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Mysuru Chapter
e-Magazine



Vision

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

Motto

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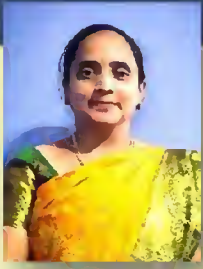
Inside this Issue

I Articles

Artificial Intelligence and Company Secretary	07
Anti-Dilution Protection and its Legality Under Indian Laws	12
Understanding IPR and its Importance in the Business	14
Voluntary Liquidation	16
Budget 2020 & Dividend Distribution Tax - New Challenges	19
CS as a Start-up Consultant	21
SEBI passes impounding order for notional gains in Insider Trading Case	26
The New Tax Regime for Companies	27
Women Empowerment- Freedom through my Eyes!!	32

II Columns

From Chairman's Desk	03
Chapter Activities	05
Delhi Diaries	34
Brainy bits	36
Regulatory Updates	38



From the Desk of Chairman

CS Parvathi K R
Chairperson
Mysuru Chapter

Dear Professional colleagues,

Greetings from the Mysuru Chapter of ICSI!!

With the results of December 2019 CS Examination announced, my sincere congratulation to the students who have succeeded. For those who are yet to make it, I would like to recall the words of great motivational speaker-Zig Zaglar, “It’s not how far you fall, but how high you bounce that counts.” Let us bounce back high and strong.

On 11th February 2020, we had a session on Union Budget 2020-21 at Mahajana PG Centre in association with MCCI and Print Media Pvt. Ltd. On 15th & 16 February 2020, we had a two-day seminar under the theme “Recent Trends in Corporate Compliance” which was inaugurated by Mr. H V Rajeev, President, Co-Operative Union and General Secretary, BJP, Mysuru. It was our pride privilege to have CS Nagendra D. Rao, Vice President, ICSI, CS Gopala Krishna Hedge, and Past Council Member for the inauguration of the programme along with other members, professional colleagues and students. On 29 February, we had a Study Circle Meeting on “Related Party Transaction” as per the Companies Act, 2013. You will find detailed Report of all the programmes in Activity Report segment of this eMagazine.

While curricular activities sharpens our mind, it is also important to play games for the physical fitness. Considering the same, we had organized ‘Sports Day 2020’ on 1st March 2020 at Mahajana PU College premises where students and members from all three professional institutes i.e., ICSI, ICAI and ICMAI participated actively

In the month of March 2020, we are planning various programmes. 2 days seminar which was scheduled on 21st and 22nd March with the theme “Company Secretary -A Multi -Disciplinary Professional” has been postponed due to COVID -19 issue. Will update through email of the new date. Request active participation from all of you.

Feel free to share inputs, feedback and suggestions to continue this journey of growing together!

Thank you.



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

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Chapter Activities

Session on Union Budget 2020-2021

Chapter in association with Mahajana PG Centre, Mysore Chamber of Commerce & Industry and The Printers (Mysore) Pvt. Ltd. organized a session on Union Budget 2020-2021 on 11.02.2020. Sudhakar S Shetty, immediate past president FKCCI has inaugurated the event. Bhaskar Kalale, Chairman, CII was the Chief Guest. CA Annapurna Srikanth delivered the Keynote address. Oliver Lessely Velitinger, General Manager DH & Prajavani,

C V Manjunatha, DGM-Corporation Bank and A S Satish, President MCCI were the guest of honour. The session was attended by more than 150 students and members of various organizations.



Two Day seminar on Corporate Compliance

Chapter had organized a two days' seminar titled "Recent Trends in Corporate Compliance" at the Chapter premises on 15th & 16th February 2020. The program received overwhelming response with participation of large number of members and students.

On 15th February 2020, Chief Guest Shri. H V Rajeeva, President of District Cooperative Union inaugurated the seminar. "Guest of Honor" CS Nagendra D Rao, Vice-President-ICSI, "Special Guest" CS Gopalakrishna Hegde, Past Council Member, CS K R Parvati, Chairperson, Mysuru Chapter along with other committee members, was presided during the inaugural Session.



The Seminar covered the following topics. Role of Company Secretaries in Shaping Governance Trends by CS Dattatri H. M., Salient Features of Wage Code and Resolution of Labour Disputes Under Various Labour Enactments by Mr. J. Purushotham, Emerging Trends in Finance by CS Gopala Ramanan, Corporate Governance & Independent Directors by CS V. Sreedharan, A fresh perspective for Dispute Resolution in India-Challenges and Way Forward by Mr. Narasimhan S., NCLT and NCLAT Practical Aspects by CS Abhishek Bharadwaj A.B

The valedictory session was held on Sunday, 16th February 2020 and was presided over by CS. Sri S. Kannan, Chairman of SIRC of ICSI and CS. Ganapathi G.M., past Chairman of SIRC of ICSI. CS Parvati K R - Chairperson, CS Vijaya Rao - Vice Chairperson, CS A Harsha - Secretary, CS D N Phani Datta - Treasurer of the Management Committee had participated. Past Chairman -Mr. M.C. Bhansali, Mr. V J Balakrishana, Mr. Veeresh M J and senior members Mr. Subramanian R, Mr. Hiatesh Kumar, Mr. Prakash N, Mr. Kiran M C, Ms. Pracheta M, Mr. Rajesh N, Mr. Kiran Thyagaraja and other members and students were present in the session.





Chapter Activities

Study Circle Meeting-29.02.2020

First Study circle meeting for the year has been organized by the Chapter on 29th February 2020 on the topic related party transactions at Chapter Premises. Members of Mysuru Chapter has been participated in the study circle meeting and discussed elaborately on the topic.



SPORTS DAY 2020

Sports day 2020 of Mysuru Chapter of ICSI was held on 03rd March 2020 at Mahajanasa College Grounds. More than 150 students participated in the event including Members and Students of Mysuru Chapter of ICSI, Mysore Chapter of ICAI, Mysore Chapter of ICMAI and Bengaluru Chapter of ICSI. The event was inaugurated by the Chairmen of the chapters of all three premier institutes of Mysore - ICSI, ICAI and ICMAI. The events included Cricket, Shuttle Badminton, Chess and Treasure Hunt Sports. The event marked the interaction between the students and members of all the three institutes. The initiative of Chapter was well received and praised by all the students and members across the chapters of all three Institutes. The event was presided over by the office bearers of Mysuru Chapter of ICSI, ICAI and ICMAI and also the presence of other important personalities like Mr. Pavan Ranga and CS DD Bhat. The Chapter also places the special appreciations for the students of the organizing committee and the volunteers for organizing the event.



Artificial Intelligence and CS

Substantial Impact and Vision



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BACKDROP

World has always been a better place to live in, when each aspect of respective innovation conveys the philosophy of inclusive development and sustainable practices. Technology is not left spared with this relative influence i.e. any technology in the human space and environment has always shaped lives based on the predictable patterns in its near term set by its wide array of application and awareness. 21st century bears the responsibility of treatment of 'Data' in its absolute manner summarizing every data based interactive mechanisms into reverberations of application design and policy decisions. Every portrayal of such revolutionary challenges are potential platforms in understanding the horizons of its social and economic reach and an opportunity which could profoundly transform human lives to the best of its natural ability in the coming years.

Computer systems has always been successful in delivering an organized communication by the means of deployment and understanding of the data subjecting it to analytics process of data modeling, interpretation and evaluation. Currently this seems to be the most prescriptive and successful mode of analytics process because of its characteristics features like active data driven

sequence, programmatic approach, user cases observations and recurring data models. Computer systems lined in such a manner to perform tasks of what human intelligence can do by the virtue of latter characteristics features, exhibits the tangible momentum of Artificial Intelligence. So-forth it is evident that because of its extensive utility and functionality this altogether has led to penetration of such models of communication mechanisms in every dimensions of human professional lives possible. One such application user case being, into the profession of Company Secretaries.

Corporate governance professionals viz. Company Secretaries are centrally preoccupied with the fundamental component of vetting statutes, rules and regulations thereon reasoning it logically and to draw inferences appropriate to the circumstances arrived at. Synthesis of man and machine has always increased work efficiency and AI will radically alter how work gets done and who does it, the technology's larger impact will be in complementing and augmenting human capabilities, not replacing them. AI has three components- speedy computation, abundant quality data and advanced algorithms. Core components of Artificial Intelligence provide speedy data computation and accuracy, stability

“Artificial Intelligence will assist the Company Secretary to research on various issues like confirming that new directors are not conflicted on any other platform prior to appointing them to the board by running extensive research throughout various social platforms. Companies offer training and up-skilling program to junior CS which add values other than mere processing. An understanding of blockchain and robotics will be imperative for Company Secretary. This doesn't mean the Company Secretaries will need to become technology specialists but would need to be competent in the field to make use of AI to their advantage and to work efficiently alongside AI as a whole.

in day to day processes with advanced algorithm. Collaboration of company secretary and artificial intelligence provides strength to the entities by enhancing the speed, scalability, and quantitative capabilities of the former.

Evaluation of Company Secretarial functions in reach of AI systems

Company Secretary has been recognized as Key Managerial Personnel along with the Chief Executive Officer/managing director/manager, whole-time director and Chief Financial Officer and acts as conscience seeker of the company. The Responsibilities of the Company Secretary are diverse and comprises both administrative and technical aspect. The Company Secretary, is nothing but master teacher of corporate governance, regulations and law within the company. As discussed above, Company Secretary is the central element of any communication mechanism of the company between the board management of the company and other stakeholders in relation to that company. Apart from filing returns and ensuring the documentary requirements according to the statutes, the Company Secretary guides to the directors to complete their duties within given time framework, to seek proper arrangement of induction of new director which ensure communication required and expected duties from him as a director.

The Company Secretary also advises directors on issues related to laws, regulations and recommended governance practices based on company's state of affairs. The Company Secretary stands responsible for overall management and monitoring of meetings by preparing agenda, records the minutes and supervise the voting procedure. Company Secretary prepares and certifies the annual integrated report and vets company's financial statements. He is also liable to send the copies to all entitled person of the company. He ensures about the payment of the dividends and interests and involved in drafting and execution of agreements and resolutions. Without being confined to the above he is also seen as strategic business manager, advisor into public issue, listing and securities management and into performing representation services before the quasi-judicial bodies.

AI and Company Secretary

Company secretary must possess and have essential knowledge and experience in relevant laws. Here question arises whether a robot would have essential knowledge and experience in relevant laws to fully discharge the Company Secretary's role. It can be justified in a manner being more optimistically that, Artificial Intelligence can reduce repetitive and administrative tasks, which still do exist in role of Company Secretary. Artificial Intelligence also reduces the manual workload and will abolish lower level function of Company Secretary, providing support with diligence processes. Artificial Intelligence should not be considered as threat while must be considered as opportunity to improve knowledge and skill set to manage the Company. Artificial Intelligence can substitute sorting and diligence functions of Company Secretary.

Application Cases

Risk Management: AI systems can be helpful in detecting risk factors like determining the negative trends of shareholders value at an early stage thereby indicating to help the board to take the right diversion and initialing the appropriate measures. These AI systems could help company secretary in advising the rightful steps to the board in taking management decisions through the process of due diligence and necessary checks. Periodical reviews are one of the key features of the risk management functions of the company secretary which can be automated by the AI systems. It is important that robust governance arrangements are in place to assess the risks factors on timely basis, which should be

clearly documented and communicated to the organization. The position of the company secretary enables them to have a holistic view of the governance framework and as a result they are generally tasked with the responsibility of ensuring that this framework and any supporting policies and procedures are clearly documented. This can be substituted by the AI systems in supervising any changes happening to the framework and clearing reporting the same.

Optimizing search process: AI systems could go through gigabytes of information and data in seconds of time. Under the purview of preparation of memorandum/petition, this would help company secretaries to search for a particular and most suitable case to the given situation out of all the historical cases pertaining to that subject matter. This in a manner



can help save lot of time and rather concentrate on judgment and assessment of the case. Similarly this kind of automation can also help company secretary to search for a relevant section/rules and provisions out of ocean of statutes in a seconds of time for a given situation at the time of case study or in a board meeting to correlate and get the empirical understanding of the derivatives possible.

Returns filing: This is a fact-based process, and which could be easily automated by the help of AI machines which understands the facts and figures at a variable range. AI machines could fill up the form according to the understanding of the particulars given there and keep it

ready for signatures and attachments. This can also further call up for the mandatory attachments required in respect of that particular eforms and send it for review. This kind of repetitive and administrative task could be very helpful for the company secretaries so that can concentrate on other business aspect which requires their involvement. This kind of automation will also be helpful in XBRL filing as required for prescribed companies where the AI systems could reconcile and integrate the values and measures from different software's understandable to a computer system. This doesn't require any kind of supervision and there is so much of manpower-time utilized for other areas of work.

Managing administrative works of company secretary: AI systems can be developed to an extent that it could manage the attendance of the meetings by facial recognition technology and scheduling statutory events according to the deadlines as prescribed like board meetings and Annual General Meetings. AI systems can also assist in handling the vote responses received from the members of the company against any specific agenda item of the meeting which has been put to circulation for voting in the manner as specified. This kind of AI assistance could lead the company secretary to have extra time in researching more and acute information development for the effectiveness and success of every meetings. **Improving stakeholder communication:** AI systems could complement company secretaries in submitting and making available all the relevant disclosures and documents which is ought to be available over a public domain in just a click of request. These AI systems could help in assessing the needs of the respective shareholder and provide the exact kind of response in providing such statistical results or any management reports. Any request placed by the shareholder in terms of any grievance can be attended by the AI systems and accordingly provide the most suitable result and further convey and divert the grievance to the respective manager/Company secretary if it falls out of its scope of

algorithm/understanding. In this manner there is a chance of occurring harmonious relationship between the company and other stakeholders of that company.

Challenges

Lack of knowledge: It is difficult to expect the board members or in that case company secretary to be enabled tech savvy in handling the AI systems and servicing the AI systems at regular intervals. Being the out of scope area to the board members and company secretary, the top management has to rely upon different set of human resource experts to fix AI systems in cases of breach or updation. Every company has to manage different set of human resource for the purpose of looking after the AI systems installed which could be worrisome for the companies in terms of cost factor and organization factor.

Lack of infrastructure: AI systems need their own kind of infrastructure for their setup and operations which cannot be pocket-friendly to most of the companies in the current scenario. Bearing the huge cost in its setup and operations at a testing stage and again bearing separate cost for the final installation would not be feasible for many companies.

Possibility of lack of interest by existing human resource: AI systems installed may lead to demotivation of the existing employees in terms of their downsized attention by the board members and could acutely effect the employees who were employed for specific administrative process or skilled specially in an area which is now to be substituted by AI systems

Lack of legal coverage in identifying the liability extent: AI systems do not hold themselves liable for any consequences rather it would still be hovering around the human experts who builds and services the AI systems. There is no law which calls for the AI systems as legal person and be sued in its name. Lack of legal remedy to the mistakes performed by AI systems is also one of the severe challenges which could lead to non-acceptance of AI systems to be installed at their companies.

Training: Training of the AI systems at a level of top management of the company requires a sophisticated training setup for providing every methodological and analytical training to the AI systems which could not be possible by the existing IT advancement in the region and such scarcity of training experts leading to borrowing the foreign assistance every time could gear up a crying a cost every time.

Potential futures of AI in place of Company Secretary

Representations before quasi-judicial bodies: In the near future of the company secretarial functions, AI systems can make itself able in their advocacy skills and court crafts so that it becomes possible for them to represent the clients before the quasi-judicial bodies in supplementing the company secretaries by providing the facts and figures of the case at the request of the judicial officer.

Investment decisions: Valuation based decisions which are usually seen at the spark of company secretaries advising the board can also be at some point of time be substituted by AI systems due to their capability of interpreting the market figures in correlation to their investment decisions or other management decisions by evaluating thousands of illustrations and by the virtue of their accuracy in dealing statistical trends.

Conclusion

Artificial Intelligence can't replace the CS any time soon. Expert System has been developed for the purpose of providing expert knowledge-based decision and right now these systems are not enough to replace corporate governance experts. These systems contain knowledge accumulated by interviewing experts having a set of rules for implementation of this knowledge at the given situation. Since these systems are very expensive to maintain and develop and have a limited application it would be difficult for most of the companies to facilitate its given utility at the actual cost in complete convenience. Another important thing to be considered is these AI systems cannot learn on its own & its validation is difficult, and henceforth companies cannot dig its cost every time a minute replacement or updation needs to be performed. Like the more complex clauses of a contract, which are requested by parties to an agreement and which require thought and precision to avoid liability, would still need to be drafted by qualified humans who possess the requisite intellect. Sometimes these systems are overrated, and it is up to the human behaviour to understand its evolution into the human purview. It can be supplemental in utility rather replacement of experts.



Spontaneity of people (making a joke, for example) can't be substituted by machine and Spontaneity of machine (analysing gigabytes of data) can't be replaced by people. Lastly common sense is not that common as pursued by human creature alone which stands to be the most appreciable asset which can never be matched with any AI expert systems.

Many companies are using AI in present scenario, but those that deploy it mainly to displace employees will see only short-term productivity gains. Many studies say that firm may achieve its quality and quantity standards when human and machine work together. AI and automation has definitely discovered inroads to legal arena but it is more likely to be appreciated at the phase of service delivery and of role check honors.

References:

CSSA Best Practice guide, September 2018
Deloitte report on changing role of company secretaries
AI - 100 year study - Stanford university
EY study of new age of artificial intelligence
Artificial Intelligence in HR; Research paper by Dr.Owais Ahmed, University of Kashmir

Anti-Dilution Protection and its Legality Under Indian Law



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Background

Anti-dilution protection is one term which is present in almost every investment transaction. From the perspective of the founders, especially in case of a start-up or an early stage company, it is very important to understand the implications of having such a provision in the shareholders' agreement (SHA). Founders generally tend to agree to so-called "standard" terms in the SHA, when in dire need of the investment. An anti-dilution provision has to be reviewed closely in order to ensure it is not too harsh on the founders and also since the transaction documents set precedents for the subsequent round of investments. This article discusses some of the main methods of anti-dilution protection usually seen in transactions in India and some of the difficulties associated with actual implementation of such anti-dilution provisions.

What is Anti-Dilution Protection?

Before moving to anti-dilution, we need to understand the concept of dilution. Dilution is the decrease in the shareholding percentage of a shareholder in a company due to increase in the number of outstanding shares. For example, when a company receives subsequent round of investment, the shareholding percentage of the existing investors gets diluted. It is good to have the value of a company increase in subsequent rounds of funding. However, there might be situations when a company may not perform or grow as expected due to which the value of the share decreases. In such a scenario, anti-dilution protection is triggered by the existing investors to maintain their shareholding percentage in the company to a certain extent (which is explained below). Essentially, anti-dilution protection is such protection given to the existing investors of the company when new shares are issued in a subsequent round at a price per share which is lower than the price paid by the existing investors. It is pertinent to note that anti-dilution protection is applicable only when shares are issued at a price per share which is lower than the price paid by the existing investors and not for every subsequent issue of shares. The reason being that, if shares are being offered to subsequent investors at a price per share which is higher than the price per share paid by the existing investors, even though their percentage shareholding in the company reduces, the value of the shares held by them increases.

Anti-dilution protection and its variants: In India, the two commonly used forms of anti-dilution protection are: (a) Full Ratchet and (b) Broad Based Weighted Average.

Full Ratchet: Under this method, if shares are issued at a subsequent round of investment at a price per share that is lower than the price per share paid by the existing investors of the company, then the price of the shares/ conversion price of the existing investors will be revised to the price at which the new shares being issued. In such scenario, either additional shares will be issued to the existing investors for the surplus consideration after such price adjustment without the existing investors making any further payments or conversion price would be revised to the price of such shares being issued. Thus, the full-ratchet method does not consider the number of shares held by the existing investors or the number of shares being issued in the subsequent investment round, but only considers the price at which the new shares are being issued and the new price will be applied to all the shares held by the existing shareholders. Thus,

the full ratchet method of anti-dilution protection is very harsh on the Company and the Founders as compared to the broad based weighted average method. Also, the shareholding percentage of the founders may get diluted to a very large extent if a full ratchet provision is implemented.

Broad Based Weighted Average: As compared to full ratchet mechanism, broad based weighted average method uses a formula which considers the number of shares issued in a subsequent round of investment and the number of shares held by the existing investors. Therefore, the broad based weighted average method is fair to the founders as well as to the investors and is adopted more frequently in investment transactions. The weighted average formula used in the transaction documents describe how the weighted average price is determined by taking into the consideration the existing price or the conversion price of the shares, number of outstanding shares prior to the new issuance, the number of shares to be issued and the purchase consideration to be received by the company with respect to such issuance.

Implications of Anti-dilution provision: Pricing Guidelines under Indian Laws: Any further issuance of shares by a Company registered in India shall adhere to various provisions of the Companies Act, 2013 (the "Act"), Foreign Exchange Management Act, 1999 including rules and regulations notified thereunder, regulations prescribed by Securities Exchange Board of India ("SEBI") (if applicable) and Income Tax Act, 1961 (the "IT Act"). In India, implementation of anti-dilution protection is complex considering the existing laws. For instance, shares issued to foreign investors need to be in compliance with the pricing guidelines as provided in Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 ("FDI Regulations"). As per the pricing guidelines, capital instruments which are issued or transferred to a foreign resident has to be priced as per any internationally accepted pricing methodology for valuation on an arm's length basis duly certified by a chartered accountant or a SEBI registered merchant banker or a practicing cost accountant in case of an unlisted company.

Convertible Instruments: Additionally, in case of convertible instruments, the price/ conversion formula of the instrument should be determined upfront at the time of issue of the instrument and the price at the time of conversion should not in any case be lower than the fair value worked out, at the time of issuance of such instruments, in accordance with the FDI Regulations. Therefore, even adjusting the conversion ratio of a convertible instrument can pose complexities. Considering aforementioned guidelines, enforcement of anti-dilution provisions and issue of shares pursuant to the same, especially to non-residents will be very difficult. Also, implementation of anti-dilution which results in issuance of new shares for no consideration would not be allowed under the Act (which is applicable for both resident and non-resident investors). **Tax:** Further, there is a complication which has to be examined under tax laws. As per section 56 (2) (x) (c) of the IT Act, when any person receives shares for a consideration which is less than the aggregate fair market value (FMV) by an amount exceeding fifty thousand rupees, the aggregate FMV of such property as exceeds such consideration is taxable as 'income from other sources' in the hands of the person receiving such shares.

Conclusion: Considering the nuances associated with the issuance of shares at a price below FMV or for no consideration, the actual implementation of anti-dilution provisions poses a lot of difficulties. Unless certain exceptions are brought into the existing laws, actual implementation could be a challenge in India, especially with respect to foreign investors.

Understanding IPR & its Importance



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Before we get into the details, it is important to do a reality check of the competitive environment in which we live in. We find competition in all walks of life - school, workplace, industries, so on and so forth. The competition in corporate sector is unparalleled. Therefore it is extremely crucial for professionals like us to guide the company to stay ahead of the competition. Now having set the goal in mind, it is important to understand the key skills which are required for achieving this objective.

How an Intellectual Property is created?

In today's competitive environment, innovation is the key for every business to stay ahead of the competition. The natural consequence of an innovation in business leads to development of intellectual property. The key aspect of an Intellectual property is novelty. Novelty can be with respect to ideas, words, phrases, drawing, programming codes, proprietary procedures, systems etc. Depending on the nature of the Intellectual property created, we classify Intellectual Property into Patents (Inventive ideas and process), Trade marks (Protection of words, symbols, colour schemes etc), copyrights (expression of ideas through drawings, music, arts etc.) and Trade Secrets (Proprietary procedures, systems, strategies, formulas etc.)

The evolution of Intellectual Property in a Business

Any business which identify novel innovations, develops solutions that meets the requirements of marketplace will generate revenues. The development of intellectual property solutions should be an ongoing process and it should be proactive ahead of future market requirements. A well-defined IP goal can result in achieving business objectives and help position the business as a leader in the marketplace. With growth in business revenues, the IP strategy can include protecting the unique aspects of the Intellectual Property assets and foster innovations to explore new geographies. This can be achieved through licensing or joint ventures to create novel solutions that satisfy the needs in the market.

A company must review its existing intellectual property to determine whether it is aligned with business objectives. This helps the company to identify new ways to leverage the intellectual property through licensing opportunities. Successful companies must look for new avenues to expand their product offerings, increase their sales revenue, and foray into new markets. Let us take the example of Google. If we review the innovation of products that they offers to various individual and other business, it is always unparalleled and many a times, it is proactive and customer-driven. Their products like Google Maps, Gmail and Google Drive are some of the widely used tools in a day to day life.

“IP rights provide an incentive for innovations taking place in diverse industries, especially technology space. With the growing recognition and importance of technology innovations, there is a need to create a strong IP system. A strong and effective IP system helps the country to encourage free flow of information and technology. IP plays a vital role in encouraging innovative people and rewarding them for their ideas, thus driving productive growth.”

An organization's patent portfolio is vital for its future success along its various intellectual property assets as designs, trademarks, and copyrights. Thus, organization should ensure the maximum realization of its existing product portfolio which can be done through effective portfolio management. Also, the organization should understand the patent portfolio in tandem with its competencies and market opportunities available. There is a need to identify white spaces where the organization can license their product

What are the different ways of licensing an Intellectual Property Right?

An intellectual property is patented in the name of the creator of this right. He can grant license to any other person who wish to use this IP for their beneficial use. Some of the different ways of grant of license are as follows

- Perpetual licenses (where the licenses are granted without any restriction of users or tenure)
-
- Term licenses where the grant of licenses is restricted to a specified period
- License Fee based on the number of users



The inflow of licenses doesn't stop with grant of licenses. Since these are intellectual properties, the license fee will be followed with a % percentage of Annual Maintenance fees which is paid by customers to enrich the existing product functionalities and to develop new functionalities.

Other Facets of Intellectual Property Rights

IP rights also provide an incentive to the innovator to exploit and commercialize their innovations in the marketplace. Therefore, organizations are realizing the importance of intellectual property assets as it involves a significant percentage of company's valuation during mergers and acquisitions. Stemming from its ability to provide a high rate of return and competitive advantage, companies are protecting their IP

India as a country is one of the major exporter of software products and services. India's IT industry contributed around 7.7 per cent to the country's GDP and is expected to contribute 10 per cent of India's GDP by 2025. The need of the hour is to bring innovation on the table, promote research and development, and create intellectual property which will boost the economy of our country.

To sum up, organizations should effectively embrace their IP portfolio management strategy in order to reap maximum benefits. Investments in research and development of products and services and building patent portfolios will yield returns which is sustainable and progressive.

References:
S.R. Myneni, Intellectual Property Law.
www.wto.org/trips
IBEF for statistics related to GDP



Meaning of Voluntary Liquidation

In simple words as the name itself suggests Voluntary liquidation means winding up / liquidation which takes place at the instance of the members with minimal intervention of the Court.

Why voluntary winding up?????

Entity has been formed for a purpose and the purpose is fulfilled OR Articles provide that entity shall be liquidated on the happening of an event and that event has happened OR the Company is unable to carry on business

Statute Governing Voluntary Liquidation now & History of Voluntary Liquidation in India

The provisions relating to voluntary winding up were earlier under Sections 304 to 323 of the Companies Act 2013. However, these provisions of voluntary winding up have been removed from the Companies Act 2013 & are now governed by Insolvency & Bankruptcy Code 2016.

The main object of the Insolvency & Bankruptcy Code was to provide exit route mechanism for insolvent corporate persons including also provisions for voluntary liquidation of solvent persons. The Ministry of Corporate Affairs vide its notification dated 30th March 2017 has notified Section 59 of the Insolvency & Bankruptcy Code 2016 which pertains to Voluntary Liquidation of Corporate Persons. Also, the Insolvency & Bankruptcy Board of India vide its notification dt 31st March 2017 notified the Insolvency & Bankruptcy Board of India (Voluntary Liquidation process) Regulations, 2017 which came to be effect from 1st Apr 2017.

History of Voluntary Liquidation

Provisions of Voluntary liquidation under the erstwhile Companies Act 1956: Voluntary liquidation was covered under Companies Act 1956 from Sections 484 to 520. Under the Companies Act 1956 three modes of winding up were provided:

1. Compulsory winding up
2. Voluntary Winding up - Members Voluntary Winding up & Creditors Voluntary Winding up
3. Voluntary winding up subject to supervision of Court

“In Companies Act 2013, voluntary liquidation subject to the supervision of the Court was dispensed off and 2 modes were provided for liquidation (a) winding up by Tribunal & (b) voluntary winding up. Even though the Companies Act, 2013 contained the provisions of Winding up they were not yet effective and was not enforced.

Subsequently the provisions of voluntary liquidation were removed from the Companies Act 2013 and the procedure for voluntary liquidation was provided for in the Insolvency and Bankruptcy Code 2016. Section 59 of the said code was notified on 30th March 2017 and further the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 was also notified which came to effect from 1st of April 2017.”

Provisions of Voluntary Liquidation under Companies Act 2013

In Companies Act 2013, voluntary liquidation subject to the supervision of the Court was dispensed off and 2 modes were provided for liquidation (a) winding up by Tribunal & (b) voluntary winding up. Even though the Companies Act, 2013 contained the provisions of Winding up they were not yet effective and was not enforced.

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Voluntary Liquidation at Present

The provisions pertaining to Voluntary liquidation are governed by Section 59 of the The Insolvency & Bankruptcy Code 2016 and the procedural requirements are given in the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

Voluntary Liquidation in a Nutshell - Section 59 - Section 59 of the Code deals with Voluntary Liquidation of Corporate Persons

Corporate person - As per Section 2(7) of the Code " Corporate person" means a Company as defined in clause (20)of Section 2 of the Companies Act 2013, a limited liability partnership, as defined in clause (n) of the subsection (1)of Section 2 of the Limited Liability Partnership Act, 2008, or any other person incorporated with limited liability under any law for the time being in force but shall not include any financial service provider. Financial service providers are specifically excluded from the definition of corporate persons.

Preconditions for Voluntary Winding up

There are 2 preconditions for initiating voluntary liquidation (Section 59 of the Code)

- Corporate person intends to liquidate itself voluntarily AND
- The Corporate person has not committed any default.

The voluntary liquidation of a corporate person shall be carried out in accordance with the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

For Voluntary Liquidation of a corporate person registered as a Company the following procedure is to be observed.

- Declaration of solvency from majority of directors of the Company, verified by an affidavit
- Declaration shall be accompanied by audited financial statements and records of business operations and a report of the valuation of assets
- Within 4 weeks of declaration as above, shareholder's approval to be obtained either by ordinary or special resolution to voluntarily liquidate the Company and appointment of insolvency professional to act as a Liquidator.

- Where the Company owes any debt to any person, creditors representing 2/3rd in value of the debt of the Company shall approve the resolution passed above within 7 days of the resolution.
- Intimation to the ROC and the Insolvency and Bankruptcy Board about the resolution passed for voluntary liquidation within 7 days of such resolution.
- Once the affairs of the corporate person have been completely wound up, and its assets have been completely liquidated, application shall be made to the Adjudicating Authority (NCLT) for dissolution of the corporate person.

Commencement of Voluntary Liquidation: The voluntary liquidation proceedings shall commence from the date of passing of resolution (ordinary / special resolution) as the case may be.

Procedural Requirements & Reporting by Liquidator

- Public announcement of liquidation shall be made by the liquidator within 5 days of his appointment in an English and Regional Newspaper requesting stakeholders to submit their claims as on liquidation commencement date and provide the last date for submission of claims.
- The public announcement shall be published on the website of corporate person.
- Stakeholder shall prove his claim for debts or dues to him as on the Liquidation commencement date.
- Chapter V of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 provide for the manner and submission of claims by creditors, Determination of claims, verification of claims etc.

Verification of Claims & Preparation of List of Stakeholders:

The liquidator shall verify the claims submitted within 30 days from the last date of receipt of claims. It is the discretion of liquidator to accept / reject claim. Based on the proofs of claims submitted , the Liquidator shall prepare a list of stakeholders with the amount of claim admitted , extent to which debts / dues are secured / unsecured, details of stakeholders & proofs admitted or rejected, within 45 days from the last date for receipt of claims

Realization of Assets: Chapter VI of the Insolvency Regulations, 2017 provide for the realization of assets and Chapter VII provides for proceeds of liquidation and distribution of proceeds

Completion of Liquidation: Regulation 37 of the Insolvency Regulations, 2017 provides that the liquidator shall endeavour to complete liquidation process of the corporate person within 12 months from the liquidation commencement date.

Reporting Requirements:

The Liquidator is required to prepare and submit the following reports to the corporate person.

Preliminary Report within 45 days from the liquidation commencement date detailing capital structure of the corporate person, estimates of its assets and liabilities as on the liquidation commencement date, his plan of action regarding liquidation etc. Annual Status report (applicable only in case liquidation process continues for more than 12

months) which shall indicate the progress in liquidation including inter alia settlement of list of stakeholders, details of assets remaining to be sold, enclose audited accounts of liquidation.

Final Report - On completion of liquidation process consisting of Audited accounts of liquidation, statement showing that the assets of corporate person have been disposed of, debts of corporate person has been discharged, no litigation is pending against the corporate person, sale statement stating the realized value, cost of realization and manner and mode of sale, person to whom it is sold The final report made by the Liquidator shall be sent to the Registrar, to the Board and to the adjudicating authority. Preliminary & final report are mandatory whereas reporting of Annual Status will only arise if the liquidation cannot be completed within 12 months.

Dissolution

Once the affairs of the Corporate persons are completely wound up, the liquidator shall make an application to the Adjudicating Authority for dissolution of corporate persons. After the application is filed the adjudicating authority, shall pass an order that the corporate debtor shall be dissolved from the date of that order & the corporate debtor shall be dissolved accordingly. Within 14 days of passing of order, the order shall be forwarded to the authority with which the corporate person is registered.

Budget 2020 & Dividend Distribution Tax

New Challenges in the Business



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A brief visit on history shows that DDT was introduced in 1997, removed in 2002 only to be re-introduced in 2003 till it is now slated to be removed in 2020. DDT was mandated under section 115D. There are 2 major reasons why DDT is proposed to be removed.

First, as expected on persistent demand from non-resident investors Dividend Distribution Tax (DDT) has been abolished from the financial year 2020-21. The DDT which was approximately 20.56% (15% + Surcharge & Cess) was a major concern for non-resident investors. Also as DDT is a tax obligation of the distributing company (i.e. it is not in the nature of TDS), such DDT is not available as a credit to the non-resident shareholder in his country and hence not eligible for refund of this tax. Now under the new regulations Indian companies paying dividend to non-resident investors need to comply withholding tax provisions albeit at a lower rate as prescribed under the respective country treaty. The treaty rates are beneficial to non-resident investors and it is usually between 10% to 15% in most of the cases. This move is intended to attract foreign investments as non-residents have lower tax rates in virtue of tax treaties.

Second, to avoid a flat rate on the distributed profits across the board irrespective of the marginal rate at which the recipient is otherwise taxed DDT is slated to be removed. Now with the incidence of tax passing on to shareholders they will have to discharge their tax liability depending on their income slabs. This brings in more equity among taxpayers.

The below are the challenges on removing DDT

1. This new tax regime puts the resident investor at a disadvantageous position as the highest tax rate may be as high as 42.74% for individuals and 34.94% for resident companies on dividends received as against DDT of 20.56% currently. Representations have been forwarded to finance ministry to tax dividends separately (something similar to the removed section 115BBDA) at the rate of 10% for dividend amounts up to Rs.10 lakhs and at 20% for dividend amounts above Rs.10 lakhs per annum.
2. The new DDT regime proposes to introduce section 80M to avoid cascading effect on dividend tax. A company which has multiple layers viz subsidiaries can set off dividend income from their Indian subsidiaries and also from Indian companies, Section 80M provides relief from cascading effect on all dividends received from domestic companies. However, if a company receives dividends from foreign companies' section 80M does not provide set off relief and this dividend received is not set off against dividend income in hands of recipient.
'80M. (1) Where the gross total income of a domestic company in any previous year includes any income by way of dividends from any other domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends received from such other domestic company as does not exceed the amount of dividend distributed by the first mentioned domestic company on or before the due date.
3. Reading section 80M provision is available only when tax is paid under normal provisions of the Income Tax Act. If a company is paying tax under section 115JB (Book Profit - MAT) then section 80M cannot be applied. This needs an amendment to the section 115JB and section 80M
4. Buy back of shares under section 115QA has an effective tax of 23.29%. For individual persons receiving tax highest rate of tax will be 42.74%. This in effect means for this category of shareholders buyback of shares offers a lower rate and there are chances of more share buyback than dividend for domestic companies for the years after April 2020.
5. Transitional provision: A company has 14 days for disbursement of dividend from the date of declaration of dividend. There is a confusion as to if dividend is declared in last week of March 2020 and actual payment is affected in April 2020 will there be double tax - in March DDT and in April individual tax? Clarification is required from Government on this subject.
6. Section 194 has been amended by finance Act 2020 to enable TDS @ 10% to be deducted for dividends exceeding Rs.5,000 per year
7. Amendment to Section 115A provides that a non-resident should file return in India if his dividend income has been subject to TDS which is less than the rate prescribed under Chapter XVII-B. In practice most of the non-resident entities will be covered under a treaty and will have a rate lower than the one provided in Chapter XVII-B. In short most of the non-residents will be mandated to file income tax returns in India for dividend income and also would be required to file form 3CEB

A Quick look at Mutual Fund dividends

A new section 194K is introduced in budget 2020 to provide that any person responsible for paying to a resident any income in respect of units of a Mutual Fund will deduct income-tax (TDS) there on at the rate of 10% if the amount exceeds Rs.5,000 per annum. This 194K has cast a doubt on investors' minds, whether only dividends will be subject to 10% TDS or also capital gains arising out of mutual fund withdrawals are subject to TDS. A suitable clarification is expected from Government on this soon.

Conclusion

Removal of DDT is a welcome step for the industry albeit for some promoter held entities whose promoters will be required to pay tax at a higher rate. Government has to come out with clear answers / guidelines to remove all concerns of industry relating to the points mentioned above to bring in high level of clarity and seamless implementation of this change.

CS as a Start-up Consultant



Harleen Kaur

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It seems the trendiest word now a days is “Startup”. In India, Startup action plan is initiated by Honorable Prime Minister Narendra Modi intended towards building a strong business environment, promoting economic growth and boost employment opportunities in our country. A Startup is a venture which is initiated by the entrepreneurial founders with innovative ideas and new business model in identifiable, investable and sustainable form, with an intention to grow rapidly as a result of offering something that address a particular market gap with extra ordinary products, services and processes. Startup is out of the box processes of research and development of target market. Startups are heralded for there innovative spirit over the existing industries. Its actual process starts with searching of a great idea or a problem worth solving with a committed value adding team aligned with shared vision to make that vision a reality. In a nutshell, a great brain wave business model with a devoted human resource creates a great company.

Eligibility criteria for recognition of Startups

1. Incorporated or registered in India for less than 7 (seven years) and for biotechnology startups up to 10 years from the date of its incorporation.
2. Annual turnover not exceeding Rs. 100 crores in any of the preceding financial years.
3. Endeavor to work towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.
4. Company is not formed by splitting up or reconstruction of any business/ Company already in existence.

5. Must obtained certification from the Inter-Ministerial Board setup for such a purpose.
6. It can be incorporated as a Private limited company, registered Partnership firm or a Limited Liability Partnership.

An entity shall cease to be a Startup:

1. On completion of 10 years from the date of incorporation/registration.
2. If its turnover for any previous year exceeds Rs. 100 crore.

Register as Startup

After being eligible to setup as a new startup, an entrepreneur to qualify as an eligible startup should register the entity as follows:

1. Register an entity as i.e. Private Ltd Company, LLP, Partnership Firm, One person Company under the Companies Act, 2013.
2. Obtain letter of recommendation or letter of funding from incubators or any other authorities as prescribed by DIPP (Department of Industrial Policy and Promotion). This letter of recommendation is a kind of certificate which acknowledges that the product is innovative.
3. File an application to DIPP to recognize as startup (along with the attachment of letter of recommendation) through the mobile app or the portal of DIPP.

“Company secretary are also considered as Corporate Governance professionals who advise the Board of Directors on critical aspects of corporate laws to dispense their duty effectively. Company secretaries are recognized as the Key Managerial Person and are subjected to ensure that the company and its directors operate within the law. A Company Secretary has a lot to do in startup affairs aside advisory in Government Startup Scheme. Role of a CS come into picture from the very beginning i.e. Incorporation of the Company , guiding an entrepreneur into formation of a legal entity, drafting of AOA and MOA, issue of shares, obtaining all the tax registrations, trade mark registrations, helping with registration with govt. bodies like DIC, DGFT, SEZ etc. if required.”

Benefits of Startup Registration

- a. Tax Exemption for 3 years- u/s 80IAC and U/s 56 relief for Angel Tax relief
- b. Participation in Government tenders- Relaxation in Prior experience or Turnover criteria.
- c. Concession in IPR fees: 50%-80% Govt. fee concession is available for IPR registration
- d. Trouble-free winding up process: Winding-up of company within 90 days under the Insolvency & Bankruptcy code, 2016.
- e. Government Funding: Government provide funds upto Rs. 10,000 crores for investment into startups through Alternate Investment Funds.
- f. Self Certification under the Labor and Environmental Laws: startups are allowed to self certify their compliances under six labor laws and three environment laws for a period of five years from the date of incorporation of the entity.
- g. Connect Networks: Mentorship, connect to investors and industry.

Startup Policies

Many States notify Startup Policies by the respective State Governments. The Policy also contains the reference of the concerned Nodal Agency their office address, and contact details. Below are the states who notified the Startup Policies:

1. Andaman & Nicobar Innovation Policy 2018
2. Andhra Pradesh Innovation & Startup Policy 2014
3. Assam Startup Policy 2017
4. Bihar Startup Policy 2017
5. Chhattisgarh Innovation and Entrepreneurship Development Policy 2016
6. Goa Startup Policy-2017
7. Electronics & IT/ITeS Start-up Policy (2016-21)- Gujarat
8. Haryana Entrepreneur & Startup Policy-2017
9. Chief Minister's Startup/Innovation/Projects/New Industries Scheme- Himachal Pradesh
10. Jammu & Kashmir Startup Policy 2018
11. Jharkhand Startup Policy 2016
12. Karnataka Startup Policy 2015-2020
13. Kerala Startup Policy 2017
14. MP Incubation and Startup Policy 2016- Madhya Pradesh
15. Maharashtra Startup Policy 2018
16. Manipur Startup Policy 2016
17. Nagaland Startup Policy 2019
18. Odisha Startup Policy 2016
19. Aspring Puducherry - Innovations & Startup Policy 2019
20. Industrial & Business Development Policy 2017- Punjab
21. Rajasthan Startup Policy 2015
22. Tamil Nadu Startup & Innovation Policy 2018 - 2023
23. Telangana Innovation Policy 2016
24. Uttar Pradesh Information Technology and Startup Policy 2016
25. Uttarakhand State Start-up Policy-2018
26. West Bengal Startup Policy 2016¹



Government Schemes

- Support for International Patent Protection in Electronics and & Information Technology (SIP-EIT)- for international patent filing to encourage innovation and recognize the value and capabilities of global IP
- Stand-Up India for Financing SC/ST and/or Women Entrepreneurs- facilitate bank loans between 10 lakh and 1 crore to atleast one scheduled caste (SC) or Scehduled Tribe, borrower and atleast one women per bank branch for setting up a greenfield enterprise.
- Single Point Registration Scheme- NSIC registers Micro & small Enterprises (MSEs) under Single Point Registration scheme (SPRS) for participation in Government Purchases.

- Dairy Entrepreneurship Development Scheme- Scheme is being implemented by National Bank for Agriculture and Rural Development (NABARD), to promote setting up of modern dairy farms for production of clean milk.
- Scheme To Support IPR Awareness Workshops/Seminars in E&IT Sector
- AND MANY MORE ²

CS as Consultant

Startup required an experience in the field as it has lot of exemption and relaxations given by the government for new startup ventures. Consultants/ professionals play a vital role in startups as they bring you the knowledge for multiple benefits and domains available which help to make the right decision at the right time.

Company Secretaries has been recognized as expert in:

- Formation and incorporation of companies and other matters related to incorporation.
- Filing, registration of any document including e- forms, returns and applications on behalf of the company as an authorized representative.

Company secretary are also considered as Corporate Governance professionals who advise the Board of Directors on critical aspects of corporate laws to dispense their duty effectively. Company secretaries are recognized as the Key Managerial Person and are subjected to ensure that the company and its directors operate within the law. A Company Secretary has a lot to do in startup affairs aside advisory in Government Startup Scheme. Role of a CS come into picture from the very beginning i.e. Incorporation of the Company , guiding an entrepreneur into formation of a legal entity, drafting of AOA and MOA, issue of shares, obtaining all the tax registrations, trade mark registrations, helping with registration with govt. bodies like DIC, DGFT, SEZ etc. if required.

Why a Company Secretary?

Startups are formed as private limited companies, LLP's, etc. this makes them separate legal entities governed by various statutes, acts and laws of the vicinity where they are registered. The registration of a Company for recognised as startup is the first step to meet lawmaking guidelines for starting business, but there are some other requirements also need to be complied with to avoid any complexities from regulatory bodies after the incorporation. A Company Secretary as a consultant to a startup helps to move a specific objective of the company a way forward and add value to it. They as professionals offer an advice and expertise, aiming to boost trade existence and performance.

Roles of a CS

1. Company Setup is the preliminary role of a CS, start with incorporation and drafting of the MoA and AoA. In short, guiding the best form of entity as per the laws and benefits available.
2. Further, as discussed earlier, guide the KMP's/ Promoters to issue of shares, as many relaxations available in issue of shares under Companies Act.
3. Helps in strategic planning and create a road map and removes hurdles in starting startups.
4. CS will suggest the series of funding each by valuing the company at every stage. Further, CS as consultant and professional will change/ advise to change the capital structure of the company to accommodate the variable equity

based on the capital or provide a smooth capital structure and options for the venture capitalists, the promoters as well as the funding entities.

5. CS has adequate and in depth knowledge of corporate approach and will add value towards the business planning at par with the promoters. Contribution to Corporate Vision and Mission along with compliances with CSR.
6. ROC filing, tax registration, trade mark registration, SEZ registration, etc. are some varied roles of CS.
7. CS as your consultant will meticulously research the market and sector and plan to grow your business in.

Consultants are asked to solve the crisis alarming the business sector, who deeply analyse the symptoms which affects the business and assist the client to identify the way towards re-planning and to grab the opportunities.

Initiatives by THE INSTITUTE OF Company Secretaries of India

The ICSI has taken up an initiative to launch the Joint Certificate Programme with Startup India. The Programme will focus to equip the Members of ICSI with specific knowledge of all legal provisions relating to startups and also to get familiarise the members with startup culture and ecosystem trends.³

Sources:

1. <https://www.startupindia.gov.in/content/sih/en/startup-scheme/state-startup-policies.html>
2. <https://www.startupindia.gov.in/content/sih/en/government-schemes.html>
3. https://www.icsi.edu/media/webmodules/Startup_flyer.jpg

RELAXATION IN GUIDELINES FOR COMPULSORY ATTENDANCE OF PROFESSIONAL DEVELOPMENT PROGRAMMES FOR THE CURRENT BLOCK 2017-20

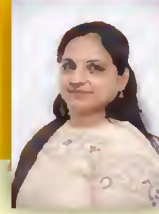
As we are all aware that Ministry of Health and Family Welfare, Government of India has issued advisory, regarding Novel Corona Virus Disease (COVID-19).

All the employees & officials, members and students of ICSI are advised to adhere to the guidelines /instructions/advisories including restrictions on travelling and mass gathering, issued by the Central Government and the concerned State Government from time to time. The Council at its 268th Meeting held on 12-13 March, 2020 has decided that the time period for obtaining the mandatory PCH for the current block of 2017-20 be extended by one month. i.e., the members may now obtain the mandatory PCH up to 30th April, 2020 instead of 31st March, 2020.

Further, with a view to facilitate the members in obtaining the mandatory PCH (for the current block of 2017-20) the following measures have been taken:

- (i) the ceiling of maximum (eight) PCH through webinars is relaxed and the members shall be entitled for PCH through webinars without any limits.
- (ii) the webinars up to 31st March, 2020 shall be completely free of cost. Series of webinars will be announced separately.
- (iii) W.e.f 1st April, 2020 the webinar fees shall be Rs.200 + GST.
- (iv) Members may also obtain up to 60 PCH by enrolling & qualifying the online assessment modules. The fee for appearing in each module shall be Rs.1000 + GST,
- (v) Members may also obtain 10 PCH for every PMQ/Certificate Course at the time of enrolment.

SEBI passes impounding order for notional gains in Insider Trading Case



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In this case, SEBI has passed impounding order to persons who are not immediate relatives on the basis of presumption that they were reasonably expected to have access to UPSI due to their relations with connected person and they indulged in the act of insider trading which resulted in avoidance of loss.

Facts of the case

- The shares of PC Jeweller are listed on BSE Limited (“BSE”) and the National Stock Exchange of India Limited (“NSE”).
- Securities and Exchange Board of India (“SEBI”) had conducted an investigation in the scrip of PC Jeweller Limited (“PC Jeweller/Company”) to ascertain whether or not suspected entities had traded in the aforesaid scrip during the period April 2-July 31, 2018 (“Investigation Period”) on the basis of unpublished price sensitive information (“UPSI”), in contravention of the provisions of the SEBI Act, 1992 (“SEBI Act”) read with the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“Insider Trading Regulations, 2015”).
- On 10 May, 2018, the Company in its Corporate Announcement has informed BSE and NSE that the Board of Directors in its meeting held on that date had approved a buyback of equity shares at a price not exceeding Rs. 350 per equity share of Rs. 10 each for an aggregate amount not exceeding Rs. 424 Crores.
- The company approached STATE BANK OF INDIA (“SBI”) on 7 July, 2018 to issue NOC for the proposed Buy Back offer and which was refused by the SBI on same day
- On 12 July, 2018 CFO met the officials of the Bank to reconsider the Bank’s refusal. However, the request was again refused on same day.
- Thereafter, on 13 July, 2018 (after market hours), the Company informed BSE and NSE that the Board of Directors in its meeting held on that date, had approved the withdrawal of the aforesaid buyback of equity shares with immediate effect.
- The Corporate Announcement pertaining to buyback of equity shares of the company, which was related to a change in capital structure of the Company, qualifies as UPSI in terms of event of Reg 2(1)(n)(iii) of Insider Trading Regulations 2015.

SEBI’s Observation:

SEBI observed that as soon as announcement relating to buyback was made the market price of scrip hit the upper circuit of 10% and as soon as withdrawal of buyback was announced market price of scrip hit lower circuit of 20%.

Allegations:

- Considering the trading pattern of Ms. Shivani Gupta, Mr. Sachin Gupta, M/s. Quick Developers Ltd (“QDPL”) and Mr. Amit Garg (“noticees”), and considering that even though they were not “immediate relatives” of each other but

they were reasonably expected to have access to UPSI due to their relations with each other and as all of them had common residential address, it is alleged that they were “Insiders” and they have indulged in the act of insider trading by trading in the scrip of PC Jeweller while in possession of UPSI (relating to announcement and cancellation of Buyback).

- It is alleged that they have violated Section 12A (d) and (e) of SEBI Act read with Reg 4(1) of PIT Regulations 2015.

Held

- SEBI directed to disgorge an amount equivalent to the total gains made/loss avoided on account of insider trading in the scrip of PC Jeweller along with interest @ 12% which amounts to Rs .8,30,83,345.77
- Further SEBI restrain noticees from the securities market and prohibited them from buying, selling or otherwise dealing in securities till the matter is disposed off

The New Tax Regime for Companies



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To start with The Government has brought in the Taxation Laws (Amendment) Ordinance 2019 to make certain amendments in the Income-tax Act 1961 and the Finance (No. 2) Act 2019 which provides a path for new tax regime for companies. Corporate tax rates slashed to 22% for domestic companies and 15% for new domestic manufacturing companies and other fiscal reliefs.

Salient Features

- A. In order to promote growth and investment, a new provision has been inserted in the Income-tax Act with effect from FY 2019-20 which allows any domestic company an option to pay income-tax at the rate of 22% subject to condition that they will not avail any exemption/incentive. The effective tax rate for these companies shall be 25.17% inclusive of surcharge & cess.

Section 115BAA Tax on Income of Certain Domestic Companies:

- Applicable on all Domestic Companies i.e, no foreign companies are covered
- Income tax rate @22%

“Under section 115BAA the effective tax rate after considering surcharge and education cess would be 25.168% and 17.16% under section 115BAB correspondingly. These two tax rates are less as compared to partnership and proprietorship form of business.

This new tax regime will give a boost up in incorporation of companies as well as conversion of existing partnership firms, proprietorship firm or any other form of business into a company.

- MAT Under section 115JB is NOT applicable
- Deductions and exemptions are NOT allowed
- Once exercised, such option cannot be withdrawn for the same or subsequent assessment years which means once option availed is taken forever
- Option to avail for lower rate of tax must be exercised on or before the due date of furnishing of return under section 139(1)
- Surcharge @10% and education cess @ 4%
- Such companies can be formed by splitting up or reconstruction of business already in existence
- Even old Plant & Machinery can be taken into this company.

Which means reduced tax @22% eventually with surcharge and education cess in any case will definitely less than the tax rate of any partnership firm or proprietorship firm which gives effect to all the existing firms, LLPs, proprietorship business may get also converted into corporate firms to get the benefit of reduced tax rate. However cannot be back out from this option once availed.

Deduction and exemption foregone

Such companies should not avail any exemptions/incentives under different provisions of income tax. Therefore, the total income of such company shall be computed without:

1. Claiming any deduction especially available for units established in special economic zones under section 10AA
 2. Claiming additional depreciation under section 32 and investment allowance under section 32AD towards new plant and machinery made in notified backward areas in the states of Andhra Pradesh, Bihar, Telangana, and West Bengal
 3. Claiming deduction under section 33AB for tea, coffee and rubber manufacturing companies
 4. Claiming deduction towards deposits made towards site restoration fund under section 33ABA by companies engaged in extraction or production of petroleum or natural gas or both in India
 5. Claiming a deduction for expenditure made for scientific research under section 35
 6. Claiming a deduction for the capital expenditure incurred by any specified business under section 35AD
 7. Claiming a deduction for the expenditure incurred on an agriculture extension project under section 35CCC or on skill development project under section 35CCD
 8. Claiming deduction under chapter VI-A in respect to certain incomes, which are allowed under section 80IA, 80IAB, 80IAC, 80IB and so on, except deduction under section 80JJAA (Deduction in respect of employment of new employees)
 9. Claiming a set-off of any loss carried forward from earlier years, if such losses were incurred in respect of the aforementioned deductions
- B.** In order to attract fresh investment in manufacturing and thereby provide boost to 'Make-in-India' initiative of the Government, another new provision has been inserted in the Income-tax Act with effect from FY 2019-20 which allows any new domestic company incorporated on or after 1st October 2019 making fresh investment in manufacturing, an option to pay income-tax at the rate of 15%. This benefit is available to companies which do not avail any exemption/incentive and commences their production on or before 31st March, 2023. The effective tax rate for these companies shall be 17.01% inclusive of surcharge & cess.

Previously Section 115BA of the Act provides that the total income of a newly set up domestic company engaged in business of manufacture or production of any article or thing and research in relation thereto, or distribution of such article or thing manufactured or produced by it, shall, at its option, be taxed at the rate of 25 per cent. subject to conditions specified therein. This benefit is available from assessment year 2017-18.

A new section was inserted with the ordinance as **Section 115BAB Tax on Income of Certain New Domestic Manufacturing Companies**

- Applicable on new manufacturing Domestic companies
- Income tax rate @15%
- Companies must be incorporated on or after 01/10/2019
- Companies must commence manufacturing/production on or before 31/03/2023
- NOT applicable to trading or service provider companies
- MAT under section 115JB is NOT applicable
- Deductions and exemptions are NOT allowed
- Once exercised, such option cannot be withdrawn for the same or subsequent assessment years which means once option availed is taken forever
- Option to avail for lower rate of tax must be exercised on or before the due date of furnishing of return under section 139(1)
- Surcharge @10% and education cess @ 4%
- Cannot be formed by splitting up or reconstruction of business already in existence
- Cannot Use OLD Plant & machinery
- However, there is an exception of using old Plant & machinery if it satisfies all the four conditions below
 - ✓ NOT used in India
 - ✓ Plant & Machinery must be Imported
 - ✓ No Depreciation is availed under section 32
 - ✓ Value of such plant & machinery cannot exceed 20% of total Plant & Machinery



Deduction and exemption foregone:

- Such companies should not avail any exemptions/incentives under different provisions of income tax. Therefore, the total income of such company shall be computed without:
- Claiming any deduction especially available for units established in special economic zones under section 10AA
- Claiming additional depreciation under section 32 and investment allowance under section 32AD towards new plant and machinery made in notified backward areas in the states of Andhra Pradesh, Bihar, Telangana, and West Bengal
- Claiming deduction under section 33AB for tea, coffee and rubber manufacturing companies

- Claiming deduction towards deposits made towards site restoration fund under section 33ABA by companies engaged in extraction or production of petroleum or natural gas or both in India
 - Claiming a deduction for expenditure made for scientific research under section 35
 - Claiming a deduction for the capital expenditure incurred by any specified business under section 35AD
 - Claiming a deduction for the expenditure incurred on an agriculture extension project under section 35CCC or on skill development project under section 35CCD
 - Claiming deduction under chapter VI-A in respect to certain incomes, which are allowed under section 80IA, 80IAB, 80IAC, 80IB and so on, except deduction under section 80JJAA (Deduction in respect of employment of new employees)
 - Claiming a set-off of any loss carried forward from earlier years, if such losses were incurred in respect of the aforementioned deductions
- C. A company which does not opt for the concessional tax regime and avails the tax exemption/incentive shall continue to pay tax at the pre-amended rate. However, these companies can opt for the concessional tax regime after expiry of their tax holiday/exemption period. After the exercise of the option they shall be liable to pay tax at the rate of 22% and option once exercised cannot be subsequently withdrawn. Further, in order to provide relief to companies which continue to avail exemptions/incentives, the rate of Minimum Alternate Tax has been reduced from existing 18.5% to 15%.

CBDT has issued a Circular no: 29/2019 dated 02/10/2019

This Circular has clarified that, If any company wants to take benefit of reduced tax rate then such a case it cannot avail the benefit of SET - OFF of balances forwarded on account of

- Loss of Additional Depreciation
- MAT tax credit

However, the company availing the benefit of reduced tax rate under section 115BAA can differ the benefit by coming out with tax planning in such way to set off all the accumulated loss of additional depreciation and MAT tax credit. After consuming all the accumulated losses even on later years, the companies can opt for the benefit of reduced tax rate under section 115BAA.

There is no time limit prescribed under section 115BAA in order to exercise the option of switching over to new reduced tax rate. Thus, the corporates can have their TAX planning accordingly.

- D. In order to stabilise the flow of funds into the capital market, it is provided that enhanced surcharge introduced by the Finance (No.2) Act, 2019 shall not apply on capital gains arising on sale of equity share in a company or a unit of an equity oriented fund or a unit of a business trust liable for securities transaction tax, in the hands of an individual, HUF, AOP, BOI and AJP i.e, increased surcharge of 25% and 37% basing on the turnover is not applicable on the income arising as long term capital gains on sale of equity shares in accompany and are charged at regular surcharge rates.
- E. The enhanced surcharge shall also not apply to capital gains arising on sale of any security including derivatives, in the hands of Foreign Portfolio Investors (FPIs).

- F. In order to provide relief to listed companies which have already made a public announcement of buy-back before 5th July 2019, it is provided that tax on buy-back of shares in case of such companies shall not be charged i.e, public announcement of buy-back must be made before 5th July 2019 but actual buy back may happen after 5th July 2019, such companies are also exempted from such tax on buy-back of shares.
- G. The Government has also decided to expand the scope of CSR 2 percent spending. Now CSR 2% fund can be spent on incubators funded by Central or State Government or any agency or Public Sector Undertaking of Central or State Government, and, making contributions to public funded Universities, IITs, National Laboratories and Autonomous Bodies (established under the auspices of ICAR, ICMR, CSIR, DAE, DRDO, DST, Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting SDGs.

The total revenue foregone by government for the reduction in corporate tax rate and other relief is estimated at Rs. 1,45,000 crores.

Removal of Dividend Distribution Tax

Companies are required to pay dividend distribution tax (DDT) on the dividend paid to its shareholders at the rate of 15 per cent plus applicable surcharge and cess, in addition to the tax payable by the company on its profits.

In order to increase the attractiveness of the Indian equity market and to provide relief to a large class of investors, the government in the union budget removed the DDT and adopted the classical system of dividend taxation under which the companies would not be required to pay DDT.

“The dividend shall be taxed only in the hands of the recipients at their applicable rate,”

Further, in order to remove the cascading effect, government allowed deduction for the dividend received by holding company from its subsidiary. The removal of DDT will lead to estimated annual revenue forgone of Rs 25,000 crore.

To Conclude With

Under section 115BAA the effective tax rate after considering surcharge and education cess would be 25.168% and 17.16% under section 115BAB correspondingly. These two tax rates are less as compared to partnership and proprietorship form of business.

This new tax regime will give a boost up in incorporation of companies as well as conversion of existing partnership firms, proprietorship firm or any other form of business into a company.

The objective of the government was to keep more money in the hands of corporates by reducing the tax rate u/s 115BAA and u/s 115BAB, removal of dividend distribution tax in order make the corporate capable for expansion of business by investing in capital expenditure and reinvestments. Thus, new tax regime is a positive cascading impact for overall economic growth and it will impact the GDP as well and support in growth of GDP.

Women Empowerment

-Freedom through my Eyes!!



Ms. Neetu Aggarwal

Compliance Officer - CDSL Depository,
Religare Finvest Limited
neetu.aggarwal@religare.com

Technically, Freedom means 'the power or right to act, speak, or think as one wants without hindrance or restraint,' Article 19(1)(a) of Indian Constitution says that all citizens have the right to freedom of speech and expression. Freedom of Speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode.



I Am Free, I am like a butterfly.

Colourful and free, I belong to no one

I will be set free, my colours are my personality

They only belong to me, I want to breathe and enjoy my life

Every morning I wake up, not having fears of whether I'll live that day. I'm confident to act as my normal self. I have no fear of this because our future, present, and past men and women have fought to keep us safe. Not in the middle of wars and not worried for our lives. Allowing us to confidently live our day.

It is all these things that make us who we are, and with the freedom we have fought for, we really can be ourselves. So, freedom might just be a word in the dictionary, but to me, freedom is getting to be one hundred percent me.

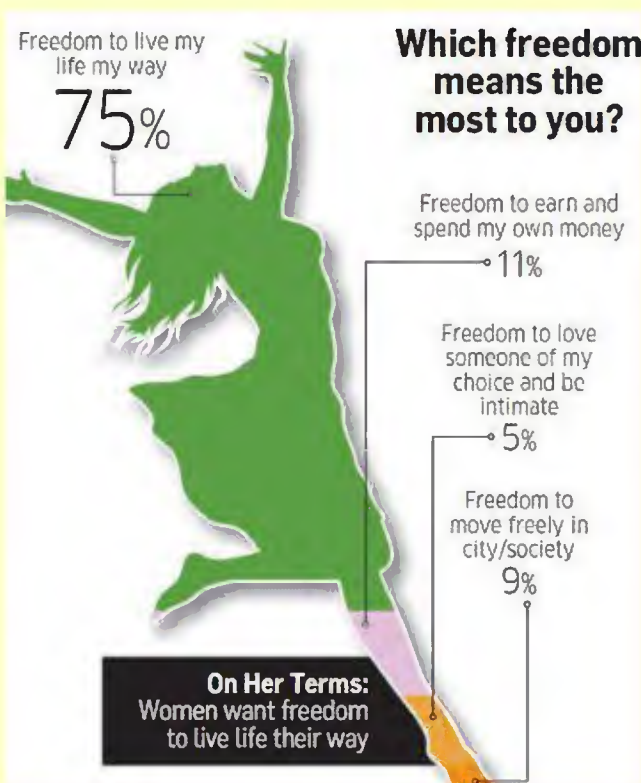
In our country, we have been provided with some fundamental rights which include freedom of many things like education, speech, etc. But have we really been given these freedoms? By listening to the word 'freedom' people might

start making their own perceptions. Some may take it lightly and thus misuse it while the others might take it greatly and make ample use of it. It depends entirely on an individual as to how he wants to take his freedom ahead.

I believe that freedom has both good and bad effects. It can either make a person or break a person. It can make a person independent, but it can also make a person get influenced by wrong company. Freedom to me is to be able to make decisions and choices independently, to be able to breathe freely. As a female, freedom is the most important thing in my life to live confidently. By this I mean, being allowed to choose the career that I want to pursue. By doing so I'll be able to give my best to my work.

To me freedom is getting an opportunity to know who I really am and discovering my strengths and weaknesses. By this would help me to be strong and face the world without any fears because then I'll know myself in and out, living the way I want to, wearing clothes that I like, eating what I relish, speaking to whomsoever I want to or going to wherever my mind wanders to. This freedom would allow me to be stress free and enjoy each and every second that I live in this world.

Freedom is much more than its literal sense. It is rights that are unconditional and issued to every citizen. To me freedom is to let everyone live their lives without getting insulted and abused. It is to let every child in our country to study so that this world can be transformed into a better place to breathe in and throw away child labour and things like these from our society.



I expected the people to renounce practices of derogatory to the dignity of women. What I find is that women are insulted and humiliated. Mahatma Gandhi said that the real progress is when a woman can walk on a street without fear at any time of the day or night. Now women are not safe even in daytime let alone the night-time. Children are subjected to all kinds of abuse. This is not the society what I expected it to be in independent India.

Keep your heart and mind free of bad thoughts, and fears. Like if your dream can come true, it's a choice - but if your mind is too nervous then you are taking away your freedom. For instance, Ranbir Kapoor in the movie Tamaasha did not have freedom to do what he liked but then one day he followed his heart and felt free to do what he wanted.

Freedom in India means a lot to me before and means a lot to me even now. As a citizen of India, I have the freedom of speech and freedom of expression. What more can I ask for? Freedom gave me the opportunity to be what I am today, an independent citizen of

India. In spite of everything, the country progressed well in all the fields. It is we, the people, who let the country down. Let us rise to the occasion to make our independence more meaningful. Let us think positive and act positive for the betterment of our country. I love my freedom and cherish it.



Neeta Saha (Appellant) vs. Ram Niwas Gupta (Respondent) dated 25 Feb, 2020 National Company Law Appellate Tribunal, (NCLAT) New Delhi

Facts of the Case

- ✓ Respondent filed Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) in the name of Proprietorship Mr. Ram Niwas Gupta & Sons (Operational Creditor)
- ✓ When the Application was filed, it was stated that a settlement took place between the M/s Palm Developers Private Limited (Corporate Debtor) and the Operational Creditor. The Application was earlier disposed off as withdrawn (4 June, 2019) with liberty granted to the Operational Creditor to seek restoration of the petition in case any of the cheques issued is dishonoured
- ✓ The total cheques amounting to Rs. 1,18,00,554/- were issued to the Operational Creditor.
- ✓ The Operational Creditor filed an Application again for restoration as cheque worth 78,000/- was dishonoured. Hence, the Application was restored and the parties were heard
- ✓ The said application was admitted under Section 9 of IBC and against the said admission the present Appeal has been filed
- ✓ The application was filed in the personal name of operational creditor

Question for consideration: Whether sole proprietorship concern is considered as person u/s 3(23) of the IBC and is eligible to file application u/s 9 of the IBC?

Arguments by the Appellant:

- Application filed is in the name of sole proprietorship firm and it is not a legal entity under the definition of "person" under Section 3(23) of IBC
- Proprietorship is not a legal person and thus Application u/s 9 of IBC cannot be maintained
- Tribunal had no jurisdiction because the Application is filed by entity which is not "person" under the law
- In R.G. Steels Vs. Berry Auto Ancillaries (P) Ltd. the petition which was filed by the sole Proprietorship concern was dismissed by National Company Law Tribunal, on grounds that a Sole Proprietorship concern was not held to be a 'person' and hence not a legal entity u/s 3(2) of IBC to file an application

Arguments by the Respondent:

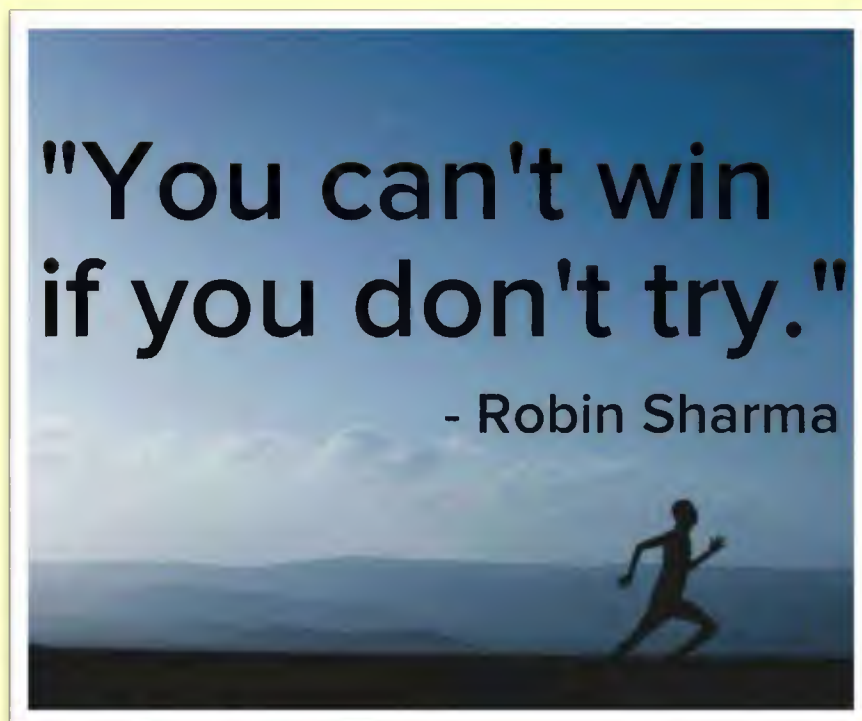
- No defect in the application as the NCLAT has allowed the application

Held:

- ❖ Section 2 of IBC provides that the provisions of the Code apply, inter alia, to "proprietorship firms"
- ❖ Further the definition of "person" in Section 3(23) of IBC is inclusive definition
- ❖ Appeal was dismissed

Comment

This order of NCLAT will be used as a benchmark by NCLT benches all across as different benches were taking different views. In the case of *M/s. R.G. Steels Vs. Berry Auto Ancillaries (P) Ltd* (IB- 722 /ND/2019), NCLT, New Delhi took converse view whereas NCLT Kolkata in the matter of *Kishore and Company v. Sri Balaji Metallics (P.)Ltd.* [CP(IB) No. 165/KB/2018] has allowed the application for initiation of CIRP Process filed by the sole proprietary concern





M/s ABC Ltd., a registered person in the state of Karnataka is into the activity of manufacturing brake liners. They have incurred various expenses which attract the provision of Section 9(3) of CGST Act, 2017 for payment of tax under RCM. Please explain the requirements in this regard



Opinion to Last Month's Brainy Bits

M/s ABC Ltd., a registered person in the state of Karnataka is into the activity of manufacturing brake liners. They have incurred various expenses which attract the provision of Section 9(3) of CGST Act, 2017 for payment of tax under RCM. Please explain the requirements in this regard

Facts of the case:

- Mr. A (hereinafter referred as Assessee) is an Individual having Turnover within the threshold limit of Registration under Section 22 CGST Act, 2017
- Assessee has no transactions specified under Section 24 CGST Act, 2017 calling for Compulsory registration
- Assessee has sought for a Registration voluntarily under Section 25 of CGST Act, 2017
- Assessee having registered under GST, would like to opt out of GST registration voluntarily at mid of the year concerned
- All the returns to be filed were duly filed and corresponding taxes have been duly paid; no benefit of Input Tax credit exists in the Electronic credit ledger and also no closing stock exists on the date of above surrendering of registration

Legal Provision:

Section 25:

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

Section 29:

1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,--

Existing provision:

(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24

Proposed in Finance Bill, 2020

“(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25:”

2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, -

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration;

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher

Conclusion:

Currently unless there is no business commenced within a period of six months by a person who took voluntary registration under Section 25, there is no mechanism to opt out of the registration sought. However, this anomaly of voluntary registration, after a certain period i.e. after having commenced his business, when the threshold limit for registration has not been lapsed can opt out of registration as per the insertion proposed in Finance Bill, 2020 in Section 29. Till the above Bill, gets enacted voluntary registration has to continue as such.





Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Issue of Global Depository Receipts) Rules, 2014, which is to be known as Companies (Issue of Global Depository Receipts) Amendment Rules, 2020.

In the Companies (Issue of Global Depository Receipts) Rules, 2014, after clause (a) of sub-rule 1, the following clause shall be inserted,

“(aa) “overseas depository” or “overseas depository bank” shall mean “foreign depository” as defined in the Scheme.”

In Rule 5, for sub-rule 1, the following sub-rule shall be substituted,

“(1) The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction.”

The following proviso shall be inserted in rule 7 of the principal rules,

“Provided that proceeds of issue of depository receipts may be remitted in an International Financial Services Centre Banking Unit (IBU) and utilized in accordance with the instructions issued by the Reserve Bank of India from time to time.”

Companies (Issue of Global Depository Receipts) Amendment Rules, 2020., dated 13th day of February 2020.

MCA has amended Companies (Incorporation) Rules, 2014, which is to be known as Companies (Incorporation) Amendment Rules, 2020.

The following rule shall substitute the rule 9 of the principal rules,

“9. Reservation of name or change of name.- An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICE+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from the 23rd February, 2020.”

MCA has introduced new E-Form SPICE+, same is now available on MCA website.

Companies (Incorporation) Amendment Rules, 2020., dated 22nd day of February 2020.

MCA has amended companies (Appointment and Qualification of Directors) Rules, 2014, which is to be known as companies (Appointment and Qualification of Directors) Amendment Rules, 2020. *In the Principal rule, the following proviso shall substitute the first proviso of sub-rule 4,*

"Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served as a director or key managerial personnel, for a total period of not less than ten years, as on the date of inclusion of his name in the databank, in one or more of the following, namely:-

(a) Listed public company; or

Unlisted public company having a paid-up share capital of rupees ten crore or more; or

(c) Body corporate listed on a recognized stock exchange.

Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28th February 2020.



NOVEL CORONAVIRUS (COVID-19)

Ministry of Health & Family Welfare
Government of India

Protect yourself and others!
Follow these Do's and Don'ts

Do's

- Practice frequent hand washing. Wash hands with soap and water or use alcohol based hand rub. Wash hands even if they are visibly clean
- Cover your nose and mouth with handkerchief/tissue while sneezing and coughing
- Throw used tissues into closed bins immediately
- See a doctor if you feel unwell (fever, difficult breathing and cough). While visiting doctor wear a mask/cloth to cover your mouth and nose
- If you have these signs/symptoms please call State helpline number or Ministry of Health & Family Welfare's 24X7 helpline at 1075(Toll Free)/011-23978046
- Avoid participating in large gatherings

Don'ts

- Have a close contact with anyone, if you're experiencing cough and fever
- Touch your eyes, nose and mouth
- Spit in public