



eMagazine



NFRA



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Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टकारे क्लृप्तं तृप्तं। अविष्टे सु क्लृप्तं क्लृप्तं।

Mission

"To develop high calibre
professionals facilitating
good corporate governance"





CS Veerash M.J.
Chairman
Mysore Chapter

Dear Professional Colleagues

I am happy to meet and greet you all through the E-magazine. I am happy to inform you all that, chapter organized an Orientation programme for students and it went very well and there were around 40 students participated. Chapter conducted few career counselling session to students so as to inform the importance of CS as a professional course. Also there was a session conducted in NIE College for UG Students on "Activity Based Costing" which was a very nice interaction session with students, Chapter is looking forward to do such seminars to help students to gain in-depth knowledge about the subject. I wish all fellow members and students a Happy Deepavali.

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Chapter Activities

Career Awareness Program

Chapter conducted 02 Career Awareness Program during the month of September 2019. The details are as follows.

S No.	Date	College Name	Speaker	No. of Participants
1	13.09.2019	NIE First Grade College	CS Veerash Mysore Jagadish	60
2	23.09.2019	Mahajana PG Centre		50

1. Teachers Conference



Chapter organized Teachers Conference at Maharani Commerce & Management College, Mysore on 11th September, 2019. Around 50 faculties from the stream of Commerce, Management & Law of various colleges participated in the event. CS Veerash Mysore Jagadish, Chairman of the Chapter welcomed the gathering and introduced the guests. Dr. G H Mahadevaswamy, Principal was the Chief guest of the program and inaugurated the program. Dr. Manju S., HOD of Commerce was the guest of honour. CS Vijaya Rao, Secretary of Mysore Chapter delivered the vote of thanks.



The first session was in the topic “Life Style & Stress Management” handled by Ms. Nandhini Murthy a famous Nutritionist in Mysore. The second session was in the topic of “Overview of GST” handled by CA Vageesh Hegde, Practising Chartered Accountant. The final session was in the topic “Career as a Company Secretary” addressed by CS Veerash M J., Chairman. Participation Certificates has been distributed to the participants. The participants informed that the program was very useful and got more ideas about CS Course and profession & GST

2. Special Lecture on Exam Writing



On 17th September, 2019 a special lecture has been organized by Mysore Chapter for the oral coaching class students in the topic Exam Writing Techniques. CA Krishnan A R, speaker of the session explained about the ways of preparing for the exams in effective manner. Students actively participated in the session and clarified their doubts about the exam preparation

3. Orientation Program for Executive Students



On 26th September, 2019 Chapter organized the One day orientation program for the Executive level students. The session was inaugurated by the Chairman of Mysore Chapter CS Veerash Mysore Jagadish. Various topics have been covered (About the institute, online services, training, exams, syllabus etc.,) in the session which will be helpful for the executive students. More than 30 students participated in the event.



5 Interesting Facts about Indian Constitution

1. The original copies of Constitution, written in Hindi and English are kept in special helium filled cases in the library of Parliament of India
2. The original copy was hand written by Prem Behari Lalzada in flowing italic style with beautiful calligraphy. Artists from Shantinikethan beautified the pages
3. Over 2000 amendments were made to the original draft before it was finalized
4. As of 2018, only 102 amendments were made to the Constitution since its enactment





UDIN and eCSIN

Unique Document Identification Number

¹In exercise of the powers conferred by clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 as amended by the Company Secretaries (Amendment) Act, 2006. The council member in its 261st meeting held on 27th June, 2019 issued Unique Document Identification Number (UDIN) Guidelines, 2019 that every Company Secretary in Practice shall be required to generate UDIN for certain professional services.

Applicability

- ✓ It is applicable on Company Secretaries in Practice.
- ✓ Voluntary applicable w.e.f. 05th July, 2019
- ✓ Mandatory Applicable from 1st October, 2019

OBJECTS

- To verify the authenticity of various documents certified by Company Secretaries in Practice.
- Ease of maintaining the Register of Attestation / Certification services rendered by practicing members;
- Prevent counterfeiting of various attestations / certifications
- Regulatory bodies and other stakeholders may verify the authenticity of documents certified by PCS by visiting the designated website.

Applicability

Only Members with a valid Certificate of Practice can register. PCS is mandatory required to generate UDIN for following below mentioned Reports and Certifications:

Reports

- Annual Return - MGT 8;
- Share Transfer Certification - Reg 40(9) of SEBI (LODR), 2015;
- Director Disqualification Certificate;
- Reconciliation of Share Capital Audit;
- Foreign Investment (As per notification under FEMA);

- Secretarial Audit - Sec 204 of Companies Act, 2013;
- Secretarial Audit of Material Unlisted Companies Reg. 24A of SEBI (LODR) Regulations, 2015;
- Annual Secretarial Compliance Report - Reg. 24A of SEBI (LODR) Regulations, 2015;

Certificates

- Internal Audit of DP and Stock Brokers;
- Third Party Certification of Labour Law;
- Diligence Report for Banks;

Others

Provided further that the practicing company secretary may generate the UDIN for any other eForm and document(s) which is not listed above and not mandatory as per these guidelines on voluntary basis.

Quick bite

1. Whether it is mandatory for PCS to generate UDIN for certifications of e-form.

As per list of mandatory reports and certificates provided by ICSI for which it is mandatory for PCS to obtain UDIN doesn't cover e-forms.

Therefore, one can opine that UDIN is not mandatory for e-forms certification. However, a PCS voluntary can generate UDIN for e-form certification.

2. How UDIN shall help in stopping of back dated reports and certificates?

UDIN has to be generated on the DATE of certification preventing back and postdating of certification.

At the time of general of UDIN date shall be automatically filled by ICSI system.

3. Whether there are any fees for generation of UDIN?

¹<http://udin.icsi.edu/PDF/UdinGuidelines.pdf>

There is No fee for registration/generation of UDIN.

4. Whether UDIN once generated but not utilized can be cancel?

UDIN once generated but not utilized may be surrendered/ cancelled by the PCS within 7 days of such generation.

UDIN becomes important to surrender in case of no use otherwise the same will be taken in record and counted in the limit fixed for various certification a Practicing Company Secretary is authorized to issue.

5. Whether there is any restriction or limits in generation of UDIN?

There is no restrictions & limits on generation of Udin.

6. Whether New UDIN required generating for duplicate Certificate?

UDIN has to be generated only once for original certificate, same UDIN can be issued for issue is duplicate certificates.

7. In case of Partnership Firm or LLP in whose name UDIN shall be generate?

In case of Partnership Firm/LLP only the signing partner can generate UDIN.

8. What is the information required for generation of UDIN?

At the time of generation of UDIN following information required:

- ✓ Name of the Company
- ✓ CIN required

9. Whether any document is required to upload on ICSI website to get generate UDIN?

No documents need to be uploaded to generate UDIN.

UDIN Generation

The practicing company secretary shall go to the designated website (ICSI.EDU), and create a login id and password by entering the Membership Number, CoP No., Phone No., Email id, AADHAR and Income Tax PAN.

- (i) The login id would be verified through a computer application.
- (ii) The UDIN shall be a system generated random alphanumeric number.
- (iii) No document shall be required to be uploaded

Key Points

- ✓ UDIN shall be generated at the time of signing the Certificate/ Report
- ✓ UDIN mandatorily be mentioned in the Certificate, Report and documents along with the Certificate of Practice number.
- ✓ UDIN shall be shared on registered Email id of the Members or through any other electronic mode.

In case of violation Member is liable for action as professionals misconduct under Company Secretaries Act, 1980 r/w first and second schedule to the CS Act, 1980.



Employee Company Secretary Identification Number

In exercise of the powers conferred by clause (1) of Part II of the Second Schedule to the Company Secretaries Act, 1980 as amended by the Company Secretaries (Amendment) Act, 2006. The council member in its 261st meeting held on 27th June, 2019 issued Employee Company Secretary Identification Number.

Applicability

- ✓ It is applicable on Company Secretaries in Employment.
- ✓ Any Person getting employment w.e.f. 01st October, 2019 needs to obtain eCSIN.
- ✓ Any person already appointed in companies till 30th September, 2019 need to obtain eCSIN till 31st December, 2019

OBJECTS

- To monitor the appointment and cessation of Company Secretaries in Employment.
- To bring more transparency by creating a platform to identify the Company Secretaries employed in a particular company;
- It shall provide an opportunity to the members to update their professional address simultaneously in the Institute's Register of Members maintained in terms of Regulation 3 of The Company Secretaries Regulations, 1982.

Applicability

- eCSIN shall be generated by the Company Secretary **at the time of employment** as a Company Secretary,
- eCSIN shall be generated by the Company Secretary at the time of demitting office in any manner (**resignation / removal / retirement / disqualification**).
- eCSIN is to be generated at the time of filing of form DIR-12 in terms of Section 203 of the Companies Act, 2013 and the Rules framed thereunder.
- The same is mandatorily required to be quoted on the **consent letter and resignation letter / cessation letter** to be attached with the form DIR-12.

Quick bite

1. **Whether it is mandatory to mention eCSIN on Consent Letter, Resignation Letter or Cessation Lette.**

Yes, it is mandatory to mention the same on all these documents.

2. **Whether DIR-12 can be file with consent letter not mentioning eCSIN**

NO, DIR-12 required to file with letter containing eCSIN.

eCSIN Generation

- (i) The member of the Institute shall visit the designated website, create a login id

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and password by entering the Membership Number, Phone No., Email id, AADHAR, Income Tax PAN, and such other particulars as may be mandated.

- (ii) The login id would be verified through an electronic application.
- (iii) The eCSIN shall be a system generated random alphanumeric number.
- (iv) No document is required to be uploaded.
- (v) eCSIN shall be shared only on registered Email id of the Members or through electronic mode.
- (vi) Member Name, ICSI Membership No., CIN & Name of the Company, Income Tax PAN No. of member, Date of Appointment / cessation, Date of Board Resolution, (as the case may be) shall be disclosed at the time of generation of eCSIN.
- (vii) No fee for registration/generation of eCSIN.

In case of violation Member is liable for action as professionals misconduct under Company Secretaries Act, 1980 r/w first and second schedule to the CS Act, 1980.

Disclaimer The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Although care has been taken to ensure the accuracy, completeness and reliability of the information provided, I assume no responsibility therefore. Users of this information are expected to refer to the relevant existing provisions of applicable Laws. The user of the information agrees that the information is not a professional advice and is subject to change without notice. I assume no responsibility for the consequences of use of such information. IN NO EVENT SHALL I SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR INCIDENTAL DAMAGE RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE INFORMATION



An Analysis: Filing of NFRA-1 (Details of Auditors) under the NFRA Rules 2018

The MCA vide notification. G.S.R. 1111(E) dated 13.11.2018 has notified the National Financial Reporting Authority Rules (NFRA) , 2018 to be effective from 13.11.2018

1. Key Legislative provisions

1.1 Section 132 of the Companies Act 2013 (CA13):

Through Section 132 of the Companies Act of 2013 (CA13) the Government brought into force the constitution of a National Financial Report Authority to deal exclusively with matters related to accounting and auditing standards under the CA13. This Section was fully notified by 24.10.2018. This Section corresponds to Section 210A of the erstwhile Companies Act of 1956 (CA56), where in it was envisaged to constitute a National Advisory Committee on Accounting Standards.

As we will see that the erstwhile provisions of Sec.210A and Sec.132 are quite different, both in purpose and intent, simple reason being that the present Sec.132 not only has an oversight on accounting and auditing polices and standards but also oversee the quality of service of accounting professionals engaged in assurance services.

1.1.1 Some of its key powers include-

a. Suo moto investigation into any matter relating to professional and other misconduct and once it does so no other institute or body shall initiate or continue any proceedings in such matters;

b. Has been teathed with similar powers as vested in a civil court under the CPC while dealing with matters under its oversight;

c. Has power to issue orders which includes both pecuniary penalties as well as debarring a member from practice.

1.1.2 On which profession does it have an oversight?

In its present form, it has oversight over a member or firm of Chartered Accountants, registered under the Chartered Accountant Act, 1949. And therefore this would cover any Auditor/Auditors appointed under Section 139 of CA13.

1.1.3 Professionals presently outside its ambit-

a. Internal Auditors who may be a Chartered Accountant or Cost Accountant or any other professional as may be prescribed appointed under Section 138 of CA13;

b. Cost Auditor/s appointed under Section 148 if the CA13 and

c. Secretarial Auditor appointed under Section 204 of the CA13

d. Any other professional who may be a registered as member under the Chartered Accountants Act, 1949 but not engaged in professional services as provided under Sec.139 of the CA13. So, a Chartered Accountant engaged in service or rendering other services like tax audit/ GST Audit or consultancy services, etc. would not be covered under NFRA.

1.2 National Financial Reporting Authority Rules, 2018 - (NFRA Rules)

NFRA Rules have been notified with effect from 11th November 2018 and some of the key points to be noted are as under:

1.2.1 Class of Companies/ Bodies Corporate governed by NFRA (Rule 3)

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

- (a) Listed companies;
- (b) Unlisted companies with paid up capital of INR 500 CR or more / Annual Turnover of INR 1000 CR or more / outstanding loans, debentures and deposit of more than INR 500 Cr or more, as on 31st March of immediately preceding FY of the Act;
- (c) insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;
- (d) Any reference made by Central Government to NFRA authority;

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

1.2.2 Filing under NFRA Rules (Rule 3)

NFRA Rule (R)	Periodicity	Responsibility	Form No	Form Coverage	Time Lines
R3(2)	First Filing on commencement of Rules	Every existing body corporate other than a Company governed under these Rules	NFRA-1	Particulars of Auditors	Within 30 days of deployment of the Form on NFRA website
R3(3)	Subsequent Filings on Auditor appointments U/s.139	Every Body Corporate other than a Company as defined under S.2(20) of CA13 formed in India and governed under these Rules	NFRA-1	"do-"	Within 15 days of appointment of Auditors U/s.139 of CA 13 (15 days of deployment of Form)
R5	Annual Return	Every Auditor referred to in R3	Form yet to be Notified		

It may be noted that-

a. Company under Sec.2(20) means a Company incorporated under this Act or under any previous Company law.

b. Auditor under Rule 2(d) means "auditor" means an individual or a firm including a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009) or any other Act for the time being in force, who has been appointed as an auditor of a company or a body corporate under section 139 of the Act or under any other Act for the time being in force.

2. Analysis (Author's Views)

The main or key purpose of NFRA 1 is to capture the details of the Statutory/Financial Auditor being appointed/re-appointed under Section 139 of the Companies Act, 2013 and information of which is

already not available with NFRA/MCA in the form of ADT-1 under Companies (Audit and Auditors) Rules 2014.

- Hence the first-time filings of NFRA-1 needs to be done by an Existing body corporate (other than Companies) which are regulated by NFRA under Rule 3(1) of the NFRA Rules.

- Periodical Filings of NFRA-1 on appointment or re-appointment shall be by body corporates formed in India and which are not Companies as defined under Sec.2(20) of the CA13.

Therefore, all Companies filing ADT-1 need not be required to file NFRA-1 first time or subsequently on Auditor appointments U/s. 139 of the Act.





Sustainable Finance – A tool for shaping the future

Coming from an ‘empty’ world with abundant natural resources, the Industrial Revolution has brought prosperity in the form of economic and population growth. At the same time, this growth - based on production processes dependent on fossil fuels and other natural resources- has created social and environmental challenges. Mass production in a competitive economic system has led to long working hours, underpayment and child labour, first in the developed world and later relocated to the developing world. Social regulations are increasingly introduced to counter these practices and promote decent work and access to education and healthcare. Mass production and consumption is stressing the Earth system through pollution and depletion of natural resources. Climate change is now the most pressing ecological constraint or planetary boundary. To address these social and environmental challenges in our economic system, the United Nations has developed the Sustainable Development Goals for 2030. Sustainable development means that current and future generations have the resources needed, such as food, water, healthcare and energy, without stressing the Earth system processes

Our economic models were developed in a world with an abundance of goods and services produced by nature. That was at the onset of the Industrial Revolution in the 19th century. Labour and capital were the scarce production factors to optimise in economic production, while nature and its services were freely available. The current linear production and consumption system is based on extraction of raw materials (take), processing into products (make), consumption (use) and disposal (waste). Traditional business models centred on a linear system assume the on-going availability of unlimited and cheap natural resources which is emerging as a challenge and significant risk.

Why sustainability matters ?

“It matters more than it ever has,” says Will Day on sustainability. The head of the UK’s Sustainable Development Commission. Sustainability is important for a very simple, very straightforward reason: we cannot maintain our quality of life as human beings, the diversity of life on Earth, or Earth’s ecosystems unless we embrace it. There are indications from all quarters and from the smallest to the largest scale that sustainability is something we must address. We will run out of fossil fuels. Thousands if not millions of animal species will become extinct. We will run out of lumber. We will damage the atmosphere beyond repair... If we don’t change. And the root of that change lies in understanding and striving for sustainability—in our own homes, in our communities, in our ecosystems, and around the world. Sustainability is a major challenge, one that matters beyond individual companies. But reassuringly a number of large companies are developing forward-thinking sustainability policies. It is really becoming clear that sustainability is a megatrend that simply isn’t going away!

What is Sustainable Finance?

Sustainable finance refers to any form of financial service integrating environmental, social and governance (ESG) criteria into the business or investment decisions for the lasting benefit of both clients and society at large. Sustainable finance is the provision of finance to investments taking into account environmental, social and governance considerations

Sustainable finance includes a strong green finance component that aims to support economic growth while

- reducing pressures on the environment
- addressing green-house gas emissions and tackling pollution

- minimising waste and improving efficiency in the use of natural resources

It also encompasses increasing awareness of and transparency on

- the risks which may have an impact on the sustainability of the financial system
- the need for financial and corporate actors to mitigate those risks through appropriate governance

The role of the financial system in sustainable development

Finance is a key lever for change in sustainability and plays a major role in shaping the world we live in. The financial system can make a difference to our current economic model. It can significantly influence sustainable development by not only better integrating environmental risk, but delivering mechanisms that protect nature and drive sustainable business practices. How can the financial system facilitate decision-making on the trade-offs between economic, social and environmental goals? Levine (2005) lists the following functions of the financial system:

- Produce information ex ante about possible investments and allocate capital;
- Monitor investments and exert corporate governance after providing finance;
- Facilitate the trading, diversification, and management of risk;
- Mobilise and pool savings;
- Ease the exchange of goods and services.

The first three functions are particularly relevant for sustainable finance. The allocation of funding to its most productive use is a key role of finance. Finance is therefore well positioned to assist in making strategic decisions on the trade-offs between sustainable goals. While broader considerations are guiding an organisation's strategy on sustainability, funding is a lever for reaching sustainable goals. Finance plays this role at different levels. In the financial sector, banks, for example, define their lending strategy regarding which sectors and projects are eligible for lending and which not. Similarly, investment funds set their investment strategy, which directs in which assets the fund invests and in which assets not. The financial sector can thus play a leading role in the

transition to a low-carbon and more circular economy. If the financial sector chooses to finance sustainable companies and projects, they can accelerate the transition. In terms of monitoring their investments, investors can also influence the companies in which they invest. Investors thus have a powerful role in controlling and directing corporate boards. The governance role also involves balancing the many interests of a corporation's stakeholders.

Sustainability is about acknowledging the important role we can play in catalyzing capital to help address issues facing our society today — from the environment to health care to urban development. If we are serious about delivering superior long-term shareholder returns, we must continue to focus on managing ourselves responsibly and identifying opportunities to allocate capital more purposefully across our businesses.

The main definitions concerning sustainable finance

Sustainable Development: an economic development model aimed at meeting the needs of present generations without jeopardising the needs of future generations.

Sustainability/ESG Factors: aspects of Sustainability that encompass the environmental, social and corporate governance dimensions (Environmental, Social, Governance - ESG).

Sustainability Finance: establishes how the concepts of Finance and Sustainable Development interact, in other words, the application of the Sustainable Development model to Finance.

Sustainable Investments: investments that include, at least one of the Sustainability/ESG factors. Sustainability: application of the Sustainable Development model in the private, public and tertiary sectors.

Sustainable Finance Products and Services: financial products and services that include environmental, social and/or corporate governance criteria, in other words that include at least one of the Sustainability/ESG Factors.

Why should finance contribute to sustainable development?

The main task of the financial system is to allocate funding to its most productive use. Finance can play

a leading role in allocating investment to sustainable corporates and projects and thus accelerate the transition to a low carbon and more circular economy. Sustainable finance looks at how finance (investing and lending) interacts with economic, social, and environmental issues. In the allocation role finance can assist in making strategic decisions on the trade-offs between sustainable goals. Moreover, investors can exert influence on the corporates in which they invest. In this way, long-term investors can steer corporates towards sustainable business practices. Finally, finance is good at pricing risk for valuation purposes and can thus help dealing with the inherent uncertainty about environmental issues. Finance and sustainability both look at the future. The thinking about sustainable finance has gone through different stages over the last decades, whereby the focus is gradually shifting from short-term profit to long term value creation

In the emerging global Financing Challenge Harnessing the nearly US\$300 trillion global financial system is essential if countries are to make a rapid and orderly transition to a prosperous, inclusive and sustainable economy. Over the past decade, there have been increasing efforts by financial institutions, as well as steps taken by central banks, financial regulators and market standard setters, to align the financial system with long-term sustainable development. This is being driven by the growing acknowledgement of the value of sustainability factors for efficient capital allocation to the real economy, the delivery of risk-adjusted returns, the management of emerging threats and the strengthening of economic governance

The 5Rs of Sustainable Financial Systems

Reallocation Financing a sustainable economy will require the efficient reallocation of capital to critical priorities including improving access to green finance, raising capital for sustainable infrastructure, and financing critical areas of clean tech innovation

Risk Sustainability factors are increasingly being considered as relevant factors for risk management within financial domain. Experience is extending from project analysis through portfolio assessment to system level stress tests for issues across the spectrum of sustainable development issues.

Responsibility Growing numbers of financial institutions are adopting shared principles that

guide the integration of Environment, Social, Governance factors. Policymakers are often supporting this process through policy interventions in Banking Insurance Capital markets Reallocation, Risk Reporting, transparency and governance

Reporting The financial system relies on information flows to enable the efficient allocation of capital—and ensure accountability. Market approaches to disclosure are increasingly moving towards Environment, social and Governance dimensions.

Roadmaps Many countries have elements of a strategy for sustainable finance – but often need a process to ‘join the dots’ across key sectors and issues – taking stock of current state and practices and identifying next steps.

Three stages of sustainable finance

At the level of the economy, the financial return and risk trade-off is optimised. This financial orientation supports the idea of profit maximisation by organisations and economic growth of countries. Next, at the level of society, the impact of business and financial decisions on the society is optimised. And finally at the level of the environment, the environmental impact is optimised. There are interactions between the levels. It is thus important to choose an appropriate combination of the financial, social and environmental aspects

Challenges to integration of sustainability into finance

Corporates play a key role in the transition to a sustainable economy. It is therefore important to broaden their objective from shareholder value to stakeholder value, which integrates financial, social and environmental value. Another challenge is a behavioural bias towards the short term. Market practices, like monthly or quarterly performance benchmarking and variable pay, reinforce this short-term bias. A possible cost of financial markets is thus short-termism, with agents in the financial intermediation chain weighing near-term outcomes too heavily at the expense of longer-term opportunities. But sustainability is about the long term

Sustainability needs to be incorporated in mainstream finance. At the basic level (SF 1.0),

exclusion of companies or projects with very negative social or environmental impact is incorporated in the investment, lending or insurance strategy. The next level (SF 2.0) incorporates ESG factors and risks in the decision-making and manages the integrated value. The advanced level (SF 3.0) starts with an analysis of the social and environmental impact before considering financial returns

Mainstreaming of sustainable finance

Sustainable finance has leapt from 'niche' to mainstream with lightning speed. Sustainable finance is currently one of the most widely discussed issues in the Global financial system. Continued decisive action, both at the policy and market levels, will contribute to maintain the momentum achieved. Such action could include the pricing of climate-related risks, mobilizing finance, and ensuring that sound underlying policies with clear and harmonized definitions are used across jurisdictions.

Sustainable finance can provide ways to address income inequality and meet the basic needs for all people. Through a combination of public policy mechanisms and financial innovation, policymakers should ensure that coherent climate and investment policies, along with effective fiscal reforms, are working together to facilitate a just transition to a low-carbon economy. Financial innovations such as social impact bonds and sustainability bonds can also play a crucial role.

Emerging markets around the world are beginning to view sustainable finance as an opportunity. It can drive the innovation that leads to job creation and new industries. Multilateral development banks

(MDBs) can help foster sustainability in emerging markets, particularly by leveraging private sector finance, but tensions exist – debt, transparency and capacity to name a few. The momentum is positive, but has not yet achieved a systematic impact.

Conclusion

Sustainable finance refers broadly to the process of taking into account environmental and social considerations in investment decisions. The growing momentum towards sustainable finance is clear: integrating ESG factors into investment portfolios is delivering superior returns; the green bond market continues to expand; governments are developing national sustainable finance roadmaps; and, financial regulators are incorporating environmental risks into market supervision. Sustainability factors are becoming material for the competitiveness of financial centres.

Traditional finance focuses solely on financial return and risk. By contrast, sustainable finance considers financial, social and environmental returns in combination. Seeing the role of finance as one of allocating funding to productive investments in a narrow sense is no longer appropriate. What constitutes 'productive' cannot be independent of a project's environmental and socio-economic impact because there are often trade-offs between short-term profits and long-term impact. What might appear to be a profitable project over a given time period could have negative impacts that might only become apparent in the longer term. Using finance as a means to achieve social goals we can divert the planet and its economy from its current path to a world that is sustainable for all.





GST: Advance Rulings – Part 12

1. Whether the supply of frozen seafood in packages with company name and contact details to institutional customers taxable under GST?

M/s. Abad Fisheries Private Ltd. (AAR – Kerala)
Advance Ruling No. KER/44/2019 dated
21.06.2019

The applicant is engaged in the processing and sale of frozen seafood domestically as well as internationally with its registered brand name. It sells its products through retail outlets and also to institutional customers. Since seafood is highly perishable in nature, they sold them in packages. For retail outlets with its registered brand name whereas to institutional customers such as hotels, restaurants, etc., without bearing its brand name. The applicant has sought an Advance Ruling on the above-stated issue. It is a well-known fact that the brand name holder enjoys reputation even though he is not using his registered brand name or logo on the goods. Hon'ble Supreme Court in Australian Foods (India) Private Ltd. reported in (2013) 287 E.L.T 385 (SC) held that even an ordinary name is sufficient rather than a manifestation of a brand name on all the goods. Hon'ble Supreme Court in one more instance held that even the name of some other company, if it is used for the purpose of indicating a connection between the product and that company would be sufficient to constitute a brand. Hence, the AAR – Kerala held that supply of frozen seafood in packages with company name and contact details to institutional customers are taxable under the GST Laws.

2. Whether multiple GST registrations allowable to companies functioning from the same address?

M/s. Spacelance Office Solutions Private Ltd.
(AAR-Kerala) Advance Ruling No.
KER/55/2019 dated 15.07.2019

The applicant is engaged in the business of subleasing of office spaces as “co-working spaces” and its lease agreement with landlord permits such subleasing and accordingly obtained NOC from the landlord for registering GST for the customers. Though “co-working spaces”, the applicant provides dedicated landline, fax, internet, air conditioning, housekeeping, pantry, power back up and other facilities to each of its clients. It is a known fact that each client or company is a separate and identifiable within the main office premises though functions newly developed business model. The applicant has sought an advance ruling on the above-stated issue. The Authority while examining the issue in detail observed that in this fast-changing world, the traditional office culture is being overshadowed by the shared office space solutions. Further, there are no restrictions under the GST laws for obtaining GST registration to a shared office if the landlord permits such subleasing as per the agreement. Since the GST registration is based on PAN, identification of taxpayer may not be a difficult thing and for GST registration, its rental agreement and /or sublease agreement is a prerequisite to prove its office address. Hence, the AAR ruled that the separate GST registrations are allowed to multiple companies functioning under the ‘co-working space’ model.

3. Whether Appellate Authority for Advance Ruling can condone the delay for filing an appeal beyond the prescribed period?

M/s. Nuetech Solar Systems Private Ltd. (AAAR – Karnataka) Order No. - KAR/AAAR/03/2019-20 dated 16.08.2019

The applicant is engaged in the business of selling solar water heaters. Solar power based devices are basically powered by sunlight. There are two versions of solar panels to convert solar light into energy, flat plate and another one is evacuated or vacuum tube collectors. The applicant has sought an Advance

Ruling stating whether evacuated or vacuum tube collectors fall under Chapter 84 of HSN which is covered in Sl. No. 234 of Schedule - 1 of Notification No. 01 of 2017 IGST (Rate) dated 28.06.2017 to avail concessional rate of GST? The Authority while hearing the issue observed that solar energy is not converted into electrical energy though it heats the water. Hence, 'ETC' is not covered under the said Chapter and accordingly not entitled for concessional GST rate at 5 per cent. Aggrieved by this Ruling, the Applicant has moved Appellate Authority for Advance Ruling (AAAR) - Karnataka along with an application for condonation of delay of 145 days by stating the reason of getting 'views' from Solar Thermal Federation of India, Karnataka Solar Manufacturers Association, Gold Standard Foundation, Ministry of New & Renewable Energy and Customs Authority. The AAAR relying on Section 100 of the Central GST Act, 2017 i.e. the jurisdictional officer or an aggrieved party or applicant may appeal to the

Appellate Authority within a period of thirty (30) days from the date on which the ruling communicated. In any case, if the AAAR satisfied so that the appellant was prevented by a sufficient cause from presenting the appeal within the prescribed period of thirty days, may grant further extension of not exceeding thirty (30) days for filing an appeal, Hon'ble Supreme Court's ruling in the case of Singh Enterprises v. CCE reported in (2008) 3 SCC 70, CCE v. Hongo India Private Ltd. reported in (2009) 5 SCC 791 and Section 5 of the Limitation Act, 1963 dismissed the said appeal.

To be continued...



**"IF YOU DON'T BUILD
YOUR DREAM,
SOMEONE ELSE WILL
HIRE YOU TO HELP
THEM BUILD THEIRS"**

-Dhirubhai Ambani





CS MINERVA

Commentary on Independent Director- Applicability - Series-20 - Part I

Section 149 r/w Section 150 and Rules 4, Rule 5, Rule 6 of Companies (Appointment and Qualifications of Directors) Rules, 2014 and Schedule IV of the Companies Act, 2013:

Commentary

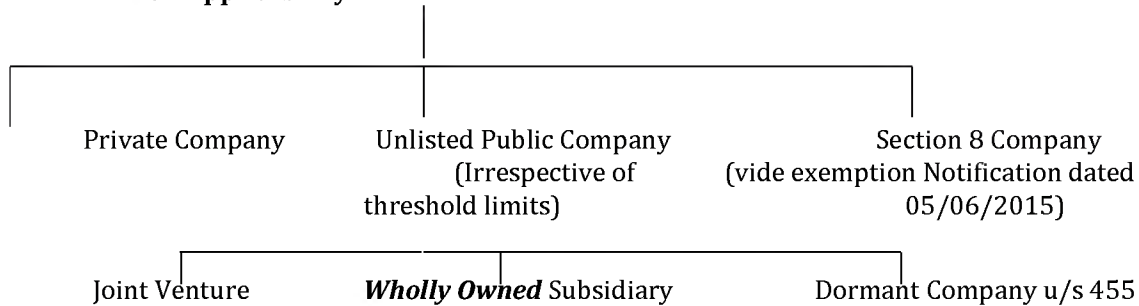
Applicability and Minimum number of Independent Directors (IDs):

1. Applicable only to the following **Public Company**

<u>Applicability</u>	<u>Minimum number of Independent Directors</u>	<u>Provision</u>
Every <i>listed</i> Public Company	One-third of the total number of directors. (Fraction to be rounded off as one)	Section 149(4)
The Public Companies - paid up share capital - Rs.10 crore or more	2	Rule 4
The Public Companies having turnover of Rs.100 crore or more	2	Rule 4
The Public Companies which have, <i>in aggregate</i> , outstanding loans, debentures and deposits, <i>exceeding</i> Rs.50 crore.	2	Rule 4

2. **Mandatory** Appointment of ID's and compliance thereon are mandatory as word used is 'Shall'.
3. **Minimum** Sec.149 mandates only minimum number of ID's, either voluntarily or on account of requirement of any other provisions of Act or any other law, the company may appoint such higher number of ID's.
4. **Meaning** There is no definition for listed public company. Sec 2(52) of the Act defines the listed company. In general meaning, it refers to public company which is listed.
Words turnover, debenture and deposits shall have meaning as defined u/s 2(91), 2(30) and 2(31) respectively.
5. **Or Condition** As the term used is 'or', if a public company is falling in any one of the criteria, such public company shall appoint the IDs.
6. **The word 'aggregate' under 3rd condition** It is put together of all loans, debenture, deposits.
7. **Loans** Loans includes secured and unsecured loan, borrowed from banks, financial institutions etc., subject to provisions of the Act.
8. **Material Date** For paid up capital, turnover, deposit, loans, debenture – the figures shall be as per latest audited financial statements.

9. **Non Applicability**



10. **Meaning of 'joint venture':** Circular No 09/2017 dated 05/09/2019 clarified that joint venture mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. Term is similar to that under the Accounting Standards.

11. **Non-fulfillment of threshold limits** The company ceases to fulfil any of three conditions for 3 consecutive years, it shall not be required to appoint IDs and comply with these provisions until such time as it meets any of such conditions.

12. **Casual Vacancy** Any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, *whichever is later*.

...To be continued



Did you know?

1. India has the most number Post offices in the world, Including one and only floating post office in Kashmir.
2. The value of zero invented by Indian scientist Aryabhata.
3. India hosted the first ever university in the world which was, built in Takshila in 700 BC
4. India never lost a kabaddi world cup men's and women's both.
5. Diamond mining was invented in India
6. India never invaded any country in the History



Volunteering is not just selfless.....

Volunteering is not just selfless job it helps you more than the people you are volunteering for

In the book "Beekeepers of Aleppo" by Christy Lefteri the author was a volunteer at a UNICEF-supported refugee centre in Athens. Part of the book is her experience working as a volunteer. As she says she learnt so much including learning a new language.

"The best way to find yourself is to lose yourself in the service of others." -Mahatma Gandhi.

When we really look at the benefits of Volunteering for a cause it is not really a selfless job it helps you more than anyone else. Benefits we get cannot be measured in any kind. Every time you don't have to go somewhere else to volunteer you can do the job wherever you are.

Recent days no one has time to spend with the family let alone spend time for volunteering to help the community or giving back to the society. People are becoming so commercial minded whatever we do it should have some financial benefit. What people don't understand is the nonfinancial benefit we get out of volunteering work is much more than the financial benefit. If we look at some of the benefits we get out of volunteering for a cause,

1. **It connects you with real people** In the modern digital era we are forgetting the real people around us. It is a two way street. It can benefit you and your family as much as or more than it benefits the organization or people whom you are volunteering for. It expands your network, make new friends and boost your social skills. When you are new to the area it is a

best way to meet new people and getting to know the place. It strengthens your ties with the community, you can build a support network, and you get better understanding of the neighbourhood resources.

2. **It is good for your mind and body**Talking to real people outside your work can help with psychological wellbeing. When you connect with other people you are relieved of stress and anxiety. Research shows, it can combat depression and increases self-confidence. One feels a purpose of life during retired time or loss of loved ones or during any other personal distress. Whatever your age and situation in your life you are in volunteering can take your minds off from your worries, keep you mentally stimulated and add more zest to your life. In the end it makes you mentally happier and you stay physically healthier.
3. **Volunteering can advance your career.** While volunteering you can learn new skill, teamwork, communication, problem solving, project planning, task management and more which you always use at your workplace. Many times when you are thinking of changing a job or a career, people you meet while volunteering will come to help as they have seen your strength. So indirectly it has financial benefit also.

In Conclusion, don't always think that you are so busy with your work and be lost in your own world. Go out and smell the roses you will find so many new things which you never thought about





RCM on Renting of Motor Vehicle – Nuances for Examination

GST payable on Reverse charge mechanism under Section 9(3) of CGST Act, 2017 has got a new family member under the service category “Renting of a motor vehicle”, w.e.f. 01.10.2019.

Insertion to be made for the above in Original Notification 13/2017 dtd:28.06.2017 vide new Notification No.22/2019 dtd:30.09.2019. Entry in this regard is read as below:

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person <u>other than a body corporate</u> , paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory.

“Body Corporate” has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

The above entry implicates the recipient who happens to be a Body corporate located in Taxable territory to pay GST on RCM basis for receipt of services in relation to “Renting of a motor vehicle”.

Detailed aspects to kept in mind by the Service Recipient who happens to be a Body Corporate, for payment of GST on RCM basis is as per below:

- Services received are in relation to Renting of Motor vehicle alone are covered for above entry
- Service provider is other than a Body Corporate i.e. an Individual or a Partnership firm or AOP/BOI
- The above said Service provider has not availed benefit of ITC other than the GST

charged by a person in the same line of business

- Service provider charges GST on such Renting services @ 5% [2.5%+2.5%] on the services rendered

It is quite important to examine **the nature of the Contract** between the Service provider and Recipient i.e. “Renting” and the position of service provider along with the benefit of Input tax being availed for making the payment of Tax under RCM.

The above entry is a copy-cat from erstwhile Service Tax law which has created abundant litigation for applicability and payment of tax on RCM. After a span of two years of GST implementation, entry for the above category in the RCM list is very unclear in entirety towards its entry and language used. Reference to SAC with couple of examples is strongly recommended by the law makers to ZERO down the interpretational

issues and for a proper compliance by the Registered person.

A mere examination of the words “Renting of a Motor Vehicle vis-à-vis Passenger Transportation

Service” on different attributes listed as below indicates the interpretational difference existing to have a clarity for compliance in this regard.

Key attribute	Renting of a Motor Vehicle	Contract for Transport of employees or Passenger
Intent	Hire of a motor vehicle with or without a Driver	To pick & drop the desired list of employees or passengers at the instruction of the employer
Periodicity	On need basis	On a continuity basis
Pricing	Basic fare + variable component on use basis	Fixed fare + variable component for kms or extra hours
Knowledge on place of use	Usually not a pre-condition to specify the location/destination for such renting of a motor vehicle	Pre-defined specific route shall be confirmed. On need basis <u>within a territorial jurisdiction</u> the motor vehicle shall ply as per the contract
Risk & responsibility	Owner of the vehicle casts responsibility on the buyer for proper maintenance of such motor vehicle in the course of contract period to use such vehicle	Owner of the vehicle takes ultimate responsibility to upkeep and maintain the vehicle in proper working condition and little responsibility casted on the recipient for its usage

From above aspects of examination, most of the Body Corporates do have an intent for Employee/Passenger transportation rather than mere hiring of a motor vehicle. Interpretation of the above entry by the judicial authorities other way round to classify the “Employee Transportation” cost hit to Profit & Loss Account as Rental Service and not to be attributed to be as “Transportation of Employee/passenger” is going to cause plethora of litigation under GST. Assuming for a moment, the above stand of the authorities concerned gets a dictum from the superior authorities, establishing the fact that Service provider has complied with GST in relation to payment of taxes on above entry shall be an additional burden in future. Learning from present litigation under Service tax, many courts have upheld that tax cannot be collected twice for the same transaction, where service provdier has paid the tax duly though the responsibility of payment of tax has been casted on the service recipient on RCM basis on the grounds of Revenue neutrality.

For all probabilities to face the situation, it is highly recommended that Service recipient tracks the

legal compliance for payment of taxes and filing of returns for the taxes collected by the service provider where ambiguity exists to pay or not on RCM basis. Also, it is recommended to make a correspondence with the concerned jurisdictional authority for the stand taken by the body corporate towards their understanding of the legal provisions concerned and reason for non-payment of tax under RCM for the above entry with due reference to the contracts entered thereof for the services received.

Examining the Rate chart on the basis of classification of services laid out under Notification No.11/2017 dtd:28.06.2017 as amended duly from time to time, following are the entries relevant for our discussion:

Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
Heading 9966 Rental services of transport vehicles with operators	(i) Renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle) has not been taken. [Please refer to <i>Explanation</i> no. (iv)]
		6	NIL

Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
Heading 9964 (Passenger transport services)	(i) Transport of passengers, with or without accompanied belongings, by rail in first class or air-conditioned coach.	2.5	Provided that credit of input tax charged in respect of goods used in supplying the service is not utilised for paying central tax or integrated tax on the supply of the service
	(ii) Transport of passengers, with or without accompanied belongings by- (a) air-conditioned contract carriage other than motorcar; (b) air-conditioned stage carriage; (c) radio taxi. Explanation. - (a) "contract carriage" has the meaning assigned to it in clause (7) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988); 	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to <i>Explanation</i> no. (iv)]

	(vi) Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	2.5	<p>Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle), has not been taken.</p> <p>[Please refer to <i>Explanation</i> no. (iv)]</p>
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Meaning of Contract Carriage as referred in Motor vehicle Act, 1988

"**contract carriage**" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another; and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

- (i) a maxicab; and
- (ii) a motor-cab notwithstanding that separate fares are charged for its passengers;

Aspects to be considered for Conclusion

A thorough examination of the attributes relevant for Renting service and Transportation service as per above, following points can be concluded:

- a) Contract document has to be examined to establish "Renting of motor vehicle or Transport service"

- b) Mere existence of a contract between a Body corporate [service recipient] and non Body corporate [service provider] cannot be construed to be a convincing activity to have existence of RCM for passenger transportation
- c) Examining the relevant documentary evidence of service provider towards the rate adopted, service category, benefit of ITC availment are essential for future reference purpose on or after 01.10.2019
- d) Further availability of Input Tax credit for the service recipient on the basis of Rate adopted for payment of GST has also to be clarified for the restriction imposed on Input Tax credit for a Service provider.

I see that the intent of the law maker is not to tax the Body Corporate for payment of taxes on RCM basis towards the expenses incurred on Employee Transportation, rather to tax upon the renting of motor vehicles alone. However, this scenario of Renting activity exists very rare occasion for a compliance due to non-existence of such contract for the Body Corporate. Most of the industry works upon the requirement of Passenger Transportation alone and not mere Renting of a motor vehicle.

FAQ's

- 1) If a company hires cab services for a shorter trips on day to day basis, will the above RCM be applied?

Ans. No. The services availed by the company is of Passenger transportation and not for hiring of Motor vehicle and accordingly payment of tax on RCM basis is not required. Each of these shorter trips shall be with a specific guideline of pickup & drop location with clarity

2) Obtaining the services of Aggregator such as OLA or UBER, does it call for payment of GST on RCM basis?

Ans. No. The above services are of Passenger transportation on distance basis and not chargeable under the category "Renting of Motor vehicle. Also, a reference to Section 9(5) of CGST Act, 2017 is relevant to examine the position of Aggregator to pay tax for this service and levy under Section 9(3) shall not be attracted

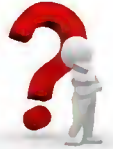
3) Service provider is a Proprietary concern who charges GST @12% for the employee

related pickup & drop service. Does the recipient need to pay tax on RCM

Ans: No, there is no necessity to pay Tax on RCM

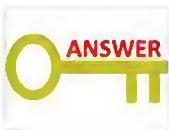
Disclaimer

The above views expressed are as per the understanding of the present GST provisions by the author. Any corrections or suggestions may be sent to praveen@gella.in. It is recommended to take expert opinion for having better clarity in this regard



M/s ABC Ltd., has incurred expense in relation to Import of service during January 2019. However, tax under RCM has been paid during October 2019. Examine the compliance under GST law for the above payment.

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



Opinion To Last Month's Brainy Bits

Facts of the case

- M/s ABC Ltd., [hereinafter referred as Recipient] availed Input Tax credit on the basis of Tax Invoice issued by the supplier
- Accountant of the Recipient has examined the Input Tax as per Books vis-à-vis the entry in GSTR2A and noted few discrepancies for missing credits on the portal

- Recipient needs clarity with regards to eligibility of Input Tax credit for the missing credits as per the GST provisions

Legal provision

- Section 16 read with Section 41
- Section 43A yet to be notified
- Rule 36 as amended by Notification 49/2019 dtd:09.10.2019

Conclusion

Input tax credit is governed by Section 16 currently and insertion made in Rule36 vide Notification 49/2019 has no legal sanctity for its applicability. Reference to Section (2)(c) has a reference towards payment of tax on the supply to the Government either in cash or through credit is the criteria for allowing input tax credit.

Reference to Section 16(2) read as per below:

“subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;”

Entry found in GSTR2A for the purchases booked in the Books of Accounts doesn't confirm compliance under the above provision. At the same time, clerical error made in GSTR1 filing by the supplier shall not deprive the benefit of Input Tax credit to the Recipient.

Accordingly, as per the present provisions laid out in GST law, there is no necessity to equate the Input Tax credit as per Books vis-à-vis the entry in GSTR2A for confirming the eligibility of Input tax credit. However, compliance as per other provisions laid out in Section 16 read with Rule36 prior to insertion as per Notification 49/2019 are relevant.

Section 43A has been inserted vide CGST Amendment Act, 2018 which has provisions built in for availing the Input Tax credit on the basis of data uploaded by the supplier in a return to be filed under Section 37 has not been given legal validity for its implementation. Accordingly, amendment made to Rule36 vide Notification No.49/2019 dtd: 09.10.2019 has no sanctity in its implementation until Section 43A has been enforced



Words Worth Million



“Allow your ego to be destroyed.
Don't be afraid of destruction.
People and events can only destroy that which is not real.”
— Sri Vishwanath



Delhi Diaries 19

Limitation Act and IBC – Clarifying a Year Long Doubt

Exactly a year ago, in the October 2018 edition of this Column we examined *B.K.Educational Services Pvt. Ltd. v. Parag Gupta and Associates* 2018 SCC OnLine SC 1921 where it was held that the Limitation Act is applicable to proceedings initiated by the creditors, from the inception of the IBC.

However, that issue did not rest there as the interpretation rendered by the Supreme Court left a gap. It may be worthy of recollection that in *Black Pearl Hotels v. Planet M Retail Ltd.* the reasoning followed by the NCLAT was that since the right to file an application, under IBC, accrued only on 1st December, 2016 and hence reading it concurrently with Article 137 in the Schedule to the Limitation Act, the limitation period would be calculated from 1st December, 2016.

Hence despite the judgment of the Supreme Court in *B.K.Educational Services Pvt. Ltd. v. Parag Gupta and Associates* the NCLAT took a different view in *Shankar Varadarajan v. Dewachand Ramsaran Corporation Pvt. Ltd.* Company Appeal (A.T.) (Insolvency) No. 735 of 2018; *Pushpa Shah v. IL&FS Financial Services Limited and Anr.* Company Appeal (AT) (Insolvency) No. 521 of 2018; *Shalini Publicity Creative Pvt. Ltd. v. Dena Bank* (2019) SCC OnLine NCLAT 91; and many other cases the NCLAT once again relied upon Article 137 to hold that period of limitation in IBC cases is to be calculated from 01.06.2016, i.e., the date on which the right to apply arose.

This confusion was rectified by the Supreme Court in a two-step process. The first step in the process was recent Supreme Court judgment in *Jignesh Shah v. Union of India* where in relation to the process of winding up under the Companies Act, it was

reiterated that the trigger for limitation is the inability of a company to pay its debts. Undoubtedly, this trigger occurs when a default takes place, after which the debt remains outstanding and is not paid. It is this date alone that is relevant for the purpose of triggering limitation for the filing of a winding up petition. Though it is clear that a winding up proceeding is a proceeding 'in rem' and not a recovery proceeding, the trigger of limitation, so far as the winding up petition is concerned, would be the date of default.

Thereafter in *Sagar Sharma v. Phoenix Arc* the Court reiterated its previous judgment in *B.K. Educational Services* and held:

“We had also made it clear beyond any doubt that for applications that will be filed under Section 7 of the Code, Article 137 of the Limitation Act will apply. However, we find in the impugned judgment that Article 62 (erroneously stated to be Article 61) was stated to be attracted to the facts of the present case, considering that there was a deed of mortgage which was executed between the parties in this case. We may point out that an application under Section 7 of the Code does not purport to be an application to enforce any mortgage liability. It is an application made by a financial creditor stating that a default, as defined under the Code, has been made, which default amounts to Rs. 1,00,000/- (one lakh) or more which then triggers the application of the Code on settled principles that have been laid down by several judgments of this Court”

The Supreme Court also took a strong view that its orders are not being followed in letter and spirit and further clarified that the commencement of IBC has no relevance to initiation of CIRP under the

Insolvency Code while at the same time reiterating that it would be Article 137 of the Schedule to the Limitation Act which would apply.

In the facts of *Sagar Sharma*, upon the request of the advocate, the Court permitted them to raise the plea of continuing breach before the NCLAT.

This judgment though reiterates the stance taken earlier in *B.K. Educational Services*, does not

adequately explain the reasoning why the interpretation taken by the NCLAT in the judgments referred above, does not hold.



News Room



- India may become one of Apple's key global production hubs as part of China derisking plan.
- PwC India plans to hire 1,200 for its Kolkata labs
- Adani Transmission share price rises over 13% after firm acquires arm of REC Transmission Projects
- HCL renews multi-million deal with oil and gas major Equinor

RBI imposes Rs 1 crore fine on LVB, Rs 75 lakh on Syndicate Bank for violating norms

This penalty has been imposed in exercise of powers vested in RBI under the provisions of Section 47A(1)(c) read with Section 46(4)(i) of the Banking Regulation Act 1949, the central bank said in a statement late on Monday.

IRCTC makes stellar debut on bourses

The stock opened 101.25% higher above the issue price of Rs 320 at Rs 644. It jumped 132% to touch a high of Rs 743.80 and a low of Rs 625 during the day, before closing at Rs 728.60, an increase of 127.68%.

Air India becomes first airline to use Taxibot on A320 aircraft

Air India on Tuesday became the first airline in the world to use a Taxibot on a A320 aircraft with passengers onboard.

Taxibot is a robot-used aircraft tractor for taxiing an aircraft from parking bay to runway and vice versa.

Mahindra Group chairman Anand Mahindra may take on non-executive role

Under new Sebi norms, the top 500 listed entities will have to ensure that the chairperson is a non-executive director from April 1, 2020. It will eventually lead to a split in the post of chairman and managing director.

NCLAT asks ED to release Bhushan Power's attached property

The National Company Law Appellate Tribunal (NCLAT) on Monday put JSW Steels Rs 19,700 crore payment to acquire Bhushan Power and Steel (BPSL) on hold and asked the Enforcement Directorate (ED) to release the BPSL's attached properties.



Regulatory Updates

Companies Act, 2013

Compiled by:
Matruka B.M.
Professional student Mysore



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, 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.

