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STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

EASE OF DOING BUSINESS – INDIA'S COMMITMENT TO REFORMS

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

STUDENT COMPANY SECRETARY

[e-Journal for Executive & Professional Students]

April 2020

Content

Announcement for the Students

Students are invited to contribute articles for Student Company Secretary e-journal at ***academics@icsi.edu***

on the topic

Revival of Economy and Role of Professionals

Selected Articles will be published in the forthcoming issue of Student Company Secretary e-journal

Attention Students

Guideline Answers are available at the Website of the Institute and may be accessed at

https://www.icsi.edu/student/academic-portal/guideline-answers/

"As the legend goes, when the Phoenix resurrects from the flames; it is even more beautiful than before."

Dear Students,

It has been more than a month since the entire country went in for a lockdown and it has been many more months since the entire world has been grappling with the pandemic of COVID-19. The times facing us have been unprecedented and they surely have altered our lifestyles in a manner unimaginable until now.

While all of us are waiting to get on track with time, the fact that it is the moment at hand, the present that we live in, has required us to make multiple modifications and transformations both in our personal and professional lives. You, as students, too, I believe are going through a host of changes given the situations at hand. Yet, we at ICSI, wholeheartedly appreciate the courage being portrayed by you in your daily lives.

Understanding the gravity of the situation and its unpredictable nature, ample steps are being taken by the ICSI to accord you much ease and comfort as to move ahead on your professional paths. While providing relaxation in the Pre-Examinations and One day Training Programme for the upcoming June, 2020 Examinations, another major decision has been taken by the ICSI in view of the ongoing situation.

I would like to take this moment to share with you the decision that the Company Secretaryship Examinations for June, 2020 which were to be held from 1st to 10th of June, 2020 have been postponed. The same shall now be held from 6th July, 2020.

I hope and believe that all of you, all my young Governance Professionals in making shall take this extended duration, the time at hand to prepare yourselves in a much better manner and come out with flying colours at the end of this journey.

Understanding the relevance and significance of the above quote in the present times, the intent of the Institute has always been to create an atmosphere for our students wherein, neither the growth is hampered nor does the process of learning pause. And to keep our students continually updated and armed and equipped with knowledge, the Institute is organizing Webinars by Experts to provide learning within the comfort of their abodes.

Friends, a true professional is not one who portrays professionalism in his field of work, activity and operation, rather a true professional is one who portrays professionalism in each and every sphere of life…

Stay Safe, Stay Home!

With Best Wishes

CS Ashish Garg
President
The Institute of Company Secretaries of India

RECENT INITIATIVES FOR STUDENTS

1. To keep the students updated with the case laws on various subject, the Directorate has taken a new initiative by bringing out Case Digest covering case studies and case snippets. It has case snippets under different legislations and case study on relevant topics. Case Digest Series 1 was circulated to students.
2. Practice manual on direct and indirect tax for June 2020 session has been prepared and uploaded on the ICSI website.
3. Training Modules of the 15 days Executive Development Programme are updated.
4. Interaction of president, VP, the ICSI and ICSI officials with students of the Institute on 4th April, 2020 at 4 p.m. through live webcast on topics related to Exam, CSEET, E learning and Academics
5. Free online classes were organised for Class Room Teaching students of ICSI enrolled for classes across the country.
6. Online Crash Courses, Mock Tests, Revision classes and Free Video Lectures facility provided to the students of ICSI
7. Online CSEET classes were conducted for students who wish to pursue CS Course
8. Postponement of CS Examinations, June-2020 session to 6th July 2020
9. Extension of Last Date for Submission of Online Requests for Change of Centre/ Medium / Module / Cancellation of Exemption for June, 2020 Session of CS Examinations up to Friday, the 5th June, 2020 23:59 Hours.
10. Making e-MSOP accessible to all eligible students during the period of complete lock down due to COVID 19 by relaxing the criterion of two years' time bar after passing professional exam.
11. Launched provision of 15 days e Academic Programme including 08 days e EDP (3 Days e Governance and 05 Days Skill Development Programme).
12. Relaxation in submitting the first quarterly reports in the Institute records during the period of complete lock down due to COVID 19.
13. Treating the Lock Down Period on account of COVID-19 as continuity of Practical Training for the CS trainees.
14. Extension of temporary relaxation for complying with the requirement of One day orientation Programme for enrollment in CS exam organising e PDP for students through separate webinar.

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- ***Theme Article*** **– Reforms under Companies Act, 2013 for Ease of Doing Business**
- **Management of Companies during the outbreak of COVID-19**
- **Companies under IBC and GST Compliance**
- **GST on Director's Remuneration : The Conundrum**
- **Trade Receivable Discounting System (TReDS)**

Reforms under Companies Act, 2013 for Ease of Doing Business*

Introduction

The enactment of Companies Act, 2013 allowed India to have a modern legislation for growth and regulation of corporate sector in India. The act was enacted in light of the changing economic and business environment both domestically and globally to facilitate business-friendly corporate regulations, improve corporate governance norms, enhances accountability on the part of corporates and auditors, raise levels of transparency and protect interests of investors, particularly small investors.

The objective of the Companies Act, 2013 is to provide business friendly corporate regulation/ pro-business initiatives; e-Governance Initiatives; good corporate governance and CSR; enhanced disclosure norms; enhanced accountability of management; stricter enforcement of laws; audit accountability; Protection for minority shareholders; Investor protection and Shareholder activism; Robust framework for insolvency regulation; and Institutional structure.

Initially, it seems that changes in the Companies Act, 2013 will brought out the significant changes in the manner of doing business in India. It becomes true, when the initial unrest of business community was taken to the Government and to address the practical difficulties faced by the business community upon notification of the various provisions of the Act and Rules made thereunder and the term "Ease of Doing Business" was popularised in India.

However, Ease of doing business is an index published by the World Bank. It is an aggregate figure that includes different parameters which define the ease of doing business in a country. Some of the parameters included under Ease of Doing Business are Starting a business, Getting electricity, Dealing with construction permits, Registering , Getting credit, Protecting minority investors, Employing workers, Enforcing contracts, Resolving insolvency, Paying taxes, Trading across borders, Contracting with the government, etc.

On Ease of Doing Business front, the Government of India has enacted the series of amendments, relaxation, exemptions and simplification in the various Acts, Rules, Regulations etc. covering various business related issues and processes and also extends support to facilitate ease of doing business. In the series the Companies Act, 2013 has also been amended to extend relief to the business entities governed under the Companies Act, 2013. The object and rationale for such amendments are discussed below:

1. Companies (Amendment) Act, 2015

The Companies (Amendment) Act, 2015 addressed the initial practical difficulties experienced from implementation of the provisions of the Act and difficulties faced by the companies / stakeholders / Professionals in complying with some of the provisions of the Companies Act, 2013.

* *Directorate of Academics*

Views expressed in the Article may not express the views of the Institute.

To provide immediate relief and to ensure ease of doing business, amendments in relation to related party transactions, fraud reporting by auditors, making common seal optional, and jurisdiction of special courts to try certain offences etc. was brought out in the Companies (Amendment)Act, 2015.

The Companies (Amendment) Bill 2014 was introduced in the Lok Sabha on December 12, 2014. It was passed in Lok Sabha on December 17, 2014 and passed in Rajya Sabha in May 13, 2015. The Companies (Amendment) Act, 2015 has been published in the gazette on 26th May, 2015.

The key amendments made in the Companies Act, 2013 for ease of doing business through Companies (Amendment) Act, 2015 are as under:

a. Omitted the requirement for minimum paid up share capital, and consequential changes.
b. Making common seal optional in the whole Companies Act, 2013 and consequential changes for authorization for execution of documents.
c. Prohibiting public inspection of Board resolutions filed in the Registrar of Companies.
d. Empowering Audit Committee to give omnibus approvals for related party transactions on annual basis
e. Exemption for Loans to Directors provided for loans to wholly owned subsidiaries and guarantees/ securities on loans taken from banks by subsidiaries.
f. Replacing 'special resolution' with 'resolution' for approval of related party transactions by non-related shareholders.
g. Related party transactions between holding companies and wholly owned subsidiaries exempted from the requirement of approval of non-related shareholders.
h. Bail restrictions to apply only for offences relating to fraud under section 447.

2. Exemption Notifications to Government Company, Private Company, Section 8 Company and Nidhis – 05th June, 2015

To further remove the practical difficulties in applicability of the provisions of the Companies Act, 2013 to various types of Companies, the Ministry of Corporate Affairs issued notifications on 05.06.2015 under Section 462 of the Companies Act, 2013 (Act), which provide exemptions under various provisions of the Act to (i) Government Companies; (ii) Private Companies; (iii) Section 8 Companies and (iv) Nidhis. Highlights of these exemptions were as under**:**

(i) Exemptions for Government Companies

With this exemption notification the Government Companies have been exempted from the limits pertaining to managerial remuneration; restriction on maximum number of directorships and disqualification of directors in certain cases.

The provisions in respect of Nomination and Remuneration Committee have also been relaxed in respect of their applicability to directors/ managerial persons. The provisions relating to loans to directors; loans and investments by companies and related party transactions has been modified to provide flexibility to the Government companies in complying with such provisions.

Amendment in the provisions relating to place of holding general meetings has also been made. Further, the wholly owned Government Company is exempted from the provisions relating to rotation of Directors and rights of persons to stand for Directorship.

The provisions in respect of forming opinion about integrity, expertise/experience of independent directors have been modified to provide flexibility to the concerned Ministry/Department.

(ii) Exemptions for Private Companies

The relaxations to private company is an initiative to bring further ease in administrative and management of the company and to do away with the hardship faced by private companies and reduce cost of compliance.

For Private Companies, the exemptions notification relaxed the provisions for entering into related party transactions; provide a shorter period for offering securities to members through right offers; provide for approving issue of employee stock option plans through a simple majority and allow an easier procedure and flexibility in holding general meetings. Private companies have also been allowed to accept deposits from members without the requirement of offer circular, creation of deposit repayment reserve etc. Flexibility has also been given in the types of share capital that can be issued by private companies. Exemption has been given from filing of board resolutions with the registry and giving of notice for standing for directorships. Requirement of mandatory consent of shareholders with regard to certain transactions relating to sale of undertaking, investments, borrowings etc. has been omitted. Further, OPCs, dormant companies, small companies and private companies having paid up share capital less than Rs. 100 crore have been excluded for calculating the limit of 20 companies for audit by an auditor.

Private companies not having any investment by any body corporate have been allowed to extend loans to directors, subject to certain conditions relating to bank borrowings and default thereof. After the notification, an interested director of a private company can participate in the Board meeting after declaring his interest.

(iii) Simplification of Rules for Charitable Companies

In the Exemption notification for Charitable Companies the provisions in respect of notice for general meeting have been modified to enable such companies to save time and resources in sending notices. The notice for general meeting and financial statements may be circulated at notice of 14 days instead of 21 days. The provisions in respect of appointment of Independent Directors (IDs) and Nomination and Remuneration Committee were not applicable to charitable companies. The audit committees of such companies need not have Independent Directors. The restrictions on number of directorships have also been removed. The companies are allowed to hold board meetings once in six months instead of four meetings in a year, as prescribed for other companies. These companies have been exempted from provisions requiring notice to be given for standing for directorship if their articles provide for election of directors by ballot. Flexibility from the provisions on passing of board resolutions in a board meeting only and on disclosure and participation in board meetings by an interested director has also been provided.

(iv) Simplification of Rules for Nidhi Companies

For Nidhis, in exemption notification the provisions relating to serving of documents to members and payment of dividend have been modified to provide more flexibility to such companies. Provisions relating to private placement have been partially relaxed for such companies. These companies have also been exempted from the requirements of section 62 which relates to further issue of share capital. The notice amount of Rs. 1 lakh provided under section 160 has been reduced to Rs. 10,000 for these companies. Provisions of section 185 (of which Act, please mention) in respect of loans to directors have been relaxed for these companies with the condition that loan is given to a director or his relative in his capacity as member and the disclosure is made in the accounts.

3. Company Law Committee and Companies (Amendment) Act, 2017

(i) Company Law Committee

During the consideration of the Companies (Amendment) Act, 2015 in the Rajya Sabha, views were expressed that more amendments would be required; accordingly, the Government has constituted a Companies Law Committee on 4th June, 2015. The terms of references of the Committee are:

(i) to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 and

(ii) to examine the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies, while undertaking (i) above.

The report of the CLC was submitted to the Government on the 1st February, 2016 and the Companies (Amendment) Bill, 2016 introduced in Lok Sabha on 16 March, 2016 is based on the recommendations of the Companies Law Committee after taking into account the comments received on the report. The amendments proposed, inter alia, include changes in definitions to remove ambiguities; allowing greater flexibility in incorporating and running a company by simplifying Memorandum of Association and doing away with Central Government approvals, etc.; easing raising of capital, procedures; rationalizing penal provisions related to auditors, reconciling the competing objectives of improving corporate governance, incentivising individuals to take up positions of responsibility in boards and reducing compliance cost. The report have also recommended some changes to remove ambiguities in the CSR provisions based on the recommendations of the High Level Committee on CSR.

(ii) Standing Committee on Finance

The Companies (Amendment) Bill 2016, was referred to the Standing Committee on Finance on 12th April 2016 for examination and report thereon. The Standing Committee on Finance Committee submitted it report on 07, December, 2016.which was further placed before the Lok Sabha on 27th July, 2017 and Passed in Rajya Sabha on 19th December, 2017.

The Companies (Amendment) Bill, 2016 seeks to bring in changes in the Companies Act 2013, broadly aimed at broadly aimed at –

- addressing difficulties in implementation owing to undue stringency of compliance requirements,
- facilitating ease of doing business for companies, including start-ups, in order to promote growth with employment,
- harmonization with accounting standards, and other financial/economic legislations,
- rectifying omissions and inconsistencies in the Act, and
- Carrying out amendments in provisions relating to qualification and selection of members of NCLT and NCLAT in accordance with Supreme Court directions.

(iii) Companies (Amendment) Act, 2017

The subsequent amendments in Companies Act, 2013 was made through Companies (Amendment) Act, 2017 which was expected to ensure better corporate governance and improve the ease of doing business by simplify procedures, making compliance easier and taking stringent action against defaulting companies, strengthen corporate governance standards, achieve better harmonization with other statutes and address difficulties in implementation of the Companies Act, 2013.

The following were some of the amendments in Companies (Amendment) Act, 2017, to facilitate ease of doing business:

- For incorporation of a company, 'affidavit' has been replaced by "self-declaration" from the first subscribers to memorandum and first directors resulting ease in the additional documentary burden and avoid delay in the incorporation process.
- Allowing an unlisted company to hold its AGM anywhere in India if consented by all members in writing or in electronic mode providing flexibility by removing the restriction.
- The items which were mandatorily required to be passed by postal ballot may now be transacted at the general meeting where the facility of electronic voting is provided by the Company provides significant flexibility and would enable wider shareholder- participation and saving of cost.
- Instead of exact text of the policies, salient points of the CSR Policy, Remuneration Policy may be included in the Board's report along with respective web link to be disclosed in Board's report. Extract of Annual Return required to be incorporated under Board's report can be uploaded on website, if any, and web link provided in Board's report. This removes redundancy as the information on the web site is in public domain and just a click away for the interested reader.
- Simplification of the private placement process, involving doing away with separate offer letter, details/record of applicants to be kept by company and to be filed as part of return of allotment only, and reducing number of filings to Registrar.

- Allowing unrestricted object clause in the Memorandum of Association dispensing with detailed listing of objects, with a view to ease incorporation of companies; Self-declarations to replace affidavits from subscribers to memorandum and first directors
- Provisions relating to forward dealing and insider trading have been omitted from Companies Act as these are covered under SEBI regulations.
- Requirement of approval of Central Government for Managerial remuneration above prescribed limits has been replaced by approval through special resolution by shareholders in general meeting.
- Companies may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement.
- Amendment of definitions of associate company and subsidiary company to ensure that 'equity share capital' is the basis for deciding holding-subsidiary relationship rather than "both equity and preference share capital".
- Restriction on layers of subsidiaries and investment companies has been removed.
- Change in the definition of term 'relative' for determining disqualification of auditor.
- Rationalization of penal provisions with reduced liability for procedural and technical defaults. Penal provisions for small companies and One Person Companies are reduced.
- Reducing requirement for maintaining deposit repayment reserve account from 15% each for two years to 20% during the maturing year.
- Foreign companies having incidental transactions through electronic mode have been exempted from registering and compliance regime under the Act.
- Align prescription for companies to have Audit Committee and Nomination and Remuneration Committee with that of Independent Directors (IDs)
- Test of materiality has been introduced for pecuniary interest for testing independence of IDs.
- Disclosures in the prospectus required under the Act and SEBI Regulations has been aligned, with a view to make these simpler, by allowing prescriptions be made by SEBI in consultation with Central Government.
- Re-opening of accounts has been limited to 8 years.
- Requirement for annual ratification of appointment/continuance of auditor by members has been removed.
- Amend provisions relating to Corporate Social Responsibility to bring greater clarity.

4. Exemption Notification 2017- 13th June, 2017

Ministry of Corporate Affairs provided exemption to Private Limited / Government / Section 8 Companies under Companies Act, 2013 vide Notifications dated: 13.06.2017 which are in addition to exemptions provided vide earlier notifications dated 05.06.2015. relating to [1]Private Limited Companies, [2]Government Companies and [3]Section 8 Companies.

These exemptions are applicable only to such Private Limited Companies, Companies defined under section 8 and Government Companies which have not committed a default in

filing their financial statements under section 137 of the Act or Annual Return under section 92 of the Companies Act, 2013 with Registrar of Companies.

The Concept of the Start-up/ Start-up Companies is introduced through this exemption notification which means "a private Company incorporated under Companies Act, 1956 or the Companies Act, 2013 and recognized as start-up in accordance with the notification issued by the Department of Industrial Policy and promotion, Ministry of Commerce and Industry.

Exemptions to Private Companies for facilitating the Ease of Doing Business are as under:

- Additional exemptions have been granted towards acceptance of deposits by Private Company, upon satisfaction of conditions provided in the notification:
- Every Private Company which is Small Company shall prepare the annual return containing the particulars of aggregate remuneration drawn by directors.
- In relation to One Person Company, Small Company and Private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- Reporting on Adequacy of Internal Financial Controls System in audit report shall not apply to Private Company:
    - Which is a One-Person Company or small company; or
    - Which has turnover of less than INR 50 Crores as per latest audited financial statement; or
    - Which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year of less than INR 25 Crores.
- If the One Person Company, Small Company, Dormant Company or a Private Company (if such private company is a start-up) conducts the meeting of Board of Directors once in every half year and there is gap of not less than 90 days in both meetings, the said companies shall be deemed to have complied with the provisions of Companies Act, 2013.
- An interested director may also be counted for the purpose of quorum in such meeting after disclosure of his interest pursuant to section 184.

5. Committee on review of Offences under Companies Act, 2013 & Companies (Ordinance), 2018

In order to review the framework dealing with offences under the Companies Act, 2013 and related matters and to make recommendations to promote better corporate compliance, the Government of India has constituted a Committee on review of Offences under Companies Act, 2013 in July, 2018 and the said Committee, submitted its report in August, 2018.

The Committee recommended that the existing rigour of the law should continue for serious offences, whereas the lapses that are essentially technical or procedural in nature may be shifted to in-house adjudication process. The Committee observed that this would serve the twin purposes of promoting of ease of doing business and better corporate compliance. It would also reduce the number of prosecutions filed in the Special Courts which would in

turn facilitate speedier disposal of serious offences and the offenders shall be penalised. The liability under section 447 which deals with corporate fraud would continue to apply wherever fraud is noticed.

The Committee also recommend suitable amendments for significant reduction in compounding cases before the Tribunal, declaration of commencement of business, maintenance of a registered office, protection of depositors registration and management of charge declaration of significant beneficial ownership and independence of independent director. The main recommendation of the committee are

- To recategorization of 16 offences out of 81 which are in category of compoundable offence to an in-house adjudication Framework where in default' would be subject to penalty levied by an adjudication officer.
- To instituting a transparent and Technology driven in-house adjudication mechanism and increasing the transparency in house adjudication mechanism by minimising physical interface conducting processing on an online platform and Publication on the order of the website.
- strengthening the in-house adjudication mechanism to sub serve ultimate aim for achieving better compliances
- Declogging the NCLT etc.

After the submission of the Report, the immediate relief were expected by the Corporate and Stake holders, However at that time the parliament was not in session, to provides the immediate relief, the Ordinance in need to be issued by the Government of India, accordingly the Companies (Amendment) Ordinance, 2018 was promulgated by the President on the 2nd day of November, 2018.

In order to give continued effect to the Companies (Amendment) Ordinance, 2018, the President promulgated the Companies (Amendment) Ordinance, 2019 and the Companies (Amendment) Second Ordinance, 2019 on the 12th day of January, 2019 and the 21st day of February, 2019 respectively. With the constitution of new assembly, The Companies (Amendment) Bill, 2019 was introduced in Lok Sabha on July 25, 2019to replace the Companies (Amendment) Second Ordinance, 2019 with certain other amendments which are considered necessary to ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in corporate sector. The Companies (Amendment) Bill, 2019 passed in Lok Sabha on 26th July and on 30th July in the Rajya Sabha.

6. The Companies (Amendment) Act, 2019

The Companies (Amendment) Act, 2019 replace the Companies (Amendment) Second Ordinance, 2019 with certain additional amendments, inter alia, provides for the Ease of Doing Buisness:

i. Amendment in clause (41) of section 2 of the Companies Act, 2013 so as to empower the Central Government to allow certain companies to have a different financial year instead of as determined by the Tribunal;

ii. Amendment in sixteen sections of the Act so as to modify the punishment as provided in the said sections from fine to monetary penalties to lessen the burden upon the Special Courts;

iii. Amendment in section 135 of the Act so as to bring clarity to -

(a) carry forward the unspent corporate social responsibility amount, to a special account to be spent within three financial years and transfer

thereafter to the Fund specified in Schedule VII, in case of an ongoing project; and

(b) transfer the unspent amount to the Fund specified under Schedule VII, in other cases;

iv. Amendment in section 441 of the Act so as to enhance the jurisdiction of the Regional Director for compounding the offences

7. Company law Committee on Decriminalise of Offences.

Further, in line with the Government's objective of promoting Ease of Living in the country by providing Ease of Doing Business to law abiding corporates, fostering improved corporate compliance for stakeholders at large and also to address emerging issues having impact on the working of corporates in the country, MCA has constitute a Company Law Committee for examining and making recommendations to the Government on various provisions and issues pertaining to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

The terms of reference of the Committee were as under:-

- Analyze the nature of the offences (compoundable and non-compoundable) and submit its recommendation as to whether any of the offences could be re-categorized as 'civil wrongs' along with measures to optimize the compliance requirements under the Companies Act, 2013 and concomitant measures to provide further Ease of Doing Business;
- Examine the feasibility of introducing settlement mechanism, deferred prosecution agreement, etc., within the fold of the Companies Act, 2013;
- Study the existing framework under the Limited Liability Partnership Act, 2008 and suggest measures to plug the gaps, if any, while at the same time enhancing the Ease of Doing Business;
- Propose measures to further de-clog and improve the functioning of the NCLT;
- Suggest measures for removing any bottlenecks in the overall functioning of the statutory bodies like SFIO, IEPFA, NFRA, etc. under the Act;
- Identify specific provisions under the Companies Act, 2013 and the Limited Liability Partnership Act, 2008 which are required to be amended to bring about greater Ease of Living for the corporate stakeholders, including but not restricted to review of Forms under the two Acts;
- Any other relevant recommendation as it may deem necessary.

The Committee submitted its report on14th November, 2019.

8. Companies (Amendment) Bill, 2020

Based on the recommendations of the CLC and internal review by the Government, the government has proposed to amend various provisions of the Act to decriminalise minor procedural or technical lapses under the provisions of the said Act, into civil wrong; and considering the overall pendency of the courts, a principle based approach was adopted to further remove criminality in case of defaults, which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest. In addition, the Government also proposes to provide greater ease of living to corporates through certain other amendments to the Act.

The Companies (Amendment) Bill, 2020, inter alia, provides for the following, namely:—

(a) to decriminalise certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest;

(b) to empower the Central Government to exclude, in consultation with the Securities and Exchange Board, certain class of companies from the definition of "listed company", mainly for listing of debt securities;

(c) to clarify the jurisdiction of trial court on the basis of place of commission of offence under section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be;

(d) to incorporate a new Chapter XXIA in the Act relating to Producer Companies, which was earlier part of the Companies Act, 1956;

(e) to set up Benches of the National Company Law Appellate Tribunal;

(f) to make provisions for allowing payment of adequate remuneration to nonexecutive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases;

(g) to relax provisions relating to charging of higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in section 403;

(h) to extend applicability of section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups;

(i) to exempt any class of persons from complying with the requirements of section 89 relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;

(j) to reduce timelines for applying for rights issues so as to speed up such issues under section 62;

(k) to extend exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117;

(l) to provide that the companies which have Corporate Social Responsibility spending obligation up to fifty lakh rupees shall not be required to constitute the Corporate Social Responsibility Committee and to allow eligible companies under section 135 to set off any amount spent in excess of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years;

(m) to provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases;

(n) to provide for specified classes of unlisted companies to prepare and file their periodical financial results;

(o) to allow direct listing of securities by Indian companies in permissible foreign jurisdictions as per rules prescribed.

9. Other Initiatives

Relaxation through Rules& Circulars

On time to time the MCA, wherever necessary keeping in view of the requests received from various stakeholders extend relaxation for filing of Documents, additional fees, clarification etc. by issuing circulars and amendment in the Rules. This provide an ease to the business in the doing compliance in true letter and spirit.

Company Law Settlement Schemes

To facilitate ease of doing business, the Ministry of Corporate Affairs (MCA) on time to time has introduced Company Law Settlement Scheme (CLSS) for companies who have defaulted in making annual statutory filings with the Registrar of Companies (RoC) to condone the delay in filing annual statutory documents and grant immunity for prosecution in respect of such delayed filings. CLSS pertains to delayed filing of statutory documents only. Under the Scheme, companies are permitted to file statutory documents that were due for filling until a cut off date.

Similarly, in order to give an opportunity to the defaulting companies and to enable them to file the belated statutory documents in the MCA-21 registry, the Central Government has introduced "Companies Fresh Start Scheme, 2020 (CFSS-2020) scheme" vide General Circular No: 12/2020, dated 30th March, 2020, which give one time opportunity to the Companies to mark a fresh beginning as fully compliant companies by making good any defaults related to statutory filings, without paying any additional fees.

In addition, this scheme gives opportunity to inactive companies to get their companies declared as 'dormant company' under Section 455 of the Companies Act, 2013, by filing a simple application at the normal fee. The said provision enables inactive companies to remain on the register of the companies with minimal compliance requirements.

The CFSS-2020 scheme came into force on 01st April, 2020 and shall remain in force till 30th September, 2020.

LLP Settlement Scheme, 2020

As part of Government's constant efforts to promote ease of doing business, the Ministry of Corporate Affairs (MCA) has given a one time relaxation in additional fees to the defaulting LLPs to make good their default by filing pending documents and to serve as a compliant LLP in future by introducing "LLP Settlement Scheme,2020".

However, in order to support and enable Limited Liability Partnerships (LLPs) to focus on taking necessary measures to address the COVID-19 threat and to reduce the compliance burden, certain modifications to the above Circular have been made on 30th March, 2020 and thereby introduced "Modified LLP Settlement Scheme, 2020" via General Circular No-13/2020, dated 30th March, 2020.

10. Ease of Doing Business – India

The Government in pursuance of its objective of providing greater "Ease of Doing Business" to all the stakeholders, brought greater transparency in corporate structure in order to foster better Corporate compliance to enhance the efficiency of the processes under

Companies Act, 2013, has introduced these reforms that resulted in India securing 63rd rank among 190 countries, thereby improving by 14 ranks from its earlier rank of 77th in 2019.

It is noteworthy that India has improved its rank in 7 out of 10 indicators and has moved closer to international best practices. The 2020 edition of the World Bank Report acknowledges India as one of the top 10 improvers, third time in a row, with an improvement of 67 ranks in 3 years. It is also the highest jump by any large country since 2011.

In order to facilitate **Ease of Doing Business**, the Ministry of Corporate Affairs (MCA), has taken a further initiative of introducing a new **Web Incorporation Form 'SPICE+'** which is effective from 23rd February, 2020, thereby replacing the old SPICE e-form.

The new SPICE+ form provide all the services right from the name reservation for the Company till opening of bank account post incorporation. It is an integrated Web form offering ten services by three Central Government Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour and Department of Revenue in the Ministry of Finance) thereby reducing many procedures, saving time and cost for starting a business in India.

Ministry of Corporate Affairs has also contributed substantially towards insolvency resolution process. As per the latest Report of the Resolving Insolvency Index, India's ranking improved by 56 places to 52 in 2019 from 108 in 2018. Recovery rate increased from 26.5% in 2018 to 71.6% in 2019 and time taken in recovery improved from 4.3 years in 2018 to 1.6 years in 2019.

On Competition Law, the Government has revised De-Minimis exemption under Competition Act 2002 for speeding up of Mergers & Acquisitions of companies in the country and introduced an automatic system of approval for combinations under Green Channel. Under this process, the combination is deemed to have been approved upon filing the notice in the prescribed format. This system would significantly reduce time and cost of transactions.

Conclusion

The Government has launched the number of policy reforms for ease of doing business, however, it is the Corporates and Professionals whose moral duty is to follow the law and do the compliances in true letter and spirit.

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Management of Companies during the outbreak of COVID-19*

The World Health Organisation (WHO) on March 11, 2020 has formally declared the novel coronavirus (COVID-19) outbreak a global pandemic, which has till now led to the death of approximately more than 2 lakhs people and infected more than 25 lakhs of people globally. It has sent shock waves across global market and has forced unprecedented measures on the movement of people within and across the country.

In India only, approximately more than 25 thousand people are infected uptil now and more than 700 have died. As vaccine is yet to be found, in order to curb the outbreak, government of many countries including India has announced complete lockdown.

Indian Prime Minister initially announced 21 days lock down from 24th March, 2020 till 14th April, 2020. Then it was further extended till 3rd May, 2020. The Government of India's directives of lockdown, imposition of travel ban, suspending flights, stopping trains, shutting factories and businesses, social distancing to avoid large public gatherings, asking companies to have their employees work from home have significant impact on the normal day to day management of the Companies. The rapid spread of Coronavirus outbreak has wrecked the market and disrupted demand-supply chain, forcing the companies to think hard how they can conduct their business uninterruptedly.

Even before the outbreak of COVID-19, the global economy including India was facing a slowdown. Moreover, the Indian economy was grappling with its own issues such as banking and financial services are facing massive problems with the collapse of IL&FS, DHFL and Yes Bank fiasco. Besides, this slowdown has also been witnessed in other sectors of economy such as auto industry, telecom, textile, mining, manufacturing, power industry etc. The outbreak of COVID-19 made the matters worse. This global shock comes at a particularly inopportune time for India, as the economy was already on a very concerning downward trajectory.

The credit rating agencies both global and domestic are unanimous that the Covid-19 pandemic will be an economic disaster for India. Fitch Ratings have slashed its earlier GDP growth forecast for India and now estimated it around 0.8% for the financial year 2020-21, while Standard & Poor and Moody's have projected India to grow at around 1.8% and 2.5%, respectively. Goldman Sachs has lowered its growth estimation to 1.6% for the financial year 2020-21 from 3.3% estimated earlier. The impact of this disaster will be far-fetched from spiking rise in unemployment rate, decrease in demand, fall of income of various sectors such as tourism, hospitality, IT, Aviation etc., leading to massive lay-off, pay cut and other consequences.

Amidst this grave situation companies are finding it very hard to run their business smoothly. Businessmen have to think of various alternatives to manage their companies in this critical condition where there is lack of man-power, resources, proper infrastructure etc. for carrying out conducive businesses.

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Various Challenges for the Management of Companies during Covid-19 outbreak

1) While many companies have implemented the policy of work from home for their employees during the lockdown period, but a lack of proper infrastructure poses many challenges. For instance, many employees do not have laptop or desktop, in many parts of India they don't have access to high-speed internet, power back-up etc.

2) Manufacturing industries, mining industries, textile industries, power generation companies are most hard hit where their units are completely closed, manpower is unavailable, transportation is disrupted, there is no or very less generation of revenue, but they have to pay wages to workers and salaries to the staff from their reserve.

3) Then another major challenge is conducting of various Meetings such as: Board Meetings, Annual General Meeting, Extra Ordinary General Meetings, Class Meetings etc. Meetings are necessary instrument of decision-making.

   (i) Annual General Meeting provides opportunities to the shareholders of the Companies to ask question from the Management, get their queries resolved and hear views of other members.

   As the new financial year has already begun, many companies have concerns over their upcoming Annual General Meetings (AGM). Holding physical meeting with large gathering of shareholders will risk the spread of the disease.

   However, Companies have to comply with the various provisions and time-limitations provided in the Companies Act, 2013, SEBI Act and other applicable Acts, rules and regulations. Companies Act, 2013 provides that a company shall conduct its AGM within a period of six months (nine months in case of first AGM) from the closure of the financial year and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.

   As per Regulation 44(5) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, top 100 listed entities by market capitalization are required to hold Annual General Meeting, within a period of 5 months from the date of closing of the financial year.

   ii) Though the country is in lock-down mode, but companies still need to work. There are lots and lots of matters in the corporate world where board decisions are required. There are matters which mandatorily require board resolutions to be passed in a meeting of the board, and these matters may be quite frequent, for example, borrowing monies, granting of loans, investing of funds, issue of securities, etc. Additionally, there may be lots of other matters where approval of boards/ audit committee meetings or other committee meetings may be required.

   iii) Amid this grave situation, many companies are unable to hold Extra Ordinary General Meeting, hence, facing delay on transaction of urgent matters such as related party or inter-corporate transactions, where there is a requirement of shareholder's approval for passing resolutions. This delay in holding shareholder meetings can have a material impact on business and leading to non-compliance and inviting penalty from the regulators.

4) On one hand, the companies are unable to conduct necessary physical processes for book closures during the lockdown. They are also struggling to assess the financial impact of the disruptions caused by Covid-19. On other hand, the Statutory Auditors are facing difficulty to conduct audit of financial statements of Companies. Secretarial Auditors are facing difficulty in physically verifying the company's statutory compliance related documents in such extraordinary situations.

5) Heavy dependence of Companies on digital mode like video-conferencing, VPN solutions, cloud-enablement etc, for conducting of business is also posing cyber-security threats for the companies, leakage of price-sensitive information etc., when majority of staffs are working from home, may be, they are using unprotected personal networks, which opens up organisations to a completely different level of fraud and cybercrime risks.

Recently Ministry of Home Affairs have issued an advisory on the use of the video conferencing app-Zoom. It was said that the use of the platform is "not safe" regarding to its dubious privacy policy. Zoom has emerged as an one-stop solution for video meetings among users during the covid-19-induced lockdown globally. But the looming concern on Zoom is related to the security loopholes that have been unearthed in multitudes.

Hence, viewing such extra-ordinary circumstances, several relaxations have been given by various regulatory authorities of India such as Ministry of Corporate Affairs, Securities Exchange Board of India, Reserve Bank of India, SIDBI etc., for providing relief amidst this pandemic.

Relaxation given by Ministry of Corporate Affairs

Relaxations regarding Board Meetings

(1) Many Companies are facing difficulties during this lock-down period in complying with the mandatory requirement of holding of Board Meetings by maintaining the stipulated time gap of 120 days between two consecutive meetings of the Board, as mentioned in Section 173 of the Companies Act, 2013.

Viewing such difficulties, MCA has extended the time gap of 120 days by a period of further 60 days till next two quarters i.e. till 30th September, 2020. Accordingly, as an one-time relaxation the gap between two consecutive meetings of the Board extended to 180 days till the next two quarters, instead of 120 days as required in the Companies Act, 2013. Consequently, this aims at reducing the compliance burden of the Companies.

(2) Considering the need to take precautionary steps to overcome the outbreak of the coronavirus (COVID-19), the Ministry of Corporate Affairs has relaxed the requirement of holding Board meetings with physical presence of directors under Section 173 read with rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 for approval of the restricted matters such as approval of the annual financial statements, board's report, approval of the prospectus, the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act and approval of matters relating to amalgamation, merger, demerger, acquisition and takeover vide. Companies (Meetings of Board and its Powers) Amendment Rules, 2020, dated 19th March, 2020.

Companies now may hold such meetings for the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules,

2020 i.e. 19th March, 2020 till 30th June, 2020 through Video Conferencing or other audio visual means (OAVM) by duly ensuring compliance of rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.

According to Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014, the companies will have to ensure avoidance of failure of the video or audio-visual connection. The chairperson of the meeting and the company secretary (if any) has to take due and reasonable care to safeguard the integrity of the meeting via proper security and identification procedures. Companies need to ensure availability of proper video conferencing or other audio-visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting. Proceedings at the board meeting will have to be recorded and minutes of the meeting needs to be prepared. Hence, Directors need not come to a common venue and can do the meetings from their home only.

Relaxation of holding Independent Directors Meeting

3) The Independent Directors of the company are required to hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management. But due to Covid-19 crisis, MCA has relaxed the provision that if the Independent Directors of a company have not been able to hold such a meeting for the financial year 2019-20, the same shall not be viewed as violation. To co-ordinate among themselves the independent Directors, may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary.

Relaxation on Extra-Ordinary General Meeting

4) The Ministry of Corporate Affairs vide its Circular No. 14/2020 dated 8th April, 2020 and Circular No. 17/2020 dated 13thApril, 2020 has clarified that the companies are allowed to conduct unavoidable Extra Ordinary General Meeting (EGM) to transact business of urgent nature requiring approval of members (except items of ordinary business and items where any person has a right to be heard) through Video Conferencing (VC) or Other Audio Visual Means (OAVM) in prescribed manner on or before 30th June, 2020.

In light of the aforesaid, this notification is a welcome step as it enables companies (including those that are not required to provide for (e-voting facility)) to conduct EGMs by way of VC-OAVM for matters that are considered unavoidable, Hence, It helped the companies to conduct business as usual to an extent whilst ensuring that there is adherence to principles of corporate governance even during such challenging times.

Relaxation for holding Annual General Meeting

5) Amidst this health emergency and related social distancing norms and consequential restrictions linked thereto, many companies are facing difficulties in holding annual general meetings (AGMs) whose financial year has ended on 31st December, 2019 due to COVID-19.

On account of these difficulties, MCA vide. Circular dated 21st April, 2020 has clarified that for the companies whose financial year (other than first financial year) has ended on 31st December, 2019, can hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), and

the same shall not be viewed as a violation. Thus, giving sufficient time to above mentioned companies to avoid non-compliance.

Additional Relaxations

(i) The Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021, instead of being applicable from the financial year 2019-2020 as notified earlier. This will significantly ease the burden on companies & their auditors for the financial year 2019-20.

(ii) MCA has announced that no additional fees shall be charged for late filing during a moratorium period from 01st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large, but also enable long-standing non-compliant companies/ LLPs to make a 'fresh start'.

In pursuance of the Government of India's efforts to provide relief to law abiding companies and Limited Liability Partnerships (LLPs) in the wake of COVID 19, the Ministry of Corporate Affairs, has introduced the "Companies Fresh Start Scheme, 2020" and revised the "LLP Settlement Scheme, 2020" which is already in vogue to provide a first of its kind opportunity to both companies and LLPs to make good any filing related defaults, irrespective of duration of default, and make a fresh start as a fully compliant entity. The Fresh Start scheme and modified LLP Settlement Scheme incentivize compliance and reduce compliance burden during the unprecedented public health situation caused by COVID-19. The USP of both the schemes is a one-time waiver of additional filing fees for delayed filings by the companies or LLPs with the Registrar of Companies during the period starting from 1st April, 2020 and ending on 30th September, 2020.

(iii) MCA has clarified that amount spent for various activities related to COVID-19 are eligible for CSR activity under item no. (i) and (xii) of Schedule VII of Companies Act, 2013, relating to promotion of healthcare including preventive healthcare and sanitation and disaster management. Also, any contribution made to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) shall qualify as CSR expenditure under the Companies Act 2013. The Fund has been set up by the Government of India to deal with any kind of emergency or distress situation such as that posed by COVID-19 pandemic. Hence, now companies can help the government during this tough time as well as can fulfil their statutory Corporate Social Responsibility obligations.

(iv) MCA has temporarily relaxed the provision of Section 149 of the Companies Act, 2013 which provides that every company shall have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year, Now any Non-compliance of minimum residency shall not be treated as violation for the financial year 2019-20.

Various other relaxations related to provisions of Companies Act, 2013 and the rules made thereunder also have been given by MCA. In the current lockdown scenario, the relaxations granted by MCA from a few of the compliance requirements will definitely ease the burden on the management of the companies and LLPs for few months.

Relaxations given by Securities and Exchange Board of India (SEBI)

SEBI has granted the following relaxations from compliance stipulations specified under the SEBI (Listing Obligations and Disclosure Requirements) ('LODR') Regulations, 2015 to listed entities:

Relaxation given to Board / Audit Committee meetings

1) As per Reg. 17(2) and 18(2)(a) of the SEBI(LODR) Regulations, 2015, it is mandated that the board of directors and the audit committee of listed entity shall meet at least four times a year with a maximum time gap of one hundred and twenty days between any two meetings.

   SEBI vide circular, dated 19th March,2020 has exempted the board of directors and Audit Committee of the listed entity from observing the maximum stipulated time gap of 120 days between two meetings for the meetings held or proposed to be held between the period December 1, 2019 and June 30, 2020. However, the board of directors / Audit Committee shall ensure that they meet at least four times a year, as stipulated under regulations 17(2) and 18(2)(a) of the SEBI(LODR) Regulations, 2015.

2) Regulation 29(2) of the SEBI(LODR) Regulations, 2015 specifies that stock exchanges need to be provided prior intimation about meetings of the board (excluding the date of the intimation and date of the meeting) of at least 5 days before the meeting if financial results are to be considered and 2 working days in other cases. It has been decided by SEBI that the above requirement under Regulation 29 (2) of prior intimation of 5 days / 2 working days shall be reduced to 2 days for board meetings held till July 31, 2020.

Relaxation for conduct of Committee Meetings

3) As per Regulation 19(3A), 20(3A) and 21(3A) of the SEBI (LODR) Regulation, 2015, the Nomination and Remuneration Committee, the Stakeholder Relationship Committee, the Risk Management Committee which is required to meet at least once in a year whose due date is March 31, 2020.SEBI has extended this due date by 3 months till 30th June, 2020. By this step the compliance burden of holding the committee meetings has been eased for few months during this critical time.

Relaxation on conduct of Annual General Meetings

4) SEBI in its circular dated March 26, 2020 have already given 1 month relaxation to top 100 listed entities by market capitalization for financial year 2019-20 who are required to hold AGM within 5 months from the date of closing of the financial year in compliance to Regulation 44(5) of the SEBI (LODR) Regulations, 2015, now such companies can hold their Annual General meeting till September 30, 2020 instead of August 31, 2020. The above Relaxation is for listed entities, whose financial year ended on 31st March, 2020.

   Subsequently, MCA vide Circular No.18/2020 dated April 21, 2020, has given relaxation to those Companies whose financial year (other than the first financial year) has ended on December 31, 2019, they can hold their AGM for such financial year within a period of nine months from the closure of the financial year (i.e., by September 30, 2020) and the same will not be treated as violation. Now, SEBI in order to streamline gave the same benefit to the top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 vide circular dated April, 23, 2020.

   Accordingly, regulation 44(5) of the SEBI (LODR) Regulations, 2015 is relaxed whereby the top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 may hold their AGM within a period of nine months from the closure of the financial

year (i.e., by September 30, 2020).Thus, granted more time to listed entities for holding annual general during the pandemic.

Additional Relaxations

i) SEBI vide circular dated 17th April, 2020 clarified that authentication / certification of any filing / submission made to stock exchanges under SEBI(LODR) Regulations, 2015 may be done using digital signature certifications until June 30, 2020.

ii) Further, it has been brought to the notice of the SEBI, that some newspapers are not bringing their print versions for a limited period while some newspapers that are still printing are not accepting a e-copy of the information to be published which acts as a challenge in ensuring compliance with Regulation 47 of the SEBI (LODR) Regulations, 2015 which requires publication of information such as notice of the board meeting, financial results etc in the newspaper. So, it has been decided by SEBI to exempt publication of advertisements in newspapers as required under regulation 47 for all events scheduled till May 15, 2020

iii) SEBI has also relaxed the deadline for submitting Corporate Governance reports by a month and quarterly shareholding patterns by three weeks (approx). The submission of Corporate Governance report is required to be made within 15 days from end of the quarter, thus, for quarter ending 31st March, 2020 due date is by 15th April, 2020 but now companies can submit them by 15th May, 2020. The shareholding pattern is required to be filed within 21 days from the end of the quarter. So, the due date for submission of shareholding pattern for quarter ending 31st March, 2020 is by 21st April, 2020, but now companies can submit it by 15th May, 2020.

iv) Listed entities which had 45 days from the quarter ending 31st March, 2020 to file their quarterly financial results, will now get an extra 45 days. Also, annual financial results, which needed to be filed within 60 days from the financial year ending 31st March, 2020 have now been extended by a month. In effect, the deadline to file both has been extended till 30th June, 2020.

Besides these measures, other relaxations also has been given such as compliance certificate on share transfer facility, statement of investor complaints, secretarial compliance report etc., for listed entities and other market intermediaries as part of efforts to ease their compliance burden. These relaxations are welcome relief for corporate India. As many companies are doing work-from-home and this extension will be helpful for them to focus on the current business exigencies.

Relaxation given by Reserve Bank of India (RBI)

A slew of measures have been announced by the RBI to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses.

1) In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) ("lending institutions") are permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor will be shifted across the board

by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.

For the next three months no EMI would be deducted from the account of anyone who has a loan outstanding. And all this without any hit on credit score. EMIs will resume after the moratorium period gets over. This is going to be a huge relief for all EMI payers, especially for those — such as the self-employed — whose income had become uncertain in the wake of the lockdown.

2) In respect of working capital facilities sanctioned in the form of cash credit/overdraft, lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 upto May 31, 2020 ("deferment"). The accumulated accrued interest shall be recovered immediately after the completion of this period. This would ease the already burdened companies from such payment of interest for the time being, helping them to focus on their business.

3) In respect of working capital facilities sanctioned in the form of cash credit/overdraft to borrowers facing stress on account of the economic fallout of the pandemic, lending institutions may recalculate the 'drawing power' by reducing the margins and/or by reassessing the working capital cycle. This relief shall be available in respect of all such changes effected up to May 31, 2020 and shall be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from COVID-19.

4) Any delay in payment leads to default and gets reported to Credit Bureaus. For business loans of Rs. 5 Crores and above, the banks report the overdue position to RBI also through CRILC. As a result of the relief package by RBI, the overdue payments post 1st March 2020 will not be reported to Credit Bureaus/ CRILC for three months. No penal interest or charges will be payable to the banks. Similarly, SEBI has allowed that Credit Rating Agencies (CRAs) may not consider the delay as default by listed companies, if the same is owing to lockdown conditions arising due to COVID-19.

5) In view of the disruption caused by the pandemic, the time period for realisation and repatriation of export proceeds for exports made up to or on July 31, 2020, has been extended by RBI to 15 months from the date of export.

Presently value of the goods or software exports made by the exporters is required to be realized fully and repatriated to the country within a period of 9 months from the date of exports. This measure will enable the exporters to realise their receipts, especially from COVID-19 affected countries within the extended period and also provide greater flexibility to the exporters to negotiate future export contracts with buyers abroad.

RBI has also announced a sizeable reduction in the policy repo rate/ reverse repo rate and maintaining accommodative stance as long as necessary, while ensuring inflation remains within target.

Hence, besides these relaxations, other relief has also been provided by RBI to ease the burdened economy. The policy measures taken by the RBI will sizeably expand liquidity in the system, which will ensure that financial markets and institutions are able to function normally in the face of COVID-19 related dislocations. This will also reinforce monetary transmission so that bank credit flows on easier terms are sustained to all those who have been affected.

Small Industries Development Bank of India (SIDBI) recognizes the operational and financial challenges being faced by start-ups and has been making efforts to provide financial assistance and stability to such start-ups through schemes like COVID-19 Start-up Assistance Scheme ('CSAS').The objective of this scheme is to provide quick working capital in the next 45 to 90 days after screening the application for the start-ups who are facing financial challenges.

Conclusion

Besides, these measures other regulators such as Ministry of Finance, Ministry of Commerce and Industry, Insolvency and Bankruptcy Board of India, Central Board of Direct Taxes, Central Board of Indirect Taxes and Customs etc., have given various relaxations to the Companies in India. These relaxations have helped them to stand and operate in such critical scenarios without worrying about the compliances, when the stock market is in frenzy state and the companies are finding it hard to keep their business stable and earn income.

Though various measures have been announced by various regulators in order to join hands with government efforts to rescue a slowing economy that has now got caught in coronavirus whirlwind, yet more relaxations are need of the hour in dealing with this COVID-19 outbreak in accordance with the current situation.

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Companies under IBC and GST Compliance*

The Insolvency and Bankruptcy Code, 2016(IBC) is one of the biggest economic reforms which provides a uniform and comprehensive insolvency legislation covering Corporates, partnerships and individuals (other than financial firms). The Code gives both the creditors and debtors the power to initiate proceeding. It has helped India achieve a historic jump in the ease of doing business rankings by consolidating the law and providing for resolution of insolvencies in a time-bound manner.

Goods and Services Tax (GST) is a destination based tax on consumption of goods and services. It came into effect from July 1, 2017. It has integrated India into a single common market by breaking barriers to inter-state trade and commerce. GST Authorities have always tried to ease the compliance part for promoting ease of doing business.

As per the **Insolvency and Bankruptcy Code, 2016 (IBC),** as soon as a Company/LLP fails to make a payment above Rupees One Lakh, the financial/operating creditors can initiate the **Corporate Insolvency Resolution Process (CIRP)**. The limit has been recently raised to Rupees One Crore, due to the COVID-19 pandemic.

The 39thGST council meeting held on 14thMarch, 2020 addressed various issues relating to extension of time for annual returns, changes in GST rates and other measures. One of the important decisions presented in the meeting was relating to the rules pertaining to entities undergoing CIRP under the Insolvency and Bankruptcy Code, 2016 (IBC).

In **CIRP** the financial creditors assess the viability of debtor's business and the options for its revival and rehabilitation. If the CIRP fails or the financial creditors decide that the business of the debtor cannot be carried on in a profitable manner and it should be wound up, the debtor's business undergoes the liquidation process.

JUDGEMENT

In the case of ***R. Ravichandran, RP vs. The Asst. Commissioner (ST) Kilpauk Assessment Circle & 12 Ors*****,** the National Company Law Tribunal (NCLT), Chennai Bench held that a corporate debtor can access its GST Portal Account for filing GST Returns generated after the commencement of the corporate insolvency resolution process (CIRP) period before clearing the pre-CIRP dues. The NCLT observed that blocking the access to the GST Portal will result in barring the corporate debtor to generate bills related to GST. The NCLT also stated that if the corporate debtor is allowed to run on going concern basis then it should be allowed to pay taxes as well. The NCLT also held that the Tax Authorities fall within the ambit of operational creditors and they can recover the GST dues, for the period prior to the CIRP, by making a claim to the resolution professional against the corporate debtor as per the provisions of IBC.

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NOTIFICATION FOR NEW PROCEDURE

Central Government vide **Notification No. 11/20 Central Tax dated 21st March 2020** has prescribed special procedure in respect of GST formalities to be complied by Companies which are in the process of Insolvency Resolution.

The Notification is applicable to Corporate Debtors who are undergoing CIRP.

PROCEDURE FOR GST COMPLIANCE OF COMPANIES UNDER IBC

i) REGISTRATION

Company/LLP shall, with effect from the date of appointment of IRP/RP be treated as a distinct person of corporate debtors, and shall be liable to take a new registration in each states or union territories where the corporate debtor was registered earlier, within 30 days from the date of appointment of IRP/RP.

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

ii) RETURNS

Company/LLP shall, after obtaining registration file the first return under section 40 of CGST Act, 2017 from the date on which he becomes liable to registration till the date on which registration has been granted.

Section 40 of Central Goods and Services Tax Act, 2017 "Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration".

iii) INPUT TAX CREDIT

Such company/LLP shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the such company/LLP prior to CIRP period, subject to the conditions of *Chapter V* of the CGST Act, 2017 and the rules made thereunder, except the provisions of *sub-section (4) of section 16 of the CGST Act, 2017* and *sub rule (4) of rule 36 of the* ***CGST Rules, 2017***.

Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in *notification no.11/2020* or thirty days from the date of *notification no. 11/2020*, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the such company/LLP prior to CIRP period, subject to the conditions of *Chapter V of the CGST Act* and the rules made thereunder, except the provisions of *sub-rule (4) of rule 36 of the CGST rules*.

Section 16(4) of *CGST Act, 2017* *"A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the*

due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier".

Rule 36(4) of CGST Rules, 2017 *"It stipulates a cap of 10% provisional ITC. Even a registered person receiving goods from such companies can claim ITC on invoices bearing the earlier GSTIN in compliance with the conditions specified under Chapter the GST Act".*

iv) ***REFUND***

Any amount deposited in the cash ledger by the IRP/RP shall be available for refund to the erstwhile registration.

INSOLVENCY PROFESSIONAL

An Insolvency Professional (IP) plays a very important role under the Insolvency and Bankruptcy Code, 2016. He is a significant actor in the corporate insolvency resolution process. He acts as an "Interim Resolution Professional (IRP)" and "Resolution Professional (RP)" in the Corporate Insolvency Resolution Process (specified in Part II of the Code which deals with corporate persons) as well as a "resolution professional" under Part III of the (which deals with Insolvency Resolution and Bankruptcy for Individuals and Partnership Firms) for conducting the fresh start process or insolvency resolution process. As an interim resolution professional, he performs various functions such as the collection of claims, the collection of information about the corporate debtor, the constitution of the committee of creditors and the interim management of the company's affairs and monitoring of the company's assets till a resolution professional is appointed.

An insolvency professional also acts as a liquidator in accordance with the provisions of Part II as well as a "bankruptcy trustee" for the estate of the bankrupt under section 125 in Part III of the Code.

CONCLUSION

As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process(CIRP) gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (IRP) or resolution professional (RP). It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (NCLT). Previously, RP/IRP were not able to file return because the registered person has defaulted in filing returns. But after introduction of special procedure under GST for Companies under IBC they can do so.

Also removing capping of 10% while claiming ITC in first returns is a welcome move. But no consequences have been specified if the required person fails to take registration.

Introduction of Special procedure for Companies undergoing CIRP is a noble step taken by government to maintain the continuity of compliances by Corporate Debtor undergoing CIRP.

The onus to file first return is put on the IRP/RP, so that correct and appropriate information is presented.

The Recent Notification issued will help India to improve its ranking further in Ease of doing Business.

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GST on Director's Remuneration : The Conundrum*

Goods and Services Tax (GST) is an indirect tax levied on the supply of goods and services. GST Law in India is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. Is GST levied on Director's Remuneration is a question which is discussed in detail over here.

Directors' remuneration is the process by which Directors of a Company are compensated, either through fees, salary, or the use of the company's property, with approval from the shareholders and board of directors.

But who is a Director? What he does? How is he/she appointed? What is Director's remuneration?

To understand the scope of 'director' and 'remuneration' we need to read the relevant provisions of the Companies Act, 2013.

As per Section 2(34) of Companies Act, 2013"Director" means a director appointed to the Board of a company.

As per Section 2(54) of Companies Act, 2013"Managing Director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of the managing director, by whatever name called.

As per Section 2(94) of Companies Act, 2013 "whole-time director" includes a Director in the whole-time employment of the company;"

As per Rule 2(1)(k) of the Companies (Specification of definitions details) Rules, 2014, "Executive Director" means a whole-time director as defined in clause (94) of section 2 of Companies Act, 2013.

As per Section 2(78) of Companies Act, 2013, 'remuneration' means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act

Under the Companies Act, a General Circular No. 24/2012 dated 09.08.2012 issued by Ministry of Corporate Affairs (MCA) clarifies that "The Non-Whole Time Directors of the company are presently not covered under the exempted list and as such, the sitting fees/commission payable to them is liable to Service Tax. Service tax is payable on the commission/sitting fees payable to Non-Whole Time Directors of the company."

A perusal of the above provisions reveals that the director whether the whole-time director or managing director can also be an employee of the company. Further, the remuneration is wide enough to cover any monetary, non-monetary, fixed or variable component. The directors are appointed to the Board of Directors of the Company and are also accountable for their actions and performance to the Board. That is, the Board has supervisory control over the functions being performed by the Directors.

* *Sarika Verma, Assistant Director and Pankhuri Agrawal, Consultant, The ICSI.*

As per Schedule III of CGST Act, 2017 certain activities or transactions which shall be treated neither as a supply of goods nor a supply of services.

Section 9(3) and Section 9(4) of the CGST Act, 2017 contains the provisions with respect to Reverse Charge Mechanism in respect of certain services which are notified from time to time. Notification 13/2017 – Central Tax (Rate) dated 28-06-2017 vide entry No. 6 provides for levy of Reverse Charge Mechanism on services provided by a director of the company or a body corporate to the said company or body corporate.

If we read above two provisions, schedule III and notification 13/2017 together, then two questions arise:

1. Whether the Salary or Remuneration paid by the company to its Directors is liable for payment of GST under Reverse Charge Mechanism?
2. In case the above is excluded under Schedule III, what is the relevance of Entry 6 in Notification No 13/2017 – CT?

REVERSE CHARGE MECHANISM (RCM)

In regular circumstances, any supplier of goods and services is liable to pay the Goods and Services Tax (GST). However, when the reverse charge mechanism is applied, the receiver of the goods becomes the party that is liable to pay the taxes.

''reverse charge'' means the liability to pay tax by the recipient of goods or services or both instead of the supplier of goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;''

There are two provisions under which GST is payable under reverse charge:

A) The first one is payable under section 9(3) of CGST Act, 2017. A list of goods and services on which the tax is payable under the said section is notified through notification.

B) The second provision to pay tax is provided under section 9(4) of CGST Act, 2017 where the registered recipient is liable to pay tax on all purchase of goods or services or both from an unregistered person under GST.

The Central Board of Indirect Taxes and Customs (CBIC) has clarified that GST is applicable on Directors Remuneration on reverse charge basis.

JUDGEMENTS

Some very popular judgements are given below for better understanding of provisions of GST on Director's Remuneration:

1. ***M/s Clay Craft India Pvt. Ltd.*** –Advance Ruling No. RAJ/AAR/2019-20/33

M/s Clay Craft India (P) limited filed an application before the Rajasthan bench of the Authority for Advanced Ruling (AAR), for clarification on whether salaries paid to directors would attract Goods and Services Tax.

The company said its directors are working as employees for which they are being compensated by way of a regular salary and other allowances.

"The company is deducting TDS on their salary and PF laws are also applicable to their service. Therefore, in all practical purposes these directors are the employees of the company and are working as such besides being Director of the company,"

In its ruling, the AAR said, "the consideration paid to the directors by the applicant company will attract GST under reverse charge mechanism.

It said that the Central Tax (Rate) notification clearly states that services supplied by a Director of a company will be considered as supply and hence **directors cannot be called an employee.**

"So, as per AAR order, it is very clear that the services rendered by the Director to the company for which consideration is paid to them in any head is liable to pay GST under Reverse Charge Mechanism,"

Companies will have to pay GST on the remuneration they dole out to directors.

2. **M/s Alcon Consulting Engineers (India) (P) Ltd. –Advance Ruling No. KAR ADRG 83/2019 dated *25th September, 2019***

M/s Alcon Consulting Engineers (India) Pvt. Ltd. filed an application for Advance Ruling under Section 97 of the CGST Act, 2017 and Section 97 of the KGST Act, 2017, in FORM GST ARA-01 discharging the fee of Rs.5,000 each under the CGST Act, 2017 and the KGST Act, 2017.

The applicant has sought advance ruling in respect of the following question:

a) Whether the expenses incurred by the Staff members on behalf of the Company exceeding Rs.5000 a day and then reimbursed periodically are liable to tax?

b) Whether RCM is applicable on remuneration paid to the Directors?

HELD THAT :- The amount paid by the employee to the supplier of service is covered under the term "consideration" as if it is paid by the applicant himself for the services received by them on behalf of the company. This amount reimbursed by the applicant to the employee later on would not amount to consideration for the supplies received as the services of the employee to his employer in the course of his employment is not a supply of goods or supply of services and hence the same is not liable to tax.

Remuneration to the Directors paid by the applicant –

HELD THAT :- The question before us is not whether this service is taxable or not, but whether this supply of services is liable to tax under reverse charge mechanism.

The services provided by the Directors to the Company are not covered under clause (1) of the Schedule III to the Central Goods and Services Tax Act, 2017 as the Director is not the employee of the Company. The consideration paid to the Director is in relation to the services provided by the Director to the Company and the recipient of such service is the Company as per clause (93) of section 2 of the CGST Act and the supplier of such service is the Director.

Reverse Charge Mechanism – HELD THAT:- In the present case, the applicant is the company and is located in the taxable territory and the Directors' remuneration is paid for the services supplied by the Director to the applicant company and hence the same is liable to tax under reverse charge basis under section 9(3) of the Central Goods and Services Tax Act, 2017.

Treatment under Income Tax Act, 1961

The remuneration paid by a company to its directors is subjected to Tax Deducted at Source (TDS) under section 192 of the Income Tax Act, 1961.

The remuneration received by the directors in lieu of managing the affairs of the company in the capacity of employee and taxed as salary in hands of directors.

Also, the remuneration paid by the company to its directors is assessed under the head "Income from Salary" by Department of Income Tax.

Non-Executive Directors are generally the ones who are professionally involved merely in broad business of the Company and is not involved into the day to day activities hence they are not entitled to remuneration but they receive sitting fees to attend the board meeting or commission for providing services to the company or body corporate. The sitting fees paid by the company to its non executive director liable for deduction under section 194J and considered as professional fees and not as Salary.

Conclusion

The government has power under sections 9(3) of CGST Act & under section 5(3) of IGST Act, to notify the levy of GST on Reverse Charge Mechanism basis on goods or services. Vide entry no. 6 of **Notification No. 13/2017- Central Tax (Rate) dated 28th June 2017** & entry no. 7 of **Notification No. 10/2017- Integrated Tax (Rate) dated 28th June 2017**, Government had notified that any services supplied by a director of a company to the said company would be covered under reverse charge. Therefore, after reading Notification No 13/2017 – CT and Schedule III together, we can conclude that any amount paid by a company to its Director which is in the nature of employment contract is not liable for payment of GST. Whereas any amount paid by the company to its Directors in the nature of professional relationship will be liable for Reverse Charge Mechanism.

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Trade Receivable Discounting System (TReDS)*

Genesis of TReDS

Micro, Small and Medium Enterprises (MSMEs) plays an important role in the economic development of India. The Indian MSME sector is the backbone of the national economic structure and has unremittingly acted as the mainstay for the Indian economy, providing it resilience to ward off global economic shocks and adversities. With around 63.4 million units throughout the geographical expanse of the country, MSMEs contribute around 6.11% of the manufacturing GDP and 24.63% of the GDP from service activities as well as 33.4% of India's manufacturing output. They have been able to provide employment to around 120 million persons and contribute around 45% of the overall exports from India. But despite their mammoth contribution towards stoking up the economic growth and contribution to Gross Domestic Product MSMEs, continue to face constraints in obtaining adequate finance, particularly in terms of their ability to convert their trade receivables into liquid funds. In order to address this vital issue through setting up of an institutional mechanism for financing trade receivables across India, the Reserve Bank of India published a concept paper on "*Micro, Small & Medium Enterprises (MSME) Factoring-Trade Receivables Exchange"* in March 2014.

Based on the public comments received on the Concept Paper and the subsequent draft guidelines issued for setting up and operating the system, and interactions held with relevant stakeholders, guidelines were issued regarding setting up and operating the trade receivables system in the country. These Guidelines were issued by Reserve Bank of India under Section 10(2) read with Section 18 of Payment & Settlement Systems Act, 2007 (Act 51 of 2007).

In 2018, the Government made it mandatory for all companies with a turnover greater than Rs.500 crores to register with TReDS. As on February 2020, while 8211 MSME sellers were registered, only 1530 buyers were participating on the platforms.

Trade Receivable Discounting System (TReDS) Scheme

Trade Receivables Discounting System or TReDS is an initiative undertaken by Reserve Bank of India to safeguard the interest of micro, small and medium enterprises (MSMEs) as they always finds it very hard to convert their trade receivables into liquid funds in short period. TReDS is an electronic platform for facilitating the financing / discounting of trade receivables of MSMEs through multiple financiers. These receivables can be due from corporates and other buyers, including Government Departments and Public Sector Undertakings (PSUs).

The TReDS facilitates the discounting of both invoices as well as bills of exchange. Further, as the underlying entities are the same (MSMEs and corporate and other buyers, including Government Departments and PSUs), the TReDS could deal with both receivables factoring as well as reverse factoring so that higher transaction volumes come into the system and facilitate better pricing.The transactions processed under TReDS will be "without recourse" to the MSMEs meaning that MSME vendors need not be responsible for non-payment of the trade receivables amount (from buyers).

* *Akansha Gupta, Executive (Academics), The ICSI.*

Views expressed in the Article is the sole expression of the Author and may not express the views of the Institute.

Participants under TReDS System

MSME sellers, corporate and other buyers, including the Government Departments and PSUs, and financiers (both banks and NBFC factors) are direct participants in the TReDS. The TReDS provide the platform to bring these participants together for facilitating uploading, accepting, discounting, trading and settlement of the invoices / bills of MSMEs. The bankers of sellers and buyers may be provided access to the system, where necessary, for obtaining information on the portfolio of discounted invoices / bills of respective clients. The TReDS may tie up with necessary technology providers, system integrators and entities providing dematerialisation services for providing its services

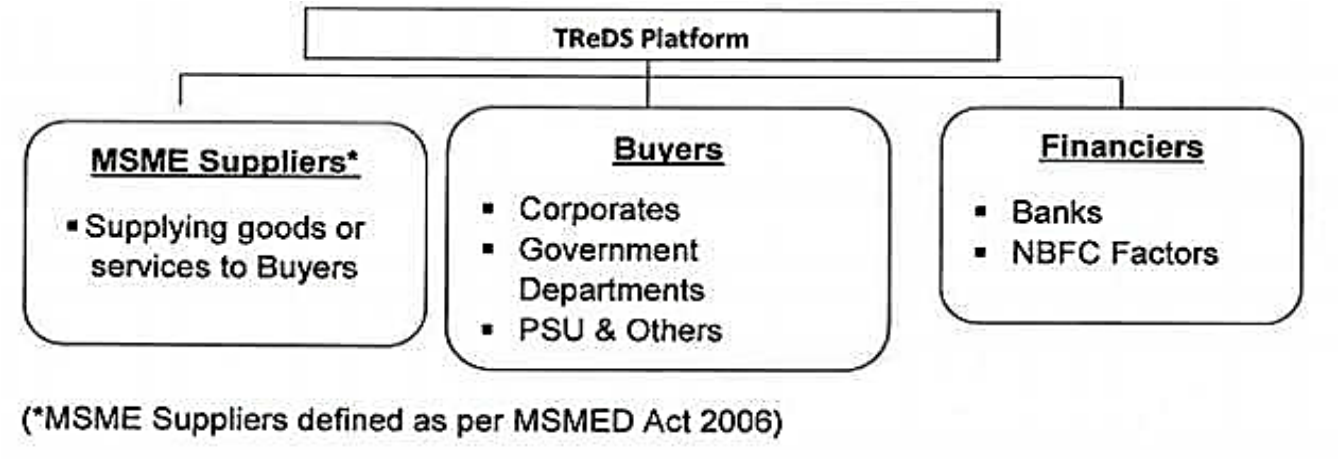

Image Source: Economic times

Working mechanism of TReDS

A seller has to upload the invoice on the platform. It then goes to the buyer for acceptance. Once the buyer accepts, the invoice becomes a factoring unit. The factoring unit then goes to auction. The financiers then enter their discounting (finance) rate. The seller or buyer, whoever is bearing the interest (financing) cost, gets to accept the final bid. TReDs then settle the trade by debiting the financier and paying the seller. The amount gets credited the next working day into the seller's designated bank account through an electronic payment mode. The second leg of the settlement is when the financier makes the repayment and the amount is repaid to the financier.

To summarize, following steps take place during financing / discounting through TReDS:

1. Creation of a Factoring Unit (FU) - standard nomenclature used in TReDS for invoice(s) or bill(s) of exchange - containing details of invoices / bills of exchange (evidencing sale of goods / services by the MSME sellers to the buyers) on TReDS platform by the MSME seller (in case of factoring) or the buyer (in case of reverse factoring);
2. Acceptance of the FU by the counterparty - buyer or the seller, as the case may be;
3. Bidding by financiers;
4. Selection of best bid by the seller or the buyer, as the case may be;
5. Payment made by the financier (of the selected bid) to the MSME seller at the agreed rate of financing / discounting;
6. Payment by the buyer to the financier on the due date.

The TReDS platform providers in the country

RBI has given license to three entities and they are governed by the Payment and Settlement Systems Act, 2007. These are Receivables Exchange of India (RXIL), which is a joint-venture between National Stock Exchange and SIDBI; A.TReDS, a joint-venture between Axis Bank and Mjunction Services and Mynd Solution.

Process flow and procedure

Once registered on one of the three TReDS platforms, here's how the process flow works, supported by RBI data:

1. The corporate buyer indicates the intention to buy by sending a purchase order to the MSME seller.
2. The MSME delivers the goods and generates an invoice. At this stage, there may or may not be an accepted bill of exchange between the buyer and the seller.
3. Based on the invoice or bill of exchange, the MSME goes on their registered TReDS platform creates a 'factoring unit.' The buyer also logs on to TReDS and accepts this factoring unit.
4. Based on the invoice or bill of exchange, the TReDS will standardise the time window available for corporate buyers to 'accept' the factoring units.
5. The MSME seller may decide to go on the TReDS platform and upload documents supporting evidence of the movement of goods.
6. The TReDS will have separate modules for transactions with invoices and transactions with Bills of Exchange.
7. Factoring units may be created in each module as required. Each such unit will have the same sanctity and enforceability as allowed for physical instruments under the 'Factoring Regulation Act, 2011' or under the 'Negotiable Instruments Act, 1881'.
8. The standard format and features of the 'factoring unit' will be decided by the TReDS platform. But each unit will represent a confirmed obligation from the buyer to pay. The unit will have all details such as information of the seller and the buyer, issue date, due date, amount due, etc.
9. The TReDS platforms should be able to filter these factoring units by any of the above parameters. This provides flexibility of operations to the stakeholders.
10. A notice or advice is created and automatically sent to the buyer's bank once the factoring unit and all the details have been generated.
11. These factoring units can be financed or bid for by any of the financiers registered on the TReDS platform. The final amount quoted by the financier can be viewed only by the MSME seller and not other financiers.
12. There will be a window period provided for financiers to quote these bids against factoring units. Further, financiers are free to choose how long their bids are valid.
13. The MSME then chooses and accepts any bid. The financier then gets the notification that their bid has been accepted.
14. Once a bid is accepted by the MSME seller, financiers cannot revise or change their bid.
15. The factoring unit will then get tagged as 'financed' and the funds will be deposited in the MSME seller's account by the financier on T+2 basis (two business days after the date of

acceptance). However, TReDS platforms can choose to speed up the time taken for payment. For instance, MSMEs on the M1xchange platform receive payment in T+1 days (one business day after the acceptance).

16. Simultaneously, financing by a financier generates another notice to the buyer's bank which enables a direct debit from the buyer's account to the financier's account on the due date. These are based on the settlement obligations generated by the TReDS platform.

17. On the due date, the corporate buyer transfers the due amount to the financier. All the while, the TReDS platform sends due notifications to corporate buyers and their banks reminding them of the amount due.

18. If the buyer doesn't pay on the due date, it will attract penal provisions and enable the banker to proceed against the corporate buyer.

19. Any action in this regard will be strictly non-recourse with respect to the MSME sellers.

20. After financing, these instruments are rated by the TReDS platform and may be further transacted or discounted among financiers in the secondary segment.

21. Any successful trade in the secondary segment will also automatically result in a direct debit authority being enabled by the buyer's bank in favour of the financier.

22. In case any factoring unit is unfinanced, the buyer corporate will pay the MSME seller outside of the TReDS platform.

Image sources: M1Xchange

Regulatory framework for TReDS

The TReDS, which undertakes clearing and settlement activities, is governed by the regulatory framework put in place by the Reserve Bank of India under the Payment and settlement Systems Act 2007 (PSS Act). It functions as an authorised payment system under the PSS Act, 2007. The activities of the TReDS as well as those of the participants in the TReDSare governed by the relevant legal and regulatory provisions applicable to various stakeholders in the system. As such, the processes and procedures of the TReDS should be compliant with such legal and regulatory provisions which may be issued and amended from time to time by respective authorities.

Conclusion

Trade Receivables Discounting System (TReDS) is a digital platform to support micro, small and medium enterprises (MSMEs) to get their bills financed at a competitive rate through an auction where multiple registered financiers can participate.

The RBI, thus by undertaking Trade Receivables Discounting System (TReD), has mechanized the financing of trade receivables of MSMEs from corporate buyers through two or more financiers.All the registered MSMEs can discount their bills of exchange or invoice through TReDS with a quoted price. This system will ensure the competitive pricing offer from the financer. The seller can opt for a financer of his choice. TReDS deals with discounting of both invoices and bills of exchange. It has been well-equipped with discounting and re-discounting of trade receivables thus facilitating higher volumes of transaction with better pricing.

The concept of TReDS, an institutional mechanism for financing trade receivables on a secure digital platform has been introduced by RBI with an intention to decrease the financing concerns faced by MSMEs in India,. Trade Receivable Exchanges, standardizes the process of funding MSMEs via Invoice Discounting and this will help the MSMEs in the long run to compete in the market.

In the Union Budget 2020-21, the Government has announced app-based invoice financing products to obviate the problem of delayed payments of MSME. The mechanism may prove complementary to the TReDS platform and would further alleviate the problem of delayed payments.

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(During the month of March – April, 2020)

Company Law

1. Invitation for Public Comments on Draft Valuers Bill, 2020

http://feedapp.mca.gov.in/

Ministry of Corporate Affairs had constituted a Committee of Experts (CoE) under the Chairpersonship of Shri M. S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) on 30th August 2019 to examine the need for an institutional framework for regulation and development of Valuation Profession. Based on comprehensive study and analysis of all relevant issues and taking the inputs of key stakeholders, the Committee has submitted its report to the Government of India on 31st March 2020 recommending to establish a National Institute of Valuers.

Accordingly, a Draft Valuers Bill, 2020 has been drafted to establish a National Institute of Valuers on the recommendations of the Committee.

Vide Notice dated 14th April, 2020 posted on the website of Ministry of Corporate Affairs, Public Comments were solicited on the Draft Valuers Bill, 2020 through email only. However, to ensure structured comments, it has been decided to invite public comments through the following weblink:- *http://feedapp.mca.gov.in*. Comments, if any, may be submitted online therein by end of business hours on **14th May 2020**.

Comments should not be sent separately through e-mail or Post**.** Those who have submitted comments by email are also requested to submit comments/suggestions through above link.

2. Sensitization of Nidhi companies towards compliance of provisions of Section 406 of the Companies Act, 2013 and Nidhi Rules, 2014 as amended vide Nidhi (Amendment) Rules, 2019 w.e.f 15.08.2019 and general public to invest in genuine and compliant Nidhis only

http://www.mca.gov.in/Ministry/pdf/Nidhi_19032020.pdf

In order to make regulatory regime for Nidhi Companies more effective and also to accomplish the objectives of transparency & investor friendliness in corporate environment of the country, the Central Government has recently amended the provisions related to NIDHI under the Companies Act, 2013 and the Rules (effective from 15.08.2019).

Under Nidhi Rules, 2014, Nidhi is a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

1. The amended provisions of the Companies Act (Section 406) and Nidhi rules (as amended w.e.f. 15.08.2019) require that the Nidhi companies have to apply to the Central government for updation of their status/ declaration as Nidhi Company in Form NDH-4.

2. The time-frame for applying to Central Government in form NDH-4 is as under:-

   (I) Companies incorporated as Nidhi before Nidhi Amendment Rules, 2019 i.e. 15.08.2019 have to apply within a period of one year from the date of its incorporation or within 9 months of the Nidhi Amendment Rules i.e. 15.08.2019 whichever is later.

   (II) Companies incorporated as Nidhi on or after Nidhi Amendment Rules, 2019 i.e. 15.08.2019 have to apply within 60 days of expiry of one year from the

date of incorporation or extended period (as granted by concerned Regional Director).

3. In case a company does not comply with the above requirements, it shall not be allowed to file Form No. SH–7 (Notice to Registrar for any alteration of share capital) and Form PAS–3 (Return of Allotment).

4. Such companies are required to ensure strict adherence to provision of Companies Act, 1956/2013 and Nidhi Rules, 2014 as amended. In case of contravention of the provisions of these Rules, the company and every officer of the company who is in default shall initially be punishable with fine which may extend to five thousand rupees and further fine in case of continuous violations.

5. Investors are advised to verify the status of Nidhi company from the notification issued by Central Government in official gazette before making any investment or deposit.

3. The Companies (Amendment) Bill, 2020

http://www.mca.gov.in/Ministry/pdf/Amendment_18032020.pdf

To further amend the Companies Act, 2013 based on the recommendations of the CLC Committee Report submitted in November, 2019, The Companies (Amendment) Bill, 2020 was introduced in Lok Sabha on 17th March 2020

Objects of the Companies (Amendment) Bill, 2020

Based on the recommendations of the CLC and internal review by the Government, it is proposed to amend various provisions of the Act to decriminalise minor procedural or technical lapses under the provisions of the said Act, into civil wrong; and considering the overall pendency of the courts, a principle based approach was adopted to further remove criminality in case of defaults, which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest. In addition, the Government also proposes to provide greater ease of living to corporates through certain other amendments to the Act.

The Companies (Amendment) Bill, 2020, inter alia, provides for the following namely:

(a) to decriminalise certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest;

(b) to empower the Central Government to exclude, in consultation with the Securities and Exchange Board, certain class of companies from the definition of "listed company", mainly for listing of debt securities;

(c) to clarify the jurisdiction of trial court on the basis of place of commission of offence under section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be;

(d) to incorporate a new Chapter XXIA in the Act relating to Producer Companies, which was earlier part of the Companies Act, 1956;

(e) to set up Benches of the National Company Law Appellate Tribunal;

(f) to make provisions for allowing payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases;

(g) to relax provisions relating to charging of higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in Section 403;

(h) to extend applicability of Section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups;

(i) to exempt any class of persons from complying with the requirements of Section 89 relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;

(j) to reduce timelines for applying for rights issues so as to speed up such issues under Section 62;

(k) to extend exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under Section 117;

(l) to provide that the companies which have Corporate Social Responsibility spending obligation up to fifty lakh rupees shall not be required to constitute the Corporate Social Responsibility Committee and to allow eligible companies under Section 135 to set off any amount spent in excess of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years;

(m) to provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases;

(n) to provide for specified classes of unlisted companies to prepare and file their periodical financial results;

(o) to allow direct listing of securities by Indian companies in permissible foreign jurisdictions as per rules to be prescribed.

Securities Laws

1. Securities and Exchange Board of India (Foreign Portfolio Investors) (Amendment) Regulations, 2020 (April 7, 2020)

In Regulation 5, clause (a), sub - clause (iv), under category I foreign portfolio investor, after the words "member countries" and before the words "which are", the words and symbol ", or from any country specified by the Central Government by an order or by way of an agreement or treaty with other sovereign Governments," shall be inserted. The amended regulation is now read as:

"5(a)(iv) Entities from the Financial Action Task Force member countries, *or from any country specified by the Central Government by an order or by way of an agreement or treaty with other sovereign Governments,* which are-"

(For complete details, please click on https://www.sebi.gov.in/legal/regulations/apr-2020/sebi-foreign-portfolio-investors-amendment-regulations-2020_46504.html)

Other Updates

SEBI Consultative Paper- For Public Comments

1. Preferential Issues in companies having stressed assets. (April 22, 2020)

The objective of this discussion paper is to seek comments / views from all stakeholders including listed companies, market intermediaries and public on pricing of Preferential Issues and exemption from making an open offer for acquisitions in listed Companies having Stressed Assets.

(The full text of Consultative Paper is accessible at https://www.sebi.gov.in/reports-and-statistics/reports/apr-2020/consultation-paper-preferential-issue-in-companies-having-stressed-assets_46542.html)

Direct Tax Law

1. Corrigendum to Circular No. 4 of 2020 dated 20th January,2020 regarding Income-Tax Deduction from Salaries during the Financial Year 2019- 2020 under Section 192 of the Income-Tax Act, 1961

In Circular No.04/2020 dated 16th January, 2020 on the above mentioned subject, it is to state that Para 3.1 under heading "Method of Tax Collection" is modified as below:

For sentence 3 of Para 3.1 : "No tax, however, will be required to be deducted at source in a case unless the estimated salary income including the value of perquisites, for the Financial Year exceeds Rs 2,50,000 or Rs 3,00,000 or Rs 5,00,000, as the case may be, depending upon the age of the employee."

May be read as : "No tax, however, will be required to be deducted at source in a case unless the estimated salary income including the value of perquisites is taxable after giving effect to the exemptions, deductions and relief as applicable."

https://www.incometaxindia.gov.in/communications/circular/corrignedum_cir4_2020.pdf

2. Circular C1 of 2020 dated 13th April, 2020 - Clarification in respect of option under section 115BAC of the Income-tax Act, 1961

Section 115BAC of the Income-tax Act, 1961 inserted by the Finance Act, 2020 w.e.f. the assessment year 2021-22provides that a person, being an individual or a Hindu undivided family having income other than income from business or profession", may exercise option in respect of a previous year to be taxed under the said section 115BAC alongwith his return of income to be furnished under sub-section (1) of section 139 of the Act for each year. The concessional rate provided under section 115BAC of the Act is subject to the condition that the total income shall be computed without specified exemption or deduction, setoff of loss and additional depreciation.

The option is required to be exercised at the time of filing of return, the deductor, being an employer, would not know if the person, being an employee, would opt for taxation under section 115BAC of the Act or not. Hence, there is lack of clarity regarding whether the provisions of section 115BAC of the Act are to be considered at the time of deducting tax.

In order to avoid the genuine hardship in such cases, the Boardhereby clarifies that an employee, having income other than the income under the head "profit and gains of

business or profession" and intending to opt for the concessional rate under section 115BAC of the Act, may intimate the deductor, being his employer, of such intention for each previous year and upon such intimation, the deductor shall compute his total income, and make TDS thereon in accordance with the provisions of section 115BAC of the Act. If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC of the Act.

It is also clarified that the intimation so made to the deductor shall be only for the purposes of TDS during the previous year and cannot be modified during that year. However, the intimation would not amount to exercising option in terms of sub-section (5) of section 115BAC of the Act and the person shall be required to do so alongwith the return to be furnished under sub-section (1) of section 139 of the Act for that previous year. Thus, option at the time of filing of return of income under sub-section (1) of section 139 of the Act could be different from the intimation made by such employee to the employer for that previous year.

Further, in case of a person who has income under the head "profit and gains of business or profession" also, the option for taxation under section 115BAC of the Act once exercised for a previous year at the time of filing of return of income cannot be changed for subsequent previous years except in certain circumstances.

Accordingly, the above clarification would apply to such person with a modification that the intimation to the employer in his case for subsequent previous years must not deviate from the option under section 115BAC of the Act once exercised in a previous year.

https://www.incometaxindia.gov.in/communications/circular/circular_c1_2020.pdf

3. Circular No. 8 of 2020 dated 13th April, 2020 - Clarification regarding short deduction of TDS/TCS due to increase in rates of surcharge by Finance (No.2) Act

The Finance Act, 2019 provided for increase in the rate of surcharge as under:

Sl. No.	*Income slab*	*Surcharge before the Act*	*Enhanced Surcharge as provided by the Act*
1	Less than 50 lakh rupees	Nil	Nil
2	50 lakh rupees but less than 1crore rupees	10%	10%
3	1 crore rupees but less than 2 crore rupees	15%	15%
4	2 crore rupees but less than 5 crore rupees	15%	25%
5	5 crore rupees and above	15%	37%

The enhanced rates of surcharge were applicable from the 1st day of April, 2019 for previous year 2019-20 relevant to assessment year 2020-21. Accordingly, TDS/TCS under various provisions of the Income-tax Act is required to be deducted / collected after taking into account the enhanced rate of surcharge.

Several cases have come to the notice of the Central Government wherein deductor / collectors were held to be an assessee in default for short deduction of TDS/short collection of TCS in cases where final transaction was done before laying of the Finance (No.2) Bill, 2019 in the Parliament, i.e. 5th July, 2019. Since the transaction was completed before the rates of enhanced surcharge were announced and the concerned deductee/payee is required to furnish their Income-tax return for the relevant assessment year, it has been

requested that in such cases, deductor or collector should not be held to be an assessee in default under section 201 of the Income-tax Act.

The Board clarified that a person responsible for deduction/collection of tax under any provision of the Income-tax Act will not be considered to be an assessee in default in respect of transactions where:

a) such transaction has been completed and entire payment has been made to the deductee/payee on or before 5th July, 2019 and there is no subsequent transaction between the deductor/collector and the deductee/payee in the financial year 2019-20 from which the shortfall of tax could have been deducted/collected by the deductor/collector;

b) TDS has been deducted or TCS has been collected by such deductor/collector on such sum as per the rates in force as per the provisions prior to the enactment of the Act;

c) such tax deducted or collected has been deposited in the account of Central Government by the deductor/collector on or before the due date of depositing the same;

d) TDSITCS statement has been furnished by such person on before the due date of filing of the said statement.

The above relaxation does not absolve the deductee/payee to pay proper tax including enhanced surcharge by advance tax or self-assessment tax and file return of income after paying such tax.

https://www.incometaxindia.gov.in/communications/circular/circular_8_2020.pdf

4. Notification No. 18/2020 Dated 18thMarch, 2020 - The Direct Tax Vivad Se Vishwas Rules, 2020

The Central Government hereby makes the Direct Tax Vivad se Vishwas Rules, 2020 which shall come into force on the date of their notification in the Official Gazette. The Rules provide the following:

- Definitions
- Form of declaration and undertaking
- Form of certificate by designated authority
- Intimation of payment
- Manner of furnishing
- Order by designated authority
- Laying down of procedure, formats and standards
- Manner of computing disputed tax in cases where loss or unabsorbed depreciation is reduced
- Manner of computing disputed tax in cases where Minimum Alternate Tax (MAT) credit is reduced
- Manner of computing disputed tax in certain case

https://www.incometaxindia.gov.in/communications/notification/notification_no_18_2020.pdf

5. Notification No. 20/2020 Dated 20th March, 2020

The Central Board of Direct Taxes hereby authorizes the Assessing Officer working in the Principal Chief Commissioner of Income-tax (international Taxation) Region having Jurisdiction in respect of the assessees for the purpose of the Income-tax Act, 1961, to exercise or perform all or any of the powers and functions conferred on, or, assigned to an Assessing Officer for the purpose of Chapter VIII of Finance Act, 2016.

https://www.incometaxindia.gov.in/communications/notification/notification20_2020.pdf

Indirect Tax Laws

A. Goods and Services Tax

1. Notification to exempt foreign airlines from furnishing reconciliation Statement in FORM GSTR-9C.

[Notification No. 09/2020 - Central Tax, dated 16th March, 2020]

The foreign company which is an airlines company shall not be required to furnish reconciliation statement in FORM GSTR-9C to the Central Goods and Services Tax Rules, 2017 under subsection (2) of section 44 of the said Act read with sub-rule (3) of rule 80 of the said rules:

Provided that a statement of receipts and payments for the financial year in respect of its Indian Business operations, duly authenticated by a practicing Chartered Accountant in India or a firm or a Limited Liability Partnership of practicing Chartered Accountants in India is submitted for each GSTIN by the 30th September of the year succeeding the financial year.

For further details please visit : *http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-09-central-tax-english-2020.pdf*

2. Circular to issue clarification in respect of appeal in regard to non-constitution of Appellate Tribunal.

[Circular No. 132/2/2020 - CGST, dated 18th March, 2020]

Various representations had been received that the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. The appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal, such appeals cannot be disposed.

As of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

For further details please visit : *http://cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-132.pdf*

3. Notification to provide special procedure for taxpayers in Dadra and Nagar Haveli and Daman and Diu consequent to merger of the two UTs.

[Notification No. 10/2020 - Central Tax, dated 21st March, 2020]

1. The Government notified that those persons whose principal place of business or place of business was in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2020; and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th day of January, 2020 onwards will follow the following special procedure till the 31st day of May, 2020 as mentioned below.

2. The said registered person shall -
   (i) ascertain the tax period as per sub-clause (106) of section 2 of the said Act for the purposes of any of the provisions of the said Act for the month of January, 2020 and February, 2020 as below:-
      (a) January, 2020: 1st January, 2020 to 25th January, 2020;
      (b) February, 2020: 26th January, 2020 to 29th February, 2020;
   (ii) irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from the 26th January, 2020 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act;
   (iii) who have registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu and the erstwhile Union territory of Dadra and Nagar Haveli till the 25th day of January, 2019 have an option to transfer the balance of input tax credit (ITC) after the filing of the return for January, 2020, from the registered Goods and Services Tax Identification Number (GSTIN) in the erstwhile Union territory of Daman and Diu to the registered GSTIN in the new Union territory of Daman and Diu and Dadra and Nagar Haveli by following the procedure as below:-

      (a) the said class of persons shall intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within one month of obtaining new registration;
      (b) the ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile Union territory of Daman and Diu, for the tax period immediately before the transition date;
      (c) the transfer of ITC shall be carried out through the return under section 39 of the said Act for the tax period immediately before the transition date and the transferor GSTIN shall debit the said ITC from its electronic credit ledger in Table 4(B)(2) of FORM GSTR-3B and the transferee GSTIN shall credit the equal amount of ITC in its electronic credit ledger in Table 4(A)(5) of FORM GSTR-3B.

3. The balance of Union territory taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Daman and Diu, as on the 25th day of January, 2020, shall be transferred as balance of Union territory tax in the electronic credit ledger.

For further details please visit *: http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-10-central-tax-english-2020.pdf*

4. Notification to provide special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.

[Notification No. 11/2020 - Central Tax, dated 21st March, 2020]

The Government notified that those registered persons, who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 , undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), as the class of persons who shall follow the following special procedure, from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process, as mentioned below.

Registration- The said class of persons shall, with effect from the date of appointment of IRP / RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration (hereinafter referred to as the new registration) in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP:

Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

Return- The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.

Input tax credit-(1)The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made there under, except the provisions of sub-section (4) of section 16 of the said Act and sub-rule (4) of rule 36 of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the said rules).

(2) Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the said Act and the rules made thereunder, except the provisions of sub-rule (4) of rule 36 of the said rules.

Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

Explanation- For the purposes of this notification, the terms "corporate debtor", "corporate insolvency resolution professional", "interim resolution professional" and "resolution professional" shall have the same meaning as assigned to them in the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

For further details please visit : *http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-11-central-tax-english-2020.pdf*

5. Notification to waive off the requirement for furnishing FORM GSTR-1 for 2019-20 for taxpayers who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate)

[Notification No. 12/2020 - Central Tax, dated 21st March, 2020]

The Central Government, on the recommendations of the Council, hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2019- Central Tax, dated the 23rd April, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 322(E), dated the 23rd April, 2019, namely:–

In the said notification, in paragraph 2, the following proviso shall be inserted, namely: –

"Provided that the said persons who have, instead of furnishing the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 have furnished a return in FORM GSTR-3Bunder the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules) for the tax periods in the financial year 2019-20, such taxpayers shall not be required to furnish the statement in outward supply of goods or services or both in FORM GSTR1 of the said rules or the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 for all the tax periods in the financial year 2019-20."

For further details please visit : *http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-12-central-tax-english-2020.pdf*

6. Circular to clarify issues in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules

[Circular No. 133/03/2020 - CGST, dated 23rd March, 2020]

Clarification in respect of apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ownership of business. Certain doubts raised regarding the interpretation of subsection (3) of section 18 of the Central Goods and Services Tax Act, 2017 and sub-rule (1) of rule 41of the Central Goods and Services Tax Rules, 2017 in the context of business reorganization is given below:

S. No.	Issue / Question	Clarification
a	(i) In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.	Proviso to sub-rule (1) of rule 41 of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to sub-rule (1) of rule 41 of the CGST Rules states that "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under sub rule (1) of rule 41 of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level. **Illustration** A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P are Rs 60 crore and Rs 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crore are transferred to company ABC in State of M.P, while assets amounting to Rs 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. 30/60 = 0.5 and not on the basis of all-India ratio of value of assets, i.e. 40/100=0.4. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P., i.e. 10/40 = 0.25.
	(ii) Is the transferor required to file FORM GST ITC – 02 in all States where it is registered?	No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

b	The proviso to rule 41 (1) of the CGST Rules explicitly mentions 'demerger'. Other forms of business reorganization where part of business is hived off or business in transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC ?	Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities.

For further details please visit : *http://cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-133.pdf*

7. Circular to clarify issues in respect of in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016
[Circular No. 134/04/2020 - CGST, dated 23rd March, 2020]

Clarification on issues being faced by entities covered under Insolvency and Bankruptcy Code, 2016

S. No.	Issue	Clarification
1	How are dues under GST for pre-CIRP period be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited
2	Should the GST registration of corporate	It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of

	debtor be cancelled?	cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.
3	Is IRP/RP liable to file returns of pre-CIRP period?	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.

For further details please visit : *http://cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-134.pdf*

8. Notification to make third amendment (2020) to CGST Rules.

[Notification No. 16/2020 - Central Tax, dated 23rd March, 2020]

The Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely :-

1. (1) These rules may be called the Central Goods and Services Tax (Third Amendment) Rules, 2020.
   (2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.
2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 8, after sub-rule (4), the following sub-rule shall be inserted, namely:-
   "(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.".
3. In the said rules, in rule 9, in sub-rule (1), with effect from 01.04.2020, the following subrule shall be inserted, namely:-
   "Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.".
4. In the said rules, for rule 25, the following rule shall be substituted, namely:-
   "Physical verification of business premises in certain cases.-Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.".

For further details please visit : *http://cbic.gov.in/resources//htdocs-cbec/gst/notfctn-16-central-tax-english-2020.pdf;jsessionid =FFD5BCFD224CBE996D04A673F6ABB472*

9. Notification to specify the class of persons who shall be exempted from aadhar authentication.

[Notification No. 17/2020 - Central Tax, dated 23rd March, 2020]

The Central Government, on the recommendations of the Council, hereby notifies that the provisions of sub-section (6B) or subsection (6C) of the said Act shall not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons, namely:–

(a) Individual;

(b) authorised signatory of all types;

(c) Managing and Authorised partner; and

(d) Karta of an Hindu undivided family.

10. Notification to notify the date from which an individual shall undergo authentication, of Aadhaar number in order to be eligible for registration.

[Notification No. 18/2020 - Central Tax, dated 23rd March, 2020]

The Central Government notifies the date of coming into force of this notification as the date, from which an individual shall undergo authentication, of Aadhaar number, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017 in order to be eligible for registration:

Provided that if Aadhaar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

2. This notification shall come into effect from the 1 st day of April, 2020.

11. Circular on Clarification on refund related issues – Reg

[Circular No. 135/05/2020 - CGST, dated 31st March, 2020]

The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years. Registered persons having aggregate turnover of up to Rs. 1.5 crore in the preceding financial year or the current financial year opting to file FORM GSTR-1 on quarterly basis, can only apply for refund on a quarterly basis or clubbing successive quarters as aforesaid. However, refund claims under categories listed at (a), (c) and (e) in para 3 above must be filed by the applicant chronologically. This means that an applicant, after submitting a refund application under any of these categories for a certain period, shall not be subsequently allowed to file a refund claim under the same category for any previous period. This principle / limitation, however, shall not apply in cases where a fresh application is being filed pursuant to a deficiency memo having been issued earlier.

It has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply.

For further details please visit : *http://cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_135_5_2020.pdf;jsessionid=D6265111EA3AEB02507B45813A12BBB8*

B. Customs

12. Notification to amend notification No. 8/2020-Customs dated 02.02.2020 to make changes consequential to enactment of Finance Act, 2020.

[Notification No. 19/2020 - Customs, dated 9th April, 2020]

The Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notifications of the Government of India in the Ministry of Finance (Department of Revenue), No. 08/2020-Customs, dated the 2nd February, 2020, published in the Gazette of India, Extraordinary, vide number G.S.R. 68 (E), dated the 2nd February, 2020, namely:-

In the said notification, -

(i) for the words, figures and brackets "clause 139 of the Finance Bill, 2020, which, by virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law", the words, figures and brackets, "section 141 of Finance Act, 2020 (12 of 2020)" shall be substituted;

(ii) for the words "under the said clause of the Finance Bill", the words "under the said section of the said Finance Act" shall be substituted.

Banking Laws

1. RBI has issued notification no. RBI/2019-20/196DOR.NBD.No.44/16.13. 218/ 2019-20 on March 28, 2020 on Guidelines for Licensing of Small Finance Banks (SFB) in Private Sector.

(i) To harmonise the instructions for existing SFBs with those SFBs to be licensed under 'Guidelines for 'on-tap' Licensing', it has been decided to:
   (a) Grant general permission to all existing SFBs to open banking outlets subject to adherence to Unbanked Rural Centre norms as per RBI circular on 'Rationalisation of Branch Authorisation Policy - Revision of Guidelines' dated May 18, 2017, as amended from time to time.
   (b) Exempt all existing SFBs from seeking prior approval of Reserve Bank for undertaking such non risk sharing simple financial service activities, which do not require any commitment of own fund, after three years of commencement of business of SFB.

(ii) Further, in case of existing SFBs, it is clarified that –
   (a) Whether a promoter could cease to be a promoter or could exit from the bank after completion of a period of five years, would depend on the RBI's regulatory and supervisory comfort / discomfort and SEBI regulations in this regard at that time (Reference: Response to query number 101 of 'Clarifications to queries on guidelines for licensing of Small Finance Banks in the Private Sector' dated January 1, 2015).

(b) The phrase 'paid-up equity capital' in 'Guidelines for Licensing of SFBs in Private Sector - 2014' means 'paid-up voting equity capital' (Reference: Response to query number 104 of 'Clarifications to queries on guidelines for licensing of Small Finance Banks in the Private Sector' dated January 1, 2015).

2. RBI has issued notification no. RBI/2019-20/207DOR.AML.BC.No. 61/ 14.01.001/2019-20 on April 01, 2020 on Amendment to Master Direction (MD) on KYC.

The Government of India, vide Gazette Notification G.S.R. 228(E) dated March 31, 2020 has notified amendment to the Prevention of Money-laundering (Maintenance of Records) Rules, 2005. Consequent to the aforementioned amendment to the PML Rules, Master Direction on KYC dated February 25, 2016 has been updated as under:

Clause (g) has been inserted in the conditions stipulated for Small Accounts in Section 23 of the MD. Clause (g) reads as,

"Notwithstanding anything contained in clauses (e) and (f) above, the small account shall remain operational between April 1, 2020 and June 30, 2020 and such other periods as may be notified by the Central Government."

The Master Direction on KYC dated February 25, 2016, is hereby amended to reflect the above change and shall come into force with immediate effect.

Labour Laws

1. Registration of New Public & Private Limited Companies for EPFO & ESIC now on MCA Portal

As part of the ongoing efforts to improve India's ranking in the Doing Business Report 2021, The Ministry of Labour & Employment has completed the reform to "Integrate process of registration for GST, EPFO, ESIC and Profession Tax for Maharashtra with company incorporation" in tandem with the MCA.

The reform has been completed by making the registration of new Public, Private Limited Companies and One Person Company for ESIC and EPFO mandatory through the Spice+ and AGILE-PRO eforms of MCA w.e.f., 15-02-2020. Registration for ESIC and EPFO for new companies as above has been stopped on Shram Suvidha Portal from 15.02.2020. A message to this effectis displayed on the Shram Suvidha Portal and the website of Ministry of Labour and Employment www.labour.gov.in as follows:

Registration for EPFO & ESIC for new Public& Private Limited Companies and One Person Company has been stopped on Shram Suvidha Portalfrom 15.02.2020.

With effect from 15.02.2020, new Public & Private Limited Companies and One Person Company shall get registration number for EPFO & ESIC on MCA portal (www.mca.gov.in) through Spice + and AGILE-PRO eforms) only at the time of incorporation.

However, the above new companies will have to comply with the provisions of EPF & MP Act, 1952, and ESI Act, 1948 when they cross the threshold limit of employment under the respective Acts.

2. Employees' Pension Scheme (Amendment) Scheme, 2020

Representations have been received from individual Employees' Pension Scheme (EPS), 1995 pensioners as well as various pensioners associations raising issue of amendments in EPS, 1995 as well as demands, inter-alia, regarding enhancement of minimum monthly pension and restoration of commuted value of pension.

Considering the demands of EPS, 1995 pensioners, the Government had constituted a High Empowered Monitoring Committee for complete evaluation and review of EPS, 1995. Based on Committee's recommendation, the Government vide Notification G.S.R. No. 132(E) has notified decision to restore normal pension after completion of fifteen years from the date of such commutation, in respect of those members who availed the benefit of commutation of pension under the erstwhile paragraph 12A of this Scheme, on or before the 25th day of September, 2008.

Economic and Commercial Laws

1. Revised Timelines for Sunset Review Investigation for Anti-dumping Duty

Vide Trade Notice No. 02/2017 dated 12th December, 2017, the Directorate General of Trade Remedies (DGTR), Ministry of Commerce and Industry had prescribed the procedure and timelines for initiating an Anti-dumping Sunset Review investigation (SSR) under the Customs Tariff Act 1975 and the Anti-dumping Rules. The said notice prescribed a minimum time of 270 days prior to the expiry of the anti-dumping measure in force, for filing the SSR application, which could be relaxed till 240 days with justification of delay.

It has been observed that the prescription of time limit for filing the SSR application, i.e. either 270 days prior to expiry of measure or 240 days prior to expiry of measure with justification of delay, has brought a reasonable degree of discipline and has resulted in the SSR application being filed well before the expiry of the measure. However, representations are often received from the domestic industry that on account of unavoidable circumstances, they are unable to adhere to the prescribed timeline of minimum 240 days prior to expiry of measure, in certain situations.

To redress this grievance of the industry, a Trade Notice (No. 02/2020) has been issued by DGTR on 20th April 2020, providing a relaxation of the said time limit up to 180 days prior to the date of expiry of the measure for filing the SSR application, on account of genuine difficulty faced by the domestic industry in meeting the deadline of 270 days. The Designated Authority may further relax the timeline up to 120 days prior to the expiry of the measure, in exceptional circumstances.

2. Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020

In exercise of the powers conferred by clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Central Government hereby makes the following rules further to amend the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, namely:-

1. Short title and commencement.— (1) These rules may be called the Foreign Exchange Management (Non-debt Instruments) Amendment Rules, 2020.

   (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, in rule 6, in clause (a), for the provisos, the following provisos shall be substituted namely:-

   "Provided that an entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval:

   Provided further that, a citizen of Pakistan or an entity incorporated in Pakistan shall invest only under the Government route, in sectors or activities other than defence, space, atomic energy and such other sectors or activities prohibited for foreign investment:

   Provided also that in the event of the transfer of ownership of any existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction or purview of the above provisos, such subsequent change in beneficial ownership shall also require government approval".

   Note : The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), *vide* notification number S.O.3732 (E), dated the 17th October, 2019 and subsequently amended vide S.O. 4355 (E), dated the 5th December 2019.

3. Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020

In exercise of the powers conferred by clause (a) of sub-section (1), sub-section (3) of section 7 and clause (b) of sub-section (2) of section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015 [Notification No. FEMA 23(R)/2015-RB dated January 12, 2016. Available at *https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10256&Mode=0]* (hereinafter referred to as 'the Principal Regulations'), namely:

1. Short title and commencement: -

1. These Regulations may be called the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2020.
2. In the Principal Regulations, in regulation 9, in sub-regulation (1) and sub-regulation (2)(a), for the words "nine months", the words "nine months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time" shall be substituted. Similarly, in sub-regulation (1) (a), for the words "fifteen months", the words "fifteen months or within such period as may be specified by the Reserve Bank, in consultation with the Government, from time to time "shall be substituted.
3. In Regulation 9 (1)(b), for the words "period of nine months or fifteen months, as the case may be", the words "said period" shall be substituted.
4. In proviso to Regulation 9 (2)(a), for the words "period of nine months", the words "said period" shall be substituted.

Detailed circular is available at *https://www.rbi.org.in/Scripts/BS_viewfemanewnotification.aspx*

Cyber Laws

1. E-mails for facilitating faster refund can not be misconstrued as harassment : CBDT

The Central Board of Direct Taxes (CBDT) responding to some observations being circulated on social media alleging that the Income Tax Department is pursuing recovery proceedings and using arm-twisting methods by adjusting outstanding demands of the start-ups, stated that these observations are completely unfounded and are total misrepresentation of facts.

The CBDT said that its email seeking clarification from all those who are entitled to get tax refund but also have outstanding tax to pay cannot be misconstrued as harassment. These computer generated emails have been sent to almost 1.72 lakh assessees which includes all classes of taxpayers – from individual to HUF to firms, big or small companies including start-ups and therefore to say that start-ups are being singled out and harassed is total misrepresentation of facts.

The CBDT said that these emails are part of the faceless communication which protects public money by ensuring that refunds are not released without adjusting against outstanding demand, if any. These emails are auto-generated u/s 245 of the I-T Act in refund cases where there is any outstanding demand payable by the assessee. In case the outstanding demand has already been paid by the taxpayer or it has been stayed by the higher tax authorities, the taxpayers are requested through these mails to provide the status update so that while issuing the refund, these amounts are not held back and their refunds are released forthwith.

The CBDT said that such communications are just a request for seeking an update response from the assessee for the proposed adjustment of refund with the outstanding demand and cannot be misconstrued as a notice of recovery or be perceived as so-called arm-twisting by the I-T department because the department is duty bound to protect public money by adjusting the outstanding demand before releasing the refund.

The CBDT further said that in order to provide hassle-free tax environment to the start-ups, a consolidated Circular no. 22/2019 dated 30th August 2019 was issued by the CBDT. Apart from laying down the modalities for assessment of start-ups, it also stipulated that the outstanding income tax demands relating to additions made under Section 56(2)(viib) would not be pursued. Any other income tax demand of such start-ups would also not be pursued unless the demand was confirmed by ITAT. Furthermore, a start-up cell was also constituted to redress grievances of start-ups and address other tax related issues of such concerns.

Explaining the extant procedure pertaining to recovery of outstanding demands in the case of an assessee, the CBDT said that an opportunity is provided by the department to the assessee to either clear the demand or intimate the status of said demand to the I-T Department. Invariably, such communication is made by the department by sending an email to the assessee informing it of the quantum of outstanding demand and providing an opportunity to pay the demand or respond with evidence regarding payment of the same if already made, or update the status of any other action on it.

The CBDT said that the assessee on its part is required to furnish details of the pending demand, whether it has been paid or has been stayed by any appellate/competent authority so that the department could keep the same in abeyance and do not deduct this amount from refund.

Thus, following the existing procedure of recuperation of outstanding demand, similar mails have also been sent to 1.72 lakh assessees including start-ups to intimate to the I-T department, the status of the demand outstanding and whether it has been stayed by the competent authority so that appropriate action can be taken for release of refunds without delay to the start-up. However, not providing such a response to the emails of I-T dept and raising false alarm is contrary to the spirit of the Circular 22/2019 of CBDT and is totally unjustified.

The CBDT further requested the start-ups to respond to its emails at the earliest so that further necessary action can be taken by the I-T Department to release the refunds immediately wherever due, in accordance with the extant procedure.

The CBDT reiterated that pursuant to the 8th April 2020 declaration vide an earlier Press Release of the Government, the CBDT has till date issued nearly 14 lakh refunds involving an amount of over Rs. 9,000 crore to various taxpayers including individuals, HUFs, proprietors, firms, corporate, start-ups, MSMEs in order to help taxpayers in the pandemic situation. Many refunds are pending for the want of response from the taxpayers and will be issued at the earliest possible once the information is updated.

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Company Law Corner

AUDIT AND AUDITORS

[Section 139 to 148 of Companies Act, 2013]

Introduction

An Auditor is an independent person/firm who is engaged to do audit, review and verify the accuracy of financial records and to express an opinion on whether or not the company's financial statements are free from any material misstatements due to fraud or error.

Appointment of first Auditors

For Government Companies [Section 139(7)] of the Companies Act, 2013]

In the case of a Government company or any other company owned or controlled, directly or indirectly, 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:

the first auditor shall be appointed by the **Comptroller and Auditor-General (CAG) of India** within **sixty days** from the date of registration of the company and in case the Comptroller and Auditor-General (CAG) of India does not appoint such auditor within the said period, the Board of Directors of the company shall appoint such auditor within the next thirty days; and

In the case of failure of the Board to appoint such auditor within the next thirty days, it shall inform the members of the company who shall appoint such auditor within the sixty days at an extraordinary general meeting, who shall hold office till the conclusion of the first annual general meeting.

For Companies other than Government Companies [Section 139(6) of the Companies Act, 2013]

The first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and

In the case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within ninety days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

Appointment of Subsequent Auditor other than first Auditor

In case of a Government company [Section 139(5) of the Companies Act, 2013] In case of a Government company or any other company owned or controlled, directly or indirectly, 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:

The Comptroller and Auditor General (CAG) of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

For Companies other than Government Companies [Section 139(1) of the Companies Act, 2013]

Every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.

Manner and procedure of selection of auditors by the members of the company at Annual General meeting [Rule 3 of the Companies (Audit and Auditors) Rules, 2014]

The Board shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.

The Board/ Audit committee shall have regard to any order or pending proceeding relating to professional matters of conduct against the proposed auditor before the Institute of Chartered Accountants of India or any competent authority or any Court.

In case, the company is required to constitute the Audit committee, the Audit committee shall consider the above points and recommend the name of an individual or a firm as auditor to the Board for consideration and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the annual general meeting for appointment.

In case, the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.

Or In case, if the Board disagrees with the recommendation of the Audit Committee, it shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendation, the Board shall record reasons for its disagreement with the committee and send its own recommendation for consideration of the members in the annual general meeting; and if the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the annual general meeting.

The auditor appointed in the annual general meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting.

Compliance Requirements

Documents Required from Auditor before Appointment

- Before such proposal for appointment is made, the **written consent** of the auditor to such appointment, and a **certificate** from him or it that the appointment, if made, shall be in accordance with the following conditions that -
    - the individual or the firm, is eligible for appointment and is not disqualified for appointment under the Companies Act, 2013, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
    - the proposed appointment is as per the term provided under the Companies Act, 2013;

- the proposed appointment is within the limits laid down by or under the authority of the Companies Act, 2013;
- the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- that the auditor satisfies the criteria provided in section 141 of the Companies Act, 2013.

Company

- The Company shall place the matter before the General meeting with specific mention of Tenure and term & Conditions of the Appointment**.**
- The company shall inform the auditor concerned of his or its appointment by issuing the Appointment letter.
- The Company should take **written confirmation** from the Auditors for his appointment.
- The Company shall file a notice of such appointment with the Registrar within fifteen days of the meeting in which the auditor is appointed in form ADT-1.

Eligibility, Qualifications and Disqualifications of Auditors

Qualification

- **Individual :** A person shall be eligible for appointment as an auditor of a company only if he is a chartered accountant
- **Firm:** A firm whereof majority of partners are Chartered Accountant and practicing in India may be appointed by its firm name to be auditor of a company. However, the partners who are chartered accountants shall be authorised to act and sign on behalf of the firm.

Eligibility

The following persons shall not be eligible for appointment as an auditor of a company, namely:—

(a) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(b) an officer or employee of the company;

(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(d) a person who, or his relative or partner—

(i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

Provided that the relative may hold security or interest in the company of face value not exceeding one thousand rupees or such sum as may be prescribed;

(ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; or

(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed;

(e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed;

(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel;

(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies.

(h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction;

(i) a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Explanation.—For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144.

Disqualification

Where a person appointed as an auditor of a company incurs any of the disqualifications mentioned as above after his appointment, he shall vacate his office as such auditor and such vacation shall be deemed to be a **casual vacancy** in the office of the auditor.

Appointment of Auditor in Casual Vacancy [Section 139(8) of the Companies Act, 2013]

Any casual vacancy in the office of an auditor shall-

(i) in the case of a company other than a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Board of Directors within thirty days, but if such casual vacancy is as a result of the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting;

(ii) in the case of a company whose accounts are subject to audit by an auditor appointed by the Comptroller and Auditor-General of India, be filled by the Comptroller and Auditor General of India within thirty days:

Provided that in case the Comptroller and Auditor-General of India does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next thirty days.

Maximum Tenure of Appointment of Individual and Firm of Auditor

No listed company or the following classes of companies excluding one person companies and small companies:-

(a) all unlisted public companies having paid up share capital of rupees ten crore or more;

(b) all private limited companies having paid up share capital of rupees fifty crore or more;

(c) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

shall appoint or re-appoint –

(a) an individual as auditor for more than one term of five consecutive years; and

(b) an audit firm as auditor for more than two terms of five consecutive years.

Reappointment of Auditor

(i) an individual auditor who has completed his term of five consecutive years shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

(ii) an audit firm which has completed two terms of five consecutive years, shall not be eligible for re-appointment as auditor in the same company for five years from the completion of such term:

Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

In case where an Auditor, who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years.

Rotation of Auditor

The members of a company may resolve to provide that-

(a) in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or

(b) the audit shall be conducted by more than one auditor.

Removal of Auditor

Section 140(1) and Rule 7of the Companies (Audit and Auditors) Rules, 2014

The auditor appointed under **Section 139** of the Companies Act, 2013 may be removed from his office before the expiry of the term only by –

(i) Obtaining the prior approval of the Central Government by filling an application in form ADT-2 within 30 days of resolution passed by the Board.

(ii) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.

(iii) The auditor concerned shall be given a reasonable opportunity of being heard.

Resignation of Auditor

Section 140 (2), 140 (3) and Rule 8 of the Companies (Audit and Auditors) Rules, 2014

The auditor who has resigned from the company shall file a statement in **Form ADT-3** indicating the reasons and other facts as may be relevant with regard to his resignation as follows:

(i) In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and the registrar.

(ii) In case of Government Company or Government controlled company, auditor shall within **30 days** from the resignation, file such statement to the company and the Registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

The onus to file such statement containing relevant facts and reasons for resignation is on the resigning auditor and any contravention of Section 140(2) he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

Remuneration of Auditor

- Section 142 of the Act prescribed that the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein.
- Board may fix remuneration of the first auditor appointed by it.
- The remuneration will be in addition to the out of pocket expensed incurred by the auditor in connection with the audit of the company and any remuneration paid to him for any other service rendered by him at the request of the company.

Auditor's Right to Attend General Meeting [Section 146]

All notices of any general meeting shall be forwarded to the auditor of the company and he must attend any general meeting either by himself or through his authorised representative (qualified to be an auditor) and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

Powers and Duties of the Auditor

Every auditor shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place and seek such information and explanation from the company and enquire such matters as he considers necessary, including the matters specified below -

(a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interest of the company or its members.

(b) whether the transactions of the company which are represented merely by book entries are prejudicial to the interests of the company.

(c) whether so much of the assets of the company (except an investment company or a banking company) as consists of shares, debentures and other securities, have been sold at a price less than that at which they were purchased by the company.

(d) whether loans and advances made by the company have been shown as "deposits". The auditor must inquire in respect of all the deposits shown by the company and satisfy himself that the loans and advances have not been shown as deposits.

(e) whether personal expenses have been charged to revenue account.

(f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of shares stated to have been allotted for cash and if no cash has actually been so received, whether the position as stated in the account books and balance sheet is correct, regular and not misleading.

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.

Audit Report

The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which are required to be laid in the general meeting of the company. The Audit report shall take into consideration the provisions of the Companies Act, 2013, the Accounting and Auditing standards and matters which are required to be included under the provisions of the Act or rules made thereunder or under any order made u/s 143(11) of the Companies Act, 2013.

The Audit report should state that to the best of his information and knowledge, the said accounts and financial statements give a true and fair view of the state of the company's affairs as at the end of the financial year and the profit or loss and the cash flow for the year and such other matters as may be prescribed.

Section 143 (3) of the Companies Act, 2013 laid down that auditor's report shall also state other details which are as under:

(a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary and if not, the details thereof and the effect of such information on the financial statements;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(c) whether the branch audit report prepared by a person other than the company's auditor has been sent to him;

(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

(e) whether, in his opinion, the financial statements comply with the accounting standards;

(f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

(g) whether any director is disqualified from being appointed as a director under Section 164 (2);

(h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

(i) whether the company has adequate internal financial controls with reference to financial statement in place and the operating effectiveness of such controls;

(j) Rule 11of the Companies (Audit and Auditors) Rules, 2014 prescribed that Auditor's Report shall also include their views and comments on the following matters, namely:-

(i) whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;

(ii) whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;

(iii) whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

(iv) whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.

The auditor is required to provide the reasons, where any of the matters required to be included in the Audit Report under this Clause is answered in negative or with a qualification-Section 143 (4) of the Companies Act, 2013.

Auditor shall sign the auditor's report of the company. Any qualifications, observations or comments on financial transactions matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Auditing Standard

Every auditor must comply with the auditing standards. While the Central Government prescribes the Auditing Standards or addendum thereto, it shall consult with and take recommendations of the Institute of Chartered Accountants of India (ICAI) and the National Financial Reporting Authority (NFRA).

Functions and duties of the National Financial Reporting Authority [Rule 4 of the National Financial Reporting Authority Rules, 2018]

(1) To protect the public interest and the interests of investors, creditors and others associated with the companies or bodies corporate governed under rule 3 of the National Financial Reporting Authority Rules, 2018 by establishing high quality standards of accounting and auditing and exercising effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors.

(2) In particular, and without prejudice to the generality of the foregoing, the Authority shall:-

(a) maintain details of particulars of auditors appointed in the companies and bodies corporate specified in rule 3 of the National Financial Reporting Authority Rules, 2018;

(b) recommend accounting standards and auditing standards for approval by the Central Government;

(c) monitor and enforce compliance with accounting standards and auditing standards;

(d) oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;

(e) promote awareness in relation to the compliance of accounting standards and auditing standards;

(f) co-operate with national and international organisations of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and

(g) perform such other functions and duties as may be necessary or incidental to the aforesaid functions and duties.

Classes of companies and bodies corporate governed by the National Financial Reporting Authority [Rule 3 of the National Financial Reporting Authority Rules, 2018]

The NFRA have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 of the companies Act, 2013 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate, namely:-

(a) companies whose securities are listed on any stock exchange in India or outside India;

(b) unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;

(c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;

(d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and

(e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or net-worth of such subsidiary or associate company exceeds twenty per cent. of the consolidated income or consolidated net-worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

Every body corporate, other than a company as defined in clause (20) of section 2, formed in India and governed under this rule shall, within fifteen days of appointment of an auditor under **sub-section (1) of section 139 of the companies Act, 2013,** inform the Authority in **Form NFRA-1**, the particulars of the auditor appointed by such body corporate:

Provided that a body corporate governed under clause (e) above shall provide details of appointment of its auditor in Form NFRA-1.

(4) A company or a body corporate other than a company governed under this rule shall continue to be governed by the Authority for a period of three years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

Prohibited Services by an auditor

An auditor shall provide to the company only such other services as are approved by the Board of Directors/ the audit committee, but which shall not include any of the following services namely:-

(a) accounting and book keeping services;

(b) internal audit;

(c) design and implementation of any financial information system;

(d) actuarial services;

(e) investment advisory services;

(f) investment banking services;

(g) rendering of outsourced financial services;

(h) management services; and

(i) any other kind of services as may be prescribed.

Internal Audit

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:-

(a) every listed company;

(b) every unlisted public company having-

  (i) paid up share capital of fifty crore rupees or more during the preceding financial year; or

  (ii) turnover of two hundred crore rupees or more during the preceding financial year; or

  (iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

  (iv) outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year; and

(c) every private company having-

  (i) turnover of two hundred crore rupees or more during the preceding financial year; or

(ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year: The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

The company board shall be free to appoint any practicing Chartered Accountant or a Cost Accountant or any other person whom it deems fit to be appointed as its internal auditor. For this purpose, company board may consider the nature and volume of business of company; qualifications, experience and capabilities of such person being appointed as auditor and scope of internal audit.

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Legal Maxims

LEGAL TERM	MEANING	USAGE
A fortiori	From stronger	An *a fortiori* argument is an "argument from a stronger reason", meaning that because one fact is true, that a second related and included fact must also be true.
A mensa et thoro	From table and bed	Divorce *a mensa et thoro* indicates legal separation without legal divorce.
A posteriori	From later	An argument derived from subsequent event
A priori	From earlier	An argument derived from previous event
A quo	From which	Regarding a court of first instance, or the decision/s of a previous court, known as the court *a quo.*

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Legal World

CORPORATE LAWS

BALKRISHAN GUPTA & ORS v. SWADESHI POLYTEX LTD. & ANR [SC]

Civil Appeal No. 4803 of 1984

E.S. Venkataramiah & Sabyasachi Mukharji, JJ. [Decided on 12/02/1985]

Equivalent citation s: 1985 AIR SC 520; 1985 SCR (2) 854; 1985 SCALE 1)236; 1985 SCC (2) 167.

Companies Act,1956- section 169- requisitioned meeting- attachment of shareholder's share by collector - whether shareholder loses his right to requisition a meeting-Held, No.

Brief facts : Swadeshi Cotton Mills Company Ltd. ('the Cotton Mills Company') is one of the shareholders of Swadeshi Polytex Ltd. ('the Polytex Company'). The shares of Swedeshi Polytex Ltd held by the cotton Mills Company was attached by the collector and later pledged with the Government of Uttar Pradesh, as Cotton Mills Company failed to make payment of certain government dues. A litigation ensued and was pending before the Allahabad High Court.

During the pendency of the litigation, certain number of shareholders of the Polytex Company, including the Cotton Mills Company, requisitioned the company to hold a general meeting.

In the meanwhile the appellant No. I Balkrishan Gupta had filed an application before the High Court of Allahabad in Special Appeal No. 2 of 1982 questioning the right of the requisitionists issue notice under section 169 of the Act to call the extraordinary general meeting. His contention was that since a Receiver had been appointed by the Collector in respect of the shares held by the Cotton Mills Company and they had also been attached, the shares held by the Cotton Mills Company could not be taken into consideration for determining the required qualification to issue the notice under section 169 of the Act requisitioning the extraordinary general meeting and that if those shares were omitted from consideration then the shares held by the other requisitionists would not be sufficient to issue the said notice. That application was dismissed by the High Court by its order dated August 7, 1984. This appeal by special leave was filed against the said order of the High Court.

Decision : Appeal dismissed.

Reason : It is clear from the relevant provisions of the Act which are referred to hereafter that a member can participate and exercise his vote at the meetings of a company in accordance with the Act and the articles of association of the company. Section 41 of the Act defines the expression "member" of a company. The subscribers of the memorandum of association of a company shall be deemed to have agreed to become members of the company and on its registration shall be entered as members in its register of members. A subscriber of the memorandum is liable as the holder of shares which he has undertaken to subscribe for. Any other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company. In his case the two conditions namely that there is an agreement to become a member and that his name is entered in the register of members of the company are cumulative. Both the conditions have to be satisfied to enable him to exercise the rights of a member. Subject to section 42 of the Act, a company or a body corporate may also become a member. When once a person becomes a member, he is entitled to exercise all the rights of a member until he ceases to be a member in accordance with the provisions of the Act. The voting rights of a member of a company are governed by section 87 of the Act. Section 87 of the Act says that subject to the provisions of section 89 and sub-section (2) of section 92 of the Act every member of a company limited by

shares and holding any equity share capital therein shall have a right to vote, in respect of such capital, on every resolution placed before the company and his voting right on a poll shall be in proportion to his share of the paid-up equity capital of the company.

In the Act, the expressions 'a member', 'a shareholder' or 'holder of a share' are used as synonyms to indicate the person who is recognised by a company as its owner for its purposes. What does ownership of a share connote? 'Ownership in it most comprehensive signification; says Salmond, 'denotes the relation between a person and any right that is vested in him. That which a man owns in this sense is a right. The right of ownership comprises benefits like claims, liberties, powers, immunities and privileges and burdens like duties, liabilities, and disabilities. Whatever advantages a man may have as a result of the ownership of a right may be curtailed by the disadvantages, in the form of burdens attached to it.

As observed by Dias, an owner may be divested of his claims etc. arising from the right owned to such an extent that he may be left with no immediate practical benefit. He remains the owner nonetheless because his interest will outlast that of other persons in the thing owned. The owner possesses that right which ultimately enables him to enjoy all rights in the thing owned by attracting towards himself those rights in the thing owned which for the time being belong to others, by getting rid of the corresponding burdens. An owner of a land may get rid of the interest of a mortgagee in it by redeeming the mortgage, may get physical possession of land by terminating a lease and may get rid of an attachment by discharging the debt for which it is attached. A Receiver appointed by a court or authority in respect of a property holds it for the benefit of the true owner subject to the orders that may be made by such court or authority.

The different kinds of rights of ownership flowing from the ownership of a right depend upon the nature of the right owned. A person who is a shareholder of a company has many rights under the Act. Some of them, with which we are concerned in this appeal principally, are (i) the right to vote at all meetings (Section 87), (i;) the right to requisition an extraordinary general meeting of the company or to be a joint requisitionist (Section 169), (iii) the right to receive notice of a general meeting (Section 172), (iv) the right to appoint proxy and inspect proxy registers (Section 176), (V) in the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf (Section 187) and (vi) the right to require the company to circulate his resolution (Section 188). The question for consideration is when does a shareholder cease to be entitled to exercise any of these rights?

An order of attachment cannot, therefore, have the effect of depriving the holder of the shares of his title to the shares. We are of the view that the attachment of the shares in the Polytex Company held by the Cotton Mills Company had not deprived the Cotton Mills Company of its right to vote at the meeting or to issue the notice under section 169 of the Act The fact that 3, 50,000 shares have been pledged in favour of the Government of Uttar Pradesh also would not make any difference Sections 172 to 178-A of the Indian Contract Act, 1872 deal with the contract of pledge.

A pawn is not exactly a mortgage. As observed by this Court in *Lallan Prasad v. Rahamat Ali & Anr [1967] 2 S.C.R. 233*, the two ingredients of a pawn are: "(1) that it is essential to the contract of pawn that the property pledged should be actually or constructively delivered to the Pawnee and (2) a Pawnee has only a special pore party in the pledge but the general property therein remains in the pawner and woolly reverts to him on discharge of the debt. A pawn therefore is a security, where, by contract a deposit of goods is made as security for a debt. The right to property vests in the pledgee only so far as is necessary to secure the debt. The pawner however has a right to redeem the property pledged until the sale."

In *Bank of Bihar v. State of Bihar and Ors, (1971] Supp, S.C.R. 299* also this Court has reiterated the above legal position and held that the pawnee had a special property which was not of ordinary

nature on the goods pledged and so long as his claim was not satisfied no other creditor of the pawner had any right to take away the goods or its price. Beyond this no other right was recognised in a pawnee in the above decision. Under section 176 of the Indian Contract Act, 1872 if the pawner makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

In the case of a pledge, however, the legal title to the goods pledged would not vest in the pawnee. The pawnee has only a special property. A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In this sense a pledge differs from a mortgage. In view of the foregoing the pawnee in the instant case i. e. the Government of Uttar Pradesh could not be treated as the holder of the shares pledged in its favour. The Cotton Mills Company continued to be the member of the Polytex Company in respect of the said shares and could exercise its rights under section 169 of the Act.

It is also significant that the Directors of the Polytex Company who what that a Receiver had been appointed in respect of the shares in question, that they had been attached by the Collector, that a part of them had also been pledged in favour of the Government of Uttar Pradesh and that orders had been passed under section 18AA (1) (a) of the Industries (Development and regulation) Act, 1951 taking over six industrial units of the Cotton Mills Company did not question the validity of the notice. The Polytex Company had in this case rightly treated the registered holder i.e. the Cotton Mills Company as the owner of the shares in question and to call the meeting in accordance with the notice issued under section 169 of the Act. The appellant cannot, therefore, be allowed to raise any dispute about the validity of the meeting on any of the grounds referred to above. In the result the appeal fails and it is dismissed with costs.

LATE MONA AGGARWAL THROUGH HER LEGAL HEIR & ANR v. GHAZIABAD ENGG COMPANY LTD & ORS [NCLAT]

Company Appeal (AT) No.320 of 2019

J.K.Jain, Balvinder Singh & A.K.Mishra. [Decided on 18/03/2020]

Section 433 of the Companies Act, 1956 read with section 248 & 271 of Companies Act, 2013- winding up of a company- during the pendency of the petition the name of the company was struck off by the ROC- NCLT rejected the petition- whether correct- Held, No.

Brief facts : The appellants have filed petition for winding up of Respondent No.1 Company on 22.11.2016. Subsequently this petition was transferred to NCLT New Delhi. During the pendency of this petition the name of the company has been struck off w.e.f. 07.06.2017 by ROC exercising power under sub-section (5) of Section 248 of the Companies Act, 2013. The NCLT by the impugned order has rejected the winding up petition with liberty to file a fresh one when the name of the company is revived. Being aggrieved with this order the appellants have filed this appeal.

Decision : Appeal allowed.

Reason : The question for consideration before us that during the pendency of winding up petition the name of the company has been struck off under Section 248 of the Companies Act 2013. In such circumstances whether the NCLT can proceed with winding up petition or not.

From sub-section (8) of Section 248, it is clear that Section 248 in no manner will affect the powers of the Tribunal to wind up the company, the name of which has been struck off from the register of companies. Therefore, even after removal of the name of the company from the register of companies the NCLT can proceed with the petition for winding up under Section 271 of the Companies Act, 2013.

We have taken the same view in the case of Mr Hemang Phophallia (supra).With the aforesaid, we are of the considered view that the impugned order is not sustainable in law. Hence the order is hereby set aside and the matter is remitted to NCLT, New Delhi for deciding the winding up petition on merit as per law. However, no order as to cost.

COMPETITION & CONSUMER LAWS

RUBTUB SOLUTIONS PVT. LTD v. MAKEMYTRIP INDIA PVT. LTD. (MMT) & ORS [CCI]

Case No. 01 of 2020

A.K.Gupta, SangeetaVerma & B. S. Bishnoi. [Decided on 24/02/2020]

Competition Act, 2002- sections 3 & 4 – restrictive clauses in the agreements- CCI directs investigation into the practices adopted by MMT and OYO.

Brief fact : The Informant is primarily aggrieved on account of three issues: firstly, that Treebo and its partner hotels are being excluded from listing on MMT's platform through abrupt termination-pursuant to the commercial arrangement between MMT and OYO; secondly, that MMT, as a dominant player, imposed 'price parity restriction' on Treebo partner hotels through the Chain Agreement, which restricted it from providing its properties to Booking.com and Paytm (MMT's competitors) at a better rate/price; and thirdly, MMT imposed an 'exclusivity condition' on Treebo through 'Exclusivity Agreement' which restricted it from listing its properties on Booking.com and Paytm (MMT's competitors) for a period of 72 hours and 30 days prior to check-in for hotels situated in Category A and Category B cities, respectively.

Decision : Investigation ordered.

Reason : A plain reading of Clause 2.1 of the 'Exclusivity Agreement' shows that Treebo was not permitted to list its hotels situated in cities classified under Category A on MMT's two competitors, i.e. Booking.com and Paytm, 72 hours (i.e. 3 days) prior to the check-in day. Similar restriction was imposed for a much longer period, i.e. 30 days, in case of hotels situated in Category B cities. Category A included hotels in 29 Indian cities while Category B included hotels situated in 25 Indian cities as mentioned earlier.

The aforesaid restriction prima facie appears unfair, and hence exploitative, under Section 4(2)(a)(i) of the Act, for the Treebo partner hotels as it denies them an opportunity to list on other platforms/OTAs and to gain access to those platforms, especially Booking.com which appears to be the closest competitor of MMT, during the busiest booking periods. Such restriction also seems to be exclusionary as two OTAs were excluded from listing the Treebo chain of hotels, thus potentially leading to denial of market access for those OTAs with regard to those hotels branded by Treebo. Thus, apart from prima facie appearing to be in contravention of Section 4(2) (a) (i), the restriction also seems to be prima facie in contravention of Section 4(2) (c) of the Act. Though this restriction is presently stated not to apply on Treebo partner hotels pursuant to the termination of the Exclusivity Agreement (i.e. March 2018), this fact may not be relevant to relieve MMT of its liability, if this clause is otherwise found to have contravened the provisions of this Act.

Based on the foregoing, the Commission is of the view that prima facie a case of contravention against MMT for abuse of dominant position under Section 4(2) (a) (i) and 4(2) (c) is made out on account of all the three allegations analysed supra. Further, a case against MMT and OYO for entering into a vertical arrangement having an AAEC in the market is also prima facie made out under Section 3(4) read with Section 3(1) of the Act.

Considering the similarity of facts and allegations, the Commission is of the view that the present case may be clubbed with Case No. 14 of 2019 forthwith, in terms of the proviso to Section 26(1) of the Act read with Regulation 27(1) of the Competition Commission of India (General) Regulations 2009.

Accordingly, the DG is directed to investigate the present matter along with Case No. 14 of 2019 and submit a consolidated Investigation Report covering all the aforesaid issues prima facie found to be in contravention, as per the timelines applicable to that matter. During the course of investigation, if the involvement of any other party is found, the DG shall investigate the conduct of such other party as well who may have indulged in the said contravention.

THE JOINT LABOUR COMMISSIONER & REGISTERING OFICER & ANR v. KESAR LAL [SC]

Civil Appeal No 2014 of 2020 (@ SLP(C) No 2150 of 2020)

Dr. D.Y. Chandrachud & Hemant Gupta, JJ. [Decided on 17/03/2020]

Consumer Protection Act, 1986 read with Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996- construction labour- benefit under the welfare scheme- application rejected- National Commission upheld the compensation to the construction worker- whether construction worker is a consumer-held, yes.

Brief facts : The neat issue which has to be adjudicated upon in this appeal was whether a construction worker who is registered under the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and is a beneficiary of the Scheme made under the Rules framed pursuant to the enactment, is a 'consumer' within the meaning of Section 2(d) of the Consumer Protection Act 1986. The issue assumes significance because the answer will determine whether a beneficiary of a statutory welfare scheme is entitled to exact accountability by invoking the remedies under the Consumer Protection Act 1986.

The respondent applied to the appellant seeking financial aid for the marriage of his daughter, under the scheme. Nine months after the application was submitted, the Joint Commissioner of Labour, Jaipur issued an order of rejection covering 327 such applications, finding technical defects as a ground for the decision.

The respondent instituted a consumer complaint before, overruling the objection that the respondent is not a 'consumer' within the meaning of the Consumer Protection Act 1986. The National Commission, however, reduced the rate of interest from 18 percent per annum to 9 percent per annum. The present appeal has arisen from the order of the National Commission.

Decision : Appeal dismissed.

Reason : The appellants have been entrusted with the solemn duty of enforcing and implementing the provisions of the welfare legislation which has been enacted by Parliament specifically to ameliorate the plight of construction workers. Construction workers belong to the unorganized sector of the economy. Many among them are women. Child labour is rampant. Their vulnerabilities

have been attempted to be safeguarded by a law which unfortunately has not been implemented either in letter, or in spirit. Yet, we have in the present case, the spectacle of a statutory welfare board seeking to exempt itself from being held accountable to the remedies provided under the Consumer Protection Act 1986. The submission which has been urged before the Court, simply put, boils down to this: the beneficiaries of the service pay such a meagre amount as contributions that they cannot be regarded as 'consumers' within the meaning of Section 2(d) of the Consumer Protection Act 1986. That is the submission which now falls for consideration.

The Board has been entrusted with specific functions which have been defined in Section 22. These functions squarely fall within the definition of the expression 'service' within the meaning of Section 2(1) (o) of the Consumer Protection Act 1986. The expression 'service' has been defined in the widest possible terms to mean 'service of any description which is made available to potential users'. The exception in Section 2(1) (o) is a service which is rendered free of charge. The workers who are registered under the provisions of the Act of 1996 are beneficiaries of the schemes made by the Board. Upon registration, every worker is required to make a contribution to the fund at such rate per month as may be prescribed by the State government. The fund into which the contributions by persons who are registered under the Act are remitted, comprises among other sources, the contributions made by the beneficiaries. The fund is applied inter alia for meeting the expenses incurred to fulfil the objects and purposes authorized by the legislation. In view of the statutory scheme, the services which are rendered by the Board to the beneficiaries are not services which are provided free of charge so as to constitute an exclusion from the statutory definition contained in Section 2(1) (o) and Section 2(d) (ii) of the Consumer Protection Act 1986.

The true test is not whether the amount which has been contributed by the beneficiary is adequate to defray the entire cost of the expenditure envisaged under the scheme. So long as the service which has been rendered is not rendered free of charge, any deficiency of service is amenable to the fora for redressal constituted under the Consumer Protection Act 1986. The Act does not require an enquiry into whether the cost of providing the service is entirely defrayed from the price which is paid for availing of the service. As we have seen from the definition contained in Section 2(1) (d), a 'consumer' includes not only a person who has hired or availed of service but even a beneficiary of a service. The registered workers are clearly beneficiaries of the service provided by the Board in a statutory capacity.

As a matter of interpretation, the provisions contained in the Consumer Protection Act 1986 must be construed in a purposive manner. Parliament has provided a salutary remedy to consumers of both goods and services. Public authorities such as the appellants who have been constituted under an enactment of Parliament are entrusted with a solemn duty of providing welfare services to registered workers. The workers who are registered with the Board make contributions on the basis of which they are entitled to avail of the services provided in terms of the schemes notified by the Board. Public accountability is a significant consideration which underlies the provisions of the Consumer Protection Act 1986. The evolution of jurisprudence in relation to the enactment reflects the need to ensure a sense of public accountability by allowing consumers a redressal in the context of the discharge of non-sovereign functions which are not rendered free of charge. This test is duly met in the present case.

Consequently, and for the reasons that we have indicated, there is no reason to interfere with the ultimate decision of the State Commission to award the claim, subject to the modification of the rate of interest by the order of the National Commission. The appeal shall accordingly stand dismissed. There shall be no order as to costs.

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Training

ONLINE TRAINING FACILITIES FOR STUDENTS DURING THE LOCK DOWN PERIOD

Making e-MSOP accessible to all eligible students during the period of complete lock down due to COVID 19 by relaxing the criterion of two years' time bar after passing professional exam.

The Directorate of training vide circular dated 31.03.2020 has relaxed the eligibility criteria for taking admission in e-MSOP by temporarily removing the two years' time bar between professional pass and e-MSOP registration, so that all professional pass students irrespective of their year of passing in professional examination may avail the facility of e-MSOP subject to fulfillment of other conditions as mentioned in the guidelines. This will facilitate the students to apply for membership without waiting for the classroom based MSOP in regions and chapters.

Making provision of 15 days e Academic Programme including 08 days e EDP (3 Days e Governance and 05 Days Skill Development Programme)

Due to the lockdown on account of Covid 19, all the short term training organized by the ROs and Chapters was discontinued. In view thereof ,many students could not able to complete their 15 days academic program and EDP programme. In order to provide the best possible services to the students during the period of lock down,the Directorate of Training has organized 15 days e Academic Programme including 08 days e EDP (3 Days e Governance and 05 days Skill Development Programme). The revised announcement dated 15.04.2020 w.r.t. revised schedule of 15 days e Academic Programme including 08 days e EDP (3 Days e Governance and 05 Days Skill Development Programme) is updated on the website.

Relaxation in submitting the first quarterly reports in the Institute records during the period of complete lock down due to COVID 19

The Institute has relaxed the last date of submission of the first quarterly reports till 30th June 2020. Keeping in view of the complete lockdown till the period of 03rd May 2020, the Institute has decided to extend the date of submission of the first quarterly reports from 30th April 2020 to 30th June 2020.

This provision may be applicable till 30th June 2020 or till any further notification. Now the trainers may submit the first quarterly report of their trainees till 30th June 2020 except the students completing their practical training during the period of Lock down.

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

ICSI/Trg/QR/2020 17.04.2020

Directorate of Training

Sub : Extension of last date for submitting the quarterly training report of trainees due to lock down on account of COVID 19 .

Due to lock down in the country on account of the COVID 19, the last date of submission of first quarterly progress report (January to March 2020) of the trainees undergoing their practical training with companies and PCS is here by **extended till 30th June 2020**. All the quarterly reports which were subject to be submitted online in ICSI stimulate portal by 30th April 2020, **could be submitted now upto 30th June 2020.**

The trainees whose practical training will be completed during the lock down period, their last quarterly report may be submitted by their trainer without waiting till 30th June 2020. The trainers may submit the quarterly report through the online portal https://stimulate.icsi.edu using their log in credentials and password already provided by the ICSI to their registered email IDs.

(Dr. S. K. Jena)
Director (Training)

To:

1. All the registered Companies and PCS as a trainer.
2. All students of ICSI undergoing practical training.
3. RDs of Regional Council
4. Director CCGRT and I/C CoE, Hyderabad
5. Eos/Office In-Charge of Chapters

Copy for Information to:

1. PS to the President , ICSI
2. The Vice President , ICSI
3. The Council Members of the ICSI
4. The Officiating Secretary , ICSI
5. The Chairman of the Regional Councils and chapter management committees.

THE INSTITUTE OF Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

ICSI/TRG/2020 15/04/2020

Announcement

Revised Schedule for 15 days e Academic Programme including 08 days e EDP (3 Days e Governance and 05 Days Skill Development Programme)

In continuation to the ICSI announcement dated 11.04.2020 regarding postponement of 15 days e academic program including 08 days e EDP. The Institute has rescheduled the 15 days e- academic program including 08 days e EDP as under:

Sl.No	Programme	Registration open date	Registration close date	**Schedule of the Programme**	Fee structure
1	02 days Induction program	Already closed in Phase I	Already closed in Phase I	**17th April (10am-18th April 2020(5 pm)**	Rs 1500/-
2	03 Days e Governance Program	21st April, 2020, 10am	22nd April, 2020, 12pm	**25th April (10am-27th April 2020(5pm)**	Rs 3000/-
3	05 Days Skill Development Program	30th April, 2020,10 am	1st May, 2020,12pm	**4th May (10am) -8th May, 2020(5pm)**	Rs 4000/-
4	05 Days Entrepreneurship Program	11th May, 2020,10 am	12th May, 2020,12pm	**15th May (10am) -19th May 2020(5pm)**	Rs 4000/-

Kindly note students who have already applied for the 15 days e- academic program in first phase need not apply again.

Students interested to undergo e academic and e EDP programme have to note the following:

A. Eligibility:

1. 15 days e Academic program: The students registered in Executive Program on or after 1st April 2014 and who have passed out Executive Programme examination on or after 25.08.2015.
2. 08 days e EDP Program: Applicable to students registered in CS Executive Programme on or before 31.03.2014

B. Who can attend ?

1. Students who have completed executive program can register in 15 days e academic program
2. Students who have partially completed the 15 days academic programme, can also undergo the remaining training through online mode.
3. The students who are under the earlier training structure, can undergo 03 days e Governance and 05 days Skill Development programme in lieu of 08 days EDP applicable to them.

For Registration: click on http://stimulate.icsi.edu (use your smash log in id and password for login into the stimulate)

Other terms and conditions

1. The program shall be imparted through e- Learning platform of the Institute https://elearning.icsi.in.
2. The log in process is given below in detail. All communication will be sent to student's registered email id only.
3. The participant needs to appear MCQ based post training assessment in order to generate the completion certificate. The modalities of the post training assessment shall be communicated through a separate e mail.
4. The participant can generate their completion certificate in the e Learning Platform after the post training assessment. The Completion certificate need to be uploaded in stimulate under short term training (upload your certificate option) in order to get your completion approved as to enable you to register in the next programme as per the series requirement.

For queries, please refer the FAQ uploaded on the website. You can email your query at training@icsi.edu.

Directorate of Training
The Institute of Company Secretaries of India

LOG IN PROCESS IN E-Learning Platform

A. For Old syllabus Students

1) Website to login https://elearning.icsi.in
Please use the login for CS Course as your registration number without slash @ icsi.edu for example if your registration number is 12345678/01/2020 the your registration number is 12345678012020@icsi.edu.

2) The Default Password is for CS students Icsi@1234. Upon first login you will be shown EXPIRED PASSWORD PAGE where old password is Icsi@1234. Please set you password using capital letters, small letters, special character and numbers.
For any other online course of ICSI the login id has been sent to your email id registered with ICSI

3) In case you Forgot password use the "Forgot Password" option
Where Login Id is same as above (for example 12345678012020@icsi.edu). Use email option to reset the password. An email will be sent to your email id registered with ICSI where you can reset the password.

4) After successful login go to my courses and find " 2 days e-induction program"

B. For New Syllabus Students

1) If you have logged in to e-learning platform before, please use your existing login credentials and go to my courses.

2) If you never logged in then use the following information

3) Website to login https://elearning.icsi.in
Please use the login for CS Course as your registration number without slash @ icsi.edu for example if your registration number is 12345678/01/2020 the your registration number is 12345678012020@icsi.edu.

4) The Default Password is for CS students Icsi@1234. Upon first login you will be shown EXPIRED PASSWORD PAGE where old password is Icsi@1234. Please set you password using capital letters, small letters, special character and numbers.

For any other online course of ICSI the login id has been sent to your email id registered with ICSI

5) In case you Forgot password use the "Forgot Password" option
Where Login Id is same as above (for example 12345678012020@icsi.edu). Use email option .An email will be sent to your email id registered with ICSI where you can reset the password.

6) After successful login go to my courses and find " 2 days e-induction program"

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

DIRECTORATE OF TRAINING

FAQs ON 15 DAYS e-ACADEMIC PROGRAMME INCLUDING 8 DAYS e-EDP

Q 1	From where we can access the training programme?
Ans.	You need to login into the website https://elearning.icsi.in. Please use the login for CS Course as your registration number without slash @ icsi.edu for example if your registration number is 12345678/01/2020, your registration number is 12345678012020@icsi.edu.
Q 2	What will be my password?
Ans.	The Default Password is for CS students Icsi@1234. Upon first login you will be shown EXPIRED PASSWORD PAGE where old password is Icsi@1234. Please set your password using capital letters, small letters, special character and numbers.
Q 3	What I need to do if I forgot my password?
Ans.	In case you Forgot password use the "Forgot Password" option Where Login Id is same as above (for example 12345678012020@icsi.edu). Use email option to reset the password. An email will be sent to your email id registered with ICSI where you can reset the password.
Q 4	What to do if I need to update my registered email id or I don't have access of my registered email id?
Ans.	Please send an email to sunny@icsi.edu.
Q 5	What to do if I am not able to access the training programme at e-Learning portal?
Ans.	Please email your registration number and log in detail to sunny@icsi.edu.
Q 6	Where should I contact, if I face any technical problem during training programme?
Ans.	Please email your issue in detail to sunny@icsi.edu.
Q 7	Is the MCQ based post training assessment mandatory?
Ans.	Yes, it is mandatory to complete the post training assessment in order to generate the completion certificate.
Q 8	What is the date and time for MCQ based post training assessment?

Ans.	For 2 days Induction Programme, the assessment will be conducted on 18/04/2020 between 5:30 PM to 9:00 PM. Similarly The date and timing for the MCQ based post training assessment for other training programme will be on the last day of the training program from 5 to 9pm . The details will be provided to you through your registered email id. **Modalities of the post training assessment** a. Total number of MCQs- 30 b. Each question carries 2 marks. c. Duration of the test – 30 minutes any time in between 5.30 to 9pm on the last day of training d. Qualifying marks- 30% e. Syllabus – from the prescribed content/topics of the training program(from the audio/video/text material given on the e learning platform) f. Difficulty level- Simple g. Preparation- Self learning from the study and reference materials given on the portal. h. Publication of result- On the next day of the Assessment.
Q 9	What to do if there is error in completing the post training assessment or I am not able to generate the Completion certificate?
Ans.	Please email your issue in detail to sunny@icsi.edu.
Q 10	Where and how to upload my training completion certificate?
Ans.	The Completion certificate need to be uploaded in stimulate portal under short term training (upload your certificate option) in order to get your completion approved as to enable you to register in the next programme as per the series requirement. Before, uploading the document, please tick mark the undertaking given therein.
Q 11	From where and when I can register for 3 days e- Governance and other programme?
Ans.	You can register for the programme at http://stimulate.icsi.edu as per the schedule uploaded on the website.
Q 12	Where to contact if I am facing problem while registration for e-15 days Academic programme under stimulate?
Ans	Please email your query at training@icsi.edu .
Q 13	I have already made the payment for the registration in 2days/3days/5days/5 days programme. However, I have not received any confirmation?

Ans.	In case of payment failure, the amount deducted will get credited to your account within 2 days. Further, if the payment deducted but showing pending registration due to any reason, the same status will be updated after reconciliation process which takes minimum 2 days.
Q 14	I have already uploaded my old completion certificate for 2days/3days/5days programme, however, the status is not yet updated?
Ans.	Please re-upload the completion certificate in stimulate under short term training (upload your certificate option). Before, uploading the document, please tick-mark the undertaking therein.
Q 15	I have already attended few days out of induction/e-governance/skill development/entrepreneurship at various region/chapter. Can I do the remaining days of training online?
Ans.	The partial completion of training in classroom mode cannot be adjusted in the Online training. You need to register afresh for the particular training program and get the amount refunded from the respective region/chapter. However, if any candidate completed one training programme i.e. 2 days Induction programme at RC/Chapter and want to register for 3 days e- Governance online, they can register for the same if completion certificate of 2 days Induction programme is updated in stimulate portal and approved.
Q 16	Will the amount paid offline for the programme to the chapter can be adjusted with online fees?
Ans.	The amount already paid to the Regions/Chapter for direct mode programme cannot be adjusted with the online fees. You need to register afresh for the online programme. The students, who have already registered for 15 days academic programme in classroom mode in their respective Region and Chapters and could not continue due to the lock down, can get their refund proportionately from their respective Region and Chapters.
Q 17	Can I register for 5 days skill development programme without completing 3 days e-governance programme?
Ans.	As per the guidelines it is mandatory to complete the requirement of 15 days Academic programme in following series i.e. you can move to the next training only after completion previous training. 1. 2 days Induction Program 2. 3 days e-Governance Program 3. 5 days Skill Development Program 4. 5 days Entrepreneurship Development Program

Q 18	I have already completed 2 days and 3 days in class room mode, but unable to register for 5 days programme?
Ans.	You can register for 5 days Programme only if the completion certificate of previous training is updated in the stimulate. The completion certificate can be uploaded in the system through the tab of short term training.
Q 19	I have already uploaded the completion certificate for 2 days/3days or 5 days programme, however, it is still not updated in the system?
Ans.	You are requested to re--upload the certificate in the portal, while uploading the certificate please click on the under taking and accept all the term condition. It takes few hours to be approved.
Q 20	I am a student of earlier training structure and would like to complete the requirements of 08 days EDP. Can I able to apply for 03 days e Governance and 05 days skill development training?
Ans.	Yes, you can register for the same, however, you need to complete 03 days e Governance first and then you can apply for 05 days skill development training which is applicable in lieu of your EDP.
Q 21	The Executive development programme applicable in earlier training structure was only Rs 1000/- where as the fee of in lieu provision of 03 days e Governance and 05 days skill development training Rs 7000/?
Ans.	The fee structure of 15 days academic programme is duly approved by the Institute. Interested students are required to pay the applicable fee in order to become eligible for the programme. The fee of Rs1000 was fixed almost ten years back under old training structure.
Q 22	I have completed the requirement of long term practical training and my Quarterly reports , project reports and completion certificate is already updated in the portal, only the requirement of short term training is pending but in my log in I am not able to find the details of training programmes?
Ans.	As per the guidelines students are required to attend and complete 15 days academic training programme before completing the requirement of long term practical training. Since your long term training status is updated in the system therefore you are not able to view the details of 15 days academic training programme. Such students may send their request separately in the email id given in the announcement.

The ICSI

15/04/2020


Membership

Attention Students !!

LICENTIATE - ICSI

Regulation 29 & 30 under Chapter-V of the Company Secretaries Regulations, 1982 provides for Licentiate ICSI.

ELIGIBILITY FOR AWARD OF LICENTIATE ICSI

A person who –

- has completed the Final examination or Professional Programme examination conducted by the Institute may, within six months from the date of declaration of results in which he has passed the Final examination or Professional Programme examination can apply for enrollment as a licentiate
- the Council, however, may condone the delay in applying for licentiateship by any person for reasons to be recoded in writing.

PROCEDURE

An eligible student may apply for enrollment as Licentiate ICSI by submitting an application in prescribed form ST-8 alongwith annual subscription of Rs. 1000/- in cash (at counters of the Institute across the country) or by way of Demand Draft in favour of 'The Institute of Company Secretaries of India' payable at New Delhi along with copies of date of birth, professional programme pass certificate and graduation certificate/foundation pass certificate duly attested by any member of the Council/Regional Council/Satellite Chapter of the Institute or any Officer of the Institute.

STATUS OF LICENTIATES

- The person enrolled as a Licentiate of the Institute shall be entitled to use the descriptive letters "Licentiate ICSI" to indicate that he has qualified in the Final examination or Professional Programme examination of the Institute.
- The grant of licentiateship shall not confer on such licentiate any rights of a member nor entitle him to claim any form of membership of the Institute or its Regional Council or Chapter, as the case may be.
- The licentiate may be permitted to borrow books from the library of the Institute, Regional Council or Chapter or participate in the activities of the Institute, its Regional Council or Chapter as the case may be, subject to such conditions as may be imposed by the Council, Regional Council or Chapter, as the case may be.

VALIDITY OF CERTIFICATE

- A licentiate shall not ordinarily be eligible to renew his enrolment for more than five years after passing the Final Examination or Professional Programme examination.

OTHER DETAILS

- The Licentiate will be provided Chartered Secretary Journal of the Institute free of cost.
- The student enrolled as a Licentiate ICSI may apply for ACS Membership on attaining the eligibility for ACS by surrendering his Licentiateship.
- A Licentiate may apply in the prescribed form for exemption from training requirements (except MSOP) along with the requisite documents of work experience. eMSOP can be undergone through online mode by the eligible candidates for acquiring ACS Membership.
- The annual licentiate subscription becomes due and payable on the first date of April every year and non-payment of annual subscription on or before the thirtieth of June of a year shall disentitle the person to use the descriptive letters "Licentiate ICSI" from 1st July of that year, until his annual subscription for the year is received by the Institute.
- The name of the person so disentitled shall be published in the Journal.

For queries, please write at licentiate@icsi.edu or contact on phone number 0120-4082136.

NEWS FROM REGION

NIRC

THE INSTITUTE OF Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

NORTHERN INDIA REGIONAL COUNCIL

NIRC OF ICSI

Announces

Online Crash Course

For

TAX LAWS
(CS Executive Course)
(Module 1)

Classes will commence from Wednesday, 29th April 2020

For the aspirants of CS Examinations June2020

Distinguished Faculty

Shri Deepak Jain
(FCA, M.Com, Qualified CS)

Fee: Rs.1000/- (Rs. One Thousand only)

Regards,

CS Suresh Pandey
Chairman – NIRC ICSI

-: For more details Contact or Visit: -

Mr. Vinay kr. Baisoya
NIRC of ICSI, NIRC Building, Plot 04, Prasad Nagar, Nearest Metro Station Rajender Place, New Delhi 110005

Email–vinay.baisoya@icsi.edu; **website** – https://www.icsi.edu/niro/home/

Students are advised to send the enquiry email to vinay.baisoya@icsi.edu mentioning their contact details including mobile number.

Directorate of Academics

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