



IN PURSUIT OF PROFESSIONAL EXCELLENCE Statutory body under an Act of Parliament (Under the jurisdiction of Ministry of Corporate Affairs)

Motto

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

सत्यं वद। धर्मं चर।

speak the truth abide by the law.

Mission "To develop high calibre professionals facilitating good corporate governance"

Wednesday, November 01, 2023

Info Capsule

President CS Manish Gupta Vice President CS B Narasimhan

✤ Latest @ ICSI

Feedback on Company Forms in MCA21-V3 Portal

As you are aware, the Ministry of Corporate Affairs w.e.f. August 31, 2022 migrated filing of 9 Company Forms from MCA 21 V2 to V3 Portal.

The Ministry of Corporate Affairs w.e.f. January 23, 2023, has launched second set of Company Forms covering 56 forms on MCA21-V3 Portal for filing purposes. The list of all 56 Company Forms is available on MCA website.

The Institute of Company Secretaries of India, in its attempt to further facilitate the stakeholders and ensure smooth transition and implementation, is sharing your feedback to the Ministry of Corporate Affairs (MCA) on regular basis. Such feedback is constantly and closely monitored by MCA at all levels for timely resolution.

We request you to share your inputs/ issues/suggestions on filing of Company Forms in MCA V3 at the link given below:

https://forms.gle/m5NGoCbt4TibuD196

We thank you for your continued support and hope for association in the future as well.

Ministry of Corporate Affairs Commencement of section 5 of the Companies Amendment Act 2020 (October 31, 2023)

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government hereby appoints the 30th day of October, 2023 as the date on which the provisions of section 5 of the said Act shall come into force.

Section 5 of the Companies Amendment Act 2020 states that in section 23 of the principal Act, after sub-section (2) and before the Explanation, the following sub-sections shall be inserted, namely:—

"(3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.".

For details:

https://egazette.gov.in/(S(y2dg5n3kf1pthn0bmw4qfpkf))/ViewPDF.aspx

✤ ESG

Competition Laws must adapt to support the ESG mandate (October 31, 2023)

Increasing natural disasters, rising global temperatures, rocketing economic inequalities, surging financial losses, spiralling company collapses, swelling unethical treatment of employees, and growing stakeholder insensitivities are undoubtedly the fallouts of ignoring the Environmental, Social, Governance (ESG) mandate. It is now universally accepted that businesses must implement the ESG framework in letter and spirit to finally inch-in towards the establishment of overall sustainability.

For details: https://www.teriin.org/blog/competition-laws-must-adapt-supportesg-mandate

Indirect Tax Goods & Services Tax

Clarifications regarding applicability of GST on certain services (Circular No. 206/18/2023-October 31-GST)

Central Board of Indirect Taxes & Customs (CBIC) on the basis of recommendations by GST Council in its 52nd meeting held on October 07, 2023, clarify the following issues, with reference to GST levy as:

1. Whether 'same line of business' in case of passenger transport service and renting of motor vehicles includes leasing of motor vehicles without operators: - It is hereby clarified that input services in the same line of business include transport of passengers or renting of motor vehicle with operator and not leasing of motor vehicles without operator which attracts GST and/or compensation cess at the same rate as supply of motor vehicles by way of sale.

2. Whether GST is applicable on reimbursement of electricity charges received by real estate companies, malls, airport operators etc. from their lessees/occupants:-It is clarified that whenever electricity is being supplied bundled with renting of immovable property or maintenance of premises, as the case may be, it forms a part of composite supply and shall be taxed accordingly. However, where the electricity is supplied by the Real Estate Owners, Resident Welfare Associations, Real Estate Developers etc., as a pure agent, it will not form part of value of their supply. Further, where they charge for electricity on actual basis that is, they charge the same amount for electricity from their lessees or occupants as charged by the State Electricity Boards or DISCOMs from them, they will be deemed to be acting as pure agent for this supply.

3. Whether job work for processing of "Barley" into "Malted Barley" attracts GST @5% as applicable to "job work in relation to food and food products" or 18% as applicable on "job work in relation to manufacture of alcoholic liquor for human consumption":- It is hereby clarified that job work services in relation to manufacture of malt are covered by the entry at Sl. No. 26 (i) (f) which covers "job work in relation to all food and food products falling under chapters 1 to 22 of the customs tariff" irrespective of the end use of that malt and attracts 5% GST.

4. Whether District Mineral Foundations Trusts(DMFTs) set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority:- DMFTs work for the interest and benefit of persons by providing services related to drinking water supply, environment protection, health care facilities, education, welfare of women and children, supply of medical equipment etc Accordingly, it is clarified that DMFT set up by the State Governments are Governmental Authorities and thus eligible for the same exemptions from GST as available to any other Governmental Authority.

5. Whether supply of pure services and composite supplies by way of horticulture/horticulture works(where the value of goods constitutes not more than 25 % of the total value of supply) made to *CPWD are eligible for exemption from GST:-* It is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works(where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST:- It is clarified that supply of pure services and composite supplies by way of horticulture/horticulture works(where the value of goods constitutes not more than 25% of the total value of supply) made to CPWD are eligible for exemption from GST under Sr. No. 3 and 3A of Notification no 12/2017-CTR dated 28.06.2017.

For details:

https://taxinformation.cbic.gov.in/view-pdf/1003189/ENG/Circulars

*	Pronouncement									
	October, 31 st 2023	Sanjay Kumar Agarwal { Petitioner(s)}	Supreme Court of India Inherent Jurisdiction							
		Vs State tax officer (1) & Anr. {Respondent(s)}	Review Petition (Civil) No. 1620 of 2023							
			In Civil Appeal No. 1661 of 2020							

A party is not entitled to seek a review of a judgment delivered by Supreme Court merely for the purpose of a rehearing and a fresh decision of the case.

The Hon'ble Apex Court inter alia observed that the power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution of India. Of course, that power is subject to the provisions of any law made by the Parliament or the Rules made under Article 145. Supreme Court in exercise of the powers conferred under Article 145 of the Constitution of India has framed the Supreme Court Rules, 2013. The Order XLVII of Part IV thereof deals with the provisions of Review. Accordingly, in a Civil Proceeding, an application for review is entertained only on the grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure and in a Criminal Proceeding on the ground of an error apparent on the face of record. However, it may be noted that neither Order XLVII CPC nor Order XLVII of Supreme Court Rules limits the remedy of review only to the parties to the judgment under review. Even a third party to the proceedings, if he considers himself to be an "aggrieved person," may take recourse to the remedy of review petition. The quintessence is that the person should be aggrieved by the judgment and order passed by this Court in some respect *{(2019) 18 SCC 586, Union of India vs. Nareshkumar Badrikumar Jagad & Others}.*

In the words of Krishna Iyer J., (as His Lordship then was) "a plea of review, unless the first judicial view is manifestly distorted, is like asking for the Moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result....... A review in the Counsel's mentation cannot repair the verdict once given. So, the law laid down must rest in peace."{(1980) 2 SCC 167, M/s. Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi}.

It is also well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.{ AIR 1965 SC 845, Sajjan Singh and Ors. vs. State of Rajasthan and Ors.}.

For details:

https://main.sci.gov.in/supremecourt/2022/32268/32268_2022_6_1501_48032_Judgement_31-Oct-

Terminology for Today

Hollow Corporation

A business in which important elements are outsourced to subcontractors.

* Competition law

CCI approves proposed combination relating to minority investment by India Business Excellence Fund – IV in SK Finance Limited (October 31, 2023)

The Competition of Commission of India (CCI) has approved the proposed combination relating to minority investment by India Business Excellence Fund – IV in SK Finance Limited. India Business Excellence Fund – IV (Acquirer) is a Category II Alternative Investment Fund registered with the Securities and Exchange Board of India. It primarily invests in equity and equity-linked instruments and/or debt and/or mezzanine or other instruments of Indian or India related companies. It is a sector-agnostic fund, providing growth capital to mid-sized companies.

SK Finance Limited (Target) Target is a non-banking finance company registered with the Reserve Bank of India as a Non-Banking Non-Deposit Taking Systemically Important Asset Finance Company engaged in the business of providing financing for vehicles (new and used) and loans to Micro Small and Medium Enterprises. Target largely caters to low-mid income, self-employed individuals that are largely under-banked (in semi-urban/rural areas) with minimal access to organized lending.

The proposed combination relates to a minority investment by Acquirer in the Target by way of subscription to equity shares of the Target and purchase of outstanding equity shares of the Target from Mr. Rajendra Kumar Setia, the promoter of the Target; and Baring Private Equity India AIF (Proposed Combination).

For details:

Marlat Watch

https://pib.gov.in/PressReleasePage.aspx?PRID=1973532

* Market Watch									
Stock Market Indices as on 01.11.2023			Foreign Exchange Rates as on 01.11.2023 (https://m.rbi.org.in//script/ReferenceRateArchive.aspx)						
S & P BSE Sensex	63,615.81 (-259.12)		INR / 1 USD	INR / 1 EUR	INR / 1 GBP	INR/ 1 JPY			
Nifty 50	18,991.95 (-87.65)		83.28	88.03	101.11	.5506			

Prepared by Directorate of Academics

For any suggestions, please write to academics@icsi.edu.

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