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CONTENTS

MESSAGE FROM THE PRESIDENT 3

ARTICLES

- Corporate Governance : An Insight into Principles 4
- Significant Beneficial Owners Rules, 2019 7
- Emergence of Corporate Social Responsibility : An Overview 10
- Secretarial Audit under the Companies Act, 2013 12
- Goods and Service Tax (GST) – A Bird's Eye View 14

KNOWLEDGE UPDATE

COMPANY LAW

- Commencement of Section 81 of the Companies (Amendment) Act, 2017 6
- Designation of Special Court 6
- Companies (Appointment and Qualification of Directors) (3rd Amendment) Rules, 2019 6
- Companies (Registration Offices and Fees) (4th Amendment) Rules, 2019 13
- Nidhi (Amendment) Rules, 2019 13
- Companies (SBO) (2nd Amendment) Rules, 2019 13
- Companies (Amendment) Act, 2019 18

SPECIAL ECONOMIC ZONE LAW

- SEZ (Amendment) Act, 2019 11

SEBI LAW

- Modification of Circular dated September 24, 2015 18
- Standardizing Reporting of Violations of Code of Conduct 18
- Amendment of Guidance Note 18

INSOLVENCY AND BANKRUPTCY LAW

- Appointment of Part-Time Members in IBBI 17
- Amendments of various Regulations 17, 18, 19

CASE LAW 19 & 20

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Editor : B P Bhargava.

Correspondence:

Send your Articles at
email id : articles@vidhimaan.com

For non receipt of issue
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For feedback
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MESSAGE FROM THE PRESIDENT

Look at the sky. We are not alone. The whole universe is friendly to us and conspires only to give the best to those who dream and work.

– A.P.J. Abdul Kalam

Dear Students,

On the onset, I wish you all a very happy 73rd Independence Day. This Independence Day let's take a pledge to protect the peace and unity of our great nation. This is the month which brings along with it the spirit of freedom and patriotism and being the future of our country, you all should take pride in celebrating this day. Also, I want to congratulate all the students who have passed the CS Foundation Examination, June 2019 with flying colours. I wish you all the best for your future endeavours and those who could not make it this time, don't lose hope because things will get better. It may be stormy now, but it never rains forever.

Speaking on education and its impact on future of a country, Barack Obama, former President of the United States has rightly said that "In this kind of knowledge economy, giving up on your education and dropping out of school means not only giving up on your future, but it's also giving up on your family's future and giving up on your country's future." The future of the country depends upon its students. They play a vital role in the development of a country. If the positive energy of the students are directed to constructive purposes, the whole country will reap benefits and it will lead to an all round development of the nation. Students, who are educated today, will become pillars for the whole nation tomorrow. Thus, it is your perseverance, dedication and commitment towards nation building which will determine the future of our nation.

The scope of a country to prosper is limited in the absence of a robust education system. Therefore, being the future of the country, the nation had a lot of expectations from you. In order to meet such expectations, you have to be morally and mentally strong. You should have the ability to create an identity for yourselves and take the nation forward towards the path of development. We, as the Institute of Company Secretaries of India are here to support this cause and provide wings to your journey. Once again, on this special day here's wishing our dreams of a new tomorrow come true! May our Independence Day be filled with patriotic spirit!

Jai Hind!

Regards

CS Ranjeet Pandey

President, ICSI



Corporate Governance : An Insight into Principles

This article provides basic insights to the principles of Corporate Governance.

Aisha Begum Ansari

Registration No. 440732299/09/2018

Email id : ansari786aaisha@gmail.com

Introduction

Many a times, a common question click to all of us, 'Is there any way to keep check on corporate?' The answer is yes! It is 'Corporate Governance'. Corporate Governance refers to the process, mechanism to govern the corporations. It is actually a technique used to direct and manage the companies. It also refers to the accountability of the Board of directors to all stakeholders of the corporation, *i.e.*, shareholders, employees, suppliers, customers and society in general towards giving the corporation a fair, efficient and transparent administration. In the context of liberalization and globalisation there is growing realization in the emerging economies including India that a country's business environment must be maintained and operated in a manner that is conducive to investors' confidence so that both domestic and foreign investors are induced to make adequate investment in corporate companies.

Corporate Governance : An Evolution

The modern practice of Corporate Governance has its roots in the 17th century. It is usually observed and complied by Board of directors and the concerned committees for the benefit of company's stakeholders'. It is all about balancing an individual goal and societal goals as well as economic development. Corporate Governance deals with determining effective ways to take

strategic decisions. It ensures shaping the organizations in a good way. The relationship between the owners and the employees must be healthy, there should not be any conflict between the two. In today's market-oriented economy, the need for corporate governance arises. It is essential to develop added value to the stake holders. Corporate Governance has a broad scope. It includes both social and institutional aspects. It encourages a trustworthy, moral as well as ethical environment in companies.

Corporate Governance : Significance and Merits

The need and significance of Corporate Governance could be briefed in following points :

- Wide range of shareholders are spread all over India even in the world. Their democracy is confined only with the articles of association which requires practical implementation of code of conduct through Corporate Governance.
- The biggest reason for the subsuming the need of corporate governance is to restrict the occurrence of corporate scams. For example, scams like Sahara, ICICI bank Ltd and Videocon etc. are still in the heart and mind of all people. Therefore, corporate governance is required to regain the stakeholder's confidence in order to development of economic growth.

- Today, society hold great expectation with corporate related to best utilization of resources, pollution control, reasonable price, better quality of product. To fulfill all these desires a system of good corporate governance is needed.
 - In the past, huge increase in the monetary payment of top-level management has been witnesses. There is no justification for exorbitant payments to top ranking managers, out of corporate funds, which are a property of shareholders and society. This factor necessitates corporate governance to contain the ill-practices of top managements of companies.
 - Desire of more and more Indian companies to get listed on international stock exchanges also focuses on a need for corporate governance. In fact, corporate governance has become a buzzword in the corporate sector. There is no doubt that international capital market recognises only companies well-managed according to standard codes of corporate governance.
- ◆ It is always ensures that organization are managed in a manner that fits best interest of all.

Principles of Corporate Governance

Successful corporate governance can be achieved by adopting a set of principles that depends upon, honesty, generosity, justice and the manner in which companies conduct their affairs. The virtue ethics of generosity, justice and honesty are all important in today's business due to the challenges organizations face with growing globalization. The owners must see that individual's actual performance is according to the standard performance. A good corporate governance should be made to avoid corporate scams like Harshad Mehta, ICIC bank Ltd and Videocon, etc. When investors and flat owns lost their money to bad builders, the Bombay High Court directed to treat such cases as criminal and register case against the builders. I think, same principle should also apply when investor lost their money due to bad Corporate Governance.

Major principles of Corporate Governance are listed as follows :

In addition to the above mentioned points which highlights the significance of Corporate Governance, there are various benefits of Corporate Governance (CG). Few of them are listed as follows :

- ◆ Good Corporate Governance ensues corporate success and growth
 - ◆ It ensures investor's confidence, as a result company can raise capital efficiently and effectively
 - ◆ There will be positive impact on the share prices of the companies
 - ◆ It provides proper inducement to the owners as well as managers to achieve objectives that are in interest of the shareholders and the organizations
 - ◆ A good Corporate Governance minimizes fraud, corruption, wastages and mismanagement
 - ◆ It helps in brand formation
- **Transparency** – In the context of corporate governance, it implies an accurate, adequate and timely disclosure of relevant information about the operating results, etc. of the corporate enterprise to the stakeholders. In fact, transparency is the foundation of corporate governance which helps to develop a high level of public confidence in the corporate sector. For ensuring transparency in corporate administration, a company should publish relevant information about corporate affairs in leading newspapers, e.g., on a quarterly or half yearly or annual basis.
 - **Accountability** – In the context of corporate governance, accountability implies the responsibility of the Chairman, the Board of directors and the Chief Executives, Key Managerial Personnel and alike for the use of company's resources (over which they have authority) in the best interest of company and its stakeholders.

- **Independence**—Good corporate governance requires independence on the part of the top management of the corporation i.e. the Board of directors must be strong non-partisan body; so that it can take all corporate decisions based on business prudence. Without the top management of the company being independent; good corporate governance is only a mere dream.

Conclusion

Corporate Governance has assumed greater effect in the wake of frauds, scams as well as increasing competition and globalization. It enhances parameter of accountability, transparency, control and reporting functions of the Board of directors. It also enhances the relationship between supplier, shareholders, management, banks, financial institutions, employees and creditors of the companies.

Looking at the complexity of the situation, it is quite evident that only law cannot ensure good corporate governance without code of conduct and self-regulation. Laws, rules and regulations are required to strike a balance in the objectives sought to be achieved by different interest groups in companies, but the aim of corporate governance is commitment to values, business ethics and distinction between personal money and corporate funds. The effective implementation of good governance practices would ensure investors' confidence in the corporate companies which will lead to greater investment in them ensuring their sustained growth.

Thus, good corporate governance would greatly benefit the company, its stakeholders and society at large.

The views expressed are personal views of the author and do not necessarily reflect those of the Institute.



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KNOWLEDGE UPDATE

COMPANY LAW

Section 81 of the Companies (Amendment) Act, 2017 shall come into force with effect from 15th August, 2019

Central Government *vide*, File No. 1/1/2018-CL-I dated 1st July 2019, has appointed 15th August, 2019 as the date on which the provisions of section 81 of the Companies (Amendment) Act, 2017 shall come into force.

Designation of Special Court in Maharashtra under the Companies Act, 2013

Central Government, *vide* Notification No. S.O. 2564(E) dated 17th July 2019, has designated Court of District Judge-1 and Additional Sessions Judge, Pune of State Maharashtra as Special Court for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the Companies Act, 2013.

Companies (Appointment and Qualification of Directors) (Third Amendment) Rules, 2019

Central Government, *vide* Notification dated 25th July, 2019, has amended the Companies (Appointment and Qualification of Directors) Rules, 2014. Amended provisions are as follows :

- e-Form DIR-3 KYC is to be filed by an individual who holds DIN and is filing his KYC details for the first time or by the DIN holder who has already filed his KYC once in e-form DIR-3 KYC but wants to update his details.
- Web service DIR-3-KYC-WEB is to be used by the DIN holder who has submitted DIR-3 KYC e-form in the previous financial year and no update is required in his details.
- Submission of e-form DIR-3-KYC for the financial year to the Central Government on or before 30th September of immediate next financial year.



Significant Beneficial Owners Rules, 2019 : A Snapshot

The Ministry of Corporate Affairs ('MCA') notified the Companies (Significant Beneficial Owners) (Amendment) Rules, 2019 on 8th February, 2019 to revise and amend the Companies (Significant Beneficial Owners) Rules, 2018 ('SBO Rules'). In this article, the author explains the new SBO Rules, which lay down the reporting procedures for significant beneficial owners.

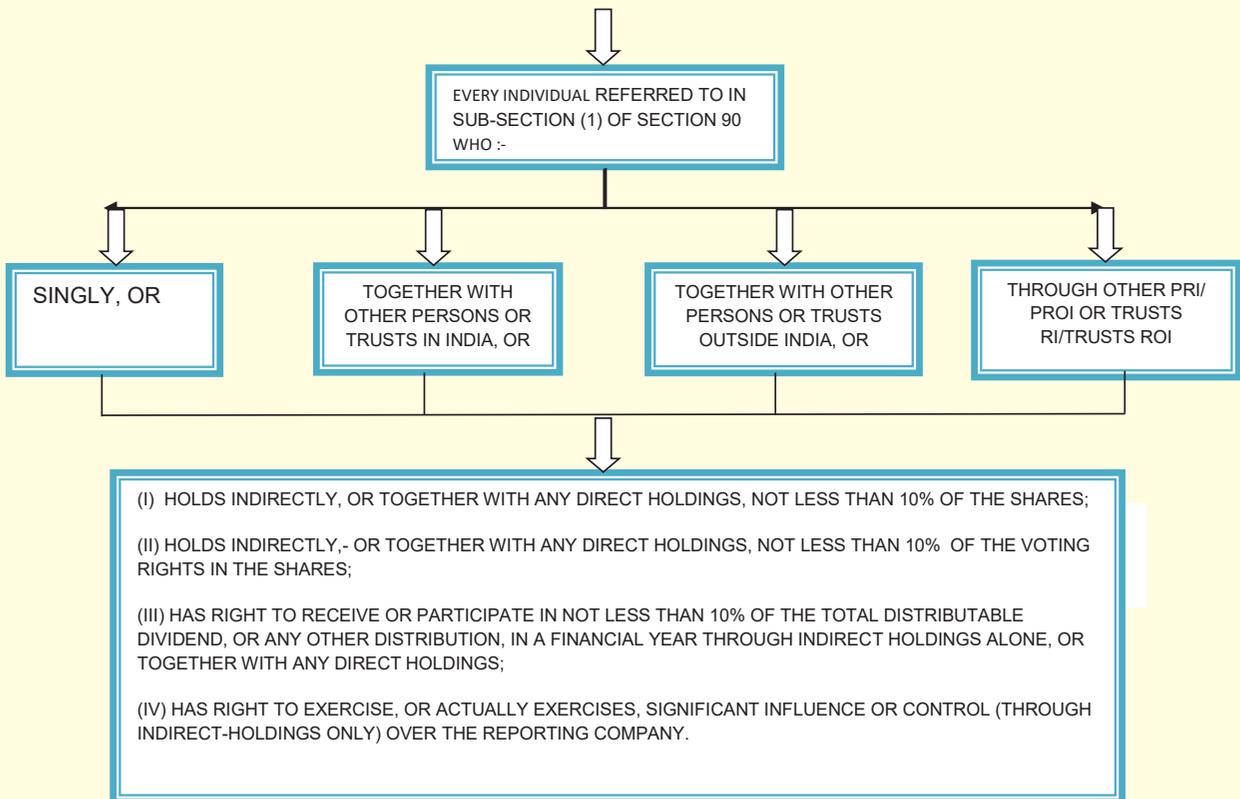
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Registration No. 421334043/08/2012

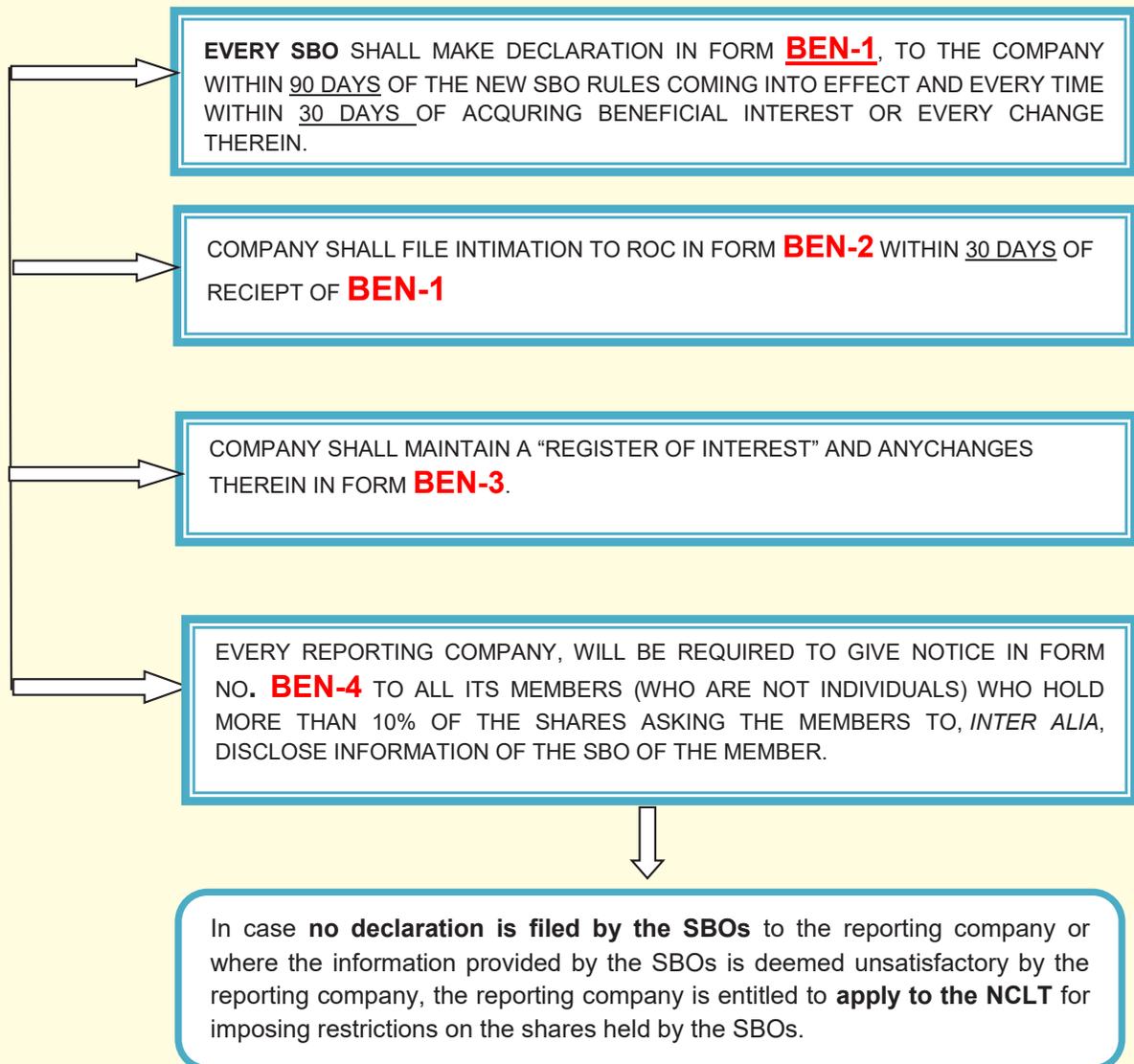
Email id : www.tanu26@gmail.com

Significant Beneficial Owner

Significant beneficial owner in relation to a reporting company means:-



Procedure under the New SBO Rules



Direct Holding Versus Beneficial Interest

Any individual holding shares in the reporting company in his/her name or holds/acquires a beneficial interest in the share of the reporting company and has made a declaration under Section 89 of the Act are considered to hold a right or entitlement directly.

Criteria for Determining Beneficial Interest

Body Corporate (whether registered in India or abroad)

- Individuals holding a majority stake in that member
- Individuals holding a stake in the ultimate holding company of such member
- The Amendment Rules has identified one or more of the following as a majority stake
 1. Holding > 50% equity share capital in the body corporate.
 2. Holding > 50% voting rights in the body corporate.
 3. Having the right to receive or participate > 50% distributable dividend or any other distribution by the body corporate.

HUF

- Karta

Partnership FIRM

- Partner
- A person holding a majority stake in the body corporate which is a partner of the partnership entity
- A person holding majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.

TRUST

- The trustee – if it's a discretionary or charitable trust
- The beneficiaries – if it's a specific trust
- The author or settlor – if it's a revocable trust

Exemption from New SBO Rules to following Persons :-

- The Investor Education and Protection Fund;
- The holding reporting company of the reporting company;
- The Central Government, State Government or any local authority;
- Any entity controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;
- All investment vehicles registered with the Securities and Exchange Board of India (SEBI);
- Investment vehicles regulated by the Reserve Bank of India or Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.



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Emergence of Corporate Social Responsibility : An Overview

This article intends to provide an overview of emergence of corporate social responsibility (CSR) as corporate conscience, corporate citizenship and social performance.

Anukriti

Registration No. 240470408/01/2016

Email id : anukritikanauja82@gmail.com

Backdrop of Corporate Social Responsibility

The evolution of corporate social responsibility ('CSR') in India refers to changes over time in India of the cultural norms of corporation's engagement in corporate social responsibility (CSR), with CSR referring to way that businesses are managed to bring about an overall positive impact on the communities, cultures, societies and environment in which they operate.

We live a dynamic life in a world that is growing more and more complex. Global scale, environmental, social, cultural and economic issues have now become part of our everyday life. Boosting profits is no longer the sole business performance indicator for the corporate and they have to play the role of responsible corporate citizens as they operate and draw resources from it and as such they are part of society.

The fundamentals of CSR rests on the above facts only. It says that not only public policy but even corporate should be responsible enough to address social issues. Thus, companies should deal with the challenges and issues looked after to a certain extent by the States. CSR is the way companies manage their businesses to produce an overall positive impact on society through different economics, environmental and social actions. CSR is also called corporate conscience, corporate citizenship, social performance, or sustainable responsible businesses. As business depends for its survival on long term prosperity of the society, it

becomes their duty to give necessary changes to that society.

Among other countries, India has one of the oldest traditions of CSR. But CSR practices are regularly not practiced or are done only in namesake especially by multinational companies with no cultural and emotional attachment to India. Much has been done in recent years to make Indian entrepreneurs aware of social responsibility as an important segment of their business reactivity but CSR in India has yet to receive widespread recognition. If this goal has to be realised then, the CSR approach of corporates has to be in line with their attitudes towards mainstream business, companies setting clear objectives, undertaking potential investments, measuring and reporting performance publicly.

CSR is certainly a business approach that creates a long term consumer and employee value by not only creating a green strategy on natural environment but also considering every dimension of how a business operate in social, cultural and environment. The company should meet the needs of its all stakeholders without sacrificing the ability to meet the needs of the future stakeholders.

The Four Phases of CSR Development in India

The history of CSR in India has its four phases which run parallel to India's historical development and has resulted in different approaches towards CSR.

First Phase - In the first phase, charity and philanthropy were the main drivers of CSR culture, religion, family values and tradition and industrialization had an influential effect on CSR. The industrial families of the 19th century such as Tata, Godrej, Bajaj, Modi, Birla were strongly inclined towards economics as well as social considerations.

Second Phase - In the second phase, during the independence movement, there was increased stress on Indian industrialists to demonstrate their dedication towards the progress of the society. This was one Mahatma Gandhi introduced the notion of 'trusteeship' according to which the industry leaders had to manage their wealth so as to benefit the common man. Under his influence businesses established trusts for schools and colleges and also helped in setting up training and scientific institutions. The operations of the trusts were largely in line with Gandhi's reforms which sought to abolish untouchability, encourage empowerment of women and rural development.

Third Phase - The third phase of CSR (1960-80) had its relation to the element of 'mixed economy', emergence of public sector undertakings (PSUs) and laws relating to labour and environment standards, during this period the private sector was forced to take a back step. The public sector was seen in 'prime mover of development position. However, the public sector was effective only to a certain limited extent. This led to shift of expectation from the public to the private sector and their active involvement in the socio-economic development of the country became absolutely necessary. The emphasis was put on transparency, social accountability and regular stakeholder dialogue. In spite of such attempts the CSR failed to catch steam.

Fourth Phase - In the fourth phase (1980-2013) Indian companies started abandoning their traditional engagement with CSR and integrated it into a sustainable business strategy. Globalisation has transformed India into an important destination in terms of production and manufacturing bases of multinational companies. As western markets are becoming more and more concerned about labour and environmental standards in the developing

countries which export and produce goods for the developed would need to pay a close attention to the compliance with the international standards.

CSR - Legal Provisions

The Companies Act, 2013 brought about magnificent changes and introduced CSR as legal compliance by corporates. All listed companies and any other company having a net worth of Rs.500 crore or more or a turnover of Rs.1000 or more or a net profit of Rs.25 crore or more in the immediately preceding financial year, has to spend at least 2 per cent of last 3 years' average net profits on CSR activities as specified in Schedule VII of the Companies Act, 2013.

However, companies Act makes it clear that in case company fails to undertake CSR activity then, it should mention the reasons about the same in its Board Report.

The main reason of bringing CSR in law ambit was to make corporates understand their responsibilities and duty towards their stakeholders. It is good for both – corporates as well as society. Corporates can create a good image and have an edge over their competitors and society gets required changes and upliftment.



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KNOWLEDGE UPDATE

SPECIAL ECONOMIC ZONE LAW

Special Economic Zones (Amendment) Act, 2019

Central Government, vide Notification dated 6th July 2019, has amended the Special Economic Zones Act, 2005 and repealed the Special Economic Zones (Amendment) Ordinance, 2019.



Secretarial Audit under the Companies Act, 2013

The Author aims to provide a brief information on Secretarial Audit under the Companies Act, 2013. This Article contains the introduction, clarification, applicability, appointment, its procedure, required e-forms and other important points related to Secretarial Audit under Companies Act 2013.

Angshuman Saikia

Registration No. 150564942/07/2018

Email id : ansuman309@live.com

Secretarial Audit

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organisation. In short, Secretarial Audit is a process to check compliances within the provisions of various laws and rules/regulation/procedure, maintenance of books, records, etc., by an independent professional to ensure that the company has complied with the legal procedural requirement and also followed to due process. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Applicable Sections and Rules

Sections 204(1) of the Companies Act, 2013 ('the Act') deals with the provisions of Secretarial Audit under the Act. Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 also deals with provisions of Secretarial Audit.

Applicability of Secretarial Audit

The applicability of the Secretarial Audit is as per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014. As per the rule, prescribed class of companies is as follows:

- ◆ Every listed company; or
- ◆ Every public company having a paid-up share capital of Rs. 50 crore or more; or
- ◆ Every public company having a turnover of Rs. 250 crore rupees or more.

It is also to be noted that the Board of directors, in their report, shall explain in full any qualification or observation or other remarks made in Secretarial Audit Report. The format of the Secretarial Audit report shall be in the Form MR.3.

Appointment of Secretarial Auditor

Only a practicing Company Secretary and member of Institute of Company Secretaries of India can conduct Secretarial Audit and furnish the Secretarial Audit report to the company.

The Objectives of Secretarial Audit

The objectives of Secretarial Audit may be summarised as follows:

- ◆ To check and report on compliance of applicable laws and Secretarial Standards
- ◆ To point out non-compliances and inadequate compliances
- ◆ To protect the interest of various stakeholder i.e. the customer employees, society etc .,
- ◆ To avoid any unwarranted legal actions/penalties by law enforcing agencies and other persons as well.

Scope of Secretarial Audit

The scope of Secretarial Audit can be summarised as follows

- ◆ The Companies Act, 2013 (the Act) and the Rules made thereunder

- ◆ The Securities Contract (Regulation) Act, 1956 (SCRA) and the Rules made thereunder
- ◆ The Depositories Act, 1996 and the Regulation and Bye-laws framed thereunder
- ◆ Foreign Exchange Management Act, 1999 and Rules, Regulations made thereunder to the extent of foreign direct investment, overseas direct investment and external commercial borrowings (where applicable)
- ◆ The following Regulations and Guidelines prescribed under the Securities and exchange Board of India Act, 1992 :
 - The Securities and Exchange Board of India (Substantial Acquisition of shares and takeovers) Regulations , 2011
 - The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992
 - The Securities and Exchange Board of India (Issue of capital and Disclosure Requirements) Regulations ,2009
 - The Securities and exchange Board of India (Delisting of Equity Shares) Regulations, 2009;
 - The Securities and Exchange Board of India (Buy-back of Securities) Regulations, 2018.

Need of Secretarial Audit

Audit is to be conducted on the principal of "Prevention is better than cure" rather than a post mortem exercise and to find faults. Broadly, the need for Secretarial Audit is : (i) effective mechanism to ensure that the legal and procedural requirement are duly complied with (ii) provides a level of confidence to the director and key managerial personnel, etc., (iii) enables director to concentrate on important business matter as Secretarial Audit legal and procedure requirements, and (iv) strengthens the image and goodwill of the company in the mind of regulator and stakeholders.

Appointment of Secretarial Auditor

As per rule 8 of the Companies (Meetings of the Boards and its Powers) Rules, 2014 read with section 179 of the Companies Act, 2013, Secretarial Auditor is required to appointed by means of resolution at a duly convened board meeting.

Conclusion

This Article summarized the provisions of Secretarial Audit under the Companies Act, 2013 and it seeks to update the readers with the basic understanding of this provision of law in the line of well complied governance in corporate structure.



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KNOWLEDGE UPDATE

COMPANY LAW

Companies (Registration Offices and Fees) (Fourth Amendment) Rules, 2019

Central Government, vide notification dated 25th July, 2019, has amended the Companies (Registration Offices and Fees) Rules, 2014 by substituting fee for filing e-form DIR-3 KYC or DIR-3 KYC-WEB under rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014.

Nidhi (Amendment) Rules, 2019

Central Government, vide Notification No. G.S.R. 467(E) dated 1st July, 2017, has amended the Nidhi Rules, 2014 and introduced new Form NDH-4 for filing application for declaration as Nidhi Company and for updation of status by Nidhi's.

Companies (Significant Beneficial Owners) Second Amendment Rules, 2019

Central Government, vide Notification No. G.S.R. 466(E) dated 1st July, 2017, has amended the Companies (Significant Beneficial Owners) Rules, 2018 by substituting Form BEN-2.



Goods and Service Tax (GST) – A Bird’s Eye View

This article is intended to give a birds eye view of Goods and Service tax

Aishwarya M

Registration No. 340719089/06/2019

Email id : manchikanti.aishu@gmail.com

Introduction

Goods and service tax ('GST') is a single tax on the supply of goods and services, right from the manufacturer to the consumer. The input tax credit paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. It is the end consumer who will bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages, with the streamlining of the multiple taxes, the final cost to the consumer will turn out to be low because of elimination of double charging system.

Countervailing duty is an additional input duty charged on imported goods. The rate of such duty is equivalent to the rate of excise levied on such goods as, if it has been manufactured within the import duty. Special additional duty is the duty paid on the imported goods. The importer could claim for refund of the special additional duty after the subsequent sale of imported goods.

The Central goods and service tax ('CGST') and the State goods and service tax ('SGST') would be levied simultaneously on every transaction of supply of goods and services except the exempted goods and services. Both would be levied on the same price or value, while the location for the purpose of CGST would be Pan India, however, SGST would be chargeable only when the supplier and the recipient are both located within the state. Integrated goods and service tax ('IGST') would

be levied and collected by the centre on inter-state supply of goods and services. Such tax shall be apportioned between the Union and State in the manner as provided by the law.

Concept of Intra-State and Inter-State supply

Intra-State supply of goods or services is when the location of the supplier and the place of supply, i.e., location of the buyer are in the same state. In intra-State transactions, a seller has to collect both CGST and SGST from the buyer. The CGST gets deposited with the Central Government and SGST gets deposited with the State Government. Inter-State supply of goods or services is when the location of the supplier and the place of supply are in different states. Also, in cases of export or import of goods or services or when the supply of goods or services is made to or by a SEZ unit, the transaction is assumed to be Inter-State. In an inter-State transaction, a seller has to collect IGST from the buyer.

Salient Feature of GST

Some major features of GST are as follows:

- ◆ GST is an indirect tax, where the tax liability is imported on business but the burden of the tax is borne by the end user/consumer
- ◆ It confirms one nation, one tax
- ◆ In GST regime, goods and services are not differentiated for taxation

- ◆ It is a destination based consumption tax
- ◆ GST is a comprehensive value added tax on goods and services
- ◆ It is a tax on consumption that is collected in arrears, where in the credit of taxes paid at previous stages available as input tax credit
- ◆ It is a multi-point taxation along the supply chain of goods or services

GST in India - A Journey So Far

GST is one of the biggest indirect tax reforms in the country. GST has aimed to bring together state economies and improve overall economic growth of the nation. GST is a comprehensive indirect tax levied on manufacture, sale and consumption of goods as well as services at the national level. It replaced all indirect taxes levied on goods and services by Center and States. There are around 160 countries in the world that have GST in place. GST is a destination based tax where the tax is collected by the State where goods are consumed. India has implemented the GST from 1st July, 2017 and it has adopted the dual GST model in which both States and Central levies tax on goods or services or both.

CGST – It is collected by the Central Government and replaces the existing tax at the center level like service tax, excise, etc. It is levied and collected by Central Government. It is applicable in intra-state supply tax by Central Government.

SGST – It is collected by the State Government and replaces the existing taxes in the States, like sales tax, luxury tax, entry tax, etc. It is levied and collected by the State Government and applicable to inter-state supply.

IGST – It is, collected by the Central Government. It is a combination form of CGST and SGST. It is levied and collected by Central Government and is applicable to intra-state supply.

Levy and Collection - Power and Procedure

The authority to levy a tax is derived from the Constitution which allocates the power to levy various taxes between the Central and the State.

An important restriction on this power is Article 265 of the Constitution which states that “No tax shall be levied or collected except by the authority of law”. Therefore, each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature. In short, Article 265 of the Constitution clearly states that all kinds of taxes shall be levied or collected except by the authority of law. Therefore, each and every section of levy and collection of tax including GST must be backed up by the respective tax statute. In this reference, for GST, Article 246A of the constitution, was introduced by the Constitution (101st Amendment) Act, 2016. This Article confers concurrent powers to both parliament and state legislatures to make laws with respect to goods and service tax. However, Article 246A (2) read with Article 269A provides for the exclusion powers to the Parliament to legislate with right to interstate trade or commerce. It has to be noted that levy of tax under GST regime depends on the happening of the taxable event. Only on the occurrence of the taxable event, the tax is levied under the CGST Act, The taxable event in case of GST is supply of goods, services or both. Thus, the basic concepts of GST can be taxable event, supply, goods and services.

Merits and Demerits of GST

With boon goes the bane, so is the case with GST. Along with enormous benefits, it has some demerits too. Major recompenses and demerits of GST are as follows:

Merits :

- *No dual tax (tax on tax)* – Previously, excise was charged on amount of taxes. Value added tax (VAT)/Central sales tax (CST) was charged on amount plus excise. Now under GST regime, both the CGST & SGST will be only on amount.
- *Input of central purchases will be available* – Previously, on central purchases, CST is charged for which no input is available under GST, input will be available on central purchases called IGST credit.

- *Uniform rates of tax in different States* – Previously, rates of VAT are different from State to State and also in some States, a surcharge is levied on this VAT. Under GST regime rates will be same.
- *Full input credit on capital goods* – Previously, on capital goods 50 per cent credit was available in current year and balance 50 per cent in next year. Also input of VAT on capital goods varied from State to State. Under GST regime, input credit will be available in first year itself.

Demerits :

- *Under GST regime, every person has to file three returns per month (36 returns per annum)* - One for purchase details, one for sale details and one for the purchases and sales details. Apart from this, there is an annual return also which makes it 37 returns per annum.
- Previously, party wise details were not to be given for purchases and sales in old tax system. But under GST regime, party wise details separately with right to CGST, SGST, and IGST is required to be mentioned.
- Within the State sales used to attract only VAT but under GST, CGST plus SGST on the same transactions.

Supply - Concept and Kinds

Mixed supply and composite supply are provided under GST regime. "Supply" simply means all forms of supply of goods or services. It is made for a consideration during the course of business and includes sales, transfer, barter, exchange, license, rental, lease, disposal, import of services. A new concept is introduced in GST regime which will cover supplies made together whether the supplies are related or not. Supplies of two or more goods or services can be either composite supply or mixed supply. The concept of these supplies becomes important as it helps to determine the correct GST rate and provides uniform tax treatment under Goods and Service Tax for such supplies.

Composite Supply - It means a supply which

comprises of two or more goods/services, which are naturally bundled and supplied in which each other in the ordinary course of business, one of which is as a combination. The tax rate of the principal supply will apply on the entire supply.

Mixed supply - It means a combination of two or more goods or services made together for a single price. Each of those items can be supplied separately and is not dependent on any other. Under GST regime, a mixed supply will have the tax rate of the item which has the highest rate of tax.

Time of supply

In case of composite supply, if the principal supply is a service then the composite supply will qualify as supply of services. The provisions relating to time of supply of services will apply. Similarly, in the case of purchasing and transporting the goods, the supply of goods is the principal supply. The composite supply will qualify as supply of goods and the provisions relating to time of supply of goods will apply. In the case of mixed supplies if the highest rate of tax belongs to a service then the mixed supply will be treated as the supply of services. The provisions relating to time of supply of services would be applicable. Similarly, if the highest tax rate belongs to goods then the mixed supply will be treated as supply of goods. The provisions relating to time of supply of goods would be applicable.

Advance Ruling [Section 95-105]

An advance ruling is a tool for the tax payers for clarifying and conforming particular taxation arrangements. A written interpretation of tax laws is issued by tax authorities to tax payers, be it corporations or individuals who request clarification of taxation arrangements. An advance tax ruling binds tax authorities to comply with the tax arrangements set out in the ruling. It brings certainty in tax planning and tax administration.

In the context of GST, advance ruling authority would be established in every state having State GST/Central GST members advancing ruling may be sought the following cases :

- Classification of any goods or services under the CGST Act
- Applicability of notification having a bearing on the rate of tax
- Admissibility of input tax credit
- Determination of the liability to pay tax on any good or services under the CGST Act
- Liability to be registered under the Act
- Whether the transaction is supply or not

Advance ruling order is to be issued within 90 days respect of application. It shall be binding only on the applicant and jurisdictional tax authorities. Advance ruling can be appealed against before the appellate authority by the applicant or the tax authority.

Conclusion

The federal structure of India has resulted in indirect taxes being administered by both Centre and State. The lack of the facility to utilize credits across these two entities had resulted in the cascading of taxes across the supply chain and across state borders. In addition, the burden of compliance had also increased due to involvement of multiple agencies. It was in keeping with this sentiment, that GST was conceived, wherein it strives to address these concerns by driving uniformity across India through a single tax and ensuring an unrestricted flow of tax credit. GST has provided the nation a relief towards producers and consumers by providing wide and comprehensive coverage of input tax credit set-off. Efficient formulation of GST along with the directed implementation is leading to resource and revenue gains for both centre and state. Considering the overall aim that GST strives to bring down the prices and push up prosperity and living standards of the people of India, it can be concluded that GST have a positive impact on Indian sectors and Industry.



● *The views expressed are personal views of the author and do not necessarily reflect those of the Institute.*

KNOWLEDGE UPDATE

INSOLVENCY AND BANKRUPTCY LAW

Appointment of Part-Time Members In Insolvency and Bankruptcy Board of India

Pursuant to the approval of the Appointments Committee of the Cabinet *vide* Order No. 18/16/2019-EO(SM.II) dated 11.06.2019, the Central Government has appointed Dr. K. V. Subramanian and Sh. B. Sriram to the post of Part-time Members in the Insolvency and Bankruptcy Board of India with effect from 8th July, 2019 and 4th July, 2019 respectively for period of three years or until further orders whichever is earlier.

Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2019

IBBI, *vide* F. No. IBBI/2019-20/GN/REG045 dated 23rd July 2019, has further amended the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.

Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) (Amendment) Regulations, 2019

IBBI, *vide* Notification No. IBBI/2019-20/GN/REG044 dated 23rd July, 2019, has amended the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) Regulations, 2016 by substituting clause (c) of sub-regulation (2) of regulation 5.

Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2019

IBBI, *vide* Notification No. IBBI/2019-20/GN/REG043 dated 23rd July 2019, has amended the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016.

KNOWLEDGE UPDATE

COMPANY LAW

Companies (Amendment) Act, 2019

The Companies (Amendment) Act, 2019 ('Amendment Act') received the assent of the President on 31st July, 2019. It amends the Companies Act, 2013 and seeks to ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in corporate sector as enshrined in the Companies Act, 2013.

The main reforms undertaken through the Amendment Act include the following:

- Re-categorising of offences which are in the category of compoundable offences to an in-house adjudication framework. However, no change has been made in respect of any of the non-compoundable offences.
- Ensuring compliance of the default and prescribing stiffer penalties in case of repeated defaults.
- De-clogging the NCLT by:
 - enlarging the jurisdiction of Regional Director ("RD") by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.
 - vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41); and
 - vesting the Central Government the power to approve cases of conversion of public companies into private companies.
- Other reforms include re-introduction of declaration of commencement of business provision; greater accountability with respect to filing documents related to creation, modification and satisfaction of charges; non-maintenance of registered office to trigger de-registration process; holding of

directorships beyond permissible limits to trigger disqualification of such directors.

Apart from replacing the Second Ordinance 2019, the newly enacted Amendment Act seeks to provide for certain additional amendments.

SEBI LAW

Modification of Circular dated September 24, 2015 on Format for Compliance Report on Corporate Governance to be Submitted to Stock Exchange(s) by Listed Entities

SEBI, *vide* Circular SEBI/HO/CFD/CMD1/CIR/P/2019/78 dated 16th July 2019 has modified format for compliance report on corporate governance to be submitted to stock exchange(s) by listed entities.

Standardizing Reporting of Violations of Code of Conduct under SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI, *vide* Circular SEBI/HO/ISD/ISDICIR/P/2019/82 dated 19th July 2019, has standardize the process for dealing with violations of the Code of Conduct by designated persons and their immediate relatives, all listed companies, intermediaries and fiduciaries.

Amendment of Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015

SEBI, *vide* Press Release No. 17/2019 dated 22nd July 2019, has amended Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015 to provide clarity on requirement of maintaining structured digital database and scope of investment company.

INSOLVENCY AND BANKRUPTCY LAW

Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) (Amendment) Regulations, 2019

IBBI, *vide* Notification No. IBBI/2019-20/GN/REG042 dated 23rd July 2019, has amended the Insolvency and Bankruptcy Board of India (Procedure for Governing Board Meetings) Regulations, 2017 by substituting sub-regulation (1) of regulation 5.

Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) (Amendment) Regulations, 2019

IBBI, *vide* Notification No. IBBI/2019-20/GN/REG041 dated 23rd July, 2019, has amended the Insolvency and Bankruptcy Board of India (Engagement of Research Associates and Consultants) Regulations, 2017 by substituting the Schedule I.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2019

IBBI, *vide* Notification No. IBBI/2019-20/GN/REG048 dated 25th July 2019, has amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2019

IBBI, *vide* Notification No. IBBI/2019-20/GN/REG046 dated 25th July 2019, has amended the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017 by substituting regulation 21, clause (e) of sub-regulation (2) of regulation 6 and sub-regulation (7) of regulation 9.

Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019

IBBI, *vide* Notification No. IBBI/2019-20/GN/REG047 dated 25th July 2019, has amended the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

CASE LAW

ARBITRATION AND CONCILIATION ACT, 1996

A former employee is not disqualified from acting as arbitrator provided there are no justifiable doubts as to his independence and impartiality.

The Act does not dis-qualify a former employee from acting as arbitrator, provided there are no justifiable doubts as to his independence and impartiality. Mere fact that the arbitrator was in the employment of the State in the past would not make the allegation of bias tenable- *Government of Haryana v. G F Toll Road (P.) Ltd.*, Supreme Court of India, CA No. 27/2019 dated 3rd January 2019.

Arbitration and Conciliation (Amendment) Act, 2015 cannot have retrospective operation in the arbitral proceedings unless the parties otherwise agree.

Where arbitration proceedings commenced long back in the past and there was nothing to suggest that the parties had agreed that the provisions of the Act shall apply in relation to the arbitration proceedings, the respondent could not invoke the same- *Rajasthan Small Industries Corporation Ltd. v. Ganesh Containers Movers Syndicate*, Supreme Court of India, CA No. 1039 of 2019 dated 23rd January 2019.

BANKING ACT/REGULATIONS

There is nothing in section 35A which would interdict that the power of the Reserve Bank to give direction, when it comes to the Insolvency and Bankruptcy Code, 2016, cannot be so given.

The width of the language used in the provision which only uses general words such as 'public interest' and 'banking policy', etc. makes it clear that if otherwise available, the use of section 35A cannot be interdicted as a source of power for the impugned Reserve Bank circular on the ground that the Insolvency Code, 2016 could not be said to have been in the contemplation of Parliament in 1956, when section 35A was enacted- *M/S Dharani Sugars & Chemicals Ltd. v. Union of India*, Supreme Court of India SLP(C) No. 31421 of 2018 dated 2nd April 2019.

KNOWLEDGE UPDATE

CASE LAW

ERSTWHILE COMPANIES ACT, 1956

Where transfer of shares illegally acquired violating Insider Trading Regulations was required to be dealt with in terms of sub-section (4) of section 59 of the Companies Act, 2013, the Tribunal exceeded its jurisdiction in annulling the shares and in directing the appellants to transfer the shares to the company.

Where there is illegal acquisition of shares of the company by the appellants in violation of regulation 13 of the Prohibition of Insider Trading Regulations and the Tribunal has directed the appellants to hand over the share certificate and share transfer forms within 30 days of the order of the company and in response to that the petitioner would be liable to pay the buyback price which would be the value of share prevailing on the date of presentation of the petition or market value whichever was higher, the Tribunal exceeded its jurisdiction in annulling the shares and in directing the appellants to transfer the shares to the company, because the transfer was required to be dealt with in terms of sub-section (4) of section 59 of the Companies Act, 2013. If there was contravention of any of the legal provisions the Tribunal could have directed the company or a depository to set right the contravention and rectify the register or record concerned- *SICGIL India Ltd. v. IFB Agro Industries Ltd.*, National Company Law Appellate Tribunal, Company Appeal (AT) No. 240 of 2017 dated 6th December 2018.

It is improper for the directors to allot shares to themselves without notice to the other shareholder, and excluding him from allotment – *Ram Parshotam Mittal v. Hotel Queen Road (P.) Ltd.*, Supreme Court of India, Civil Appeal Nos. 3934-3935 of 2017 dated 10th May 2019

INSOLVENCY AND BANKRUPTCY CODE, 2016

Trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debt owed for services rendered by each individual workman, who are collectively represented by the trade union.

The Appellate Tribunal is not correct in refusing to go into whether the trade union would come within the definition of 'person' under clause (23) of section 3. Equally, the Appellate Tribunal is not correct in stating that a trade union would not be an operational creditor as no services are rendered by the trade union to the corporate debtor. Trade union represents its members who are workers, to whom dues may be owed by the employer, which are certainly debts owed for services rendered by each individual workman, who are collectively represented by the trade union – *JK Jute Mill Mazdoor Morcha v. Juggilal Kamalpat Jute Mills Co. Ltd.* Through its Director, Supreme Court of India, CAno.20978 of 2017 dated 30th April 2019.

If undelivered, please return to:
Krishna Law House
B-365, Sector 19, Dwarka
New Delhi - 110075