

eMagazine

ARE YOU COMPLIANT WITH THE

“SEXUAL HARASSMENT

of Women at Work Place

(PREVENTION, PROHIBITION
& REDRESSAL) ACT 2013”



Articles:

Disclosure of compliance under the Sexual Harassment of
Woman at Workplace Act, 2013 05

Columns:

From Chairman's Desk	02
Students corner	07
Living Room	09
Words Worth Millions	09
GST Suite	10
Web Yatra	12
Delhi Diaries	14
Newsroom	16
Regulatory Update	17

For Private Circulation Only

Vision

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

Motto

सत्यं वद। धर्मं चर। इच्छते तेन लोके। तेषाम् ब्रह्म विद्महे।

Mission

"To develop high calibre
professionals facilitating
good corporate governance"



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

**MYSORE
CHAPTER**

Chairman
Mysore Chapter

Dear Professional Colleagues,

We are happy to inform you that during the month of September 2018, Annual day was held for two days and many students took part in the event. It was a proud moment for the chapter when Moot court competition for the degree students was conducted for the first time in its history, students from different colleges from the city took part eagerly.

Further, we conducted career awareness programs and Investor awareness program for degree and Post graduate students. A deeper insight about stock market and its working mechanism was created to students. We are looking forward to conduct many more programs for both students and members in the coming days.

Thank you

-: Editorial Team:-

CS Vijaya Rao

CS Sherene

CS Pracheta M

CS Phani Datta

CS Ajay Madhaiah

CS Madhur N Agrawal

**Join
5600+ members'
strong**

"CS Mysore" eParivaar

<http://www.groups.google.com/group/csmysore>

Now it's easy to receive the eMagazine directly into your personal mail id.

Click <http://goo.gl/PV90lr> and fill-in simple info.

You may send this link to your friends too!

Please write your comments and feedback to us:

enewsletter.icsimysore@gmail.com

Disclaimer

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.

Chapter Activities

1. CAREER AWARENESS PROGRAM

Chapter conducted 01 Career Awareness Program during September 2018. The details are as follows.

S No.	Date	College Name	No. of Participants
1	24.09.2018	D Banumaiah's College, Mysore	70

2. ANNUAL DAY CELEBRATIONS

Chapter in association with JSS Law College, Mysore organized the annual day celebrations during 07th & 08th of September, 2018. Moot Court Competition was organized on the first day for the degree

college students. Around 20 teams from various colleges in Mysore participated in the preliminary round. In that, 8 teams were shortlisted for the final round. The list of the colleges is mentioned below.

S No	College Name
1	Cresta College, Alanahalli, Mysore
2	Amrita School of Arts & Sciences, Mysore
3	Depaul College, Belagola
4	Vidyavardhaka First Grade College, Mysore

Members from ICSI and faculties from JSS Law College were acted as judge for the event. Mr. Yarappa R Krishnti, Head Remote Services, Wipro was the Chief Guest and inaugurated the event. Members & Students from the Chapter, JSS Law College were participated in the program. Team from Cresta College adjudged as the winner of the event & team from Amrita School of Arts & sciences are the runner up. On the same day judgment writing competition also conducted to the students.

The second day program was organized in the topic Decoding Corporate Compliance India 2018 for the Members & Students of ICSI in the Hotel Quorum. Mr. SP Mathew, Advocate, Bombay high court was the speaker for the session. In his address, he explained about the various amendments in the companies act and the reasons.

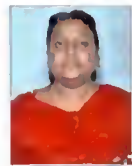
Sri S K Vantigodi, Principal District and Sessions Judge, Mysore was the Chief Guest & Prof. K S Suresh, Chief Executive, JSS Law College, Mysore was the guest of honour. Treasurer of the Chapter

welcomed the gathering. The Chairman of the Chapter addressed on the journey of ICSI Institute and Mysore Chapter.

Prizes & trophies have been issued to the winning teams during the event. Students from various colleges shared their feedback of the event and thanked the Chapter for arranging the event. Secretary of the chapter delivered the vote of thanks. More than, 100 students & members were participated in the session. High tea was arranged at the end of the event.

Sri SK Vantigodi, Principal District and Sessions Judge, Mysore





Disclosure of compliance under the Sexual Harassment of Woman at Workplace Act, 2013

“you too Brutus” Shakespeare’s most famed phrase in the popular story Julius Ceaser seem to fit the names of big wigs mentioned in the “Me too” movement. Talks on Feminism, awareness, equality, women’s rights have done very little to safeguard women especially in the working environment. Right from travelling in the bus or metro to working late at office has always been a struggle for women. Portraying woman as an object of delight and lust in cinema’s and advertisements has been taken as a “part of job”. Working women are more exposed to workplace atrocities which they endure with guilt and shame for the sake of families and children.



In a country driven by society and families, women rarely speak in a forum the pains they undergo at workplace. The supposedly haven of security and comfort has unfortunately turned into an emotional trap for working women. Unable, neither to spill out nor to swallow the discontent and discomfort they deal with, many woman are choked and succumb to depression. To provide safe environment at workplace for woman and to make sure law has been implemented, Ministry of corporate Affairs has laid its foundation stone to curb sexual crime against women at work place. In this article we throw light upon the recent amendment and mandatory requirement.

Ministry of corporate affairs has notified the companies (Accounts) Amendments Rules 2018 under section 134 of the Companies Act 2013 amending the Companies accounts Rules 2014.

Under this Amendment clause (x) has been added to rule 8 which enumerates the ‘matters to be Included in board report’ This new clause requires every company to report compliance with the Sexual Harassment of Women at work place (Prevention, Prohibition and Redressal) Act,

2013, i.e., constitution of an Internal Complaints Committee (ICC).

First let us look at Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 in brief. This law was enacted on 9th December 2013 to provide safe workplace for woman or protecting them against sexual harassment. Prior to which Vishakha guidelines were there but act supersedes the guidelines. Act provides a mechanism for speedy redressal of complaints of sexual harassment.

Now let us look at what is internal complaint committee and what it should comprise of and what are its roles and responsibility.

As per section 4 of the act ICC is mandatory for any employer having workplace with more than 10 employees. Workplace includes, Government organizations, Government companies, corporations, private companies, cooperative societies, professional offices, entertainment, vocational, education, sports everything. Also includes unorganized sector. It includes any enterprise owned by individual or self-employed workers engaged in the sale of goods or service of any kind.

ICC is a place where woman can complain about the sexual harassment without any fear of getting fired or getting humiliated with the offender. The Internal Committee shall consist of the following members to be nominated by the employer, namely

- a. Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace;
Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;
- b. Not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
- c. One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

IOC should listen to the grievance and take action as per the law prescribes.

On 31st July 2018 the ministry of corporate affairs has made it mandatory to include the statement saying company has constituted the IOC under the

sexual harassment of woman at workplace (prevention, prohibition, and Redressal) act 2013

As a company secretary he/ she has to understand this in different angle. As a Professional company secretary need to make sure directors report has complied with this requirement. And this is applied to every employer including the practicing company secretary who is having more than 10 employees he/ she needs to set up IOC if he meets this condition. If he/ she is in employment as a compliance officer make sure company complies with this requirement.

Noncompliance of this mandatory requirement, under section 134, could lead to impose penalty on the company of Rs. 50,000 but which may extend to Rs. 25 Lakhs and imprisonment of every officer of the Company for a term which may extend to 3 years or fine in the range of Rs. 50,000 to Rs.5 lakhs.

Creation of awareness, rules and regulation above all consciousness are the ways to provide a safe working place for a woman. Technological advancement and legal protection has increased manifold times, women should come forward to educate themselves about these available opportunities to protect themselves. Indian law to protect women at workplace has been made stronger and effective, to enable a peaceful and hassle free working condition. Big dreams always mean bigger battles and battles are to be won, with women becoming more vociferous and law doing its duty, the battle is on the way to victory.





Commentary on Maximum Number of Directorship Series -11

Provisions: Section 165 of the Companies Act, 2013 ('Act'):

1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time:

Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.

Explanation I - For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Explanation II - For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

2) Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

3) Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year from such commencement,-

(a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director;

(b) resign his office as director in the other remaining companies; and

(c) Intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement

and to the Registrar having jurisdiction in respect of each such company.

4) Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned.

5) No such person shall act as director in more than the specified number of companies,—

(a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3); or

(b) after the expiry of one year from the commencement of this Act, whichever is earlier.

6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall be punishable with fine which shall not be less than five thousand rupees but which may extend to twenty-five thousand rupees for every day after the first during which the contravention continues.

Commentary:

1. Applicability: Applicable to all Companies, public, private or OPC.

2. Not applicable to:

a. Section 8 Company vide exemption notification dated 05/06/2015 provided such Section 8 Company should not have defaulted in filing its Financial Statements or Annual Return vide exemption notification dated 13/06/2017.

- b. Dormant Company vide Companies (Amendment) Act, 2017 w.e.f 09/02/2018.
 - c. Directorship in body corporate as they do not come within the meaning of 'Company' as defined u/s 2(20) of the Act.
3. Meaning of any Person: Person refers to individual only as individuals alone are eligible to become directors of the company in line with section 149(1) r/w 153 of the Act.
4. Mandatory: The provisions of this section are mandatory as the word is 'Shall'.
5. Class of directorship covered: All kinds of directorship are covered i.e. Independent director, Nominee director, small shareholder director, additional director, alternate director, director appointed in case of casual vacancy, etc.
6. Maximum Number of Directorship:

An individual can hold the directorship in maximum of 20 companies at the same time. However within 20 companies, an individual can hold-

 - Directorship only in Private Companies: up to 20 Companies;
 - Directorship in partly in public companies and partly in private companies: Maximum of 20 Companies out of which directorship in public companies (including private companies that are *either* holding or subsidiary company of a public company) shall not exceed 10.
 - 10 public companies directorship - only public company irrespective of paid up capital is covered.
 - Small Shareholder director can become director in maximum 2 companies.
 - Sec.165 restricts maximum number of directorship with reference to director in a company and not for members of committees of Board.
- There are restrictions for number of directorship and for committee members and under SEBI laws in addition to Sec.165.
7. Power of Members: Members are having power to reduce the maximum number of directorship to less than 20 which otherwise also available to members of the company. However, members do not have the right to increase the maximum number of directorship as specified in the Act.
8. Transition provisions:

Obligation of Director if the number of directorship exceeds 20: Such director within one year from the commencement of the Act (i.e., effectively prior to 31/03/2015 which is redundant as of now as time limit elapsed) shall:

 - Choose 20 companies (out of such maximum 10 public companies) as companies in which he wishes to continue to hold the office of director;
 - Resign his office as director in the other remaining companies; **and**
 - Intimate his choice to all the Companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.
9. Punishment for contravention of this section: such director shall be punishable with fine of minimum Rs.5,000/- and maximum Rs.25,000/- every day for the period during which the contravention continues.
10. Proposed amendment: There is committee recommendation that if the number of directorships held by an individual exceeds the number specified u/s 165, such individual should be subject to disqualification u/s 164(1) and deemed to have vacated the office r/w 167(1) of the Act.



Living Room

Honesty and Integrity

Two of our nation's pride inspirational personalities had a birthday on Oct 2nd. As many of us know lot of stories about Mahatma Gandhi, we know very little about our 2nd Prime Minister Lal Bahadur Shastri who also shares birthday with Mahatma Gandhi and both fought for our independence.

Lal Bahadur Shastri is known not only for his honesty and Integrity also for his Simplicity. Here is one example of that.

Once Shastriji went to a textile mill with the owner of the mill. When he went around seeing the mill he saw some display of sarees in the warehouse. Seeing those he requested the owner to show some sarees and owner asked the salesman to bring the best sarees to him. Owner showed the unique and best quality sarees to Shastriji. As Shastriji asked cost of one of the sarees owner said Rs800. He

asked the owner to show little less expensive sarees and he showed sarees in the range of 400-500. Shastriji said all these are too expensive for a poor person like me. Owner was so surprised and said "you are the prime minister of the country how can you be poor. Moreover as you are the prime minister of the country you don't have to pay anything. It is a gift to you. Shastriji said "No my friend I can't accept such expensive gifts. May be I am the prime minister that doesn't mean I can accept this and give it to my wife. Please show me something I can afford". Finally he bought some sarees which he can afford to give it to his wife.

This is the way Shastriji led his life throughout his career whether he was just a minister or the prime minister.

Words Worth Million

Carefully watch your thoughts, for they become your words. Manage and watch your words, for they will become your actions. Consider and judge your actions, for they have become your habits. Acknowledge and watch your habits, for they shall become your values. Understand and embrace your values, for they become your destiny.

-Mahatma Gandhi



GST Transition, Transformation & Way forward

Part 3

Recap..!!

The Part 1 of the GST Transition, Transformation & Way forward has covered the brief introduction to the GST Laws, the necessity & initial steps to introduce, Constitutional Authority, key organs and their roles. Part 2 dealt with 'GST Impact' on 'key sectors' such as Logistics, Pharma & healthcare, FMCG, Automobile and Textile & Apparels. Part 3 and final piece, covering its impact on a few more key sectors such as Real Estate, Education, E-Commerce, Hotel & Hospitality, MSME, Overall Impact on Indian Economy & way forward.

Sector-wise impact

1. Real Estate

Real Estate sector plays a very pivotal role in Indian Economy which contributes around 8 per cent to India's GDP Growth and stands just second to Information Technology Sector. With the introduction of GST, the sector has seen overhaul or revamped even though it does not cover in its entirety under the new regime. Prior to GST Regime, there were multiple taxes or levies used to be levied such as Value Added Tax anywhere 1 per cent to 4 per cent, Service Tax of 4.5 per cent, also Registration and Stamp Duty charges between 0.5 per cent to 1 per cent and 5 per cent to 7 per cent respectively. Availment of Cenvat Credit on inputs was also restricted. Under the new regime, GST rate of 12% on work contracts and on Joint Development Agreements/ contracts, at 12 per cent has been prescribed. However, the same is not applicable to completed or ready to move properties. In addition to, GST has reduced the developers' costs to a maximum extent as multiple

taxes were subsumed into one. Since Stamp Duty and Registration Charges are State Subject, same

will continue for few more quarters or months until States final call on its inclusion under GST ambit.

2. Education

Education is fundamental to the nation building and also a very fundamental right of every child. GST regime recognized it and provides due exemption up to the higher secondary school from the levy of GST. Auxiliary services received by such educational institutions are also exempted from GST. Other services are taxed at a standard rate of 18 per cent with the availability of Input Tax Credit provided such service is not exempted. In contrast, GST is haunting the students of the weaker section. According to Maharashtra Authority for Advance Rulings, 18 per cent GST has been levied for coaching classes offering value-added courses. Due to this, the coaching institutes have enhanced the fees for the preparation of medical and engineering examinations. The sector has urged the GST Council to reduce the rate into 5 per cent from 18 per cent or exempt under the same. However, the GST Council is yet to take a call.

3. E-Commerce

Prior to the GST regime, the State level VAT/ CST was required to be paid by the seller. W.e.f. 1st October, 2018, e-commerce operators are set to collect a standard levy of TCS at the rate of 1 per cent of the net value of taxable supplies on a pan-India basis. Standard rate and subsume of VAT / CST reduced the cascading effect of taxes. Due to GST, inter-state as well as Intra-state sales are becoming easy and maintenance of warehouses in all states is done away with or its necessity does not

arise. Both sellers as well as e-commerce operator is required to be registered in each State for smooth transactions. Stating that implementation of TCS provisions also increased the compliance burden on e-commerce entities but at the same time which will serve the 'Revenue' as a tool to check the tax evasion effectively.

4. **Hotel & Hospitality**

Hotel industry including tourism contributes to 6.23 per cent to the National GDP. Prior to the GST Regime, there were multiple taxes in the form of VAT and Luxury Tax was levied by the State Government and Service Tax was levied by the Central Government. Under old VAT regime, the VAT rate was between 12 to 14.5 per cent, whereas the average luxury tax, influenced by the room tariff, was around 8 to 10 per cent. In addition to, if a hotel room tariff exceeded Rs. 1000, consumers were required to pay Service tax at 9 per cent (i.e. 40 percent abatement). Similarly, Service tax was 6 per cent (60 per cent abatement) for foods and beverages in restaurants apart from the VAT amount levied. Post GST Council's 28th Meeting held on 21.07.2018, levies are reduced to 18 per cent for room tariffs ranging between Rs 2,500 and Rs 7,500 whereas tariffs of Rs 7,500 and above attracted 28 per cent. No doubt, levy on the transaction value rather than on the declared tariffs are a welcome move.

5. **MSME**

The all-powerful GST Council in its 29th meeting held on 4th August, 2018, has constituted a Group of Ministers (GoM) comprising State Finance Ministers to address MSME issues. The Panel will submit its report by end of this October. The GST Council, in its next meeting, may consider its submissions. Prior to the constitution of the said GoM, the Council has received more than 200 proposals including waiving off late fee, nil filing fee for appeals at various forums, exclusive MSME

monetary sops, refund of a certain percentage of taxes paid by them which is in line with exemption from erstwhile Excise Duty among others.

Overall Impact on Indian Economy & Way Forward

Implementation of GST is truly a remarkable achievement for any Government. Even though, an equal amount of windfall and agony, one must appreciate the Government for its bold and immediate actions to address initial technical glitches. As said, GST is having a multiplier effect on the Indian economy. Its implementation is increasing the competitiveness of the Indian exporters in the international market. Uniform tax rates and procedures across the country are reducing the compliance costs of both Exporters as well as Importers. As far as concerned MSMEs, the threshold for GST registration has been kept at an aggregate annual turnover of Rs 20 lakhs (10 lakhs in case of North Eastern States). Unlike the previous regime, multiple registrations have been done away with. In addition to, a Composition scheme has also been provided for businesses with an aggregate annual turnover of up to Rs 1.5 crore.

The new regime is giving much needed relief to agriculture, industry and trade through a comprehensive input tax credit mechanism. GST is helping to realize India's great dream of "Make in India" campaign which will create India as a "Manufacturing hub" in near future. Geographically, India is a vast country and the new regime is evolving slowly but steadily and may need a few more months to settle down fully. Since it is more than a year of implementation and having a handful of experience, all concerned should move forward to achieve 'One Nation – One Tax – One Market' by taking few more concrete steps. *Happy festival season...!!*



mParivahan

Punith Ravindra
M.com, CS Professional
Tax Associate @KPMG
Bangalore
Punithravindra@gmail.com



Web Yatra

In this digital age, we have an opportunity to transform the lives of people 1 ways that was hard to imagine just a couple of decades ago.

These were the lines spoken by our Honourable Prime Ministers Shri Narendra Modi way back on 26th September 2015 at Silicon Valley, USA. Today the concept of Digital India has grown into a major policy of the current government. Since its inception Digital India has tried to bring in almost all the Government Departments and their various programmes into its ambit. One of such initiative is launching of the app called mParivahan by the Ministry of Road Transport and Highways.

The new version of the mParivahan app was made available in Google play store on 21st November 2017. The app has peculiar features. This app can be used for performing following functions:

1. You can store your vehicle documents like RC card and Driving Licence in cloud format so that even if you leave the original documents back at home you will have a backup in your mobile.
2. You can report any sort of road offences through this app directly in the portal called *Citizen Portal*, so you don't have to go to police station for reporting a complaint.
3. You can find nearest RTOs.
4. You can also find the traffic status in *Traffic Status* portal, were as current it is limited only to Delhi and UP. (The app redirects you to Google Play store to download the respective state Traffic Police app)

For storing the RC and DL you have to type in the RC number and DL number in the portal and it will display the following information:

- a. Details of the owner such as name, Chassis No., Engine No., Issue date of RC, Vehicle Class and its description, Seating Capacity

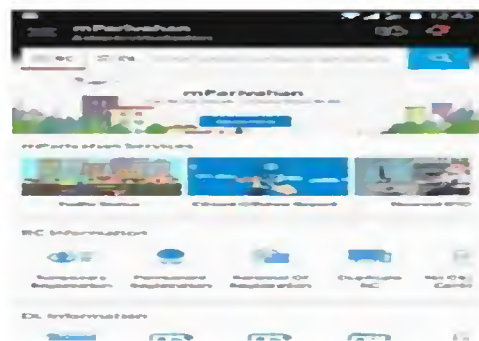
and the details of issuing RTO. (In case of RC)

- b. Details like Name of the DL holder, issue date and validity date, Vehicle Class, RTO code and RTO name. (In case of DL Details)

Both of them can be saved in your RC and DL Dashboard for future uses. Both RC and DL will be converted into QR Scan codes for privacy purpose, like in the image shown below:



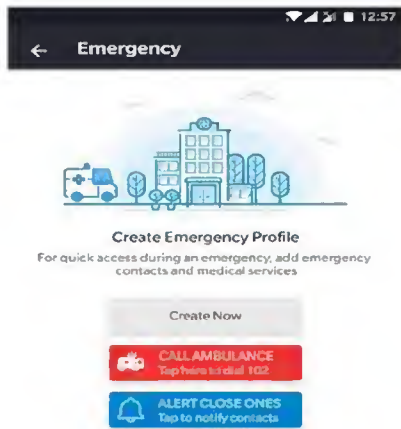
The app has good appearance and is easy to use.



Apart from the above mentioned uses, app has also information about Temporary and Permanent Registration details, details of its Renewal and obtaining Duplicate RC card. Further, it contains useful information as to Learner's DL, Permanent DL, its Renewal and obtaining Duplicate DL. One of the peculiar features of the app is that you can update emergency call details in it.

However, the terms of use policy of the App is very clear that this app has been provided with sole purpose of providing general information and it cannot be used as legal document and the information cannot be used as evidence in any forum.

To give an honest opinion, Our Government has done best job by creating the App and making the Traffic Rule in sync with its objective of Digital India. Well there is scope of growth always. But mParivahan is one of the must have app in your mobile.





Delhi Diaries 7

Solved cases of Supreme Court and NCLAT

Applicability of the Limitation Act to Proceedings under the Insolvency and Bankruptcy Code, 2016

Background

Proceedings under the Insolvency and Bankruptcy Code, 2016 ("IBC") for liquidation are not intended as recovery proceedings in the due course of running of a business. It is intended to apply to that uncommon situation where a company is unable to settle its dues and hence has to be wound up and its assets divided among its creditors and after satisfaction of their debts, to its shareholders. However, from the very inception, the IBC had been recognized as an efficient route for debt recovery. This dichotomy between the purpose and impact of the IBC was the reason behind the courts adopting the stance that a claim will not be barred from becoming the basis for an action under IBC for the sole reason that the debt is barred by limitation. In a judgment of the National Company Law Appellate Tribunal titled *Neelkanth Township and Construction Pvt. Ltd. v. Urban Infrastructure Trustees Ltd.* the National Company Law Tribunal had permitted the commencement of insolvency proceedings against the corporate debtor. The Corporate Debtor challenged the order of the NCLT *inter alia* on the ground that the debt was barred by limitation. The NCLAT dismissing the appeal on 11th August, 2017 held:

"The I&B Code, 2016 is not an Act for recovery of money claim, it relates to initiation of Corporate Insolvency Resolution Process. If there is a debt which includes interest and there is default of debt and having continuous course of action, the argument that the claim of money by Respondent is barred by Limitation cannot be accepted"

The parties challenged the order of the NCLAT before the Supreme Court in *Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructure*

Trustee Ltd., Civil Appeal No.10711 of 2017 and the said appeal came to be dismissed. However, the Supreme Court further clarified thus:

"Accordingly, the appeal is dismissed keeping the question of law viz. whether the Limitation Act would apply to this proceeding, open"

In *Black Pearl Hotels v. Planet M Retail Ltd.* the NCLAT *vide* order dated 17th October, 2017 took note of the above judgment and without delving into the question as to whether the limitation act is applicable, referring to Article 137 of the Limitation Act, 1963 took cognizance of the fact the limitation applies only from the point of time when the right to apply accrues. Hence, the Court held as follows:

"Insolvency and Bankruptcy Code, 2016 has come into force with effect from 1st December, 2016. Therefore, the right to apply under I&B Code accrues only on or after 1st December, 2016 and not before the said date (1st December, 2016). As the right to apply under section 9 of I&B Code accrued to appellant since 1st December, 2016, the application filed much prior to three years, the said application cannot be held to be barred by limitation"

This meant that for debts which became due even prior to the advent of the IBC, the relevant date for limitation for initiation of proceedings would be 1st December, 2016, barring any overriding circumstances which would entitle them to a further extension.

Amendment

In March 2018, the Insolvency Law Committee of the Ministry of Corporate Affairs submitted a report

on several issues including the applicability of the Limitation Act. The committee took into consideration two important points. First, though the IBC is not a debt recovery law, since the trigger for IBC proceedings is “default in payment of debt” it cannot be said to be entirely divorced from the limitation act. Second, claimants with time barred debts also would then become part of the restructuring process contrary to Section 30(4) of the Code. Hence the committee recommended the insertion of a specific provision applying the Limitation Act, 1963 to the IBC.

Following the report of the Insolvency Law Committee, the Insolvency and Bankruptcy (Second Amendment) Act, 2016¹ was introduced with effect from 06.06.2018. One of the provisions introduced in the said amendment was Section 238A which provided as follows:

“238A. Limitation.—The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.”

Retrospective Applicability and Commencement of Time

The above provision gave rise to two questions. First, whether this amendment would be made applicable with retrospective effect, i.e., in respect of proceedings already instituted or whether it would be applicable only prospectively. Second, when would the time period be deemed to have started to run, for the purposes of limitation.

Both questions were answered by the Supreme Court in its recent decision in *B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates* decided on 11.10.2018.

In this case the NCLAT had held, prior to the amendment coming into effect, that though the Limitation Act is not applicable, the principle of delay and laches would still be applicable. The NCLAT further clarified that if an application by either a Financial Creditor or Operation Creditor for liquidation of a company, filed under Section 7 or Section 9 of the IBC respectively, was found to pertain to a debt that had been due more than three years ago, the adjudicating authority may give an

opportunity to the applicant to explain the delay, but without a satisfactory explanation, ‘Corporate Insolvency Resolution Process’ under Section 7 and Section 9 of the IBC would not be initiated. However the NCLAT held that such a restriction would not apply to an application for voluntary liquidation under Section 10 of the IBC.

On appeal, the Supreme Court considered the history of this issue at some length. Then, the Supreme Court considered the definitions of terms “claim”, “debt” and “default” under sub sections (6), (11), and (12) respectively of Section 3 of the IBC.

The Court then took note that under Section 433 of the Companies Act, 2013, the Limitation Act, 1963 had been made applicable to proceedings before the National Company Law Tribunal, which is the adjudicating authority for the purpose of Section 5(1) of the IBC, noting specifically that Section 433 of the Companies Act does not restrict the application of Limitation Act to NCLTs for the purposes of that act alone. However, this would have to be contrasted with the Supreme Court’s own holding that the IBC is a self contained code and does draw from other legislations.

The Court then held limitation is a procedural issue. Two implications flow from this. First, since the statute under which the NCLT is constituted and procedure devised incorporates the limitation act, the procedure incorporates the limitation act and all matters pertaining to the companies act would be bound by the same procedure. Second amendments regarding procedural matters are automatically made applicable retrospectively. The Supreme Court thus held that the Limitation Act is applicable to proceedings initiated by the creditors, from the inception of the IBC.

The Supreme Court further held that the right to sue accrues from the time of the default and hence if the default has occurred more than three years prior to the filing of the application, the application would be barred by the law of limitation.

¹ Readers may recollect that we had considered another aspect of this amendment in the August 2018 edition of this column.

News Room



Express News

- Trade deficit narrows to five-month low of \$13.98 billion for September
- Data localisation: Sparking complaints of bias, US companies seek 12 months' time from RBI
- Unease of doing business makes \$26-billion US giant Flex look out of India
- WPI inflation rises to 5.13% in September
- A \$10-Billion Clean Air Push Set to Boost Indian Pipe Makers
- Xiaomi forays into NBFC sector in India; to seek RBI's approval to start operations

NCLAT stays proceedings against IL&FS, group companies

IIFL India Private Equity Fund has acquired about three fourths of the total shareholding in Kadai Eshwar (KE) Housing Finance, a non-banking finance company, for about Rs 100 crore

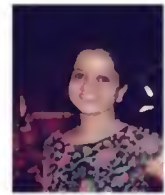
Sovereign Gold Bond Scheme opens

Sovereign Gold Bonds will be issued every month from October 2018 to February 2019 as per the calendar specified in five tranches, the RBI said in a release.

#MeToo Impact on corporate India: Women executives more confident but cautious

NEW DELHI | KOLKATA: As #Me-Too forces India Inc to take a more substantive approach to workplace sexual harassment, women in the corporate world feel more empowered but remain cautious at the same time.





Companies Act, 2013

Updates on Amended Rules

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

In the principal rule following clause shall be inserted after clause (viii) of Sub-rule 5,

(ix) a disclosure, as to whether maintenance of cost records as specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,

(x) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [14 of 2013]. After sub-rule (5), the following rule shall be inserted. “(6) This rule shall not apply to One Person Company or Small Company”.

This new rule has also listed the matters to be included in Board’s Report of one person company and small company.

Companies (Accounts) Amendment Rules, 2018, Dated 31st July, 2018.

MCA has amended Companies (Prospectus and allotment of securities) Rules, 2014 which is to be known as Companies (Prospectus and allotment of securities) Third amendment Rules.

In the Principal Rule after rule 9, following rule shall be inserted,

9A. Issue of securities in dematerialised form by unlisted public companies.-

- (1) Every unlisted public company shall –
- (a) issue the securities only in dematerialised form; and
 - (b) facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996 and regulations made there under.

The new rules has also listed all the duties and the responsibilities of the issuer.

Companies (Prospectus and allotment of securities) Third amendment Rules, Dated ,10th September, 2018.

MCA has amended Companies (Corporate Social Responsibility Policy) Rules, 2014, which is to be known as Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018.

In Principal rules after rule 2, following substitutions shall be inserted,

(a) in sub-rule (1), in sub-clause (i) of clause (c), after the words “relating to activities”, the words “, areas or subjects” shall be inserted;

(b) in sub-rule (1), in sub-clause (ii) of clause (c), for the words “cover subjects enumerated”, the words “include activities, areas or subjects specified” shall be substituted;

(c) in sub-rule (1), in clause (e), for the words “company as”, the words “company in areas or subjects” shall be substituted.

(2) in rule 5, in clause (i) of sub rule (1), for the words “an unlisted public company or a private company”, the words “a company” shall be substituted.

Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018, 19th September, 2018.

Notifications

MCA has notified 1st day of October, 2018 as the date of constitution of National Financial Reporting Authority.

S.O. 5099(E), Dated 1st October, 2018.

MCA has designated following courts as the special courts for the purposes of providing speedy trial of offences punishable with imprisonment of two years or more under the companies Act.

1. Court of District and sessions judge at kohima.
2. Court of District and sessions judge at Aizawl.
3. West Session Division, Yupia.