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Mysore Chapter

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CS Veerash M.J.
Chairman
Mysore Chapter

Dear Professional Colleagues,

I am happy to meet and greet you all through the E-magazine. I am happy to inform you all that Mysore Chapter got Best Chapter award for the year 2017 and it was a pride moment to receive the award from Shri Santhosh hedge, Lokayukta Justice and I heartily congratulate all committee members and members of Mysore on this occasion. The month of June 2019 was very productive as many career awareness programs were conducted for both under graduate and Post graduate students. This month we were successful in our efforts to reach out to colleges and universities outside Mysore city and create awareness to students about CS profession.

In the month of August 2019, we are conducting a two-day Residential Programme for our members with topics focusing on "Manthan 2019 – An unique 2 days' workshop on critical issues in Corporate Laws" looking forward for your valuable participation and I hope it will help all professionals.

Thank You,

-: Editorial Team:

CS Vijaya Rao

CS Sherene

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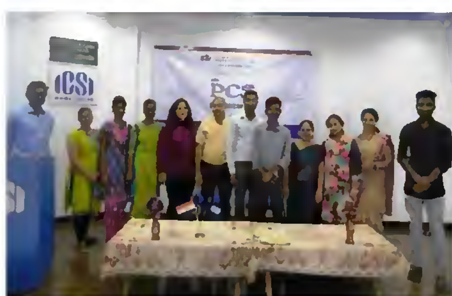
Chapter Activities

1. CAREER AWARENESS PROGRAM

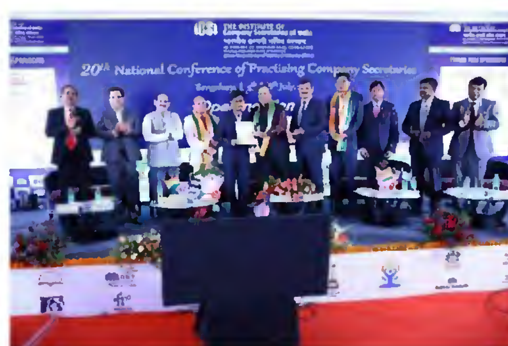
Chapter conducted 02 Career Awareness Programs during the month of June 2019. The details are as follows.

S No.	Date	College Name	Speaker	No. of Participants
1	19.06.2019	Marimallappa PU College	N. Dhanabal	80
2	27.06.2019	Maharani PU College	CS Veerash Mysore Jagadish	150

2. PCS DAY CELEBRATIONS



Chapter celebrated the PCS Day on 15th June, 2019 at the Chapter premises. Members and students participated in the celebration. Chairman CS Veerash Mysore Jagadish welcomed the members and highlighted the importance of CS in the present corporate environment and the role of PCS. During the event, an open discussion held on DPT Form & Analysis of Acceptance of Deposits Rules. Members and students participated in the discussion actively. Secretary CS Vijaya Rao delivered the vote of thanks. The celebration concluded with high tea.

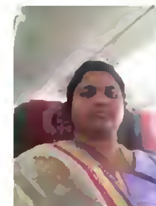


Mysore Chapter won the Best Chapter Award for the Year 2017

Award Distribution during the 20th National Conference of PCS in Bengaluru, July 2019

Article

Bhargavi Medisetty
Company Secretary in practice.



Valuation of Intangible Assets -Need for Promotion or Regulatory Body

Intangible assets (intangibles) are long lived assets used in the production of goods and services. They lack physical properties and represent legal rights or competitive advantages (a bundle of rights) developed or acquired by an owner. Owners exploit intangibles either in their own business (direct use) or through a license fee or royalty (indirect use).

The International Glossary of Business Valuation Terms (IGBVT) is a glossary of business valuation terms that defines intangible assets as "non-physical assets such as franchises, trademarks, patents, copyrights, goodwill, equities, mineral rights, securities and contracts (as distinguished from physical assets) that grant rights and privileges, and have value for the owner."

Valuation assignments must estimate the value of intangibles, recognising the volatility, on-going creation and problems with protection and enforcement. Business valuation analysts have been independently valuing intangible assets for many years, usually in the context of an exchange between owners (transaction), for estate and gift tax purposes or as part of a litigation assignment. Knowledge underlies the creation of value. Some of the questions that need to be answered include the following:

Conducting a valuation of intangible assets

- What would a willing buyer pay to employ the intangible asset?
- What is the useful life of this asset?
- What portion of the operating income does this asset generate?

Intangible asset valuation assignment is different from a more standard, or traditional, business valuation assignment. It is true that one particular valuation method might be wrong precisely for a particular intangible asset, there are usually several valuation methods that would be approximately right, and while arguments exist for the use of each of these methods, there may be no clear winner.

Categories of intangible assets as per Indian valuation standard 302 -intangible assets
Intangible assets can generally be classified under the following broad categories (not intended to be exhaustive):

(a) Customer-based intangible assets;

(b) Marketing-based intangible assets;

(c) Contract-based intangible assets;

(d)Technology-based intangible assets; or

(e) Artistic-based intangible assets.

Customer-based intangible assets

Customer-based intangible assets are created with an entity establishing relationships with its customers in the due course of its business. Such intangibles may be contractual or non-contractual.

Marketing-based intangible assets

Marketing-based intangible assets are created with the evolvement of a business and such intangibles are also used for further growth of the business through marketing.

Contract-based intangible assets
Contract-based intangible assets are created from rights arising from contracts in a business.

Technology-based intangible assets

Technology-based intangibles are those intangible assets that create propriety knowledge.

Artistic-based intangible assets

Artistic-based intangible assets are created from the benefit arising from artistic works.

Valuation approaches and methods

Generally, the following three main valuation approaches are adapted to measure value of intangible assets in correlation with the valuation approaches and methodologies prescribed under Indian Valuation Standard 103 *Valuation Approaches and Methods*.

(a) Market approach;

(b) Income approach; and

(c) Cost approach.

Market approach is a valuation technique that uses prices and other relevant information generated by market transactions involving identical or comparable (i.e., similar) assets, liabilities or a group of assets and liabilities, such as a business

The following are the common methodologies for the market approach:

(a) Price/Valuation multiples/Capitalisation rates;

(b) Guideline pricing method

Income approach is the valuation technique that converts future amounts (e.g. cash flows or income and expenses) to a single current (i.e. discounted) amount. The fair value measurement is determined on the basis of the value indicated by current market expectations about those future amounts.

Some of the common valuation methods under the income approach are as follows:

(a) Relief-from-royalty-method;

(b) Multi-period Excess Earnings Method (MEEM);

(c) With-and-Without method or premium profit method;

(d) Greenfield method; and

(e) Distributor method

Cost approach is a valuation technique that reflects the amount that would be required currently to replace the service capacity of an asset (often referred to as current replacement cost).

The following are the commonly used valuation methods under the income approach:

(a) Reproduction Cost Method;

(b) Replacement Cost Method

From an indian transfer pricing standpoint:

The valuation criteria include comparable uncontrolled price (CUP) method, resale price method (RPM), cost-plus method (CPM), profit split method (PSM), transactional net margin method (TNMM) and such other methods as may be prescribed. The valuation methods shown in Exhibit 3 can be mapped to such criteria prescribed to arrive at the intangible valuation. With the Reserve Bank of India amending pricing guidelines to reflect internationally accepted valuation methodologies, valuations for tax purposes are expected to be similarly aligned.

A unified fair valuation at an arm's length price could be used both for income tax and exchange control purposes.

Introduction of accounting standards on intangible assets

The globalisation of the world's capital markets sparked a movement for global standards on intangible assets. The best example of this was the introduction of 48 International Accounting Standard-38 on intangible assets. Following that other countries have also issued separate accounting standard on intangible assets like AS-26 in India, SFAS-142 in US, FRS-10 in UK and ASBE-6 in China. These standards address issues like how and when intangible assets that are acquired or internally generated should be accounted in the financial statements. They also lay down provisions on how these intangible assets should be accounted after they have been initially recognised in the financial statements. A brief history/description of these standards under IFRS, UK, US, Indian and Chinese GAAP is given below:

International Financial Reporting Standard (IFRS): Under IFRS, International Accounting Standard-38 (IAS-38) on intangible assets was issued by the International Accounting Standards Committee (IASC) in September, 1998. The objective of the standard was to prescribe the accounting treatment for intangible assets that are not dealt with specifically in another standard. The standard requires an entity to recognise an intangible asset if, and only if, specified criteria are

met. The Standard also specifies how to measure the carrying amount of intangible assets and requires specified disclosures about these assets. Accounting treatment for amortisation, impairment, retirements and disposals have also been explained. Further IASC has also issued International Accounting Standard 36-Impairment of Assets which discusses the impairment provisions for goodwill and intangible assets with indefinite life

In April 2001 the International Accounting Standards Board (IASB) adopted all International Accounting Standards and continued its development, calling the new standards as IFRS. Subsequently, International Financial Reporting Standard (IFRS) 3 on Business Combinations was issued in March 2004. IFRS-3 describes the accounting treatment for intangible assets acquired as a part of business combination. The introduction of IFRS-3 resulted in an increase in the number of intangible assets recognised at the time of acquisition.

IASB has issued many IFRS, which are now being used for public reporting purposes in almost 100 countries ranging from Australia to the United Kingdom. 49 Regulators in India, China and US are likely to converge their local standards with IFRS by 2011.

US GAAP: Under US GAAP, the accounting and valuation of intangible assets for financial reporting purposes is governed by The Financial Accounting Standards Board (FASB). FASB issued the Statement of Financial Accounting Standards No. 142 on goodwill and other intangible assets, in June 2001. The application of the standard was made mandatory from December 15, 2001. The statement explains in detail the initial recognition and measurement of intangible assets, treatment for internally generated intangible assets, accounting for intangible assets, accounting for goodwill, financial statement presentation of intangible assets and goodwill, and other disclosures.

In addition, FASB has also issued the Statement of Financial Accounting Standards No. 141 on Business combinations which describes the accounting treatment of intangible assets acquired as a part of business combination.

Indian GAAP: Accounting Standard-26 on intangible assets was issued in 2002 by the Council of Institute of Chartered Accountants of India, under Indian Generally accepted Accounting Practices. Its application was made mandatory for all types of enterprises, with accounting periods commencing on or after 1-4-2004. This standard covered the similar provisions of initial recognition, measurement, subsequent expenditure, amortisation, impairment losses, retirements and disposals, and disclosure like IFRS and US GAAP. Further Accounting Standard-28 on Impairment of Assets discusses the provisions for impairment of intangible assets.

Chinese GAAP: Under Chinese GAAP, Accounting Standard for Business Enterprises No.6 on intangible assets was issued by the Ministry of Finance of the People's Republic of China on 15th February, 2006. The standard was made mandatory for all listed Chinese companies from 1st January, 2007. The standard was made on the lines of IFRS standard. It explains the definition, initial recognition, measurement, subsequent measurement, disposal and discarding and disclosure of intangible assets. It also includes treatment of internal research and development projects. In conjunction to above, ASBE- 50 8 explains the provisions of impairment of intangible assets and ASBE-20 describes the treatment of intangible assets acquired as a part of business combination.

UK GAAP: Under UK GAAP, Financial Reporting Standard-10 (FRS-10), issued by the Accounting Standards Board in December1997, sets out the principles of accounting for goodwill and intangible assets. The objective of the standard was to ensure that purchased goodwill and intangible assets are charged in the profit and loss account in the periods in which they are depleted and also that sufficient information is disclosed in the financial statements to enable users to determine the impact of goodwill and intangible assets on the financial position and performance of the reporting entity. FRS10 applies to all financial statements that are intended to give a true and fair view of a reporting entity's financial position and profit or loss for a period. Reporting entities applying the Financial Reporting Standard for Smaller entities (FRSSE) are exempt from the provisions of FRS-10.

Ccomparision of accounting standards on intangible assets

- International Accounting Standard-38 (IAS-38) on intangible assets was issued by the International Accounting Standards

Committee (IASC) in September, 1998. Other countries have also issued separate accounting standard on intangible assets like AS-26 in India, SFAS-142 in US, FRS-10 in UK and ASBE-6 in China.

- International financial reporting Standard (IAS-38) has been used as a yardstick for the comparison of accounting standards as most of the countries are harmonising their national accounting practices with IFRS. All European countries have adopted IFRS since 1 January, 2005.
- IAS 38 (IASB), FAS 142 (US GAAP), FRS 10 (UK GAAP), AS 26 (Indian GAAP) and ASBE 6 (Chinese GAAP), all cover many of the same topics, and reach the same conclusions on many issues.
- As per IFRS, US GAAP and Chinese GAAP intangible assets can be of definite or indefinite life. On the other hand Indian GAAP and UK GAAP differ and have a rebuttable presumption of maximum useful life being 10 and 20 years respectively.
- Under US GAAP except some software and website development cost all research and development costs are expensed, unlike IFRS, UK GAAP, Indian GAAP and Chinese GAAP. On the other hand, IAS 38, FRS 10, AS 26 and ASEB 6 allow for capitalization of all development costs when specific criteria are met, contrary to US GAAP.
- Only IFRS and UK GAAP allow the revaluation of intangible assets out of the pool of other accounting standards compared.
- The only significant difference between IAS 38 and FRS-10 relates to capitalization of development costs. Where the capitalization of development costs is compulsory under IAS 38 if certain criteria are met, it is optional under FRS 10. Further, in terms of the treatment of goodwill after initial measurement, IFRS-3 on Business combinations requires that goodwill should be subject to annual impairment reviews, but should not be amortized. While under FRS 10 there is a rebuttable presumption that the useful life of goodwill does not exceed 20 years, with amortization over the useful life.

Need for promotion or regulatory body

Intangibles are major value drivers of business in our modern economy, the company's capacity and growth depends on these intangible assets. The quick development of the debate on company intangible assets in the last few years generated competition among different valuation approaches and measurement procedures adopted by different stake holders. In this effort the target of that race, tends to increase the risk that different proposals may only provide fragmented, partial or even wrong solutions.

We would therefore welcome initiative from regulators aimed at gradually defining share rules and a common language; this could bring business best practices to the surface, prevent a harmful proliferation of guideline and ensure a smooth convergence towards common standards.

Article

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Central Know Your Customer Repository (CKYCR) – A dynamic rapport with KYC, eKYC

As per the directives of the Ministry of Finance, the Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) are to perform the functions of the Central KYC Records Registry (CKYCR). The CERSAI will receive, store, safeguard and retrieve know your customer (KYC) records in digital form for a client, as corresponding to other KYC Registration Agencies (KRAs) such as Computer Age Management Services (CAMS) and Karvy, which maintain KYC information provided by investors on their individual systems and verified in person.

The main objective of CKYC is to provide a platform which enables investors to complete their KYC only once before interacting with various entities in the Financial Services Sector. Once CKYC is complete for an investor, he/she is allotted a 14-digit unique KYC identification number (KIN) which needs to be quoted by the investor while conducting any transaction.

CKYC is the latest addition to the various types of KYC already available. However, the other types of KYC will be rendered redundant once CKYC is fully implemented. Financial institutes (FI)* will have to implement this new regime, which will require a significant investment of time, money and resources.

Although CKYC is a one-stop solution for KYC requirements of all FIs, it is blemished by some delusions:

- The CERSAI's CKYC is not integrated with other KYC repositories, which in turn requires customers to provide KYC documents again.
- KYC documents have to be submitted in paper format as there is no digital or paperless onboarding process.

It is believed that FIs should align themselves to the new regulation as this would reduce redundant work of KYC compliance in the long run.

CKYC- A win–win situation for various stakeholder(s)

FI opportuneness

- Cost optimization, as CKYC introduces mutualisation of costs across multiple FIs
- FIs can stay focused on their core business of serving their customers
- Inter-usability of KYC records across the financial sector

User know-how

- Convenient for customers to upload their documents in one place
- Unify KYC data across all financial regulators (RBI, SEBI, IRDA and PFRDA) for investors
- Reduced burden of constantly producing and verifying KYC for a new FI

CKYC Working and Features at a Glance

- CKYC collects and verifies information only once and distributes it to specific client-chosen FIs.
- Clients have to submit a duly filled and signed CKYC form along with self-attested supporting documents to verify proof of identity and proof of address.
- FIs can also submit the required documents for their clients using bulk upload or file transfer mechanisms.

- If all the required details and documents are in place, the form will be processed and a 14-digit KIN will be issued to the client via an SMS or email.
- Searching and downloading KYC records: FIs can download single/bulk records by entering a CKYC identifier and an authentication factor.
- Updating KYC records: On update of a KYC record on the CKYCR, all linked FIs will receive an electronic update notification of a KYC record. The entities can then download the last updated record of the client.

CKYC Additional Attributes

- It is applicable only to individuals (both resident individuals and non-resident individuals [NRIs]).
- It charges money to FIs for accessing KYC data. The charges for creating, downloading and updating a record are **0.80 INR, 1.10 INR,** and **1.15 INR** respectively.
- It also requires additional information (e.g. investor's maiden name, mother's name, Foreign Account Tax Compliance Act [FATCA] information).
- KIN intimation will be sent by the CERSAI to the registered mobile number/email address of the investor as soon as it is generated at their end.

KYC, eKYC and CKYC - A Rapid Exploration

KYC: KYC (Know your customer) is the Regulatory defined procedure via which businesses (like Banks, Insurance Companies, Mobile Service Providers, Mutual funds houses etc.) are required to identify their customers. The purpose of KYC is simple – the Regulator bidding to ensure that the customer is who he/she claims to be and hence preventing crimes like identity theft/ Money Laundering/ Financial Fraud and much more.

In Banking Sector India, KYC was introduced in commencement of 2002 by RBI (Reserve Bank of India). Banks across India were given a deadline of Dec 2005 for KYC compliance for their existing accounts and for all new accounts KYC will be required going forward. Since Banking KYC has been around for almost 15 years, we still have few cases when bank officials help black money stashers in opening non-KYC complaint account to remit black money outside India.

Banks also ask for Re-KYC, if they see a change in the risk profile of the account holder. For instance, if you suddenly deposit huge amount in your Bank Account (account generally has less balance) – your account would likely be tagged for Re-KYC and you have to submit the required documents again. As banks do not share the KYC data with other banks and hence every time you open a new bank account, a new KYC is done (document submission done again). Government is trying to make the process easier by allowing e-KYC (Adhaar Based KYC).

eKYC: KYC details are required to be submitted mandatorily to several departments of the Government, banks and financial entities. This would require a person to be present in-person and manually submit verification documents, which is a time-consuming process and requires storage and retrieval of a customer's documents. The electronic KYC or eKYC validates the identity of an individual using an Aadhaar-based biometric scan and/or OTP in a matter of minutes. This data is uploaded into the records of the KRA.

Aadhaar eKYC is a service offered by the Unique Identification Authority of India (UIDAI) to businesses and organizations. These businesses and organizations can validate the identity of an individual by verifying the personal details of an individual such as name, address, etc. against his or her biometric information held with the Aadhaar database. The Aadhaar eKYC software is based on the Aadhaar KYC API or Application Program Interface which allows quick and easy integration into an existing system or App.

The identity of an investor is verified based on written details submitted by him/her on a form, supplemented by an in-person verification (IPV) process. Once the verification is carried out successfully, the relevant investor data is entered into the KRA system and subsequently uploaded to the KRA system database.

In-person Verification (IPV)

In-person verification is verification done where the physical presence of the individual is required while submitting verification documents. The old KYC norms required an individual to fulfill Know Your Customer information in-person at the

physical location of the office that requires it. In-person verification is required if:

1. A customer's verification is not done through Aadhaar-based biometric verification (as stipulated by the UIDAI) such as fingerprint or OTP.
2. A customer's verification is not done through Aadhaar-based OTP verification (as stipulated by the UIDAI).

Note: Customers or investors that have done verification through Aadhaar-based OTP verification will be permitted to make financial transactions up to a limit of INR 50,000 per year.

Is The KYC Form Required If Verification Is Done Through Aadhaar-based eKYC?

An individual is not required to fill a KYC form furnishing the details of his Permanent Account Number (PAN) and physically signing the Form if verification is done through Aadhaar-based eKYC norms. The personal information of an individual available with the UIDAI is considered as sufficient KYC information for the purpose of verification. Such information is made available only upon the consent of the individual requiring a service.

CKYC: CKYC is the next logical step with an aim of unifying KYC need across all financial sectors.(RBI [Banks], SEBI [Stock Market], IRDA [Insurance] and PFRDA [Pension Fund Regulatory Authority]. In case of CKYC – customers details are stored at a central server and approved partners (like banks, mutual fund houses, stockbrokers etc.) are given access to customers KYC. Hence, once a customer is CKYC registered – he/she can open any bank account or mutual fund account or buy life insurance without the need of KYC again – this not only saves documentation but also reduces the processing time of the application.

As per the regulation, if you open a new bank account or mutual funds account (after Feb 2017) – you would be required to fill the C-KYC form. The filled C-KYC form along with self-attested supporting documents to verify proof of identity and proof of address would be submitted to CERSAI (Central Registry of Securitization & Asset Reconstruction and Securities Interest in India) who would issue the 14 digit KIN(KYC Identification Number).

Conclusion

The unavailability of a link between the CERSAI's CKYC system and SEBI-registered KRAs is perceived as the main reason for complications and a slower than envisaged rate of implementation. The data about non-individuals still rests with SEBI and there are no guidelines yet on how this data is to be included in the CKYC repository. The original deadline for banks to upload all KYC data, including legacy data, was March 2017. The RBI had been apprised of the practical difficulties in meeting this deadline. Banks would need more time to upload information for legacy accounts as contacting long-standing customers and getting their updated KYC details would not be easy.

The real hurdle is going to be in the maintenance of legal entity accounts, where authorized signatories change frequently. No objection certificates are required to be obtained before opening a current account if the client has any funded/non-funded facilities with other banks. It is very difficult to capture this information in the CKYCR. The real challenge will arise for banks, which need to frequently update their records in the CKYC repository once there is a change in the demographic details of the client. If the changes are not immediate, other banks will open an account based on the CKYC records and will face a bona fide challenge with respect to the client's KYC details, thus posing a threat to the entire banking system.

Article

CS Abhishek Goyal FCS, LLB
Proprietor, Goyal Abhishek & Associate
GST practitioners and Tax Consultants

A New Age Company Secretary Looking Beyond Compliance Professional

Introduction

Company Secretaries are traditionally looked upon as Compliance professionals in corporate circles. Their compliance and governance role has also been recognized by the Government of India and regulatory authorities like SEBI.

Company Secretaries are not only trained and well educated in the field of corporate law, but also in the field of direct and indirect taxation. Our syllabus is blend of tax laws along with corporate laws. Yet it is rather painful to see that not a large number of Company Secretaries have endeavored in the field of direct and indirect taxation where we can render quality professional and consultancy services. At present Company Secretary Profession seems to be lagging behind the Chartered Accountants and Advocates in this area, as tax laws be it the income tax or the GST, is one area which is completely dominated by Advocates and Chartered Accountants. This is clearly seen from the fact that we are not recognized to conduct tax audit u/s 44AB of the income tax act and also GST audit under the GST Act even though our fellow professionals like CA and CMA are authorized for the same.

Let us examine the scope of professional services available for Company Secretaries in the field of Income Tax and GST and measures that may be taken to improve our recognition in these areas.

Company Secretary as authorized Representative

Under section 288 of the Income Tax Act, though Company Secretaries are not directly recognized as authorized representatives, in exercise of its powers under section 288, the CBDT has notified that a person who has passed intermediate or final examination of the ICSI would be an 'authorized representative' within the meaning of section 288 of the Act. Therefore, a CS may represent his clients before income tax authorities in income tax cases. A person entitled to act as "authorized representative" under section 288 is also entitled to appear before the Income Tax Appellate Tribunal (ITAT). Thus, CS can also appear before ITAT to represent his clients.

Company Secretary as GST practitioner

A practicing member of the ICSI is entitled to seek registration from GST authorities as GST practitioner. Accordingly he can file GST returns for and on behalf of his clients and also appear before GST authorities to represent his clients in any proceedings under the Act.

Thus from the above it is clear that the law affords recognition to Company Secretaries in the field of direct and indirect taxation. But practically situation is entirely different; number of members practicing in these fields across the country continues to be meager. Lack of recognition for us to conduct Income Tax or GST audit has been another cause for concern. Moreover it is widely seen that in the area of taxation, the profession of Chartered Accountants and Advocates hold the fort firmly. This can also be exemplified from the fact that tax bars across the country are dominated by these two professionals with Company Secretaries very rarely seen.

This brings us to the question are we not equipped or qualified to be at par with our fellow

professionals in the area of taxation? Why doesn't the Government trust the profession of Company Secretaries in the area of taxation?

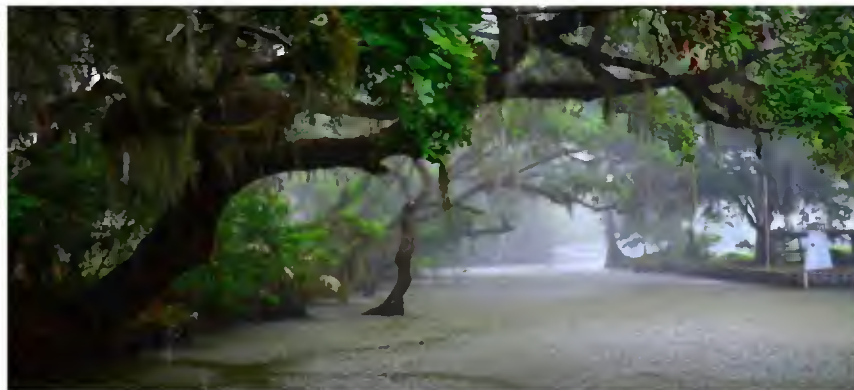
One major reason is that as already stated there aren't sufficient numbers of CS working and demonstrating their skills in this field. This is one of the reasons for lack of confidence in Company Secretaries on the part of Government in this area.

Measures for securing more recognition for our profession

I strongly suggest the following measures for the improvement of the situation and securing more recognition in this area for our profession:

1. Capacity building of our students through comprehensive industry oriented and practical syllabus covering every fine aspect of direct and indirect tax practice. Need is to follow a practical and case study based approach rather than having theoretical and traditional approach.
2. Capacity building of our members by organizing regular workshops and seminars across the country at Regional and Chapter level. These days' workshops and seminars in the area of taxation are hardly witnessed.
3. Members to be encouraged for carrying out research on various aspects of tax laws.
4. Strong representations at the Ministry level to secure recognitions for the Company Secretaries in the area of tax audits. This must be done regularly at the Institute Level.
5. Practicing members who are successful and are well established in their practice must come forward and look beyond their traditional practice of corporate laws.
6. MSOPs and PDPs for the students must contain compulsory lectures on various fine aspects of tax laws in our country.
7. A database of members who are practicing in the field of Income Tax and GST should be maintained.
8. A post membership qualification in the field of Income Tax and GST may be designed and implemented.
9. Members must be encouraged and assisted to set up practice in the field of taxation.
10. Regular sessions from eminent tax experts and jurists to be organized for increasing the repertoire of the members.

Though the measures suggested above are not comprehensive yet it is believed that if the above measures are taken up and implemented in right earnest, this will go a long way in strengthening our profession in tax practice as well. Since the Institute is as good as its members, it is also the duty of members to spread their wings and enhance their knowledge and expertise in this little touched area as well so that our glorious profession can stand on an equal pedestal with fellow professions like CA, CMA and Advocates.



Article

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GST: Advance Rulings – *Part 9*

1. Applicant – M/s. Dagger Die Cutting (I) Pvt. Ltd., Advance Ruling No. - No. 13/AAR/2019 dated 22.03.2019

The applicant is a Chennai based manufacturer of Hand-made Cutting Knives used in the shoe industries having domestic as well as overseas customers' base. Since certain payment for overseas supplies received domestically in foreign currency, the applicant has moved AAR – Tamil Nadu on the following question -

"Whether there should charge Integrated GST? or State GST? & Central GST on such sales?" i.e. to determine the said transaction is an inter-state supply or intra-state supply.

Place of Supply & Jurisdiction of AAR - Sub-section (2) of Section 97 & Sub-Section (1) of Section 100 of the Central GST Act, 2017 deals with certain definite questions which are eligible to raise with the jurisdictional AAR/AAAR. They are:

1. *Whether an applicant is required to be registered or not?*
2. *Classification of any goods or services or both?*
3. *Applicability of a Notification issued under the Central GST Act, 2017?*
4. *Determination of time and value of supply of goods or services or both?*
5. *Admissibility of Input Tax Credit (ITC) ?*
6. *Determination of the tax liability on any goods or services or both?*
7. *Any particular thing done by the applicant amounts to or results in a supply of goods or services?*

From the above, it is cleared that the 'Place of Supply' is out of the purview of the AAR. Hence, the Authority has rejected the application on the ground of lacking jurisdiction.

2. Applicant – M/s. Udyog Mandir, Advance Ruling No. RAJ/AAR/2019-20/01 dated 16.04.2019

The applicant is a manufacturer of Khadi garments who buys khadi fabrics from outside, stitches and make own garments in its own establishment. The Central Government vide Notification No. 28/2017-Central Tax (Rate) vide inserting an entry at serial No. 130A in relevant Notification No. 02/2017 to exempt khadi fabrics. The applicant moved the AAR – Rajasthan with two fit questions, they were

a) Will Khadi readymade garments to be included under the entry of Khadi fabric under chapter 50 to 55 of GST classification?
b) If not, then what is the correct classification and rate of tax on Khadi readymade garments?

Upon relying on the aforesaid Notification, the Authority held that the khadi readymade garments are not exempt from the GST purview. To answer its second question, If the sale value of readymade garments manufactured by the applicant is less than Rs. 1,000 hose will attract GST at the rate of 5 percent or else GST at the rate of 12 percent.

3. **Applicant – M/s. Vedika Exports Tea Pvt Ltd, Advance Ruling No. 36/WBAAR/2018-19 dated 28.01.2019 / Order copy of AAAR is awaited.**

The applicant is a contract packer of tea bags, entered into an agreement with Hindustan Unilever Ltd., According to the agreement, the applicant shall manufacture and/or process, pack tea bags of Taj Mahal, Lipton and Brook Bond brands at his own plants. HUL shall procure, transport and deliver to the applicant's manufacturing plants all the raw materials and packing materials required for such activities and provides insurance cover against fire, expulsion, etc. The ownership and property on those materials at all times rests with the HUL. The applicant has no liberty to apply such materials for any purpose other than processing and packing of the products for HUL. HUL also bears the cost of such waste disposal. The applicant seeks a ruling on the classification of the services provided to the HUL. A question raised before the AAAR – West Bengal was –

Whether the applicant's services to HUL are classifiable as packaging service or manufacturing service or both?

The Authority for Advance Ruling – West Bengal relying on the agreement and Section 2 (72) of the Central GST Act, has classified the aforesaid service under SAC 9988 and taxable at the rate of 5 percent.

The department has filed an appeal with the Appellate Authority for Advance Ruling – (AAAR), West Bengal. One member of AAAR upheld the AAR's Order while the other member of AAAR held that the service offered by the applicant is classified under SAC 9985 and taxable at the rate of 18 percent.

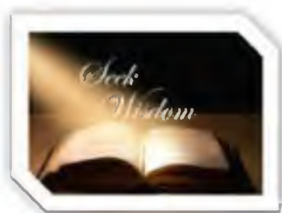
Since the difference of opinion among AAAR Members, it is presumed that no Advance Ruling issued with respect to the above stated question. On an appeal by the Applicant with jurisdictional High Court, the court has granted a stay on further proceedings against the Order of National Anti-Profiteering Authority.

To be continued….

Words Worth Million

The difference between winning and losing is most often not quitting.

- Walt Disney



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Commentary on Disqualifications for Appointment of Director Part-I
Series- 18

This Article deals with the provisions relating to the sub section (1) of Section 164 of the Companies Act, 2013. The remaining parts of Section 164 shall be analysed in the subsequent Article(s).

Provisions: Section 164 of the Companies Act, 2013 ('the Act')

1) A person shall not be eligible for appointment as a director of a company, if -
   a. he is of unsound mind and stands so declared by a competent court;
   b. he is an undischarged insolvent;
   c. he has applied to be adjudicated as an insolvent and his application is pending;
   d. he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:
      Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
   e. an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
   f. he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
   g. he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
   h. he has not complied with sub-section (3) of section 152.
   i. he has not complied with the provisions of sub-section (1) of section 165.

Commentary

1. **What is the difference between 'vacation of director u/s section 167 the Act' and 'disqualification of director u/s 164 of the Act':**

   a. Section 164(1) begins with 'a person shall not be eligible for appointment', as a result of this, Section 164 is applicable to a person *who is proposed to be appointed as a director* of any company. Whereas Section 167(1) begins with 'office of a director shall become vacant'. Hence, section 167 provides for grounds for vacation of office of a person who is *already a director* of a company.
   b. Further if any company has appointed any person as director without complying the provisions of Sec.164, then said person/director shall automatically vacate the office of director u/s 167.

2. **Purpose –** Purpose is to save community from consequences of mismanagement and protect the public against future conduct by persons whose past record as director shows to be danger to creditors and others.

3. **Applicability**
   a. Sub-section (1) of Section 164 is applicable to all kinds of Directors including Additional Director, Alternate Director, Woman Director, and Independent Director, Director appointed by any Tribunal or Court etc.
   b. It is also applicable to all types of Companies viz., Private Companies, Public Companies, OPC, Government companies, etc.
   c. *In case of Government Company, only sub section 2 of Section 164 is not applicable.*
   d. Person – Only individuals are eligible to become director of the company.

4. **Automatic and mandatory:** If any of the grounds gets attracted to an individual, such individual shall automatically disqualifies to be appointed as Director in any existing company or proposed company by operation of law, as the wording is 'shall not be eligible for appointment'; Neither Board nor company nor shareholders nor any regulators do have a power to waive or condone it.

5. **Grounds for Disqualification under sub-section (1) of Section 164:**

   a. *he is of unsound mind and stands so declared by a competent court-*
   In case a person declared as unsound mind by a competent court, that person ceases to be appointed as director of any company. For disqualification, declaration by a competent court is must. Whenever such person gets cured, he is eligible for appointment.

   b. *he is an undischarged insolvent-*
   In case a person is an undischarged insolvent, then he is disqualified to be appointed as director (including Managing Director and Whole-time Director or manager of the Company as per Section 196). If he discharged as insolvent, then he is eligible to appoint.

   c. *he has applied to be adjudicated as an insolvent and his application is pending-*
      i. A person, who has applied to be adjudicated as an insolvent, cannot be appointed as director of any company when his application is pending. This disqualification comes to an end as soon as the application for adjudgment as an insolvent is dismissed.
      ii. If a person at any time has been adjudged as an insolvent, then he is barred to become Managing Director/Whole-time Director/Manager of any Company for life time as per Section 196.

   d.
      i. If a person has been convicted by a court for any offence and sentenced for imprisonment for <u>minimum</u> period of 6 months <u>**AND**</u> five years has not elapsed from the date of expiry of the sentence, then he cannot be appointed as director of the Company.
      ii. It is 'AND' condition, hence both conditions need to be met. In other words imprisonment lessor than 6 months within period of 5 years is eligible to become director.
      iii. However, 5 years after the expiry of last date of the sentence, his disqualification will be automatically lifted and he is eligible to be appointed as director of the Company.
      iv. Offence may be moral turpitude or otherwise.
      v. As per Companies (Specifications of definition details) Rules 2014, "or

otherwise" means any offence in respect of which he has been convicted by a Court under this Act or the Companies Act, 1956 only, not under any other laws.

vi. Interpretation of proviso
If the imprisonment period is seven years or more, then, he shall not be eligible to be appointed as director in any company for his lifetime.

Question arises whether offence may be only under company law or under any law also.
Further offence may be involving moral turpitude or any offence under any law is also covered.
In other words, proviso can be read isolated or should be read or combined with sub clause?.

vii. Sec.196 - For appointment of MD, any offence is covered whether moral turpitude or not. Further even if 5 years is elapsed, he cannot become MD for life time. Only minimum 6 months imprisonment is main criteria under this provision.

viii. Conviction by a court only. The quasi-judicial bodies (ex. Tribunal or Appellate Tribunal) are not the court of law. In this regard, if conviction by such quasi-judicial bodies shall not be considered as disqualification under this clause. For the purpose of this clause, court to be considered as per the definition given u/s 2(29) of the Act.

ix. Imposition of penalty or fine by a statutory authority or adjudicating authority or quasi-judicial authority's tribunals

ii. Joint as well as single shareholding both shall be considered.

cannot be considered as conviction.

x. Foreign Laws – Whether Conviction by foreign court or conviction in foreign land is also covered?

xi. The expression, 'moral turpitude' is nowhere defined. No absolute standard can be laid down for deciding whether a particular act is to be considered one involving moral turpitude. However, generally it means anything done in contrary to justice, honesty, modesty or good morals, ethics. In other words shameful character, corrupt practices, conducts that shocks public consciences, harmful to the interest of the public interest, violating the sentiment or accepted standards of community.

xii. In a nutshell - Charge (not proved) → Conviction (Proved) → Sentenced.

e. In case any court or Tribunal has passed an order disqualifying a person for appointment as a director and the said order is in force, he/she shall be disqualified to be appointed as Director of the Company. This disqualification shall be waved off only after receipt of leave from the court/Tribunal.

f. Non-payment of calls money

i. If a shareholder fails to make payment of call money in respect of any shares held by him, for minimum period of six months from the last date fixed for payment of call money, then he shall be disqualified to be appointed as director of the Company

iii. Share includes both equity shares as well as preference shares.

iv. Once he makes the call money payment or makes payment

within period of 6 months, he is eligible for appointment.

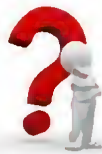
g. A person who has been convicted of the offence while dealing with transactions u/s 188 of the Act, at any time during the preceding five years, cannot be appointed as director of the Company. Question arises whether year is financial year or calendar year.

h. As per section 152(3) of the Act, only person having DIN or any other number as prescribed u/s 153 shall be eligible for appoint as director of the Company. In case he does not have DIN or other prescribed number, such person cannot be appointed as director of the Company. DIN is a prerequisite condition for appointment.
As of now except DIN, no other number is prescribed by law.

i. In case a person holding a directorship in excess of the number directorship specified u/s 165 of the Act, such person is disqualified to be appointed as director in any new company. Question arises whether a person can be appointed after reducing the excess number of directorships?

6. Section 11 of Indian Contract Act – Only person competent to contract is eligible to become director of the company. Question arise whether minor can become a director of the company?.

7. Disqualifications for Managing Director/Whole Time director or Manager u/s 196 – Provisions of 196 is more stringent compered to Sec.164 as MD is personally responsible for business of the company. Details/provisions of the same is already explained elsewhere in this write up.



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M/s XYZ Ltd., a registered person under GST has opted for Composition under Section10 of CGST Act, 2017. He does a trading activity in goods and has got some surplus money parked in a fixed deposit with a bank. For the month of March 2019, his bank account is credited for a sum of Rs.15,000/- towards Interest. Is there a onus for payment of GST on the Interest amount credited

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

GST Suite

35th GST Council meeting held on 21.06.2019 – Changes in Law & Procedure

Introduction of new returns in a phased manner

1) July 2019 to September 2019, new return form GST ANX-1 and GST ANX-2 only shall be available on trial basis. GSTR1 & GSTR3B to continue AS-IS
2) Compulsory Filing of Form GST ANX-1 as per below

Turnover during Previous year	Filing to be effective from
Large Tax payers having Turnover more than Rs.5 Crore	October 2019
Small Tax payers Less than Rs.5 Crore	Oct 2019 to Dec 2019 in January 2020

Note: Clarity shall be provided for having clarity towards the above Turnover to be computed PAN basis or state specific for Registered person having registrations at more than one location

3) Large Tax payers continue to file Form GSTR3B for October& November 2019. Form GST RET-1 to be filed for December 2019 in January 2020
4) Both small and large tax payers can upload invoices in Form GST ANX-1 on monthly basis w.e.f October 2019 onwards. Form GST ANX-2 can be viewed during this period, but no action shall be permitted
5) From October 2019 small taxpayer stop filing GSTR3B and start filing Form GST PMT-08. They will file first Form GST RET-01 for the period October 2019 to December 2019 in January 2020
6) From January 2020, Form GSTR-3B to be completely phased out

Old forms with new nomenclature as per below

Old Form	New Nomenclature	Change points in new forms
GSTR-1	GST ANX-1	• B2C Net of CN can have a Negative value • Reporting of advances and adjustments thereof no more to be reported in GST ANX-1 • Reporting for RCM GSTN wise for every supplier • Reporting for Import of Services
GSTR-2	GST ANX-2	• Availment of ITC only on the basis of documents uploaded by supplier • No correction/amendment for the details auto-populated can be done by recipient.

		All the corrections to be done by supplier alone • Recipient has only three options to Accept/ Reject/ Keep it for pending
GSTR-3B	GST RET-1	• Details auto-populated from GST Anx-1 and GST Anx-2 • Advances details to be entered for fresh receipt or adjustments • Credit not availed in books after transition to new GST returns mechanism from July 2019

7) Rule 138E of the CGST rules, pertaining to blocking of e-way bills on non-filing of returns for two consecutive tax periods, to be brought into effect from 21.08.2019, instead of the earlier notified date of 21.06.2019

Sabka Vishwas Dispute Resolution Scheme, 2019

Hon'ble Finance Minister in her speech said "A dispute resolution cum amnesty scheme called "the Sabka Vishwas Legacy Dispute Resolution Scheme, 2019" is being introduced for resolution and settlement of legacy cases of Central Excise and Service Tax. The proposed Scheme covers past disputes of taxes which have got subsumed in GST namely Central Excise, Service Tax and Cesses. All persons are eligible to avail the scheme except a few exclusions including as those convicted under the act in the case for which he intends to make declaration and those who have filed an application before the Settlement Commission".

Detailed road map with relevant Rules are yet to be formulated in this regard. However, some insights provided regarding this scheme are outlined as per below:

A. Definitions relevant to understand:

i) Amount in Arrears:
Amount of duty which is recoverable as arrears of duty under Indirect tax enactment on account of:

- NO appeal filed by the declarant against an Order or an Order in Appeal
- Order in Appeal attaining finality
- Declarant filed a return on or before 30.06.2019 admitting a liability in the return but not paid it

ii)Amount of duty:
Means amount of Central Excise, service tax and cess payable under the indirect tax enactment

iii) Declarant:
Means a person who is eligible file such declaration

iv) all other words and expressions used in this Scheme, but not defined, shall have the same meaning as assigned to them in the indirect tax enactment and in case of any conflict between two or more such meanings in any indirect tax enactment, the meaning which is more congruent with the provisions of this Scheme shall be adopted

Around 26 enactments were enumerated to include this scheme and Central Government may by notification in official gazette shall have authority to include further in this regard

B. Relief available in this scheme:

Following is the

Scenario	Relief provided
Tax dues are relatable to a SCN or one or more appeals arising out of such notice and pending as on 30.06.2019	<= Rs.50lakhs :: 70%
	>Rs.50lakhs :: 50%
Tax dues are relatable to a SCN a late fee or penalty	Entire amount of late fee or penalty

only and the amount of duty is paid or NIL	
Tax dues are relatable to tax arrears	Amount of duty <= Rs.50lakhs :: 60%
	Amount of duty > Rs.50lakhs :: 40%
Tax arrears relatable to a return where duty payable is indicated but not paid	Amount of duty <= Rs.50lakhs :: 60%
	Amount of duty > Rs.50lakhs :: 40%
Tax dues are linked to an enquiry, investigation or audit <u>and quantified</u> against the declarant as on 30.06.2019	Amount of duty <= Rs.50lakhs :: 70%
	Amount of duty > Rs.50lakhs :: 50%
Tax dues are on account of voluntary disclosure by the declarant	NO Relief

For providing above relief the amount paid by the declarant at any stage of appeal proceedings/ audit/ enquiry/ investigation shall be deducted when issuing the statement payable by the declarant. However, any amount already paid exceeds the amount payable after above relief shall not be refunded back to the applicant

C. Persons not eligible to apply for the above scheme

- person who has filed an Appeal before appellate forum and such appeal has been heard finally on or before 30.06.2019
- person who has been convicted for an offence punishable under any provision of Indirect tax enactment
- a person who has been issued with a SCN under Indirect Tax enactment and the final hearing has been heard as on 30.06.2019
- a person who has been issued with SCN for erroneous refund or a refund
- a person who has been subjected to an enquiry or investigation or audit and the amount involved in this regard has not been quantified as on 30.06.2019
- a person making a voluntary disclosure:
    - after being subjected to any enquiry or investigation or audit
    - having filed a return under the indirect tax enactment, wherein he has indicated an amount of duty as payable, but not paid
- a person who has filed an application before settlement commission for settlement of case
- person dealing with goods set forth in Fourth schedule to Central Excise Act, 1944 which deal with Tobacco products, Mineral products and Petroleum products

D. The designated committee shall verify the correctness of the declaration made by the declarant under section 124 in such manner as may be prescribed:
Provided that no such verification shall be made in case where a voluntary disclosure of an amount of duty has been made by the declarant

E. Issue of statement by Designated committee

- Where the amount estimated to be payable by the declarant, as estimated by the designated committee, equals the amount declared by the declarant, then, the designated committee shall issue in electronic form, a statement, indicating the amount payable by the declarant, within a period of sixty days from the date of receipt of the said declaration
- Where the amount estimated to be payable by the declarant, as estimated by the designated committee, exceeds the amount declared by the declarant, then, the designated committee shall issue in electronic form, an estimate of the amount payable by the declarant within thirty days of the date of receipt of the declaration
- After the issue of the estimate under sub-section (2), the designated committee shall give an opportunity of being heard to the declarant, if he so desires, before issuing the statement

indicating the amount payable by the declarant:

- Provided that on sufficient cause being shown by the declarant, only one adjournment may be granted by the designated committee.
- After hearing the declarant, a statement in electronic form indicating the amount payable by the declarant, shall be issued within a period of sixty days from the date of receipt of the declaration

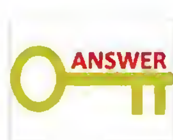
F. Issuance of discharge certificate to be conclusive or matter and time period

- Every discharge certificate issued with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and
- the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration
- the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;
- no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment.

G. Restrictions for the scheme:

Any amount paid under this scheme:

- Shall not be paid through the input tax credit account under the indirect tax enactment or any other Act
- Shall not be refunded under any circumstances
- Shall not, under indirect tax enactment be taken as Input Tax credit or entitle any person to take input tax credit as a recipient



Opinion To Last Month's Brainy Bits

Relevant facts of the case

- M/s XYZ ltd., (hereinafter referred as "Supplier"), is a registered person in the state of Karnataka
- Supplier a regular registrant makes a purchase entitling him for Rs.2,00,000 as ITC say IGST. Also, he has got an outward supply on which output tax payable is for Rs.5,00,000
- Both the above transactions have been recorded in the Books during January 2018. Due to inadequate funds and delay in payment from customer, the supplier has remitted the tax during March 2018 and has filed his GSTR3B for the month of January 2018 in March 2018
- Accountant of the supplier computed the interest under Section50 of CGST Act, 2017 on the net tax payable of Rs.3,00,000

Legal provision

Section 2(62): Input tax
Section 2(82): Output tax
Section 16: Eligibility and conditions for taking Input Tax credit
Section 41: Claim of input tax credit and provisional acceptance thereof
Section50: Interest on delayed payment of tax
Telangana High court Judgement:

M/S. MEGHA ENGINEERING AND INFRASTRUCTURES LTD. VERSUS THE COMMISSIONER OF CENTRAL TAX, HYDERABAD, THE ASSISTANT COMMISSIONER OF CENTRAL TAX, KUKATPALLY AND THE SUPERINTENDENT, O/O THE SUPERINTENDENT OF CENTRAL TAX, HYDERABAD

Levy of interest - Delay in Filing of return in GSTR-3B Form - requirement to discharge entire tax liability - delay in filing return due to shortage of ITC, available to off-set the entire tax liability - Payment of interest on the ITC portion - HELD THAT:- While Sub-Section (1) of Section 50 speaks about the liability to pay interest under one contingency, viz., the failure to pay tax within the period prescribed, Sub-Section (3) of Section 50 speaks about the liability to pay interest under a different contingency. Whenever an undue or excess claim of ITC is made or whenever an undue or excess reduction in out-put tax liability is made, a liability to pay interest arises under Sub-section (3). The words "on his own" used in Sub-section (1), are not used in Sub-section (3) of Section 50 - The liability to pay interest under Section 50 (1) is self-imposed and also automatic, without any determination by any one. Hence, the stand taken by the department that the liability is compensatory in nature, appears to be correct.

Sub-section (2) of Section 49 that a credit entry is made in the electronic credit ledger of a registered person, only when the ITC, as self-assessed, is found in the return of a registered person. After a credit entry is made in the electronic credit ledger, the same becomes available for making payment. This is clear from Sub-section (3) of Section 49. If after payment, a balance is still available in the electronic credit ledger, the same is liable to be refunded in accordance with Section 54.

Finance Bill 2019

Clause 99 of the Bill seeks to amend Section 50 of the Central Goods and Services Tax so as to provide for charging Interest only on the net cash tax liability, except in those cases where tax is paid subsequent to initiation of Proceedings under Section 73 and Section74

Conclusion

Under GST law, eligibility to Input tax credit [ITC] has to be satisfied in line with the requirements under Section16. Such ITC, shall be allowed to be credited to Electronic Credit ledger after filing Return under Section39. Hon'ble Telangana has upheld the standing order issued by Telangana Central Tax Commissionerate for providing a clarification to demand Interest on the Gross liability and not on the net liability since returns were not filed by the Registered person. However, Finance Bill 2019 has brought in a clarity in this regard stating that Interest has to be charged under Section 50 on the Net Tax liability only in normal cases leaving the Proceedings made for recovery under Section 73 or 74. Accordingly, though Finance Bill is not approved in principle by Hon'ble President of India, the logic & principle conveyed thereupon needs to be adopted for payment of Interest on the Net tax liability only

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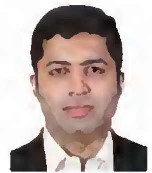


Solved cases of Supreme Court and NCLAT

Delhi Diaries 16

Housing Development Finance Corporation Ltd. v. RHC Holding Pvt. Ltd. – IBC does not contemplate proceedings against NBFCs

In the great Indian epics the *Bramhastra* is a weapon that is all powerful and is capable of destroying even the largest of empires. Likewise, the Insolvency and Bankruptcy Code, can bring down large companies that have defaulted on their debts. But just as the use of *bramhastra* is restrained by several conditions, the IBC too has its own limitations. This edition of Delhi Diaries brings you an instance of one such restriction on the use of IBC against debtors, i.e., IBC is not available as against financial service providers.

The definition of corporate persons under the IBC contains a curious exception. Section 3(7) of the Insolvency and Bankruptcy Code provides:

> (7) "corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider;

The definition of Financial Service Provider is a somewhat circular one with Section 3(6) of the IBC providing:

> (16) "financial service" includes any of the following services, namely:—
>
> (a) accepting of deposits;
>
> (b) safeguarding and administering assets consisting of financial products, belonging to another person, or agreeing to do so;
>
> (c) effecting contracts of insurance;
>
> (d) offering, managing or agreeing to manage assets consisting of financial products belonging to another person;
>
> (e) rendering or agreeing, for consideration, to render advice on or soliciting for the purposes of—
>
> > (i) buying, selling, or subscribing to, a financial product;
> >
> > (ii) availing a financial service; or
> >
> > (iii) exercising any right associated with a financial product or financial service;

(f) establishing or operating an investment scheme;

(g) maintaining or transferring records of ownership of a financial product;

(h) underwriting the issuance or subscription of a financial product; or

(i) selling, providing, or issuing stored value or payment instruments or providing payment services;

Naturally a Financial Service Provider is defined as a person engaged in business related to the above.

In *Housing Development Finance Corporation Ltd. v. RHC Holding Pvt. Ltd.* the NCLAT examined at some length the concept of a financial service provider under the IBC and the nature of NBFCs as registered with the RBI.

The brief background of the case was that the appellant had filed an application before the NCLT under Section 7 of the IBC, seeking, as a financial creditor, the initiation of insolvency of the Respondent Company. The Respondent Company, being registered as an NBFC was considered by the NCLT to be a financial service provider and on that basis, the application filed by the appellant had been rejected. The Appellant challenged the order of rejection before the NCLAT.

On behalf of the appellant, a chart was submitted whereby it was canvassed that the Respondent is not involved in any of the 9 activities defined as financial services despite being registered as an NBFC. The Appellant also foisted an attack on the basis of the Respondent's contention that it was a holding company by stating that the said averment amounted to an admission that the Respondent was not a financial service provider.

The NCLAT observed that the list of 9 activities provided in Section 3(16) is an inclusive list and hence there could be other services which are financial services.

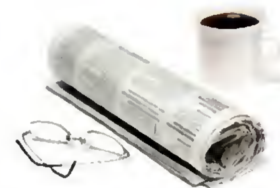
The NCLAT then referred to Section 45 I (a) of the Reserve Bank of India Act, 1934 which provides:-

(a) business of a non-banking financial institution' means carrying on the business of a financial institution referred to in clause (c) and includes business of a non-banking financial company referred to in clause (f)

Other provisions of the Reserve Bank of India also established that a Non Banking Financial Institution is a Financial Institution. On the said reasoning, the NCLAT confirmed that an NBFC, though not providing any of the financial services contemplated in Section 3(16) of the Code, was a Financial Service Provider and hence not subject to Insolvency Process.

This judgment is also significant for the use of definitions from outside the code for purposes of interpretation of the Insolvency and Bankruptcy Code.

News Room



Express News

- Government working on solution for FPIs facing higher surcharge
- Wholesale Price Index inflation declines to near 2-year low at 2.02% in June
- IndiGo board to question Gangwal on talks with Pratt & Whitney
- PSP Investments ties up with ADIA & NIIF to invest in GVK Airport Holdings Ltd
- Consumer finance focus can bring SoftBank to Piramal

BHEL, CONCOR tie up for rail-based logistics terminal at Haridwar

"Leveraging BHEL's strategic location and CONCOR's expertise in logistics, the two companies have signed an agreement to form a joint working group named BHELCON, for jointly setting up a rail-based logistics terminal at Haridwar," a BHEL statement said.

Slowdown in auto, realty may dent NBFCs' disbursement growth numbers

Non-banking finance companies may witness one of the slowest disbursement growth rates in over three years in the June quarter, owing to sparse liquidity even as some of these companies continued to be bogged down by a slow demand environment in auto, real estate and non-retail sectors.

Tata Sons mopping up $500 million via foreign loans

Tata Sons is raising $500 million in the first tranche of its scheduled offshore borrowings, the proceeds from which will likely be used to fund multiple on-going expansion and restructuring plans,

DHFL collateral is worth just Rs 500 crore against Rs 40,000 crore lent by banks

The auditors recently noted that the company's ability to raise funds has substantially impaired and the business has come to a standstill because of challenges in fresh disbursements. "These developments may raise a significant doubt on the ability of the company to continue as a going concern," note auditors. In the just concluded fourth quarter (January-March) of 2018-19, DHFL has reported a net loss of Rs 2,223 crore.

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Companies Act, 2013

Updates on Amended Rules

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

In the principal rule, after clause (c) of rule 2, the following clause shall be inserted,

"(d) every company declared as Nidhi or Mutual Benefit Society under sub-section (1) of section 406 of the Act".

In the principal rules, in rule 3, after clause (d), the following clause shall be inserted,

'(da) "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with the rules made by the Central Government for regulation of such class of companies.'.

In the principal rules, after rule 3, the following rule shall be inserted,

Declaration of Nidhis:

A Nidhi Company incorporated under the act on or after the commencement of the Nidhi (Amendment) Rules, 2019 shall file Form NDH-4 within sixty days from the date of expiry of:-

(a) One year from the date of its incorporation; or

(b) The period up to which extension of time has been granted by the Regional Director under sub-rule (3) of rule 5:

Further, MCA has introduced Form NDH-4.

It is further provided that, any company which fails to comply with the requirements of this rule, shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of Allotment).".

Nidhi (Amendment) Rules, 2019, dated 1st July 2019.

Circulars

The MCA has received representations from stake holders, with respect to certain difficulties in filing e-form DIR-3 KYC in accordance with Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.

The matter has been examined and it is hereby informed that it is being proposed that every person who has already filed DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service, with pre-filled data based on the records in the registry, for ease of verification by the person concerned.

If a person wishes to update his contact details, he would be required to file e-form DIR-3 KYC, as this facility of updation is not being proposed in the web-based service.

To update any other personal information Form DIR-6 shall be filed for updation, before filing KYC Form.

General Circular No.07/2019, dated 27th June 2019.