad collected between 1.5 crore to Rs5 crore each from public.

Fortis Shareholders Approve IHH's Rs 4,000-Crore Offer

Shareholders of Fortis Healthcare Ltd. approved Malaysia's IHH Healthcare BHD's binding offer to take control of India's second-largest hospital chain, capping months-long takeover battle after founders lost control.

RBI puts 200 stressed account under scanner

As part of its effort to contain rising non-performing assets (NPAs), the RBI has started scrutiny of 200 large accounts to assess level of stress and provisioning done against them by respective banks

Banks finalising power firms' debt resolution plans

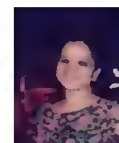
Banks, led by State Bank of India are close to finalising resolution plans for at least half a dozen stressed power companies involving total loans of ₹50,000 crore, which could result in banks taking more than 50% cut, bank officials said.

Sebi plans to stipulate framework for timely disclosure of loan default

Markets regulator Sebi is looking to stipulate a framework for timely and detailed disclosures of loan defaults by listed entities to enhance transparency.

Regulatory Updates

Compiled by:
Matruka B.M.
Trainee at AAA & Co, Mysore



Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Registration of Charges) Rules, 2014 which is to be known as Companies (Registration of Charges) Amendment Rules, 2018.

The following shall substitute Sub-rule (1) of rule 8 of the principle rule,

“A company or charge holder shall within a period of three hundred days from the date of the payment or satisfaction in full of any charge registered under Chapter VI, give intimation of the same to the Registrar in Form No. CHG-4 along with the fee.”

In Sub-rule (1) of Rule 12, words “ within a period of three hundred days” shall substitute the words “ within thirty days”.

Companies (Registration of charges) Amendment Rules, 2018, Dated 5th July, 2018.

MCA has amended Companies (Accounting Standards) Rules, 2006 which is to be known as Companies (Accounting Standards) Amendment rules, 2018.

The paragraph 32 of Annexure of Accounting Standard (AS) 11, shall be substituted by the following,

“32. An enterprise may dispose of its interest in a non-integral foreign operation through sale, liquidation, repayment of share capital, or abandonment of all, or part of, that operation. The payment of a dividend forms part of a disposal only when it constitutes a return of the investment.

Remittance from a non-integral foreign operation by way of repatriation of accumulated profits does not form part of a disposal unless it constitutes return of the investment.

In the case of a partial disposal, only the proportionate share of the related accumulated exchange differences is included in the gain or loss.

A write-down of the carrying amount of a non-integral foreign operation does not constitute a partial disposal. Accordingly, no part of the deferred foreign exchange gain or loss is recognised at the time of a write-down”.

Companies (Accounting Standards) Amendment Rules, 2018, Dated 18th June, 2018.

MCA has amended Companies (Appointment and Qualification of Directors) Rules, 2014, which is to be known as Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018.

Following shall be inserted after Rule 12 of the principle rules

“12A Directors KYC Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit **e-form DIR-3-KYC** to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 31st August, 2018.”

The Central Government or Regional Director (Northern Region), or any officer authorized by the Central Government or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with Rule 12A.

Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018, dated 5th July, 2018.

MCA has amended Companies (Incorporation) Rules, 2014, which is to be known as Companies (Incorporation) Third Amendment Rules, 2018.

In rule 3, for Explanation to sub-rule (1), the following shall be substituted.

“Explanation I. - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one

hundred and eighty two days during the immediately preceding financial year.

Explanation II.- For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted”;

For rule 15, the following shall be substituted,

“15. Declaration from Subscribers and First Directors

For the purposes of clause (c) of sub-section (1) of section 7, the declaration shall be submitted by each of the subscribers to the memorandum and each of the first directors named in the articles in Form No.INC-9.”

In Form No. INC-9, for the word ‘Affidavit’, the word ‘Declaration’ shall be substituted;

Notifications

MCA has notified following sections of Companies (Amendment) Act, 2017 and has appointed 13th June 2018 as the date on which such sections of the said Act shall come into force.

1. Section 22
2. Section 24
3. Section 25
4. Section 26
5. Section 71

S.O. 2422(E), Dated 5th July, 2018.