ANNUAL CONFERENCE - 2019

Saturday, the 10th August, 2019

Taj Bengal, Kolkata

Expectations from Professionals in Changing Times!

ACAE Chartered Accountants' Study Circle - EIRC

An ISO 9001 : 2015 Certified Study Circle

6, Lyons Range, 3rd Floor, Unit - 2, Kolkata - 700 001

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INFORMATION TECHNOLOGY

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SPIRITUAL

ACAE CHARTERED ACCOUNTANTS' STUDY CIRCLE – EIRC

Organises

ANNUAL CONFERENCE - 2019

on Saturday, the 10th August, 2019 at The Taj Bengal, Kolkata

Expectations from Professionals in Changing Times!

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

An ISO 9001 : 2015 Certified Organisation

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E-mail : info@acaekolkata.org

Website : www.acaekolkata.org

Editorial.

Dear Members and Delegates,

It is our proud privilege to present before you the coveted Souvenir of ACAE's flagship event, the Annual Conference - 2019. This year, the Annual Conference is being organized on the theme **Expectations from Professionals in Changing Times!**

The Conference is being organized at a juncture when the Indian economy is facing a double whammy, first being the bearish trend in the economy and second the increased compliance in almost every legislation. The corporates are finding it very challenging to keep pace with the almost daily changes in law and increase in compliances.

The expectations of all stakeholders including Corporate, Government including enforcement agencies, Judiciary and the Society at large, from Professionals is ever increasing. In almost all cases of non-compliance, fraud or otherwise, the finger is also pointed towards Auditors. This has created a huge expectation gap. It is all about what auditor expects and what other expect from the auditor.

These times are really challenging for the professionals. We need to have a clear understanding of different connected factors and a fine balance between what we do and what we cannot do. The line has to be drawn. We are seeing many auditors' resignations in the recent past. This trend is a very new and here the professionals are trying to bridge some of the gap by leaning towards their role as perceived by the stakeholders. These changes in the profession is being watched by the Corporates and Government, especially regulatory agencies. Overall, the expectations from professionals have changed a lot in recent times and is bound to change more in the near future. However, challenges are associated with opportunities too for the Professionals.

In this publication, we have published articles from national level experts on topics like GST, Income Tax, Information technology and its impact on the profession, Corporate laws, IBC, Internal audit, statutory audit and like subject, who have tried to address some of the points of expectations from professionals in their respective field. An article on Gita and its teachings for the profession is also published. We hope you will find this issue informative. We look forward for your feedback on the Souvenir.

from **Editorial Board**

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Message from Chairman, Annual Conference Committee

A warm welcome to you at this Annual Conference-2019.

In the backdrop of rising expectation from audit profession we all are aware that an Auditor is to make an objective independent examination, whether the books of accounts and the resulting financial statements portray a true and fair view. Therefore, the role of the Auditor is to provide objective assurance and not to act as an insurer. However, the Public in general and users of accounting information in particular, have high expectations from the Auditor in comparison with the actual auditor's role thus giving rise to audit-expectation gap.

Consequent upon globalization and digitization, today, the Auditors' profession has been facing an unenviable balancing act. While their remuneration has shrunk, their risks, complexity and accountability have gone up exponentially. Time has come also to reorient the Auditor's profession in the wake of extensive use of technology in the areas of accounting, new legislations, regulations, codes and standards. But as I feel, IT and automation cannot undermine the role of human intervention, rather, only human touch can bring changes and transforms a mundane task into a strategic one.

Since the frequency and scale of frauds have been increased significantly in recent times which are discussed and debated by the accounting profession and the public in general the role of Auditors have become challenging with wider risks although the bankers' role in those frauds cannot be under estimated. In the backdrop of failure to report frauds, fingers are pointed at auditors with allegations that the auditors colluded with management and it is an intentional act involving gross negligence. However, it is not prudent to draw any conclusion without examining the facts. It could be a bona fide omission (not part of audit sample selection), or an error of judgment, or that the time available to auditor was not commensurate with the volume of business. May be, the skills of the auditor have not kept up with those of the fraudster. Increasing risks are also becoming the focal point in performing the tasks religiously by an auditor. With public sentiment turning negative and some lowering of confidence in the independent auditor's work, there is a fear that professionals may stay away from the audit domain. Moreover, tightening the regulatory aspects and monitoring the quality of audit by National Financial Reporting Authority (NFRA) have led to issues such as overriding powers of the NFRA over the ICAI

The role of the audit committees of company boards as also of the independent directors are also rarely scrutinised. Experts concur that most audit committees do not do their jobs properly, choosing a tick-box approach instead, offering auditors the standard "we see everything through your eyes" response.

All such factors ultimately culminate to the extreme step of an auditor's resignation which signals to the world that either there are irreconcilable issues in the company's accounts or that the management is not letting the auditors do their job as the management intends to hide something.

Against such backdrop, this conference is divided into two Sessions. While the first one will be on Direct & Indirect taxes, in the second Session, a Panel Discussion consisting of eminent speakers will be held on the theme 'Audit profession expectation gap'. My specials thanks to our President, all Chairmen of the Sub Committees without whose active support and co-operation it would not have been possible to organize this conference in such a big way.

Thank you all.

CA. Santosh K. Roongtaa
Chairman - Annual Conference Committee

Message from President – ACAE

Dear Members,

Our Annual Conference, like every year, is going to be held on 10th August 2019, at Taj Bengal, Kolkata. The theme for this conference is **"Expectations from Professionals in Changing Times!"**. This year's conference has been structured - Knowledge Session I on GST, Direct Tax and Information Technology and Knowledge Session II - Panel Discussion on "Audit Profession : Expectation Gap" which will be very relevant and useful for the enrichment of knowledge of our members. The speakers, moderator and panelists of the conference are prominent speakers from all over the country.

Change is inevitable especially in the professional world. Those who adapt to change will survive and stay relevant, the rest will find the going tough. Change is the only constant thing in life and this holds true for all the professions.

The change in the regulatory environment and expectations demands the professionals to develop and deliver high quality service by upgrading professional skills and this conference will enlighten us on these skills.

Friends, I have taken the baton of the highest post in our Association -The President's Post and throughout my tenure I have tried to deliver my best, very sincerely and diligently, to the best of my skills and available resources. This year, various different programs and events were organized -three conclaves- GST Conclave,Capital Market Conclave and Real Estate Conclave were successfully organized and appreciated by the attending members. Apart from our regular lecture meetings, seminars and group discussions, emphasis was also laid on other enlightening programs. One such program was talk show held for female members and the spouses of other members on the topic "Restarting Life". Two more programs involved the eye opening topic on health in which four prominent doctors were invited to deliberate on health issues arising due to change in life style. Another very informative session was held in which Swamy Swatmanandaji had put emphasis on how to make balance between work and life. One of the best take away from this session was vision and action creates transformation. Three excursion trips were also planned and executed- Andaman, overnight stay at Holiday Inn Resort-Uluberia and the last one to the religious and pious Varanasi.

The regular lecture meetings and seminars were held regularly which were attended in huge numbers and were relevant for the professional benefits of the members.

Friends, it is my pride and privilege to announce that our association has acquired a new office in the fourth floor of the same building of the present office which will be fully equipped with the latest technology. It is my request to all the members to kindly contribute generously for the collection of funds for the new office.

Friends, this is my last communication through this house journal. During the year, three house journals were published, each one on the three conclaves held- as mentioned above.

I take this opportunity to thank the strength behind these successful publications - CA H K Agrawal and CA Tarun Kr. Gupta. I would also like to thank my colleagues and members of the Executive Committee and Special Invitees who have been my strength and support throughout the year. I also feel humbled to thank our past presidents who were guiding factors throughout the year.

Best Regards.

CA. Vasudeo Agarwal
President
Association of Corporate Advisers and Executives

Message from Governor of West Bengal

Keshari Nath Tripathi
GOVERNOR OF WEST BENGAL

RAJ BHAVAN
KOLKATA 700 062

25th July, 2019

Message

I am glad to learn that Association of Corporate Advisers & Executives is going to organise its Annual Conference on the theme "Expectations from Professionals in Changing Times" on 10th August, 2019 and to bring out its souvenir to commemorate the occasion.

I am sure that the deliberations in the Conference will be highly informative and useful to enrich the experience of the members for economic development.

I convey my felicitations to all the members of the Association for taking such initiatives and wish the Conference all success.

Keshari Nath Tripathi

Message from the Vice President – ICAI

Dear Members,

It is heartening to note that the ACAE Study Circle of EIRC of the Institute of Chartered Accountants of India is organizing its Annual Conference on the theme 'Expectations from Profession in the Changing Times' on 10th August, 2019.

Chartered Accountancy profession is driven by knowledge and powered by values, its paramount to learn new practices and perspectives to succeed in the evolving economic environment. The Accountancy profession is continuously progressing to meet the aspirations of society. Our economy is growing everyday with emerging regulatory regime, enhancing business confidence by developing best reporting framework for sustained value creation. The current business environment is inspiring for the profession - acting as strategic business advisors to corporates in navigating markets with innovative business models as well as augmenting trust through developing best reporting frameworks.

The Conference will acclimatize the accounting fraternity to emerging trends, growth drivers and demands of a market driven economy. The conference will brainstorm on many key topics and will enable the members to understand and appreciate the future marketplace to create a mark for them in times to change.

I appreciate the Study Circle for its commitment to provide opportunities to the members, to enhance their knowledge, expertise, skill sets.

I wish the Conference a resounding success.

CA. Atul Kumar Gupta
Vice President, ICAI

Annual Conference – 2019

Expectations from Professionals in Changing Times!

on Saturday, the 10th August, 2019 at The Taj Bengal, Kolkata

PROGRAMME

6 CPE HOURS

REGISTRATION – 09.30 am to 10.00 am

KNOWLEDGE SESSION I – 10.00 am to 1.30 pm

GOODS & SERVICES TAX

Industry Knowledge for quality GST Audit : **CA A Jatin Christopher**
Partner, JCSS
Bengaluru

DIRECT TAX

Concept of Start-up : Tax Implications : **CA Yogesh A Thar**
Partner, Bansi S Mehta & Co.
Mumbai

INFORMATION TECHNOLOGY

Blockchain and Triple Entry System of Accounting : **CA Anand Prakash Jangid**
Managing Partner, AJA
Bengaluru

LUNCH BREAK : 1.30 pm to 2.30 pm

KNOWLEDGE SESSION II – 2.30 pm to 5.00 pm

PANEL DISCUSSION

Audit Profession : Expection Gap

MODERATOR : **CA (Ms.) Sripriya Kumar**
Former Central Council Member, ICAI
Chennai

PANELISTS : **CA Nilesh S Vikamsey**
Past President, ICAI
Mumbai

CA Yogesh Gupta, IPS
Special Director - ER
Enforcement Directorate, Kolkata

CA Dilip B Desai
Chairman, Baker Tilly DHC India
Kolkata

CA Anand Prakash Jangid
Managing Partner, AJA
Bengaluru

About the ACAE Chartered Accountants' Study Circle – EIRC

ACAE Chartered Accountants' Study Circle - EIRC which was formed by the Chartered Accountants members of Association of Corporate Advisers & Executives (ACAE) in the year 2002 is known in Eastern part of the Country for organizing events on unconventional topics for the benefit of its members besides organizing lecture meetings, Seminar and Interactive sessions on contemporary burning issues in GST, Direct Taxes , Corporate laws and Auditing & Accounting etc. The Study Circle has received many accolades over the year from ICAI-EIRC.

The ACAE study circle has always been the front runner in spearheading knowledge to professionals and its very hard working and dedicated team of CA Members continuously strive for excellence and help each other in deliberating the complex issues and their efforts has enabled the Study Circle to excel in different spheres.

The theme of Annual Conference "Expectations from Professionals in Changing Times" aptly describes our Study Circle popularly known as 'ACAE'.

In the present global environment, economic and regulatory changes are taking place at a rapid pace and the Chartered Accountants are expected to integrate with such changes regularly. The present world is focused on technology and as such the Chartered Accountants are also required to have in depth knowledge of existing and emerging digital technologies. With the change being only constant thing and as required by the changing environment the Chartered Accountants are expected to go beyond their conventional role and provide the complete business solution to bridge the gap between the expectations by the regulators and stakeholders and their duly performed duties .

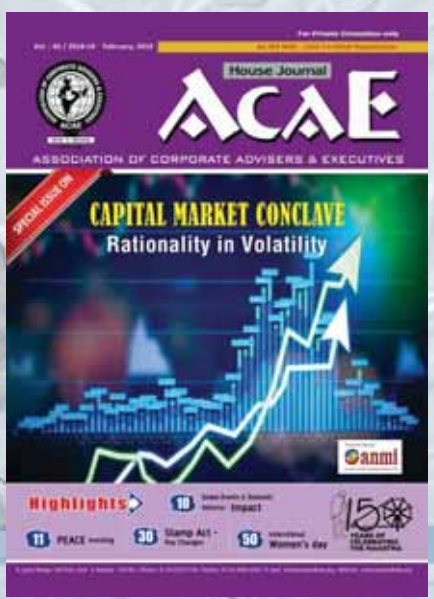
ACAE study circle's reputation is built on its timely delivery of deliberations on current issues and is constantly making efforts to help its members to adapt and match the economic and technological changes by organizing various programmes with best speakers on burning topics which is being appreciated by one and all. The interactive session of Group discussions conducted by the study circle addresses various critical issues wherein the participants even share their knowledge & experiences on the relevant topics.

Additionally keeping in mind the physical health of its members , our study circle also organizes sports event- Inter CA Study Circle Indoor Cricket Tournament and participates in Badminton Tournaments.

The study circle thanks all its patrons, sponsors, delegates, guests and speakers for their valuable contributions to make the programmes successful throughout the year and look forward to more active involvement of its members and delegates to help it reach greater heights.

Anup Kumar Sanghai
Convenor - Study Circle

Our Publications ...



Activities at a glance ...

Interactive Session on **Rules of Investments** on 24th November, 2018 at The Park, Kolkata. CA Varun Malhotra, New Delhi giving his deliberations.

Group photograph

Capital Market Conclave - Reality in Volatility! with Technical Partner - ANMI on 23rd February, 2019 at The Park, Kolkata. Lighting of the Lamp in the Inaugural Session -Chief Guest, Mr. S V Muralidhar Rao, Executive Director, SEBI-Mumbai, accompanied by CA Madhav Prasad Sureka, Chairman, Capital Market Conclave, CA Vasudeo Agarwal, President-ACAE and Mr. Anil Changoiwala, Chairman-ANMI-EIRC.

Capital Market Conclave - Reality in Volatility! with Technical Partner - ANMI on 23rd February, 2019 at The Park, Kolkata. Guest of Honour, Mr. Ravi Varanasi, Chief Business Development Officer, NSEIL-Mumbai, CA Vasudeo Agarwal, President-ACAE, Guest of Honour, Mr. Prashant Vagal, Senior Vice President, NSDL, Mumbai and Mr. Anil Changoiwala, Chairman-ANMI-EIRC in the Inaugural Session.

Talk & Interactive Session on **Present Focus of Government on Unearthing of Black Money** - a joint programme with Calcutta Chamber of Commerce on 6th December, 2018 at Hotel Hindusthan International, Kolkata. Speaker CA Jinesh S Vanzara, Past President-ACAE, sharing views and issues of the assessees. On the dais-CA Madhav Prasad Sureka, Sr. Vice President-CCC and also Past President -ACAE, Mr. Ashish Verma, IRS, Principal Director of Income Tax (Investigation),Kolkata, Mr. Om Prakash Agarwal, President-CCC, Mr. Pranab Kumar Das, IRS, Director General of Income Tax Investigation), East, Mr. Vasudeo Agarwal, President-ACAE and Mr. Arvind Kumar, IRS, Principal Commissioner of Income Tax-4,Kolkata.

Activities at a glance ...

Interactive Session on **"Spread your Wings - Fly High"** on 8th March, 2019 - **International Women's Day** at ACAE, Emami Conference HalL. Moderator CA Shivani Shah, Panelists Ms. Saroj Agarwal, Psychotherapist, Ms. Saroj Jalan, Fashion Designer, CA Beena Jajodia, Chairperson-Ladies Wing Sub-Committee, Panelists Ms. Saroj Agarwal, Chief Embryologist, CARE-IVF and Ms. Purnima Lohia, Nature Care Activist.

Interactive Session on **Recent GST Notifications in Real Estate Sector** on 13th April, 2019 at Bengal Chamber of Commerce & Industry, Kolkata. CA Tarun Kr Gupta, Chairman-GST/Indirect Tax Sub-Committee, Guest Speaker CA Ashok Batra, Senior Partner, M/s. A K Batra & Associates, New Delhi, CA Arun Kr Agarwal, Chairman of the Session, Keynote Speaker Mr. Khalid Aizaz Anwar, I.A.S., Joint Secretary (Finance), Govt. of West Bengal, CA Anup Kr Sanghai, Convenor - ACAE CA Study Circle.

Seminar on **Audit for Small and Medium Companies** on 24th & 25th May, 2019 at ACAE, Emami Conference Hall.

Speakers CA Vivek Newatia and CA Mohit Bhuteria on either sides of CA Vivek Agarwal, Chairman - Accounts & Audit Sub-Committee.

CA Vivek Agarwal, Chairman - Accounts & Audit Sub-Committee introducing Guest Speaker CA Sunit Kedia sitting on the dais along with Dy. Convenor CA Niraj Agrawal.

Activities at a glance ...

Seminar on **Audit for Small and Medium Companies** on 24th & 25th May, 2019 at ACAE, Emami Conference Hall.

CA Vivek Agarwal, Speaker & Chairman-Accounts & Audit Sub-Committee, CA Beena Jajodia, Executive Committee Member and CA (Dr.) Debashis Mitra, Speaker and Vice President-ACAE.

Real Estate Conclave - Navigating the Undercurrents! with Technical Partner : CREDAI Bengal and Knowledge Partner : JLL on 8th June, 2019 at The Lalit Great Eastern Kolkata. Mr. Debashis Sen, IAS, Hon'ble Additional Chief Secretary, Govt. of West Bengal, Information Technology & Electronics Department & Chairman-Managing Director, WBHIDCO Ltd., lighting the inaugural lamp - accompanying him are CA Rishi Khator, Chairman - Real Estate Conclave Committee, Guest of Honour, Mr. Nandu Belani, President-CREDAI Bengal, CA Vasudeo Agarwal, President-ACAE and CA Anup Kr Sanghai, Convenor - ACAE CA Study Circle.

A cross-section of the audience.

Activities at a glance ...

Talk & Interactive Session on **Income Tax Settlement Commission - Current Scenario** - a joint programme with Calcutta Chamber of Commerce on 20th June, 2019 at Hotel Hindusthan International, Kolkata.
Jb. Syed Muhammad Ashraf, IRS, Vice Chairman, ITSC, Additional Bench, Kolkata giving his deliberations. On the dais, CA Madhav Prasad Sureka, Senior Vice President - CCC and also Past President-ACAE, CA Vasudeo Agarwal, President - ACAE, Mr. Om Prakash Agarwal, President-CCC, Mr. B D Gupta, IRS, Member, ITSC, Additional Bench, Kolkata and CA Jinesh S Vanzara.

Seminar on **Union Budget - 2019** on 7th July, 2019 at Rotary Sadan, Kolkata

Guest Speaker CA G Sekar, Chennai, Past Chairman, Direct Taxes Committee, ICAI giving his deliberations. On the dais, Speaker and also Immediate Past President - ACAE, CA Arun Kr Agarwal, Mr. N K Poddar, Senior Advocate, Supreme Court of India, CA Vasudeo Agarwal, President-ACAE and CA Anup Kr Sanghai, Convenor-ACAE CA Study Circle.

Talk on **Work Life Balance** on 1st August, 2019 at ACAE, Emami Conference Hall.

Past President-ACAE, CA Madhav Prasad Sureka welcomes Swami Swatmananda, Acharya of Chinmaya Mission - South Mumbai & National Director of All India Chinmaya Yuva Kendra, by presenting Uttariya. Others on the dais, CA Vasudeo Agarwal-President-ACAE and CA Ketan Satnalia, Chairman - Members Co-ordination & Service Sub-Committee join him.

GST Mela - (L-R) On the Podium - Mr. D.V.Nagvenkar, Commissioner, CGST & CX, (On the dias) Prof. Dilip Shah, Bhawanipore Educational Society, CA. Sumit Binani, Chairman, EIRC of ICAI, CA. Sushil Goyal, Central Council Member, ICAI, and Chairman Indirect Tax Committee, ICAI, CA. Vasudeo Agarwal, President ACAE and CA Debayan Patra, Member EIRC of ICAI

Activities at a glance ...

GST Made Easy 5 day TV programme organised on TAAZA TV in association with ICAI, EIRC. Glimpses of all 5 days discussing the various topics.

Activities at a glance ...

GST Made Easy 5 day TV programme organised on TAAZA TV in association with ICAI, EIRC. Glimpses of all 5 days discussing the various topics.

Goods & Services Tax Conclave on 30th November, 2018 at Bengal Chamber of Commerce & Industry, Kolkata.
CA Tarun Kr Gupta, Chairman-GST/Indirect Tax Sub-Committee, Chief Guest, Mr. D Nagvenkar, IRS, Commissioner CGST & CX, Kolkata North Commissionerate, CA Vasudeo Agarwal, President - ACAE, CA Arun Kr Agarwal, Moderator and CA Anup Kr Sanghai, Convenor - ACAE CA Study Circle releasing ACAE House Journal, Special Issue on GST Conclave.

ACAE Varanani Trip - Group photo of delegates of Varanasi Trip

Our Past Presidents

Year	Name
1960-63	Mr. S. B. Dandekar (*)
1963-64	Mr. J. P. Gupta (*)
1964-65	Mr. Sukumar Bhattacharya (*)
1965-66	Mr. R. Singhi (*)
1966-67	Mr. B. P. Khaitan (*)
1967-68	Mr. B. S. Kothari (*)
1968-69	Mr. P. M. Narielvala (*)
1969-70	Mr. R. N. Lakhotia
1970-71	Mr. K. K. Mitra (*)
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1972-73	Mr. P. R. Neelkanth (*)
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1974-75	Mr. S. S. Kothari (*)
1975-76	Mr. A. B. Rabadi (*)
1976-77	Mr. K. P. Bhargava (*)
1977-78	Mr. R. L. Bathwal
1978-79	Mr. M. L. Varma
1779-80	Mr. T. D. Mundhra (*)
1980-81	Mr. Sasanka Sekhar Sen (*)
1981-82	Mr. Nirmal Kr. Poddar
1982-83	Mr. Amal Kr. Chakraborty (*)
1983-84	Dr. Abhijit Sen
1984-85	Mr. K. L. Chatrath (*)
1985-86	Mr. Amitav Kothari
1986-87	Mrs. Nandita Sen
1987-88	Mr. G. P. Agrawal (*)
1988-89	Mr. C. S. Lahiri (*)

(*) Since deceased

Year	Name
1989-90	Mr. Sushil Kr. Rungta
1990-91	Mr. Ashis Kr. Ray
1991-92	Mr. R. N. Rustagi
1992-93	Mr. P. R. Ramesh
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1994-95	Mr. Kashi P. Khandelwal
1995-96	Mr. Santanu Ghosh
1996-97	Mr. R. S. Agarwala
1997-98	Mr. Ketan Satnalia
1998-99	Mr. J. K. Drolia (*)
1999-00	Mr. H. K. Agrawal
2000-01	Mr. Indu Chatrath
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2002-03	Mr. Sushil Kumar Pransukhka
2003-04	Mr. Arvind Agrawal
2004-05	Mr. R.S. Jhawar
2005-06	Mr. Santosh Roongtaa
2006-07	Mr. Pulak Kumar Saha
2007-08	Mr. S. M. Gupta
2008-09	Mr. Chirajit Goswami
2009-10	Mr. Rakesh Jain
2010-11	Mr. Anand Chopra
2011-12	Mr. Swapan Kr. Bhattacharyya
2012-13	Mr. Jinesh S Vanzara
2013-14	Mr. Kamal Nayan Jain
2014-15	Mr. Rishi Khator
2015-16	Mr. Madhav Prasad Sureka
2016-17	Mr. R. R. Modi
2017-18	Mr. Arun Kumar Agarwal

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Debashis Mitra
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ANNUAL CONFERENCE - 2019

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VASUDEO AGARWAL | DEBASHIS MITRA | JITENDRA LOHIA | VIVEK AGARWAL | ANUP KR BANKA

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Delegate Registration	–	PRAMOD DAYAL RUNGTA	NIRAJ HARODIA
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SUMIT BINANI
SUSHIL KR GOYAL
SUSHIL KR RUNGTA
SWAPAN KR BHATTACHARYA
VIJAY KR SARAWAGI
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CA. A. JATIN CHRISTOPHER

Profile

Partner, JCSS, Bengaluru

CA. A. Jatin Christopher besides being a Chartered Accountant, is also a Cost Accountant and a Law graduate. He has been in practice for about twenty years and he is specialised in Advisory and Litigation matters in Indirect legislation.

He is a Partner in JCSS - a full service firm with presence across India. CA. Christopher is an Invitee to the Indirect Tax Committee of the ICAI. He is a Resource person for the ICAI in various post-qualification programmes in relation to the Indirect tax. He has contributed towards publication of Educational and Research materials by the ICAI on various Indirect tax topics.

CA. YOGESH A. THAR

Profile

Partner, Bansi S Mehta & Co., Mumbai

CA. Yogesh A. Thar is currently a Partner of M/s. Bansi S. Mehta & Co., Chartered Accountants, Membai. He has a rich blend of experience in Direct Tax and Indirect Tax. In his work experience of 33 years, CA. Thar has acquired specialization in the areas of Corporate Taxation, Taxation of Non-residents and Foreign Companies, Business mergers, acquisitions and restructuring and business valuations. Before joining M/s. Bansi S. Mehta & Co. in 1997, CA. Thar had practiced formerly a decade as sole proprietor and subsequently as a Partner in M/s. R.S. Kadakia & Co., Chartered Accountants.

CA. Thar authored several books and articles on Direct Tax including Double Taxation Avoidance Agreements and Domestic Transfer Pricing. He was a visiting faculty at the Narsee Monjee Institute of Management Studies from 1992 to 1997. He is presently a member of the Managing Committee of the ITAT Bar Association and a member of the Taxation Committee of the Chamber of Tax Consultants.

CA. ANAND PRAKASH JANGID

Profile

Managing Partner, AJA, Bengaluru

CA. Anand Prakash Jangid is the Managing Partner of AJA, an Organization having focus in the area of Forensic audit, IS audit, Fraud Analytics and Blockchain for Internal Audit function. Earlier he had been part of the Risk Management team at Goldman Sachs covering multiple audits, across much Geography for different function in the organization. Prior to Goldman Sachs CA Jangid had been with ES Consulting Group at Infosys Technologies Ltd., Bangalore, where he was involved in the development of regulatory compliance framework for various compliances like Sarbanes Oxley Act etc. and was part of the team developing solution for BASEL II Accord Implementation.

CA. Jangid is a visiting faculty for IIM, Bangalore teaching IS Audit and Fraud Analytics and he has been a speaker at North America Cacs and Euro Cacs of ISACA.

CA. (Ms.) SRIPRIYA KUMAR

Profile

Former Central Council Member, ICAI
Chennai

CA. (Ms.) Sripriya Kumar is the Managing Partner of M/s. S P R & Co., Chartered Accountants. M/s. S P R & Co. is a new generation practice which services reputed clientele largely in Risk, IT consulting, Corporate Laws and Foreign Trade Advisory domains. Earlier she had worked with Ford India Ltd. and Price Waterhouse Coopers. CA. (Ms.) Kuamr has been involved in the execution of R&D projects for the Government owned enterprises such as Indian Railways and Tamil Nadu Civil Supplies Corporation.

CA. (Ms.) Kumar had been an elected Member of the Central Council for the term 2016-19. She has been nominated as the Chairperson of the Women Leadership Committee of the South Asian Federation of Accountants for the year 2018-20. She has been actively involved in training in the areas of Financial Reporting, Audit and Compliance and has addressed a number of forums of Chartered Accountants, industries and bodies lsuch as CII, Nasscom aswell as Staff Training College of the Office of the C&AG.

CA. NILESH SHIVJI VIKAMSEY

Profile

Past President, ICAI
Mumbai

CA. Nilesh Shivji Vikamsey is a senior partner of the Firm Khimji Kunverji & Co. LLP, Chartered Accountants. The Firm is having over eighty years of experience in Auditing, Taxation, Corporate & Personnel Advisory services, Business & Management, Consulting services, etc.

CA. Vikamsey had been the President of the ICAI during the year 2017-18. He has been a member of various important committees formed by the Ministry of Corporate Affairs of the Government of India, the ICAI, Internal Federation of Accountants, Insurance & Regulatory Development Authority, Securities & Exchange Board of India, Comptroller & Auditor of General of India, ASSOCHAM and a number of other important authorities and organisations. CA. Vikamsey has been a Faculty at various Conferences, Seminars, etc. organised by the ICAI and other important Institutions. He is a contributor Income-tax Review, a monthly journal of the Chamber of Tax Consultants.

CA. YOGESH GUPTA, IPS

Profile

Special Director-ER
Enforcement Directorate, Kolkata

CA. Yogesh Gupta completed ICWAI Examination (Cost and Management Accountant) in 1990 and subsequently completed Chartered Accountancy Examination in 1993. CA. Gupta joined IPS in 1993. Presently CA. Gupta is working as the Addl. Director General of Police and Special Director of Enforcement heading the Eastern Region Office of Enforcement Directorate with jurisdiction over 11 States.

CA. Gupta had vast experience in holding several senior posts in the Government Services such as - Joint Excise Commissioner-Kerala, Managing Director-Kerala State Beverages Corporation Ltd., while posted in Central Bureau Investigation (CBI) worked in various fields like Bank Fraud Cell, Anti-Corruption Branch, Special Crime Branch, etc., posted as Chairman & Managing Director of Kerala Civil Supply Corporation, worked as Inspector General of Police and headed various Police Wings, Armed Police, Economic Offences, Traffic and Road Safety, Intelligence, etc. CA. Gupta was posted as the Chairman and Managing Director, Kerala Financial Corporation in the year 2011 and the said PSU which had been on the verge of collapse, was subsequently rated as the best PSU of Kerala and the best State Financial Corporation in India within one year of his taking the charge.

CA. DILIP B. DESAI

Profile

Chairman, Baker Tilly DHC India
Kolkata

CA. Dilip B. Desai has been a National Scholar and Gold Medalist in the CA examination. He founded D.B. Desai & Co. to develop an Organization having twin strength - (a) the value system, principles and ethics of every reputed large organization and (b) the vision, drive and 'go-getting' spirit of a passionate entrepreneur. His vision led to (i) emergence of DHC-DesaiHaribhakti, a leading national firm of Chartered Accountants which was later on transformed as Baker Tilly DHC with international outlook and (ii) setting up of an exclusive DHC Baker Tilly Global Centre of Excellence (GCE) to provide "best in class" professional services overseas.

Currently, CA. Desai is the Chairman of Baker Tilly DHC, a leading consultancy firm providing services in the field of business and tax advisory & solutions, Corporate Finance, assurance, risk advisory (including forensic audit and investigations). He has the distinction of being the first Indian to be on the Global Board of Baker Tilly International.

CA. Desai has participated as a faulty in more than 300 National and International Conferences, Seminars and Training programmes.

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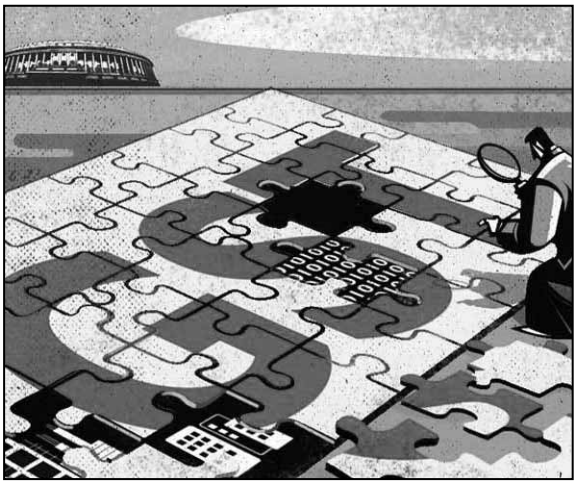
Insights into 'business' of Auditee imperative

Introduction

Travel agent in West Bengal claimed input tax credit of invoice issued by Hotel Lalit where Client from Delhi stayed for a day. IGST was charged by travel agent and CGST-SGST paid flowed into GSTR 2A. Only during departmental audit, the error was discovered that travel agent should have either issued invoice for commission to Hotel Lalit with CGST-SGST of 18% or else, invoice with IGST of 5% should have been issued to Client from Delhi.



While this error was being committed, travel agent did not realize something was amiss and client was happy that credit flowed from West Bengal to Delhi. In fact, not even GSTN is designed to prevent such errors because portal does not 'open / close' functionalities based on HSN of taxpayer. Credit-hungry Client has landed this business-hungry travel agent in trouble. What should the GST auditor do about this? The answer is easy, but the more important questions is how does the GST Auditor discover this error?

CA A Jatin Christopher
Bengaluru

Innocuous errors

Insights into the business of Auditee is imperative while carrying out GST Audit. There are scores of areas where current practices may not be in line with GST law, for example:

- Advance received in Apr 2017 by service provider issued invoice in Jul 2017 to Trader-Client with GST and credit was claimed;
- VAT-ST was paid by Works Contractor in respect of rate difference approved in Aug 2017;
- Goods given for 'trial' to prospective customer on non-returnable basis were expensed as 'business development expenses';
- Abnormal wastage of inputs by job-worker were included in cost of production;
- Employees of all group entities use travel desk of one entity who books and pays airline;
- And the list goes on……

Question still remains, how does GST Audit discover the errors in these seemingly compliant transactions. Press Release issued by Government advises auditor to be responsible only to reconcile the books with GSTR 9. But, GAAP-basis of maintaining books DO NOT record transactions of barter and exchange because there is no financial record of these transactions (even if there is a transaction value in GST law). It is inconceivable for GST Auditor to take shelter with this Press Release as if his expertise and qualifications

don't provide enough guidance as to the role expected.

Auditor certifies 'zeros' too

GST Auditor who certifies GSTR 9C, is not only responsible for the values in relevant tables, she / he is also responsible for tables where the value reported is 'zero'. For example, tables like 5D and 5J where taxpayer reports 'zero', cannot be readily accepted by GST Auditor. By certifying the reconciliation, GST Auditor would be certifying that 'there are no deemed supplies' or that 'all credit notes issued are, in fact, permissible under section 34'.

Where GSTR 9 and books are not matching, there is reason for GST Auditor to inquire into the reasons and either reconcile the two or explain the items that remain unreconciled. That's the essence of the expectable from GST Auditor. But consider a case where GSTR 9 and books are perfectly matching. Is the GST Auditor's job done? Is there nothing to be inquired into?

Experts will say that they would be more worried about cases where GSTR 9 and books are matching than cases where there is a mismatch. And the reason is GST relies on 'time of supply' for fastening the incidence of tax whereas books rely on 'accrual of income'. With this fundamental difference in the premise on which both are prepared and presented, GST Auditor must look for 'what ought to be' within 'what appears to be'.

Classification

"Sir, have you advised clients on GST rates applicable to the goods supplied by them?" asked a GST faculty. "Yes Sir, I have" replied a participant with some sense of accomplishment. "Do you have a copy of Customs Tariff Act in your office?" asked the faculty. "No Sir, I don't practice in Customs. My areas of practice have been auditing and direct tax, now I've expanded my service offerings to cover GST".

Surely, everyone can relate to such a conversation. Para (iii) to notification 1/2017-CT(R) specifies in the explanation that:

> *(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*
>
> *(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.*

So, it is impossible for one to advise on GST tariff without first looking into Customs Tariff in respect of those goods.

Information technology software is classifiable both under HSN 4907 as well as HSN 8523. Please identify the circumstances when one of these will not apply. Classification issues are not (yet) a thing of the past. GST continues to require domain understanding to support interpretation of GST tariff.

Expenses or inward supplies

"Are all expenses inward supplies?" asked the faculty and the entire auditorium went quiet, wondering what kind of question this was. Isn't the answer obvious. Question was repeated but based on the way things turned out when some enthusiastic participants answered previous questions, no one ventured to offer an answer.

In the earlier tax regime, tax compliance required monitoring of 'purchases, sales and closing stock'. But GST has changed the rules of the game and new vocabulary needs to be embraced. GST knows nothing of this sort, that is, 'purchases, sales and closing stock'. GST only knows 'inward supplies, outward supplies and input tax credit'.

Except depreciation, provisions and opening stock, it seems all expenses (or debit balances in P&l) are inward supplies. And all inward supplies must be outward supplies of one or other person. Either from another person or another distinct person. If taxable, either tax paid or tax escaped. And if non-taxable, either specifically exempt or excluded from scope of supply itself. Care must be taken to identify all inward supplies and whether any tax obligations remain on the Auditee must be examined. GST under section 9(4) will be a reality one day and that's the day the extent of inquiry by GST Auditor will be realized. What about the period from 1 Jul 2017 to 12 Oct 2017?

Valuation

"Is it lawful for price of supply between unrelated parties to be challenged?". Now, participants were sure that they can't go wrong with this one and replied

"NO", in unison.

Section 15(1) provides three 'disqualifications' and then takes the transaction to 15(4) and the rules for determination of its transaction value. These disqualifications are (a) price (b) unrelated persons and (c) price being the sole consideration.

Test of 'sole consideration' is not automatically satisfied every time test of 'unrelated persons' is satisfied. Remember, if that were the case, only two disqualifications would have been sufficient. Parliament in its wisdoms recognizes the possibility that even among unrelated persons, the price charges 'may not' be the sole consideration. That is, there may be extraneous consideration (simple examples can be found in section 15(2) itself) or some part (or whole) of the consideration may be non-monetary form.

Insights into the business of Auditee helps GST Auditor to locate transactions or expense heads where such non-monetary consideration could reside. Gift is a transfer that is taxable as an outward supply but disposal 'by way of' gift attracts reversal of credit. Now, there's no doubt that goods that are 'fit for sale' are not 'disposed' because the word 'disposal' is not used interchangeably with 'sale'. Generally, sale applies to goods that are 'fit for sale' and disposal applies to goods that are 'unfit for sale'.

Just because credit has been reversed under the impression that goods (although fit for sale were given away freely), will the demand for output tax be excused? Under which section? Before analysing 'given away freely', please consider the word for consideration in section 2(31) in vernacular language. UPGST Act (available in hindi) uses the word 'pratiphal' and now the meaning jumps out of the pages. When goods that were 'fit for sale' were given away, what was the pratiphal? In fact, the remainder of clause (b) to section 2(31) makes it abundantly clear that there is consideration flowing albeit in non-monetary form. And when consideration exists in non-monetary form, even among unrelated persons, rule 27 comes into operations to determine the transaction value to demand tax.

GST is a 'destination based' tax

In the run-up to introduction of GST, all position papers made it explicitly clear that GST is a 'destination based' tax. Where is it said in the CGST Act? Destination of supply is not a question that taxpayer is free to determine. Article 269A(5) makes it the exclusive privilege of Parliament to dictate what is the destination of any supply.

In exercise of this exclusive privilege, sections 10 to 13 of IGST Act declare what is the destination of supply a.k.a place of supply qua each supply with a residual provision also. So, destination of supply is to be seen in the law and not sought from the recipient of supply.

When hotel located outside India is booked by a supplier in India to a customer also in India, even though the immovable property is not in India, it is declared that the destination of this supply is in India. When a commission agent represents overseas principals with overseas customers, the destination of this supply is in India. When research and trials are carried out on specimen in India, then even though payment from overseas clients are realized in convertible foreign exchange, the destination of this supply is in India. And in the case of goods, bill to London and ship to Delhi, is not export and its liable to GST even if invoice is issued in foreign exchange.

Identifying which specific provisions declaring the place of supply attracts in each case is imperative to paying the right 'type' of tax. Export of goods and export of services have nearly nothing in common in their respective definitions in IGST Act.

Input tax credit

Even before any question could be posed, participants said, "input tax credit is an indelible right" and cited Eicher Motor's decision. "Of course, it is" said the faculty "but, when does this right come to vest? What are the vesting conditions? And unless vested, it is an inchoate right that can be lost by prescription" replied the faculty. Now the auditorium went quiet again.

Vesting of rights is when the vesting conditions are met. Rights that are not yet vested (inchoate or in formation) can be lost if the vesting conditions are not met within the time permitted.

Limitation is well understood; it is the time limit within which any right can be enforced. Once the time limit prescribed or limitation is passed, the right is not lost, its enforceability is lost. Compared to this, consider something called 'prescription'. While the right remains intact and only its enforceability is lost in limitation, in prescription the right itself is lost. One may read section 25 to 27 of Limitation Act, 1963 for

more insight, losing the right is very interesting.

When right over a thing is lost, it means the person who had that right has lost it and not that the thing has vapourized. Now, when right over a thing is lost, it also means that right over that thing could be acquired (by operation of the law of prescription) by another person. Yes, that is *acquisitive prescription* where a person who did not have right over a thing, gets all those rights (and that thing itself so as to enjoy the newly acquired right). And the mirror result is *extinctive prescription* where the person who had those rights but lost it (by operation of the law of prescription), will forfeit the thing in favour of the person who acquired it.

Although this explanation does not do justice to the concept of 'limitation v. prescription', it is important in the context of input tax credit, to know that only when all the conditions – conditions precedent and conditions subsequent – in section 16(2) are satisfied will any input tax credit will be a vested right. And until all these conditions are fulfilled, credit availed is only provisionally availed and can be denied if they are finally not fulfilled, even something as simple as rule 37.

While GSTR 2A is not the gateway to claim input tax credit, but the requirement to fulfil all the conditions in section 16(2) continues to beckon GST Auditor's inquiry.

Books of account

"What is unbilled revenue?" asked the faculty. And even before anyone could answer, the faculty added "Do you think unbilled revenue may sound like 'turnover escaping assessment' to a taxman?". There is not a whisper in the auditorium and then heads nodded in fearful agreement.

That's the nature of today's book-keeping. In fact, section 35(1) requires 'every registered person' to maintain books and records. And truth be said, registered person DOES NOT maintain books and records. Books and records, if at all, are maintained by the Person and NOT the Registered Person. Not because there's no intention to maintain books and records but today's computerized book-keeping has done away with the need to maintain separate branch-wise books due to concept of 'cost centre' and 'location' based tagging of each accounting entry. With that, books of accounts of each branch can be 'extracted'.

Is it sufficient that books and records of every registered person be 'extracted' or should it be 'maintained'. Maintained means, regularly and continuously. Extracted is not that. And nothing can be done when GST audit is being carried out in 2019-20 in respect of 2017-18.

It is with some sense of doubt that the GST Auditor will proceed to 'extract' a GSTIN-wise trial balance that is certified, at least by the management, before proceeding to work on the reconciliation. There's no reason to be anxious, because GST Auditor knows his way around. How to test if the branch trial balance is correct and complete, how it ties-up with the entity-level trial balance, what are the contra-ledgers that will cancel each other on consolidation and what are inter-branch supplies and inter-branch loans?

Identify these aspects and putting together something that the tax authorities can understand is the task of GST audit. The clarity with which this exercise is to be conducted, this is the job for an expert. And when something is amiss, GST Auditor knows how to present the information without clouding the reader's mind and without arousing unmerited concerns.

Conclusion

Insight into the 'business' of Auditee is inevitable. Remember, the Government has come to an expert to help make sense of it all because today's books of accounts are so complex that simple-minded taxman may hardly appreciate. That's exactly why the expert is required. And the expert can do no less than bring his expertise to bear. GST Auditor's knowledge of accounting-auditing is well-known, understanding of GST law is assumed but insight into the 'business' of Auditee is implied. It is impossible for GST Auditor to discharge duties assigned in the law without the confluence of all three streams of understanding. And unfamiliarity with the business of Auditee is a clue to turn down those engagements, at least, this year.

Clearly, there is a job for an expert and the law acknowledges this. But the question is, does the GST Auditor recognize the role or is happy relying on Press Release that suggests that something far lesser is good enough, this time!

* * * * *

Importance of Review in Indirect Tax Compliance Regime

BACKGROUND

The GST machinery works based on self-assessed compliance, wherein the registered person has the onus to declare correct details of turnover, tax payable, input tax credits and other tax details; which also involves long paper trail of invoices, thus robust control mechanism become critical. Though certain inbuilt checks are planned in the GST tax regime regarding input tax credit, by virtue of matching of credits, the registered person should ensure appropriate disclosures and tax payments. The consequences of inappropriate disclosures and tax treatments could result in additional tax cost, missed tax saving opportunities and possible litigations.

At times, even a minor disclosure error in the GST returns could lead to significant tax demands. The traditional approach of internal control system also requires 'A Maker' and 'A Checker' to ensure compliance with the requirements of the said job. In the self-assessed regime of GST, one should also look at the importance of 'A Checker' who is an independent tax professional, to ensure compliances with the tax provisions and to validate the tax positions taken. Review conducted by an independent Tax Professional would provide an opportunity to revisit and validate the tax positions taken by the Management and also get a comfort on the level of compliance. Timely review of tax positions would also provide an opportunity to rectify the errors/gaps if any, within the permitted statutory timelines allowed for such corrections.

IMPORTANCE OF REVIEWS

GST being a recent levy is very dynamic. The general sense is that the Industry is still finding their way to keep pace with and stabilise the tax compliances; considering that the Govt. has made frequent changes and amendments in GST law in the last 2 years which have created confusion in the mind of taxpayers which may further result in either non-compliance or wrong compliance. Adherence to compliances with the provisions of any tax law is a critical area for any Organisation, considering the risk of future litigations, missed ITC and penal provisions.

Review of GST compliances by a Tax Professional would act as an independent check on the following key areas of compliances:

- ***Discharge of tax liabilities on all taxable outward supplies***

CA Madhukar N Hiregange,
Past Central Council Mamber, ICAI and Chairman Indirect Tax Committee, ICAI, New Delhi

assisted by **CA Mannu K**, Gurgaon

The consequences of inappropriate disclosures and tax treatments could result in additional tax cost, missed tax saving opportunities and possible litigations.

To ensure that all taxable supplies under GST have been considered and taxes have been paid. GST has introduced certain new concepts such as Schedule I transactions, on which tax shall be paid even when no consideration is received. Identification of such transactions would be critical, as the same may not be apparently identifiable from the financial statement. Any lapses in payment of tax on such transactions, could result in future tax demands along with interest and penalty.

- ***Valuation adopted for the purpose of payment of tax and ensure the same is line with the provisions of the GST law***

  Under GST every transaction may not be valued at the transaction value. There are specific rules for valuation and the same needs to be applied, depending on the nature of transaction. One of the aspects which needs to be validated would be the basis of determination of 'Open Market Value'. A review by a Tax Professional would provide an independent assessment of the appropriateness of the 'Open Market Value' adopted and also on the level of documentation maintained for the same.

- ***Classification of goods or service and Appropriateness of rate of tax***

  Correct HSN classification of goods or services is important in order to determine the correct rate of tax to be charged. It has been observed that tax payers are often confused with HSN classification of goods or services thereby could lead to a risk of wrong classification and wrong rate of tax applied.. Multiple amendments have been made to the rate of taxes in the last 2 years. It has to be ensured that the correct HSN has been determined and accordingly rate of tax have been considered, as applicable at that point of time. Certain new concepts such as Composite supply and Mixed supply have been introduced under the GST law. For determination of rate of tax, it is important to identify whether such supplies would qualify as a Composite/Mixed supply. Any change in the tax positions for such supplies could have additional tax implications which would result in tax costs.

- ***Eligibility to Exemptions***

  Verify the correctness of exemptions claimed and also the compliance with the conditions attached to such exemption. Also, verify if tax has been charged on supplies which are exempt under GST. In certain cases, the availability of exemptions could also have an impact on the pricing of the product/service, considering the corresponding impact on input tax credit.

- ***Appropriate disclosure of outward supplies in the GST returns filed***

  Appropriate disclosure of outward supply needs to be ensured for proper discharge of tax liabilities and also for the recipient to claim input tax credit. There are statutory timelines, beyond which rectification in GST returns is not permitted. Hence, the review would also help in ensuring appropriate disclosures in the GST return and suggest for rectifications which are possible to be made within the statutory timelines.

- ***Reconciliation of values reported between GSTR-1 and GSTR-3B***

  Currently there is no link between the values reported in Form GSTR-1 and the disclosures made in Form GSTR-3B. Reconciliation of values reported in these two returns would help in identification of gaps, if any, and also ensure that the rectification for the same is made within the statutory timelines.

- ***Reconciliation of Turnover as per Books with the GST returns filed***

  To reconcile total turnover as per books, including other taxable/exempt supplies not forming part of turnover (reimbursement of expenses, recovery from employees etc.) with the GST returns filed.

- ***Ensure proper documentation is maintained with respect to tax invoices, delivery challans, debit/credit notes***

  Maintenance of documentation and the

appropriate disclosures therein shall be verified, and compliance thereof shall be verified. Any gaps in the documentation shall be rectified at periodical intervals, as it may not be possible to rectify such gaps at a future date.

- ***Payment of taxes under reverse charge and proper documentation***

  Payment of tax for supplies received from unregistered suppliers was a new concept introduced under GST, which had become a huge compliance burden. Considering the challenges in compliance with the said provision, the same was exempted subsequently. Reverse charge under Section 9(3) of the CGST Act, 2017 continues and compliance of the same shall be verified. Maintenance of documentation and the appropriate disclosures therein shall be verified, and compliance thereof shall be verified

- ***Proper availment of input tax credit in the returns filed***

  Appropriate disclosures of input tax credit shall be ensured in the GST return filed. The proposed new GST returns works on the principle of matching credits, based on the invoices reported by the vendor. Incorrect action in the return, could result in loss of tax credits.

- ***Reconciliation of input tax credit availed in the books as compared to the GST returns***

  Verification of proper availment of credits involves the following

  - Reconciliation of credit availed in the books with the GST returns
  - To check of eligible credits as per vendor invoices has been availed in the books

- ***Reconciliation of input tax credits reported by Vendors***

  Verification of invoices reported by vendors and identify vendors where the reporting of invoice has not been made/incorrect values reported. Communication of such observations to vendors would be critical for timely correction/reporting of such invoices and minimise the risk of credit loss.

- ***Ensure proper documentation is maintained for claim of input tax credits***

  Compliance with the disclosure requirements in the vendor invoices shall be verified, to avoid future disallowance of credits. A review of vendor documentation would also provide an opportunity to rectify the deficiencies in the documents by the vendors, on a timely basis.

- ***Timely filing of all applicable GST returns***

  Currently multiple returns such as Form GSTR-1, GSTR-3B, GSTR-6 etc. are required to be filed. Delay in filing of returns would result in penalty and possible interest cost. Compliance with statutory due dates for filing of returns shall be verified.

- ***Review of Systems and Process***

  As part of the Compliance review, one must also ensure that the existing systems and process followed by the Company is adequate and has sufficient checks, to ensure that the objective of compliance is fulfilled.

- ***Compliance with other procedural requirements such as E-Way Bill, amendment of registration certificate etc.***

  GST law provides for penalty in case of non-compliance with the procedural requirement. Hence compliance with such procedural aspects should be verified and reported.

- ***Ensure proper maintenance of accounts and records***

  GST requires proper maintenance of accounts and records by tax payer in accordance with Rule 56 of CGST Rules, which includes records of sales, purchases, stock, tax payable, ITC, imports, etc. Proper maintenance of such accounts and records need to verified and ensured. Any gaps in the

documentation shall be rectified at periodical intervals, as it may not be possible to rectify such gaps at a future date.

- ***Check and facilitate benefits available for exporters under Customs & FTP***

  There are various benefits available to exporters under Custom Laws and Foreign Trade policy (FTP) such as MEIS(for manufactures), SEIS(Service providers), SFIS((Service providers), Duty drawback ,EPCG, Advance Authorization scheme, etc.,. Further, some incentives are also available to importers in terms of preferential rates on imports from certain countries. An in-depth review would check and identify areas where such benefits could be available and thereby creating significant tax savings for tax payers. Further, it would also ensure various compliances associated in order to claim such benefits under custom and FTP laws.

TYPES OF REVIEW

Review as an independent function can be customised and the best suited review or a combination of two or more of such review categories, can be considered by the Management. The objective of a review could be to give assurance as to the compliance of the law, optimization of available benefits, streamlining of the processes and procedures including building internal controls, adopted for indirect tax compliance and validation of documentations.

Some of the possible review categories which one may consider are as follows

1. ***Compliance Reviews***

   The basic objective of a Compliance review is to ensure compliance with the procedural requirements of GST, such as filing of returns within statutory timelines, maintenance of documents and other relevant records. In case of entities with registration in multiple states with decentralised compliance system, the requirement of a periodic Compliance review would have more significance. Many Corporates have a strict policy with regard to the statutory timelines for compliances and hence such reviews would help them to achieve 100% compliance. The review would also look at ensuring that a standard process is followed across all locations, for timely compliance of statutory filings.

2. ***Complete Diagnostic Reviews***

   Complete Diagnostic review or Complete Heath check review is a detailed review which covers almost all areas of the GST law, which are applicable to the said entity. It is similar to a master health check-up which an individual may take. Unlike Compliance review, the Diagnostic review would also look into the areas of valuation, rate of tax, input tax credits, reverse charge etc. Such a review would provide a 360-degree view of the status of GST compliance, efficiencies and tax leakages. The extent of sampling and areas of review would depend on the extent of coverage required by the Management. Such reviews would be also helpful for GST mandatory statutory audit and more importantly it provides management with the comfort on level of compliance in the organization. This exercise is also value additive where various benefits available in the law are also identified on timely basis.

3. ***Concurrent Reviews***

   In case of entities such as Banks, FMCG and other Big Corporates where the volume of transactions is very high, one may look at the option of Concurrent review, as it provides a continuous process of review. Also, it provides an option to rectify the gaps/errors in a timely manner, as it may not be possible to rectify all such gaps/ errors at a future date, considering the volume of transactions. The areas of review shall be decided based on the risk matrix and specific needs of the Management.

4. ***Input Tax Credit Reviews***

   Input tax credit is one of the critical areas under GST. Any lapse/non-compliance in the availment of input tax credit could result in possible tax cost. Specific reviews with the focus only on input tax credits

could be undertaken to ensure proper availment of credits. It is also important to verify that ineligible credits are not availed, considering the interest and penal provisions under GST.

As an additional scope, one shall look at building efficiencies in availment of input tax credits, by means of proper tax planning in accordance with the provisions of the law. Sample size and the extent of verification shall be decided based on the risk matrix and nature of credits. Reconciliations of input tax credits availed as per returns shall be done with the following:

- Input Tax Credit ledger as per books to ensure that all credits availed in books have been duly availed in the return and to ensure that ineligible credits are not availed
- Vendor Invoices to verify if any eligible credits have not been considered
- GSTR-2A to verify if the credits availed have been duly reported by the vendors

5. ***ERP/System Reviews***

In today's corporate world, the importance of a strong ERP system is undoubtedly one of key focus areas of the Management. The dependency on the ERP system has increased substantially and the very base of compliance under GST is dependent on the reports provided by the ERP system. One has to ensure the level of accuracy and proper flow of details in the ERP system, for proper compliance under GST. Any gaps in the ERP system, could lead to significant tax cost and also result in unnecessary litigation in future. A Tax Professional who also has knowledge and experience in the field of ERP would be ideal for conduct of such reviews.

6. ***Process/SOP Reviews***

A strong internal control system is highly dependent on the quality of Standard Operating Procedures ('SOP') in place. It is important to evaluate and review the SOP's on a periodic basis to ensure that the same is in line with the frequent changes in tax provisions and procedures.

7. ***Vendor Assessment Reviews based on GSTR-2A***

One of the key changes introduced in the GST regime is the requirement to match input tax credit, with the details of supplies reported by the vendors. Such facility to match input tax credit was not available in the erstwhile CENVAT credit regime and it would be enough if the recipient had a valid tax invoice to substantiate the claim of credit.

Considering the robust requirement for matching of credits, it would be important to assess the compliance status of the vendors, in terms of reporting of invoices in Form GSTR-2A.

Under the GST regime, one of the conditions for availment of input tax credit is that the supplier should have paid the taxes. Additionally, there is also a requirement to match input tax credits under Section 43 of the CGST Act, 2017. Though the said requirement for matching under Section 43 has not been implemented, there are notices issued by Department for mismatch of input tax credit availed as compared to details available in Form GSTR-2A. Further, the proposed new returns have a specific Form GST ANX-1 for matching of credits, for the purpose of availment of credit. Considering the robust requirement for matching of credits, it would be important to assess the compliance status of the vendors, in terms of reporting of invoices in Form GSTR-2A. A system of compliance rating for vendors can be put in place and periodic assessment of their rating can be made. Such reviews can also be considered as a base for vendor evaluation and awarding of purchase orders.

8. ***Valuation Review***

The objective of a valuation review would be specific to review of supply contracts and other transactions, with a focus to validate the valuation adopted for the purpose of payment of GST. Special focus could be made on transactions with related parties and those contracts where the price is not the sole consideration. Basis for determination of 'Open Market Value' would become the essence of such transactions and a safeguard in case of future litigation. Documentation of the basis of

valuation adopted for such transactions would be critical and hence a system of review of such documentation would also be important.

9. ***Tax Efficiency Reviews***

One of the most innovative and value-addition based reviews is a study to improve tax efficiencies. One of the approaches would be to understand the various cost centres and identify hidden tax costs, which can be converted into tax credits. One such example could be per diem allowance given to employees who travel for official work as a fixed amount. The break-up of such expenses is not known and any possible tax credits on such expenses would also not be available. Additionally, restructuring of business transactions within the provisions of the GST law, with the objective of minimising the impact of blocked credits should also be explored. This review would provide a different perspective to the Management on structuring of transactions, with the objective of optimisation of tax credits and improving tax efficiencies.

10. ***Contract Reviews***

In case of complex contracts, an independent review by a Tax Professional would provide insights on the possible structuring which are possible in the said contract. It is also important to review the contract clauses regarding the tax provisions and safeguards. In case any of the critical clauses are missed in the contract, for example a fixed price contract with no provision for increase in price in case of increase in tax rates, it could result in huge tax burden in the hands of the supplier.

11. ***Due Diligence Reviews***

Due diligence is normally associated with takeovers, amalgamations, mergers of entities. It can be said to be a comprehensive appraisal or audit of a business undertaken by a buyer to establish the genuineness of assets and liabilities of the seller. It further aims at highlighting any potential litigation out of tax position taken by the seller which could have impact on the buyer if the liability crystalizes post business acquisition.. This becomes more critical in cases where entity is exposed to multiple indirect tax laws. The review identifies areas of non-compliance current or in long term, potential risks and even threats, changes required if any in the terms of the contract and also suggest alternative structuring strategy to optimise tax incidence.

12. ***Interim Review for Final Audit (Form GSTR-9C)***

One of the recent developments has been the process of conducting an interim review/audit for the purpose of the Audit requirement under GST. The main purpose of such review is to ensure that the overall objective of GST audit compliance is verified at an interim period and it would become the basis for the purpose of conduct of final audit. Any gaps/errors noted during the interim review could be rectified within the statutory timelines and the process of final audit would become easier.

CONCLUSION

A well-planned review structure by an independent Tax Professional would go a long way in terms of ensuring compliance, minimising additional tax costs, building tax efficiencies and avoiding future litigations. In a self-assessed tax regime, the importance of identification of gaps/errors and its suo-motto rectification has immense significance. Entities which had planned and conducted such review exercise would be in a better position in terms of any future disputes. Review exercise could also be considered as an independent feedback on the level of GST compliance of the entity.

Corporates and Professionals may take a cue from the words of Mr. Bill Gates *"We all need people who will give us feedback. That's how we improve."*

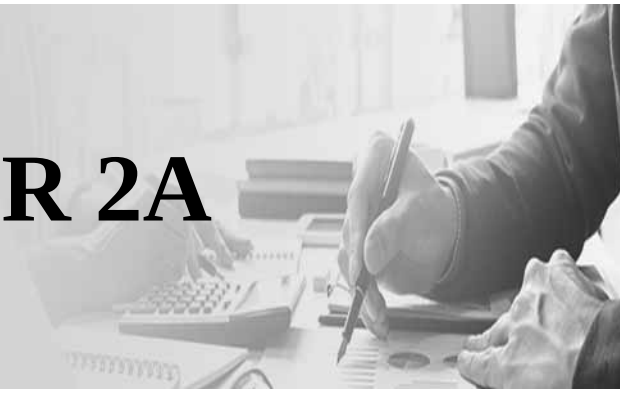
(For feedback- madhukar@hiregange.com, vikram@hiregange.com and mannu@hiregange.com)

* * * * *

When you stop expecting people to be perfect, you can like them for who they are.

— Donald Miller

ITC Claim Vs. GSTR 2A



Introduction:

Claim of optimum Input Tax Credit is one of the most important but challenging task for any tax payer. At one side, if the credit is not claimed completely, it is direct loss to the business and on the other side if the credit is claimed in excess of which may be claimed legally, risk of penal consequences would be there. This article is an attempt to analyse relevance of GSTR 2A in making valid and legal claim of Input Tax Credits.

Substantive law for claim of ITC:

Sec. 16(1) of the CGST Act 2017 & all State GST enactments (herein after, collectively, shall be called as 'GST Act') makes any registered persons eligible to claim credit of Input Tax charged on any goods or services used or intended to be used in the course of or furtherance of business. Further sub section (2) of Sec. 16 puts up restriction on entitlement of the credit unless four conditions mentioned therein are satisfied. These conditions are as under:

(a) Claimant of ITC should be in possession of Tax Invoice or other prescribed Tax Paying Documents (prescribed in Rule 36).

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(b) Claimant of ITC should have received goods or services on which the ITC has been claimed.

(c) Subject to Provisions of 'Provisional Credit', the tax charged on such supply has been actually paid to the government.

(d) Claimant has furnished his return u/s 39.

To understand, let us examine it with help of a illustration. Assuming ITC claim by an automobile dealer who purchased Spare Parts in the month of August 2017. However, due to non-filing or wrong filing of particulars of Invoice by the supplier in its GSTR 1, the credit is not reflecting in the GSTR 2A of the Recipient.

Firstly, since the spare parts are goods purchased by registered person on which Input Tax (GST) has been charged, and such goods are intended to be used for further sale i.e. business, hence the credit of Input Tax is eligible in terms of Sec. 16(1) of the GST Act.

For taking the credit of the same it is necessary that all conditions prescribed in Sec. 16(2) are complied with in the transactions. Lets us examine all such condition in the illustration taken:

(a) Tax Invoice – Yes, Tax Invoice issued in the month of August 2017 is in possession of the claimant.

(b) Receipt of Goods/ Services – Yes (Assuming Goods has been received by the claimant in the month of September 2017).

(c) Payment of taxes – Yes (Assuming supplier has paid the taxes on such supplies, however missed or couldn't file the GSTR 1 properly)

(d) Filing of Return – Yes, the person claiming return has furnished its return GSTR 3B.

Now question arises, whether non reflection of credits in GSTR 2A can be said to be violation of clause (c) of Sec. 16(2) ? Apparently answer is no, for simple reason that as per rule 59(3) the GSTR 2A generates only and only on the basis of information filed by the supplier in its statement of outward supply u/s 37 (i.e. GSTR 1), and not on the basis of supplies on which actually taxes has been paid. It is quite possible that any supplier has paid the taxes, however could not correctly and completely reported the same in GSTR 1, due to which the credit might not reflect in GSTR 2A.

Accordingly in the illustration taken since assessee is eligible u/s 16(1) and complies with all conditions of Sec. 16(2) the credit shall be eligible and cannot be denied only on the ground that it is not reflected in GSTR 2A of the recipient, as GSTR 2A is not a legal condition to claim the credit itself. On the other hand lets assume, due to wrong reporting of GSTIN by the supplier in its GSTR 1, the credit gets reflected in GSTR 2A of any other person (who actually has not received such supplies), such other person shall not be eligible for such credits only due to the reason that credits are reflecting in its GSTR 2A.

Procedural law for claim of ITC:

Since seamless flow of credit is the backbone of the GST, the law encompasses detailed provisions for filing of return and credit flow. Major take away of legal provisions for filing of returns (majorly in relation to credits pass on), can be narrated as under:

- Sec. 37 of the GST Act requires furnishing of statement of outward supply by any registered person. As per Rule 59(1) this statement is to be submitted in form GSTR 1.
- Sec. 38 requires any person to furnish statement of inward supplies by verifying, validating, modifying and deleting any of information communicated to him which has been filed u/s 37 by respective suppliers. As per rule 59(3) the details referred above, i.e. filed by any suppliers u/s 37, shall be made available to the recipient in form **GSTR 2A**, after the due date of furnishing form GSTR 1. Further Rule 60(1) prescribes form **GSTR 2**, which is to be filed by the claimant of Input Tax Credit.
- **Sec. 38(1) specifically authorizes the recipient of the supply to include invoices and debit notes received for inward supply which has not been declared by the supplier u/s 37(1), that means not communicated to recipient (i.e. not reflected in GSTR 2A).**
- Once the claim of entries not declared in GSTR 2A, is made by the recipient, such entries shall be communicated to respective supplier for their ratification by 17th of the month succeeding to the tax period (i.e. within two days of due date of GSTR 2) of the next month in form GSTR 1A, as per provisions of Sec. 37(2) read with Rule 59(4).
- The date of filing of GSTR 2 & GSTR 3 *(consequently ratification of missed or wrongly reported invoices in GSTR 1A)* has been extended vide notification no. 58/2017 Dt. 15.11.2017, and continuously been extended thereafter from time to time, and the dame has not been fixed till now (Important to note, that requirement to file GSTR 2 & GSTR 3 has not been dispensed with, and legally the same are supposed to be filed on or before the date yet to be prescribed).

From the above description, it is absolutely clear that, even procedurally law entitled the tax payer to claim credit of input tax even if not reflected in the GSTR 2A, through form GSTR 2, ratification of which was supposed to be done through GSTR 1A by the supplier. As per rules GSTR 2A, ideally, should have life of maximum five days, i.e. generation after due date of GSTR 1, and GSTR 2 had to be filed within 5 days, as per originally designed schedule, using

information form GSTR 2A. However, due to system or other difficulties the procedure of:

- filing of Statement of inward supplies in GSTR 2 by recipient;
- ratification of additional entries (i.e. not reflected in GSTR 2A) of credit claimed by the recipient through form GSTR 1A;
- filing of return u/s 39 i.e. GSTR 3.

has been suspended and legally extended due date of all above statements/ returns are yet to be prescribed. The registered tax payer has every right to put all credit in the form GSTR 2, which are not reflected in GSTR 2A, whenever due dates are notified or alternate legal mechanism put in place. Since system/ government couldn't put in place complete procedure, the credit cannot be said to be restricted only and only on the basis of GSTR 2A.

Impact of RODO No. 2/2018 Dt. 31.12.2018:

Sec. 16(4) specifies another restriction for claim of credit of input tax. The ITC in respect of invoices of supply made in any financial year can be claimed till due date of filing of return of September of immediately next financial year. That means credit for supplies received in FY 2017-18 could have been taken till 25.10.2018 (due date of Sep. 18 return extended till 25th October). Giving relaxation in this provision government has issued Removal of Difficulty Order No. 2/2018 u/s 172 of the GST Act so that credit of invoices belonging to supply made in 2017-18 could be claimed till due date of filing of return of March 2019. However, such relaxation came with specific condition of uploading the details of supply by the respective supplier in GSTR 1 (consequently reflecting in GSTR 2A). Meaning thereby benefit of specific relation given will not apply if the details of supply are not completely filled up by the concerned supplier. Assuming there is not technical glitch in reflecting GSTR 1 details in GSTR 2A of supplier, we can understand the impact with help of following illustrative table:

Invoice/ Supply of:	Credit Claimed in:	Reflected in GSTR 2A	16(1)/ (2) Compiled with ?	Credit admissible ?
August 2017	August 2017	No	Yes	Yes
August 2017	March 2018	No	Yes	Yes
August 2017	Sept. 2018	No	Yes	Yes
August 2017	March 2019	No	Yes	No

(Note: The article has treated GSTR 3B as return filed u/s 39 and has not considered and discussed impact of Judgment of hon'ble Gujrat High in the case of AAP & Co. Vs. UOI delivered on 24.06.2019.)

Conclusion:

The GSTR 2A is having only referral value for the purposes of legal claim of ITC. Just because some credits are reflecting in GSTR 2A, a registered person doesn't ipso facto eligible for the credit. Simultaneously, the claim of credit cannot be denied only on the basis of fact that the same is not reflecting in GSTR 2A.

Extracts of Provisions of GST Law

Sec. 16(1) *Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

Sec. 16(2) *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-*

(a) *he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*

(b) *he has received the goods or services or both.*

(c) *subject to the provisions of section 41, 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; and*

(d) *he has furnished the return under section 39:*

Sec. 16(4) *A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.*

Sec. 37(1) *Every registered person, other than an Input Service Distributor, a non-resident taxable*

person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:

***Sec. 37(2)** Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.*

***Sec. 38(1)** Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.*

***Sec. 38(2)** Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such form and manner as may be prescribed.*

***Sec. 38(3)** The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.*

***Sec. 38(4)** The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.*

***Rule 59(1)** Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.*

***Rule 59(3)** The details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal after the due date of filing of FORM GSTR-1.*

***Rule 59(4)** The details of inward supplies added, corrected or deleted by the recipient in his FORM GSTR-2 under section 38 or FORM GSTR-4 or FORM GSTR-6 under section 39 shall be made available to the supplier electronically in FORM GSTR-1A through the common portal and such supplier may either accept or reject the modifications made by the recipient and FORM GSTR-1 furnished earlier by the supplier shall stand amended to the extent of modifications accepted by him*

***Rule 60** Form and manner of furnishing details of inward supplies.-(1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017, required to furnish the details of inward supplies of goods or services or both received during a tax period under sub-section (2) of section 38 shall, on the basis of details contained in Part A, Part Band Part C of FORM GSTR-2A, prepare such details as specified in sub-section (1) of the said section and furnish the same in FORM GSTR-2 electronically through the common portal, either directly or from a Facilitation Centre notified by the Commissioner, after including therein details of such other inward supplies, if any, required to be furnished under sub-section (2) of section 38.*

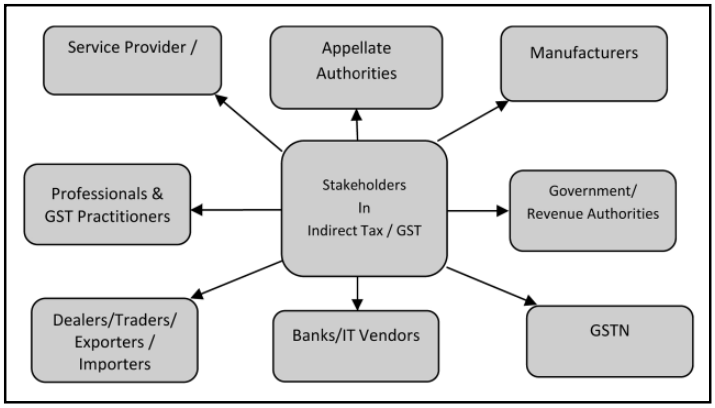
* * * * *

Role of Professionals in GST Regime

Introduction

India stands out for the size and dynamism of its services sector. The contribution of the services sector to the Indian economy has been manifold- a 56 percent share in gross domestic product (GDP) in March, 2019, growing by about 9 per cent annually, contributing to about a quarter of total employment, accounting for a high share in foreign direct investment (FDI) inflows and over one-third of total exports.

Services and demography are expected to continue driving Indian economic growth. Services which now have a huge share (about 57 per cent) in GDP will be the main driving force. The services sector has been a major and vital force steadily driving growth in the Indian economy, particularly in last two decades. Because of services sector, Indian economy could successfully navigate through the recent turbulent years of global economic crisis.



Professionals are qualified and equipped to provide services to all the above stakeholders.

Role of Professionals

In the context of tax management, professionals play an important role in aiding tax administration, tax compliance, tax revenue collection and facilitating dispute redressal by way of litigation and tax management.

The role of professionals is important in every field, specially in the management of taxation. They need to create space for self and look at the opportunities in the economic system arising out of the changed tax structure and need for interpretation and assistance/ advisory.

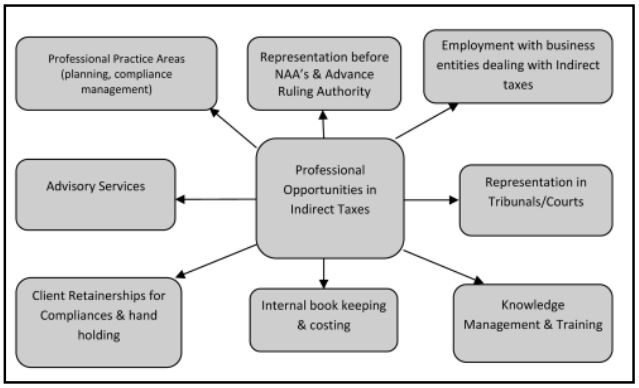
Now a days, professional's focus has to be on value addition as well as compliance management rather than merely compliance procedures which is an industry norm. It is in this scenario that it is time for professionals to convert into tax management consultants or solution providers rather than being a mere tax consultant. Professionals should look at how to maximize profits, wealth or the intrinsic value of the entrepreneurs and look at ease of doing business, yet complying with tax laws. This becomes more relevant as in indirect taxes, Cenvat credit adds to efficiency in business and cost effectiveness rather than to focus on tax reductions/tax saving measures.

Mainly, following professionals provide services in relation to indirect taxation-

Dr. Sanjiv Agarwal, FCA, FCS
Jaipur

- Chartered Accountants
- Company Secretaries
- Cost & Management Accountants
- Tax Advocates
- Other Tax Consultants
- Tax/Corporate Executives

Professional Opportunities in Indirect Taxes at Glance



As the gamut of indirect tax expands and reorients for future tax regime, there is going to be ever increasing need for professionals to advise and assist the assessees. Chartered accountants and other professionals with proper training and experience are considered to be well equipped to position in the dynamic role as an advisor and facilitator for compliances under the law. New professional areas would also include role as GST practitioner, GST suvidha providers, facilitations centre management etc.

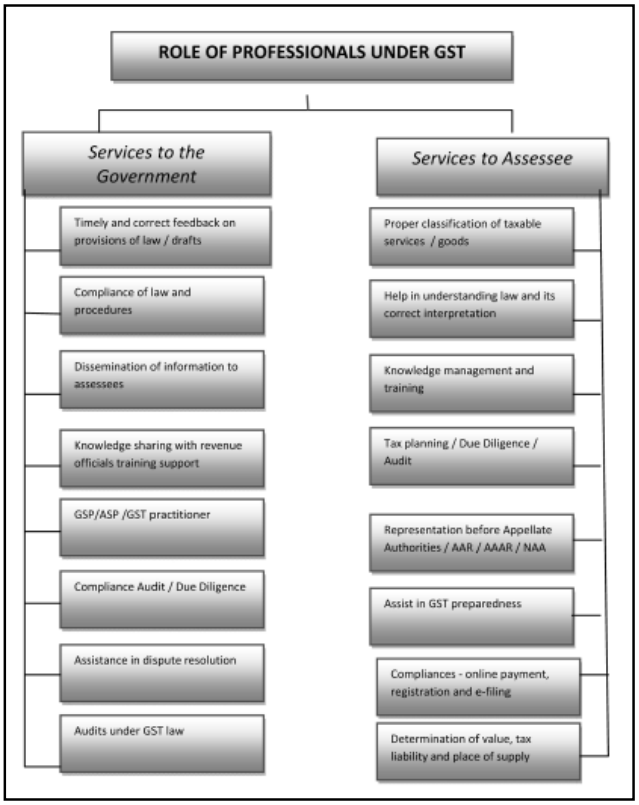
Professionals can find the emerging opportunities in relation to multiple areas of practice in indirect taxation and in particular Service tax.

Emerging opportunities for professionals may include:

- Advisory and consulting services
- Tax planning issues
- Interpretation of legal provisions and procedures
- Developing systems, procedures and MIS
- Contesting / representing cases on behalf of clients in audits / adjudication / appeals
- Knowledge dissemination - corporate presentations/training of client's personnel or even revenue authorities
- Providing tax planning and documentation advisory in Government/Commercial projects/investments/ IPRs having substantial investment
- Migration to GST/Registration of assessees
- Disclosures and submissions to Department/ Revenue Authorities
- Implementation assistance and post GST support
- Compliance of procedural aspects
- Computation of monthly/quarterly payment of tax/duties
- Return verification/filing of returns
- Tax review and quarterly audit
- Review of systems and procedure before Departmental audit
- Voluntary due diligence of compliances
- Assistance during Departmental IAP or CAG audit
- Verification of revenue leakages (including input tax credit)
- Providing opinions/clarifications
- Transaction planning and structuring
- Guidance on understanding of impact of Budget changes / law on business activities
- Filing and adjudication of Refund claims of Indirect Taxes
- Handling Departmental representations
- Special Audits under Excise/Service Tax
- Reply to Show Cause Notices (SCN)
- Attending to summons by way of representation
- Drafting of representation at Appellate Forums
- Facilitation to Advocates at High Court/Supreme Court
- Outsourcing of Service Tax compliance activities
- Representation before Authority for Advance Ruling
- Advisory and representation in relation to anti-profiteering measures
- Assistance/Advisory services for GST regime – industry specific preparedness, impact study,

change in business processes, knowledge dissemination, change process, compliances, tax planning etc.

- Other areas such as tax research, training/ teaching, authoring articles and books, submission/ representation to the Government, etc.



The role of a professional tax consultants can no longer be the traditional tax/accounting/representation/ audit and attestation practices etc. Global lending institutions have been urging India to streamline their tax laws to usher in simplicity and transparency. Towards this end, the Union Government has been striving to

convince States to adopt a Goods and Service Tax. In Goods and Services Tax (GST), the onus of proper understanding of the GST law and giving it a proper direction to a large extent lies on the professionals.

Enhanced Role of Professionals

Professionals ought to explore GST as an emerging area for professional opportunities in view of the following:

- Professionally qualified and equipped to be so
- Interpretational skills
- Knowledge of accounting, costing and taxation
- Use of IT for business processes provides an edge to offer value added services (like MCA compliances under Companies Act)
- Makes sense as already providing IT support services for MCA - cost effective, value additive
- Industrial exposure & experience
- New law, new practice areas
- Little competition exists compared to other taxes (internally/externally).
- GST will emerge as an area of specialization
- GST will aid secretarial audit/internal audit functions
- GST compliances will become a management and governance issue – GST compliance rating
- Compliance with anti-profiteering provisions
- New role as GSP / ASP / GST practitioner
- Adding GST to the basket of services

It is expected that for migration to GST regime new, demand for over five lakh professionals will be created. Apart from Chartered Accountants, Cost Accountants, Company Secretaries, lawyers etc, a whole new breed of GST practitioners and facilitators (such as those with GST service providers) would be there as GST will cover all taxpayers, small or big and in both, organized and unorganized sector. Huge job opportunities would emerge in employment as well as self employment.

Specific Recognition to Professionals in GST Laws

Following professional opportunities shall come to eligible professionals:

- Authorised representative under section 2(15) of CGST Act, 2017
- GST practitioners under section 2(55) and section 48 of CGST Act, 2017
- Authentication for certification with regard to return, refund, registration and payment
- Appearance before Appellate authorities (section 116)
- Audit under section 65
- Special Audit under section 66

- Facilitation/Advisory in compliance with GST compliance ratings (section 149) and Anti-profiteering measures (section 171) of CGST Act, 2017.

GST Practitioner

Section 48 provides for the manner of approval of goods and services tax practitioner, their eligibility conditions, duties and obligations, manner of removal. This section also provides that a registered person may authorise a practitioner for filing of various returns, but all the responsibilities under the Act lie with the registered person.

Central Government shall prescribe the following for GST practitioners:

- Manner of approval
- Eligibility condition
- Duties and obligation
- Manner of removal
- Other conditions relevant for functioning

Registered person can authorize approved GST practitioner to undertake anyone or more of the following activities:

- furnish details of outward supplies u/s 37
- details of inward supplies u/s 38
- furnishing of return u/s 38, 39, 44 or 45
- make deposit of tax
- file a refund claim
- file application for amendment or cancellation of registration

Despite such authorization, responsibility for correctness of particulars and other details filed/ furnished in return shall be of registered person on whose behalf, approved practitioner has furnished details or returns.

Section 48 provides for the manner of approval of goods and services tax practitioner, their eligibility conditions, duties and obligations, manner of removal.

Section 116 provides for qualification, disqualification and other procedures relating to authorized representative.

A GST practitioner shall be required to obtain registration and file returns as required under Rule 24 and 25 of GST Return Rules.

Authorized Representative

'Authorized representative' means –

(i) relative or regular employee

(ii) Practising Advocate

(iii) Practising CA, CMA or CS

(iv) A retired officer of the Commercial Tax Department of any State Government or Union Territory or of the Board, who had worked for not less than 2 years in a post not lower in rank than Group-B Gazetted officer. It is important to note that such officer shall not be entitled to appear before any proceedings under this Act for a period of 1 year from the dated of his retirement or resignation.

(v) Goods and service Tax practitioner authorized to act on behalf of the concerned registered taxable person.

Any person,

(i) who has been dismissed or removed from government service, would be disqualified to be an authorized representative forever, or

(ii) who is convicted of an offence connected with any proceeding under CGST Act, SGST Act, IGST Act, UTGST Act or under the earlier law or under any of the Acts passed by a State legislature dealing with the imposition of taxes on sale of goods or supply of goods and/or services, or

(iii) who is found guilty of misconduct by the prescribed authority, or

(iv) who has been adjudged as an insolvent,

shall not be qualified to be appointed as authorized representative,

(i) for all times in case of persons referred to in clauses (i), (ii) and (iii), and

(ii) for the period during which the insolvency continues (Clause iv).

Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or

the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under the Act.

Classification Codes of Professional Services

Under GST, legal and accounting services shall be classified under the heading 9982 as follows:

Group No.	Service Code	Services
Heading no. 9982		Legal and accounting services
Group 99821		Legal services
	998211	Legal advisory and representation services concerning criminal law.
	998212	Legal advisory and representation services concerning other fields of law.
	998213	Legal documentation and certification services concerning patents, copyrights and other intellectual property rights.
	998214	Legal documentation and certification services concerning other documents.
	998215	Arbitration and conciliation services
	998216	Other legal services n.e.c.

Rate of GST on Professional Services

Central Government vide Notification No. 8/2017-Integrated Tax (Rate) dated 28.06.2017 has notified GST rates for the supply of services. On the same lines, Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 has been issued for CGST. Professional services shall be levied a GST @ 18 percent with full input tax credit. Thus, the cost of services shall go up by 3 percent from service tax @ 15% to 18% GST. However, no cesses would be applicable.

GST: Tax of Future

The indirect taxes kitty is in for an overhaul as India prepares to migrate to a new regime, i.e., Goods and Services Tax (GST) which has since been introduced w.e.f. 1st July, 2017 which will take over all major indirect taxes (both Union and State) and then have only one tax, GST. This new tax, GST shall be levied in the form of Central GST (CGST), State GST (SGST), Union Territory GST (UTGST) and Inter-State GST (IGST). GST is going to be the biggest tax reforms of independent India.

In the GST regime, one can be sure of larger role of professionals involving tax planning, knowledge dissemination, change in business processes, cost and profit assessments etc more of procedural compliances,

GST has increased a host of new professional opportunities for all professionals - accounting, corporate, legal and financial.

law which will be outsourced to professionals. A chartered accountant who is a tax consultant is the most appropriate person who has both accounting as well as a legal background. His knowledge of the business is probably also unmatched among any professional group. Opportunities may also arise out of ignorance of law, lack of knowledge, poor compliance (leading to strict penalties etc.) frequent amendments in law and rules (complex provisions), interpretation of provisions (risky interpretation), large assessee base and heterogeneous group of assessees.Today's indirect taxes (Central Excise, Customs, Service Tax, VAT etc) and GST in future are the taxes to stay which offer lot of opportunities to be explored, especially by young professionals.

Conclusion

GST has increased a host of new professional opportunities for all professionals-accounting, corporate, legal and financial.

What is required is that the professional institutes ought to gear up and provide requisite academic, research and technical support to both, members as well as revenue authorities. Training is one area where they should focus not only for members, but for traders, businessmen and revenue officials. They ought to provide well researched and reasoned inputs in framing of legislations and rules as a partner in economic progression.

Abbreviations Used

AAR - Authority for Advance Ruling
AAAR - Appellate Authority for Advance Ruling
CAG - Comptroller & Auditor General of India
CST - Central Sales Tax
FDI - Foreign Direct Investment
GDP - Gross Domestic Product
IT - Information Technology
IAP - Internal Audit Programme
MIS - Management Information System
NAA - National Anti-profiteering Authority

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Importance of Cross Examination in Proceedings under Income Tax Act, 1961

Preamble:

The well known maxim of 'nemo judix in causa sua' or 'nemo debet essc judex in propria causa sua', says that, "no man shall be a judge in his own cause". The second rule is 'audi alteram partem', that is, 'hear the other side'. All the evidence collected by the Assessing Officer which is to be used against the assessee must be placed before the Assessee who must also be given an opportunity to rebut the same. An interesting question arises whenever an Assessing Officer proposes to make an assessment by adding income not disclosed by the assessee, based on evidence he has gathered from third parties. Can the assessee insist on cross-examining the said parties? If the right of cross-examination is not granted, would the assessment be tenable in law? The important point to be borne in mind is that the Assessing Officer is not debarred from relying on private sources of information, which he may not disclose to the assessee at all. But at a later stage, in case he proposes to use against the assessee the result of any private inquiry, he should communicate to the assessee the substance of such information so as to put the assessee in possession of full particulars of the case he is expected to meet and should further give him sufficient opportunity to meet it. Similarly, whenever any statement is recorded by the Assessing Officer from any party, say, Creditors, shareholders, donor, trustee, entry provider or any other third party, the inherent right to cross-examine the said persons is embedded in the proceedings under the Income Tax Act (hereinafter referred to as the 'Act').

1. **Indian Evidence Act:-**

Evidence of a witness through examination or cross-examination is covered under Sections 137 to 154 of the Indian Evidence Act. For the purposes of application under Income-tax Act, the relevant provisions are sections 137 to 139. These sections are reproduced as under-

(i) Section 137. Examination-in-chief. —The examination of a witness by the party who calls him shall be called his examination-in-chief. Cross-examination. —The examination of a witness by the adverse party shall be called his cross-examination. Re-examination. —The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

(ii) Section 138. Order of examinations. — Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination

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and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. Direction of re-examination. — The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(iii) Section 139. Cross-examination of person called to produce a document. —A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called for as a witness.

2. **Cross Examination essential before any adverse inference by Assessing Officer:-**

a. Many a times, the Assessing Officer draws an adverse inference against the Assessee without affording the latter an opportunity to cross examine the documents/statements relied upon the Assessing Officer while framing the assessment, reassessment or search assessment.

b. In this connection, it is prudent for the Assessee to make an application in writing that an opportunity of cross-examination ought to be given before any adverse inference is drawn by the Assessing Officer before the Assessee at a later stage.

c. In this regard, several useful precedents have been pronounced in different contexts of the facts of the Assessee.

(i) Recently, in the case of Sunita Dhadda [SLP(Civil) Diary Nos 9432/2018] it was held that, "Section 69 of the Income-tax Act, 1961 - Unexplained investments - Assessment year 2008-09 - Where Assessing Officer, while making addition on account of 'on money' received by assessee on sale of land to a builder group, relied upon statement of director of that group and did not allow assessee to cross-examine said person, there was violation of principle of natural justice and, therefore, addition could not be sustained [In favour of assessee]"

(ii) Similarly, in the case of Andaman Timber Industries (2015) 281 CTR 214 (SC) the Hon'ble Apex Court has held that denial to the assessee of the right to cross-examine the witness whose statement was made the basis of the impugned order is a serious flaw which renders the order a nullity in as much as it amounted to violation of the principles of natural justice because of which the assessee was adversely affected.

(iii) Earlier, in case of Kishanchand Chellaram v/s CIT [1980] 125 ITR 713 the Honourable Supreme Court after considering all facts and circumstances, observed that, "though the proceedings under the Income Tax laws may not be governed by the strict rules of evidence, the department is bound to afford an opportunity to controvert and cross examine the evidence on which the department places its reliance." Thus the principle laid down by the Supreme Court in this case is of immense value so much so that it amply makes it clear that the income tax proceedings are not immune to the cannons of natural justice. I have right to see, verify and also to cross-examine the piece of evidence. The consequence of breach of natural justice by the department is that the order passed in violation of natural justice is nothing but a nullity and void, as was also held by the Supreme Court in the case of Shree Ramadurga Prasad v/s Settlement Commission 176 ITR 169.

(iv) Also, in the case of Cannon Industries Pvt. Ltd. [167 TTJ 82 (Mum)] It was held that, "addition was made by the Assessing Officer by treating purchases of Rs. 24.73 Crs as bogus, based on the statements of third parties recorded during the survey proceedings u/s 133A. the Commissioner of Income Tax(A) issued a remand order to give opportunity to cross-examine the third parties, however, no opportunity was given for the same in remand proceedings. the Commissioner of Income Tax(A) and Tribunal held that in absence of any direct evidence showing the impugned purchases are non genuine, addition on the basis of a statement by third parties u/s 133A is not sustainable."

(v) Recently, in the case of H. R. Mehta vs. ACIT [387 ITR 561 (Bombay)] it was held that, "The assessee is bound to be provided with the material used against him apart from being permitted to cross examine the deponents. The denial of such opportunity goes to root of the matter and strikes at the very foundation of the assessment order and renders it vulnerable. On a very fundamental aspect, the revenue was not justified in making addition at the time of reassessment without having first given the assessee an opportunity to cross examine the deponent on the statements relied upon by the ACIT. Quite apart from denial of an opportunity of cross examination, the revenue did not even provide the material on the basis of which the department sought to conclude that the loan was a bogus transaction. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the CIT (A) and the Tribunal vulnerable."

(vi) Long back in case of Ponkunnam Traders [83 ITR 508 & 102 ITR 366 (Ker)] it was held that, " When assessment year, he has collected the information within the meaning of s. 142(3), it may be his obligation to give an opportunity to the assessee to offer his explanation Section 34 of the Evidence Act substantiates that entries in the books of another party would alone on the information collected. When this is not done there is failure to confirm to the principles of natural justice and the order which is quasi-judicial order is void. Further, when a decision is null due to want of jurisdiction, it cannot be cured by any appellate proceedings."

(vii) Similar view is also held in case of PRAKASH CHAND NAHTA vs. COMMISSIONER OF INCOME TAX (2008) 301 ITR 134 : in which it is held that, "On a perusal of the assessment order it is perceivable that the AO has heavily relied upon the statement of M, proprietor of R & Co. The AO has expressed the opinion that there could not have been any transaction between assessee and R & Co. as it was a small firm and not assessed to income-tax. It is of immense significance that M has filed an affidavit in variance of his original statement. That apart, the AO has ignored the affidavit and ascribed reasons how the transaction with said M was not worth giving credence. The genuineness of bills produced by the assessee has not been accepted exclusively on the basis that the said M was a small businessman and was not assessed to income-tax. The aforesaid circumstances eloquently speak that the addition in the order of assessment has been made on the basis of the statement made by M. There is no cavil that a prayer was made under s. 131 to summon said M for cross-examination. That has not been done. The language employed under s. 131 empowers the AO to ensure the attendance of any person. When the statement of M was used against the assessee and an affidavit was filed controverting the same, it was obligatory on the part of the AO to allow the prayer for cross-examination. That would have been in the fitness of things and in compliance of principles of natural justice. As the AO had not summoned M, the proprietor of R & Co., in spite of the request made under s. 131, the evidence of said M could not have been used against the assessee and in the absence of affording reasonable opportunity of being heard by summoning the said witness the assessment order is vitiated and cannot be saved as the addition has been made on the foundation of his deposition.—CIT vs. Dharam Pal Prem Chand Ltd. (2007) 212 CTR (Del) 253 : (2007) 295 ITR 105 (Del) and State of Kerala vs. K.T. Suaduli Grocery Dealer Etc. 1977 CTR (SC) 260 : (1977) 39 STC 478 (SC) relied on. AO having not summoned the person from whom the assessee is said to have purchased goods, under s. 131 for cross-examination in spite of the request of the assessee, evidence of said person could not have been used against the assessee and therefore, the assessment order passed by AO making the impugned addition on the basis of the deposition of the witness is vitiated."

(viii) On the issue of rejection of affidavit without cross-examination, one may also refer to

L. Sohan Lal Gupta v. CIT [1958] 33 ITR 786 (All.) and Malwa Knitting Works v. CIT [1977] 107 ITR 379 (MP). However, an affidavit can be held to be untrue with reference to other material on the record. Smt. Gunwantibai Ratilal v. CIT [1983] 12 Taxman 86/[1984] 146 ITR 140 (MP).

(ix) Moreover, in the case of DN Shah & Co 2 TTJ 1217 (AHD)- it was held that, "Evidence of M before sales-tax authorities to the effect that after 1970 they entered only hawala transactions—Opportunity for cross examination of M not made available to assessee either by sales-tax or by Income-tax authorities— Additions under s. 69 and 69A not justified"

(x) Similar judgments can be noted where not providing opportunity of cross-examination was held illegal and the additions were deleted are as follows:

- CIT v. A.L. Lalpuria Construction (P.) Ltd. [2013] 32 taxmann.com 384/215 Taxman 12 (Raj.) (Mag.)].
- Mohanlal R. Daga v. ITO [2005] 147 Taxman 28 (Mum.)(Mag.).
- CIT v. Pradeep Kumar Gupta [2008] 303 ITR 95 (Delhi).
- Heirs & LR of Late Laxmanbhai S. Patel v. CIT [2010] 327 ITR 290/[2008] 174 Taxman 206 (Guj.);
- CIT v. Gani Silk Palace [1988] 37 Taxman 295 (Mad.);
- CIT v. Ashwani Gupta [2010] 322 ITR 396/191 Taxman 51 (Delhi);
- CIT v. Dharam Pal Prem Chand Ltd. [2007] 295 ITR 105 /[2008] 167 Taxman 168 (Delhi);
- CCE v. Gujarat Cypromet Ltd. [2013] 34 taxmann.com 249/40 STT 210 (Guj.);
- CTO v. Haryana Dal Mill [1993] 90 STC 519 (Raj.);
- CIT v. Indrajit Singh Suri [2013] 33 taxmann.com 281/215 Taxman 581 (Guj.);
- CIT v. SMC Share Brokers Ltd. [2007] 159 Taxman 306 (Delhi);
- CIT v. Geetanjali Education Society [2008] 174 Taxman 440 (Raj.);
- Sri Krishna Educational & Social Trust v. ITO [2013] 40 taxmann.com 7/[2014] 220 Taxman 16 (Mad.);
- CIT v. Independent Media (P.) Ltd. [2012] 25 taxmann.com 276/210 Taxman 14 (Delhi) (Mag.);
- CIT v. Supertech Diamond Tools (P.) Ltd. [2014] 44 taxmann.com 460/[2015] 229 Taxman 62 (Raj.).
- Amitabh Bansal v. ITO [2019] 175 ITD 401 (Delhi - Trib.);
- Pratik Suryakant Shah v. ITO [2017] 77 taxmann.com 260 (Ahd. - Trib.);
- Smt. Madhu Killa v. Asstt. CIT [2018] 100 taxmann.com 264 (Kol. - Trib.);
- Ramprasad Agarwal v. ITO [2019] 174 ITD 286 (Mum. - Trib.);
- Meghraj Singh Shekhawat v. Dy. CIT 175 ITD 693 (Jp. - Trib.);
- CCE v. Shyam Traders 2016 (333) ELT 389 (All.);
- P.R. Rolling Mills (P.) Ltd. v. Dy. CIT [2018] 96 taxmann.com 185 (Jp. - Trib.);
- Fateh Chand Charitable Trust v. CIT [2017] 83 taxmann.com 33 (Luck. - Trib.); ITO v. Karsan Nandu [2017] 77 taxmann.com 275 (Mum. - Trib.);
- ITO v. Softline Creations (P.) Ltd. [2017] 81 taxmann.com 139 (Delhi - Trib.);
- Mohan Meakin Ltd. v. Asstt. CIT [2017] 87 taxmann.com 171 (Delhi - Trib.);
- Fancy Wear v. ITO [2017] 87 taxmann. com 183 (Mum. - Trib.);
- Pavitra Realcon (P.) Ltd. v. Asstt. CIT [2017] 87 taxmann.com 142 (Delhi - Trib.);
- Apeejay Education Society v. Asstt. CIT [2017] 81 taxmann.com 289 (Asr. - Trib.);
- ITO v. Shreedham Construction Pvt. Ltd. [ITA No. 2948/Mum/2017];

- Pr. CIT v. Kanubhai Maganlal Patel [2017] 79 taxmann.com 257 (Guj.);
- Obulapuram Mining Co. (P.) Ltd. v. Dy. CIT [2016] 160 ITD 224 (Bang. - Trib.)

3. **Cross Examination at the Appellate Stage:-**

In cases where assessee demands at the appellate stage, cross-examination of the witness, the CBDT has advised CIT(A) to provide such opportunity. In Instruction F. No. DGIT(Vig.)/ HQ/SI/Appeals/2017-18/9959, dated March 8, 2018, the Board has instructed that- "…… In some other cases, the additions were deleted in a summary manner solely on the ground that opportunity of cross-examination was not given to the assessee. The CIT (Appeals) could have given the opportunity of cross- examination to the assessee rather than summarily deleting the additions in such cases since it has been held by Hon'ble Apex Court in a number of cases that the scope of power of CIT (Appeals) is coterminous with that of the Assessing Officer…."

4. **Conclusion:**

As can be seen above, cross examination is the sine qua non of due process of taking evidence. No adverse inference can be drawn against a party unless the party is put on notice of the case made out against him in any proceedings of Income Tax. The Assessee must be supplied with the contents of all such evidences like statements, documents and other such papers, both oral and documentary, so that the Assessee can gear himself up against the case against himself. This necessarily also postulates that he should cross examine the witness on whose statement the Assessing Officer relies to make addition against the assessee.

* * * * *

The quality of our expectations determines the quality of our action.

— A. Godin

High achievement always takes place in the framework of high expectation.

— Charles F. Kettering

Unhappiness lies in that gap between our talents and our expectations.

— Sebastian Horsley

Expectations were like fine pottery. The harder you held them, the more likely they were to crack.

— Brandon Sanderson

Profession and Digital World- Challenges ahead

The profession is going through a transitional phase where digital era has set in. Artificial intelligence is becoming order of the day. Alexa is now ruling the homes and offices. Everything is getting digitalised. The Institute of Chartered Accountants of India (ICAI) itself is now paperless. It seems that the whole world has come into that one tool in our hand i.e., mobile. We cannot now think of a life without it. Google is now controlling the digital world and it is said that it is possible for Google to bring the world to a standstill nothing less than a world war. Social Media has become so much important that everybody is trying to have a piece of it. Whatsapp, Facebook, twitter, linked-in with likes and followers in these platforms are becoming decision making platforms. In such a scenario, can Artificial intelligence take over the human intelligence and make it subservient to itself. With digital revolution, digital frauds are also on the rise. It is now possible to buy the likes and followers. It is now possible to crop the images. It is now possible to steal the data. It is now possible to steal the privacy. In one of the biggest privacy fines, recently as per news reports Facebook agreed to pay US $ 5 Billion (equivalent to almost Rs 35000 crores) in fine to regulators.

It is in this background that the auditing profession is now performing the attest, compliance, and so many other complex functions that it is expected to do. Gone are the days when an auditor while auditing the books of accounts used to place red mark on the books of accounts as a matter of identification. Now in the digital era with virtual books of accounts there is no way one can make any mark of identification on the virtual books. Gone are the days when the income-tax returns were filled manually, now the government of India has proposed pre-filled return forms to be sent and faceless assessments will be the order of the day soon. The auditing profession has a new competitor now in the form of a computer which is performing with its artificial intelligence what an auditor or a chartered accountant is supposed to do and the regulators are now evaluating the competency of the profession with that of a computer.

In the light of above digital era, the laws are also changing. Information Technology Act, 2000 which is now almost two decades old is ruling the digital legal world and is being amended consistently to adopt

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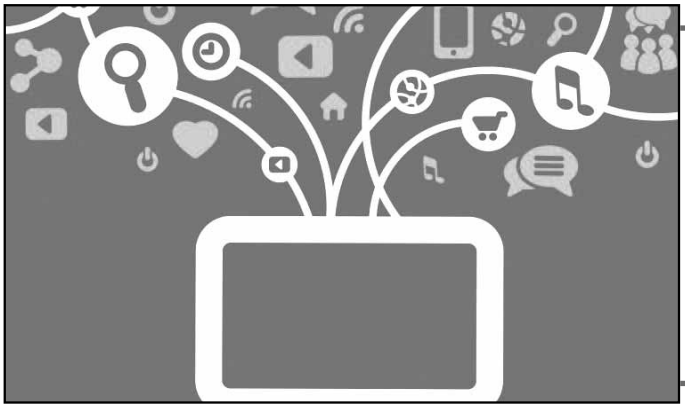

In the light of above digital era, the laws are also changing. Information Technology Act, 2000 which is now almost two decades old is ruling the digital legal world and is being amended consistently to adopt itself to the changing needs of the digitised society.

itself to the changing needs of the digitised society.

In this regard, it is noteworthy to mention that with the advent of the Information Technology Act, 2000, several legislations including the Evidence Act, 1872 also needed amendments and the same was made effective from 17.10.2000 by virtue of insertion of inter alia Section 65A and Section 65B in Chapter V dealing with 'Documentary Evidence'. The aforesaid Sections were specifically introduced to provide for "special provisions as to evidence relating to electronic record" and "admissibility of electronic records" respectively.

It is further important to note that the Income Tax Act, 1961 and the rules and forms made thereunder have also been amended from time to time to give cognizance to digital means of communication. The law now provides for the following mandatory digital means of communication and filing:

1. Compulsory e-fling of income tax returns by all assesses excluding those in the category of super-senior citizen. It is relevant to note here that the returns of companies, political parties and those assesses having to get the accounts tax audited have to file the income tax return with the electronic signature mandatorily as per Rule 12 of the Income Tax Rules, 1962
2. The application for lower deduction of tax at source
3. Filing of appeals before Commissioner (Appeals) excluding the cases where the assessee has the option to furnish the return of income in paper form
4. TDS and TCS returns filed by some of the deductor/collector;

In this regard, it is important to note that Section 140 of the Income Tax Act, 1961 which deals with "returns by whom to be signed" was amended vide the Finance No. (2) Act of 2014 by substitution of the word "verified" for the word "signed" so as to enable the verification of returns both by sign in manuscript or by any electronic mode also. The Memorandum to the said Finance Bill reported in (2014) 365 ITR (ST) 169 in this regard states as follows under the head F. RATIONALISATION MEASURES:

"Signing and verification of return of income

The existing provisions under Section 140 of the Act provide that the return under Section 139 shall be signed and verified in the manner specified therein.

With a view to enable the verification of returns either by a sign in manuscript or by any electronic mode, it is proposed to amend Section 140 of the Act so as to provide that the return shall be verified by the persons specified therein. The manner of verification of return is prescribed under Section 139 of the Act.

The amendment will take effect from 1st October, 2014".

It is important to note that even though Section 140, ibid. now talks about verification in the manner as prescribed in Section 139 of the Act, Section 139 itself does not talk about the prescribed manner of verification. It is Rule 12 of the Income Tax Rules, 1962 that provides for verification in the manner as stated in the relevant returns.

Therefore, a question arises whether the said manner of verification can be said to be in accordance with the Income Tax Act, 1961 and Information Technology Act, 2000 where the Information Technology Act of 2000

specifically deals with the manner of authentication of electronic records in Section 3 by providing that any subscriber may authenticate an electronic record by affixing his digital signature. Moreover, Section 4 of the Information Technology Act, deals with legal recognition of electronic records and Section 5 deals with legal recognition of electronic signatures. A question may arise whether an issue as important as signature on the Income Tax Return whereby the assessee is made liable to serious legal consequences in case any of the information which is submitted/ filed/transmitted to the Income Tax Department is either incomplete or incorrect can be made in such a manner as provided in Section 140.

Further, it is also important to mention that Section 282 of the Income Tax Act, 1961 which deals with the provisions relating to "service of notice generally" and Section 282A of the said Act dealing with the provisions relating to "authentication of notices and other documents" have also been amended in the light of the growing needs of digitisation. The aforesaid Sections have been suitably amended to provide for the service of notice or summon or requisition or order or any other communication by the Income Tax Authority under the Act in the form of any electronic record and also the manner of authentication of such notices and other documents respectively have been prescribed.

Now, looking at the above mentioned provisions and the changing pace of digitisation, a question may arise as to whether the evolving law can be said to be equipped to cater to the changes in the digital world and the way frauds are being committed day in and out by the hackers and as well as the experts in the field of digital world. The way the Courts have solved the disputes in relation to the revenue enactments with the law, in the light of paper documents/physical safeguards, are no longer enough to deal with the disputes in relation to the revenue enactments after the mandatory compliances in the form of electronic records. It is now possible to easily manipulate electronic records by various means including but not limited to cropping, super imposing, copy paste and what not. The Courts are now called upon to decide the disputes in the light of such electronic evidences where there are innumerable possibilities of tampering the same.

One such question recently came before the Apex Court in the case of Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal and others wherein the Hon'ble Court while considering a bunch of appeals in CIVIL APPEAL NO(s). 2082520826 of 2017, on 26th of July '2019, opined that with the passage of time, reliance on electronic records during investigation is bound to increase. The law therefore needs to be laid down in this regard with certainty.

The above decision of the Supreme Court wherein the matter relating to the applicability of Section 65A and Section 65B of the Evidence Act, 1872 was referred to a Larger Bench emanated from the decision of the Bombay High Court delivered on 24th of November '2017 in the case of Kailash Kushanrao Gorantyal vs. Arjun Panditrao Khotkar wherein the issue relating to the authenticity of election petition submitted to the election commission by the candidate was considered by the Hon'ble High Court and evidence in the form of video CD was produced and authenticity of the said video CD was assessed in the light of Section 65A and Section 65B of the Evidence Act, 1872.

Therefore, in the light of above discussion, it has to be seen whether the present provisions of the Income Tax Act and Rules regarding the manner of electronic communication between the assessee

It is now possible to easily manipulate electronic records by various means including but not limited to cropping, super imposing, copy paste and what not. The Courts are now called upon to decide the disputes in the light of such electronic evidences where there are innumerable possibilities of tampering the same.

and the department and the evidences in the form of electronic records can be said to take care of the possibility of any kind of digital fraud. It has been held that rigours of Evidence Act are not applicable to income tax proceedings but the Bombay High Court in the case of J.S. Parker vs. V.B. Palekar reported in [1974] 94 ITR 616 (Bom) held that what was meant by saying that the Evidence Act did not apply to the proceedings under the Act was that the rigours of the rules of evidence contained in the Evidence Act was not applicable but that did not mean that when the taxing authorities were desirous of invoking the principles of the Act in proceedings before them, they were prevented from doing so. Evidence Act embodies principle of common law jurisprudence which could be attracted to a set of circumstances that satisfy its conditions. Similar was held in the case of Chuharmal Vs CIT (1988) 172 ITR 250(SC).

The relevance of Evidence Act in cases of electronic documents now becomes all the more important in income tax proceedings in the age of Digital era.

The Income Tax Act does not take into account situations where there can be possibility of frauds by way of wrongful use or misuse of electronic signature or unauthorised access to the electronic devices with an intention to create unauthorised electronic records in the form of email, notes, excel sheets, word files etc. It will not be out of place to mention that hardly the digital signatures are affixed in presence of the person to whom the signature belongs and the digital signature token or key is given to the authorised representative, Chartered Accountants, and secretaries. Similarly for an assessee who is not very conversant with the digital world and who relies on someone else is susceptible to frauds etc.

In a country like India where digitalisation is growing by leaps and bounds still a lot more needs to be done to secure the electronic mode of communication. Section 11, 12 and 13 of the Information Technology Act, deals with attribution, acknowledgement and dispatch of electronic records. In a situation where the originator of the electronic record is the assessee himself since his electronic signature is used but the attribution to that electronic record is to the secretary, chartered accountant, authorised representative, it is important and necessary that the verification in the return or the filing of form, appeals etc must distinguish between the attributor and the originator of the electronic record. This process is being followed by Ministry of Corporate Affairs whereby the signature of the professional i.e. the company secretary or the chartered accountant's digital signature is affixed on the electronic document which is to be filed in certain cases.

The manner in which the digital signatures are being issued must also be controlled by way of a central registry to see that there is no possibility or zero possibility of any such eventuality of a digital signature being duplicated.

The Institute of Chartered Accountants of India has taken a very good step by making it mandatory w.e.f 01.07.2019 that all the certificates which are issued by Chartered Accountants are uploaded on the website of ICAI under the platform called UDIN so as to prevent unauthorised certificates being issued by persons who are not the professionals.

Conclusion

In the light of above the Chartered Accountants or the auditors with an onerous task of various attest functions need to be extra alert so that the challenges which the profession is facing can be dealt with in a manner which the society expects from them.

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That was the thing about the world: it wasn't that things were harder than you thought they were going to be, it was that they were hard in ways that you didn't expect.

— Lev Grossman

Blockchain

Blockchain is an undeniably ingenious invention – the brainchild of a person or group of people known by the pseudonym, "Satoshi Nakamoto."

Blockchain came to the world's attention thanks to its role as the underlying technology behind Bitcoin, the most popular cryptocurrency.

Blockchain is a decentralized database (distributed ledger) that operates on a consensus basis. Every data block in the ledger is linked to the previous block by a cryptographic algorithm called a hash, with the linked blocks forming a chain – hence the name "blockchain."

It is storage of data that:

- usually contains financial transactions
- is replicated across several systems in almost real-time,
- usually exists over a peer to peer network
- uses cryptography and digital signature to provide identity, authenticity and enforce read/write rights,
- can be written by certain participants,
- can be read by certain participants,
- have mechanism to make it hard to change historical records.

Any new update to the data in the blocks is in turn verified and approved by all the users which increases the authenticity of the data. The database does not have a central administrator. It's similar to a Google Docs with restricted settings, allowing only the verified authors to make edits, but enabling everyone to see them and see who made them.

Four elements of Blockchain are:

- **Replicated Ledger:** contains history of all transactions, append-only with immutable past and distributed and replicated
- **Consensus:** Decentralized protocol, shared control tolerating disruption and transactions validated
- **Cryptography:** Integrity of ledger, Authenticity of transactions, privacy of transactions and identity of participants.
- **Business Logic:** Logic embedded in the ledger, executed together with transactions and from simple "coins" to self-enforcing "smart contracts"

All the information available on the blockchain is continuously reconciled and shared amongst all users like a database.

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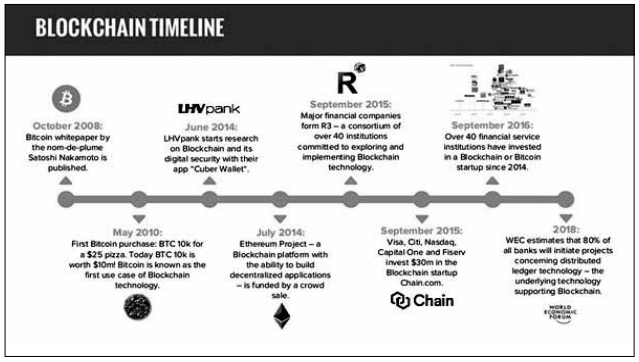

The thought leaders of the world in the blockchain sphere offer numerous benefits of blockchain technology which include:

1. **Decentralization:** This is a core concept and benefit of blockchain. Instead of assigning a unique separate third party for the purpose of validation, blockchain uses a consensus mechanism to do so.
2. **Transparency and trust:** As blockchains are shared and everyone can see what is on the blockchain, this allows the system to be transparent and as a result trust is established. Transparency is established throught the supply chain, right from the producer to the consumer.
3. **Immutability:** Immutability refers to something which can never be modified or deleted. Once the data has been written into the blockchain, it is extremely difficult to change it back. Proof of work in blockchain makes it tamper proof and in turn immutable.
4. **High availability:** As the system is based on thousands of nodes in a peer-to-peer network, and the data is replicated and updated on each and every node, the system becomes highly available. Even if nodes leave the network or become inaccessible, the network as a whole continues to work, thus making it highly available.
5. **Highly secure:** All transactions on a blockchain are cryptographically secured and provide integrity.
6. **Simplification of current paradigms:** The current model in many industries such as finance or health is rather disorganized, wherein multiple entities maintain their own databases and data sharing can become very challenging due to the incongruent nature of the systems. But since it is a single shared ledger, it can lessen the complexity of dealing separate system for it.
7. **Faster dealings:** In the financial industry, especially in post-trade settlement functions, blockchain can play a vital role by allowing the quicker settlement of trades as it does not require a lengthy process of verification, reconciliation, and clearance.
8. **Cost saving:** As no third party or clearing houses are required in the blockchain model, this can massively eliminate overhead costs in the form of fees that are paid to clearing houses or trusted third parties.

While IBM predicts that 66 percent of all banks will have commercial blockchain products by 2020, the potential applications are not limited to finance. In fact, according to a Market and Markets report, the blockchain technology market will be worth more than $2 billion by 2021.

Blockchain technology may represent the next step for accounting

The entire accounting system is developed in such a manner that falsification is impossible or at least very costly. This depends on constant controls, checks and reconciliations. This inevitably affects every day's operations. These processes also lead to the duplication of efforts, excessive unnecessary documentation, etc. Most of them are manual, labour intensive tasks and far from being automated. To date, that seemed to be the sacrifice of revealing the truth.

It has been said that Blockchain will do to transactions what the Internet did for information.

Blockchain is an accounting technology.
It is concerned with the transfer of ownership of assets and maintaining a ledger of accurate financial information. The profession is largely concerned with the measurement and communication of financial information, and its further analysis. For accountants, using blockchain provides clarity over ownership of assets and existence of obligations, and could dramatically improve efficiency.

Companies can use enhance many of its functions with the help of blockchain. For example, transaction receipts can be maintained in a joint register ensuring easy accessibility instead on maintaining them on separate records. This technology will augment the capability of accountants by reducing the costs and

providing certainty over the ownership and history of assets.

Blockchain could help accountants gain clarity over the available resources and obligations of their organisations, and free up resources to concentrate on planning and valuation, rather than recordkeeping.

When combined with other innovations such as machine learning, blockchain can ensure that transactional-level accounting can be done and not only by accountants. In its place, accountants will be enduring in tasks such as assessing the real economic interpretation of blockchain records, its reality and valuation. For example, blockchain might make the existence of a debtor certain, but its recoverable value and economic worth are still debateable. And an asset's ownership might be verifiable by blockchain records, but its condition, location and true worth will still need to be assured.

Why the blockchain adoption have been slow by auditors?

1. **Blockchain is relatively new:** The first implementation is less than a decade old, and most applications are not very mature. In contrast, the systems that management currently relies on have been tested for decades and have specific guidance and principles to allow IA teams to gain comfort with them. Leasing takes time

2. **These controls are different:** Because the technology is new, it requires a new way of thinking about controls. Auditors might welcome the change, but it's their job to ask the difficult questions: Who controls the blockchain? Who gets access? Where are the servers, and what physical and digital controls exist? Who monitors activity?

3. **Technical expertise is rare:** Few IT departments have relevant blockchain experience. In fact, in our 2017 Global Digital IQ Survey, some 86 percent of financial services executives said that their organizations haven't yet developed necessary blockchain skills. And even fewer companies have IA teams with enough expertise to provide any sort of assurance around the technology and the associated work.

4. **It got a rough start:** Although the first prominent use of blockchain was bitcoin, the two are not synonymous. To those who haven't paid close attention, the whole topic may seem dicey, given some early issues with digital currency. This perception creates a bias against the technology.

Prerequisite before implementing Blockchain:

1. **Standards:** Reporting, legal and financial accounting standards don't talk about use of blockchain technology. But this would be a very key point during the audits. So, the respective bodies must work closely with the experts of blockchain to set standards and align them with the current needs.

2. **System Security:** Blockchain is a decentralized ledger managed by a network of users. Each user is identified by a unique digital signature and all transactions must be approved by a set of consensus rules before the block can be added to the chain; this is one reason why it is seen as so secure and reliable. However, one area of weakness is the digital signatures themselves, due to the possibility that these could become compromised, lost or stolen. To overcome this issue, auditors would need the means to check digital signatures and counterparties to verify their existence, giving them confidence regarding the completeness, existence and accuracy of the entire network.

3. **Audit strategies:** With new demand for assurance, blockchain could also change the nature of auditing, reducing the auditor's role in checking and validating account transactions and instead moving them further up the value chain. Because of the ease of transfer of information, and the automated tracking of every transaction, blockchain can simplify and partially automate elements of accounting and compliance, making it easier to do business with new global customers and enabling elements of the audit process to be completed with even greater accuracy. Auditors will therefore be able to focus attention on non-automated elements of the audit.

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Risk Management Committee's (RMC's) in a Rapidly Evolving India

1. Introduction:

With stock markets falling, credit flow slowing and disruption in key industries afoot, Risk Management has now come centre stage. In the entire series of Board Meetings for the quarter ended June 2019, the most intense meetings were those of the Risk Management Committees ("RMC's"). It also helps that SEBI's Listing Obligations and Disclosure Requirements (LODR) has put across the mandatory requirement for establishing this Committee. This importance being accorded to the RMC could not have come a day earlier!

2. How leading Corporates have organised for harnessing of the value of Risk & Opportunity Management:

Risk Management is owned by the CEO by whatever name it's called. The function has been positioned to be an input to strategy and a framework to direct Internal Audit and other control related investment to their most productive use. It has been worked upon as a candid appraisal of the past, leading up to the present. The future has been projected and the organizations ability to leap from the present to the future is stress tested using deep insights about the strong inherent advantages the organization has built up. These include brand power, low leverage, high productivity human resources, access to technology, great supply chains, deeply penetrated use of Information Technology & Artificial Intelligence locks on customers on account of past agreements or built up comforts, and a host of other levers.

The most appropriate word picture is the familiar one of the human form, fully stretched, jumping from the past to the future, straddling a deep valley but with the distinct possibility of crossing over. The big change I notice is that both risks and opportunities are considered. At Ambuja Cements Ltd., it is called Risk and Opportunity Management Committee. This is very evocative and creates great energy and integration in efforts to achieve competitive advantage, organizational excellence and a compelling vision for the future.

The E=Environment, S=Social Responsibility and G=Governance initiatives are all being rolled into the mix. It is now amply clear that Global credit and debt flows will only occur when the ESG story is in place. What was "nice to have" has transformed into "mandatory to have". As these forces gather strength, the entire Reporting Structure is acquiring the true character of Integrated Reporting covering all six capitals. The seamless connections between data capture, control, information processing and

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dissemination, strategic planning, risk management, opportunity capture and disruption management are combining to make all Governed Entities more agile and sustainable. It has become a very critical point of the Board' s responsibility to ensure that this process is dynamically improved.

3. Some examples of Best Practises:

Taking into consideration the above introduction let us take a couple of examples where Company X and Company Y are shown adopting various risk management best practises.

➢ **Company X**

The major risk indicators taken into consideration here are:

- Value at Risk: Confirmed/Probable Loss with an expected Scope of 100%
- Areas of Opportunity: with an expected Scope of up to 50%.
- Risk Appetite: With an expected Scope of up to 10%.

In order to minimize these risks, various approaches can be used by the company.

a) Internal Audit Framework approach based on 3 Lines of Defence

Various Elements of a sample Project undertaken based on 3rd Line of Defence approach:

1. Governance Framework
2. Policy Audits
3. Fraud Risk Assessments (FRA's)
4. Risk Register (Strategic/Operational/Financial/ Compliance)
5. SOP's - Core Processes (HR, Category/Format, Support, Inventory, Finance & Accounts, Capex/ Projects, Supply Chain/Logistics)
6. SOP's/Applications - Support Services (Governance, Risk Management Internal Audit & LPC, Facility Management, Information Technology/Security, Secretarial, Legal, Treasury, Corporate Planning, Media & Marketing, Corporate Communication, Corporate Actions, Analytics.
7. Delegation of Authority
8. Transaction Monitoring Framework-Centre of Excellence (COE)
9. Validations (Soft Controls)
10. Compliance Framework
11. Control Index/Rating Models

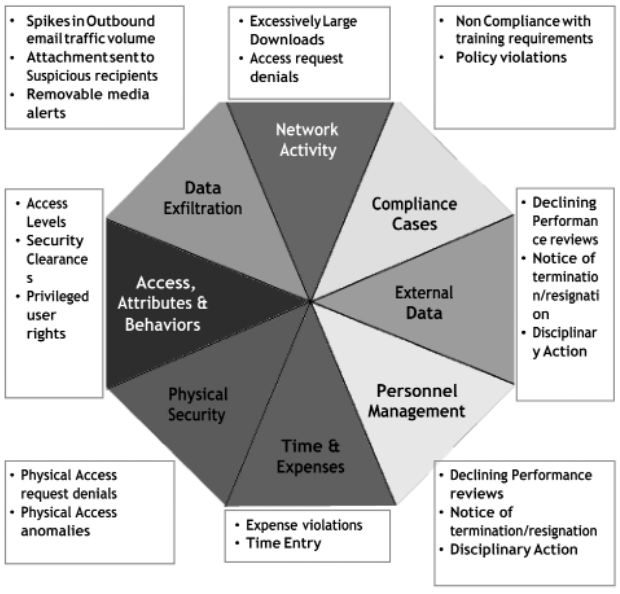
b) Information Technology based approach:

c) Sustainability Guidelines & Framework based approach:

1. Energy and Carbon
2. Water Stewardship
3. Bio Diversity
4. Product Nutrition
5. Waste to Wealth
6. Sustainable Packaging
7. Product Stewardship
8. Occupational Health and Safety
9. Human Rights
10. Supply Chain Code of Conduct
11. Stakeholder Engagement
12. Anti-Corruption

The role of the Board/Audit Committee in assessing the risk culture is shown in the below diagram:

There are various internal risks which an organization has to be cautious about. These risks can be easily identified via the chart provided below:



In order to ascertain whether there is a requirement to refresh existing controls the following questions should be considered by the Board/Audit Committee:

1. Are these the right controls to include in scope?
2. Do they address the financial reporting risk?
3. Are there better controls?
4. Are there better ways to address the risk, perhaps making use of technology?
5. Are there redundant controls that can be eliminated?
6. Is there too much control?
7. Do the people have not only the information, training, responsibility, and experience to perform the controls?
8. Is supervision and review effective and appropriate?
9. Will management know when there are problems performing the controls?
10. Can the processes be upgraded?

➢ **Company Y**

In the case of Company Y, it identifies Risk via a Business Risk Management (BRM) process which is summarized below:

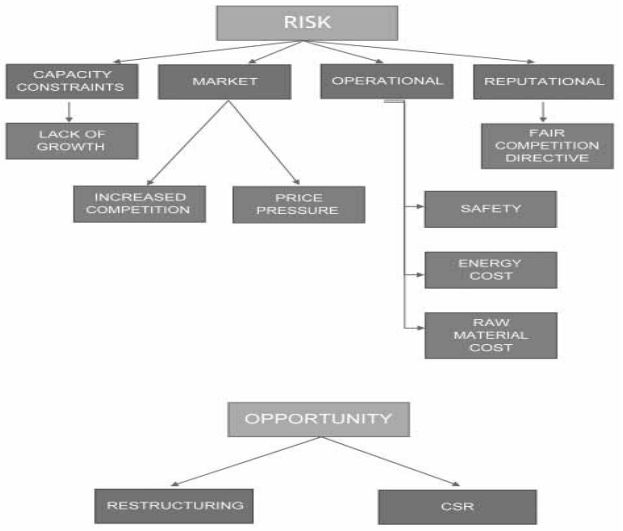
- Objective: Risk Management is a systematic approach to identify, assess, manage and monitor risks that can affect the organizations ability to achieve its objectives.
- BRM process: Overall risk exposure is assessed from both top-down and bottom- up approach, which means that in addition to the Departments, senior management (Board of Directors/Audit Committee) also conduct an annual risk analysis
- Achieving various Targets:

➢ Management – Incorporate risk based thinking into all strategic decisions

➢ Prevention – Reduce the likelihood/impact of potentially adverse events

➢ Compliance – Comply with Laws & Regulations

The BRM can be mapped below:



4. Key Takeaways:

i. Risk and Opportunity Management is emerging as a unifying, ultra-strategic function in corporates across domains.

ii. To be a disruptor or be disrupted are stark choices emerging in India. A premeditated position will make the vital difference between success and failure.

iii. Identifying the key levers that can change outcomes and deployizng them in the context of environmental challenges ad competitive pressures is a vital exercise.

iv. When done on a committed, organisation wide basis, Risk and Opportunity Management can deliver sustainability and competitive advantage.

v. ESG and Integrated Reporting are emerging as significant inputs and outputs from a well-orchestrated Risk and Opportunity Management process.

vi. As the discipline evolves, Indian industry can aspire to be world leaders in almost every area they choose to excel in.

vii. Skills and processes to accomplish visibly beneficial results will need to be curated, shared, IT enabled and carefully implemented.

viii. A new, Exciting area of engagement is emerging for professionals to collaborate in and take India to the next level or a US$ 10 trillion economy.

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Things Mentally Strong People Do ...

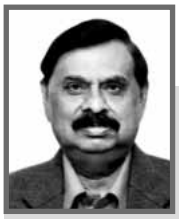
1. **They move on.** They don't waste time feeling sorry for themselves.
2. **They keep control.** They don't give away their power
3. **They embrace change.** They welcome challenges.
4. **They stay happy.** They don't complain. They don't waste energy on things they can't control.
5. **They are kind, fair, and unafraid to speak up.** They don't worry about pleasing other people.
6. **They are willing to take calculated risks.** They weigh the risks and benefits before taking action
7. **They invest their energy in the present.** They don't dwell on the past.
8. **They accept full responsibility for their past behaviour.** They don't make the same mistake over and over.
9. **They celebrate other people's success.** They don't resent that success.
10. **They are willing to fail.** They don't give up after failing. They see every failure as a chance to improve.
11. **They enjoy their time alone.** They don't fear being along.
12. **They are prepared to work and succeed on their own merit.** They don't feel the world owes them anything.
13. **They have staying power.** They dong expect immediate results.
14. **They evaluate their core belief** – and modify as needed.
15. **They expend their mental energy wisely.** They don't spend time on unproductive thoughts.
16. **They think productively.** They replace negative thoughts with productive thoughts.
17. **They tolerate discomfort.** They accept their feelings without being controlled by them.
18. **They reflect on their progress every day.** They take time to consider what they've achieved and where they are going.

RP's Role in CIRP and as Liquidator of Debtor Companies under IBC

With the enforcement of the main provisions of the Insolvency and Bankruptcy Code, 2016 (in short "**IBC**") in December 2016, a new area of practice for corporate professionals has opened up as the IBC envisages appointment of an Insolvency Professional as the "*Interim Resolution Professional*" (IRP) or "*Resolution Professional*" (RP) - who has a major role to play in the Corporate Insolvency Resolution Process (CIRP) of a debtor company (CD) that has defaulted in payment of its outstanding dues to the Financial Creditors (FCs) or Operational Creditor (OCs) once an application/ case against such CD is admitted by the concerned Adjudicating Agency (AA) under the provisions of the IBC.

Section 3(19) of IBC stipulates that "Insolvency Professional" ("IP") means a person enrolled under Section 206 with an Insolvency Professional Agency as its member and registered with the Insolvency and Bankruptcy Board of India (IBBI) as an insolvency professional under Section 207. Provisions relating to registration as IP and IP Entity have been made in the IBBI (Insolvency Professionals) Regulations, 2016. Any CA, CS, CMA or Advocate with at least ten years of experience or a graduate with 15 years management experience after graduation would be eligible to qualify for being appointed as an IP. As IP aspirant, he has to also pass the Limited Insolvency Examination, enrol with an IP Agency as a professional member and undergo pre-registration educational course as required by the IBBI, before applying for registration with the IBBI. He should register as IP within 12 months of passing Limited Insolvency Examination. After registration, he is required to undergo continuous professional education (CPE) periodically, as prescribed by IBBI.

Once an application under Sections 7, 9 or 10 of the IBC is admitted against CD, the IP is appointed as 'Interim Resolution Professional' (IRP) and later on as RP by the CoC of CD. The working of the IBC for the last nearly 20 months since its enforcement has no doubt shown that the IRP/RP plays a significant role not only during CIRP of the CD, but even in cases where CIRP does not get approved and the AA permits liquidation of the CD, where the IRP/RP continues to play a significant role. As such, he has to keep himself abreast with the latest caselaws under the IBC. In this article, an attempt has been made to highlight some of



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the landmark decisions under IBC and special focus has been given to the recent Court rulings where liquidation of the CD under IBC has been ordered.

The Supreme Court decision/observations in the Swiss Ribbons Case

The Hon'ble Supreme Court of India in the well-known decision dated 25.1.2019 in ***re: Swiss Ribbons Pvt Limited –vs- Union of India*** (2019-152 SCL 365) has very aptly held that with the enforcement of the IBC, **"the defaulter's paradise is lost"** because as soon as the case against CD is admitted by the AA, the Board of Directors (BoD) of the CD gets suspended and in its place, the IRP/RP takes over the management of the affairs of the CD under Section 17 of the IBC exercises all such powers, subject to the provisions of the IBC, Regulations framed thereunder and works under directions of the CoC and that of the concerned AA. In the said *Swiss Ribbons* (supra), while upholding the constitutional validity of the IBC, the Supreme Court observed that "the IBC is a legislation which deals with economic matters and, in the larger sense deals with the economy of the country as a whole. Earlier experiments, in terms of legislations having failed, "trial" having led to repeated "errors", ultimately led to the enactment of the IBC. The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities have been pointed out by the petitioners, passes constitutional muster. To stay experimentation in things economic is a grave responsibility, and denial of the right to experiment is fraught with serious consequences to the nation…..In the working of the Code, the flow of financial resources to the commercial sector in India has increased exponentially as a result of financial debts being repaid. The experiment conducted in enacting the code is proving to be largely successful. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained."

Supreme Court decision/observations in the *Arcelor Mittal's* case

The Hon'ble Supreme Court of India in its judgement in ***Arcelor Mittal Pvt Limited –vs- Satish Kumar Gupta*** (2018-98-Taxmann.com 99) dealt with the important issue regarding eligibility criteria of the Resolution Applicant under Section 29A of IBC for bidding in the resolution plan of a CD. Section 29A has been enacted so as to prevent the defaulter directors/promoters/related persons from bidding for

In the said Swiss Ribbons (supra), while upholding the constitutional validity of the IBC, the Supreme Court observed that "the IBC is a legislation which deals with economic matters and, in the larger sense deals with the economy of the country as a whole.

the same company and Section 29A does not allow them to have backdoor entry via the clever device of bidding through entities projecting them as Resolution Applicants. The Supreme Court held that "a person shall not be eligible to submit a resolution plan, if such person, or any other person, acting jointly or in concert with such person" fall within the instances laid down in the various sub-clauses contained under section 29A. The Supreme Court also held that the Section 29A is a typical instance of a "see through provision" so that one is able to arrive at persons who are actually in "control", whether jointly, or in concert, with other persons. A wooden, literal interpretation would obviously not permit a tearing of the corporate veil when it comes to the "person" whose eligibility is to be gone into. However, a purposeful and contextual interpretation, such as the felt necessity of interpretation of such a person as section 29A alone governs. For example, it is well settled that a shareholder is a separate legal entity from the company in which he holds shares. This may be true generally speaking, but when it comes to a corporate vehicle that is set up for the purpose of submission of a resolution plan, it is not only permissible, but imperative for the competent authority to find out as to who are constituent elements that make up such a company. In such cases, the principle laid down in ***Saloman –vs- A Saloman & Co.Ltd*** (1897-AC 22) will not apply. For, it is important to discover in such cases as to who are the real individuals or entities who are acting jointly or in concert, and who have set up such a corporate vehicle for the purpose of submission of a resolution plan. In *ArcelorMittal* case (supra), the Supreme Court pierced the corporate veil and analysed the complex structure of both the competing resolution applicants and held that if it is shown on facts that at a reasonably proximate point of time before submission of the resolution plan, the affairs of the persons referred to in Section 29A are so arranged

The Court held that Section 30(2)(e) does not empower the RP to "decide" whether the resolution plan does or does not contravene the provisions of the law and merely append the due diligence report carried out by him and state briefly as to why it does, or does not conform to the law.

as to avoid paying off the debts of the non-performing assets concerned, such persons must be held to be ineligible to submit a resolution plan.

With regard to the any challenge by the resolution applicants at various stages of the CIRP, particularly when the RP, under section 30(2) of the IBC rejects a resolution plan at the threshold, the Supreme Court held that it is settled law that a statute is designed to be workable and the interpretation thereof should be designed to make it so workable. The Supreme Court therefore held that given the time limit referred to in the IBC, the Resolution Applicant has no vested right that his resolution plan has to be considered and that it is clear that no challenge can be preferred to the AA at the stage of consideration of the resolution plan and that a Writ Petition under Article 226 of the Constitution of India filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage.

In the aforesaid *ArcelorMittal* judgement (supra), the Supreme Court further held that the RP is only to "examine" and "confirm" as to whether a resolution plan conforms to what is provided by Section 30(2) and that under Section 25(2)(i) of IBC, the RP shall undertake to present all resolutions plans at the meetings of the CoC and confirm as to whether all the prescribed statutory conditions have been followed by the Resolution Applicant, especially with regard to eligibility criteria enumerated under Section 29A. The Court held that Section 30(2)(e) does not empower the RP to "decide" whether the resolution plan does or does not contravene the provisions of the law and merely append the due diligence report carried out by him and state briefly as to why it does, or does not conform to the law.

IBC is not a substitute for Recovery Forum

The Hon'ble Supreme Court in its judgement dated 23.10.2018 in ***Transmission Corpn. Of AP Limited –vs- Equipment Conductors & Cables Limited*** (150-SCL-447) spelled out clearly that "in a recent judgement of this court in ***Mobilox Innovations Private Limited –vs- Kirusa Software Private Limited*** (2018-SCC-1-353) this Court has categorically laid down that IBC is not intended to be a substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked."

The Supreme Court holds that liquidation of CD is not the objective of IBC

In the aforesaid *Swiss Ribbons* case (supra), with regard to the approach of the IBC, the Supreme Court had observed, inter-alia, that "the objective of the IBC is to ensure revival and continuation of the corporate debtor by protecting it from its own management and from liquidation and that the Code is a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors." The Supreme Court further observed:

"11. …What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort, if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.

12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/ those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the

corporate debtor to achieve all these ends."

Further, the Supreme Court in *ArcelorMittal* (supra), at paragraph 83, footnote (3) has noted as follows:

"3. Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 states that the liquidator may sell the corporate debtor as a going concern."

In ***Meghal Homes Pvt. Ltd.*** **v.** ***Shree Niwas Girni K.K. Samiti*** [2007] 78 SCL 482, the Supreme Court held that in terms of Section 391 of the Companies Act, 1956, revival of a company, including a company that is liable to be wound up, is allowed and that Section 391(1)(b) gives a right to the liquidator to even propose a compromise or arrangement with creditors and members for revival of such a company.

In *S.C. Sekaran* v. *Amit Gupta* [2019] 103 taxmann.com 222/152 SCL 536 (NCLAT), the National Company Law Appellate Tribunal (NCLAT) went on to hold that Section 391 of the Companies Act, 1956 has been replaced by Section 230 of the Companies Act, 2013 (CA 2013) which talks of "power to compromise or make arrangements with creditors and members" and analysed in detail the elaborate provisions of Section 230 of the CA, 2013. The NCLAT also directed the liquidator to proceed in accordance with law, to verify claims of all creditors, take into custody and control the assets, property, effects and actionable claims of the CD; carry on the business of the CD for its beneficial liquidation, etc., as prescribed under Section 35 of the IBC. The NCLAT also directed that the liquidator will have access to information under Section 33 of the IBC and will consolidate the claim under Section 38 and after verification of claim in terms of Section 39, will either admit or reject the claim as required under Section 40 of the IBC. The NCLAT further directed that before taking steps to sell the assets of the CD, the liquidator will take steps in terms of Section 230 of the CA, 2013 and that the AA, if so required, will pass appropriate orders. Only on failure of revival, the AA and the liquidator will first proceed with sale of the company's assets wholly and thereafter, if not possible, to sell the company in part in accordance with law.

The NCLAT reiterated its decision in *S.C. Sekaran* (supra) in another judgement in *Ajay Agarwal* v. *Ashok Magnetic Ltd.*, Company Appeal (AT) (Insolvency) Nos.792 & 793 of 2018, and held that even during the period of liquidation, the liquidator should ensure that the debtor-company should remain as a going concern and take steps in terms of Section 230 of the Companies Act 2013 and can consider compromise, arrangements and amalgamation between the company and its members or any class of them in terms of Section 230(1)(b) of the Companies Act 2013. The NCLAT also observed that it will be open to the members of the debtor-company (in this case M/s. Ashok Magnetics Ltd.) or the creditors, to contact the liquidator for compromise or arrangements in terms of Section 230 of the CA 2013 and if the scheme is viable, feasible and maximizes the assets of the CD and the balance of interest of the creditors, then the liquidator will move an application under Section 230 of the CA 2013 before the NCLT for order and directions. On failure, the liquidator will ensure to sell the CD as a going concern in its totality, taking into consideration the interests of the employees of the corporate debtor.

Further, in *Y. Shivram Prasad* v. *S. Dhanapal* [2019] 153 SCL 294/104 taxmann.com 377 (NCLAT), the NCLAT once again reiterated that during the liquidation stage, the liquidator is required to take steps to ensure that the company remains a going concern and that steps are required to be taken for revival and continuance of the CD by protecting the CD and its management from death by liquidation. Thus, the steps which are required to be taken, are by compromise and arrangement with creditors or class of creditors or members or class of members in terms of Section 230 of the CA 2013 and on failure, the liquidator is required to take steps to sell the business of the corporate debtor as a going concern in its totality, along with the employees. The last stage will be death of the corporate debtor by liquidation, which should be avoided. The NCLAT directed that a total 90 days' time is allowed to take steps under Section 230 of the CA 2013. In case for any reason, the liquidation

process under Section 230 takes more time, it is open to the NCLT to extend the period, if there is a chance for approval of arrangement of the scheme.

In the aforesaid NCL-AT judgment in *Y. Shivram Prasad* (*supra*), on the question of how to deal with objections to the scheme and to examine the viability of the scheme of compromise and arrangement, the NCLAT passed the following direction:

"18. During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the 'Corporate Debtor' (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the 'I&B Code', the arrangement of scheme should be in consonance with the statement and object of the 'I&B Code', meaning thereby, the scheme must ensure maximisation of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme in spite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

19. In view of the observations aforesaid, we hold that the liquidator is required to act in terms of the aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members or the 'Corporate Debtor' or the 'creditors' or a class of creditors like 'Financial Creditor' or 'Operational Creditor' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority, *i.e.*, National Company Law Tribunal in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue."

Conclusion

As can be seen from discussions hereinabove, the Resolution Professional has a vital role during the CIRP and also as a Liquidator during the liquidation process. While under IBC the shareholders of CD have virtually no role to play during CIRP, yet, under Section 230 of the Companies Act, 2013, when the Liquidator proceeds with compromise or arrangement of the CD, he has to follow the procedure under Section 230 which also calls for approval from the shareholders. It needs to be also seen whether the erstwhile promoters/ management of the CD have any role in such revival under Section 230 while they had been denied such role during the CIRP. How these seemingly complex questions are to be resolved during the revival process of the debt-ridden CD is yet to unfold.

* * * * *

You were born to win, but to be a winner, you must plan to win, prepare to win, and expect to win.

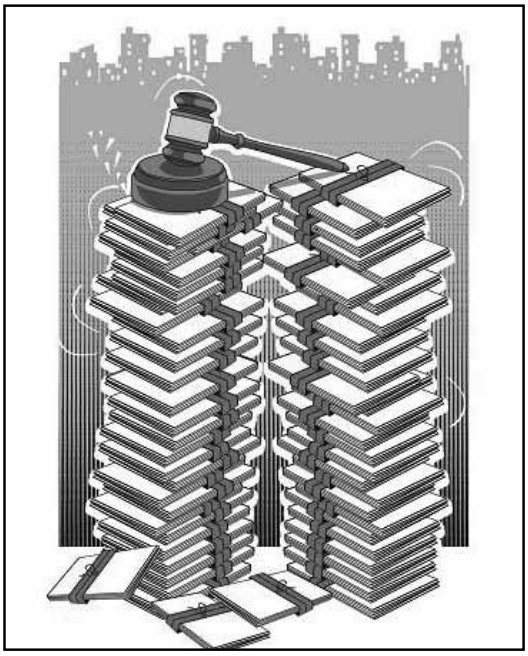
— Zig Ziglar

It's a funny thing about life: if you refuse to accept anything but the best, you very often get it.

— W. Somerset Maugham

Insolvency and Bankruptcy Code 2016 : Overview and Recent Developments

The Insolvency and Bankruptcy Code 2016 (the Code) is in the third year of implementation. The success of any law depends on its implementation. The Indian Government defied its poor track record on the implementation of laws by deploying unprecedented political will for effective roll out of the IBC. On June 1, 2016, the Principal and 11 benches of National Company Law Tribunal (the NCLT) and its appellate tribunal were constituted. The Insolvency and Bankruptcy Board of India (the IBBI) was established on October 1, 2016. Three Insolvency Professional Agencies were set up as membership bodies of Insolvency Professionals (the IPs), in the month of November, 2016. With a view to build a cadre of well competent IPs, 897 IPs were provided temporary licence, to be renewed after taking the Limited Insolvency Examination which commenced on December 31, 2016. The subordinate legislation was put in place by the IBBI in record time and the Code was made operational on December 1, 2016. All this happened in a little over two years.



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The Code has progressed leaps and bounds. In a little over two years, 14,000 cases have been filed out of which NCLT ordered commencement of resolution process in 1,858 cases, 152 were closed on appeal, review or settlement, 91 were withdrawn on account of settlement, 94 yielded resolutions and 378 resulted in liquidation. 1,143 cases were undergoing resolution process as on March, 2019. The resolution process yielded resolution of 94 cases resulting in the settlement of claims of FCs of Rs. 1,73,359 crore. These cases include 6 out of 12 large accounts. The overall recovery is ~43% (Rs. 74,497 crores) to financial creditors while the corresponding liquidation value was Rs. 38,443 crores. More benches have been added to NCLT. The number of licensed IPs has crossed 2400. This is, by no means, a small feat to achieve in a little over two years.

Main features of the Code

The Code introduced significant legal and structural changes in the insolvency framework comprising many new principles and concepts alien to the Indian market. The Code introduces a shift from the 'debtor-in-possession' regime to a 'creditor-in-control' regime, making it a creditor-friendly legislation. It is based on the United Kingdom's administration procedure, although a few provisions have been customised for India.

While a financial creditor is required to present a record of default before the NCLT for any initiation of the corporate insolvency resolution process, an operational creditor must issue a statutory notice to a corporate debtor in the manner provided in the Code before approaching the NCLT.

The law establishes a new discipline of insolvency professionals. These insolvency professionals perform a central role in the corporate insolvency process, including management of the debtor's enterprise as a going concern. The Code has designated the NCLT as the adjudicating authority to provide oversight of insolvency cases. The role of the court has been reduced. Creditors have been provided with greater powers to approve decisions made by the resolution professional appointed as office-holder in the corporate insolvency resolution process. Strict timelines have been provided for resolution and liquidation, shorter even than what is provided in English law.

Commencement

A corporate insolvency resolution process can be initiated in respect of a company that has committed a default. A default would have occurred when the debtor fails to pay the whole or any part or instalment of the amount of debt (see below for definition) that has become due and payable. While a financial creditor is required to present a record of default before the NCLT for any initiation of the corporate insolvency resolution process, an operational creditor must issue a statutory notice to a corporate debtor in the manner provided in the Code before approaching the NCLT. A default in payment of 100,000 rupees is sufficient to attract insolvency proceeding.

What is a debt?

The Code defines 'debt' as a liability or obligation in respect of a claim, which is due from any person and includes financial debt and operational debt. A 'claim' means a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured; or a right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

The corresponding obligation of the debtor to pay may arise out of a financial debt or an operational debt. Broadly, 'financial debt' means a debt with interest, if any, which is disbursed against the consideration for the time value of money. An 'operational debt' means a claim in respect of the provision of goods or services, including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to central government, any state government or any local authority. As per the June 2018 amendment, any amount raised from allottees under a real estate is deemed to have the commercial effect of a borrowing. This amendment was introduced to safeguard the interest of homebuyers in real estate projects facing insolvency proceedings.

Who can initiate the insolvency process?

The process for initiating a corporate insolvency resolution may be led by a financial or operational creditor, or a corporate debtor. However, the following are disqualified from initiating the process: a corporate debtor undergoing a corporate insolvency resolution process; a corporate debtor who has completed a corporate insolvency resolution process 12 months preceding the date of making of the application; a corporate debtor or a financial creditor who has violated any of the terms of a resolution plan that was approved 12 months before the date of making of an application; or a corporate debtor in respect of whom a liquidation order has been made.

Admission of application

The NCLT has to make a decision on an application filed before it within 14 days. In practice, it takes longer for the NCLT to decide application. Where the NCLT admits an application for commencement of corporate resolution process, it shall pass an order: granting a moratorium; appointing an insolvency professional as interim resolution professional (IRP); and cause a public announcement of the initiation of the corporate insolvency resolution process to be made by the IRP and invite claims from creditors. The order declaring a moratorium prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security

interest created by the corporate debtor in respect of its property, including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002; and the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

The order of moratorium does not affect the supply of essential goods or services to the corporate debtor, which shall not be terminated or suspended or interrupted during the moratorium period. The order of moratorium is effective from the date of order until the NCLT approves the resolution plan or passes an order for liquidation of the corporate debtor. Invocation and enforcement of guarantees was excluded from the purview of moratorium.

Resolution professional: appointment, tenure, power and duties

Insolvency professionals appointed by the NCLT as IRPs play a key role in the initial stages of the process. The insolvency professional to be appointed by the NCLT is proposed by the person initiating the insolvency process. The term of the IRP is 30 days from the date of appointment or till such time a resolution professional is appointed by the committee of creditors. On commencement of the insolvency resolution process and appointment of the IRP: management of the affairs of the corporate debtor is vested in the IRP; the powers of the board of directors are suspended and exercised by the IRP; and the officers and managers of the corporate debtor report to the IRP and are required to provide access to such documents and records of the corporate debtor as may be required by the IRP.

The main duties of the IRP are to: collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to business operations; prepare a list of assets and liabilities as on the initiation date; receive and collate all the claims submitted by creditors pursuant to the public announcement; constitute a committee of creditors; take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor.

The committee of creditors may, in the first meeting (and by a majority vote of not less than 66 per cent of the voting shares of the financial creditors), either resolve to appoint the IRP as a resolution professional or to replace the IRP by another resolution professional.

The Code provides that the IRP shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern. For this purpose, the IRP has been provided with the authority to: appoint accountants, legal or other professionals as may be necessary; enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions that were entered into before the commencement of the corporate insolvency resolution process; and issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern, and take all such actions as are necessary to keep the corporate debtor as a going concern. In the matter of *Swiss Ribbons*, the Supreme Court of India has held that the resolution professional cannot adjudicate the claims. Its role is administrative in the matter of inviting and collating claims.

The committee of creditors may, in the first meeting (and by a majority vote of not less than 66 per cent of the voting shares of the financial creditors), either resolve to appoint the IRP as a resolution professional or to replace the IRP by another resolution professional. The resolution professional has the same powers as that of the IRP. He is responsible for the conduct of the corporate insolvency resolution process and manages the operations of the corporate debtor as a going concern for the duration of the corporate insolvency resolution process. It is the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including its continued business operations. For this purpose, the resolution professional must undertake the following actions: to take immediate custody and control of all the assets of the corporate debtor, including the business records; to represent and act on behalf of the corporate debtor with third parties, and exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings; to raise interim finances subject to the approval of the committee of creditors, wherever required; to appoint accountants, legal or other professionals in the manner specified by the board; to maintain an updated list of claims; to convene and attend all meetings of the committee of

creditors; to prepare the information memorandum as discussed above; to invite prospective lenders, investors and any other persons to put forward resolution plans; to present all resolution plans at the meetings of the committee of creditors; and to file an application for avoidance of transactions, if any.

Committee of creditors

The IRP has to constitute a committee of creditors after collation of all the claims received against the corporate debtor, and determination of the financial position of the corporate debtor. The formation of the creditor committee is designed to facilitate active creditor participation in the insolvency proceedings. The committee of creditors comprises of all the financial creditors of the corporate debtor. However, a related party to whom a corporate debtor owes a financial debt does not have any right of representation, participation or voting in a meeting of the committee of creditors. Where a corporate debtor does not have any financial creditors, the committee of creditors shall comprise 18 operational creditors holding highest debt and a representative of workmen. The suspended board of directors and operational creditors, having 10 per cent of the aggregate of admitted claim, are entitled to attend meetings of the committee of creditors but do not have voting rights.

The committee of creditors have the right to: appoint the resolution professional in its first meeting, and to replace the resolution professional at any stage; require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process. When so requested, the resolution professional must make available any financial information within a period of seven days; approve the resolution plan; and approval certain actions of the resolution professional.

Prior approval of the committee of creditors by the resolution professional is required for various actions. The resolution professional is required to seek the vote of the creditors prior to taking any of these actions at a meeting of the committee of creditors. In the matter of *Swiss Ribbons*, the Supreme Court has held that the committee of creditors has final authority in commercial decision making and NCLT should not super impose its will on the committee of creditors.

The Code requires that the following decisions made by the committee of creditors require a vote of not less than 66 per cent of the voting shares of the financial creditors:

The IBBI has framed regulations to provide strict time lines for each stage of the resolution plan process. The regulations are directory and serve as model timelines rather than being mandatory.

appointment or removal of resolution professional; extension of corporate resolution plan process period (after expiry of initial 180 days); approval of resolution plan; and decision to liquidate the corporate debtor. The rest of the decisions can be taken by 51 per cent of the voting shares of the financial creditors. In the matter of *Shashidharan*, the Supreme Court has held that voting percentage prescribed in the law is mandatory and could not be interpreted to mean present and voting.

Resolution plan

The resolution professional invites expressions of interest from interested persons to submit a resolution plan for the corporate debtor. The committee of creditors approves the eligibility criteria and process for examination of resolution plans. The resolution professional is the manager of

An eligible applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum. A resolution plan means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern. The promoters of corporate debtors and their related parties and persons acting in concert with them are barred from submitting resolution plans by introducing the infamous section 29(a) in the Code. This was a bold move and addressed a moral hazard of assets being sold at a high discount to defaulters.

The IBBI has framed regulations to provide strict time lines for each stage of the resolution plan process. The regulations are directory and serve as model timelines rather than being mandatory.

The resolution professional is required to examine each resolution plan received by him or her to confirm that each plan: provides for payment of the insolvency resolution process costs in a manner specified by the board as priority over the repayment of other debts of the corporate debtor; provides for the repayment of the debts of operational creditors, which shall not be less

than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor and shall be paid within 30 days from sanction of the plan; provides for dissenting financial creditors to be paid ahead of creditors voting in favour of the plan but on liquidation value; provides for management of the affairs of the corporate debtor after approval of the resolution plan; provides for the implementation and supervision of the resolution plan; does not contravene any of the provisions of the law for the time being in force; and conforms to such other requirements specified by the IBBI.

Approval of resolution plan

A resolution plan, which conforms to the conditions referred to above, is presented to the committee of creditors by the resolution professional for its approval. The committee of creditors may approve a resolution plan by a vote of not less than 66 per cent of voting shares of the financial creditors after examining it feasibility and viability and by recording reasons for accepting or rejecting the plan. The resolution applicant whose plan is under consideration may attend the meeting of the committee of creditors. However, the resolution applicant does not have a right to vote at the meeting of the committee of creditors unless the resolution applicant is also a financial creditor.

The resolution plan as approved by the committee of creditors is presented by the resolution professional to the NCLT for approval. If the NCLT is satisfied that the resolution plan as approved by the committee of creditors meets the requirements set out above, it shall approve it. The resolution plan approved by the NCLT is binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. As a consequence of the order of approval, the moratorium order passed by the NCLT shall cease to have effect.

If the NCLT is satisfied that the resolution plan does not confirm to the stated requirements, it may, by an order, reject the plan and order liquidation of corporate debtor.

Time limit for completing insolvency resolution process

The corporate insolvency resolution process must be completed within a period of 180 days from the date of its commencement. The period of 180 days can be extended by the NCLT up to a maximum period of 90 days. Therefore, the total period for resolution of corporate insolvency, including the extended period, can be up to a maximum of 270 days. An extension can be granted by the NCLT once an application is filed by the resolution professional, but only if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 66 per cent of the voting shares, and if the NCLT is satisfied that the subject matter of the case is such that the corporate insolvency resolution process cannot be completed within 180 days.

An appeal by a person aggrieved by an order approving the resolution plan by the NCLT may be filed before the National Company Law Appellate Tribunal (NCLAT) on limited grounds.

Lack of closure in many insolvency cases in the mandatory 270 days has been a matter of concern. There are many causes behind the missed timelines. Many gaps were spotted in the law following its operationalisation prompting the stakeholders to frequently approach the NCLT to seek clarifications or solutions. Based on the learnings of the first few cases, the Government amended the Code twice and the IBBI tweaked the regulations over a dozen times. On top of this, section 29A was introduced in November 2017 to disqualify promoters of insolvent companies causing disruptions. With promoters disqualified, the pool of bidders shrunk further. This too caused slowdown of closure. Another cause for disruption was the amendment in the Code classifying buyers of real estate units as 'financial creditors'. An unprecedented move, the classification granted statutory right to individual unit buyers to seek initiation of insolvency against the developer. There was a spurt in insolvency filings in real estate sector pushing the already stressed real estate sector in a turmoil. This also contributed to the disruption in Code. Yet, compare to the painfully slow speed of cases in pre-Code regime, the progress made under the Code in 28 months appears to be an Olympic sprint.

Appeals

An appeal by a person aggrieved by an order approving the resolution plan by the NCLT may be filed before the National Company Law Appellate Tribunal (NCLAT) on limited grounds.

The limitation for filing appeal is 30 days. The NCLAT may allow an appeal to be filed after the expiry of 30

days if it is satisfied that there was sufficient cause for not filing the appeal, but this period shall not exceed 15 days.

Any person aggrieved by an order of the NCLAT may file an appeal to the Supreme Court on a question of law arising out of the order under the Code within 45 days from the date of receipt of the order. The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within 45 days, allow the appeal to be filed within a further period not exceeding 15 days.

Conclusion

With the introduction of the Code, the defaulter's paradise is lost. A behavioural change can be seen amongst the borrowers. Default is now taken seriously and the debtors are cuffing out money to clear their dues out of fear of losing control of their businesses and assets. In time, the Code can lead to the development of a robust corporate debt market and unlocking the flow of capital. The Code has the potential to significantly change the way business is done in India. The Government is committed to resolving the bad loans to spur lending and in turn, fuel economic growth. The Government is already considering futuristic reforms in this area.

Cross Border Insolvency

India has initiated the steps to adopt the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law). A draft Bill has been placed in public domain for discussion. The Bill is likely to be tabled in Parliament in the year 2019 and hopefully enacted in the same year. Once enacted, the law will address the key tenets of cross border insolvency – access, recognition, relief and cooperation by way of a comprehensive legislative and regulatory framework, and provide a fair, efficient, transparent and predictable mechanism to deal with cross border issues.

Group Insolvency

Recognising the need for a legal framework to deal with insolvency of group companies, the IBBI has recently set up a working group to recommend a complete regulatory framework to facilitate insolvency resolution and liquidation of debtors in a corporate group. The working group is expected to submit its recommendations shortly.

Insolvency and bankruptcy of individuals

Implementing insolvency law for individuals and partnership firms poses distinct challenges. The dynamics, conditions and factors involved in the insolvency and bankruptcy of individuals without business interest and individuals who have extended personal guarantee to corporate debtors or carry out business activities through partnership firms or proprietorship firm are likely be different. *Individuals with business are likely to behave in a way consistent with the classical economic ideals on which business insolvency systems are founded. On the other hand, the behaviour of individuals without business interest is expected to be somewhat informal.*

Recognising the complexities involved, a working group has been set up by the IBBI to recommend the strategy and approach for implementation of the provisions of IBC dealing with insolvency and bankruptcy of individuals. The Code was amended to provide three classes of individuals -individuals who have executed person guarantees for corporate debtors; individuals who are engaged in economic activities through proprietorship and partnership firms; and other individuals. While insolvent individuals face a shared core of key issues, the majority of insolvency and bankruptcy proceedings involving individuals may not involve contentious issues, voluminous stakeholders, and high amount of debt or disputes which might well be more efficiently resolved with the intervention and assistance of a trained cadre of mediators. Mediation and counseling is a known practice prevalent in most sophisticated jurisdictions. Similarly, counseling is a critical component of individual bankruptcy. The working group is presently considering measures to provide easier access, and reduce the time and cost of insolvency proceedings relating to individuals. It is also considering alternate and cost-effective pre-insolvency insolvency resolution procedures as well as role of effective counselling.

Prepack scheme

The Government is considering pre-packs as another option. In the Indian context, pre-package would also allow the focus to be on the resolution in adequate time and provide enabling alternative capital providers to participate in the process. Besides the above, it can be an innovative mechanism to prevent value erosion caused by disruption due to displacement of promoters and management; be significantly cheaper than the processes under the Code, and importantly, providing the sanctity and security of approval by the NCLT.

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Rights Issue – Indepth View

1. In this Article an attempt has been made by the author to elucidate and clarify the provisions enshrined under Section 62(1)(a) of Companies Act, 2013 dealing with right issue, practical issues pertaining to right issue, which has been supported by judicial pronouncements. To analyze and answer the practical problems being faced, it is pertinent to refer the bare text of Section 62(1)(a), which is citied herein below:

"Section 62: **Further issue of share capital**

(1) Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares such shares shall be offered—

(a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, **as nearly as circumstances admit**, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely.

(i) The offer shall be made by **notice** specifying the number of shares offered and limiting a time not being **less than fifteen days** and **not exceeding thirty days** from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(ii) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to **renounce the shares** offered to him or any of them in favour of any other person; and the notice referred to in clause (i) shall contain a statement of this right;

(iii) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, **the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company**;

(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode to all **the existing shareholders at least three days before the opening of the issue**."

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ANALYSIS

WHAT IS MEANT BY RIGHT SHARES?

To understand the meaning of right share it would be pertinent to refer the meaning of share which is defined under Section 2(84) as, "share means a share in the share capital of a company and includes stock".

Meaning of Right Shares

Right shares are those shares which are issued after the original issue of shares but having an inherent right of the existing shareholders to subscribe to these shares in proportion to their holding. Such shares must be offered to the existing equity shareholders on pro rata basis.

REASONS FOR A RIGHTS ISSUE

When a company is planning an expansion of its operations, it may require a huge amount of capital. Instead of opting for debt, they may like to go for equity to avoid fixed payments of interest. To raise equity capital, a rights issue may be a faster way to achieve the objective.

A project where debt/loan funding may not be available/suitable, company raise capital through a rights issue.

Companies looking to improve their debt to equity ratio or looking to buy a new company may opt for funding via the same route.

Sometimes troubled companies may issue shares to pay off debt in order to improve their financial health.

WHO ARE ENTITLED TO RIGHT SHARES?

The offer of right shares is given to the equity shareholders of the company. This means that the offer must be given to the persons who are in possession of equity share and not to person holding preference share.

IS APPROPVAL OF SHAREHOLDER NEEDED TO ISSUE RIGHT SHARES?

To analyze and answer this question it would be imperative to refer Section 179(1) of Companies Act, 2013 which is reproduced hereunder: "The Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting."

The offer of right shares is given to the equity shareholders of the company. This means that the offer must be given to the persons who are in possession of equity share and not to person holding preference share

From the perusal of above stated provision it is clear that in case the Act, Memorandum of Association and Article of Association are silent about the approval of shareholders for a particular matter, the approval of the Board shall be sufficient compliance.

Thereby, it can be safely concluded that there is no need to pass resolution in General Meeting for issue of Right Shares, the only requirement is passing of board resolution.

SCOPE OF DIRECTOR'S POWER

In the case of ***Sri Hari Rao v. Gopal Automotive Ltd.*** **MANU/CL/0024/1999** the court held that there was sufficient evidence available for the director to engage in the further issue of shares. Therefore, they held that they could not restrain the company from issuing further shares for the mere reason that the minority shareholder is unwilling to subscribe to the additional capital.

This similar aspect was considered by the court in the case of ***Chandrakant Mulraj v. Tata Engineering and Locomotive Co Ltd.*** **MANU/MH/0002/1983**. In this case, the court held that reduction in the market value of the shares is not a sufficient reason for restraining the company from the further issue of shares. This is because such a measure was undertaken keeping in view the interests of the company.

In the landmark case of ***Nanalal Zaver v. Bombay Life Assurance Co.Ltd.*****MANU/SC/0003/1950.** The Appellants contended that the director's exercise of discretion in issuing further shares was male fide in nature as it was done to gain control of the company, the Supreme Court, while dealing with this contention held that since the directors exercised their

discretion in a bona fide manner for the best interests of the company, mere incidental benefits to the directors would not warrant interference in the further issue of shares.

In the same manner exercise of director's discretion was dealt by the Supreme Court in the case of ***Needle Industries (India Ltd) v. Needle Industries Newey (India) Holding Ltd.*** **MANU/SC/0050/1981**. The Court did not restrain the acts of the director since he not only acted in a bona fide manner for the benefit of the company but also acted without any motive to promote his own cause. The Court also held that the exercise of director's discretion would be for an improper motive if it is solely done for their own benefit.

The requirement of a bonafide and proper purpose before the further issue of shares was first postulated in the landmark case of ***Hogg v. Cramphorn Ltd.*** **(1967) 1 Ch 254**. In this case, the court interfered in the further issue of shares even though they felt that he acted for the interests of the company, since he acted with the improper motive to control a greater share of the company.

The same principle was reiterated with greater force in the case of ***Clemens v. Clemens Bros Ltd.*** **1976, 2 All ER 268.** where court held that the director was acting in breach of its fiduciary duty since the further issue was done for the sole motive to squeeze out the majority shareholders.

The landmark case which applied the said modified principle (proper purpose + bone fide requirement) was the Supreme Court decision of ***Dale and Carrington Invt. (P) Ltd and Anr v. P.K Prathappan and Ors.*** **MANU/SC/0748/2004.** In this case, the Court invalidated the director's further issue since he was neither able to prove that such issue was for the benefit of the company nor was he able to prove that he was acting in a bona fide manner since his motive was to gain control of the company. The same principle was enunciated by the Supreme Court in the subsequent case of ***Shri V.S Krishnan and Ors v. Westford Hi-Tech Hospital Ltd. and Ors.*** **Case No. Appeal (civil) 1473 of 2008.**

Even though the existing shareholders have a preemptive right to the new stock of shares, the scope of such interference in the director's discretion is limited. It is only in exceptional situations where the further issue of shares is restrained.

Conclusion

Thus, it is clear from the above judicial pronouncements that the standard for analyzing the manner of exercise of the director's discretion has shifted from a mere bona fide requirement to a modified principle of bona fide + proper purpose. This, according to me is the right standard for scrutinizing the discretion of the director in the further issue of shares. This is because the Companies Act does not provide any guidance on the aspect of the director's discretion in issuing further shares. Thus, by adopting the modified principle, the possibility of a director exercising his discretion in an irregular manner is minimized to the maximum extent possible.

Even though the existing shareholders have a preemptive right to the new stock of shares, the scope of such interference in the director's discretion is limited. It is only in exceptional situations where the further issue of shares is restrained.

Question Bank

Q. Whether warrants, are also covered under Section 2(84) of the Act?

A. In order to answer this question, in would be pertinent to elaborate the meaning of 'share' in light of judicial precedents. The Hon'ble Madras High Court in case of **S. Viswanathan v. East India Distilleries and Sugar Factories Ltd, AIR 1957 Mad 341** held that share is incorporeal in its nature and it consists merely of a bundle of rights and obligations. Every one of these rights and obligations is created by a statue or under statutory instrument of powers which also define their extent, scope, boundary and instruments.

Further, share warrants finds place under the definition of securities contained under Section 2(h) of Securities Contract and (Regulation) Act, 1956.

"securities" includes:

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body

corporate;

(ia) ……..
(ib) ……
(ic) …….
(id) ……
(ie) ……
(ii) ……
(iia) ……..
(iii) ……

Share Warrant finds place under sub-clause (i) of Section 2(h) beneath the words "other marketable securities of like nature in or of any incorporated company or other body corporate".

Since, share warrants finds place under the above mentioned words and shares finds a specific mention under sub-clause (i) of Section 2(h), it can be validly said that share and share warrant are two different types of securities and hence, provisions pertaining to right issue are not applicable to share warrants.

Q. Whether Convertible Debentures are also covered within the ambit of Section 62(1)(a)?

A. No, the provisions of Section 62(1)(a) shall not be applicable on Convertible Debentures whether compulsory convertible or optionally convertible, in terms of Section 62(3) which is cited hereinbelow:

'Nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company.'

However, the securities other than debentures, such as convertible preference shares are covered within the ambit of Section 62(1)(a).

Q. Whether the provisions contained under Section 26-41 (pertaining to Public issue) shall be complied with if the number of allotees after renunciation exceeds the limit of 200?

As per the golden rule of interpretation i.e. 'literal rule' words that are reasonably capable of only one meaning must be given that meaning whatever may be the result.

A. In order to answer this question, it would be pertinent to refer the text of relevant Section read with judicial pronouncements and rules of interpretation.

Rules of Interpretation

As per the golden rule of interpretation i.e. 'literal rule' words that are reasonably capable of only one meaning must be given that meaning whatever may be the result. No words shall be added in, or deducted from, a statue. It is only when the words are not clear or are capable of multiple construction, statue is to be interpreted in light of the its purpose and intention.

Relevant Statutory Provisions

Section 23 of Companies Act, 2013: Public Offer and Private Placement

(1) A public company may issue securities—

(a) to public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or

(b) through private placement by complying with the provisions of Part II of this Chapter; or

(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder.

(2) A private company may issue securities—

(a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or

(b) through private placement by complying with the provisions of Part II of this Chapter.

Section 42 of Companies Act, 2013 mandates that the offer of securities or invitation by way of Private Placement , shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed [i.e. 200], in a financial year on such conditions as may be prescribed.

Section 23(1) states that public company may issue securities to public through prospectus.

The term 'prospectus' finds place under Section 2(70) in following words:

"prospectus means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in Section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate."

Form the perusal of the above definition, it can be observed that the term 'prospectus' is widely defined in the Act so as to include in its ambit any notice, circular, advertisement or any other documents, the purpose of which should be "inviting offers from the public for the subscription or purpose. The main function of a prospectus is, thus to invite offers from public for subscription or purchase of securities of a public company, since a private company is prohibited from issuing any invitation to the public to subscribe for any shares or debentures of the company."

A document in order to be called a 'prospectus', must invite offers from the public.

The expression 'Right Issue' has not been defined in Companies Act, 2013. Renunciation connotes the surrender to someone else of right to share in a right issue. Persons who are not shareholders of the company are not entitled to subscribe to the rights shares directly otherwise than on renunciation.

The limit of 50 finds place in Section 42 and is relevant only for the purpose of Section 42 and not for the purpose of Section 62. Moreover neither Section 62, nor Section 23, nor Section 42, nor any other provision of Companies Act, 2013 makes the number of 50 applicable in case of right issue entitlements to other (non-members) resulting into number of non-members renounces exceeding 50.

In view of the above it can be safely concluded that the provisions of Public Issue shall not be applicable in case allotees after renunciation exceeds the limit of 200.

Refund of Share application money

Allotment of share shall be made within a period of 2 months from the receipt of application money **[Explanation (a) to Rule 2(1)(c)(vii) of Companies (Acceptance of Deposits) Rules, 2014].** However,

Allotment of share shall be made within a period of 2 months from the receipt of application money [Explanation (a) to Rule 2(1)(c)(vii) of Companies (Acceptance of Deposits) Rules, 2014].

there is no provision relating payment of interest @ 12%. This application money will be treated as deposit after the expiry of 60 days in terms of **Explanation (i) to Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014**. The relevant portion of the said rule is cited hereinbelow:

Section 2(31) read with Rule 2(1)(c):

"(vii) any amount received and held pursuant to an offer made in accordance with the provisions of the Act towards subscription to any securities, including share application money or advance towards allotment of securities pending allotment, so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

Explanation.- For the purposes of this sub-clause, it is hereby clarified that -

(a) **Without prejudice to any other liability or action, if the securities for which application money or advance for such securities was received cannot be allotted within sixty days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within fifteen days from the date of completion of sixty days, such amount shall be treated as a deposit under these rules."**

Valuation of Right Shares

As per Section 247 of Companies Act, 2013, where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries only those who are registered with SEBI, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.

"Registered valuer" is a valuer registered with the Registration Authority under Rule 7(6) for carrying out valuation of assets belonging to a class or classes of assets; **[Rule 2(1)(f) of Companies (Registered Valuer and Valuation) Rules, 2017**]

A person in order to qualify as Registered Valuer must have passed the Valuation Examination in the three years preceding the date of making an application to be registered as Registered Valuer and must possess the prescribed qualification and experience. **[Rule 5 read with Rule 6 of Companies (Registered Valuer and Valuation) Rules, 2017**]

From the perusal of the above it can be stated that valuation of right shares shall be done by the Valuer registered with Registration Authority.

Procedure of Right Issue in case of unlisted Company

1. **Check weather articles authorise right issue:-** If not, take steps to alter the Articles.
2. **Letter of offer:-** Finalize the draft letter of offer for issuing equity shares through right issue. No specific format of Letter of offer is prescribed. However letter of offer shall contain offer price, face value of shares, Mode & terms of payment and right to renounce.
3. **Board Meeting:-** Hold Board Meeting and pass resolution for approval of letter of offer. Notice of BM to be sent atleast 7 days before date of BM.
4. **Filing of MGT-14 :-** File MGT-14 within 30 days from passing board resolution. (This provision is not applicable to private companies).
5. **Dispatch letter of offer:-** Dispatch Letter of Offer through registered post, speed post or electronic mode to all existing shareholders. Letter of Offer to be sent atleast three days prior to opening of issue.

   Note:- Hand delivery of letter of offer is not permissible.
6. **Time period of open offer:-** Offer to be kept open for minimum 15 days upto 30 days.

   Provided that in case of a private company, if ninety percent of members have given their consent in writing or in electronic mode, the period lesser than those specified shall apply.
7. **Deemed refusal:-** No Intimation in 30 days would be deemed to be refusal of the offer.
8. **Another Board Meeting:**– Hold another Board Meeting to approve issue of shares to shareholders who have opted for the Right Issue of shares. Notice of BM to be sent atleast 7 days before date of BM.
9. **Issuance of shares:**– Issue shares in accordance with the list of allottees approved in the Board Meeting.
10. **Filing of PAS- 3:-** File PAS-3 within 30 days from date of allotment – return of allotment.
11. **Issuance of share certificates:-** Issue Share Certificate within 2 months from date of allotment.

Procedure of Right Issue for Listed Companies

The Listed Entity shall in addition to compliance of Companies Act, 2013 shall comply with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

PROCEDURE:

1. **Check weather articles authorise right issue:-** If not, take steps to alter the Articles.
2. **Appointment of merchant banker and other intermediaries :** The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries only those who are registered with SEBI, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.
3. **In-Principle Approval of Stock Exchange**: The Company must obtain in-principle approval for its Rights Issue from the Stock Exchanges where the company shares are listed.

4. **Documents to be submitted before opening of the issue:** The Lead Merchant Banker shall submit the documents mentioned in Regulation 8 of chapter II of along with draft offer document.

5. **Filing of offer document:** File letter of offer atleast 30 days prior to file the same with designated stock exchanges. If SEBI specifies any change in it then issuer shall carry out such changes.

   The offer document filed with the board under this regulation shall also be furnished to the Board in a soft copy in the manner specified in Schedule V.

6. **Format of Letter of offer:** Specified in Schedule VIII of part A or E specified in regulation 57(2) (b). If a company complies conditions mentioned in clause 1 of Part E, then it is required to make Letter of Offer (LOO) according to Part E.

7. **Pre-issue advertisement of Right Issue:** Atleast 3 days before opening of the issue.

8. **Abridge LOO to shareholders:** Atleast 3 days before opening of issue.

9. **Minimum Subscription:** Minimum subscription of issue size shall be 90 % of the issue size.

10. **Record Date –** 7 working days notice given for record date.

11. **Issue Opening Date:** As according to Regulation 11 of Chapter II.

The Rights Issue must be opened for subscription for a minimum period of 15 days and Maximum period of 30 days

12. **Pricing**: The issue price shall be decided before determining the record date which shall be determined in consultation with the designated stock exchange.

13. **Over subscription:** No part of over subscription of Rights Issue shall be retained by the Listed Company; the amount has to be refunded

14. **Withdrawal of the Rights Issue:** No Rights Issue can be withdrawn by issuer after fixing the Record Date. In case, if it has withdrawn after announcing record date, no further issue of capital is allowed for a period of 12 months from the record date.

15. **LODR Requirement:**

    Intimation to stock exchange: atleast 2 days intimation to stock exchange as per regulation 29 of sebi, lord regulations 2015.

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Voluntary Liquidation made easier under IBC

INTRODUCTION

Voluntary liquidation is a self-imposed wind up and dissolution of a company that has been approved by shareholders. Such a decision will happen once a company's leadership decides that the company has no reason to continue operating. It is not ordered by a court (ie it is not compulsory). The purpose of a voluntary liquidation is to terminate a company's operations, wind up its financial affairs, and dismantle its corporate structure in an orderly fashion, while paying back creditors according to their assigned priority. The process of a voluntary liquidation resolution is initiated by a company's board of directors or ownership. Voluntary liquidation is then enacted when a resolution to cease operations (assuming that operations are ongoing) is approved by its shareholders. Voluntary liquidation stands in contrast to involuntary liquidation. A shareholder vote allows the company to liquidate its assets to free up funds to pay debts. As such, voluntary liquidation may happen due to poor operating conditions (operating at a loss or the market moving in another direction), or due to business strategy considerations. Such reasoning may be to exact a degree of tax relief for shutting down, or reorganizing and transferring assets to another company in exchange for an ownership or equity stake in the acquiring company. Voluntary liquidation may also be approved because the liquidating company was only meant to exist for a limited amount of time or for a specific purpose that has been fulfilled. In addition, voluntary liquidation may happen if a key member of an organization leaves the company and the shareholders decide not to continue operations.

VOLUNTARY LIQUIDATION IN INDIA

The provisions for Voluntary Liquidation are governed by Section 59 of The Insolvency and Bankruptcy Code, 2016 (THE INSOLVENCY AND BANKRUPTCY CODE 2016) and The Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 which was notified on March 31, 2017. Before introduction of New Regulations, voluntary liquidation of the companies was governed by the Companies Act, 1956 ("CA 1956") since the provisions as mentioned in the Companies Act, 2013 ("CA 2013") had never been notified. Now, the Government has repealed / omitted the provisions of voluntary liquidation as mentioned in CA 1956 as well as CA 2013part II of chapter XX section 304 to 323 vide notification dated March 31, 2017 and May 28, 2016, respectively.The erstwhile CA 1956 and CA 2013 had 38 and 20 sections dealing with voluntary liquidation, respectively. Chapter V of Part II of the THE INSOLVENCY AND BANKRUPTCY CODE 2016consist of only one section, i.e. Section 59, which deals with voluntary liquidation.

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VOLUNTARY LIQUIDATION UNDER The COMPANIES ACT 1956

Voluntary Liquidation under the CA 1956 had been segregated into two types, i.e. members' voluntary winding up and creditors' voluntary winding up. However, this distinction has now been eliminated under the THE INSOLVENCY AND BANKRUPTCY CODE 2016. Section 484-521 of CA 1956 deal with Voluntary winding up. The two kinds of Voluntary Winding Up are explained as follows:

A. Member's Voluntary Winding up When a declaration of solvency has been made by directors and filed with ROC.

B. Creditor's Voluntary Winding up i) When no declaration of solvency has been made and delivered by the Directors to ROC ii) When liquidator appointed by the company is of the opinion that the company will not be able to pay off its debts completely within the period as mentioned in declaration of the solvency.

The company may be wound up voluntarily when the period, if any fixed for the duration of company by its articles has expired or the event, if any, has occurred or the occurrence of which the Articles of Association provides that the company is to be dissolved and the company in General Meeting passes an ordinary resolution requiring the company to be wound up voluntarily. If the company passes a Special Resolution that the company be wound up voluntarily. The parties involved in the process were Company, Liquidator, Registrar Of Companies, Official Liquidator and High Court. The effect of Voluntary winding up was that the company would cease to carry on its business from the commencement of winding up except so far as may be required for the beneficial winding up of such business. The process is briefly described as follows:

- The Company shall appoint one or more liquidators, in a general meeting, who shall look after the affair of winding up procedure, and distribution of assets. [490 (1)]
- The liquidator so appointed, shall be paid remuneration for his services, which shall also be fixed in general meeting [490 (2)]
- The Company shall also give notice of appointment of liquidator to the registrar within ten days of appointment (493)
- Once the company has appointed liquidator, the powers of Board of Directors, Managing Director, and Manager, shall cease to exist. (491)
- The liquidator is generally given a free hand, to carry out the winding up procedure, in such a manner, as he thinks best in the interest of creditors, and company.
- In case, the winding up procedure, takes more than one year, then liquidator will have to call a general meeting, at the end of each year, and he shall present, a complete account of the procedure, and position of liquidator (496).

Voluntary Liquidation under the CA 1956 had been segregated into two types, i.e. members' voluntary winding up and creditors' voluntary winding up.

VOLUNTARY LIQUIDATION UNDER THE INSOLVENCY AND BANKRUPTCY CODE 2016

Voluntary Liquidation Process was enshrined under Section 59 of the THE INSOLVENCY AND BANKRUPTCY CODE 2016 2016 and the complete framework for the voluntary liquidation of any corporate person is described under Insolvency and Bankruptcy Board of India (Voluntary Liquidation) Regulations, 2017.In terms of Section 59 of the THE INSOLVENCY AND BANKRUPTCY CODE 2016, only a corporate person is allowed to initiate voluntary liquidation process, which has not committed any default. However, it is subjected to two conditions:

a) Either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

b) the company is not being liquidated to defraud any person.

The procedure for Voluntary Liquidation is described briefly:

i. Submission of declaration(s) to ROC, stating that the company will be able to pay its dues and is not being liquidated to defraud any person;

ii. Within 4 weeks of such declaration, special resolution has to be passed for approval of proposal of voluntary liquidation and appointment of liquidator;

iii. If the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed by the shareholders within seven days of such resolution.

iv. Within 5 days of such approval, public announcement in newspaper and website of company has to be made for inviting claims of stakeholders;

v. Within 7 days of such approval, intimation should be given to ROC and Board;

vi. Voluntary Liquidation process commences from the date of approval of creditors

vii. Submission of preliminary report containing capital structure, estimates of assets and liabilities, proposed plan of action within 45 days to a corporate person;

viii. Verification of claims within 30 days and preparation of list of stakeholders within 45 days from the last date of receipt of claims;

ix. For receipt of money due to corporate person, bank account needs to be open in name of corporate person having words 'in voluntary liquidation' after its name.

x. Sale of assets and recovery of due money, uncalled capital is realised;

xi. The proceeds from realization to be distributed within 6 months from receipt of amount to the stakeholders;

xii. The final report by the liquidator has to be submitted to corporate person, ROC, the Board and application to NCLT.

xiii. The order of NCLT regarding dissolution to be submitted within 14 days of receipt of order.

The new additional requirements in the THE INSOLVENCY AND BANKRUPTCY CODE 2016 2016 which were not mentioned in the earlier CA 1956 are :

Additional declaration by the directors that company is not wound up to defraud any person;

The liquidator shall endeavour to wind up the affairs of the corporate person within 12 (twelve) months from the voluntary liquidation commencement date.

- Only insolvency professional can, who meets the eligibility criteria as specified under New Regulations, be appointed as liquidator;
- Maintenance and preservation of various registers in the prescribed manner;
- Preparation of various reports by the liquidator as to be submitted to a corporate person, Registrar of Companies ("ROC"); and the Insolvency and Bankruptcy Board of India ("Board");
- Receipt of stakeholders claims by liquidator only in specified forms;
- The liquidator shall endeavour to wind up the affairs of the corporate person within 12 (twelve) months from the voluntary liquidation commencement date;

CONFLICTS BETWEEN THE INSOLVENCY AND BANKRUPTCY CODE 2016 AND THE COMPANIES ACT 1956

The Ministry of Corporate Affairs on June 29, 2017 came out with an important clarification bringing an end to the uncertainty over proceedings for voluntary winding up initiated under the Companies Act, 1956, once the provisions under the Insolvency and Bankruptcy Code 2016 relating to voluntary winding up were made effective. The provisions of the 1956 Act originally governed the process of the Voluntary Liquidation. Subsequently, the Companies Act 2013 was enacted which replaced the 1956 Act in a phased manner. However, the provisions of the 2013 Act dealing with the process of the Voluntary Liquidation never came into force.

Eventually, on April 01, 2017, the provisions of the Bankruptcy Code governing the process of Voluntary Liquidation came into force, overriding the provisions of the 1956 Act and omitting the provisions of the 2013 Act. It is notable that the process of voluntary

liquidation under the Bankruptcy Code is different in many ways from the 1956 Act. The matter had gone awry for the companies which were at a stage of Voluntary Liquidation under the 1956 Act, where all the major steps for the Voluntary Liquidation prescribed under the 1956 Act had been completed but the filing before the High Court had not been made. Such companies were unable to decide if they shall continue with the process under the 1956 Act or initiate the process afresh under the Bankruptcy Code. The confusion would have persisted if no clarification had been issued by the MCA in this respect.It is pertinent to note that the Voluntary Liquidation proceedings which are dealt with by the High Court have to be in accordance with the provisions of the 1956 Act, on the other hand all the Voluntary Liquidation proceedings which are dealt with by the National Company Law Tribunal (Tribunal) have to be in accordance with the Bankruptcy Code.

The notification clarified that all proceedings relating to the processes of Voluntary Liquidation which are at a stage where notice of the resolution of the shareholders to liquidate the company has been published in accordance with the 1956 Act and the company has not been dissolved before April 01, 2017, such Voluntary Liquidation proceedings should continue to be governed by the 1956 Act. This cleared the confusion of the companies who were at the advanced stages of Voluntary Liquidation Process as to whether the THE INSOLVENCY AND BANKRUPTCY CODE 2016 2016 or the CA 1956 would apply

ANALYSIS AND CONCLUSION

In the year 1999, as per Justice Eradi Committee Report, 473 winding up cases were pending for more than 25 years and in 2015, there were 1479 winding up cases pending for more than 20 years, as per data furnished by the Department of Financial Services. The Insolvency and Bankruptcy Code, 2016 was passed to ensure time bound settlement of insolvency which would in turn help in solving India's bad debt problem.

To expedite the process of voluntary winding up, Government had introduced New Regulations as the procedure of voluntary winding up under Companies Act, 1956 was time consuming and there was no prescribed qualification for liquidator. The Code mandates that insolvency professionals are to be appointed as Liquidators, such a move is welcome by corporates and professionals. The Code and Regulations provide a favorable framework for companies and limited liability partnerships. Though the process remains almost similar to previous regime, but the major change has taken place in initiation of winding up process. Earlier, company or any of its creditors could file a voluntary winding up petition but now company, directors, designated partners or persons responsible for exercising its corporate powers can initiate the winding up process. Moreover, approval of creditors representing two thirds of corporate debt is mandatory under the Code for initiating voluntary winding up proceeding.

To sum it up, now every company who proposes to wind up is required to follow Insolvency and Bankruptcy Code, 2016. The Code is quite comprehensive and wider as against Companies Act, 1956. It is expected that Code would help in overcoming delays and complexities involved in the process due to presence of four adjudicating authorities, High Court, Company Law Board, Board for Industrial and Financial Reconstruction and Debt Recovery Tribunal. It would also lessen the burden on courts as all the litigations will be filed under the Code.

* * * * *

We must learn to reawaken and keep ourselves awake, not by mechanical aid, but by an infinite expectation of the dawn.

— Henry David Thoreau

A Synopsis of the Banning of Unregulated Deposit Schemes Act, 2019 (No. 21 of 2019)

Background

The Banning of Unregulated Deposit Scheme Bill 2019 was passed by Lok Sabha on 13th February, 2019 but could not be passed by Rajya Sabha to ensure its enactment. Hence, to make the provisions effective immediately it was promulgated by the Hon'ble President of India as an Act w.e.f. 21st February 2019 in exercise of the powers conferred on him by clause (1) of article 123 of the Constitution of India. The Actwas to provide for a comprehensive mechanism to ban Unregulated Deposit Schemes and to protect the interest of the depositors and for matters connected therewith or incidental thereto. After the new Government was sworn in, it was introduced and passed as full-fledged Bill in the Lok Sabha on 19th July, 2019 (Bill no 182 of 2019). On 29th July, 2019 the Bill was also passed in the Rajya Sabha and received the assent of the President of India on 31st July 2019. It extends to the whole of India except the state of Jammu and Kashmir.

The Act provides for a comprehensive mechanism to ban Unregulated Deposit Schemes, **other than deposits taken in the ordinary course of business,** and to protect the interest of depositors and for matters connected therewith or incidental thereto. It shall be deemed to have come into force on the 21st day of February, 2019 and the banning of Unregulated Deposit Schemes Act, 2019 thereby stands repealed.

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Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have been done or taken under this Act.

This Act comprises of 44 sections under 8 chapters and 2 Schedules which are enumerated below:-

Chapter No.	Sections Covered
I (Preliminary)	1 to 2
II (Banning of Unregulated Deposit Schemes)	3 to 6
III (Authorities)	7 to 8
IV (Information on Deposit takers)	9 to 11
V (Restitution to Depositors	12 to 20
VI (Offences and Punishments)	21 to 27
VII (Investigation, Search and Seizure)	28 to 32
VIII (Miscellaneous)	33 to 44

The First Schedule deals with Regulated Deposit Schemes and The Second Schedule deals with theamendments to the Reserve Bank of India Act, 1934, Securities and Exchange Board of India Act, 1992 and to the Multi-State Co-Operative Societies Act, 2002.

Important Definitions

Deposit is defined under section 2 (4) of the Act (with few exceptions) as an amount of money received by way of an advance or loan or in any other form, by any deposit taker with a promise to return whether after a specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form.

The exceptions are as follows: -

a. Loans received from banks;

b. Loans/ financial assistance from private finance institutions (PFIs) or any registered non-banking

financial companies (NBFCs), regional financial institutions and insurance companies;

c. Amount received from or guaranteed by appropriate an government;

d. Amount received from a statutory authority;

e. Amounts received from foreign government, foreign banks, and foreign authorities or person resident outside India as per the provisions of the Foreign Exchange Management Act (FEMA) 1999;

f. Capital contributions by partners of a partnership firm or LLP;

g. Loans received by an individual from his relatives;

h. Loans received by a firm from relatives of partners;

i. Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable);

j. Amounts received by a registered Asset Reconstruction Company (ARC);

k. Amounts received under Section 34 or Section 29B of the Representation of the People Act, 1951;

l. Any periodic payment made by the members of self-help groups as per the ceiling prescribed by state/ Union territory government;

m. Amount received in the course of, or for the purpose of, business and bearing a genuine connection to such business for following and which has not become refundable

n. Payment, advance or part payment for supply/ hire of goods / services;

o. Advance received in connection with and adjusted towards consideration of an immoveable property under an agreement or arrangement;

p. Security deposit;

q. Advance under long-term projects for supply of capital goods;

A **Deposit Taker** under section 2(6) of the Act means:

a. any individual or group of individuals

b. a proprietorship concern;

c. a partnership firm (whether registered or not);

Deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute is also considered as a regulated deposit scheme.

d. a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

e. a company;

f. an association of persons;

g. a trust (being a private trust governed under the provisions of the Indian Trusts Act, 1882 or a public trust, whether registered or not);

h. a co-operative society or a multi-State co-operative society;

i. any other arrangement of whatsoever nature, receiving or soliciting deposits, but does not include

   1. a Corporation incorporated under an Act of Parliament or a State Legislature;

   2. a banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank as defined in the Banking Regulation Act,1949

Regulated Deposit Schemes are the Schemes specified in First Schedule to the Act.

Currently, schemes that are regulated by SEBI, RBI, IRDA, State Government, Union Territory Government, National Housing Bank, Pension Fund Regulatory and Developmental Authority, EPFO, Multi-State Co-Operative Society, Deposits accepted or permitted under Chapter-V of the Companies Act and any deposits accepted by a company declared as a Nidhi or a Mutual Benefit Society under the Companies Act are regulated deposit schemes.

Deposits accepted under any scheme or an arrangement registered with any regulatory body in India constituted or established under a statute is also considered as a regulated deposit scheme.

Further, Central Government, has a power to notify any other scheme as a regulated deposit scheme.

Under section 9(1) theAct requires the Authority designated by the Central government to create, maintain and operate an online database for information on deposit takers operating in India.

As per S. 2(17) "Unregulated Deposit Scheme" means a Scheme or an arrangement under which deposits are accepted or solicited by any deposit taker by way of business and which is not a Regulated Deposit Scheme as specified under column (3) of the first schedule.

The following are banned under this Act: -

In terms of Section 3:

- Unregulated deposit schemes are banned and
- No deposits taker shall directly or indirectly promote, operate, issue advertisement, solicit participation or enrolment in or accept deposits in pursuance of an unregulated deposit scheme

In terms of Section 4:

- No deposit taker, while accepting deposits pursuant to a Regulated Deposit scheme, shall commit any fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit.

In terms of Section 5:

- No person by whatever name called shall knowingly make any statement, promise or forecast which is false, deceptive or misleading in material facts or deliberately conceal any material facts, to induce another person to invest in, or become a members or participant of any URDS.

In terms of Section 6:

A prize chit or a money circulation scheme banned under the provisions of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 shall be deemed to be an URDS under this Act.

Under section 9(1) theAct requires the Authority designated by the Central government to create, maintain and operate an online database for information on deposit takers operating in India.

Every deposit taker which commences or carries on its business as such on or after the commencement of the Act shall intimate the authority designated under section 9(1) about its business in such form and manner and within such time, as may be prescribed. The said form, manner and time is yet to be prescribed.

The Competent authority under the Act shall share all information received under Section 29 with the CBI. Further, the appropriate government, any regulator, income-tax authorities or any other investigation agency having any information or documents in respect of the offence investigated under this Act by the Police or CBI, shall share all such information or documents with the Police or the CBI.

Where the principal officer of the banking company, a corresponding new bank, the state Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a Multi-state co-operative bank has a reason to believe that any client is a deposit taker and is acting in contravention to the provisions of this Act, he shall forthwith inform the same to the Competent Authority.

Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, any amount due to depositors from a deposit taker shall be paid in priority over all debts and all revenues, taxes, cesses and other rates payable to the appropriate government or the local authority.

Save as otherwise provided in the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or the Insolvency and Bankruptcy Code, 2016, an order of provisional attachment passed by the Competent Authority, shall have precedence and priority, to the extent of the claims of the depositors, over any other attachment by any authority competent to attach property for repayment of any debts, revenues, taxes cesses and other rates payable to the appropriate government or the local authority.

The Competent authority shall within a period of 30 days which may extend upto 60 days, for reasons to be recorded in writing, from the date of provisional attachment, file an application with such particulars, as may be prescribed, before the Designated Court for making the provisional attachment absolute, and for permission to sell the property so attached by public auction or, if necessary by private sale.

The offences under this Act are

- Soliciting deposits under URDS
- Accepting deposits under URDS
- Fraudulently defaulting in repayment of deposits accepted under URDS
- Failure to render service promised against URDS
- Fraudulently defaulting in repayment or return of deposit on maturity of regulated deposits.
- Failure to render service promised against regulated deposits
- Wrongful inducements in relation to Unregulated Deposit Schemes
- Failure to file intimation by deposit taker about its business, or to furnish statements, information or particulars to the competent authority

Various Punishments prescribed in the Act are

- For soliciting deposits under URDS is imprisonment for a term which shall not be less than 1 year but which may extend to 5 years and with fine which shall not be less than 2 lakh rupees but which may extend to 10 lakh rupees.
- For accepting deposits under URDS is imprisonment for a term which shall not be less than 2 years but which may extend to 7 years and with fine which shall not be less than 3 lakh rupees but which may extend to 10 lakh rupees.
- For fraudulently defaulting in repayment of deposits accepted under URDS and failure to render service promised against URDS is imprisonment for a term which shall not be less than 3 years but which may extend to 10 years and with fine which shall not be less than 5 lakh rupees but which may extend to twice the amount of aggregate funds collected from thesubscribers, members or participants in the URDS.
- For fraudulently defaulting in repayment or return of deposit on maturity of regulated deposits and failure to render service promised against regulated deposits is imprisonment for a term which may extend to 7 years or with fine which shall not be less than 5 lakh rupees but which may extend to 25 crore rupees or three times the amount of profits made out of the fraudulent default, whichever is higher, or with both.
- For wrongful inducements in relation to Unregulated Deposit Schemes is imprisonment for a term which shall not be less than 1 year but which may extend to 5 years and with fine which may extend to 10 lakh rupees.
- For failure to file intimation by deposit taker about its business, or to furnish statements, information or particulars to the competent authority is fine, which may extend to 5 lakh rupees.
- For repeat offenders under the Act is imprisonment for a term which shall not be less than 5 years but which may extend to 10 years and with fine which shall not be less than 10 lakh rupees but which may extend to 50 crore rupees.

For offences committed by deposit takers other than individuals under the Act is where an offence under this Act has been committed by a deposit taker other than an individual, every person who, at the time the offence was committed, was in charge of, and was responsible to, the deposit taker for the conduct of its business, as well as the deposit taker, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, such a person shall not be liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. However, in case it is proved that the offence has been committed with the consent or connivance; or is attributable to any neglect on the part of any director, manager, secretary, promoter, partner, employee or other officer of the deposit taker, such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Every offence punishable under this Act except offence under Section 22 & 26 shall be cognizable and non-bailable.

For wrongful inducements in relation to Unregulated Deposit Schemes is imprisonment for a term which shall not be less than 1 year but which may extend to 5 years and with fine which may extend to 10 lakh rupees.

The Competent Authority shall refer the matter to the Central Government for investigation by the CBI, if the Competent Authority has reason to believe that the offences relate to a deposit scheme or deposit schemes in which –

- The depositors, deposit takers or properties involved are located in more than one State or Union Territory in India; and
- The total value of the amount involved is of such magnitude as to significantly affect the public interest.

Role of Chartered Accountants

After understanding the law, a Chartered Accountant should inform his clients / management about:

- Compliance required u/s 10 of this Act
- They should not act in violation of Sections 3, 4 5 and 6 of the Act.

Conclusion

The present Act banning Unregulated Deposits Scheme has been issued after detailed consideration at various levels. The Standing Committee on Finance (SCF) presented its report on the subject of "Efficacy of Regulation of Collective Investment Schemes, Chit Funds, etc." in the Lok Sabha. The SCF had issued this report after consultations with various ministry officials and other stakeholders.

The Central Government had appointed an Inter-Ministerial Group to identify gaps in the existing regulatory framework for deposit-taking activities and suggest administrative / legal measures and also to draft a new legislation to cover all aspects of deposit taking.

The report of this Inter-Ministerial Group was made public for public comments. After detailed consideration a Bill to ban Unregulated Deposits Schemes was introduced in the Lok Sabha on 18.7.2018. The Bill was referred to the SCF on 10.8.2018. It was only after consideration of the SCF report that the Bill was passed by the Lok Sabha on 13.02.2019.

Reading the provisions of the Act it appears to be very harsh. But considering the fact that many ill-informed persons get lured by attractive schemes for deposits floated by unscrupulous persons, the government has considered it necessary to enact this legislation in order to protect the interests of small depositors.

An issue which remains silent in the Actis about the position of such Unregulated Deposit Schemes started before 21.2.2019. There is no specific mention about the same. There is also no provision for refund of money to depositors of such existing schemes within a particular period. However in West Bengal, The West Bengal Protection of Interest of Depositors in Financial Establishments Act, 2013 is in force which is supposed to take care of the scenario prior to 21.02.2019.

Section 10 of the Act requiring every person carrying on business or profession of receiving loans, advances or deposits to report to the Authority to be appointed by the government in the prescribed form, is be filed only once or every year on an ongoing basis is not clear. This requirement and certain other procedural requirements under the Act are dependent on the rules to be prescribed by the government which are expected shortly as now the Act has been passed in both the Houses of Parliament and has received the assent of the President of India on 31st July 2019

The Committee on Economic Commercial Laws & Economic Advisory of the Institute of Chartered Accountants of India has also published FAQs on the Ordinance comprising of 226 questions & answers on 10th May, 2019 which is available in the website of the Institute.

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The expectations of life depend upon diligence; the mechanic that would perfect his work must first sharpen his tools.

— Henry David Thoreau

Audit Profession: Expectation Gap – Setting the Tone

The start with, we need to elucidate the term **"expectation gap"**. It is the difference between what the public and the financial statement users expect from the auditing profession and what the auditors actually provide. An auditor is the one who is authorized to conduct an objective independent examination, inspect and verify the accuracy of the company's financial statements. However, the public believes audit should evolve in such a way so as to prevent company's failure and also identify and report frauds. But, the public fails to understand that auditors are assurers not insurers. The persistence of the expectations gap reflects, the fact that public expectations of audit can grow in line with what auditors can accomplish.

I propose to identify the gap as having three components namely the **knowledge gap, the performance gap and the evolution gap** and thereby address them separately. Consequent to globalization, digitization and entrepreneurial start-ups having innovative business ideas, the profession faces an unenviable balancing act requiring it to evolve and listen to the public's legitimate concerns about audit. While their remuneration has shrunk, their risks, complexity and accountability of the Auditors have gone up exponentially.

The future will be technology driven. Thus, fast evolving technology should not pose as a threat rather an opportunity to be embraced for the furtherance and sustenance of societal trust. Time has come also to reorient the Auditor's profession in the wake of extensive use of technology in the areas of accounting, new legislations, regulations, codes and standards. Also, the users should understand that the reasonable assurance given by the auditors are on the basis of their knowledge, due diligence, professional skepticism, judgment and understanding of the entity and procedures. Therefore, it is imperative for us to acknowledge the fact that technology, machines and automation cannot undermine the role of human intervention, rather only human touch can bring changes and transform a mundane task into a strategic one.

One of the biggest reasons highlighting this gap is the auditor's responsibility to detect fraud. The responsibility to prevent and detect fraud rests with the management of the company whereas the auditors are expected to detect only those frauds which materially impact financial statements. The quantum of frauds have been significantly increasing making the auditors' role more challenging as the users expect them to act as investigators and unearth every fraud possible. In recent times, in the light of frequency and scale of the fraud getting bigger & bigger, the role of banking institutions cannot be underestimated

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Chairman – Annual Conference Committee

With public sentiments turning negative and decreasing confidence in the independent auditors' work, therein a sense of fear that the professionals may stay away from the audit domain.

wherein they have portrayed complete ignorance and lack of due diligence while sanctioning or disbursing loans to borrowers and the diverted funds being used for non business purposes. Failure to report frauds have resulted in stark allegations being made at the auditors that they have colluded with the management to conduct such acts intentionally involving gross negligence. However, it is not prudent for the users to draw the conclusion that the auditors are solely for responsible for detecting frauds. It could be a bona fide omission (not part of the audit selection sample), judgmental error, scarcity of time available to the auditor not being commensurate with the volume of business.

With public sentiments turning negative and decreasing confidence in the independent auditors' work, therein a sense of fear that the professionals may stay away from the audit domain. Moreover, tightening the regulatory aspects and monitoring the quality of audit by National Financial 1reporting Authority (NFRA) has led to issues such as overriding powers of the NFRA over the ICAI.

The presumption that non-detection of fraud is a fraudulent act or is professional negligence / misconduct and that frauds can be reduced by a strict regulation like National financial reporting authority is far-fetched. Importantly, enough stress has to be placed on relevant internal controls, internal checks and balances required in the management and governance of large entities. If they are not adequate, the statutory audit, on its own and on a standalone basis, will not be effective.

The role of audit committees and the independent directors is rarely scrutinized which could enlighten the drawbacks or loopholes in the preparation of financial statements. Experts concur that most audit committees and/or independent directors work casually choosing a tick-box approach instead, offering auditors the standard "we see everything to your eyes" response.

One of the biggest reasons for audit quality dip in India could also be traced to the skewed market structure of the profession in the country. The Big Four firms have cornered the top end of the market, servicing more than 300 out of the top 500 companies listed on the Bombay Stock Exchange. Regrettably the many smaller Indian audit firms have not been able to combine and put up a rival big enough to take on the Big 4 even though they squabble over turf. The government being perfectly aware of the unholy mess, finds it preferable to go soft on the delinquent auditors who cynically, hold the keys to global investments. For a government desperate for international funds support of the Big 4 is considered critical. There is besides the sadly justified belief that the Big 4 are just too big to fail and that corporate moneybags can swing anything.

All such factors ultimately culminates to the extreme step of an auditor's resignation which signals to the world that either there are irreconcilable issues in the company's accounts or that the management is not letting the auditors do their job as the management intends to hide something.

We call upon all stakeholders connected to the audit profession, including professional accountancy bodies, audit firms, regulators, to contribute towards reducing the **"expectation gap"** in audit.

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The best things in life are unexpected - because there were no expectations

— Henry David Thoreau

Audit Profession – The expectation gap

The auditors have a unique role in society. The shareholders, investor community, company boards and regulators seek comfort from their work in terms of compliance. Management of companies increasingly expect value addition, in terms of providing useful business-related recommendations. While both groups are correct from their own perspective, it gives rise to "Expectation Gap" for the audit profession.

We need to understand the constraints before discussing potential solutions. The constraints could be as under

1. Resource – Auditors are expected to work within constraints of capability and capacity.
2. Objectivity and Independence – While in the Organisation structure the Audit Head reports to the Audit Committee, in practice performance is evaluated by the management
3. Visibility to business decisions – Many significant decisions / changes are only known post the event by when it may be too late to take corrective action
4. Understanding of business / industry practices – New industries, Emerging business models etc. provide challenges for the audit function to keep pace with the same
5. New risk areas – such as Cyber security, risk posed by introduction of AI. Bots etc. where technology is introduced without due diligence
6. Promoter / management led frauds – Auditors prefer to distance themselves by making a quiet exit, rather than taking onus of the cumbersome whistle-blower route.

What can auditors do to address the expectation gap?

1. Learn-Unlearn-Relearn – In the VUCA world the rate of change has increased dramatically. Companies, Industry, business models are changing at a pace never seen before. Auditors need to keep pace and change their approach / methodology accordingly
2. Communication – This has become a key enabler to manage interactions and to drive the points with business linkage.
3. Strategy – Acquaint with the organisation strategy to understand the business imperatives
4. Culture – Understand the corporate culture and risks associated with the same
5. Collaborate – Collaborate with external eco system for capability as nothing can any longer exist in isolation.

Ratul Neogi
Head Internal Audit and Business Excellence (Trent Ltd. – Brand Westside - A Tata Group Company), Mumbai

Management of companies increasingly expect value addition, in terms of providing useful business - related recommendations.

6. Resilience – Build professional network and de-risk financial dependency so that when taking a stand on a critical issue, other constraints do not impair objective decisions.

Auditors have to stand the test of public scrutiny and be able to justify their actions / inactions. We have chosen a noble profession that impacts public at large and hence we need to live by the code of professional ethics in letter and spirit. If we put our Country first, Organisation second and Self third, this may resolve many dichotomies we face in our work-related decisions.

Keeping this in view, Auditors in many organisations are shaping the professional contours to make a visible change. We need to make this a wider effort, while weeding out the delinquent, who are either not capable or unwilling to make the effort for changing the professional conduct.

As the saying goes, "It's what we do in the dark, will bring us to light." The toil and hard work will get recognized both for individuals as well as the profession. It's for each audit professional to seize the opportunity and make a mark.

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QUOTES

1. *Success is not final, failure is not fatal, it is the courage to continue that counts.*
2. *Sometimes we create our own heartbreaks through expectations.*
3. *The best way to avoid disappointment is to not expect anything from anyone.*
4. *The quality of our expectations determines the quality of our action.*
5. *High achievement always takes place in the framework of high expectation.*
6. *Peace begins when expectations ends.*
7. *A life that is burdened with expectations is a heavy life. Its fruit is sorrow and disappointments.*
8. *Unhappiness lies in that gap between our talents and our expectations.*
9. *Good is not good when better is expected.*
10. *Don't lower your expectations to meet your performance. Raise your level of performance to meet your expectations, Expect the best of yourself, and do what is necessary to make it a reality.*
11. *Perfection is not attainable, but if we chase perfection we can catch excellence.*

Audit Profession: Expectation Gap

Internal Auditors are tasked with bringing objectivity to the assurance functions they perform with an enterprise. They also provide a wide range of advisory services, stretching from managing risk to enhancing company performance. One of the key challenges Internal Auditors are facing today is understanding and tackling the expectation gap, which are summarized below:

- **Changes in Internal Audit over time:**

  Internal Audit was more a department they worked in, as opposed to a profession. Today they have a stature of our own, and certainly a seat at the executive level. Internal Auditors are required to be upskilled and need to provide a lot more in-depth knowledge to the management.

- **Integrated Audit:**

  An integrated audit considers the relationship between information technology, financial and operational controls in establishing an effective and efficient internal control environment. Internal Auditors, today are expected to do more integrated audits to address the expectations of the management, shareholders, media and the government.

- **Digital Challenges:**

  As digital innovation is speeding ahead, the Internal Audit profession is forced to follow. It is not a question whether the auditor needs to change, but rather than when and how fast. The auditor must find an answer of how to audit new technologies like robots and artificial machines, and should apply digital technology in their own business and audit processes, in order to keep up with the quality of audit. There is a need and opportunity for audit efficiency, quality and added value using digitalization.

- **Quality Manpower**:

  The new emerging risks with the advent of technology needs to be audited.

  Internal Auditors should possess the ability to understand the impact and to have technological competence to deal with it. To be an effective auditor he must have multidisciplinary skill sets, skills related to influencing, and skills related to effective challenge to be able to do a deeper audit.

- **Beyond Financial Compliance and Operational Risk:**

  Traditionally, Internal Auditors looked at financial risk, compliance risk, and operational risk. Now, they are required to look at the strategic risks, cultural risks, environmental risks and social risks

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related with the client business. They have to look at these reports on an aggregate basis to see if, overall, there is an indication from the results that, collectively, strategic risk is increasing or reputational risk is increasing in a given business.

- **Fraud Risk Management:**

  Internal Auditors are expected to ensure whether Fraud Risk management policy exists and whether key controls to mitigate fraud risks are identified and monitored for compliance on regular basis.

- **Business Understanding:**

  Internal Auditors are expected to have complete knowledge of the business and to align the audit agenda to focus on business priorities and global trends.

- **Cost Reduction:**

  Internal Auditors are expected to keep up with the increasing pressures on audit costs and the requirements of clients to receive value for money.

- **Continuous Audit:**

  Internal Auditors needs to examine accounting practices, risk controls, compliance, information technology systems and business procedures on an ongoing basis .

  Continuous monitoring enables auditors to continually review business processes for adherence and report the deviations to management.

Internal Auditors are expected to have complete knowledge of the business and to align the audit agenda to focus on business priorities and global trends.

  Use of analytical tools like Idea Tool and others will improve efficiency.

- **Concise Report:**

  Traditionally, Internal Auditors issue 15-page Audit Reports. They cannot expect people to read it on their mobile or tablet. Auditors need to adapt and transform their thinking to communicate the findings electronically in a concise way that conveys the message, while being able to give the level of details they want.

- **Requirement and Expectation:**

  There is a requirement and expectation-by the stockholders, by the shareholders, by our regulators, by management-that once Internal Auditors have executed their audit, they found most of the significant items. This is not a small responsibility. It creates a lot of pressure on them to be sure that whatever they are executing is correct.

* * * * *

Don't lower your expectations to meet your performance. Raise your level of performance to meet your expectations. Expect the best of yourself, and then do what is necessary to make it a reality.

— Ralph Marston

If we did the things we are capable of, we would astound ourselves.

— Thomas Alva Edison

The National Financial Reporting Authority (NFRA) Rules, 2018 – a new beginning

1. Background

1.1. The Companies Act, 2013 ('the Act') contains the provisions pertaining to creation and role of National Financial Reporting Authority ('NFRA'). Section 132 of the Act which deals with NFRA, unlike most other sections of the Act was not part of the original Companies Bill 2009 and was introduced midway without prior debates in various committees leading up to the Act. NFRA as an Authority is proposed under the Act for establishment and enforcement of Accounting Standards on Companies & Accounting and Auditing Standards on Auditors, oversight of quality of work of auditors with respect to compliance with accounting and auditing standards and investigate professional or other misconduct of Chartered Accountants with respect to the class of Companies covered by NFRA.

1.2. The quality of audit and financial reporting functions has been subject matter of widespread debate over last several years; more so, after the infamous Satyam Computers scam in 2009. Numerous provisions were introduced in the Act in the aftermath of this financial reporting scam, one of which is NFRA.

1.3. For almost 5 years after the Act was passed, the section pertaining to constitution of NFRA was not notified by Central Government (possibly, the only section remaining unnotified for so long), considering the representations from Institute of Chartered Accountants of India ('ICAI') about the multiplicity of the overlapping regulators over viewing the financial reporting, auditing and allied matters. In fact, the Standing Committee of Finance of the Parliament comprising members from ruling and opposition parties, which was headed by Dr. M. VeerappaMoily, also recommended in December 2016 that ICAI should be strengthened and overlapping regulators should be avoided whilst discussing proposed NFRA in their Report. ICAI, set up under an Act of Parliament [viz The Chartered Accountants Act, 1949 ('CA Act')], has been entrusted with functions of regulating the profession of Chartered Accountancy for last about 7 decades. It is an autonomous body administratively functioning under the Ministry of Corporate Affairs ('MCA'), with ample oversight by Government of India ('GOI'). The CA Act, regulations thereunder and other provisions have had jurisdiction over the members of ICAI only. It is note-worthy that ICAI never had any powers to regulate audit firms or the

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assisted by **CA Hasmukh B. Dedhia**

errant companies; therefore, its mechanism of disciplinary proceedings and actions was always confined only to its members (i.e. CA's). ICAI has sought powers to initiate actions against the CA firms way back in 2011 which is still awaited even for other entities /companies not covered under NFRA.

1.4. MCA has now vide notification dated November 13, 2018 announced constitution of NFRA, its role / responsibilities and its powers. This newly constituted body, as per the last draft rules, would comprise of 13 members - 4 full time and 9 part-time members under chairmanship of a former IAS officer Shri RangachariSridharan. It replaces NACAS – the body earlier entrusted with function of recommending/notifying the accounting standards. ICAI shall be represented in NFRA by three of its council members, ex-officio i.e. (i) President (ii) Chairperson of Accounting Standards Board and (iii) Chairperson of Auditing and Assurance Standards Board.

1.5. The trigger for this notification creating NFRA seems to be another scam, coming to light recently, of providing huge accommodative funding by a public sector bank to a Diamond trader group through dubious modes of Letter of Understanding, which was alleged to have remained undetected for several years. Here also it is pertinent to note that the internal audit of the said branch and functions was carried out by bank's officers who were not Chartered Accountants. Further, the Bank itself has mentioned that the fraud was of such nature and outside the books that it was not possible to be detected in the normal course of statutory audit. Yet, outcome of this Bank irregularity seems to have become the ultimate trigger for creation of NFRA. It is also argued that most of the developed economies of world have independent audit quality oversight regulators; India should match in these matters with other countries. It is pertinent to note that in many countries like US the Accounting Body is a 'not for profit' organization and unlike ICAI is not formed under an Act of parliament. Even these independent audit quality oversight regulators have been subjected to criticism for not being able to achieve the objectives they have been set up for; such criticisms along with the report of Standing Committee of Finance of the Parliament, referred to in para 1.3 above, do not appear to have been considered adequately whilst conceiving the setting up of NFRA. The CA Act being a specific Act to regulate the profession of Chartered Accountancy, question as to whether a provision made in the Act, which is a general Act for regulations of the Companies, could contain overlapping regulatory provisions; thus, possibilities of NFRA Rules being 'ultra-wires' are being deliberated despite there being non-obstinate clause at inception of S. 132 of the Act.

MCA has now vide notification dated November 13, 2018 announced constitution of NFRA, its role / responsibilities and its powers.

Whilst one may argue about need and rationale for creation of new regulatory authority instead of strengthening the present set up of regulatory mechanism within ICAI, this write up attempts to summarise notified NFRA Rules and issues allied thereto.

2. NFRA Rules, 2018

2.1. **Which Entities are covered for regulation under NFRA Rules?**

2.1.1. All companies/Bodies Corporate whose securities are listed whether in India or abroad.

2.1.2. Unlisted Public Companies having:

(i) paid up share capital of Rs 500 crores or more OR (ii) annual turnover of Rs 1000 crores or more OR (iii) Outstanding loans, debentures and deposits of Rs 500 crores or more as on the 31st March of immediately preceding financial year.

2.1.3. Banking Companies, Insurance Companies, Electricity generation/ distribution companies and companies or Bodies Corporate set up under special Acts within meaning of Section 1(4) of the Act.

2.1.4. All the overseas associates or subsidiaries of any of the above if the overseas income or net worth exceeds 20% of the consolidated income or net worth.

2.1.5. Any other company, body corporate or entity as may be referred to NFRA by GOI

2.2. By implication, the firms or individuals auditing any of the above companies or entities would be covered within the framework of NFRA rules.

2.3. It is clarified in the Rules that once if a company or entity is covered under NFRA Rules, it shall remain so covered for 3 years even after it ceases to be listed OR its paid up capital, annual turnover, loan/debentures/deposits fall below the prescribed limits as sated above.

2.4. It is estimated that about 8000 companies/ entities out of about a million would be covered by NFRA Rules

2.5. **Which entities are not covered under NFRA Rules?**

- All unlisted public companies who do not satisfy any of the threshold of paid up capital or annual turnover or loan/debentures/ deposits
- All private Limited companies, Section 8 Companies, One-person companies
- All non-company entities like Partnership Firms, Trusts, LLP's, Societies, Proprietorship.

The above entities would continue to be governed by ICAI under the framework of the CA Act.

2.6 Some issues for consideration with regard to applicability of NFRA framework:

- From the Rules notified, it appears that only statutory audit (compliance with accounting and auditing standards and oversight of audit quality) is intended to be covered under NFRA. According to one view, the professional work in nature of internal audit, tax-audit, consultancy assignments or special purpose certification would continue to be governed/regulated by ICAI only. But Section 132(4) of the Act states that "professional or other misconduct" under NFRA framework shall have same meaning assigned to it under Section 22 of the CA Act; therefore, another view is that all the professional services by a CA for the entities covered under NFRA are proposed to be covered`.
- As per provisions of Section 132(4) of the Act, where NFRA has initiated an investigation, no other institute or body shall initiate or continue any proceedings in matters of misconduct. However, as per Rule 10(3), the action in respect of cases of entities covered under NFRA for professional or other misconduct shall be initiated only by NFRA and no other institute or body shall initiate any such proceedings against such entities;. It appears that the Rule is superseding the section and the way this Rule is worded, there could be questions about process of initiation and practical difficulties could arise.
- There could be instances where a complaint is lodged with NFRA but for reasons of materiality or other reasons (say, no public interest concerns), NFRA does not initiate any action; such matters (even though valid to be examined) cannot be initiated by ICAI, considering the above Rule. Incidentally, unlike the provisions of CA Act, there is no mention of any provision for Complaints to be lodged with NFRA.
- As regards the Disciplinary proceedings under Rule 11(5), the decision will be by way of summary procedure and personal hearing will be given *'...where necessary or appropriate of being heard in person and after considering the submissions, if any, made by the auditor,.....'*.

Whereas in ICAI framework, the Disciplinary process is two levels i.e. the prima facie level

It is clarified in the Rules that once if a company or entity is covered under NFRA Rules, it shall remain so covered for 3 years even after it ceases to be listed OR its paid up capital, annual turnover, loan/debentures/deposits fall below the prescribed limits as sated above.

which is a summary procedure without personal hearing. If considered, prima facie, guilty the Board of Discipline / Disciplinary Committee of ICAI have to give option of Personal hearing. The above summary process in NFRA framework, where personal hearing is not available as a Right to the accused but is dependent on the discretion of NFRA needs to be tested legally on the grounds of Natural Justice.

MCA should modify the rules if the issues flagged earlier or later in this Article have merit.

3 Functions, Duties and Powers of NFRA

3.1 To protect the public interest and interests of investors, creditors and others associated with the entities covered under NFRA Rules by establishing high quality standards of accounting and auditing and exercising effective oversight.

3.2 To maintain the details of particulars of auditors of the entities covered under NFRA Rules. To facilitate maintenance of such details, the covered entities have been obligated to file the particulars of appointment of their auditors in Form NFRA 1 as per the Rules. Further, every auditor of the entities covered under NFRA Rules shall file a return with NFRA on or before April 30th every year in a form as may be prescribed by GOI.

3.3 To recommend accounting and auditing standards for approval by GOI, to monitor compliance thereof and to promote awareness about compliance to these standards. As per provisions of Section 133 of the Act, GOI may prescribe the accounting standards or any addendum thereto as recommended by ICAI in consultation with and *after examination of the recommendations made* by NFRA.

3.4 To oversee the quality of service of the professionals associated with compliance and to suggest measures for improvements in quality.

3.5 To co-operate with national and international organisations of independent audit regulators.

3.6 To perform such functions as are ancillary or incidental OR as may be delegated to NFRA by GOI.

3.7 The NFRA shall receive recommendations and may seek additional information from ICAI on proposals for new accounting or auditing standards or for amending the existing ones.

Under the provisions of Section 132(4) of the Act, NFRA has been given same powers as vested in a civil court under CPC 1908 for carrying out the hearings, summoning and enforcing the attendance of the parties etc.

3.8 In performing the above functions and duties NFRA may exercise the following powers under the Rules:

- Review the financial statements and reports of auditors to monitor compliance with accounting standards and seek further information from entities as well as auditors by seeking personal presence of the auditees and auditors.
- Review the working papers including audit plan, risk evaluation methodology of auditors and documentation, manner of documentation to monitor compliance with auditing standards and seek further information from entities as well as auditors by seeking personal presence of the auditees and auditors.
- Direct the auditor to implement measures for improvement of audit quality and refer the cases for overseeing the quality of audit to Quality Review Board set up by ICAI under the CA Act.
- Investigate in any matter referred to it or *suo moto* and forward the findings for enforcement. And can also take disciplinary actions in the fitting cases of mis-conduct including issuance of show cause notices to entities or auditors. Under the provisions of Section 132(4) of the Act, NFRA has been given same powers as vested in a civil court under CPC 1908 for carrying out the hearings, summoning and enforcing the attendance of the parties etc.
- Where a professional or other misconduct is proved, NFRA is empowered to (i) impose penalty of Rs. 1 lakh to five times of the fees received in case of an individuals and

Rs. 5 Lakhs (raised to Rs.10 Lakhs by 2017 Amendment Act) to ten times of fees received in case of firms AND (ii) debar the member or firm from practice of CA for period of six months to 10 years.

Some matters for consideration:

- The NFRA Rules do not seem to contain details about appellate body, framework and procedures; there could be another set of Rules notified concerning appellate Tribunal as referred to in Sec 132(5) of the Act.
- The penalty, if any, levied on the accused auditor is not paid or appealed against by depositing 10% with Appellate Tribunal within 30 days, the Authority shall inform each company where the said person / firm is auditor to appoint a another auditor. This provision, in our view, needs to have some mitigating provisions for genuine cases to avoid undue hardship.

4. NFRA vis a vis ICAI

4.1 ICAI is understood by most as self-regulatory body. This is not fully correct considering participation of government in every forum of ICAI. It must be noted that 20% of the composition of central council of ICAI (its apex decision making forum) is represented by Government appointed nominees. Further, 2 out of 5 members in Disciplinary Committee of ICAI are government nominees. The appellate authority within ICAI's framework comprises of 5 members, of which Chairman and 2 other members are government nominees and remaining 2 being past central council members whose appointment to appellate authority is approved by GOI. The Chairperson and majority of 11 members of Quality Review Board ('QRB') of ICAI are government nominees; the other 5 members being ICAI nominees are also approved by GOI. The respective roles of government nominees and central council members of ICAI are so coordinated as to bring well blended, balanced& professional approach in all its major decision-making process. There haven't been instances or cases anytime where government nominees communicating bias in functioning of any arm of ICAI.

It is reiterated that ICAI under the CA Act never had any power to regulate Firms of CA or errant companies/ auditees.

4.2 The disciplinary mechanism of ICAI with several government nominees on its Board / Committee (including on appellate body) has been working reasonably well considering the fact that most decisions rendered by it on disciplinary matters have been judicially tested and by and large confirmed by the High courts. If there were some issues pertaining to procedural delay in delivering the decisions, (which is truer for entire legal / judicial system of our country), those issues could have been otherwise resolved and strength of this regulatory forum of ICAI could have been enhanced/increased with more powers and necessary infrastructure. Of late, some perception is being created, based on ill-informed & imperfect facts, about slow decision making and ineffectiveness of ICAI to penalise the wrongdoers. It is reiterated that ICAI under the CA Act never had any power to regulate Firms of CA or errant companies/auditees. Example worth quoting (there could be several others) to counter allegation of so-called delay in ICAI's proceedings:

- In the infamous Satyam case, ICAI ran its disciplinary proceedings under challenging situations; mostly meeting on weekends to allow respondents to meet their obligations with Investigative agencies during week days and concluded penal actions on such errant members (its powers were confined to that only); ICAI concluded its proceedings and meted out the maximum punishment possible under the CA Act on the members involved within 3 years, long before other domestic and international regulators, armed with more powers, could decide on the errant company or firm of auditors. ICAI does not have powers to proceed against the firm and hence only the members involved were punished.

Therefore, the so-called 'delay' in deciding disciplinary matters by ICAI needs to be viewed in the light of prevailing circumstances and overall judicial parameters within which these proceedings are to be completed. The CA Act was amended in 2006 to improve the speed of Disciplinary matters by debottlenecking the process. Post these amendments, the pendency of Disciplinary matters which used be huge around 8 to 10 years has been brought down to 3 to 4 years and vigorous efforts are being made to reduce the pendency further despite many constraints.

4.3 Even if need for an independent authority for regulating the financial reporting and auditing functions is felt indispensable, executive machinery of GOI should be cautious enough without being too bureaucratic. In carrying out such regulatory oversight functions, it is necessary to have updated Professional knowledge of accounting and auditing as also pragmatism to meet avowed objectives. It wouldn't be out of place to briefly touch upon here the contents of the draft NFRA rules circulated earlier in June 2018 for seeking views of ICAI. These draft NFRA Rules were observed to be travelling far beyond the authority conferred under Section 132 and other applicable provisions of the Act. Secondly, the said draft Rules attempted to make NFRA almost like parallel institute requiring registration by the auditors with NFRA, providing for draft Code of Ethics under NFRA, prescribing eligibility conditions for auditors like (i) fit & proper person (ii) financial solvency (iii) minimum net worth etc. The draft Rules also empowered NFRA to make Regulations, the power, which is not conferred under provisions of the Act. All these provisions in the draft rules were, prima facie, ultra vires the Act / CA Act. ICAI made representations to MCA and MCA thankfully avoided many such overlapping or ultravires provisions in the final notified NFRA Rules. Yet, some of the NFRA Rules still need to be reconsidered to avoid overlap and being ultra vires as referred to in this write-up.

4.4 Another important issue is that of review of audit process (may it be regulatory review or quality review or some event-based review) can best be made by person or forum or authority which has domain expertise in the same field. Whether a medical professional surgeon has proficiently carried all necessary medical procedures on the patients or whether taken timely and appropriate actions in the given case of treatment can only be reviewed and commented upon by another medical professional surgeon and not by any person or authority not having the domain expertise. Similarly, in course of an audit, several judgmental calls are to be taken, numerous verification and analytical procedures are to be followed and interpretation to be drawn therefrom before arriving at conclusion. It may be easy to arrive at a wrong conclusion or decision with availability of hindsight wisdom. Whether due professional care and diligence was used in carrying out such procedures and arriving at audit conclusion at the time of audit can best be reviewed by another audit professional having domain expertise. In reviewing or investigating such matters post facto, disregarding the hindsight, is utmost important before alleging someone to be negligent or professional misconduct. Moreover, distinction between genuine bona-fide errors and intentional wrongdoings (mens' rea) would have to be duly considered in deciding the matters. If one surgery or operation in case of medical profession fails and the surgeon/medical staff later is found to be guilty of negligence, there must be penal actions on responsible persons but for such instances one does not close down entire hospital by banning it. It is hoped that NFRA would appreciate these matters in course of its disciplinary and investigative proceedings.

It is note-worthy that the CA Act or Regulations thereunder have not been changed at all despite periodic requests for changes from ICAI to make it contemporary.

4.5 It is note-worthy that the CA Act or Regulations thereunder have not been changed at all despite periodic requests for changes from ICAI to make it contemporary. The initiatives of ICAI in framing and recommending accounting and auditing standards and bringing out publications

like guidance notes and other educational materials as also in the matters of Peer review and Quality review should be of immense use to NFRA in accomplishing its objectives. It is worthwhile noting that NFRA cannot direct ICAI in framing or amending the Accounting Standards but it can recommend notifying the same to GOI with/without changes. The legal force of such notified standards becomes stronger. It is primary responsibility of the company's management and KMPs to comply with all such standards else be penalised; ICAI couldn't have enforced compliance to these and penalise the errant companies/auditees within its present framework. In fact, both the regulators can together play role complimenting each other and provide qualitative regulatory framework.

5 Conclusion

The ICAI would continue to play pivotal role as 'Partner in Nation Building' despite all odds against it. It will continue to retain its regulatory powers in respect of unlisted public companies and private companies and other entities not covered under NFRA Rules. It shall continue to critically review the international standards on accounting as well as auditing standards and making them converged to Indian conditions and notify as also forwarding the same for consideration of NFRA to recommend to GOI for notifying for the Companies. ICAI will continue to instill the best practices in financial reporting and auditing profession. Its contribution through Quality Review Board, Financial Reporting Review Board & Peer Review Board towards quality enhancement would continue to be immense and useful for financial reporting professionals. Its representation (3 out of 13 members) in NFRA, though abysmally low as mentioned earlier, would provide a professional input in deciding the complex professional and disciplinary matters. The publications of ICAI like Guidance Notes and technical guides on various professional matters as also research materials would continue to guide the corporate world as well as members. The success of NFRA would largely depend on bureaucracy giving its way to pragmatic and solution-oriented approach towards betterment of financial reporting, being open to taking help of professionals to decide on Quality, Disciplinary & Investigative matters and thrust on regulatory governance.

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Do everything with a mind that lets go. Do not expect praise or reward.

— Achaan Chah

You have to take risks.We will only understand the miracle of life fully when we allow the unexpected to happen.

— Paulo Coelho

Good is not good, when better is expected.

— Thomas Fuller

Culture by Regulation

The Chartered Accountancy profession is undergoing a sea change. On the occasion of ACAE Annual Conference the theme "Expectations from Professionals in Changing Times" is very apt. There have been several initiatives in the eco-system, which will regulate what we incidentally had to imbibe as a professional quality.

Let us step a few decades back, when working papers were an evidential record for audit and attest work done, and to regulate this peer review by ICAI became a mandate for listed companies. In many instances, if a professional in me, does not give adequate importance of working papers, audit evidence, there would be a guidance note, a recommendatory standard. These would be heart driven for a member of the esteemed institute to adapt. Yet, if the regulator finds lacunae in our approach to work, then our culture would be mandated by a regulation. Now, every auditor who needs to be appointed in a listed company is required to have a peer review certificate, and the entire foundation of the peer review certificate is audit evidence, audit working papers.

Often in a society, when the freedom is handled in a callous way, it would direct the birth of a regulation.

CA. Guru Prasad Makam
Chartered Accountant
Bengaluru

Culture if not driven by the inner values of a person, would have to be driven by an external force. If the social behaviour of a group of people tends to disturb an ecosystem, this would drive the lawmaker to step in with a rule. Not that the members are lawbreakers, we are proud of our profession, we are the engines of the country's economic growth. We are a profession looked up across the globe with awe and respect. It is not the profession, which draws the regulation, it is just the handful of professionals who gravitate regulation and the entire ecosystem will land up following it.

The world is myriad with so many rules, law, regulations and code. The birth of these is to ensure a civilised way of acceptable behaviour. This can be seen in many walks of life.

The entire traffic regulation was born when people drove recklessly which led to accidents. Training, guidelines and message to urge people to drive in a disciplined manner would serve the purpose, yet when the message does not reach the entire human chain, the need for a stick would arise. The lawmaker would make a rule on driving and the world follows.

There were instances observed where a few professionals in us used to do backdating. The event appeared to occur prior to the date of actual signing, but it gets a face lift that it was accomplished earlier just by appending a signature as if purported a couple of months earlier. There were very few professionals who used this means, not just by deceit but also more due to convenience. This led to the birth of the UDIN. Udin is a technology-based regulation, it is a game

changer. The ethos of a professional was to date it properly, and if there was an error in that space, it had to be regulated by UDIN.

Regulation is always not the best way to moral police a society, yet it is an understood norm to ensure that the public good is maintained. Even in an organization, when culture is not formulated and followed as a way of life, only a rule would define behaviour. Be it a home or a government. It could be an organization or a spiritual place, it could be a school or a global organization. Rules drive behaviour of people. Rules are born when commonly understood and accepted way of societal habitation and coexistence is treated with disdain. The rule is mostly a 'stick' approach and not a motivating method. That is how penalties and fines are born.

Lets see your house, a rule is maintained of eating habits, or worship, or a place for shoe. In an organization a rule is maintained that property of the enterprise should not be used for personal purpose. Even in a social club, protocol is maintained through rules. Regulation makes it a mandate and not a voluntary effort.

With advent of UDIN, and several other measures there were other changes in the profession. Technology determined a large portion of work, and this could cause a dent in our revenue model itself. Regulation of the government need not be rule based, it could be tech based, and this would require us to reinvent ourselves and garner resources, professional drive and tact to deal with the new technology.

There have been several instances where a change in regulation has emanated a leap shift in the method we work. These changes could cost us a revenue, and there by the prosperity in the profession, we have to develop a thought process that a change due to technology is not an 'end' it is actually a ' bend' which would lead to the next pedestal, and if we do not gear up our culture to understand, adept this, we will loose. Today, it is not the most intelligent who would prosper, today it is those who can adapt fast who would proposer.

A few of these illustrations would help me articulate my thoughts and I wish to pen this article with a belief that a few of the readers would resonate with my thoughts. There would be a tectonic shift in the profession with the advent of "culture by regulation" or "regulation by technology" – UDIN is a standing example.

With advent of UDIN, and several other measures there were other changes in the profession. Technology determined a large portion of work, and this could cause a dent in our revenue model itself. Regulation of the government need not be rule based, it could be tech based.

The cases where a change in regulation a change in technology would see a dent in our revenues can be exhaustive, but an illustrative list of these could be enumerated below

Tax refunds used to be a source of revenue for professionals, but in most instances it is a driven by a Central Processing cell, and with strengthening of technology refunds would become auto processed in the future and that would be death of a stream of revenue for professionals. Yes, it is easier to counter this, by ensuring that the client pays the right tax and not have a need for a refund – would augment professional revenue to a large extent.

The way the incorporation of the Company has been done in the new method of "spice", it is no longer the queue in the ROC office, while it just a few clicks on the website now. Most places incorporation services has become commoditised, there is a dent in our revenue model in this space. However, we can augment our revenue by concentrating on drafting more structure charter documents, more clauses relating to shareholding behaviour, this would help us to maintain our revenue, which has diminished due to the change in the process of incorporation. This is a classic case of regulatory changes, which affects our profession.

Tax scrutiny used to be a presentation skills coupled with technical knowledge. Today with the advent of e-scrutiny, which the author has personally experienced there is a large scope of more value addition work. For instance, we handled 75 cases of Tax Scrutiny in our firm in the last financial year, of which we opted for a large majority in e-scrutiny. The charges of "per hearing fee" got diminished, as it was a more transparent method. These are infancy periods, there is change in the culture of profession, no longer I would need to visit the tax departments,

and I would prefer visiting my desktop. The start has been encouraging, and this would go on into the platforms of Artificial intelligence, block chain, so on and so forth. This would go on to become a new way of profession

Many SME practioners have already lost revenue substantial, we were by process defined by visiting departments, processing paper work, making representations, all this has already found a red-light in the area of obtaining a PAN number, obtaining a TAN number, now GST registration is almost reached that space. Just a year ago processing a 'Letter of undertaking' in GST had a defined process, now an upload does the job. When we established our GST compliances practices, we felt there was a gold mine with a gush of returns, and compliances. This has slowly and steadily reduced, and has been on the way South. The direction seems clear, and the writing on the wall is visible. Going forward for most of our clients, GST returns would get easier, faster, and refunds would be tech enabled. We have to change our culture, we have to see regulations coming to amend this, and we have to adept to these changes.

The IBC law has given a change in the entire working of entrepreneurs, it would reach a metamorphosis as age takes IBC to a next level, and tax planning engagements, NCLT engagements, adding value as a professional valuer would take our services up the value chain. If we still settle for the old game that this space is not for good professionals, it would be a golden opportunity, which would go down the water.

Representing the greatest profession on earth, we cannot just take comfort on the ground that we are 'attest professionals'. I cannot fathom the idea that the regulator could do away with statutory audit or tax audit or GST audit for SME firms. We are cultured by the training we receive that our audit quality has to be very high, our professional standards should be very high, the author recognises the fact that majority of the professionals in this august profession do fabulous work, having stated that, we have to be aware that a handful of errors by professionals would cause our culture to be regulated by a mandate. Our heart should govern our culture of highest professional ethics, it should not be a dictum of government regulations. It gives me shudders to imagine if artificial intelligence can do a better job than our professed knowledge, then our role gets diminished unless we reinvent ourselves.

Let us not get into a culture of demanding extensions, let us get into a culture of demand pre-ponement. Many readers may find this blasphemous, but let us see the writing in the wall.

There has been a good revenue model in doing different audits for our clients, for the same client, similar financial year, we do different audits. It could range from statutory audit, tax audit, GST audit or transfer pricing audit. The same financial statements, gather different audit engagements and consequently additional audit fee too. We have a culture in our organisations that first the statutory audit is completed, because it has the first dead line, and it is followed up tax audits, TP audits and GST audits, as each of it have independent dead lines. The financial statements are the same, but audits are enormously different. This has led to lot of involvement in work over a period of 4 to 5 months. Many professionals in us, follow this route towards audit, and we take up this audit as and when the dead line nears us. This has been a method of working. We should try to change our audit programs, audit methodology where in, we should try to do all the 4 audits at the same time and sign it on the same date. This would help enhanced control, better documentation and also increase productivity. This is mostly driven by our culture. In case we adept to our programs and do this in a single instance the client is relieved, and so are we, we get more revenue, and more time.

Yet instead of being monitored by our culture at working, if the law changes, and if all the 4 audits get stitched into a single audit, a small regulation by the government could change the entire landscape. Right now, a few of us have a culture of doing it as the dead line approach, if all of us change this thought process the government or regulator would see the change in the professional approach, and there would warrant no change in law. If not, it would not be a surprise if the lawmaker just consolidated all these reports to a single AI driven tool, and we just land up billing for a single audit in the place of 4 audits. Let us not get into a culture of demanding extensions, let us get into a culture of demand pre-ponement. Many readers may find this blasphemous, but let us see the writing in the wall.

The world has been entangled today with global laws, which range from waste treatment to nuclear wars. There is a regulation from movie making to the cyber space. The entire regulation governs culture.

For a moment I would not border on the fence of technology in this article, it is the foundation beyond technology, it is the foundation of our profession – our ethical values, our culture, our prayer that should be strengthened.

Respect to the opposite sex when flouted, brings in Sexual harassment policies. When the principle of tax is understood as intrinsic organization behaviour, there is no fear of tax review by a government officer. The world has been entangled today with global laws, which range from waste treatment to nuclear wars. There is a regulation from movie making to the cyber space. The entire regulation governs culture.

Is it possible to realise the same and protect those areas, which are not governed by a rule number. Can we respect the society and not attract more dictums of the lawmaker. Can we clean up our place to avoid a penal provision. Prayer is a language to talk to God, lets do it with love and not by an enactment.

Recollect the innumerable times your dad asked you to come on time, lets understand the intention behind a parent. Let it not be a rule that a student needs to return home at time.

In many homes the culture of face-to-face talk has been replaced by technology. A student constantly chatting through an electronic mode would invite the wrath of a rule by his parent to restrict abuse of the chat world. If the eyes were glued to the idiot box, a rule would determine the time to have an affair with the idiot box. Let discipline and maturity be the front-runner in the way of life and let us not invite a whip in our lives.

Let rules not rule the roost. Lets determine our culture and not allow it to be a victim of law.

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Expectations from professionals at changing times – Point of view of a Company Secretary (CS)

Preface

With the dynamic surroundings in every sphere of the corporate world, the ones expected the most to be on their toes are the professionals. With the advent of the modern era of ease of doing business and the various changes and development surrounding it, professionals have to keep up with the changes with utmost diligence and meticulousness. In the recent years the role of the professionals has evolved.

Until a couple of years ago due to the lack of advanced technology things were handled in a more contemporary manner and hence professionals did not face as much active alteration and modifications in the legal realm as they do today. But, now with the advent of modern technology and everything available at the click of a mouse things move much faster paving way for further development and change in the corporate world.

This article emphasizes upon five expectations from a professional, focusing specifically on a Company Secretary (CS) with regard to changing times considering the increase in responsibilities that have been levied upon him`. It has been a long journey for a CS from being an "administrative aid to the board" to being "a KMP" with enhanced responsibilities. His role is further than what is put on paper and beyond the brackets of his job description.

Being updated

One of the first and foremost expectations from a professional by any client is that he is updated to the 'T' and is aware of the changes happening around him. This is expected out of a professional as he is the one who the client will look upto in the times of changes in legal framework and implementing the necessary changes so as to be in fair legal grounds. Not only that a professional is expected to study the current environment and be aware of any futuristic changes that may be on the cards. Being proactive in suggesting measures for better corporate governance or better accountability systems is what expected out of a professional. A true professional is expected to take initiative to take the company forward and make it rise above its peers. Adhering to best practices is the need of the hour and a CS is expected to be apprised of all the relevant changes that have an impact on the working of the company.

Clarity about the various laws

A professional is very well expected to have a thorough

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knowledge about the laws related to his work-field as well as other laws and regulations that might have an impact on the workings. He is expected to have a holistic knowledge and go beyond the realms of the known legal framework. He is to think in a multi-dimensional mode the consequences of the work that is in his hand. He is expected to think one step ahead and determine any possible changes that may be faced. As we all are aware of no law can exist in solitude and works with solidarity with other laws and regulations. While in the process of making any decision it is of utmost importance that a professional looks into all facets and determine the best option. The economy at the moment is all about survival of the fittest and a CS must ensure that his organisation is seamlessly into the law abiding concerns.

Facilitating the management

The Board, particularly the chairman, relies on the company secretary to advise them not only on directors' statutory duties under the law, disclosure obligations and listing rule requirements but also in respect of corporate governance requirements and practices and effective board processes. Professionals are expected to assist the management and the board of directors in their work by apprising them of the legal scenarios that are subject to frequent changes. The professional must ensure that he conveys any necessary information within time to the management and board of directors with regard to any changes in the law that might cause an impact on the corporate.

Company secretaries are the primary source of advice on the conduct of business and this can span everything from legal advice on conflicts of interest, through accounting advice on financial reports, to the development of strategy and corporate planning. Considering the highly volatile environment around a CS is expected to keep the board of directors updated accordingly.

The dynamics of the boardroom are changing and chairmen and directors are realising that they need specialist skills and technical knowledge in this area and they are looking to company secretaries to provide this expertise. The role of the company secretary also includes keeping the Board informed of new legislation and how it applies to them. With this increased focus on corporate governance, the role of the company secretary has been extended such that the secretary is now seen as the guardian of the company's compliance with legislative requirements and best practice.

Most Boards have a multitude of personalities. Some directors are appointed to the Board as nominees of shareholders or members, and are there in part to protect certain interests whereas some are there as independent directors and various other forms of directorships. It is important for the secretary to be aware of these in order to identify any potential conflicts. Knowing the board's expectations and considering your own duties as an officer of the company is critical.

Technology savvy

Considering the fact that everything is being digitized and the concept of paperless economy is surging, a CS is expected to have the knowledge about the applications and software that are relevant. The knowledge of a CS is tested much beyond the boundaries of the laws and sections. Considering strict timelines structured, time is of essence and being updated about the technology aids in saving time and being within time in abiding the laws.

Moreover most of the legal compliances are digitized and there is bare to minimum paperwork involved. Everything is communicated and updated via computers and software. This not only makes the submission and updating process faster, but also helps in keeping a record history of all the documents uploaded and keeping track of other important events that are to be updated in the site. Technological capabilities can put a CS ahead of his competitors.

Enhanced quality of disclosure and reporting

We are well aware of the fact that the quality of reporting and disclosures made is being expected to be top notch with every passing day. The reliance on the disclosures and reporting is immense whether be it by the stakeholders or by the company itself. In such a situation it is imperative for the CS, being the professional in handling these reporting requirements to be well educated about the proper and latest format and mode of disclosures and reporting. He must also ensure that no vital information is being missed out and also that no information is being conveyed in a wrong manner. He must ensure that the information being dissipated is a hundred per cent accurate and devoid of any misinformation.

Another allied aspect to a CS's job is, understanding the nature of the business or the organisation so as to

know what exact laws are to be abided by. A strong understanding of the nature of organisation saves ample time since the CS does not have to blindly look out for any random reporting to be done. He knows exactly what disclosures and reporting are to be done in relevance to the organisation. Knowledge of specific reporting obligations is of utmost importance. The company secretary must familiarise themselves with all aspects of a company's obligations to mitigate risk and ensure continuity of business.

Expectation by a professional

The article dealt with certain expectations from the CS but we would also like to discuss in brief about certain expectation of a CS from the organisation he is working for, the fellow professionals and most importantly the government.

Expectations from the organisation

A CS expects that the organisation that he is working for has the appropriate technology facilitating his work of filing, keeping of records, updating various authorities etc. He also expects a team under him that is well conversant with the various laws and regulations. He expects to have his suggestions taken into considering that have been made keeping the well-being of the organisation. A CS also expects that his work will be appreciated and valued accordingly. His pay is expected to be in parity with the tremendous amount of work that he has to do with responsibility. The other departments must also help the CS in terms of providing timely and accurate data and information. AA CS also expects that the management and the board of directors provide him with all the necessary documents within the necessary timeframe to avoid last hour rush.

Expectation from fellow professionals

A CS cannot work alone and needs to work in unison with the rest of the professionals. This calls for the professionals to have a uniform stance on certain issues. He also expects that the fellow professionals do not resort to illegal and unwanted means to procure name and money. A professional's identity lies in his honesty towards his profession, hence the professionals must act with utmost dignity and honesty. Also, fellow professionals should have uniformity in terms of charging fees for their work and it should not be too high or too low for that matter as this creates distrust. Moreover, when a CS works with another professional he expects that there will be timely communication of data and information and that any documents signed will be done so after proper scrutiny.

Expectations from the government

A CS has recently been bestowed with tremendous responsibilities and his position has been honoured by including it in as KMP. Also a CS has been given the authority to represent in various other forums such as for GST cases, arbitration cases and IBC cases. A CS is held accountable for a load of tasks and thus he expects that the government acts on certain suggestions or representations being given by the professionals from time to time in order to propel the profession to greater heights.

A CS expects that the government will ensure that his rights as a professional are also protected and that he is paid his dues within time and rightly earned so. Also he expects representatives to be included in decisions taken by the government in sectors where he is involved as a professional as that gives a working aspect too from someone who first hand has handled the scenarios and situations. Another point is it will be appreciated if the sites that deal with reporting and updating work well as technological error also acts a hindrance in effective performing of duties by a CS.

Conclusion

It is an undoubted fact that with changing times the role of a CS is being enlarged in terms of both quality and quantity. It is not merely restricted to paperwork. A CS has to shoulder the responsibility of effective communication and acting as a communicating medium between the management and the stakeholders. He is responsible for maintaining the legal balance in an organisation. Being an 'officer in default' imposes tremendous responsibility on a CS and hence he must be aware of his organisation and must adapt to a proactive method of keeping law and order in the organisation.

On the other hand a CS also expects certain help and support from his fellow professionals, government and the organisation which is quite fair considering the fact that unlike many other jobs he has to deal with a varied group of people and stakeholders.

We hope that CS as a profession grows further and forms an irreplaceable pillar in an organisation and the nation's economy.

*****

"Code of Ethics" – 2009 Vs 2019

The ethical requirement of any Accounting Body should be based on;

Integrity

Objectivity

Independence

Confidentiality

High technical standards

Professional competence

And Ethical behaviour

The highest standards of ethical behaviour can only evolve from the conduct of members. The exercise of the highest ethical standards, which ensures the progress of our Institute,is in the hands of the Members themselves.

A distinguishing mark of our profession is acceptance of our responsibility to the public which rely on the objectivity and integrity of a professional accountant like us.

CA Ranjeet Kr Agarwal
Central Council Member, ICAI
Chairman Ethical Standards Board of ICAI
Kolkata

The Motto of our service in society is the **"Pride of Service in preference to personal gain"**. The Institute of Chartered Accountants of India is the 2nd largest Accounting Bodies of the World which came into existence in 1949 enacted by an act of the Parliament.

The Council of the ICAI has brought **for the 1st time "Code of Ethics"** in **1963**.Since then it has been revised/updated many times and in 2009 ICAI Code of Ethics incorporated the provisions of International Federations of Accountants (IFAC) code of ethics also.You should be glad to know that some Provisions of ICAI Code of Ethics are more stringent than IFAC Code of Ethics.

We are today complying the **2009 Code of Ethics**, some provisions of which has been dicussed as below;

1. Goods and Service Tax

Q1. Whether a member in practice can engage as GST practitioner?

A. Yes, a member in practice can engage as GST practitioner, as the activities to be performed by GST practitioner mentioned in CGST Act, 2017 read with CGST Rules, 2017 are within the purview of a member in practice as per the provisions of Chartered Accountants Act, 1949 and Regulations framed thereunder.

Q2. Whether a member who has enrolled as GST Practitioner can act as Tax Return Preparer for GST?

A. Yes, as per Rule 83(8) of CGST Rules, 2017, a GST practitioner can inter alia undertake the assignment of filing returns under the CGST Act, 2017.

Q3. Whether a member holding CoP, who is an employee in a CA Firm, can be enrolled as GST practitioner?

A. Yes, he can enrol as GST practitioner (as this is not an attest function), subject to contractual obligations, if any, with the employer.

Q4. Can a member/Firm conduct training through seminars etc. on GST?

A. Yes, a member/Firm can conduct training through seminars etc. on GST. However, the member / Firm may only invite its existing clients to such training programmes. Inviting individuals or entities other than existing clients may amount to solicitation, which is prohibited under Clause (6) of Part-I of First Schedule to The Chartered Accountants Act, 1949.

Q5. Whether it is permissible for a member to mention himself as "GST Consultant"?

A. No, in terms of provisions of Clause (7) of Part-I of First Schedule to The Chartered Accountants Act, 1949, it is not permissible for a member to mention himself as GST Consultant.

2. On Know your client Norms

Q1. Do ICAI has "Know your client" (KYC) Norms for Members?

A. Yes, ICAI has KYC Norms for Practicing Members.

Q2. To which assignments do the KYC Norms apply?

A. KYC Norms apply to all attest functions. "Attest Functions" for the purpose of KYC include services pertaining to Audit, Review, Agreed upon Procedures and Compilation of Financial Statements.

Q3. Since when are the KYC Norms applicable?

A. The KYC Norms are mandatorily applicable for engagements accepted on or after 1st January, 2017.

3. Director Simplicitor

The member in practice has been, vide the Clause (11) of Part-I of First schedule to The Chartered Accountants Act, 1949, generally allowed to be Director Simplicitor but not Managing Director or Wholetime Director. The Code of Ethics, 2009 defines Director Simplicitor as :-

"Director Simplicitor" means an ordinary/simple Director."

However, questions have been asked on the ambit of Dirctor Simplicitor . Let us see a couple of them.

Q1. Whether a member in practice can be a Director Simplicitor of a company?

A. Yes, a member in practice is permitted generally to be a Director Simplicitor in a company provided he is not a Managing Director or Wholetime Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings. Specific permission of the council is not required to be Director Simplicitor.

Q2. Whether a member in practice, who is Director Simplicitor may affix the common seal of the Company to any document or draw/ endorse cheque on the account of the company?

A. A member in practice who is generally permitted to be Director Simplicitor in a Company may affix the Common Seal of a Company if it is part of statutory requirement of the Director. However, such Director is not permitted to endorse/sign cheques on account of Company.

4. On Tenders

Q1. Whether members in practice can apply to tenders for professional work?

A. Yes, it is permitted as per proviso (ii) to clause (6) of part I of the First Schedule to the Act. This should be read with the Council Guidelines dated 7th April, 2016.

Q2. What is the restriction in Council Guidelines dt. 7th April, 2016?

A. It says that a member of the Institute in practice shall not respond to any tender issued by an organization or user of professional services in areas of services which are exclusively reserved for chartered accountants, such as audit and attestation services if minimum audit fees is not prescribed in such tender. However, such

restriction shall not be applicable the areas are open to other professionals along with the Chartered Accountants.

Q3. Can a member approach ICAI for complaint against exorbitant EMD mentioned by an entity in a Tender ?

A. Yes, the Council at its 301st Meeting held on 20th-22nd December, 2010 decided that interference with the practices prevailing for requirement of EMD/Deposit is not required. However, on having received complaint/ instance of exorbitant EMD/ Deposit, the Ethical Standards Board may look into the matter on case to case basis. The Council also recommended that a cost sheet be maintained by members of the Institute responding to tenders, incorporating details of the costs being incurred therein having regard to number of persons involved, hours to be spent, etc, so that the same may be called for by the Institute for perusal.

5. Mentioning of ICAI Courses on the professional documents

Q1. Can a member in practice mention the Certificate course of a Committee of ICAI successfully completed by him?

A. On successful completion of a certificate Course, a member is awarded a certificate to this effect. However, a certificate course does not grant any qualification, and therefore it should not be mentioned by the members as qualification along with their name.

Q2. Can a member in practice mention the Diploma Course of a Committee of ICAI successfully completed by him?

A. On successful completion of a Diploma Course, a member is entitled to use the letters depicting course name after his/her name to indicate that he/she has completed this course conducted by the Institute of Chartered Accountants of India ike DISA.

6. On the quantum of Professional/ Audit Fees

Q1. Whether quoting lower fees in the Fees charged by the predecessor accountant is permissible,?

A. Yes, after repeal of erstwhile Clause (12) of Part-I of First schedule to The Chartered Accountants Act, 1949, vide Chartered Accountants (Amendment) Act, 2006; undercutting would no longer result in professional misconduct of the member.

Q2. Is there a scale of minimum Audit Fees mandatory for members?

A. No, as the erstwhile Chapter XII of Council General Guidelines, 2008 i.e "Minimum Audit Fee in respect of Audit" has been repealed by the Council at its 306th Meeting held from 7th to 8th June, 2011.

Q3. Is the **Minimum Recommended Scale of Fees for the Professional Assignments done by the Chartered Accountants issued by Committee of Capacity Building mandatory?**

A. The **Minimum Recommended Scale of Fees for the Professional Assignments** is to be charged as per the work performed for various professional assignments. The fee has been recommended separately for Class A & Class B cities. As the name suggests, this scale is not mandatory, and only recommendatory. It says that members are free to charge varying rates depending upon the nature and complexity of assignment and time involved in completing the same.

7. Advertisement of Teaching/Coaching activities by members in Practice

Q1. Can a member in practice advertise his teaching/ Coaching activities?

As per Announcement dt.18.5.2017 issued by ICAI, an advertisement of Coaching /teaching activities by a member in practice may amount to indirect solicitation, as well as solicitation by any other means, and may therefore be violative of the provisions of Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

In view of the above, such members have been advised to abstain from advertising their association with Coaching /teaching activities through hoardings, posters, banners and by any other means, failing which they may be liable for disciplinary action, as per the provisions of Chartered Accountants Act, 1949 and Rules /Regulations framed thereunder .

Subject to the above prohibition, such members may put, outside their Coaching /teaching premises, sign board mentioning the name of Coaching/teaching Institute, contact details and subjects taught therein

only. As regards the size and type of sign board, the Council Guidelines as applicable to Firms of Chartered Accountants would apply.

These are other Guidelines framed by ICAI like Advertisement by Members in Practice,Website Guidelines and more recently UDIN Guidelines

"Non-Adherence to the Guidelines and Code of Ethics will lead to Professional Misconduct as per Schedule I and II of The Chartered Accountant Act,1961"

New ICAI Code of Ethics, 2019

Let us first understand the new Code of Ethics which is going to be effective from **1st April,2020**. Some of the major provisions of New Code of Ethics viz-a-vis suitable comparision with ICAI Code of Ethics 2009 are discussed below;

Drafting conventions

As compared to existing 2009 Code, there is significant change in drafting conventions, which is necessary to understanding of the Code.For example, there is use of "shall" in the new Code as opposed to "should" in the existing Code, making compliances mandatory.

Independence Standards

Code of Ethics, 2009 has Section 290 *(Independence –Assurance Engagements*). The revised 2019 Code has however 4A – Independence for Audit and review engagements, and 4B – Independence for assurance Engagements other than Audit and Review engagements , which lays down separate standards for audit and other assurance engagements.

Breach of provisions of the Code

If a professional accountant identifies a breach of any other provision of this Code, he shall evaluate the significance of the breach and its impact on his ability to comply with the fundamental principles. He shall take whatever actions that may be available, as soon as possible, to satisfactorily address the consequences of the breach.

The accountant shall determine whether to report the breach, for example, to those who may have been affected by the breach, a member body, relevant regulator or oversight authority.

Depending upon the significance of the breach, it may be necessary to terminate the audit engagement or it may be possible to take action that satisfactorily addresses the consequences of the breach.

Management Responsibilities

This is another feature which was no there in ICAI Code of Ethics 2009 edition.Firm shall not assume a management responsibility for an audit client. The Code contains a description of activities that would, and would not, be generally regarded as a management responsibility and requires the firm to be satisfied regarding certain responsibilities that management must accept in order to avoid the risk of the firm assuming a management responsibility when providing non-assurance services to an audit client. The examples of activities that would be considered a management responsibility includes:

- *Setting policies and strategic direction.*
- *Hiring or dismissing employees.*
- *Directing and taking responsibility for the actions of employees in relation to the employees' work for the entity.*
- *Authorizing transactions.*
- *Controlling or managing bank accounts or investments.*
- *Deciding which recommendations of the firm or network firm or other third parties to implement.*
- *Reporting to those charged with governance on behalf of management.*
- *Taking responsibility for:*
  - *The preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework.*
  - *Designing, implementing, monitoring or maintaining internal control.*

Rotation

The partner rotation exists in ICAI 2009 Code also. The difference now is that the Partner rotation in the existing Code is – 7 years' time on period, and 2 years cooling off period. Now, while there is no change in time-on period, the cooling off period for Engagement partners has been increased from two to five years, while for Engagement Quality Control Review it is 3 years. It remains same at 2 years for all other key audit partners.

There is no requirement for audit firm rotation under the

IESBA code. The Section 550 has been incorporated by us to include the Firm rotation requirements under the various Acts/ regulations like the Companies Act, 2013, for stock brokers, for mutual funds, etc., just to have a one point guidance point on the aspect of rotation.

It has been clarified that Partner rotation and Audit Firm rotation (wherever prescribed by a statute) will co-exist.

In case of Companies where the members of the Company prescribe a shorter time on period in accordance with the provision under the Companies Act, 2013, such shorter period shall prevail.

The proprietorship Firms are not required to follow the partner rotation rules.

"Clearly insignificant" dropped, 'acceptable level' defined

In the new Code, the application of safeguards is required, when necessary, to eliminate threats or to reduce them to 'an acceptable level' (level which a reasonable and informed third party would conclude, is acceptable). In the existing Code, safeguards are to be considered if a threat was other than "clearly insignificant".

Public Interest Entities (PIEs)

The Code introduces a new definition of 'Public Interest Entities'. This is important, since there is difference between independence requirements applicable to clients which are public interest entities, and other clients.

Preparation and Presentation of Information

There is comprehensive guidance on addressing Professional Accountants in service responsibilities when preparing or presenting information. There is prohibition on exercising discretion when preparing or presenting information with intent to mislead or inappropriately influence contractual or regulatory outcomes. There is enhanced guidance to assist the accountants in disassociating from misleading information

Restrictions on Activities During Cooling-off

There is continuing prohibition on consulting with engagement team or client on technical / industry-specific issues, transactions or events.

Further, new restrictions:- like acting as "client relationship" partner, undertaking any other role or activity (including providing NAS) that would result in individual having significant or frequent interaction with senior management or TCWG, or directly influencing outcome of audit

Professional Judgment and Professional Skepticism

This is newly introduced - For all Professional Accountants to emphasize the importance of obtaining an understanding of facts and circumstances when exercising professional judgment.

Definition of Relative

ICAI Code of Ethics. 2009 replaced the definition of "close" family" and "immediate family" appearing in IESBA Code to "relative".

"Relative" – A person shall be deemed to be a relative of a professional accountant , when he is related to the professional accountant in the manner mentioned in Section 6 of Companies Act, 1956

"Close family" – A parent, child or sibling , who is not an immediate family member

"Immediate family" – A spouse (or equivalent) or dependent

The new Code uses "Relative" with reference to entities which are Companies (as defined in the Companies Act, 2013, and uses the terms "Close family" and "Immediate family" for entities other than Companies.

Conclusion:

ICAI Code of Ethics 2009 are very robust one and backbone of Accounting Profession in India applicable on Membership at large. With the changing dynamics and quantity and quality of Profession, Code of Ethics keep changing and that'swhy new Code of Ethics, 2019 are being made mandatory from 1st April, 2020 which are more robust and practical.

Ethical Standard Board of ICAI monitors the Code of Ethics to be followed by Members. Please visit esb.icai.org or follow Twitter @BoardEthical

* * * * *

Happiness- The Krishnaconciousness Way

Hare Krishna!

When I qualified and started my practice, with no income base, I thought I would be happy if I start earning a reasonable monthly income. Soon I achieved that reasonable amount, but the reasonableness disappeared. I set a second milestone, so that may be I could rent a better flat with more comforts, and achieved. The next milestone that was automatically set was buying a descent car. When that was achieved, the milestone moved away further to owning a decent flat. Till date I am struggling to achieve that milestone of happiness. A child when born, is all happy. Gradually as he grows matured, happiness finds its path away. Today we have bigger homes, but not harmony in the family. Post independence, we all know and claim that we (India) have witnessed significant development over last 70 years. This **independence** & **development** is measured in terms of growing per capita income and consumption, construction of national highways, sky-scrappers, large factories, spaceships, rockets, missiles, nuclear bombs. When we look back at our history, we find that **India** [‘**Bharat**’] has suffered from invasion by different international communities eg. Mughals, over several years in the past. Many forces came to Bharat and ruled here from time to time, and exploited the land (Bhumi) and its people, politically, physically, economically, socially, pshychologically & spiritually. The last such era of exploitation and slavery was ruled by British Empire since 1757 to 1947, almost 200 years, before our much celebrated independence.

Through archeological surveys we have found signs of many ancient civilizations eg. Mohanzodaro, Harapppa which indicate that once upon a time this land was very highly developed, rich in resources, architecture, culture and values. Over the ages, this land has undergone socio-economic downgradation (under - development) due to series of such exploitations.

For a while one may sit and think of what this so called development has given to us. Have we become happier than before is the question to be asked. Researches show that with such economic & scientific development, stress has been rising in our lives, leading to increasing psychiatric problems.

CA Arun Kumar Agarwal
Chartered Accountant
Past President ACAE, Kolkata

Cases of divorce, suicide are apparently on a rise. As per a recent study, a student kills oneself every hour in our country, and three students every day in West Bengal alone. Usually we think we can be happier through our own sense gratification. In Bhagvat-Gita, Lord Krishna says (2.60) the senses (Eye, Ear, Nose, Tongue, Skin) are so strong that they forcibly carry away the mind even of a man of discrimination who is endeavoring to control them. It is further stated that (2.62) while contemplating the objects of the senses (Beauty, sound, smell, taste, touch), a person develops **attachment** for such sense objects. From such attachment **lust** develops, and from lust **anger** arises. Krishna said (2.63) from anger complete **delusion** arises and from delusion **bewilderment of memory**. When memory is bewildered, **intelligence is lost**. This loss of intelligence causes our **downfall** into the material pool.

Thus, one's attempt of becoming happier through sense - gratification makes him fall into the trap of downfall. Instead of becoming **independent** and **happier**, one is moving towards **lust** (to get), **attachment** (towards what we have) and **fear** (of losing). As a result, there is increase in **stress**, **corruption**, **cheating**, **fraud**, **dishonesty**, **violence** etc.

In this journey of so called material development, if we stop for a while and think why we are moving towards such trap of misery in spite of all our efforts to become happier, we will find probably the biggest mistake that we committed is that we have left our spiritual knowledge (Adhyatmik Gyan) behind. Bharat is the bhumi from where **Sanatana Dharma** was spread in the whole world. **Bharat** has always been the **capital of Santana Dharma**.

A question may be asked what is Santana Dharma. The Hindi/Sanskrit word 'sanatan' means **eternal**, and the word 'Dharma' means **property**. The property of water is to flow, the property of fire (Agni) is to give heat. A property of any subject is something (some characteristic) which is inseparable from it. Similarly, the property (Dharma) of living being is to serve ('seva') or 'Karma'. According to Bhagvadgita there is no living being without service (Karma). We are always serving one or the other. At home we are serving our spouse, children, parents. In office, we serve our customers, employers. In society we serve the people. But whom should we actually serve and whom are we serving is a fact to be reconsidered. **Bhagvat-Gita**, our most holy vedic scripture has an answer to this. Bhagvat-Gita, the conversation between Lord Krishna and Arjuna, just before the commencement of the Battle of Kurukshetra in Mahabharata is universally accepted as the **essence of all knowledge** on spirituality. In Bhagvat-Gita, Lord said all living entities are parts of him (Krishna). He is the source of all spiritual and material worlds. Everything emanates from him. Therefore, everyone should serve him (Krishna). He is any way the ultimate enjoyer of everything. We are all permanent servants to the Lord by nature. Lord Chaitanya Mahaprabhu said "Jiber Swarup Hoy Krishna Nitya Daas". However, in due course of time, we forgot our relationship with Lord. We forget that he is the supreme, he is the Master and we are all servants. Instead we have a tendency to master everything. We often ignorantly make a mistake in thinking that we can be happy through our own efforts, even without the mercy of Lord. Due to this small ignorance, we all are running towards sense gratification, which is causing our downfall through the cycle of attachment, lust, anger, delusion, bewildered memory, loss of intelligence etc.

To get real freedom from the miseries/ worries of life, one needs a permanent development, which is possible by accepting a life of austerity. Bondage to material life is the only alternative. Therefore we have to choose between a life of austerity or a life of bondage to material life. A life of austerity requires us to obey the laws of God.

A further thought would reveal that a man not following the laws of God is no better than an animal. Srila Prabhupada, the founder Acharya of ISKCON explained, all scriptures, all religious principles are meant to elevate man from the animal platform to the human platform. Therefore, a person without religious principles, without God conciousness, can be logically said to be at par with an animal. Humans and animals both engage in the four common activities of **eating**, **sleeping**, **mating** and **defending**. All our activities/ engagements are only our efforts to carry out these four common activities in a better way. Then how do we differentiate ourselves from animals. The special prerogative of a human being is that he has a developed level of intelligence compared to that of an animal. Therefore, by utilising such prerogative one should once ask the questions-

(i) Who am I ?

(ii) Why did I fall into the life of miseries?

(iii) Is there any remedy?

(iv) What is my relationship with God

(v) What is my duty?

Once we raise these basic questions about ourselves, we will come to know that I am a soul and not a body. I am a permanent part of lord Krishna. I am a permanent servant to him. Therefore my duty is to serve him and to always remember that I am not independent, and I cannot become the master. This is called **self- realization**. Until and unless one raises these basic questions about ooneself and achieve this self realization he cannot logically claim to be better than animals. So we must use this special prerogative of human being, and practice spirituality.

In Bhagvat-Gita (2.47), Krishna says "you have a right to perform your prescribed duties, but you are not entitled to the fruits of action. Never consider yourself the cause of the results of your activities, and never be attached to not doing your duty". The lord advises not to be in-active but to perform our prescribed duties without being attached to the results. Work with results becomes the cause of bondage. Disinterested obligatory duties doubtlessly lead one to the path of liberation.

The lord says in Bhagvat-Gita (2.71) that "a person who has given up all desires for sense gratification, who lives free from desires, who has given up all sense of proprietorship and is devoid of false ego - he alone can attain real peace."

Unless one is situated transcendentally, it is not possible to cease from sense of enjoyment. But one who has tasted the beauty of the Supreme Lord, in the course of his advancement in Krishna consciousness, no longer has a taste for dead, material things.

Therefore, Bhagvat-Gita teaches us that once we are free from attachment to material things, and indifferent (**Sama-bhaav**) to different situations, we can be really happy, independent from the problems of material life. It is admittedly not easy, due to the presence of Maaya (the external potency of Lord Krishna), replied Krishna on a question raised by Arjun. However, he preached that with continuous practice, one can gradually achieve this position by developing attachment for the higher taste of Krishna consciousness, and simultaneously leaving the lower taste of sense gratification.

Krishna consciousness is the only way to bring back moral, values & ethics in our life. Otherwise, our problems are bound to increase with a material development without spirituality. Krishna consciousness is the Way to Happiness, the Way to make this world a better place to live in. Hare Krishna!

* * * * *

Creating perfection will also create expectations for the future

— Rick Helders

Expect much from yourself and little from others and you will avoid incurring resentments.

— Confucius

Did what I came here to do. What I've done I've done with sincerity and to the best of my ability. You can't expect much more from life.

— Bruce Lee

Activities at a glance ...

Annual Conference - *Expectations from Professionals in Changing Times!* on 10th August, 2019 at Taj Bengal, Kolkata.

Lighting of Lamp (L-R) CA Sumit Binani, Chairman, EIRC of ICAI, Speaker CA Anand Prakash Jangid, Bengaluru, Speaker CA Yogesh A Thar, Mumbai, Speaker CA A Jatin Christopher, Bengaluru, CA Santosh K Roongtaa, Chairman - Annual Conference Committee, CA Vasudeo Agarwal, President-ACAE, CA Anup Kr Sanghai, Convenor- ACAE CA Study Circle and CA (Dr.) Debashis Mitra, Central Council Member, ICAI and Vice President-ACAE.

KNOWLEDGE SESSION-I

CA Santosh K Roongtaa, Chairman-Annual Conference Committee, Speaker CA A Jatin Christopher, Bengaluru, Speaker CA Yogesh A Thar, Mumbai, CA Vasudeo Agarwal, President-ACAE, Speaker CA Anand Prakash Jangid, Bengaluru and CA Anup Kr Sanghai, Convenor-ACAE CA Study Circle.

Cross-section of the participants.

Activities at a glance ...

Annual Conference - *Expectations from Professionals in Changing Times!* on 10th August, 2019 at Taj Bengal, Kolkata.

Group Photograph.

KNOWLEDGE SESSION-II

Panel Discussion:
(L-R) Panelists - CA Dilip B Desai, Chairman, Baker Tilly DHC India, Mumbai, CA Yogesh Gupta, IPS, Special Director-ER, Enforcement Directorate,Kolkata, CA Nilesh S Vikamsey, Past President-ICAI, Mumbai, (Moderator) CA (Ms.) Supriya Kumar, Former Central Council Member, ICAI, Chennai and CA Anand Prakash Jangid, Bengaluru.

Group Photograph.

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