

eMagazine



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Wishing all our readers

Happy New Year 2019

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

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Mission

"To develop high calibre professionals facilitating good corporate governance"



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Dear Professional Colleagues,

I wish you all a very happy, prosperous and healthy new year.

It gives me immense joy and content to have served our chapter for the past one year as the chairman of the Management committee. I trust and believe that with all the efforts of the Management Committee and the staff of our Chapter we were able to reach out to the student community and friends from professional circle effectively.

I place on record my sincere thanks to all the members of the Managing Committee, members of the Chapter, students, SIRC and ICSI HQ, officials of the other institutes, supporting members from other Chapters and to all staffs of Mysore chapter for extending their wholehearted support and co-operation.

The new team is expected to take over from 19th January 2019 and I extend my best wishes to the new team.

Wish you a very happy Sankranti.

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Chapter Activities

1. Investor and Career Awareness Program

Chapter conducted 02 Investor Awareness Program during the month of December 2018. The details are as follows.

S No.	Date	College Name	No. of Participants
1	13.12.2018	GSSS Institute of Engineering & Technology for Women, Mysore	86
2	17.12.2018	Mahajana PG Centre	80





Dematerialization of Securities – Unlisted Public Companies

The Ministry of Corporate Affairs in its drive to enhance transparency, investor protection, to check black money, stop back dated issue or transfer of securities and enhance corporate governance, had notified new Rule 9A in the Companies (Prospectus and Allotment of Securities) Rules, 2014 by the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018 on September 10, 2018 by exercising power conferred upon it u/s 29(1)(b) of the Companies Act, 2013. The said Rule came into effect from October 2, 2018. It mandates an Unlisted Public Company to issue securities compulsory in Demat form and to facilitate dematerialisation of all its existing securities by having connectivity with Depositories.

Applicability

The said Rule is applicable on all the Unlisted Public Companies effective from October 2, 2018.

Advantage

The major advantages of dematerialization of securities, among others, are as follows:

- Easy to hold and deal in securities.
- No risk of duplication, theft, fraud and loss which are associated with respect to physical share certificates. It will now lead to less legal dispute.
- Increased transparency in ownership, preventing malpractices, such as benami holding, back dated issuance/transfer of securities.
- Easy to identify the pledged securities.
- Exemption from payment of stamp duty on transfer leading to lower cost of transfer.
- One click access to shareholding pattern, list of shareholders and transaction details.
- Standardization of process and format of reporting.

- Change in address/bank details recorded with a Depository participant (DP) gets registered with all Companies in which investor holds securities in Demat form eliminating the need to correspond with each of them separately.



Disadvantage

As dematerialization of securities has advantages, it also comes with some disadvantages, as follows:

- There are chances of manipulation by the stock-brokers.
- Compliance will be increased for the Company as more Regulations need to be complied.
- To open and maintain demat account has cost attached to it even though the shareholders do not want to deal in shares and want to hold it for life (specially in case of family owned Companies)
- Companies need to incur extra cost for connectivity as well as charges of various intermediaries on periodic basis.

Definition

Before going to the legal provisions first we need to understand the meaning of the phrases used in the Rule:

1. **Demat:** The word “Demat” is not defined in the Companies Act, 2013 but as per Cambridge Dictionary, word Demat is used to describe shares, etc. that, upon dematerialization, bought, sold, and stored electronically rather than being sold, etc. in the form of Paper certificates.

2. **Securities:** The word Securities is defined under clause (81) of Section 2 of the Companies Act, 2013 as follows:

“Securities” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

Hence, wherever word Securities are used in Rule, we need to see definition given in Clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956,

3. **Unlisted Public Companies:** This term can be understood by understanding word “Unlisted Company” and “Public Companies”.

The Companies Act, 2013 does not define word “Unlisted Company” but the word “Listed Company” has been defined in Clause (52) of Section (2) as follows:

“Listed Company” means a Company which has any of its securities listed on any recognised stock exchange;

Hence, the Companies which do not fall under above definition will be termed as Unlisted Companies.

Whereas “Public Company” has been defined in Clause 71 of Section (2) of the Companies Act, 2013 as follows:

“Public Company” means a company which—

(a) is not a Private Company and;

(b) has a minimum paid-up share capital, as may be prescribed:

Provided that a Company which is a subsidiary of a Company, not being a Private Company, shall be deemed to be Public Company for the purposes of this Act even where such Subsidiary Company continues to be a Private Company in its articles.

Hence, every Public Company which is not Listed Company will be termed as Unlisted Public Company.

Company’s Responsibility

In accordance with the said Rules, on or after October 2, 2018 all the Unlisted Public Companies shall:

- a) issue the securities in the dematerialized form, and
- b) facilitate dematerialize of all its existing securities in accordance with provisions of the

Depositories Act, 1996 and Regulations made there under.

Dematerialization of existing securities:

Unlisted Public Companies have to facilitate the dematerialization of their existing securities by:

a) Making application to a depository as per the provisions of the Depositories Act, 1996 to have connectivity; and

b) Securing International Security Identification Number (ISIN) for each type of securities;

It may be noted that for each type of security, separate ISIN needs to be obtained.

At present there are only two Depositories in India, NSDL (National Securities Depository Limited) and CDSL (Central Depository Services Limited).

Compulsory Demat of securities:

The Company shall ensure that entire holding of securities of its Promoters, Directors and Key Managerial Personnel has been dematerialized in accordance with the provisions of Depositories Act, 1996 and Regulation made there under before taking following action:

- a) Offer for issue of securities,
- b) Offer for Buyback of securities,
- c) Issue of bonus shares, or
- d) Issue of Right offer

Compulsory Demat in case of transferring or subscribing the securities:

A security holder of Unlisted Public Company, who intends to transfer his securities on or after October 2, 2018, needs to dematerialize **such securities** (i.e. Security to be transferred) before transfer. Hence, transfer of securities on or after October 2, 2018 can be made only in dematerialized form.



Moreover, security holders who intend to subscribe to the securities of an Unlisted Public Company by way of private placement or bonus shares or rights offer on or after October 2, 2018 shall ensure that **all his existing**

Securities in the said Company are dematerialized before such subscription.

It may be noted that in case of request for transmission of shares held in physical form, it may be processed in physical form. However, the Rule is silent on the same.

Compliance:

After establishing connectivity for demat of the securities, the Companies shall observe the following compliance:

- a) Intimate to existing Security holders about such facility;
- b) Make timely payment of fees to Depository and Registrar to an issue and Share transfer agent (hereinafter referred as "Intermediaries") as per the terms of agreement executed with them;
- c) Maintain a security deposit with the intermediaries (in the form agreed between the Company and Intermediaries), which shall, at all time, not be less than two years' fees of respective Intermediaries.
- d) Comply with the regulation or direction or guidelines or circulars, if any, issued by the Securities and Exchange Board of India ("SEBI") or Depository from time to time with respect to dematerialization and matters incidental or related thereto.
- e) Submit Audit Report as provided in Regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996 on a half - yearly basis to the Registrar of Companies under whose jurisdiction the registered office of the Company is situated. (Form for submission of the Report still to be notified).

Except, as mentioned in clause (e) above, the provisions of the Depositories Act, 1996, the SEBI (Depositories and Participants) Regulations, 1996 and SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993, shall apply *mutatis mutandis* to dematerialisation of securities of Unlisted Public Companies.

Consequences of non-compliance

Unlisted public Companies who are:

- a) defaulting in payment of fees to above intermediaries;
- b) not keeping security deposit of two years fees with intermediaries; or
- c) not following regulations or directions or guidelines or circulars, issued by the SEBI or Depository from time to time with respect to dematerialization of shares of Unlisted Public Companies.

shall not offer of any securities or buyback its securities or issue any bonus or right shares till the payments to Intermediaries are made.

Redressal of Grievance:

Grievance Redressal under this Rule is to be filed before the Investor Education and Protection Fund Authority (IEPF).

The IEPF will initiate action against the following only after consultation with the SEBI:

- Depository;
- Depository participant; or
- Registrar to an issue and Share transfer agent.

Grey Area:

1. This Rule is applicable to the Unlisted Public Company, which means it is not applicable to Listed Public Company. The Listed Company is defined under section 2(52) of the Companies Act, 2013, which says that "**Listed Company**" means a Company which has any of its securities listed on any recognised stock exchange.

Hence, if any Public Limited Company has issued NCD and which are listed, in that case the said Company will be treated as Listed Company and above provisions may not apply. This issue needs to be clarified.

2. Rule 9A(3) provide that every holder of the Security in a Unlisted Public Company who subscribes to any security of said Company (whether by way of private placement or bonus shares or rights offer) on or after October 2, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

In case of Bonus issue there is no concept of subscription of shares by shareholder. In case of Bonus issue, every person, whose name is reflecting in the Register of Member as on Record Date or Book Closure Date fixed for the purpose, will receive the shares.

Therefore, if a shareholder holds shares in physical mode and the Company allots Bonus shares; the question arises as to how will the Company issue shares in demat form to such holder.

Indirectly, the Rule provides that before Bonus Issue, all the existing Securities of the Company shall be in demat form.

3. Some Unlisted Public Companies may have Management dispute or there may be dispute amongst Promoters. In such type of Companies or due to some legal proceedings, all the Promoter shareholdings could not be converted

into Demat which will stop the Company to issue further shares.

There should be some relaxations in such cases.

4. In case the Company has issued Convertible Securities earlier which would be converted in shares on happening of specific event or on specific date, question will arise whether the shares to be allotted on conversion of securities needs to be in Demat form or it can be in Physical form as this is not a case of offer or issue of securities but the terms of securities already issued.

Conclusion

It is a welcome move by the Government which will enhance governance, reduce legal dispute, check

benami holding, etc. It is obligatory on the part of Unlisted Public Company to have connectivity with Depositories for Demat of Securities and do not wait for issue of shares or receipt of request for transfer of shares.

Ref.: <https://en.wikipedia.org/>

Disclaimer

Please note that information contained herein is author's personal view. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation and provisions applicable at that point of time.



Words Worth Million

Take risks in your life. If you win, you can lead, if you lose, you can guide.

-Swami Vivekananda

Pranav Kumar Mysore

Partner

Narasimhan Sampath

Partner

NSK Attorneys



New Era of Dispute Resolution in India

With the dawn of new era in trade and commerce and with its constant pace in development of new technologies, disputes have reached new heights. Undisputedly, Indian legal system, prior to 2015, has often failed to timely meet the ends of justice and resolve the disputes. Thus, the Indian legal system has collapsed due to inordinate delays in resolving disputes. One such successful attempt in resolving disputes was by encouraging litigants to opt for an Alternate Dispute Resolution (ADR) mechanism, through mediation, arbitration and so on. These ADRs were successful to an extent of reducing frivolous and baseless litigations. However, the need of hour was a robust mechanism for an effective time bound adjudication of disputes. One may state that there are other mechanisms which are available for a litigant to enforce his rights like Arbitration. Arbitration, being an expensive affair, has its own advantages and disadvantages. Furthermore, Arbitration process can be initiated for disputes arising purely from contracts and/or agreements. Thus, Arbitration has the limited scope in terms of addressing a larger issue of enforcement of legal rights in India.

In the year 2003, the Indian Law Commission *suo moto* undertook the task of addressing this issue in its report “*Proposal for constitution of Hi-Tech Fast Track Commercial Divisions in High Courts*”. The report proposed for establishment of commercial courts in India which would follow the fast track procedure similar to Arbitration. Thus, the intent was to assure the investors that commercial suits would be handled by Commercial Courts established in the High Courts, which would follow unique procedures for fast tracking the commercial disputes.

Undisputedly, amongst other factors, one of the main reasons for delay in disposing any litigation in India, is the process of service of suit summons and/or notice on interlocutory applications at the initial stages of a suit. Despite amendments to the Indian Evidence Act, till date most of the Indian

Courts do not order for services of suit summons and/or notices on interlocutory applications through alternate means including electronic mails, short service message or other electronic modes of service. Having said thus off late, few courts have recognized the service through electronic mails, short service message or the like electronic modes of service as sufficient service but the same is not followed as a matter of practice in throughout India. Likewise, any interlocutory order of a subordinate can be challenged before the Appellate Courts including the Apex Court. These practices are hurdles in adjudicating a suit. Thus, contributing to huge pendency of cases in the Indian Judicial system.

The Indian Government based on the Law Commission report addressed the above issue by enacting “*The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015*” (Act) on 1st January, 2016 with an objective of effectively and timely adjudicating commercial disputes of specified value. The Act focuses on eestablishment of specialized courts, including Commercial Division and Commercial Appellate Division, to adjudicate commercial disputes of specified value and to provide legal procedural framework for adjudicating commercial disputes of specified value. The Act has indeed promised a new regime of dispute resolution with the procedures and legal framework which are promising. Accordingly, the Act identifies and classifies Commercial Dispute as disputes arising from:

A. Contractual disputes:

- ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;
- agreements relating to immovable property used exclusively in trade or commerce;
- franchising agreements;

- distribution and licensing agreements;
- management and consultancy agreements;
- joint venture agreements;
- shareholders agreements;
- subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- partnership agreements;
- technology development agreements;
- agreements for sale of goods or provision of services;
- insurance and re-insurance;
- contracts of agency relating to any of the above

A commercial dispute shall not cease to be a commercial dispute merely because it involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property or one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions.

B. Mercantile issues:

- export or import of merchandise or services;
- issues relating to admiralty and maritime law;
- transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- carriage of goods;
- construction and infrastructure contracts, including tenders;
- mercantile agency and mercantile usage;
- exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

C. Enforcement of Statutory Rights:

- Enforcement of intellectual property rights relating
 - to registered and unregistered trademarks,
 - copyright,
 - patent,
 - design,
 - domain names,
 - geographical indications and
 - semiconductor integrated circuits;

And such other commercial disputes as may be notified by the Central Government.

The Act, clarifies that the Commercial Courts, Commercial Divisions and Commercial Appellate Divisions have jurisdiction to adjudicate all commercial disputes, mentioned above, provided such commercial disputes is of a specified value. The Act has fixed a pecuniary limit for a commercial dispute. Initially, in the year 2016 when the Act was enacted, the specified value was fixed at Rupees One Crore only (~USD 145,000/-). However, in order to ensure that the said effective mechanism would be available to a larger group the Act was amended and the specified value is now reduced to Rupees Three Lakhs only (~USD 5000/-). The Act further provides a mechanism to identify specified value of a commercial dispute. Accordingly, the Specified Value of a subject-matter of the commercial dispute is determined as:

(a) for matters relating to recovery of money, the money sought to be recovered therein including interest, if any, computed up to the date of filing of the suit or application, as the case may be;

(b) for matters relating to movable property or to a right therein, the market value of the movable property as on the date of filing of the suit, appeal or application, as the case may be;

(c) for matters relating to immovable property or to a right therein, the market value of the immovable property, as on the date of filing of the suit, appeal or application, as the case may be; or

(d) in matters relating to any other intangible right, the market value of the said rights as estimated by the plaintiff.

As stated earlier, the right of challenging, by way of review, revision and through writ, an interlocutory order of a subordinate court, contributing to delays in adjudicating a suit, has been restricted by the Act. However, the Act provides a right of appeal only on appealable orders as identified by the Code of Civil Procedure. Thus, enabling timely adjudication of a pending case.

In the year 2018, “Pre-Institution Mediation and Settlement” (PIMS) is introduced as a mandatory process prior to institution of a suit. Accordingly, a Plaintiff should seek a remedy under Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018 (Rules), prior to institution of a commercial suit. A person seeking a remedy under the said Rules should first file an application before an Authority established under the Legal Services

Authorities Act. As per the Rules the PIMS should be concluded within a period of 3 to 5 months from the date of filing the application before the Authority. If the PIMS fails, then the Plaintiff can proceed in filing a suitable case before Commercial Court.

With the change in the law relating to disputes resolution, the need of hour was to provide a robust mechanism for an effective implementation of the Act, thereby Code of Civil Procedure have been amended to provide an effective procedure in trying and adjudicating commercial disputes involving specific value, accordingly the following procedure is now implemented:

A. Pleadings:

a. Plaint:

- Statement of truth clearly identifying and verifying the contents of the Plaint and the documents and spelling out the nature of the documents relied therein should be mandatorily filed along with the Plaint.
- In an event if interest over the amounts is claimed in the Plaint, then a statement should be filed stating that the interest has arisen out of a commercial transaction and state the basis of such commercial transaction. The statement should further state the rate of interest claimed, date from which the interest is claimed and calculated, total amount of interest calculated till the date of filing the suit and the rate of interest after filing the suit.

b. Written Statement:

- The Defendant upon receipt of the suit summons has a time frame of 30 days, which is extendable up to 120 days from the date of receipt of summons, to file his written statement. On the expiry of 120 days from the date of receipt of summons the Defendant right in filing the written statement is forfeited.
- Statement of truth clearly identifying and verifying the contents of the Written Statement and the documents and spelling out the nature of the documents relied therein should

be mandatorily filed along with the Written Statement.

- The Written Statement should have clear statements stating the averments denied, admitted and those averments which neither be admitted nor denied which the Plaintiff has to prove. The denials by the Defendant must be specific and reasoned. If required the Defendant can state his version of the facts and/or case. In an event if the Defendant disputes the jurisdiction of the court then the Defendant must provide reasons for disputing the jurisdiction and should also state the competent court which has the jurisdiction to try the suit. Likewise, if the valuation is disputed then the Defendant should provide his own set of estimated valuation.

If the Defendant fails to adhere to the above requirements then the averments of the Plaintiff will be treated as admission and thereby the courts can proceed in passing a summary judgment over such averments.

B. Trail:

a. Disclosure and Inspection of documents:

- The parties should file a statement of truth and a list of all the documents relied thereupon. The list should clearly identify the nature, brief description of the documents stating which documents are in possession and/or custody of either Plaintiff/Defendant.
- Statement of truth should further contain a declaration that the Plaintiff/Defendant to have filed all the documents in his possession and custody and that there are no other documents relating to the disputes in his possession and/or custody.
- After filing the written statement, the parties have a right to inspect the documents filed by the counter party within a period of 30 days from the date of filing the written statement. If either of the party would require more time then the Court has the power to provide an additional period of 30 days to complete the process of inspection.

b. Statement of admission and/or denial:

- Once the parties have completed inspection of the documents, a statement of admission and/or denial, identifying the documents which are admitted and/or denied (with reasons)

within a period of 15 days from the date of completion of inspection.

- In an event where either of the party unduly contests admissibility of a document the court has discretionary power in deciding the admissibility of a document upon imposing exemplary cost.

c. Case management hearing:

- The first case management hearing is conducted and concluded within a period of four weeks from the date of filing of statement of admission and/or denial, by the Court to determine the timelines for completion of trial and arguments by both parties.
- The case management hearing will determine:
 - Points for adjudication;
 - Number of witnesses to be examined by parties;
 - Fixing timelines for trial – for examination including cross examination and re-examination, if any, of the witnesses;
 - Fixing date for submission of written arguments by both parties;
 - Fixing date and time limits for addressing oral arguments by both parties;

The time lines under the case management hearing is fixed in such a manner that the arguments by both sides should be concluded within a period of 6 months from the date of first case management hearing.

- At the time of case management hearing the Parties can seek an appointment of court commissioner as a matter of right for the purpose of recording evidence of the witness

- The Parties should simultaneously file their respective affidavit evidences (examination – in – chief) at the time fixed by the Court in the First case management hearing.

C. Adjudication:

a. Summary Judgment:

In order to provide an aid for faster adjudication of commercial disputes, the Courts are now empowered to pass a summary judgment before the trial upon an application made by either of the parties.

Lastly, with the above robust system of the procedure, the law has now bounded the courts to pass a judgment within a period of 90 days from the date of closing the oral arguments by both sides. With efforts of amending the existing procedure and enacting a new law for faster and efficient adjudication of the civil suits involving commercial disputes of specific value, the Indian Legal system is on a road to revamp the justice delivery by making it faster, effective and efficient. This new legal regime would also change the traditional practice to a specialized wing of the Indian Judicial System. However, the new law is still in its tooting phase and is yet to evolve.





CS MINERVA

Commentary on resignation of Directors - Series- 14

Provisions

- A. Section 168 of the Companies Act, 2013 ('Act'):**
- 1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company
Provided that a director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.
 - 2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:
Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.
 - 3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.
- B. Rules: Rule of 16 of Appointment and qualification of director**
- Where a director resigns from his office, he may within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation

in Form DIR-11 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Provided that in case a company has already filed Form **DIR-12** with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation.

Commentary

1. **Applicability:** Applicable to all types of companies Private Companies, Public Companies and OPC and applicable to all kinds of directors including additional director, alternate director, woman director, independent director etc.
2. **Not applicable:** However as per my opinion, it is not applicable:
 - a. To producer Companies as it still governed by erstwhile Companies Act 1956;
 - b. Where there is cessation of director other than by way of resignation like death, disqualification, vacation, removal or nomination withdrawn etc.
3. **Writing:** Resignation must be in writing, oral resignation cannot acceptable. However contrary views are there.
4. **Whom to give:** Resignation must be submitted to the company
5. **Board of directors Duty:** It is mandatory for the Board of directors to take a note of

- resignation. Acceptance of resignation by Board is not necessary. Board can take a note of the same in physical meeting or through circular resolution also. MD or WTD or Committees of Board do not have power in this regard.
6. **Company Duty:** The Company is required to file Form DIR 12 for cessation of director within 30 days.
 7. **Board Report:** Fact of resignation of director during the relevant Financial Year shall be disclosed in the Board report laid in the immediately following general meeting. General meeting shall be read as AGM as Board report cannot be placed before EGM as its ordinary business in terms of Sec. 102(2).
 8. **Director Duty:** The director *may* file Form DIR 11 before ROC in addition to Form DIR 12 by the company.
 9. **Non Mandatory:**
 - a. It is not mandatory provisions for the directors to file Form DIR 11 before ROC as word is 'may' w.e.f 07/05/2017.
 - b. Prior to 07/05/2017, it was mandatory for every director to file Form DIR 11 before ROC.
 10. **Effective date of resignation:** Date specified in the notice or date of receipt of notice by the company, whichever is **LATER**.
 11. **Liability of director:** Resigned director will be liable for the offence up to the date of resignation, not liable subsequently.
 12. **Vacation of all the directors:** Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting. General Circular No 03/2015 dated 03/03/2015 may be taken advantage in case of resignation of all directors and filing of Form DIR 12 for new director appointment.
 13. **Foreign Director:** In case a company has *already filed* Form **DIR-12** with a ROC, a foreign director of such company resigning from his office may authorise in writing a practising CA or CWA or CS or any other resident director of the company to sign Form DIR-11.
 14. **Addition grounds for vacation:** Private company simpliciter can provide for in its articles an additional grounds for vacation of office including resignation of director. However public companies cannot provide for any addition grounds for vacation. However MCA expressed contrary view in this matter and stated that it is circumvent the provisions of Sec.169 in the guise of including additional ground in its articles for vacation of office of director.
 15. **Relevant Statutory register may be updated for resignation of director.**





GST: Advance Rulings – Part 3

Applicant / Appellant: *M/s Columbia Asia Hospitals Private Limited*

Advance Ruling No. : KAR ADRG 15 / 2018 Dated 27th July 2018

Appellate Authority Ruling No. : KAR / AAAR/ 05/2018-19 Dated 12th December, 2018

M/s Columbia Asia Hospitals Private Limited, the Applicant / later Appellant, is a Bangalore based private limited company engaged in providing health care services including In-patient and Out-patient services. The Company is also engaged in the supply of medicines, operates its own Restaurant, Canteen services in its premises which is used for supplying food and other eatable items to its patients and their attendants, has filed an application for Advance Ruling under Section 97 of CGST Act, 2017, Karnataka GST Act, 2017 read with Rule 104 of CGST Rules 2017 & Karnataka GST Rules 2017 with the Authority for Advance Ruling, Karnataka.

The Applicant has sought an advance ruling on the following question:

Whether the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other States as well i.e. distinct persons as per Section 25(4) of the Central Goods and Services Tax Act, 2017 (CGST Act) **shall be treated as supply or not as** provided under the Central GST Act?"

The Authority relying on entry 2 of Schedule I, Entry 1 of Schedule III, Section 7(1) (c), Section 15 and Section 25(4) of the Central GST Act, 2017 and its India Management Office (IMO) covered under one registration in the state of Karnataka and its different registrations held as 'Distinct Persons' and accordingly same shall be treated as supply of goods and services, even if made without consideration.

Aggrieved by this Ruling, the Applicant has approached the Appellate Authority for Advance Ruling. After carefully considering the facts and contentions, the Appellate Authority upholds the Advance Ruling dated 27th July, 2018 by in its Order dated 12th December, 2018.

Author's view – The Ruling is a severe blow for companies with a pan-India presence. For instance, a large business house based in Bangalore with centralised accounting, finance and Human resource function having pan –India presence are now required to raise invoice with applicable GST. Key industries which are affected by this Ruling are Hospitals, education, Oil & gas, etc.

Whether this Ruling is confirmed the existing provisions under GST Laws? Yes. Where under a head office and a branch office will be treated as Distinct Legal Entities.

International Practice – Business 2 Business or B2B transactions within a legal entity and separate legal entities within the same Group are usually disregarded for Value Added Tax or GST purposes.

Whether this controversial Ruling ends here? No, an advance ruling pronounced by the AAR shall be binding on the applicant who raised the question, the jurisdictional Officer and the authorities subordinate to him, in respect of the applicant subject to change in law or facts as the case may be. The Hon'ble High Court of Delhi in UAE Exchange Ltd. v. UOI 236 ELT 223 affirmed the above-stated position. However, an applicant or interested person may challenge an advance ruling by filing a writ petition under Article 226 with the jurisdictional High Court or under Article 32 at the Supreme Court of India. **To be continued....**



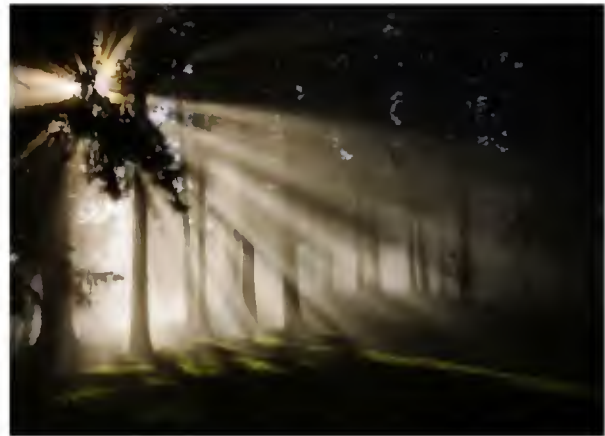
Light in the Darkness

Children squeal with fear and excitement, some even cry; all you hear is the rumbling of the train and the world outside is dark. Do you remember the thrilling Tunnel rides? For some, even now it gives chills when there is brief moment of absolute darkness when the train crosses the tunnel. The moment a small ray of light is spotted the fear, the tears, the anxiety turns into shouts of Joy and happiness. How very true is this train journey through the tunnel, in our lives too.

Life is not a flower strewn pathway all through, it has its tumbling rocks, sharp thorns, dangerous pits and deep valleys. What gives us the will to stand up and continue our path when we stumble upon a stone, what gives us courage to pull out the hurting

thorn and what is the gut to console our soul and say there is a mountain across the valley? It is the Light that shines a ray of hope, the light of confidence that shakes off despair, the light of faith that overcomes fear and the light of perseverance to reach the Goal.

The path you tread along may make you weak and hopeless, it may look winding and steep or even dark and desperate but don't forget there is LIGHT IN THE DARKNESS.





Important updates on decision taken during 31 & 32 GST Council:

Recommendations for implementation:

1) Single Cash ledger

There would be a single cash ledger for each tax head. The modalities for implementation would be finalised in consultation with GSTN and the Accounting authorities

Impact

Currently Cash ledger is segregated into Tax, Interest, Late fees and Penalty. Advance balance if any in one head cannot be transmitted to another for remittance. In spite of availability of balance in the specific cash ledger, a fresh deposit is required if the payment is to be made from another head. This issue is being addressed

2) Single window clearance for Refund and Registration process

- i. A scheme of single authority for disbursement of the refund amount sanctioned by either the Centre or the State tax authorities would be implemented on pilot basis. The modalities for the same shall be finalized shortly
- ii. All the supporting documents/ invoices in relation to a claim for refund in FORM GST RFD-01A shall be uploaded electronically on the common portal at the time of filing of the refund application itself, thereby obviating the need for a taxpayer to physically visit a tax office for submission of a refund application. GSTN will enable this functionality on the common portal shortly
- iii. The following types of refunds shall also be made available through FORM GST RFD01A:
 - a) Refund on account of Assessment/Provisional Assessment/ Appeal/ Any Other Order;

b) Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice-versa;

c) Excess payment of Tax; and iv) Any other refund

iv. In case of applications for refund in FORM GST RFD-01A (except those relating to refund of excess balance in the cash ledger) which are generated on the common portal before the roll out of the functionality, and which have not been submitted in the jurisdictional tax office within 60 days of the generation of ARN, the claimants shall be sent communications on their registered email ids containing information on where to submit the said refund applications. If the applications are not submitted within 15 days of the date of the email, the said refund applications shall be summarily rejected, and the debited amount, if any, shall be re-credited to the electronic credit ledger of the claimant

v. One more window for completion of migration process is being allowed. The due date for the taxpayers who did not file the complete FORM GST REG-26 but received only a Provisional ID (PID) till 31.12.2017 for furnishing the requisite details to the jurisdictional nodal officer shall be extended till 31.01.2019. Also, the due date for furnishing FORM GSTR-3B and FORM GSTR-1 for the period July, 2017 to February, 2019/quarters July, 2017 to December, 2018 by such taxpayers shall be extended till 31.03.2019

vi. Late fee shall be completely waived for all taxpayers in case FORM GSTR-1,

FORM GSTR-3B & FORM GSTR-4 for the months / quarters July, 2017 to September, 2018, are furnished after 22.12.2018 but on or before 31.03.2019.

Impact

An encouraging decision for calling forward all the defaulters to come forward and file their returns if not filed. However, all the Registered Person who had a slight delay and got the returns filed with payment of late fees whether such amount shall be refunded into their electronic cash ledger is not confirmed

3) New Return

The new return filing system shall be introduced on a trial basis from 01.04.2019 and on mandatory basis from 01.07.2019. These formats shall be made available shortly on the public domain for interaction and understanding

4) Due date for Annual Return and Reconciliation statement extended

The due date for furnishing the annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for the Financial Year 2017 – 2018 shall be further extended till 30.06.2019

5) Changes incorporated in Annual Return

- i. Amendment of headings in the forms to specify that the return in FORM GSTR-9 & FORM GSTR-9A would be in respect of supplies etc. 'made during the year' and not 'as declared in returns filed during the year';

Impact

The above change brings in clarity how to collate for the Amendments or corrections made for the output tax paid/payable and input tax availment during the period April 2018 to September 2018 for the purpose of preparation of the Annual Return and the Reconciliation statement thereof

- i. All returns in FORM GSTR-1 & FORM GSTR-3B have to be filed before filing of FORM GSTR-9 & FORM GSTR-9C;
- ii. All returns in FORM GSTR-4 have to be filed before filing of FORM GSTR-9A;
- iii. HSN code may be declared only for those inward supplies whose value independently accounts for 10% or

more of the total value of inward supplies;

Impact

The above is an indicative and a compulsory disclosure. However, going forward this may be made mandatory to be incorporated in the new format of return being adopted

- iv. Additional payments, if any, required to be paid can be done through FORM GST DRC-03 only in cash;

Impact

Any tax difference noted during the GST Annual Return preparation along with reconciliation statement, Input Tax credit may not be utilised for payment

- v. ITC cannot be availed through FORM GSTR-9 & FORM GSTR-9C;
- vi. All invoices pertaining to previous FY (irrespective of month in which such invoice is reported in FORM GSTR-1) would be auto-populated in Table 8A of FORM GSTR-9;
- vii. Value of "non-GST supply" shall also include the value of "no supply" and may be reported in Table 5D, 5E and 5F of FORM GSTR-9;
- viii. Verification by taxpayer who is uploading reconciliation statement would be included in FORM GSTR-9C.

6) Due date for GSTR8 extended

- a. The due date for furnishing FORM GSTR-8 by e-commerce operators for the months of October, November and December, 2018 shall be extended till 31.01.2019
- b. The due date for submitting FORM GST ITC-04 for the period July 2017 to December 2018 shall be extended till 31.03.2019
- c. ITC in relation to invoices issued by the supplier during FY 2017-18 may be availed by the recipient till the due date for furnishing of FORM GSTR-3B for the month of March, 2019, subject to specified conditions

7) Restriction on generation of e-way bills

Taxpayers who have not filed the returns for two consecutive tax periods shall be restricted from generating e-way bills. This provision shall be

made effective once GSTN/NIC make available the required functionality

8) Amendments to GST Act

Changes made by CGST (Amendment) Act, 2018, IGST (Amendment) Act, 2018, UTGST (Amendment) Act, 2018 and GST (Compensation to States) Amendment Act, 2018 along with amendments in CGST Rules, notifications and Circulars issued earlier and the corresponding changes in SGST Acts would be notified w.e.f. 01.02.2019

9) Relaxations for Composition Scheme

- The limit of Annual Turnover in the preceding Financial Year for availing Composition Scheme for Goods shall be increased to Rs 1.5 crore. Special category States would decide, within one week, about the Composition Limit in their respective States
- The compliance under Composition Scheme shall be simplified as now they would need to file one Annual Return but Payment of Taxes would remain Quarterly (along with a simple declaration)
- A Composition Scheme shall be made available for Suppliers of Services (or Mixed Suppliers) with a Tax Rate of 6% (3% CGST +3% SGST) having an Annual Turnover in the preceding Financial Year up to Rs 50 lakhs
- The said Scheme Shall be applicable to both Service Providers as well as Suppliers of Goods and Services, who are not eligible for the presently available Composition Scheme for Goods.
- They would be liable to file one Annual Return with Quarterly Payment of Taxes (along with a Simple Declaration)
- All the above for Composition scheme shall be made operational from 01.04.2019

10) Reduction in GST Rates for Services

- a. GST rate on cinema tickets above Rs. 100 shall be reduced from 28% to 18% and on cinema tickets upto Rs. 100 from 18% to 12%
- b. GST rate on third party insurance premium of goods carrying vehicles shall be reduced from 18% to 12%
- c. Services supplied by banks to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY) shall be exempted
- d. Services supplied by rehabilitation professionals recognised under

Rehabilitation Council of India Act, 1992 at medical establishments, educational institutions, rehabilitation centers established by Central Government / State Government or Union Territories or entity registered under section 12AA of the Income-tax Act shall be exempted

- e. Services provided by GTA to Government departments/local authorities which have taken registration only for the purpose of deducting tax under Section 51 shall be excluded from payment of tax under RCM and the same shall be exempted
- f. Exemption on services provided by Central or State Government or Union Territory Government to their undertakings or PSUs by way of guaranteeing loans taken by them from financial institutions is being extended to guaranteeing of such loans taken from banks
- g. Air travel of pilgrims by non-scheduled/charter operations, for religious pilgrimage facilitated by the Government of India under bilateral arrangements shall attract the same rate of GST as applicable to similar flights in Economy class (i.e. 5% with ITC of input services)

11) Reduction in GST Rates for Goods

- a. GST rate reduction on goods which were attracting GST rate of 28% to 18%
 - i. Pulleys, transmission shafts and cranks, gear boxes etc., falling under HS Code 8483
 - ii. Monitors and TVs of upto screen size of 32 inches
 - iii. Re-treaded or used pneumatic tyres of rubber;
 - iv. Power banks of lithium ion batteries. Lithium ion batteries are already at 18%. This will bring parity in GST rate of power bank and lithium ion battery.
 - v. Digital cameras and video camera recorders
 - vi. Video game consoles and other games and sports

- requisites falling under HS code 9504.
- b. 28% to 5% - Parts and accessories for the carriages for disabled persons
- c. GST rate reduction on other goods 18% to 12%
 - i. Cork roughly squared or debagged
 - ii. Articles of natural cork
 - iii. Agglomerated cork
- d. GST rate reduced from 18% to 5% on Marble Rubber
- e. 12% to 5%
 - i. Natural cork
 - ii. Walking Stick
 - iii. Fly ash Blocks
- f. 12% to NIL on Music Books
- g. 5% to NIL
 - i. Vegetables, (uncooked or cooked by steaming or boiling in water), frozen, branded and put in a unit container
 - ii. Vegetable provisionally preserved (for example by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption
- h. GST on solar power generating plant and other renewable energy plants
 - i. GST rate of 5% rate has been prescribed on renewable energy devices & parts for their manufacture (bio gas plant/solar power-based devices, solar power generating system (SGPS) etc) [falling under chapter 84, 85

or 94 of the Tariff]. Other goods or services used in these plants attract applicable GST

- ii. Certain disputes have arisen regarding GST rates where specified goods attracting 5% GST are supplied along with services of construction etc and other goods for solar power plant. To resolve the dispute the Council has recommended that in all such cases, the 70% of the gross value shall be deemed as the value of supply of said goods attracting 5% rate and the remaining portion (30%) of the aggregate value of such EPC contract shall be deemed as the value of supply of taxable service attracting standard GST rate

Disclaimer: *The opinion & interpretation drawn above by is purely on the basis of understanding & interpretation drawn by the author. User is directed to read the statutory provision for having a better clarity on the Interpretation aspects. For further clarifications/ suggestions, please reach on praveen@gella.in*





M/s ABC & Co., receives the services from M/s PPC Security & Co., in relation to the Security services of the firm. M/s PPC & Co., raises its bill without any Taxes to M/s ABC & Co., claiming their Turnover within the limit of Registration requirement as per Section 22 of CGST Act, 2017. Confirm whether M/s ABC & Co., has to discharge GST on RCM basis.

Please send your opinion to, newsletter.icsimysore@gmail.com



Opinion To Last Month's Brainy Bits

Few individuals have joined hands together to form a club for enlarging the interest of its members in the specified areas. Club derives income by way of Membership fee from its members. Assuming Rs.20lakhs has been raised from April 2018 till September 2018, does the Club need to register under GST and start collecting GST on the Membership fees collected

Facts to consider

- Individuals with a common interest have joined hands together to form a club
- The above entity is not registered under any other law
- Money is collected from the individuals who join as a Member in the club and also on need basis money is raised from Members as per the consent of all the members concerned
- Club organizes events as per the objectives set for the club by its members
- Expenditure incurred for the above events is met out of the money raised from the members

Relevant Provision

Section 2(17): Business; Section 2(84): Person
Section 7: Supply
Section 9: Levy
Section 11: Power to Grant exemption from Tax
Schedule II of CGST Act, 2017

The definition of "business" in section 2(17) of CGST Act states that "business" includes provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.

The term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Schedule II of CGST Act, 2017 enumerates activities which are to be treated as supply of goods or as supply of services. At para 7 of Schedule II, entry enumerates that supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods. A conjoint reading of the above provisions of the law implies that supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration

Reference to Notification 12/2017 CT dtd:28.06.2017 reference to Entry No.77 is also

relevant of examining the situation covered thereof for providing exemption upto a sum of Rs.7,500/- per month for the Services supplied by the Unincorporated Body or a Non-Profit organization to its members

Conclusion

A conjoint reading of the above provision, any contribution collected from Members towards Membership fees doesn't constitute a Supply being the same is in the nature of Capital contribution and no supply exists either by the Member or the club

per-se. However, supply of Services upto a threshold carries exemption as per Notification 12/2017 CT. However, same is not the case in supply of goods by the club to its members

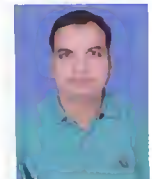
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CS ABHISHEK GOYAL

FCS, LLB(P)



GST Primer-Treatment of GST on Restaurant Business FAQs

In previous month's edition of E-magazine, we discussed implications of GST on transport sector. Now in this month's issue, continuing with our series of GST primer, we will discuss some of the fine aspects of GST implications on restaurant business presented in questions and answer format.

Q.1. Can restaurant owners avail composition scheme under GST?

Ans. Yes, composition scheme is open to restaurant business owners. In fact, it is the only service industry for which composition scheme is available.

Although in recently concluded 31st meeting of the GST Council, it has been decided to refer the issue of launch of a composition scheme for small service providers to Committee of Group of Ministers.

Q.2. What is the effective rate of GST on restaurant business under composition scheme?

Ans. It is 5%.

Q.3. We are running a food joint located in a standalone building with both takeaway as well as dining facilities to our customers. We are registered under GST normal scheme. Can we take benefit of

ITC on purchases made by us in relation to our outward services?

Ans. A restaurant or a food joint or an eatery located in a standalone building i.e. not being located inside any hotel, inn, guest house or club, is not eligible for availing ITC even if purchases made by it were in the course of and in furtherance of its business. Such restaurants shall charge GST 5% on their services without ITC.

Q.4. We are running a standalone restaurant. We have purchased an oven and a chimney for the purpose of our restaurant. Can we avail ITC on it?

Ans. As already stated in answer to question no 3, no ITC is available to a standalone restaurant.

Q.5. Would your answer be different if we are located in a hotel?

Ans. If a restaurant is located inside a hotel, inn, guest house, lodge or a club where room rent per day exceeds Rs 7500/-, the restaurant can avail ITC however GST rate in that case will be 18%. In other words, such a restaurant will have to charge GST at 18% which in the case mentioned in reply to question no 1 is 5%.

Q.6. Is there any difference in GST rate for AC and Non AC restaurants?

Ans. The different GST rates prescribed for AC and non AC restaurants have been done away with. All restaurants whether AC or non AC are subject to GST rate of 5% without ITC or 18% with ITC depending upon whether the restaurant is located in a standalone building or inside an hotel, inn, guest house, club etc where room rent per day is above Rs. 7500/-.

Q.7. We are engaged in outdoor catering services, what are the GST implications for us?

Ans. For outdoor catering services, as of now the GST rate is 18% with ITC.

Q.8. A restaurant is located inside a three star hotel with room rent of more than Rs 7500/- per day. The restaurant is also offering some sweets which may be ordered as a takeaway/parcel or may be consumed on a table in the restaurant. What are the GST implications on both situations?

Ans. Sweets attract 5% GST, so take away from the counter will attract 5% GST only. Whereas if sweets are consumed on a table in the restaurant then it will attract GST at 18% since restaurant is located inside a hotel with room tariff of Rs. 7500/- and above.

Q.9. We are a moving restaurant and are providing over the counter take away and parcel services to our customers. What is the GST rate to be charged?

Ans. In this case, GST to be charged is 5% without ITC.

Q.10. We are running a school. We have an in house canteen for the benefit of our staff and students. What are the GST implications on us in the two situations?

(i) if we supply food and beverages to our staff and students ourselves.

(ii) if we engaged a contractor for running the canteen and to provide food and beverages to our staff and students.

Ans. In a recently concluded GST Council meeting on 31.12.18 it is clarified that in the situation (i) GST is exempt.

In situation (ii) GST to be charged is 5%. In this case the contractor is liable to charge GST at 5%.





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Delhi Diaries 10

Solved cases of Supreme Court and NCLAT

Role of Guarantors in the Insolvency Process – PART III

In the August Edition of this Column, we had examined the roller coaster ride of the applicability of the moratorium under IBC to the personal guarantor of a company in liquidation. In this edition, we shall take a look at another aspect of the role of the personal guarantor in the liquidation process under IBC.

A personal guarantor obtains a security interest in the Company by virtue of the guarantee. The right of the personal guarantor in the case of a company under liquidation can move in two directions which are not necessarily disjoint. First, when the company is under liquidation, if it is considered that the insolvency resolution process amounts to a variance of the contract in respect of which the guarantee was issued, the surety stands discharged by the effect of Section 133 of the Indian Contract Act, 1872. On the other hand, once a surety performs his part of the liability under the contract of guarantee, he steps into the shoes of the creditor by effect of Section 140 of the Indian Contract Act, 1872.

In *Lalit Mishra v. Sharon Bio Medicine and Ors.* decided by the National Company Law Appellate Tribunal on 19th December, 2018 these above two rights of the guarantor became the basis for a challenge of an order of the NCLT, Mumbai by which a resolution plan came to be approved. The resolution plan did not provide for any amount to the promoters. The promoter/appellants before the NCLAT, claimed that their rights *vis a vis* the

company both in their position as shareholders and in their position as guarantors.

The Appellants also claimed that they stood in the position of lenders and denying their interest in the company amounted to discriminatory treatment of lenders. In particular, the Resolution plan proposed a selective capital reduction of the entire shareholding of the promoter group and the secured lenders and up to 90% of the equity shares held by the public shareholders while adhering to the 25% public shareholding norm. The Resolution plan also provided that the personal guarantee provided by the existing promoters of the company shall result in no liability towards the Company or the Resolution Applicants.

The NCLAT made a brief reference to the purpose of the law makers and held that the purpose behind the IBC is not to benefit the promoters. The NCLAT also reiterated that the rights under the contract act would not accrue in the case of proceedings under IBC because liquidation proceedings could not be treated as recovery proceedings.

The NCLAT thus held that there is no discrimination if a plan does not treat shareholders on par with financial creditors.

On the one hand it remains to be seen if this judgment will stand scrutiny of the Supreme Court. It also remains to be seen whether this law would hold if a non promoter or a non related party is a guarantor in any case.



EXPRESS NEWS

- **GoM to look into feasibility of GST rationalisation, composition scheme for real estate**
- **Syndicate Bank creates vertical to recover Rs 27,000 crore NPAs**
- **Exports growth slows to 0.34% in Dec, trade gap narrows**
- **Indian Oil Company to raise \$900 million via overseas bonds**
- **Large deals push private equity, venture capital investment up 35% to \$35.1 billion in 2018**

IT industry seeks clarity on tax provisions for BPO, KPO services, quashing of angel tax

IT industry body Nasscom has urged the government to clarify tax provisions that treat BPO-KPO services as intermediaries under GST rules, and scrap angel tax levied on investments in startups.

E-way bill to be integrated with NHAI's FASTag to track GST evasion from April

The GST e-way bill system is likely to be integrated with NHAI's FASTag mechanism from April to help track movement of goods and check GST evasion.

Indospace to invest Rs 650 cr in Gujarat to build three logistic parks

IndoSpace has announced its foray into the state with start of construction work at its first logistic park in Bavla near Ahmedabad. The park will be

spread over 47 acre with leasable area of 1 million sq ft.

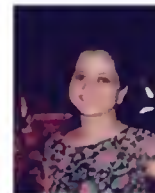
LIC trims stake in Colgate-Palmolive by 2%

As per a regulatory filing, LIC, which had 7.03 percent stake in Colgate-Palmolive earlier, brought down its shareholding in the company to 5 percent by selling shares between November 1, 2017, and January 14, 2019.

Online sellers to take Flipkart to Supreme Court if appeal to NCLT fails

Online sellers' body All India Online Vendors Association (AIOVA) will file a special leave petition (SLP) in the Supreme Court against Flipkart if their appeal in the National Company Law Appellate Tribunal (NCLT) fails, the association's lawyer Chanakya Basa told FE Online. AIOVA, representing over 3,500 online sellers,





Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Registration of Charges) Rules, 2014, which is to be known as Companies (Registration of Charges) Second Amendment Rules, 2018.

MCA has introduced a new Form CHG-4. The said amendment shall come into force from the date of their publication in the Official Gazette

Companies (Registration of Charges) Second Amendment Rules, 2018 dated 18th December 2018.

MCA has amended Companies (Incorporation) Rules, 2014, which is to be known as Companies (Incorporation) Fourth Amendment Rules, 2018.

As per the new rule, the declaration under section 10A by a director at the time of commencement of business shall be in Form No. INC-20A.

An application for the conversion of a public company into a private company, shall within sixty days from the date of passing of special resolution, be filed with Regional Director in e-Form No. RD-1 along with the below listed documents.

- A draft copy of Memorandum of Association and Articles of Association, with proposed alterations.
- A copy of the minutes of the general meeting at which the special resolution authorizing such alteration was passed.
- A copy of Board resolution or Power of Attorney dated not earlier than thirty days

authorizing to file application for such conversion.

- A declaration by a key managerial personnel of the company stating that the company limits the number of its members to two hundred and also stating that no deposit has been accepted by the company in violation of the Act and rules made there under.
- A declaration by a key managerial personnel that no resolution is pending to be filed in terms of sub-section (3) of section 179.
- A declaration by a key managerial personnel that there has been no non-compliance of sections 73 to 76A, 177, 178, 185, 186 and 188 of the Act and rules made there under.

Companies (Incorporation) Fourth Amendment Rules, 2018, dated 18th December 2018.

Notifications

MCA has introduced Companies (cost records and audit) Amendment Rules, 2018.

In the principal rules, in Annexure;

In Form CRA-1, paragraph number 31 shall be inserted; paragraph number 31 **Unit of Measurement (UOM)**

The Unit of Measurement (UOM) for each Customs Tariff Act Heading, wherever applicable, shall be the same as provided for in the Customs Tariff Act, 1975 (51 of 1975) corresponding to that particular Customs Tariff Act.

S.O. 6225(E), Dated 18th December 2018.