



ACAIE ANNUAL CONFERENCE 2021

**4TH & 5TH
SEPTEMBER**
2 0 2 1

FUTURE PROOFING BUSINESS & PROFESSION

4TH SEPTEMBER (HYBRID) VENUE: ITC ROYAL BENGAL

<https://acaekolkata.org/ac2021>

5TH SEPTEMBER (VIRTUAL)

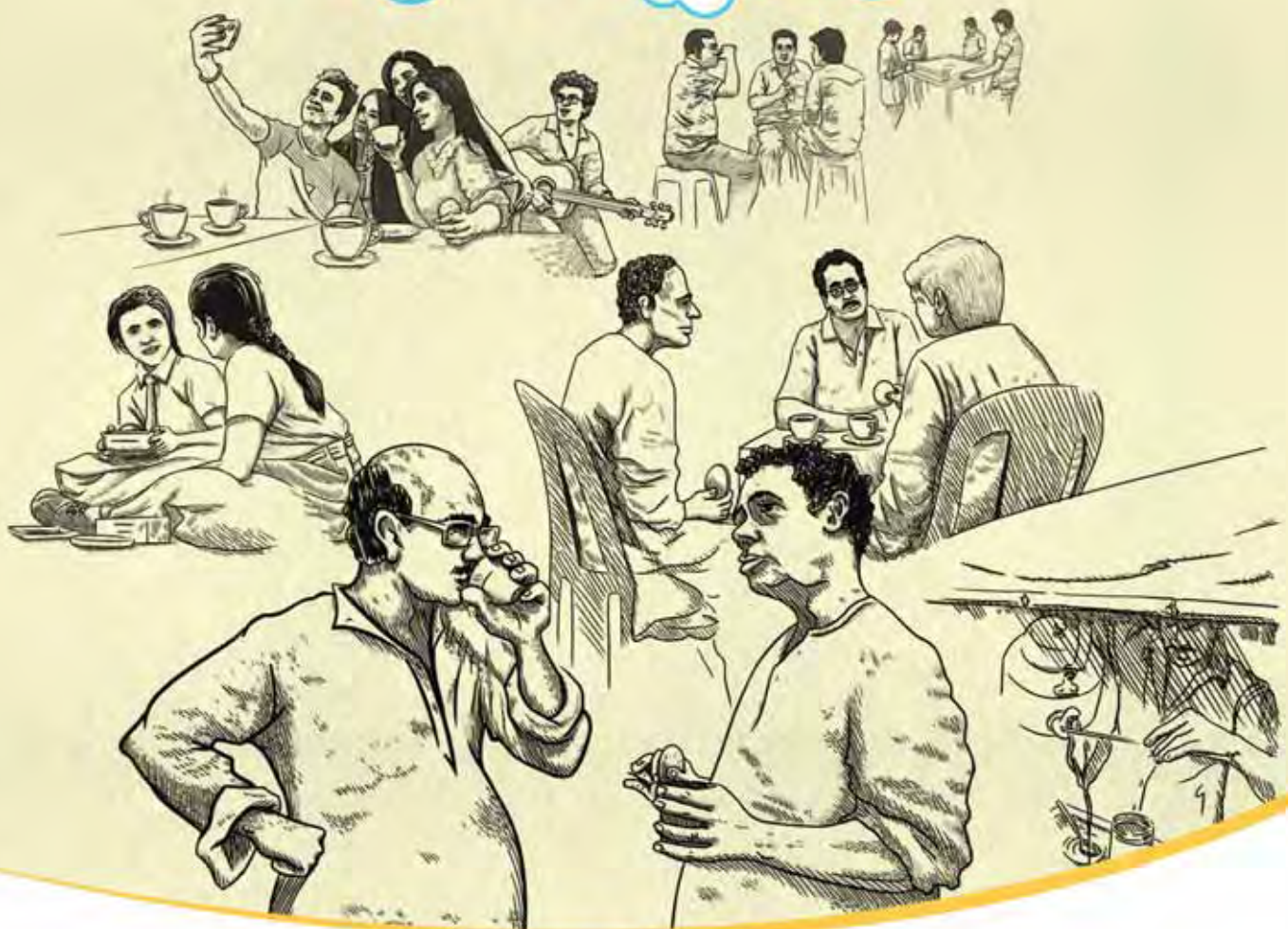
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ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES
An ISO 9001 : 2015 Certified Organisation
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Anmol Biscuits
ke sang!*



Har Pal Anmol. Har Ghar Anmol



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Mamta Binani

Sumit Binani & Associates

Chartered Accountants

Mamta Binani & Associates

Company Secretaries

With best wishes



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Views and information expressed and provided in this book are the views and information of the respective contributor, ACAE does not take any responsibility for the contents of the articles.

ANNUAL CONFERENCE - 2021

on Saturday & Sunday, the 4th & 5th September, 2021

at ITC Royal Bengal, Kolkata

FUTURE PROOFING BUSINESS & PROFESSION



ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

An ISO 9001 : 2015 Certified Organisation

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Editorial.

Dear Members, Professional colleagues and the Delegates,
Greetings to all!!

It gives us immense pleasure to share with you the Annual Conference Souvenir - 2021. The theme for this year's Annual Conference has been kept as **"Future Proofing - Business and Profession"**.

Future proofing is the process of anticipating and visualising the future and accordingly to develop method, system in order to minimise the shocks and stresses arising out of future events. It is a course of action and an ongoing function.

Currently the world is grappling with the issue of COVID-19 pandemic and the Annual Conference theme is more relevant now than ever. The pandemic has created a lot of operational and functional challenges for Business as well as the Profession. We are in a situation where we need to adapt and build ourselves to deal with the situation at hand. The constantly changing/evolving laws like Goods & Services Tax, Insolvency & Bankruptcy Code, Income Tax, Information Technology Act etc. requires us to stay on our toes.

The recent clearance for multidisciplinary partnerships for professionals presents us with an opportunity to form organisations that can be a one stop platform for our clients providing varied and diversified services under one umbrella, in turn enlarging the professional scope. Using these opportunities to our advantage, we can generate value for both the Business and the Profession.

In this Souvenir we have collated articles from learned members and professionals with expertise on topics like Goods & Services Tax, Income Tax, Insolvency & Bankruptcy Code, Accounting & Audit, Information Technology, Corporate Laws amongst others. These articles will help us abreast ourselves with the topics covered. We hope you will find this issue informative. We look forward for your feedback on the Souvenir.

It is rightly said : *"The future is uncertain, but this uncertainty is the very heart of human creativity."*

from Editorial Board

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Message from Chairman, Annual Conference Committee



It gives me immense pleasure to welcome you to the Annual Conference - 2021. This year's theme "**FUTURE PROOFING : BUSINESS & PROFESSION**" has been chosen keeping in mind the 'new normal' we are going through and the need to navigate the same in future.

Innovation is happening faster than ever before and the businesses need to adapt to the rapidly changing environment to keep pace with the developments. In today's unpredictable landscape it is very important for the businesses and professionals to future proof themselves and develop methods to minimize the effects due to unforeseen events.

The ongoing pandemic has changed the way the businesses and professionals need to meet the dynamic and uncertain operating environment. As rightly said by Marshall Goldsmith - "**WHAT GOT YOU HERE, WON'T GET YOU THERE**". Thus, the need of the hour is to change how the business houses and professional firms adapt themselves by future proofing, so as to adapt to the chronic disruption.

We have divided this Conference into **SEVEN PANEL DISCUSSIONS** spread over one and half days. The Conference Organising Committee has chosen the most contemporary topics for the Panel Discussions. The Panelists have been invited from across the country who will throw light on the various important issues concerning the business and profession.

I would like to thank the Panelists and Moderators for taking out time from their busy schedule and agreeing to share their thoughts on the subject. A special mention for the delegates, sponsors and advertisers without whom this Conference would not have been possible.

I hope that the delegates attending the conference will grab the opportunity to enhance their knowledge regarding the various aspects for Future Proofing their Business and Profession by interacting with the Panelists and through their deliberations.

I would also like to thank each and every one of you for your kind physical/ virtual presence and for supporting the Conference Organising Committee and making this Conference a great success.

Best Regards

CA Madhav Sureka

Chairman - Annual Conference Committee

Message from President - ACAE



Dear Members,

A cordial welcome to all physically present and who has joined virtually at this Annual Conference 2021.

I am happy to inform you that the Annual Conference 2021 of the Association of Corporate Advisers & Executives (ACAE), has been organized on the theme "FUTURE PROOFING: BUSINESS & PROFESSION". In this era of the rapidly changing business environment and the complexities of the business and profession and in the times of recent pandemic, the Annual Conference

has been intricately curated to provide an insight on the recent happenings in the business and professional arena together with the twin objective of the smart learning.

ACAE is regarded as the Temple of Knowledge and is one of the platforms with large network of team that provides abundant opportunities to learn, teach, mentor, and share the professional updates and knowledge in the various fields such as Accounting and Auditing, Taxation both Direct and Indirect, Insolvency, Allied Laws, etc.

The Annual Conference is an endeavor whereby the experts from across the country share their experience on the various tenets of Business and Profession thereby enabling the professionals in maintaining and developing competencies, enhancing their knowledge, expertise and skill for excellence in discharging their professional duties.

Thematic focus of this Annual Conference is that Organizations whether the business house or a professional firm are set up with the prime motto of success. Business environments are complex in nature as well as dynamic and is dependent on the various factors like political, economic, social, technology etc. which is dramatically changing the business environment. In order to achieve success in reality in the times of recent pandemic and ever-changing environment, organizations need to navigate efficiently through many internal and external challenges.

The recent pandemic has once again reinforced the need for future proofing of the organization and in order to achieve the success in today's business and professional world, the entrepreneurs need to look into various aspects of the business and profession before setting up their businesses. As the saying goes "Prevention is better than cure" it is crucial for organizations to explore and investigate the problems to be faced by an organization in near future and to take appropriate steps to combat the problems thereby fostering the growth of organization.

This year's Annual Conference which will be spread over One and half day is attended by business and professionals, ACAE is attempting to host Panel Discussion(s) on most contemporary Macro issues concerning both Business Entrepreneurs and Professionals, so that the members will get the multi-dimensional views on the Macro issue. e.g.

GST was rolled out on July 1, 2017 and after completing four years, whether GST has really played role of Game Changer for the Indian Economy?

Message from President - ACAE ... (Contd.)

Insolvency Laws were promulgated during 2016 and law is still in the evolution stage and is it making Insolvency Profession an Institution ?

E-Governance in all the arena of life, be it business, profession or other areas has changed the scenario completely and brought greater level of transparency in the Governance system.

A very proactive step taken by ICAI in Multidisciplinary Partnerships and whether it creates immense opportunities for Professionals in tying up with our professional colleagues in the area(s) of CS, CMA or Advocates : an issue needs to be discussed threadbare.

This Annual Conference will cover the above issues (besides others) in the form of Panel discussion(s) with Expert Panelists joining from across India.

It is my privilege and pride to say that Association of Corporate Advisers & Executives (ACAE) comprising of the large team of professionals, has provided a crucial platform for more opportunities for meaningful engagement of our members, introducing innovative programming formats and diverse topics, and providing professional development and outreach opportunities.

I would like to thank the Experts and Panelists for sharing their experience and knowledge on the different burning issues of the business and profession while echoing the importance of Future Proofing and the members of ACAE for their continued participation, enthusiasm and incredible support for making this Conference successful.

I wish good luck and success in future endeavours.

Thank you

Best Regards

CA Anup K Sanghai

President

Association of Corporate Advisers & Executives

ACAE Annual Conference

Future Proofing : Business and Profession

Full Day : 10.00 AM to 5.30PM

Day 1: Saturday, 4th September 2021**Inaugural Address**

10.00 AM - 10.30 AM

Chief Guest: Shri Arjun Ram Meghwal

Hon. Union Minister, Govt. of India**

Guest of Honour: CA Nihar N. Jambusaria

President, ICAI

TOPIC
Accounting and Auditing
New Horizons

10.30 AM - 12.00 O'Clock

CA P R Ramesh, Hyderabad**CA Shailesh Haribhakti, Mumbai****CA Nilesh Vikamsey, Past President, ICAI, Mumbai**
Corporate Laws
Easing Complexities

12.00 O'Clock - 1.00 PM

CA Mohit Bhuteria, Kolkata, Moderator**CS Savithri Parekh, Mumbai****CS Ramaswami Kalidas, Mumbai****1 PM to 2 PM Lunch Break**
Insolvency Profession
An Institution in making

2.00 PM - 3.30 PM

Chief Guest & Chairman of Session Shri Bhupendra Yadav

Hon. Union Minister, Govt. of India

Advocate Suharsh Sinha, Mumbai, Moderator**Shri Abizer Diwanji, Mumbai****Dr. Ashok Haldia, Delhi, Advocate Piyush Mishra, Mumbai**
GST
The Game Changer

3.30 PM - 4.30 PM

Shri Khalid Aizaz Anwar, IAS, Commissioner, WBGST**CA Arun Kr Agarwal, Kolkata, Moderator****Senior Advocate V Sridharan, Mumbai**
Income Tax
Faceless and Beyond

4.30 PM - 5.30 PM

CA Padamchand Khincha, Bengaluru**Shri Saurabh Soparkar, Sr. Advocate, Ahmedabad****CA Jinesh S Vanzara, Kolkata, Moderator**

10.00 AM to 1.30PM

Day 2: Sunday, 5th September 2021**TOPIC**
E Governance
Reigning Transparency

10 AM - 11.30 AM

CA Dilip B Desai, Kolkata**CA Guru Prasad, Bengaluru**
Multidisciplinary
Partnership Aiming Big

11.30 AM - 1.30 PM

CA Dipankar Chatterji, Kolkata, Moderator**CA Manoj Fadnis, Past President, ICAI, Indore****CS Pavan Vijay, Past President, ICSI, Delhi****CMA Sanjay Gupta, Past President, ICAI(CMA), Delhi**

About ACAE



Association of Corporate Advisers & Executives (ACAE), the oldest professional body in Kolkata, was established in the year 1960. Members of ACAE have a diverse profile and include professional practitioners, corporate executives, industrialists and businessmen. The membership strength is more than 1300. ACAE has become a premier institution of excellence and learning in the field of accounting, taxation, legal, corporate matters and finance.

ACAE has been organising conferences, conclaves, summits, symposia, seminars, workshops, group discussions, lecture meetings, memorial lectures, debates and panel discussions on a regular basis to keep its members updated on all the issues of professional interest.

ACAE programmes had been addressed by Late Jay Prakash Narayan, Political visionary, Late Shri Somnath Chatterjee, Statesman and Former Speaker of Lok Sabha, Bharat Ratna Late Shri Pranab Mukherjee, Hon'ble Former President of India, Shri Keshari Nath Tripathi, Former Governor of West Bengal, Dr. Arvind Panagariya, then Vice Chairman of NITI Aayog, Dr. Amit Mitra, Finance Minister, Government of West Bengal, Dr. Sambit Patra, National Spokesperson-BJP, Shri Sachin Pilot, Shri B K Birla, Shri Y C Deveshwar, Shri B M Khaitan, Shri R S Agarwal, Shri Sanjiv Goenka, Shri Harshavardhan Neotia, Shri T. V. Mohandas Pai, Shri M. J. Akbar, Shrimati Meenakshi Lekhi, Shri J K Mittal, Sr. Advocate, Supreme Court of India, Dr. Partha Sarathi Shome, Advisor to Ministry of Finance, Shri Anurag Singh Thakur, former Minister of State for Finance & Corporate Affairs, Govt. of India, Shri Babul Supriyo, former Minister of State for Environment, Forest & Climate Change, Shri Piyush Goyal, Minister of Commerce & Industry, Govt. of India – to name a few noted and eminent personalities of India.

ACAE has initiated and established the first annual corporate awards in West Bengal in association with The Economic times, popularly known as “ET Bengal Corporate Awards” which has recognised achievement of Corporate Bengal for the past seven years.

Our state of the art office infrastructure, which is in the heart of the city, was inaugurated in July 2011 by Dr. Amit Mitra, Hon'ble Finance Minister, West Bengal. We have recently acquired a new office in the same building for the benefit of our members and students, which was inaugurated on our 61st Foundation Day by CA Nihar N Jambusaria, President (2021-22), The Institute of Chartered Accountants of India.

CA Pramod Dayal Rungta

General Secretary

Our Publications ...



Activities at a glance ...



Residential Tour Programme at Nature Cure and Yoga Centre, Joka from 22nd January to 26th January, 2021



Live Telecast of Union Budget - 2021 with Panel Discussion on 1st February, 2021 at ACAE, Emami Conference Hall. Panelists - CA S S Gupta (Direct Tax) and CA Arun Kr Agarwal (Indirect Tax)



Felicitation of CA (Dr.) Debashis Mitra on being elected as the Vice President (2021-22) of The Institute of Chartered Accountants of India on 6th March, 2021 at The Bengal Club Ltd.

Activities at a glance ...



Panel Discussion on What Women Want on 8th March, 2021 - International Women's Day at ACAE, Emami Conference Hall. Panelists - Ms Neha Jain, Dr Rajeev Agarwal, Ms Jaya Seal Ghosh and CA CS Swati Singhania. Moderator - CA Shivani Shah



Inauguration of ACAE New Office at 4th Floor, 6, Lyons Range, Kolkata - 700001 by Chief Guest CA Nihar N. Jambusaria, President (2021-22) of ICAI on 26th August, 2021.



Felicitation of CA Nihar N. Jambusaria, President (2021-22) of The Institute of Chartered Accountants of India at ACAE New Office Opening Ceremony on 26th August, 2021



Cross Section of the Audience attending the Inauguration of ACAE New Office

Activities at a glance ...



Unveiling of ACAE Member's Directory by CA Nihar N. Jambusaria, President - ICAI and CA (Dr.) Debashis Mitra, Vice President - ICAI



Celebration of ACAE Foundation Day at ACAE, Emami Conference Hall on 26th August, 2021



Inauguration of Inter-CA Study Circle Indoor Cricket Tournament on 14th March, 2021 at The Space Circle Club.

Media Coverage of ACAE New Office Opening ...

एशोसिएशन ऑफ कारपोरेट एक्जक्यूटिव के नए कार्यालय का उद्घाटन

आईसीएआई के अध्यक्ष को सम्मानित किया गया



कोलकाता: एशोसिएशन ऑफ कारपोरेट एक्जक्यूटिव्स एंड एक्जिक्यूटिव्स एसोसिएशन के 62वें स्थापना दिवस पर कार्यक्रम रोज स्थित युनिट नंबर 1 और 6 में चौथे तल्ले पर नये कार्यालय का उद्घाटन किया गया। इस अवसर पर बतौर मुख्य अतिथि सीए निहार एन जंबुसरिया व गेस्ट ऑफ ऑनर के रूप में इन्स्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया आइसीएआई के उपाध्यक्ष देबाशीष मित्रा उपस्थित थे, दोनों को संस्था की ओर से ताल पत्र को ध्वजित करने के लिए सम्मानित किया गया। एसोसिएशन के अध्यक्ष सीए अनूप संध्या ने आगत अतिथियों का स्वागत किया और प्रोजेक्ट चेयरमैन सीए आनंद चोपड़ा ने एसोसिएशन के बारे में जानकारी दी। सीए जितेंद्र लोहिया ने एसोसिएशन में स्थापित अत्याधुनिक तकनीकी उपकरणों की स्थापना के बारे में जानकारी दी तथा कार्यक्रम के अंत में सीए विवेक अग्रवाल ने धन्यवाद ज्ञापन किया।

62वें स्थापना दिवस पर एसोसिएशन के नये कार्यालय का उद्घाटन



छपते छपते समाचार सेवा

कोलकाता, 26 अगस्त। अपने 62वें स्थापना दिवस पर एसोसिएशन ऑफ कारपोरेट एक्जिक्यूटिव्स एंड एक्जिक्यूटिव्स एसोसिएशन (एसोसिएशन) ने चौथी मंजिल, युनिट नंबर 1, 6 तल्ले रोज, कोलकाता में

नए कार्यालय का उद्घाटन किया। इस अवसर पर मुख्य अतिथि सीए निहार एन जंबुसरिया, अध्यक्ष और सम्मानित अतिथि - सीए डॉ देबाशीष मित्रा, उपाध्यक्ष, इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया उपस्थित थे। एसोसिएशन अध्यक्ष सीए अनूप संध्या

ने अतिथियों का स्वागत किया। प्रोजेक्ट चेयरमैन सीए आनंद चोपड़ा ने एसोसिएशन के बारे में जानकारी दी। सीए जितेंद्र लोहिया ने एसोसिएशन में स्थापित अत्याधुनिक तकनीकी उपकरणों की स्थापना के बारे में जानकारी दी। सीए विवेक अग्रवाल ने धन्यवाद प्रस्ताव किया।

ACAE inaugurates new office in Kolkata



KOLKATA: On the occasion of their 62nd Foundation Day on Thursday, Association of Corporate Advisers and Executives (ACAE) inaugurated their new office at 4th Floor, Unit no. 1, 6 Lyons Range, Kolkata - 700091. This inauguration was carried out by the Chief Guest for the occasion - CA Nihar N. Jambusaria, President and Guest of Honour CA Dr. Debashis Mitra, Vice President, of the Institute of Chartered Accountants of India

who was also duly felicitated to mark this red-letter day for the association. President Association of Corporate Advisers and Executives ACAE CA Anup Sanghai welcomed guests and Project Chairman CA Anand Chopra briefed about ACAE. CA Jitendra Lohia briefed about setting up of complete state of the art technological equipments installed at ACAE. CA Vivek Agarwal offered Vote of thanks.

Our Past Presidents

Year	Name	Year	Name
1960-63	Mr. S. B. Dandekar (*)	1991-92	Mr. R. N. Rustagi
1963-64	Mr. J. P. Gupta (*)	1992-93	Mr. P. R. Ramesh
1964-65	Mr. Sukumar Bhattacharya (*)	1993-94	Mr. Pawan Kr. Agrawal (*)
1965-66	Mr. R. Singhi (*)	1994-95	Mr. Kashi P. Khandelwal
1966-67	Mr. B. P. Khaitan (*)	1995-96	Mr. Santanu Ghosh
1967-68	Mr. B. S. Kothari (*)	1996-97	Mr. R. S. Agarwala
1968-69	Mr. P. M. Narielvala (*)	1997-98	Mr. Ketan Satnalia
1969-70	Mr. R. N. Lakhotia	1998-99	Mr. J. K. Drolia (*)
1970-71	Mr. K. K. Mitra (*)	1999-00	Mr. H. K. Agrawal
1971-72	Prof. L. Perreira (*)	2000-01	Mr. Indu Chatrath
1972-73	Mr. P. R. Neelkanth (*)	2001-02	Mr. Sanjay Bhattacharya
1973-74	Mr. S. C. Bhandari (*)	2002-03	Mr. Sushil Kumar Pransukhka
1974-75	Mr. S. S. Kothari (*)	2003-04	Mr. Arvind Agrawal
1975-76	Mr. A. B. Rabadi (*)	2004-05	Mr. R.S. Jhawar
1976-77	Mr. K. P. Bhargava (*)	2005-06	Mr. Santosh Roongtaa
1977-78	Mr. R. L. Bathwal	2006-07	Mr. Pulak Kumar Saha
1978-79	Mr. M. L. Varma	2007-08	Mr. S. M. Gupta
1979-80	Mr. T. D. Mundhra (*)	2008-09	Mr. Chirajit Goswami
1980-81	Mr. Sasanka Sekhar Sen (*)	2009-10	Mr. Rakesh Jain
1981-82	Mr. Nirmal Kr. Poddar (*)	2010-11	Mr. Anand Chopra
1982-83	Mr. Amal Kr. Chakraborty (*)	2011-12	Mr. Swapan Kr. Bhattacharyya
1983-84	Dr. Abhijit Sen	2012-13	Mr. Jinesh S Vanzara
1984-85	Mr. K. L. Chatrath (*)	2013-14	Mr. Kamal Nayan Jain
1985-86	Mr. Amitav Kothari	2014-15	Mr. Rishi Khator
1986-87	Mrs. Nandita Sen	2015-16	Mr. Madhav Prasad Sureka
1987-88	Mr. G. P. Agrawal (*)	2016-17	Mr. R. R. Modi
1988-89	Mr. C. S. Lahiri (*)	2017-18	Mr. Arun Kumar Agarwal
1989-90	Mr. Sushil Kr. Rungta	2018-19	Mr. Vasudeo Agarwal
1990-91	Mr. Ashis Kr. Ray	2019-20	Mr. Jitendra Lohia

(*) Since deceased

Executive Committee 2020-2021



Anup Kumar Sanghai
President



Vivek Agarwal
Vice President



Anup Kr. Banka
Vice President



Pramod Dayal Rungta
General Secretary



Sumit Binani
Joint Secretary



Tarun Kumar Gupta
Treasurer

Members



Beena Jajodia



Niraj Harodia



Pramod Kumar Mundra

Members



Priyank Singhi



Ranjeet Kr. Agarwal



Shivani Shah



Shubham Khaitan



Sumantra Guha



Vikash Kr. Banka

Ex-Officio



Jitendra Lohia

Special Invitees



Rahul Parasrampur



Madan Kr. Maroti



Mohit Bhuteria



Vivek Newatia



Ayush Jain

ANNUAL CONFERENCE - 2021

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Anand Chopra	Jinesh S Vanzara	P R Ramesh
R S Jhawar	Sanjay Bhattacharya	Santosh K Roongtaa

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Madhav Sureka	Chairman	Kamal Nayan Jain	Co- Chairman
Anup Kr Sanghai	President	Jitendra Lohia	Immediate Past President
Vivek Agarwal	Vice President	Anup Kr Banka	Vice President
Pramod Dayal Rungta	General Secretary	Sumit Binani	Joint Secretary
Tarun Kr Gupta	Treasurer		

SUB-COMMITTEES

	Chairman	Co-Chairman
Finance	Jinesh S Vanzara	Anand Chopra
Delegate Registration	Pramod Dayal Rungta	Sumantra Guha
Souvenir	H K Agrawal	Ayush Jain
Reception	Arun Kr Agarwal	Vasudeo Agarwal
Press & Publicity	Jinesh S Vanzara	Niraj Harodia
Hall Management	Arvind Agrawal	Rahul Parasrampuria
Front Desk Management	Tarun Kr Gupta	Vikash Kr Banka, Shivani Shah
Virtual/Information Technology	Jitendra Lohia	Anup Kr Banka, Priyank Singhi
Social Media	Vivek Agarwal	Pushp Deep Rungta

MEMBERS

Abhijit Sen	Kashi Prasad Khandelwal	Ravindra Sanghai	Santanu Ghosh
Amitav Kothari	Kailash Dhanuka	Rajesh Singhania	Shivank Chhaparia
Arun Kr Gupta	Ketan Satnalia	Rakesh Jain	Shubham Khaitan
Arun Kr Khandelia	Madan Kumar Maroti	Ram Ratan Modi	Subhash Chandra Saraf
Ashis Kumar Ray	Mamta Binani	Ramesh Kr Patodia	Sunil Kr Sahoo
Beena Jajodia	Manisha Sharaf	Ranjeet Kumar Agarwal	Sushil Kr Goyal
C S Sarda	Mayur Agrawal	Ratan Kr Banka	Sushil Kr Pransukhka
Chirajit Goswami	Mohit Bhuteria	Ratan Lal Sethia	Sushil Kumar Rungta
Daulat Jain	Nandita Sen	Ravi Jain	Swapan Kr Bhattacharya
Debayan Patra	Nitesh Kr More	Ravi Kr Patwa	S S Gupta
Dilip Kr Patni	Pradeep Kr Agarwal	Rishi Khator	Vijay Kr Sarawagi
Hari Ram Agarwal	Pramod Kumar Mundra	S M Gupta	Vikash Jain
Hemant Kr Lakhotia	Pulak Kr Saha	Sanjay Poddar	Vivek Newatia
Indu Chatrath	R N Rustagi	Sanjib Sanghi	Vishnu Tulsyan



Shri Arjun Ram Meghwal

Hon. Minister of State for Parliamentary Affairs, New Delhi

Profile

Shri Arjun Ram Meghwal is currently the Minister of State for Parliamentary Affairs. He is a Master of Arts in Pol. Science, LLB and MBA from Dungar College in Bikaner and University of Philippines. He was also an IAS Officer in Rajasthan Cadre.

He has published various books and has been the Chief Editor of saviors of religious, social and cultural organisations; Jan Sewa Me Arjun Ram Meghwal, Ek Safar Hum Safar Ke Sath, Divya Path Damptya Ka, CAA : Bharatiya Mulyon w paramparaoko Shashkatkarnewala Kanun.

He has participated in many programmes for the development of the Rajasthani language; extended full cooperation in various capacities for recognition of Rajasthani as an Indian language in VIIIth Scheduled of the Indian Constitution; Worked as a Principal Advisor of Bhawna Meghwal Memorial Trust, which is committed to promote the talented and economically deprived students by providing scholarships etc. and guidance by various programmes; the Trust has been conducting group marriage programmes of the weaker sections of the society and seminar, workshops to awaken the people about social issues.



CA Nihar N Jambusaria

President (2021-22), ICAI, New Delhi

Profile

A man of professional wisdom, vision and strong organisational skills with a firm belief in all round inclusive growth of Indian Chartered Accountancy profession, CA Nihar N Jambusaria has been elected as the President of the Institute of Chartered Accountants of India (ICAI) for the year 2021-22. A blend of erudition, experience, foresight, technical expertise and professional excellence worth emulating. He qualified as a Chartered Accountant in 1984 and is in practice for nearly 27 years.

As President ICAI, he is now Chairman of all Standing Committees i.e. Executive, Finance and Examination Committees, besides being the ex-officio member of all Non-Standing Committees and Editor of ICAI Journal, The Chartered Accountant. He is Director of ICAI Registered Valuers Organisation (RVO) and also the representative from ICAI RVO on the "Committee to advise on Valuation matters" of MCA. He is Chairman of the ICAI Research wing, ICAI - Accounting Research Foundation and Extensible Business Reporting Language (XBRL) India.

He is member of very important committees constituted by the Indian government and regulators relating to policy formation. He was a Member of the e-Commerce Committee formed by the Ministry of Finance and Peer Review Committee of the Central Board of Direct Taxes.

He has been a prolific speaker at national and international forum. As an academician and an orator par excellence, he has attended and contributed to numerous national and international seminars. He has addressed more than 900 seminars, conferences so far covering various subjects of professional interest like Direct Tax, Accounting Standards, International Tax and Professional Development and alike.



CA P R Ramesh

Former Chairman, Deloitte India, Hyderabad

Profile

CA P R Ramesh is a former Chairman of Deloitte India and a former member of Deloitte Global Board with over 40 years of experience in the profession and is a Fellow Member of the Institute of Chartered Accountants of India (ICAI).

P R Ramesh is a veteran auditor and an expert on accounting standards. He has been associated with various Regulatory bodies, Industry Bodies and the Institute of Chartered Accountants of India. He has lectured extensively in India (including in programmes and workshops conducted by the Institute of Chartered Accountants of India (ICAI), the Reserve Bank of India, the Confederation of Indian Industries) and abroad on a variety of subjects including auditing and accounting subjects.



CA Shailesh Vishnubhai Haribhakti

Chairman, Baker Tilly DHC India, Mumbai

Profile

Mr. Shailesh V. Haribhakti is an inspiring thought leader who defines the future of Baker Tilly. Over decades of hands-on professional involvement, he has worked through myriad engagements which have set the foundation for the future of Baker Tilly. He is not only a Chartered & Cost Accountant, Certified Internal Auditor, a Certified Financial Planner, Fraud Examiner, but also a Board Chairman, Audit Committee Chairperson, and an Independent Director at some of the country's most pre-eminent organizations.

He has represented India on the Standards Advisory Council (SAC) of the International Accounting Standards Board (IASB). He has worked with PBAS, an affiliate of IFC Washington, to establish activity-based costing and strategic planning processes in Polish SMEs. Mr. S. V. Haribhakti is a staunch believer in corporate social responsibility, governance and promoting a greener environment. He actively promotes these causes through forums like ASSOCHAM, CII and the Indian Merchants' Chamber by participating in the process of framing regulations and standards.



CA Nilesh Shivji Vikamsey

Past President, ICAI, Mumbai

Profile

CA Nilesh Shivji Vikamsey is a Senior Partner of Khimji Kunverji & Co LLP, Chartered Accountants since 1985. His firm deals in the areas of Auditing, Taxation, Corporate & Personal Advisory Services, Business & Management Consulting Services, Due diligence, Valuations, Inspections, Investigations, etc.

He has been a Past President of the Institute of Chartered Accountants of India during the year 2017-18. He has been a member of various important committees formed by the MCA of Government of India, the ICAI, Internal Federation of Accountants, Insurance & Regulatory Development Authority, Securities & Exchange Board of India, Comptroller & Auditor General of India, ASSOCHAM and a number of other important authorities and organisations. He has been a speaker and faculty at various forums and a contributor to the journals of many professional bodies.



CA Mohit Bhuteria

Partner, A C Bhuteria & Co., Kolkata

Profile

CA Mohit Bhuteria is a fellow Chartered Accountant, Insolvency Professional and a Registered Valuer - Securities & Financial Assets Class. He qualified as a Chartered Accountant with 16th rank in India (1st in Eastern Region) and joined the firm as a partner in 1994. He has been a co-opted member of various committees of ICAI and Professional Bodies. He is a regular speaker on company law, taxation, and NBFC issues at ICAI, ICSI, MCA, Study Circles under ICAI, CAG and other platforms. He has considerable experience and expertise in Audit and Assurance, Corporate Laws, Taxation, Valuation, Mergers & Acquisitions, Wills and Codicils and Trusts and Non-Banking Financial Companies sector.



CS Savithri Parekh

Joint Company Secretary, Reliance Industries Ltd, Mumbai

CS Savithri Parekh is B. Com, LLB and a fellow member of the Institute of Company Secretaries of India, New Delhi. She has over 20 years of industry experience. Prior to joining Reliance Industries Ltd, she was formerly employed as Chief Legal and Secretarial at Pidilite Industries Ltd.

She has been a Recipient of Chevening Scholarship for young Indian Lawyers - which is fully funded by the Foreign Commonwealth Office, UK and gained exposure to European law. Interned with Richards Butler LLP, a law firm in UK (now known as Reed Smith) and gained hands on experience

in handling notifications under the UK Competition Act, 1998. She has been a guest faculty at IIM - Calcutta for over 10 years. She has delivered lectures at various programmes of ICSI. She has been associated with an NGO and involved in developing and deploying a module on value-based education for children.



Profile



CS Ramaswami Kalidas

Practicing Company Secretary, Mumbai

CS Ramaswami Kalidas is a fellow member of the Institute of Company Secretaries of India, MBA (Finance) from Jadavpur University, Kolkata and B. Com (Hons) from St. Xavier's College, Kolkata. He has more than four decades of experience in Industry after starting professional career in the year 1978. He has worked in companies like ACC Limited, Ambuja Cement Ltd and Reliance Power Ltd.

He has been a faculty and speaker for various Professional Bodies, Management Institutes, etc. He has authored more than 100 articles published in journals by various organisations. He has also authored many books on Company Law Topics covering various aspects.



Profile



Shri Bhupendra Yadav

Hon. Union Minister, Government of India

Shri Bhupendra Yadav ji is an Indian Politician from Rajasthan and a member of Bharatiya Janata Party. He has studied BA (Hons), LLB from Government College, Ajmer. He is currently the Minister of Labour & Employment and Minister of Environment, Forest & Climate Change.



Profile



Advocate Suharsh Sinha

Partner, AZB & Partners, Mumbai

Advocate Suharsh Sinha, a Partner in the Mumbai office specializes in Restructuring & Insolvency and Banking & Finance. He represents resolution professionals, borrowers, institutional creditors, asset reconstruction companies, acquirers of distressed debt, and creditor committees on restructurings and insolvency proceedings including interim finance, corporate insolvency resolution process, liquidation proceedings, takeovers and related litigation.

He plays an active role in public policy discussions on insolvency and has written on restructuring related issues for various publications. He has been a member of various Bar Associations. He has also represented Reserve Bank of India in various matters related to Insolvency.

Profile



Shri Abizer Diwanji

EY India Financial Services Leader, Mumbai

Profile

Abizer Diwanji holds a bachelor's degree in Commerce from Sydenham College, University of Mumbai and is a Fellow of the Institute of Chartered Accountants of India. With 26 years of experience in the financial services industry, he has executed and advised over 100 transactions, worked on government projects and is a member of various committees formed by governments or regulators.

He is experienced in assisting buyers and sellers of businesses in evaluating the risks and opportunities of their intended transactions. Having advised on several high-profile, complex transactions, he has a deep understanding of and practical experience dealing with issues that arise in Indian transactions, both for equity and debt. He has led a team which was the first to implement various initiatives on restructuring by the Reserve Bank of India and runs the largest insolvency and bankruptcy related practice in India.



Dr. Ashok Haldia

Delhi

Profile

Dr. Ashok Haldi is a Chartered Accountant, Management Accountant, Corporate Secretary, and Ph.D. His experience includes industrial finance and policy, enterprise and NBFC management, public sector and power sector policy, reforms and restructuring, infrastructure financing, accounting standard setting, company law and corporate governance, risk management, resource mobilisation including from multilaterals and through IPO and private equity, stressed asset resolution.

He was Secretary of the Institute of Chartered Accountants of India, New Delhi, one of the largest professional body worldwide and led its transformation at national and international level, for more than 10 years. He was member of Appellate Tribunal for ICAI, ICSI, ICWAI and of National Advisory Committee on Accounting Standards. He has also headed an apex body of SAARC and was recognised for services at national and international level. He has contributed to leading journals, National economic newspapers and conferences, etc.



Advocate Piyush Mishra

Partner, L&L Partners, Mumbai

Profile

Piyush Mishra was admitted to practice in India and is a Solicitor (Non-Practicing), England & Wales. He is experienced in both Indian and English laws governed European deals. His areas of expertise in Finance include project finance, real estate finance, securitisation, issuance of listed privately placed debentures, equipment financing, trade credits etc. He has also advised lenders and borrowers on syndication, secondary trading of debt, events of default and restructuring including under CDR/Informal work outs.

On the Projects side, he has acted for lenders, acquirers, contractors, bidders and developers. His sectoral experience includes development of national highways, airports, power plants, hospitals, gas sale agreements, real estate projects and so on. His areas of practice spans across Finance, Projects, Acquisitions and JVs, General Corporate and Foreign Exchange Laws.


Shri Khalid Aizaz Anwar

IAS, Commissioner, WBGST

Profile

Mr. Khalid A. Anwar, IAS is Commissioner, Commercial Taxes, West Bengal and also holds charge of Director, Treasuries & Accounts and Director, Directorate of Revenue Intelligence & Enforcement. Prior to this he also held the post of Commissioner of Excise, West Bengal. He is a member of the GST Law Committee, IT Grievance Redressal Committee and GST Fitment Committee. He is a member of the GST team which has been awarded the PM Award for excellence in Public Administration.

A notable speaker in GST forum whose contribution in easing out different issues relating to businesses has been highly appreciated by trade and industry.


CA Arun Kr Agarwal

Director, ARS Management Consultancy Services Pvt Ltd, Kolkata

Profile

Arun Kumar Agarwal is a qualified Chartered Accountant and possesses two decades of experience in the various areas of Indirect Taxation. He regularly represents the industry and trade bodies before the Government on numerous issues in Indirect Taxation. Presently, he is the Director of ARS Management Consultancy Services Pvt. Ltd., which is a leading management consultancy house in the field of Indirect Taxation namely Central Excise, Customs, Service Tax and State VAT since 2001, and now Good & Services Tax (GST).

He is a regular corporate trainer and a visiting faculty on Indirect Taxes/ Accounting/ Auditing for Revenue officials as well as for various universities and institutes. He has contributed in many eminent books and he is the author of "Commentary on West Bengal VAT" and "Practical Guide to WB VAT Audit". He has also been regularly appearing in print and electronic media. With the help of his vast network, he brings in the excellent connectivity with many medium and large corporates.


Sr. Advocate V Sridharan

Co-founder & Senior Advocate, Lakshmikumaran & Sridharan, Mumbai

Profile

V Sridharan is a Senior Advocate, Bombay High Court and has successfully litigated on tax matters for nearly two decades at various judicial and quasi-judicial fora like the Customs Tribunal, High Courts and Supreme Court. Many of the cases argued by him are landmark legal cases.

Sridharan's vast experience coupled with his knowledge in accountancy, economics and tax laws is immensely appreciated by the Bar and the Bench. He is considered as an authority on Customs Valuation. He regularly delivers lectures on indirect tax laws at various institutions.



CA Jinesh S Vanzara

J. S. Vanzara & Associates, Kolkata

Profile

CA Jinesh S Vanzara qualified as a Chartered Accountant in 1987 and was awarded 48th rank in all India basis in the CA final exams. He qualified as a Cost Accountant in 1989. He is a member of various professional bodies and chambers of commerce and is actively involved with such organizations. In the past he was a co-opted member of the Direct Tax Committee of ICAI. He was a Past President of ACAE and under his leadership and guidance, ACAE and The Economic Times presents "ET Bengal Corporate Awards" for Bengal Business Community every year since 2013.

He handles the Income Tax planning and representation matters of various corporate houses and has specialized in handling Income Tax Search & Seizure matters, search assessment proceedings and in representing matters before the Income Tax Settlement Commission. On the platform of ICAI and various Chambers and professional bodies, he is seen as a prominent speaker on topics of Income Tax Search & Seizure, Settlement Commissions and related issues.



CA Padamchand Khincha

Partner, H C Khincha & Co., Bengaluru

Profile

Padamchand Khincha is a partner in H C Khincha & Co, Bengaluru. He is a Commerce graduate from the University of Bangalore securing 5th Rank at the University level. He holds a Bachelor's degree in Law. He qualified as a Chartered Accountant in 1982 by securing the 25th rank. With over 30 years of experience in domestic and international tax regime, he has spearheaded the income-tax consultancy and litigation practice covering tax structuring, due diligence, transfer pricing and compliance aspects. He has represented large corporates in some of the high-profile cases before various Income-tax tribunals across India and has been associated with several landmark decisions too.

He is a prolific writer on various topics in income-tax. He has co-authored many books on varied topics related to Income Tax Act. He has delivered more than 500 lectures across the nation on several income-tax issues. His teaching stints in the past include guest lectures at IIM, Bangalore, ICAI, Income Tax Department.



Sr. Advocate Saurabh Soparkar

Senior Advocate, Gujarat High Court, Ahmedabad

Profile

Saurabh N. Soparkar is practicing as an advocate before the Gujarat High Court, the Income Tax Appellate Tribunal, the National Company Law tribunal, Ahmedabad since June 1981. He is designated as a Senior Advocate by the Gujarat High Court. He is B.Com. and LL.B. from Gujarat University. He is also a Chartered Accountant and had secured 3rd rank in India and 1st in the state of Gujarat.

He had been standing counsel for the income tax department for a period of three years (1986-89) for the state of Gujarat. He has contributed papers at various seminars held at different places all over India at the invitation of different Tax Bar Associations. He had been Visiting Professor at I.I.M. Ahmedabad on the subject of 'Corporate Tax Planning' and "Legal Aspects of Business" for about 22 years upto 2009.



CA Dilip B Desai

Chairman, Baker Tilly DHC India, Kolkata

Profile

CA. Dilip B. Desai is a Fellow Chartered Accountant, a National Scholar and a Gold Medalist. With 3 decades of focused exposure, he is well known for his competence & innovation in the field of taxation - direct as well as Indirect and Corporate Advisory Services including M&A. Currently, Mr. 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 & investigations) and Global Knowledge Services to a number of reputed corporates. He has the distinction of being the first Indian to be on the Global Board of Baker

Tilly International.

Mr. Desai has, from time to time, been associated with ICAI as well as various leading Chambers, Management Schools, Law Schools and Universities as Member - Board of Studies, Chairman, Lecturer, Paper Setter &/or Head Examiner. Mr. Desai is also a prolific speaker, having participated in more than 300 National and International seminars, conferences and training programmes as Chairman, Keynote Speaker, Panellist and/or Paper Writer.



CA Guru Prasad

Founder, Guru & Jana, Chartered Accountants, Bengaluru

Profile

CA Guru Prasad is a Bachelor of Commerce & Law from Bangalore University, a Chartered Accountant and an Insolvency Professional. He has also done Advanced Management Program from IIM Bangalore. He is the founder of Guru & Jana, a Chartered Accountancy firm. His firm is the only firm in India to file tax returns on 1st April, paperless and lockless CA office.

He represents Indian Sub-continent in the HLBI Global Tech Group. He is a Board Adviser to Vishwakarma University Pune. He has written 8 technical guides, peer review manual and DCMM manual on behalf of ICAI. He has addressed many conferences & seminars for various professional bodies across India.



CA Dipankar Chatterji

Senior Partner, L. B. Jha & Co., Chartered Accountants, Kolkata

Profile

CA Dipankar Chatterji is a senior partner at L. B. Jha & Co. Chartered Accountants. He has been on the Board of four nationalized banks and has been nominated on the Board of Directors of various companies by Banks/FI. He has been chairman of The Calcutta Stock Exchange Ltd. He has been member of various committees set by RBI, Planning Commission and State & Central Governments from time to time.

Besides numerous lectures in India, he has addressed various seminars and conferences in London, New York, Beijing, Los Angeles, Toronto, Abu Dhabi, Kuala Lumpur, Bangkok, Dhaka, Kathmandu and other parts of the world. He has been a member of various committees of ICAI, Professional Bodies. He has been a member of National Advisory Committee on Accounting Standards (NACAS) constituted by Ministry of Corporate Affairs, Govt. of India.



CA Manoj Fadnis

Past President, ICAI, Indore

Profile

CA Manoj Fadnis is the Immediate Past President of Confederation of Asian and Pacific Accountants (CAPA), a Regional International Organization of 32 Professional Institutes from 23 countries from Asia and Pacific region. He was elected as President of The Institute of Chartered Accountants of India, New Delhi for the year 2015-16. He was also the non-executive Director of The Insurance and Regulatory Development Authority of India (IRDA). Presently he is an Independent Director on the Board of Federal Bank and is serving as the Chairman of the Audit Committee.

Having specialization in Corporate Accounting and Reporting Standards and Direct Taxes, Corporate Laws and Foreign Exchange Management Act, CA Manoj Fadnis has presented more than 1000 technical papers in seminars and conferences within India and Internationally.



CS Pavan Vijay

Past President, ICSI, Delhi

Profile

Mr. Pavan Kumar Vijay, Founder Corporate Professionals, is a Fellow Member of the ICSI, holds a Master's degree in Commerce and a degree in law. He possesses over 27 years of experience in Company Law, Capital Markets & Financial Services. Before founding Corporate Professionals in 2003, he was the Managing Director of BLB Limited, a biggest Corporate Stockbroker (specializing in arbitrage) of the time. He has the distinct honor of becoming one of the youngest President of the Institute of Company Secretaries of India in the year 2003. He has richly contributed in number of committees set up by the Government, Regulatory Authorities, Professional bodies, Chambers of Commerce and Industry, etc.

He is a prolific speaker and author. He has delivered over 475 lectures on Corporate Restructuring, Mergers & Acquisitions, and Takeovers, Corporate Governance, Company Law and Securities Law etc. at various forums. He has appeared on various TV News Channels in Panel discussion, Talk shows, Interviews etc. and is quite active on social media platform. Mr. Vijay has authored/ co-authored several books, articles, research papers, and reports.



CMA Sanjay Gupta

Past President, ICAI (CMA), Delhi

Profile

CMA Sanjay Gupta is the Past President of the Institute of Cost Accountants of India for the year 2017-18. He is a Managing Partner of Sanjay Gupta & Associates, Cost Accountants (one of the leading Cost Accounting Firm in India). He was Nominated by Hon'ble Union Minister for Science & Technology for RGCB for Finance Committee (2021-23). He has been a Chairman - Corporate Insolvency & Restructuring Committee of Federation of Indian Industry (FII).

Mr. Gupta was the Key player in disseminating Sustainability Practices among professionals / stakeholders globally and in India. Eloquent Speaker and Panelist on various topics in Regional/National and International conferences organized by Professional Bodies like The Prince's Accounting for Sustainability Project (A4S), IBBI, IFAC, SAFA, GRI, TRAI, ASSOCHAM, CII, ICC, PHD Chamber of Commerce & Industry, AIIPA, FICCI, IUCN etc.



The Alternative Dispute Resolution - Take charge of your own dispute

By **CA. DR. Rajkumar S Adukia**

Ph.D, LL.B, LLM (Constitution), FCA, FCS, MBA, MBF, FCMA, Dip Criminology, Dip in IFR(UK) Justice (Harvard), CSR, Dip IPR, Dip Criminology, Dip in CG , Dip Cyber, Dip data privacy B.Com., M.Com., Dip LL&LW

Introduction:

As conflict is an inevitable part of human rather we should say every living things on earth, because other species such as animals / birds may also quarrel with each other for instance say territorial disputes. More or less the conflict arises due to differences of opinion as we may be having dispute concerning family matters or in worklife or may be mere passing the street but thanks to our sense of logic and justice we being a human can resolve them amicably and certainly avoid such possible conflicts. Naturally in the event of conflict we are suggested to have court assistance but with the development of Alternative Disputes Resolution (hereafter "ADR") there evolved certain dispute resolution technique /modes that results in much simpler, faster and peaceful solution than the court remedy.

The foremost techniques of ADR is Negotiation. It is the most advantageous technique/mode that certainly provide high level privacy of disputes. Since only disputing parties are involve and no third person can have a access to interfere in this method, it gives a lot scope to sit and make up the differences. The best part of negotiation is that even if it is not successful the parties may always take recourse of other modes such as Mediation which is nothing but an assisted negotiation, conciliation and Arbitration. While as of yet the arbitration and conciliation derives legal force from the Arbitration and Conciliation Act, 1996, mediation from section 89 of CPC 1908 although it lack full fledged legislation.

Despite the legislative scheme the practice of ADR in india is voluntary.

This article focuses upon such certain practices and scheme of ADR in India in terms of its nature of conduct whether ad hoc or administered; available platforms or forums for the better understanding to commoners and budding ADR practitioners.

A. Is there statutory framework for ADR in india?

Yes, ADR was first time introduced via insertion of section 89 into the Civil Procedure code 1908 brought into effect by the CPC Amendment

Act 1999 that became effective since 1st July 2002. The section provides for the reference of case pending before courts to the ADR such as (a) arbitration; (b) conciliation; (c) judicial settlement including settlement through Lok Adalat; or (d) mediation etc. The method of Arbitration

and Conciliation are additionally governed by the Arbitration and Conciliation Act, 1996. In addition to these the supreme court in Salem Advocate Bar Association V Union of India, (2005) 6 SCC 344 approved for Model Civil Procedure Mediation Rules and directed 25 high courts in the country to framed their Mediation & Arbitration Rules.

Although these legislation are the basis of ADR there are certain other statutes that advocate for compulsory recourse of either mediation, conciliation or arbitration. These are:

1. The Indian Contract Act, 1872



2. The Negotiable Instrument Act, 1882
3. The Industrial Disputes Act, 1947
4. The Hindu Marriage Act, 1955
5. The Family Courts Act 1984
6. The Motor Vehicle Act, 1988
7. The Legal Service Authority Act 1987
8. The Companies Act, 2013
9. The Companies (Mediation and Conciliation) Rules, 2016
10. The Commercial Courts Act, 2015
11. The Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018
12. The Real Estate (Regulation and Development) Act, 2016
13. The Consumer Protection Act, 2019
14. The Consumer Protection (Mediation) Rules, 2020
15. The Consumer Protection (Mediation) Regulations, 2020



is the parties must resolve disputes themselves as it eliminates the risk of access of crucial information to third person. Since there are no hard and fast rules for negotiation and this is something which we do on a daily basis for instance every day are negotiating with family members, supervisors

or employees, or store salesclerks it is certainly advatageous to go for negotiation before faciliating or inviting third person to resolve the same. In the event when negotiation not succeded mediation may be a preferred choice certainly the person will be having choice of going for concliation or arbitration.

As already mention in India the process ADR is divided into two one is court referred and other is private, although both advocate for prior consent of disputing parties, the later that private is certainly more flexible to opt for.

It truly depict the voluntary nature of ADR as the party themeselve to decide where to go for recourse of their dispute. There are numerous ADR platforms and faciliators which are further classfied into two that is Ad hoc and Institutional meaning adminstered and not administered. For instance Ad hoc Arbitration means which is not administered by any forum or platform and the parties are generally required to terms of procedure, appointment etc. whereas on the other hand insitutional arbitration means the process of which is governed by the respective guidelines, rules prescribed by such institution/forum or platforms. You are just one google search away from the Mediation, conciliation & Arbitration institution.

With the development of ADR in country there is certainly increase in the platforms faciliating dispute resolution and therefore in the arbitration insitutions or forum that increases their competition. For this reason the 2019 amendment introduced in the Arbitration and Concliation Act 1996 led for the establishement of Arbitration Council of India who shall provide grading

B. What is the eligibility dispute resolution providers?

Naturally anyone possessing sound mind may faciliate the resolution to the concerned dispute therefore there are no rigid formalities prescribed for imparting role as a dispute resolution providers. Since India follows either court referred ADR or Private ADR, the accreditation is necessary for empanelment with court and tribunal mediation panels. The person can be a certified accredited dispute resolution provider either in the category of Mediator, Conciliator or Arbitrator after successful completion of training course.

C. Is there a chronological order of choosing alternative method? What is desirous mode of ADR?

No, ideally there is no chronological order for adoption of ADR method however at the intial level the parties must insist of upon negotiation that

of arbitral institution based on criteria such as infrastructure, quality and calibre of arbitrators, performance and compliance of time limits for disposal of domestic or international commercial arbitrations. Although it does mean that the arbitral institution be governed by such council and are certainly operate on voluntary basis.

Well this is certainly a positive step taken for strengthening the ADR and improving the quality of dispute resolution.

D. What are different types of disputes to be handled through ADR?

The question as to what matters can and cannot be settled through ADR process is well discussed by apex court in pronouncing decision in *Alcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 SCC 24. These are listed as below:

1. All cases relating to Business, trade, commerce and contracts, including—
 - disagreements arising out of provisions of contracts (including all money claims);
 - disputes between customers and supplier of goods;
 - disputes arising between the bank and customers
 - disputes relating developers/builders and customers
 - disputes between landlords and tenants/ licensor and licensee
 - disputes between insurer and insured
2. All cases arising from soured relationships, including—
 - disputes relating to matrimonial causes, maintenance, custody of children;
 - Disputes as to partition of property among the family, coparceners, co-owners etc.
 - disputes relating to partnership among partners
3. Cases where there is a need for a resolution without altering the previous relation-
 - Disputes between neighbours (relating to easementary rights, encroachment,

parking, nuisance, noise complaint etc.)

- clashes between employers and employees
 - Disputes among members of societies/ association of apartment owners/ associations etc.
4. All disputes relating to tortuous liability, including—
 - Claims for compensation in motor accidents /other accidents
 5. All consumer disputes including
 - Disputes where trader/ supplier/ manufacturer/ service provider is keen to maintain his business /professional reputation and credibility or product popularity

While matters involving prosecution for criminal offences are certainly kept out of the regime of ADR but the Law commission of India in its 142nd report stated that it is desirable to infuse life into reformatory provisions embodied in section 360 of Cr.P.C and the Probation of Offenders Act 1958. Today the CRPC allows compromise and settlement in criminal case by use of plea bargaining, Lok Adalat and Mediation. Section 320 CRPC recognises certain offences under IPC 1860 which can be compromised between victim and the offender. This process of reaching of compromise without wasting court's time is called compounding. Presently there are 56 such compoundable offences out of which 43 are without the permission of the court and 13 are with the permission of the court. Certainly only the victim has the right to compound the offences. Further the new chapter XXIA introduced in 2006 namely "plea bargaining" refers to a pre-trial negotiations between the defendant usually conducted by the counsel and prosecution during which the accused agrees to plead guilty in exchange for certain concession by prosecutors. However the benefit of plea bargaining is certainly not available to the habitual offenders.

To have an understanding of the core of matters eligible to be decided via ADR few are listed below in light of the category of dispute they fall and legislation by which they govern.

Sr. no.	Category	List of disputes	Governing legislation
1	Commercial disputes	Breach of contract	The Indian Contract Act, 1872; The commercial Courts Act, 2015
		Non-performance of contract	Ditto
		Payment of consideration delivery of goods & services	Ditto
2	Labour disputes	Payment of wages	The Payment of Wages Act, 1936
		Layoff	The Industrial Disputes Act, 1947
		Retrenchment	The Industrial Disputes Act, 1947
		Working conditions	The Disaster Management Act, 2005
		Leave disputes	The Factories Act, 1948
3	Family disputes	Maintenance	The CRPC 1973, the Family Courts Act, 1984 & the Hindu Marriage Act, 1955, the Hindu Adoption and Maintenance Act, 1956, the Special Marriage Act, 1954, and other personal laws such as the Muslim women (protection of rights of divorce) Act, 1986, the Parsi marriage and divorce Act, 1936, the Divorce Act, 1869
		Child custody	The Family courts act 1984 and other personal laws as above
		Divorce	The Family courts act 1984 and other personal laws as above
		Domestic violence	The Indian Penal Code, 1860
4	Consumer disputes	e-commerce disputes	The Indian Contract act 1872 and the Consumer protection act, 2019 & rules/regulations made thereunder
		Airline passengers disputes	Ditto
		Hospital – patient disputes	Ditto
		Insurance disputes	Ditto
		Prebooking of travel agency, hotel, entertainments platforms	Ditto
5	Tenancy disputes	Property possession	The Transfer of Property Act, 1882
		Rent disputes	Ditto
		Eviction	Ditto
6	Cases of negligence	Dispute in delivery of service	
		Dispute with hospitals	
		Disputes with restaurants/hotel	
7	Criminal offence	Violence against medical professional	IPC 1860
		Breach of lockdown guidelines	The Disaster Management Act, 2005
		Spreading fake news	The Disaster Management Act, 2005 & IPC 1860

Source: Vidhi centre for legal policy report on ODR the future of dispute resolution in India

E. Suggest some general guidelines for conduct of Online dispute resolution.

The outbreak of covid 19 that resulted in mandatory maintenance of social distancing age have necessitated the need of virtual professional, adopting to the new normal every professional forums worldwide have started virtual life of their respective profession/buisness. Well this have very much applicable to the litigation platforms

of country and almost every dispute resolutionary mechanism have adopted virtual proceedings maintaining social distancing. At this juncture the ADR mechanism have certainly become the ODR – online dispute resolution. As of now you must have understand that there are no statutory process governing the process nevertheless the ADR forums/platforms/institution have to follow certain protocol for online conduct of process. Such in nutshell have provided as below:

1. The facilitator may first contact both parties, and brief over the process of downloading/use of digital platform
2. Subsequently he must explain over the flow of session and discuss the issue arisen in matter very briefly
3. He may make available the concern parties of consenting letters stating the permission of conduct of online hearing and terms & conditions of the same
4. The facilitator may make available credentials of hearing such as meeting ID and password, and provide them to the parties or their authorized representatives
5. A reminder must be send day before the conduct of process
6. As a precautionary measure the mediator/conciliator/arbitrator may join the virtual meet in advance and facilitate assistance if any technical difficulties arise or cause to the parties
7. Before starting the process he must remind the parties of agreed terms and condition, flow of session and their rights in between the process
8. He must available or provide breakout session whenever time needed to think upon or general break in the virtual meet.
9. A virtual white board may be created to brain-storm ideas when the phase of decision making is reached
10. Once the process is concluded he may provide the parties the mutual agreement to sign through E-signature in case a final decision is reached



Since the disputing parties are permitted to appoint more than one mediator/arbitrator/conciliator so far the number is odd in cases of co-mediators/arbitrators/conciliators the responsibilities of them in virtual proceedings are certainly many. They must organize in a manner to establish a

successful system of communication with each other and with the parties. It is recommended that co-mediators/Arbitrators/conciliators:

1. Should familiar with each other, or have previously worked with each other
2. They should have an understanding of strategy, vision in resolving the concerned disputes so that the collaboration would be easier and it would be easier to arrive at conclusion.
3. It is requires that they must understand case in brief manner before proceeding to the session in respect of platform, by mail, telephone or video conference they are going to use
4. Facilitate the division of task between themselves and set strategy prior to session, harmony and cooperation is certainly very important in the process

5. They must restrain the amount of confusion to the parties take steps in the manner

6. The absence of physical presence may create problem in flow of discussion as two person might try to speak at

the same time, the collaborators must ensure that every person in the dispute may get their fair chance and must maintain discipline throughout the process

F. **How to understand the dispute?**

Well this is the most crucial question so far from the perspective of dispute resolution providers. As in order to arrived at peaceful conclusion/remedy it necessary to have clarity over subject matter concerning the disputes. This may certainly be achieved by asking further question.

1. What is that misunderstanding that resulted in dispute?
2. As far as you can tell, what did you specifically misunderstand about the other person? The situation? The interaction between you?
3. What is that exact thing/or act said/done by the other person that have caused you upset?
4. What words might you use besides upset?

5. Do you believe the said situation may be avoided? How?
6. What would you prefer the other person had said or did instead, in this circumstance?
7. The thing that you said/done causing hardship to other person was it necessitated? Was there any other alternative?
8. What seemed to be causing that person upset – such as, how might they have interpreted what you said or did?
9. What is that thing you want to be done by other person so that you will able to move on?
10. What might the other want or need from you to move on?
11. What insights do you have?

G. What is Justice in ADR and how does it has expansion of access to justice?

The idea of Justice immediately stir up our mind to related with the court of justice. With the emergence and development of other various modes than that of court providing for peaceful recourse to our dispute have certainly press of Justice through such methods. The idea of justice certainly grow with civilization and the what was used to consider justice in the past for instance An eye for an eye may not be relevant in present time especially in the context of social justice. Therefore the principles of fairness and equality have played great role and the solution provider is more focused upon the problem solving approach. This idea of justice is embodied in the process of ADR by the solution provider who generally focuses upon the interest rather than the position the disputing parties may hold. This may be better understood with illustration.

Two person “A” and “B” disputing in library where A wanted the open to be open while B wanted it closed. When Librarian enters and asked the reason from both A declared that he wanted window to be open to have fresh air on the

other hand B wanted it to be close to avoid draft

Solution: *The librarian opens window of next room to have fresh air without draft. Here the librarian could have come up with the brilliant solution which she did if she would have focus upon position, instead she focus at interest that is fresh air and no draft.*

Hence although the dispensation of justice requires the fairness, equality, the modern theory certainly focuses upon reconciliation of interest and Inventing options for Mutual Gain.

Further the idea of justice is merely on paper if means of access to justice are not provide and ADR is one such process that have certainly provided the expansion of access to justice thereby entailing completion notion of justice. The fact that development of ADR in the country have resulted in availability of platforms just one click away, existence of mechanism making

available means available adequate representation of underprivileged section of society have put the ADR certainly at the special place in the context of access to justice.

H. What is there for budding ADR professionals?

Almost 65% of India's population is under the age of 35 years, the average of Indian is 29 years, while there two ways to look at the glass some people may take it as an asset some may take in light of unemployment. Although the problem of lack of jobs is well address and curb to some extent by various government initiative of digital India or Atmanirbhar Bharat, Startup etc. the ADR Profession is one such area to be think upon by younger generation. Since the role of solution provider does not required any certain degree, the person with sense of logic and justice may explore this career opportunity. Family, commercial, business, trade, real estate, labour management, workplace, sports, transport, bankruptcy, contract, neighbor, health, hospitality etc are few subject that can be make area of practice/ specialisation.



I. Mediation and the right of children. How it can protect child right in the matter of family disputes/child custody/property disputes?

Family dispute is one such common area of ADR, since most of the family dispute relates to matrimonial matter such as divorce, separation, maintenance one factor that is going to get affected either of decision is the concerned children. When the dispute revolve around the custody of child, it certainly puts the solution provider under immense pressure as he must bring or facilitate such solution that will protect the interest of child as well. To arrive at conclusion in such respect the solution provider must consider further things:

1. What is best for child
2. Child's age must be considered
3. Protection from abusive language and treatment

To conclude the whole process requires lot of patience, time and right atmosphere

J. How Peaceful settlement can be arrived at?

Consent plays a great role in arriving at any settlement, as only desire to settle may make the conclusion peaceful. Willingness of disputing parties to explore the means of settlement is all that is needed, when the parties are represented their counsels/authorised representatives it certainly becomes their duty also to take adequate participation in arriving at settlement, they may properly suggest and encourage the respective party about the pros and cons of agreeing to respective offer.

What are the essentials of good contract/agreement to avoid the possibility of dispute?

Although we may disputes are inevitable part of our life, it can certainly be avoided to some extent. Since most of the disputes occur out of contract/agreement (written, verbal) where sometime the other party may have breach the terms of it, or perhaps there is lack of clarity over terms, this can certainly avoided by drafting good and full fledged agreement/contract. It is advisable to go for written contract/agreement, such written document must includes all the terms and conditions concerning the agreement/contract. Both parties must be aware of their respective legal obligation and that should certainly reflected in the such document and read before signing the same. The parties can be little organised so the problem of misplacing losing contract document may not occur, additional copies should be kept along.

Conclusion:

The mechanism of ADR certainly provides you the accessible, affordable, quick, confidential and flexible solution allowing you to get back to your business sooner. The greatest advantage that it brings on the table is allowing the disputing parties to work cooperatively in considering the options and reaching at a practical agreements thereby taking charge of one's own dispute indeed!

We hope you find this article helpful, if you have any questions, comments, suggestion on the same please feel free to reach us at 9820061049 or drrajkumarsadukia@gmail.com

Happiness is a butterfly, which when pursued, is always beyond your grasp, but which, if you will sit down quietly, may alight upon you."

— Nathaniel Hawthorne



"The life of an uneducated man is a useless as the tail of a dog which neither covers its rear end, nor protects it from the bites of insects."

— Chanakya



By CA Shailesh Haribhakti

Risk Resilience: a counter to the Pandemic's challenge!

Data is the new oil! Data is the new asset that needs to be curated, analysed and fed into the very essence of management.

Corporate boards have gone into overdrive: Risk policies are being revamped; independent directors are being added to risk committees; Risk committees are being renamed 'Risk and Opportunities' committee; all migrations from the identified Risk status are being tracked; new mitigating actions are being established with deliberation and Red risks are being isolated for continuous attention.

No less than CEOs are taking ownership of the Risk management processes.

Here is a peek into a 'Risk and opportunities committee' meeting:

The CEO presented the three top red Risks. They were:

- Cybersecurity
- ESG thought and action leadership
- Depletion of key Mineral resources

In the Cybersecurity space three risks and opportunities were identified:

Creation of a repository to track key Global Cyber challenges that were successfully mitigated and those where damage actually occurred. The Pandemic period revealed that the actual business interruptions and ransoms paid were on the ascendancy! Critically important mitigating factors were identified as proactive patching, penetrating testing, ethical hacking and protocols to communicate effectively as soon as

The world has suddenly become a place where several new normals are being established.

Risk, as we all know travels most frequently from outside-in!

- ✱ **Working from anywhere.**
- ✱ **SMSV: social distancing, masking, sanitization and vaccination.**
- ✱ **Collaboration to get ESG integrated into corporate strategy.**
- ✱ **Digitalisation at breakneck speed.**
- ✱ **Workers as connected entrepreneurs.**
- ✱ **Insighting from masked, desoiled data.**

an attack was discovered. A clear plan with resources required was approved. Strengthen the SOC- This is an ongoing activity. Analytics, Machine learning and rapid upgrades and system documentation protocols were approved to be invested in.

Need to communicate the lessons to the entire organisation was felt. Unless a widespread culture of safe usage of devices and of the internet interfaces is co-owned by the entire organisation, limited overall posture improvement was possible. This was set into an annual calendar to cover in waves all levels of the organisation.

On ESG work was initiated to create:

A vast implementation of IOT, embedded chips and auto dataset capture mechanisms. Aim was to establish a six capitals driven, continuous improvement in measurement. Lessons learnt from ERP implementation were sought to be transferred in.

Also a commitment was made to use social media to share positive outcomes and to spread the strategic benefits of good practices.

Experts were invited on two occasions to bring in the latest learnings from all over the world.

On Minerals the following actions were initiated:

Proactive permission for auctions to acquire mining rights and a Global search for available reserves was initiated. The SOPs to ensure resilient, proactive participation were required to be presented in a short period.

The map of available, exploited, utilised and new acquisitions was put on a tracker to ensure the continuous attention of the committee.

Reporting to the Board on a continuous basis on this critical risk was initiated.

The key takeaways are that the data richness, mapping and presentation accuracy for this aspect needs to be continually improved. Actions need to be time and responsibility stamped and trackable. Else they lose focus. Until the red risks turn green, the focus must be continuous monitoring driven.

In such a fast paced and ever changing atmosphere, Risk professionals are getting their due recognition in terms of corporate contribution. IRM's qualified graduates and experienced members are being called upon to step up to preserve the momentum tackling this challenge. While Data Analytics is gaining ascendance, ML and AI pairings are being deployed to glean insights and to recognise patterns. Risk repositories are being constructed and shared across domains as the volatility in the environment is giving

rise to the instinct of self preservation by all manner of collaboration.

Actions are being initiated, resources are being committed and results are being flagged continuously to keep the vigil constant.



The coalesced actions and insights are resulting in a flight to Resilience. Fleet footed organisations are innovating at a never before seen pace. Pivots are becoming commonplace from linear to exponential thinking, from a scarcity to an abundance mindset, from a compliance to an experimental infrastructure

to support change management. All old stereotypes are being discarded and new management styles and paradigms are emerging daily.

This is the new normal. Let's embrace it lest it strangulates us into submission. Let's bring the convergence of Sustainability, Technology and Spirituality to life in this activity of managing risk. The benefits can be sizeable and the inclusion of independent views in this process as has been recently mandated by SEBI will bear ample fruit.

Though the duck swims smoothly on water, underneath it has to struggle and pedal. Nothing comes easier in life without struggle. So stay motivated.

– Anonymous



Holding onto anger is like drinking poison and expecting other person to die.

– Buddha



"The one excellent thing that can be learned from a lion is that whatever a man intends doing should be done by him with a whole -hearted and strenuous effort."

– Chanakya



By **CS Ramaswami Kalidas**
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Enforcement of Transparency and disclosure requirements through SEBI Regulations-A Study

Introduction

There are kaleidoscopic hues that surround the concept of corporate governance. One can articulate on the concept until the cows come home and yet fail to arrive at a universally acceptable definition to the term. James D. Wolfensohn, the former President of the World Bank, succinctly defined Corporate Governance as "a concept which promotes corporate fairness, transparency and accountability". Central to the theme of governance is the need for ensuring fairness and transparency which should be pervasive in the Organization and percolate down to every level of the corporate hierarchy and functions.

The need for corporate governance is common to every company since the Companies Act provides for the separation of ownership and control. The reins of authority for running the company are bestowed on a collective assemblage of persons called directors who are elected by the shareholders of the company in their capacity as the owners of capital.

The directors have a fiduciary responsibility to the company and in discharge of their duties, have to ensure that their actions are always directed towards the best interests of the shareholders. Governance has therefore necessarily to be the part of the DNA of every company with the difference being a matter of degree, relative to the extent of public interest in the company. The larger the degree of public interest in a Corporation, the greater the need for better governance.

Governance has to be also perforce enforced through the force of Regulations to ensure adherence to procedures, systems and processes all of which are manifests of the existence of a Governance system. One common hypothesis about human behavior is that Man is indolent and has to be goaded into action.

Voluntary compliance with the attributes of fairness and transparency on the part of a company is as hard to find as a needle in a haystack. The force of regulation is necessary to ensure rational behavior from humans. Not without reason did Jacques Rousseau, the famous French Philosopher, make the famous quote "Man is only born free. Everywhere he is in chains". It is therefore a given that governance has to be enforced through the force of Regulation in some measure.

As a responsible corporate Citizen, it is incumbent upon a company to usher in a system which promotes fairness and transparency in its activities. Transparency and compliance with disclosure requirements are necessary to insulate the shareholding public which does not have access to price sensitive information which has the effect of causing turbulence in the market price of the securities issued by the company as such information does not flow, as it should, in a symmetric manner. It is for this reason that SEBI through many of its Regulations has kept making changes, thick and fast, in the regulatory environment to ensure that they remain contemporaneous and in line with the requirements of a dynamic Eco-system.

In this exposition we shall take a birds' eye view of the requirements which exist under the following SEBI Regulations which promote two of the most basic ingredients of the Governance Process—transparency with timeliness in dissemination of information and adherence to disclosure requirements for the promotion of the capital market and investor protection which form the bedrock on which the edifice of Corporate Governance rests. Given the constraints of space in a discussion paper, we shall be brief in our articulation while driving the importance of the above two facets of governance.

a) SEBI (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015

b) SEBI (Prohibition of Insider Trading) (PIT) Regulations, 2015

SEBI-LODR Regulations-Regulation 30

Regulation 30 in the above Regulations provides for disclosures to be made by a listed company, of information which, in the opinion of the board of directors is material. To take away the discretion that was previously available with company Managements in the matter of disclosure of price sensitive information by which companies restricted themselves to disclosure of information which only provided to the public the “feel good factor” about the company. Certain events have been considered by SEBI as material events as appearing in Para A of Part A of Schedule III. Such events have to be disclosed without any application of the prescribed guidelines set out for determining materiality. Events in Para B of Part A in the above Schedule have to be disclosed based on application of the guidelines for materiality.

The Regulation also stipulates that the Board has to frame a policy as regards materiality and make the KMPs responsible for determining materiality. Further as timeliness has to be ensured while providing information, disclosure has to be ensured within 24 hours from receipt of information about the event. Of course, announcements on some items such as the recommendation of dividend, a bonus issue, financial results etc. have to be made within thirty minutes from the conclusion of the Meeting of the Board at which such items have been discussed.

The information has to be also hosted, simultaneous with the disclosure to the Stock Exchanges, in the company’s website and also preserved in the website for a minimum of five years where after it can be dealt with suitably according to the preservation policy to be framed under Regulation 9.

Para A of Part A of Schedule II

Events compulsory of disclosure

As the list is fairly long we have “cherry picked” for the purpose of discussion some of the events which are of common occurrence as under:

a) Any acquisition including an agreement to acquire, Scheme of Arrangement involving corporate restructuring, sale or disposal of any undertaking or subsidiary of the company or any other restructuring. For the purposes of disclosure, the expression “Acquisition” shall be construed

liberally to cover both direct and indirect acquisitions.

- b) Issue or forfeiture of securities, split or consolidation, buyback schemes, reissue of forfeited shares, alteration of calls, redemption of securities.
- c) Revision in ratings. It would be also necessary to provide the rationale as given by the Rating agency for the revision.
- d) Outcomes of meetings of the Board which are to be disclosed within thirty minutes from the conclusion of the meeting:
 - i) Dividend including interim dividend declared/recommended /decision to pass any dividend, dates of payment thereof.
 - ii) any cancellation of dividend with reasons for justification.
 - iii) decision on any buyback.
 - iv) decision regarding fund raising exercises.
 - v) increase in capital through bonus issue with dates of credit.
 - vi) reissue of forfeited shares, creation of new shares or securities etc.
 - vii) any alteration in share capital.
 - viii) Financial results
 - ix) decision on voluntary delisting.
- e) agreements in the nature of a joint venture, family settlement to the extent that they impact management and control of company, agreements with Media companies which are not in the ordinary course of business including amendments/terminations thereof.
- f) Frauds /defaults by promoter or KMPs or by the company or arrest of KMPs or promoters. Where it comes to arrests, the information should pertain to business related acts and not something such as the arrest of a KMP for acts of drunken driving or domestic violence which has little bearing on the company’s business.
- g) Changes in directors, KMPs, Statutory auditors/ Secretarial auditors.
- h) Resignation by the auditors along with the reasons. The reasons cannot be cryptic and cosmetic and there should be a detailed reasoning for the

decision so that the investing public could get a flavor as to the actual reasons.

- i) Resignation of independent directors along with the reasons. There shall be a confirmation from the director to the effect that the reasons as provided by the company are correct. Effective from January 1, 2022, in terms of a recent amendment made by SEBI, the copy of the letter of resignation which should set out the detailed reasons for the resignation has to be attached to the intimation to the stock Exchanges along with the details of other companies from which the director had resigned in the last three years.
- j) Issue of notices and intimations to shareholders regarding general meetings. Proceedings of the General meetings shall also be intimated.
- k) Details of any debt restructuring along with one-time settlements with banks.
- l) Where the company is subjected to any corporate insolvency resolution process, all developments pertaining to the above including appointment of Resolution Professional, details of resolution plans received, salient features of resolution plans as approved by the Tribunal shall be intimated.
- m) any other material information which does not involve sharing of commercial secrets.

Para B of Part A-Information to be disclosed based on application of guidelines for materiality

Intimation on the following matters has to be made to the Exchanges:

- a) Commencement /postponement in the date of commercial production of any unit/division.
- b) Changes in the general character of business which has been triggered off by any arrangements involving technical, marketing tie-ups, adoption of new lines of business.
- c) Announcements regarding additions to capacity or product launch.
- d) Information regarding the company having bagged or terminated major contracts which are not in the ordinary course of business.
- e) Disruptions caused in operations due to natural calamities such as floods, earthquakes or events such as strikes or lock outs. It is pertinent to note that SEBI had directed that companies shall also make intimations as regards the impact on their

operations caused by the COVID 19 pandemic.

- f) Effects on the business/operations caused by changes in regulatory framework which are endemic to the company.
- g) Litigations of a major nature along with their financial and reputational impact on the business, status of such litigations, their pendency etc.
- h) Frauds/defaults etc. committed by directors other than KMPs and other employees
- i) Introduction of schemes such as ESOPs for the benefit of employees.
- j) Provision of guarantees/indemnity in favour of third parties and the financial ramifications thereof.
- k) Grant/cancellation /suspension of key licenses/regulatory approvals.
- l) Any other information which has a major bearing on the business such as the development of new technologies, expiry of patents, changes in accounting policies, their likely impact on the business which is necessary to insulate the investing public against the creation of a false market for the company's securities.

As maybe observed from the above, the lists provided above are comprehensive enough to cover the entire gamut of activities pertaining to the company and its operations.

In addition, the company is also expected to respond to the Stock Exchange in respect of information that may be sought by the Exchange based on reports carried by the Media relating to the company.

A word of caution for those that are part of the fraternity and are responsible for dissemination of information under the Regulations. The unwritten rule to be followed while making disclosures is to disclose, when in doubt as to whether the information is material or not. One should not be, like the Prince of Denmark in Shakespeare's Hamlet, caught in the horns of a dilemma and repeat his words in the famous soliloquy "To be or not to be-that is the question". The above advocacy is made considering that the Regulators generally come down heavily in cases of material non-disclosure. The other aspect to be considered is that the element of discretion has been substantially eliminated through amendments made to Regulation 30. No longer can a company follow the "low hanging

fruits” policy where it comes to making disclosures and only release information which is palatable.

Where the event reported is of a continual nature, it would be necessary to keep the market abreast of developments in the matter culminating in its conclusion.

Transparency and Disclosures-PIT Regulations

It is sacrilegious on the part of a company to fall foul of the provisions of the PIT Regulations. The surveillance mechanism that has been developed over the years through the above Regulations is such that India can lay claim to having one of the most robust mechanisms amongst the developed markets for imposing fetters on the scourge of insider trading. The Regulations have been tweaked with consistent regularity with an eye on insulating, as far as possible, the unsuspecting investor community from the menace that can be perpetrated by the “Insiders” by dealing in the company’s securities while in possession of unpublished price sensitive information.(UPSI). Any trade by an insider is presumed to be with the foreknowledge of UPSI which presumption of course is rebuttable.

We shall capture briefly the provisions that are enshrined in the Regulations which ensure transparency to espouse the cause of corporate governance.

- a) Appointment of a Compliance Officer to administer the code of conduct and fair dealing which has to be formulated by the company. The Compliance Officer could be different from the Company Secretary for the purposes of these Regulations.
- b) The Regulation brings within its ambit insiders as also connected persons and their relatives. Any person who is in possession/has access to UPSI is deemed to be an Insider.
- c) The Regulations also cover securities which are proposed to be listed.
- d) “Pledge” of securities is considered as part of trading or dealing with securities.
- e) No insider is authorized to provide access to UPSI to others including other insiders except for performance of legal duties, legitimate purposes or for discharge of legal obligations.
- f) The Board is required to formulate a policy on legitimate purposes as part of the Code of fair disclosure and conduct under Regulation 8.

- g) Anyone who is in receipt of UPSI shall be deemed to be an Insider and directed to ensure confidentiality of UPSI.
- h) Parties that are in the know of UPSI are to sign confidentiality agreements that will prevent them from trading while in possession of UPSI.
- i) Company shall maintain a digital structured data base which shall be maintained internally and will contain the nature of the UPSI, particulars of persons including PAN of persons who are in possession of UPSI as also details of persons with whom they have shared the information. The data base cannot be outsourced and shall have inbuilt controls which leave an audit trail. Information in the data base shall be preserved for a period of eight years. In case any investigation is carried out, the information shall be retained until the conclusion of the investigation.
- j) Trading plan can be formulated by an Insider which shall be shared with the Compliance Officer who will in turn share it with the Exchanges along with details of trades carried out pursuant thereto.
- k) Code of practices and procedures for fair disclosure of UPSI shall be formulated and published in the Company’s website. The Code shall be drawn up keeping in view the principles laid down in Schedule A to the Regulations.
- l) Code of conduct as approved by Board has to be formulated for regulating, monitoring and reporting trades by designated persons and their relatives. The responsibility for ensuring adherence to the Code shall lie with the CEO of the company. Persons who shall be covered under the code shall be those who occupy important positions in the corporate hierarchy and their inclusion will be decided by the board in consultation with the Compliance Officer.
A code on similar lines is to be maintained by intermediaries to the company such as Auditors, legal advisors etc. as connected persons since they are in a fiduciary relationship with the company.
- m) Trading window to deal in the company’s shares shall be closed during times such as announcement of financial results. The window closure has to commence immediately after the closure of the relevant quarter and is opened 48 hours after the conclusion of the meeting of the board at which the results have been adopted. During the above

period no trading on the company's shares shall be allowed in respect of persons and their relatives covered under the code.

- n) The Audit Committee of the Board has been entrusted with the responsibility of monitoring the effectiveness of the internal code of conduct and it shall therefore carry out a periodic review of the mechanism.

Cases of insider trading are viewed with great amount of seriousness and persons found guilty of aberrations are subjected to heavy financial penalties apart from being asked to refund the gains that they have made from transactions through misuse of UPSI.

Conclusion

Due to the limitations of space, we have considered for discussion certain facets of only two important SEBI

Regulations which lay emphasis on transparency and disclosure which attributes are so crucial to the governance process. Apart from the above, there are several other Regulations of SEBI which promote the cause of governance. As they say, all roads lead to Rome. Much the same way, every Regulation espouses the cause of Governance although they may meander along different paths before reaching their destination.

Adherence to regulations is an integral part of the corporate governance movement. True governance is something beyond the letter of the law. Substance is far more important than form and every corporation should practice Governance in the truest sense so that the fruits of governance can be reaped by all and sundry that are connected in some way with the Corporation. Regulations can at best only act as a catalyst of change in the Governance process.

* * * * *

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



Life is ten percent what happens to you and ninety percent how you respond to it.

— Charles Swindoll

Unleashing the Power of Data Visualisation: Big Data Analytics

By Mr. Sanjib Sanghi

“The greatest value of a picture is when it forces us to notice what we never expected to see”

– John Tukey

The new era revolves around data, both collecting it and analysing it in ways never before possible. The idea of data creating business value is not new, however, the effective use of data is becoming the basis of competition.



Earlier, entrepreneurs used to take decisions based on intuition or based on their past experience. But the speed of changing business dynamics has forced entrepreneurs to derive insights from data to make better, smarter, real time, fact-based decisions like customer and product profitability, customer acquisition and retention strategies, customer satisfaction strategies, marketing segmentation, operations and performance management, supply chain and delivery channel strategy etc.

This data collection and monitoring is not a one-time job, rather a continuous journey. Further, for taking instant decisions, the entrepreneurs need to understand these complex data in no time. Data Visualisation here plays a pivotal role. It helps in better consuming and understanding large volumes of data. It's much easier to understand patterns and trends than looking through never-ending spreadsheets, even though it contains the exact same information.



Let's look at some major benefits of Data Visualisation!

Faster Data Understanding: Human brain processes visual information more easily

than written information. Use of a Charts, Graphs, Speedometers etc. to summarize complex data ensures faster comprehension of relationships than cluttered spreadsheets.

Creates New Discussion:

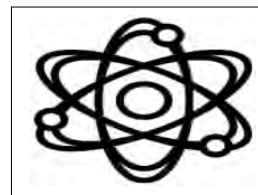
It provides a means to tell stories from the data. Eg: Heat maps can show the development of product performance in multiple geographic areas over time, making it easier to see those that are performing very well or underperforming.



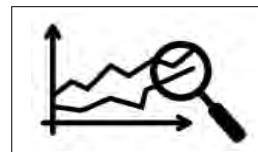
Identify Trend: It helps business leaders to easily spot market shifts and trends in varied and large data sets.



Interactive Data: Unlike static charts, interactive data visualizations encourage users to explore and even manipulate the data to uncover numerous factors.



Predictive Analytics: With Data Analytics we can forecast trends by the use of historical data. With predictive analytics, organizations can find and exploit patterns in the data to



detect risks and opportunities. Predictive analytics makes looking into the future more accurate and reliable and help organisations find ways to save and earn money.

Some Popular Powerful Data Visualisation Tools:

Power BI: Power BI is a self-service business analytics developed by Microsoft for efficient decision-making. With its help you can gather data from numerous sources and accumulate them in one platform. You can even bring data to life with intuitive dashboards and reports.



Google Data Studio: It is a cloud-based data analytics platform that enables users to connect to any data source, create beautiful data visualizations and easily share them when and where needed. It integrates multiple data sources in single report.



Tableau: It helps in simplifying raw data into the very easily understandable format. The best feature Tableau are Data Blending, Realtime Analysis, Collaboration of Data.



Skills required for Efficient Data Analytics

Producing analytics starts with understanding the business objective and identifying and obtaining relevant internal and external data sources to support the analysis. Producing analytics often occurs at the junior level. The ideal “analytically skilled” employee has these four characteristics:



Critical thinking:

To discover connections within data and draw conclusions

Understanding of the business context:

Understands the business data flow and the business context.

Analytical mindset:

Possesses an inquiring nature and intellectual curiosity.



Presentation skills:

Ability to present information clearly for data analysis.



Data analytics is a skill that can be applied to many scenarios across all service lines. Employees who have this skill are therefore both very versatile and valuable to the organization.

The work of CAs will advance in the future to provide more data analysis, consulting, and decision-making support services. The audit function will undergo a significant change with the incorporation of data analytics techniques. Data analytics can thus provide an important business opportunity for CAs and accounting firms.

PROFESSIONAL OPPORTUNITIES AHEAD -

In today's highly competitive business environment, accessing correlations between operations and performance is incredibly important. Data visualization can empower any business and give them new ways at looking at organization's data and enable them to make better and more informed



decisions from all aspects of business. In this era of information and data abundance, data visualization tools allow you to gain insights, target and analyze the essential data to drive business forward.

Chartered Accountants with their ability to interpret data can leverage these data visualisation tools and transform their reports into visually appealing and insightful dashboards to enable their clients in taking business decisions. This creates huge opportunities to take their service to the next level.

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

— Donald Miller



By CA Vinamar Gupta

GST on Second-Hand Goods

Introduction

There are special provisions under gst which deal with valuation, exemption and rates for second hand goods. The special feature of taxation is to tax differences i.e. margin instead of allowing ITC on purchases. This branch of law has been prepared to facilitate the small dealers, who generally purchase from unregistered persons and are not able to avail ITC. But number of issues in this margin scheme of taxation need to be addressed before opting for this scheme.

Valuation provisions for Second-hand goods

As per **Rule 32(5)**, Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored

Analysis:

Following conditions need to be satisfied for availing the benefit of Rule 32(5):

1. Margin Scheme is optional only.
2. Margin Scheme is applicable only to taxable supply.
3. Margin scheme is applicable only to goods.
4. Person availing the margin scheme must be “a person in buying and selling of second hand goods”
5. The margin scheme is applicable only to second hand goods.
6. Sale of second hand goods should be as such or after minor processing which does not change the nature of such goods

7. No input tax credit has been availed on the purchase of such goods.
8. Value of Supply= Difference between selling price and purchase price.
9. If purchase price is more than selling price, excess shall be ignored.

What is dealing in?

In order to avail margin scheme, the person impugned must be “a person dealing in buying and selling of second hand goods”. Hence the impugned person must be a “dealer”. What is dealer is not defined in gst law.

“To dealing in selling of a thing is to traffic, to trade in selling of it, to make a business of it. A single act of selling shall not make a person a merchant. A person who buys to sell again and not one who buys to keep is one who trades, as per **State of A.P. vs HA Bakshi & Bros., AIR 1965 SC**

Whether commission agent can be called a dealer?

As per **K.T. Cherian AIR 1954 Mad 959**, a commission agent brings the buyer and seller together and goods never passed into his possession. Such persons do not fall within the definition of dealer.

What is the meaning of second hand and used goods ?

Second Hand Goods:

i.	Second-hand things are not new and have been owned by someone else (Collins Dictionary)
ii.	having had a previous owner; not new (English Oxford Dictionary)
iii.	not new; having been used in the past by someone else (Cambridge English Dictionary)
iv.	acquired after being used by another (Merriam Webster)

v.	previously used or owned (Dictionary.com)
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Used Goods:

i.	already owned or put to a purpose by someone else; not new (Cambridge Dictionary)
ii.	that has endured use (Merriam Webster)

To avail margin scheme, goods must be used by the someone else. If the goods were owned by the previous owner and not used by previous holder, then margin scheme may not be available. Here it may be noted that it has been held by **ITAT Mumbai in Para 4.1 of Shree Laxmi Estate (P.) Ltd. 108 taxmann.com 195** that where vehicle is registered there is a presumption that vehicle has been put to use.

It has been held in **SAMEERA TRADING COMPANY 2019 (31) G.S.T.L. 375 (A.A.R. - GST) 25-09-2019**, that A plain reading of the rule 32(5) of the CGST Rules, 2017 reveals that this rule applies only in the situation where the supplier is involved in buying and selling of second hand goods. In the instant case the applicant is dealing in the generation and sale of electricity and not in buying and selling of second hand goods. Therefore, this rule would not apply to the transaction under examination. It may be noted that “electricity” has been held to be goods by **Supreme court in NTPC Ltd. 2002 (4) TMI 694**

Whether a person who sells the goods possessed for reasons other than buying, can avail margin scheme?

As per **K.T. Pappamma Rowther, AIR 1954 Mad 96**, the words used in between buying and selling in the definition of ‘dealer’ is ‘or’ and not ‘and’. Therefore a person will be a dealer, even he keeps on selling goods even though he does not buy any.

However in the present Rule 32(5), the words used are “and” and not “or”, in between buying and selling, therefore a person who sells without buying the same cannot be covered by margin scheme.

For example, if railway or transporter sells unclaimed goods not bought by them, they cannot be covered by margin scheme.

Whether sale of repossessed goods from defaulting borrower by the bank falls under margin scheme?

As per **proviso to Rule 32(5)**,

“Provided that the purchase value of goods repossessed from a defaulting

borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.”

X took a car loan of ` 3,00,000 from ABC Bank Ltd. on 1st September 2017 which was entirely used for the purchase of car worth the same amount. Mr. X defaults on the loan balance and thereby his car is repossessed by the bank on 1st March 2018. This car is sold on 30th March 2018 by the bank for ` 2,50,000. Determine the valuation under GST.

The purchase value to be taken will be the purchase price in the hands of the borrower – 5% per quarter or part thereof (September – March) i.e. 3,00,000 – (5%*3*300,000) = ` 2,55,000. As the sale value of the car is below ` 2,55,000, the margin will be ignored for the charging of GST

Hence proviso to Rule 32(5) provides the purchase value of goods only when defaulting buyer is not registered. Hence a deemed purchase value has been provided. The issue arises that what value may be adopted as purchase value where defaulting borrower is registered person. However still broader question is whether at all such repossession is covered by the scope of Rule 32(5).

It has been held in **Indo Mercantile Bank Ltd. [1959] 36 ITR 1 (SC)**, that Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. Further it has been held in **Dileep Kumar Singh [2015] 4 SCC 421**, “.....to expand the enacting clause, inflated by the proviso, since against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso.....”

Since the repossession is not purchase of goods by the borrowing bank, hence the proviso laying down the manner in which purchase value may be calculated by the borrowing bank may be rendered otiose by the Courts. Hence in the opinion of author, both in cases of registered and unregistered persons, there is no point in awarding discriminatory treatment amongst registered and unregistered person. To say that “purchase” in Rule 32(5) should be read to include “repossession”

in case of registered person is expanding the scope of proviso beyond enactment and is contrary to the pronouncements of apex court, hence Rule 32(5) may not be opted by the banks in case of repossessed goods.

Whether margin scheme is applicable to capital goods on which ITC has not been taken?

A person can not be said to be dealer in Capital goods. Hence irrespective of the fact that no ITC has been availed on purchase of capital goods, Rule 32(5) shall not apply.

Whether tax amount under Rule 32(5) is required to be indicated in the invoice ?

Indication of tax shall result in revealing the margin of the dealer by indicating the amount of tax. For example if tax of Rs. 18000/- is indicated in the invoice and tax rate is 18%, it means the margin of the dealer is Rs. 1,00,000/-. This feature can practically paralyze the applicability of Rule 32(5).

As per section 33 of the CGST Act, Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

Hence, as per **section 33, the amount of tax which forms part of the price at which such supply is made is required to be reflected in tax invoice.** However it also implies that if the tax does not form part of the price, then tax amount need not be indicated in the invoice. Hence tax need to be mentioned only when it is part of price.

As per **Rule 35**, Where the value of supply is inclusive of integrated tax or, as the case may be, Central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,—

Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100 + sum of tax rates, as applicable, in %)

Hence rule 35 also only applies where value of supply is inclusive of tax.

Combined reading of section 33 with rule 35 implies that if value does not include tax, it need not necessarily be mentioned on the invoice and also the formula for reverse calculation in Rule 35 shall not apply. The dealer in second hand goods may opt to pay tax on margin excluding the amount of tax. This shall result in his tax liability being marginally higher as compared to tax liability calculated as per Rule 35

However, this shall save the registered person from the inconvenience due to disclosure of margin of the seller by mentioning the tax amount.

Whether margin scheme shall apply to gold ornaments purchased from Jeweller and resold after use, to same or some other Jeweller.



As per **C.B.E. & C. Press Release No. 78/2017, dated 13-7-2017**, even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does

not qualify to be a supply *per se*. Hence Rule 32(5) shall not apply.

Whether margin scheme shall apply to registered person who buys old ornaments from unregistered persons and then resells to same/another person after cleaning/polishing.

As per AAR Karnataka Ruling in **Aadhya Gold (P.) Ltd [2021] 128 taxmann.com 254 (AAR - KARNATAKA)**, it was held that the applicant is effecting the supply of second-hand jewellery which is taxable under the GST Act as it is covered under entry no. 13 of Schedule V to the Notification No. 01/2017-Central Tax (Rate) dated 28th June, 2017 which is taxable at 1.5% under the CGST Act and similarly taxable under the KGST Act, 2017 also at 1.5%. Hence, the supplier satisfies the condition that the supply made by him must be a taxable supply. Regarding the next condition, the supplier must be a person dealing in buying and selling of second-hand goods. It is seen that the applicant has admitted that he

is purchasing used gold jewellery from individuals and selling the same, after cleaning and polishing them. The applicant has also admitted that he is not availing any input tax credit on the purchase of such goods and the goods so purchased are supplied 'as such'. The applicant has stated that he is not melting the jewellery to convert it into bullion and then remaking it to new jewellery but only cleaning the old jewelry and polishing it without changing the nature and form of the jewellery so purchased. These goods are then supplied to other persons. Further, the applicant admits that they are invoicing the goods as "used gold ornaments". Hence, the applicant satisfies the second condition also. In view of the applicant satisfying both the aforesaid conditions, the valuation of the supply of second hand jewellery may be made as prescribed in sub-rule (5) of rule 32 of the Central Goods and Services Tax Rules, 2017

Whether margin scheme shall apply to registered person who buys old ornaments from unregistered persons and then resells ornaments to same/another person after converting the old ornaments into bullion.

As per **J&K High Court in Lakesh Handa** Standard gold having a purity of 0.999/0.995 is converted into ornaments which have a purity level of 22 carats or lower. The purity is reduced by mixing other metals like silver, copper etc., which are necessary to give strength and durability to ornamental gold, in as much as, standard gold of 0.999/0.995 purity is very soft and tends to bend and break easily. The manufacturing processes also involve various steps whereby standard gold, copper, silver and other ingredients are processed through various mechanical processes with the aid of power as well as manual labour and skill, such as melting of metals, cold rolling, blanking, cutting and joining, sizing, base cutting, design cutting, rubbing, polishing, clearing, lacquering and packing. The result being an entirely new commodity in the form of gold jewelry, having a different name, character and use.

Therefore it is not a case of minor processing and hence margin scheme can not apply. Tax has to be paid on full amount of supply and not on difference between sale and purchase price.

Whether margin scheme shall apply to registered person who buys old ornaments from registered persons and then resells ornaments to same/another person after cleaning and polishing.

As per **AAR Karnataka in Attica Gold (P.) Ltd**

[2020] **116 taxmann.com 411**, if the jewellery is purchased from registered person, the taxpayer is eligible to claim ITC. If he claims ITC then he is not eligible for being covered in margin scheme. Even if ITC is not availed on purchases from registered person, it shall become part of cost and it shall not be feasible to avail margin scheme, especially when no tax is being collected from the buyer, because of anonymity consideration of the margin involved.

What is the taxability of old and used vehicles?

As per **Notification no.8/2018, dated 25-01-2018**, value of old and used vehicles shall be worked out as under:

- (i) in case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act, 1961 (43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply, and

S. No.	Chapter, Heading, Sub-heading or Tariff item	Description of Goods	Rate
(1)	(2)	(3)	(4)
1.	8703	Old and used, petrol Liquefied petroleum gases (LPG) or compressed natural gas (CNG) driven motor vehicles of engine capacity of 1200 cc or more and of length of 4000 mm or more. Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	9%
2.	8703	Old and used, diesel driven motor vehicles of engine capacity of 1500 cc or more and of length of 4000 mm. Explanation. - For the purposes of this entry, the specification of the motor vehicle shall be determined as per the Motor Vehicles Act, 1988 (59 of 1988) and the rules made there under.	9%

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where the margin of such supply is negative, it shall be ignored; and

- (ii) in any other case, the value that represents the margin of supplier shall be, the difference between the selling price and the purchase price and where such margin is negative, it shall be ignored.

This notification shall not apply, if the supplier of such

goods has availed input tax credit as defined in clause (63) of section 2 of the Central Goods and Services Tax Act, 2017, CENVAT as defined in CENVAT Credit Rules, 2004 or the input tax credit of Value Added Tax or any other taxes paid, on such good.

Tax rates to be applied on difference are as per following details:

Analysis of Notification 8/2018

1. It may be noted this concession is available under exemption available u/s 11 and is not part of optional margin scheme under Rule 32(5).
2. Further this exemption notification shall apply not only where ITC is not availed under GST but also where cenvat credit/vat is not availed under existing laws. Where vat/cenvat credit/ITC has been availed, then tax at full rate has to be paid on full value of supply.
3. Till 01-07-2020, another similar rate **notification 37/2017** issued u/s 9 was also operative but that was only applicable:
 - a. In case of lease Motor Vehicles purchased and leased before 01-07-2017,
 - b. In case of sale of motor vehicle , purchased before 01-07-2017, provided ITC/Cenvat/Vat not claimed at the time of purchase.

The tax computed under 37/2017 was subject to Maximum tax under 8/2018. For vehicles purchased post 01-07-2017, 8/2018 is applicable but 37/2017 is not applicable.

4. Apart from exemption available in NN 8/2018, exemption from compensation cess is available on all old and used motor vehicles, if ITC/Cenvat credit/Vat has not been availed on such vehicle. **[Notification 1/2018 dated 25-01-2018]**
5. Impact of this notification on old and used vehicle can be assessed as under:

Segment	Engine capacity	Tax rate pre-GST	Tax rate post-GST
Small cars	Less than 1,200cc	28%	18%
Mid-size cars	From 1,200cc to 1,500cc	39%	18%
Luxury cars	Above 1,500cc	42%	28%
SUVs	Above 1,500cc	45%	28%
Electric vehicles	NA	20.5%	12%

Whether Rule 32(5) can be applied to sale of demo cars by the dealers ?

There are contradictory AAR rulings on allowability of ITC on purchase of demo cars by authorized dealers. In *A.M. Motors, In re* [2018] 98 taxmann.

com 157/70 GST 484 (AAR - KER) and Chowgule Industries (P.) Ltd, In re [2019] 107 taxmann.com 293/75 GST 355 (AAR - GOA), ITC has been held to be allowed on demo cars. In *Platinum Motocorp LLP, In Re*, [2021] 124 taxmann.com 460 (AAR - HAR) and *Khatwani Sales & Services L.L.P., In re*, [2021] 124 taxmann.com 149/84 GST 658 (AAR - MP.), ITC on demo cars has denied.

However irrespective of the allowability of ITC on demo cars, it is an admitted position that in case of demo cars the intention of the dealer while purchasing the vehicle was not resale, but furtherance of business. Further supply after certain years does not change the intent behind the purchase of car. Dealing in demo car is not the intent and is rather recognized as capital goods. Hence in the opinion of the author, Rule 32(5) shall not apply to demo car. But at the same time notification 8/2018-CTR dated 25-01-2018 as discussed above shall apply.

What is the taxability of old and used goods supplied by the government ?

As per Notification No. 36 /2017-Central Tax (Rate) dated 13-10-2017,

- a) Used vehicles,
- b) Seized and confiscated goods
- c) Old and Used goods
- d) Waste and scrap

supplied by the Central government, state government, union territory or a local authority, registered person who is recipient of the supply is liable to pay tax under reverse charge u/s 9(3).

However where supply is made to unregistered person, then tax has to be paid by Central government, state government, union territory or a local authority. **Circular No. 76/50/2018-GST dated 31-12-2018** has also clarified that supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017. In this regard, it is clarified that the **respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of**

sections 22 and 24 of the CGST Act.

It was held by AAR in the case of **GENERAL MANAGER ORDNANCE FACTORY BHANDARA 2019 (26) G.S.T.L. 423**, that Indian Ordnance Factories is an industrial organization, functioning under the Department of Defence Production of Ministry of Defence, Government of India. Further, we find that Section 2(53) of the CGST Act and the corresponding section of the SGST Act defines the word 'Government' as the Central/State Government. The applicant which is engaged in research, development, production, testing, marketing and logistics of a comprehensive product range in the areas of air, land and sea systems is having an industrial status and functions under the Ministry of defence. It is not created by the constitution of India as a legislative, executive or judicial authority of the country. Hence we find that the applicant cannot be treated as "Government" as defined under Section 2(53) of the CGST Act, 2017 and hence tax has to be paid by Ordnance factory on supply of any used vehicles, seized and confiscated goods, old and used goods, waste and scrap.

In the opinion of author, the AAR ruling does not appear to be well conceived.

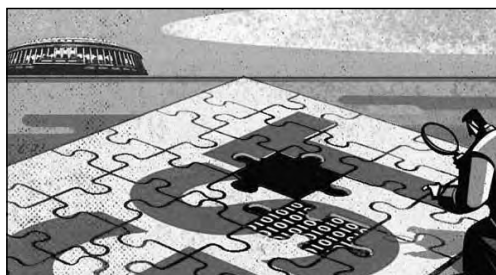
Whether margin scheme under Rule 32(5) shall apply to antiquities and memorabilia?

The Antiquities and Art Treasures Act, 1972, says an "antiquity" is an article or object that is at least 100 years old. It could be a coin, sculpture, painting or epigraph, or any object or article taken from a building or a cave, or anything that illustrates the science, art, crafts or customs or religion or literature of a bygone age, or anything of historical interest. If it is a manuscript or record of any scientific, historical, literary or aesthetic value, it should be at least 75 years' old. An art treasure is a human work of art, other than an antiquity, declared to be a treasure by the Centre for its artistic value after the artist's death. Possession of an unregistered antiquity is a punishable offence under law. Section 14(3) of the Act makes it mandatory for "every person who owns, controls or is in possession of any antiquity" to register it before a registering officer within 15 days of its coming into his control or possession and obtain a certificate of registration. Punishment may be a jail term of six

months, with or without fine. Besides, the antiquity is also liable to be confiscated.

Antiquities can be sold, but only by a licensed person. However, Section 3 of the Act prohibits export of an antiquity by anyone other than the Centre or its agencies. Violation of this section is punishable with imprisonment of at least six months, but the punishment could go up to three years with fine. The onus is on the buyer to verify if what he is acquiring is an antiquity, and, if so, that the seller is licensed to sell it and has a certificate of registration.

As per AAR ruling in Safeset Agencies, Private Limited 2019 (26) G.S.T.L. 351 (A.A.R. - GST) 15-01-2019, antique jewellery, watches, books of age 100 years and above, Sachin Tendulkar bat kept as



memorabilia has been held to be outside the purview of Rule 32(5). However, **AAAR Safset Agencies (P.) Ltd [2020] 117 taxmann.com 710 (AAAR-MAHARASHTRA) 07-10-2019** reverses the order of AAR on antiques. It has been held by AAAR The question of whether

the rule will apply has to be decided independently of the fitment of the product. There is nothing in rule 32(5) which says that it is not applicable to valuable or precious objects or objects having antique value. It is a settled principle of jurisprudence that when the words of a statute are unambiguous and only one reasonable meaning can be given to it, then the courts are bound to give effect to that meaning. Such words have to be interpreted in their natural and ordinary sense. Therefore, the term 'second-hand and used' has to be given its ordinary meaning and nothing more is to be attributed to it especially when the legislature has not chosen to expand or contract its meaning. Antique pieces are also second-hand and used by people before they come in the market. Hence rule 32(5) was held to be applicable by AAAR.

Conclusion:

The applicability of Rule 32(5) is in synchronization with principal of taxing value additions only. The cascading effect of taxes due to purchase from the unregistered person cannot be completely done away but is sought to be mitigated to some extent. However in the time to come, a memoth litigation is expected on this branch of law.



By Adv. Ankit Kanodia
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Reversal of Input Tax Credit in Real Estate - Whether Reversal Required on 1/3rd Value as Deducted on Account of Undivided Share of Land for Ongoing Projects as on 1st April 2019

Taxation of real estate under GST laws has seen various changes since the introduction of the new indirect tax regime from 1st July, 2017. From moving to No Input tax Credit on new projects from 01/04/2019 to taxation of development rights under reverse charge mechanism in the hands of the developer, the GST Council seems to have tried various formulae to boost the demand of the real estate sector.

However, one thing which has not been clarified as of yet by the CBIC is the applicability of section 17(2) and 17(3) of CGST Act, 2017 in case of reversal of common input tax credit for projects commenced before 1st April, 2019 and those who have opted for the old mechanism post 1st April, 2019.

Let us see the relevant legal provisions in this regard:

“17. Apportionment of credit and blocked credits. -

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

*(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, **sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.***



[Explanation.- For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.]

Schedule II

5. Supply of services

The following shall be treated as supply of services, namely:-

(a).....

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.-For the purposes of this clause-

(1) the expression “competent authority” means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the

following, namely:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or **(20 of 1972.)**

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure;”

As per the above section read with Sch II, the following is to be treated as exempt supply:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	All Services		
2	Section 5	Construction Services		
3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	

a. **Sale of land**

b. **Sale of building after receipt of Completion certificate where required, by the competent authority or after its first occupation, whichever is earlier.**

In case of a real estate project where the developer provides construction services to the customers, the rate of tax prior to 01st April, 2019 had been notified vide Notification No. 11/2017-CT (Rate) dated 28/06/2017 as below:

Para 2 of the explanation refers as below:

“In case of supply of service specified in column (3), in item (i); sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the

case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. – For the purposes of this paragraph, “total amount” means the sum total of,-

- (a) consideration charged for aforesaid service; and
- (b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.”

Thus, since in a real estate project where the buyer enters into an agreement for sale with the developer, along with construction services there is a transfer of undivided share of land also to the buyer, the GST law has deemed the value of said land to be 1/3rd of the total consideration charged for the unit from the buyer and thus for all practical purposes the effective rate of GST on outward supply by the developer to the buyer was $[18\% - (1/3 * 18)] = 12\%$.

With the above background, comes the question whether this 1/3rd value as has been deducted towards deeming value for the undivided share of land, should be constituted as exempt supply for the purposes of section 17(2)/(3) of CGST Act, 2017 *supra* and whether the developer is under any obligation to reverse proportionate Input Tax credit availed during the construction of such units on the value representing the undivided share of land to the total consideration of units sold by the developer.

Let us examine the definition of exempt supply. As per section 2(47) “*exempt supply*” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

Non-Taxable supply is defined under Section 2(78) to provide that “*non-taxable supply*” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.

From the above definitions what transpires is that the requirement of section 17(2)/(3) is to consider the value as exempt supply is sale value of land and sale of building if sold after receipt of Completion certificate. Now, what has been provided in the rate notification explanation 2 *supra* is that the value of taxable supply

for the purposes of construction services wherein there is transfer of undivided share of land along with provision of construction services and the law has deemed such value to be as 1/3rd of the total value of the unit as agreed between the buyer and the seller. Hence in view of the author since the said value has been provided as a mechanism of valuation of taxable value for applying the rate of GST on the construction services provided, the same cannot be qualified to be termed as exempt supply as the same is not under any exemption notified vide powers u/s 11 of the CGST Act, 2017 and neither the said value can be termed as a non-taxable supply as non-taxable supply is such supply which is not leviable to tax under the GST laws such as alcoholic liquor for human consumption, petroleum products as provided in the charging section 9(1) and 9(2) of the CGST Act, 2017.

Thus, since what is required to be added to the value of exempt supply being specified under the definition of exempt supply and other notified supplies as per section 17(3) of CGST Act, 2017, the value for the purposes of deduction for undivided share of land in case of under

construction unit cannot be said to be a part of exempt supply for the purposes of reversal of common input tax credit as required under section 17(2) of CGST Act, 2017.

Further, CBIC vide Order No. 04/2019-Central Tax dated 29/03/2019 w.e.f. 01/04/2019 clarified that in



case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, the amount of credit attributable to the taxable supplies including zero rated supplies and exempt supplies shall be determined on the basis of the area of the construction of the complex, building, civil

structure or a part thereof, which is taxable and the area which is exempt.

Thus, when the CBIC has clarified that the reversal under section 17(3) of CGST Act, 2017 must be done based on area of construction which is taxable and the area which is exempt, then the question of asking for reversal on value of 1/3rd of the total value of the unit representing undivided share of land cannot hold good for the period prior to 01/04/2019 also in the view of the author.

Once you've accepted your flaws, no one can use them against you.

– George R.R. Martin



You know you're in love when you can't fall asleep because reality is finally better than your dreams.

– Dr. Seuss



A lion doesn't concern himself with the opinions of the sheep.

– Lionel Messi



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Blocking of Electronic Credit Ledger

As per Rule 86(1) of CGST Rules, 2017- The electronic credit ledger shall be maintained in **FORM GST PMT-02** for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.

Blocking of the Credit Ledger as the term clarifies that input tax credit which has been accumulated in Electronic Credit Ledger has been Blocked. In other words the assessee being refrain to make the payment of the output tax from the credit of the input tax on goods and services to extent the amount has been blocked. Power to Block the Electronic Credit Ledger is contained in the Rule 86A of Central Goods and Service Tax Rules, 2017.

Rule 86A was inserted vide Notification No-75/2019- Central Tax dated 26.12.2019

History Leading to Insertion of Rule 86A

Case relating to the Blocking of the Credit Ledger appeared for the first time before the Hon'ble Gujarat High Court. In this case the Writ Applicant being Alfa Enterprise whose Credit Ledger was blocked for Rs. 6,63,51,380/-. Hon'ble Court held that the blocking of the credit is not backed by any statutory provision and there by respondents were directed to unlock the credit. This case was decided on 01.10.2019.

Soon after the decision of the Hon'ble High Court the CGST Rules were amended by way of Insertion of Rule 86A which empower the Proper Officer to block the credit ledger.

Intent of Insertion of Rule 86A of CGST Rules 2017

Country wide there was huge issue of Invoice without the actual supply of goods leading the recipient the benefit of the credit of the input tax. Hence with the objective to block such credit availed by the fraudulent means the provision was inserted so that the person availing such credit can be debarred from availing the credit by the way of Blocking of Electronic Credit Ledger.

Agenda of 38th GST Council Meeting as follows-

1. *Fraudulent ITC availment based on fake invoices has become quite rampant. As investigations get initiated, if the utilisation of such suspected credit continues, the investigation efforts get frustrated. However, at present there appears no explicit provision in the GST law allowing the authorities to block the ITC of business with the intent to safeguard Government revenue. Moreover, it was learnt that GSTN has already developed a utility for blocking and unblocking*

2. The issue was discussed in the Law Committee and it was felt that enabling provision for blocking utilization of ITC by the tax authorities should be provided.

In view of the above the context in which the Rule 86A was of fraudulent credit.

Hence the reasons to believe must be the registered person has availed the credit by fraudulent means.

If there does not exist any reasons to believe in relation to fraudulent credit, the Rule 86A cannot be applied.



If the proper officer has certain information about ineligible credit other than fraudulent credit he would be competent to issue notice u/s 73 of the CGST Act, 2017.

Instruction F. No. 587/CE/167/Pol/2019/11219-11269, dated 13-1-2020

Directorate General of GST Intelligence (Hqrs.), New Delhi, Instruction F. No. 587/CE/167/Pol/2019/11219-11269, dated 13-1-2020 has issued instructions for Blocking of Electronic Credit Ledger.

Para 2 of the Instruction as follows

All the Zonal Chief Commissioners have the facility to block/unblock ITC availed in a situation covered under Rule 86A(1)(a) of the CGST Rules, 2017 i.e. against fake invoices or against invoices without receipt of goods or services or both, if such availers of credit are located in their jurisdiction. To implement this provision, all the CGST Zones are required to make a list, GSTN-wise of fake credit availers and block their ITC under Rule 86A(1)(a) for the entities located in their jurisdiction. If, however, there are certain entities which are located outside their jurisdiction, they should forward a list of such availers along with GSTN No. to the local office of the Pr. ADG/ADG DGGI, with a request to block credit of such GSTN immediately.

In view of the above instruction the Electronic Credit Ledger is liable to be blocked under two conditions

- a. Input Tax Credit has been availed against the fake invoices
- b. Input Tax Credit has been availed without the receipt of the goods or services or both.

Hence the intent of DGGI, New Delhi is very clear.

No Credit of input tax to be blocked in situation where there are differences in the input tax credit claimed in GSTR 3B and details of supplies as available in GSTR 2A.

Legislative Competence of Rule 86A

Hon'ble Madras High Court in case of Revula Subba Rao And Anr. vs The Commissioner Of Income-Tax, ... on 28 March, 1951

Whether a subordinate legislative power of this nature can be exercised so as to alter or affect or abrogate a legislative provision in other statutes.

If such a power is recognised, it would lead to very serious and perhaps disastrous consequences.

Constitution belongs to the Legislature and to no other authority.

A power to make rules is in the nature of a subordinate legislation and does not stand on the same footing as the power of the Legislature to enact laws so as to affect other statutory provisions.

It is a common feature of modern legislative enactments to lay down in the sections of the Act, the principles and the policy of the Legislature leaving out details to be filled in and worked out by regulations or rules made either by the executive Government or by some other authority. This kind of legislation is described very often as subordinate legislation and is justified on the ground that the Legislature has neither the time nor the material to consider and enact rules relating to various details as they may not be acquainted fully with the facts and circumstances relating to the subject-matter and may have no time even to consider such details.

8. The very essence of subordinate legislation of the description now under consideration is that the body of the Act has laid down the general provisions and the policy of the legislature leaving out the details of the provisions of the Act to be carried out by the rule-making authority by making rules. The rule-making authority can only make rules with a view to effectuate the object of the Act and if the Legislature in its wisdom did not think it fit to modify any of the statutory provisions relating to other branches of law, the subordinate legislative authority cannot claim to exercise such power. It would be contrary to the very spirit and the basis of subordinate legislation to recognise a power of that kind.

Comments

Rule 86A of the CGST Rules, 2017 has been inserted by the exercise of the Power conferred u/s 164 of Central Goods and Service Tax Act, 2017 with the Central Government.

As per Clause 164 of Central Goods and Service Tax Bills, 2017 power has been granted with the Central Government for carrying out the provisions of the Act. In this case there is no enabling provisions in the CGST Act, 2017 which allows for blocking the Electronic Credit Ledger. In our view Legislative Competence of the Notification inserting the Rule 86A will be challenged before Hon'ble High Court.

Supreme Court of India in case of Global Energy

Ltd vs Central Electricity Regulatory Commission-

Para 18 - It is now a well settled principle of law that the rule making power “for carrying out the purpose of the Act” is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the regulation making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act- Kunj Behari Lal Butail & Ors. vs. State of H.P. & Ors. [(2000) 3 SCC 40].

Para 19 - The power of the regulation making authority, thus, must be interpreted keeping in view the provisions of the Act. The Act is silent as regards conditions for grant of licence. It does not lay down any pre-qualification therefor. Provisions for imposition of general conditions of licence or conditions laying down the prequalifications therefor and/or the conditions/qualifications for grant or revocation of licence, in absence of such a clear provision may be held to be laying down guidelines by necessary implication providing for conditions/qualifications for grant of licence also.

Grounds for Challenging Constitutional Validity of Subordinate Legislation

Supreme Court of India in case of Global Energy Ltd vs Central Electricity Regulatory Commission - State of T.N. & Anr. vs. P. Krishnamurthy & ors. (2006) 4 SCC 517, whereupon reliance has been placed by Mr. Tripathi, it has been held:

“15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a subordinate legislation can be challenged under any of the following grounds:

- (a) Lack of legislative competence to make the subordinate legislation.
- (b) Violation of fundamental rights guaranteed under the Constitution of India.
- (c) Violation of any provision of the Constitution of India.
- (d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- (e) Repugnancy to the laws of the land, that is, any

enactment.

- (f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)

16. The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly in consistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”

Delhi High Court in case of Subhash Chand Aggarwal vs Union Of India & Others on 25 July, 2011

“17. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India this Court referred to several grounds on which a subordinate legislation can be challenged as follows: (SCC p. 689, para 75) “75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary.”

10. In Mahalakshmi Sugar Mills Company Limited v. Union of India, (2009) 16 SCC 569 the Supreme Court again observed that the validity of subordinate legislation may be questioned on the following grounds:-

“51.From these decisions, it may be deduced that validity of subordinate legislation may be questioned on the ground that:

- (a) it is ultra vires the Constitution;
- (b) it is ultra vires the parent Act;
- (c) it is contrary to the statutory provisions other than those contained in the parent Act;
- (d) law-making power has been exercised in bad faith;
- (e) it is not reasonable; and
- (f) it goes against legislative policy, and does not fulfil the object and purpose of the enabling Act."

Subordinate Legislation not to go beyond Enabling Act

Delhi High Court in case of Subhash Chand Aggarwal vs Union Of India & Others on 25 July, 2011

6. The Rules are subordinate legislation and cannot go beyond the ambit and scope of the main enactment. In *Addl. District Magistrate (Rev.) Delhi Admn. v. Siri Ram*, (2000) 5 SCC 451 Supreme Court has observed that the mere conferment of rule making power by an Act does not mean that the subordinate legislation will go beyond/exceed the scope of the enabling Act. It was held:-

"16. It is a well-recognised principle of interpretation of a statute that conferment of rule-making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P-5, the rule-making authority has exceeded the power conferred on it by the Land Reforms Act."

7. In *Kunj Behari Lal Butail v. State of H.P.*, (2000) 3 SCC 40, the Supreme Court has observed that the delegated power to legislate Rules cannot be used to bring within its purview/ambit a subject that has been specifically excluded by the statute itself, or to bring into existence disabilities/prohibitions not contemplated by the provisions of the Act.

19. In *Shri Sitaram Sugar Co. Ltd. v. Union of India* a Constitution Bench of this Court reiterated: (SCC pp. 251-52, para 47) "47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the power granted, and on relevant consideration of material facts. All his decisions, whether characterised

as legislative or administrative or quasi-judicial, must be in harmony with the Constitution and other laws of the land. They must be 'reasonably related to the purposes of the enabling legislation'. See *Leila Mourning v. Family Publications Service*. If they are manifestly unjust or oppressive or outrageous or directed to an unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires': per Lord Russell of Killowen, C.J. in *Kruse v. Johnson*."

Powers which can Delegated

Supreme Court of India in case of Global Energy Ltd vs Central Electricity Regulatory Commission - In State of Rajasthan & ors. vs. Basant Nahata [(2005) 12 SCC 77] Section 22-A of the Registration Act, 1908 which was inserted by Rajasthan Amendment Act 16 of 1976 was struck down, holding:- (1) The executive while making a subordinate legislation should not be permitted to open new heads of public policy, (2) the doctrine of public policy itself being uncertain cannot be a guideline for anything or cannot be said to be providing sufficient framework for the executive to work under it, (3) Essential functions of the legislature cannot be delegated and it must be judged on the touchstone of Article 14 and Article 246 of the Constitution, and (4) only the ancillary and procedural powers can be delegated and not the essential legislative point.

Delhi High Court in case of Subhash Chand Aggarwal vs Union Of India & Others on 25 July, 2011

20. In *St. John's Teachers Training Institute v. Regional Director, NCTE* this Court explained the scope and purpose of delegated legislation thus: (SCC p. 331, para 10) "10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or,

what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes.”

Rule 86A is Pari-Materia to Rule 8(3A) of Central Excise Rules, 2002

Rule 8(3A) of Central Excise Rules, 2002 stipulates that if an assessee defaults in payment of duty beyond thirty days from due date, the assessee shall not eligible to utilize cenvat credit for payment of duty and have to pay the duty consignment wise.

However Rule 86A prescribes the situations where the Credit Ledger can be blocked.

Authorization to Block the Electronic Credit Ledger

Rule 86A(1) “The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as.....”

In view of the above provision the Electronic Credit Ledger can be blocked by

1. Commissioner
2. Assistant Commissioner with the authorization of Commissioner

Further Commissioner cannot delegate the power to block the credit ledger to an officer below the rank of Assistant Commissioner.

Further Assistant Commissioner can also not sub-delegate the power to his subordinate officer to block the credit Ledger

Reasons to Believe for Blocking the Electronic Credit Ledger

The Commissioner or Assistant Commission authorized by him before making order for Blocking the Credit Ledger must have reasons to believe that the registered person have availed the credit of input

tax fraudulently or have availed the ineligible credit.

Merely there is difference in GSTR 2A and GSTR 3B cannot be the reason to believe for Blocking the Electronic Credit Ledger.

Further merely the supplier has availed the credit fraudulent cannot be the reason to believe that the recipient of the goods or services has also indulged in the fraudulent activity of availing the credit of the input tax. Adjudication Proceedings to be initiated against the supplier and the not the recipient. Blocking of the Credit Ledger should be limited to the supplier only unless the recipient has fraudulently involved himself in availing the credit of the input tax.

Scope of Fraudulent Credit and Ineligible Credit for Blocking Credit Ledger

Electronic Credit Ledger can be blocked on occurrence of any one of the event

1. Credit of the Input Tax has been availed on the Invoice of the Registered Person found non-existent
2. Credit of the Input Tax has been availed without the receipt of the goods
3. Credit of the Input Tax has been availed by the Registered Person who is found non-existent
4. Credit of the Input Tax has been availed without in possession of the invoice
5. Credit of the Input Tax has been availed for which the tax has not been paid

Hon'ble Gujarat High Court in M/S S.S. Industries Versus Union of India -

Para 65

- (II) The power conferred upon the authority under Rule 86A of the Rules for blocking the ITC could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on subjective weighty grounds and reasons.
- (III) The power under Rule 86A of the Rules should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.
- (IV) The aspect of availing the credit and utilization of credit are two different stages. The utilization of credit is a vested right. No vested right accrues before taking credit.

(V) The Government needs to apply its mind for the purpose of laying down some guidelines or procedure for the purpose of invoking Rule 86A of the Rules. In the absence of the same, Rule 86A could be misused and may have an irreversible and detrimental effect on the business of the person concerned. In this regard, the Government needs to act promptly.

Blocking of Credit Ledger Serious Impact the Working of Business

Blocking of the Credit Ledger is a very harsh provision and same has to be applied in our opinion very cautiously. Blocking of the Credit Ledger results in the payment of tax by Electronic Cash Ledger. Hence the assessee is required to bring the additional Working Capital for the payment of tax. In this modern competitive world, the credit ledger is blocked it may have impact the Right to Carry Business. There could be violation of Article 19(1)(g) of the Constitution of India.

Issue of Show Cause Notice before Blocking the Credit Ledger

Rule 86A of the CGST Rules, 2017 does not mandate for the issue of Show Cause Notice before Blocking the Electronic Credit Ledger. However the blocking of the credit ledger without giving the opportunity of being heard is violation of Natural Justice.

Supreme Court in case of *East India Commercial Co. Ltd, Calcutta vs Collector of Customs, Calcutta [1983 (13) E.L.T. 1342 (S.C.)]* Natural justice is violated, if proceedings are initiated without show cause notice. Whether the statute provides for a notice or not, it is incumbent upon the quasi-judicial authority to issue a notice to the concerned persons disclosing the circumstances under which proceedings are sought to be initiated against them, otherwise principles of natural justice are necessarily violated. [para 27]

In a Writ Petition filed before High Court of Delhi by Savan Retailers Pvt Ltd reported in 2020 (32) G.S.T.L J41- Input Tax Credit was blocked without any reasons and without issuing show cause notice or granting opportunity. High Court directed Department to examine their claim and unlock the said ITC if the same found to be unjustified. If there is any justification for blocking, the same to be filed within 10 days.

Shorter Constitution by Durga Das Basu- 15th Edition Page 249- Volume I

Even though a restriction may be reasonable in substance the court has to see whether the method of imposing is also reasonable- State of Maharashtra vs Rao HimmatbhaiNarbheram AIR 1970 SCC 1157 (1963)

Whether the restriction upon the exercise of a fundamental right is to be imposed on hearing the person affected or on the subjective satisfaction of the authority, constitutes the procedural test

Thus a law which empowers the Executive-

- (i) To impose a collective find
- (ii) To suppress an association
- (iii) To restrict the enjoyment of the proprietary rights of an individual on subjective satisfaction is prima face, unreasonable from the procedural stand point

In general, natural justice is a condition of procedural reasonableness- NawabkhanAbbaskhan vs State of Gujarat, AIR 1974 SC 1471

Unblocking of the Credit Ledger

Rule 86A(2)of CGST Rules, 2017

The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

In view of the above condition for disallowing the debit of credit ledger may be removed upon the satisfaction of the Commissioner. If Commissioner is satisfied with the pleadings of the assessee he may issue such order.

Automatic Release of the Blocked Credit of Input Tax

Rule 86A(3)-Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

Restrictions which have been imposed for disallowing the use of the credit shall cease to have the effect. Hence the credit ledger which has been blocked shall be freely available only after the period of one year from the date of the order disallowing the debit from the Electronic Credit Ledger.

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Exemption For RWAs Above `7500 – Rethinking the Strategy?

INTRODUCTION TO THE EXEMPTION ENTRY

Taxability of the Residents' Welfare Association has always been a delicate issue due to the sheer number of stakeholders who get affected by it. While the government has always tried to protect the middle- and lower-class residents, it had shown no intention of completely exempting tax for the others. This resulted in an exemption entry of service provided by such association to its members for reimbursement of charges or share of contribution upto Rs. 5000 per month per member (later enhanced to Rs. 7500) for the sourcing of goods or services for common use of members in a residential complex. The entry was first coined in the mega exemption notification no. 25/2012-ST dated 20th June 2012 during the Service tax regime. The said entry continued its relevance under GST vide its insertion under Entry no. 77 of the exemption notification no. 12/2017-Central Tax (rate) dated 28th June 2017. Further, the limit of Rs. 5000 was enhanced to Rs. 7500 by Notification No. 2/2018-Central Tax (Rate), dated 25-1-2018, w.e.f. 25-1-2018.

APPLICABILITY OF GST ON FULL VALUE OR VALUE EXCEEDING RS. 7500

CBIC Flyer and the temporary relief

In the early years of GST, The Goods and Services Tax Department issued a clarification in the case of Co-operative Housing Societies, wherein they categorically stated that GST would be applicable only on the amount in excess of Rs. 7,500/-. The flier covers all Co-operative Housing Societies, in essence, RWAs, Housing Societies or Societies in residential complexes. This meant that the exemption upto Rs. 7500 would have been applicable and only the balance exceeding this amount, GST would have been applicable.

Circular and the U-turn

While the Government had made given an indication of their intentions through the aforesaid flyer, the said interpretation received a sudden jolt when the CBIC came out with a circular no. 109/28/2019-GST dated 22nd July 2019. As per the said circular, the following clarification was provided:

Sl. No.	Issue	Clarification
5.	How should the RWA calculate GST payable where the maintenance charges exceed Rs. 7500/-per month per member? Is the GST payable only on the amount exceeding Rs. 7500/- or on the entire amount of maintenance charges?	The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs. 9000/- per month per member, GST @ 18% shall be payable on the entire amount of Rs. 9000/- and not on (Rs.9000-Rs.7500) = Rs. 1500/-

The above clarification was a complete opposite interpretation to what was stated in the flier originally released. While the flier does not have a legal sanctity, the same had been relied upon in absence of clarity on multiple fronts in the absolute initial years of GST. This U-turn by the Government caused immense lack of faith given that multiple RWAs had already relied upon the flier for the first couple of years before the release of the circular. It also reminded the danger that one is exposed to upon reliance on the fliers and press releases.

Advance Ruling Authorities and their adverse stand

The GST Department's adverse stand against the RWAs first came to light in the case of TVH Lumbini Square Owners Association [2019 (27) G.S.T.L. 610

(A.A.R. - GST)] through order No. 25/ARA/2019, dated 21-6-2019. In this case, the Authority for Advance Ruling of Chennai took a stand that that exemption is applicable only if charges for sourcing goods and services for common use of members of Housing Society are upto aforesaid limit. Further, if the prescribed maintenance charges are exceeding the limit as mentioned, exemption is not admissible, and the entire charges of services provided to members would be leviable to GST.

Thereafter upon release of the aforesaid, what followed were multiple adverse judgements by the Advance Ruling authorities in case of RWAs. These include the judgements by Authority for Advance Ruling in the cases of Prestige South Ridge Apartment Owners' Association [2019 (30) G.S.T.L. 107 (A.A.R. - GST)], Vaishnavi Splendour Home Owners Welfare Association [2020 (32) G.S.T.L. 462 (A.A.R. - GST - Kar.)] etc. and Appellate Authority for Advance Ruling in the case of Vaishnavi Splendour Home Owners Welfare Association [2020 (34) G.S.T.L. 360 (App. A.A.R. - GST - Kar.)].

Though the judgements of Advance ruling authorities are applicable only upon the applicant, multiple associations commenced charging GST on the entire component of maintenance charges and not only the value above Rs. 7500 in order to avoid any disputes with the Department. Some of the others continued with their old stand of charging GST on the portion above Rs. 7500 only.

Order of the Madras High Court and the altered dynamics

In the case of Greenwood Owners Association v. Union of India [[2021] 128 taxmann.com 182 (Madras)], the question of taxability on entire vs balance above Rs. 7500 reached the judicial members of the Hon'ble Madras High Court. The Hon'ble Court ruled in favour of the RWA stating that GST is applicable only on the portion of maintenance charges above Rs. 7500 per month per member on the following major grounds:

- a. The term 'upto' hardly needs to be defined and connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till

the ceiling of Rs. 7,500/- would exempt for the purposes of GST.

- b. Comparison could be drawn from other exemption entries of the Service Tax and GST. For prescribing a condition of exemption upto a certain limit and full taxability if such limit is breached, the law used a distinct language. For example, the language deployed in the proviso to clause 56 in Notification 25 of 2012 where it is stated 'the exemption shall apply only where the gross amount charged for such service does not exceed Rs. 5,000/- in a financial year'. This talks about a condition and if this condition is breached, exemption is not applicable at all.

- c. The prescription of a slab connotes that income upto that slab would stand outside the purview of tax on exigible to a lower rate of tax and income above that slab would be treated differently. The intendment of the exemption Entry in question is simply to exempt contributions till a certain specified limit. The clarification by the GST Department even as early as in 2017 has taken the correct view.

d. In the case of Commissioner of Customs Import, Mumbai V. Dilip Kumar & Company (361 ELT 577), the Supreme Court held that in the case of ambiguity in interpretation of a tax exemption provision or Notification in regard to its applicability qua entitlement or rate of tax to be applied, the interpretation should be strict and the burden of proving applicability would fall on the assessee. The ratio of that decision would apply only in a case where the provisions granting exemptions are ambiguous, whereas, in the present case, the Entry, in my view, is clear and hence it is only a question of interpreting the same.

NEED TO RETHINK THE STRATEGY

Whether the RWAs should rethink their strategy of charging GST only upon the balance payment of Rs. 7500 per month per month after this judgement is a huge question of debate in the industry as of now. There may not be a single correct answer to this question



and the same may be dependent on the risk appetite of the registered RWA. However, the following pros and cons of charging GST only upon the balance above Rs. 7500 per month per member after the judgement of Madras High Court may be considered:

Pros

- The impact of taxes on the individual flat owner would reduce to a great extent (upto 7500*18%).
- If there are further judgements of any other High Court or Apex Court, the Madras High Court judgement would attain finality. The same may be quoted at all levels of the Department to get the benefit of reduced tax burden.

Cons

- Where part of the outward supply is taxable (above Rs. 7500) and part of it is exempt in nature (upto Rs. 7500), ITC would be eligible to the extent of the taxable supply as per Section 17(2) and (3) of the CGST Act 2017. Thereby, the common ITC for goods and services received would have to be reversed proportionate to the exempt portion as per Rule 42 and 43 of the CGST Rules 2017. To this extent, the cost of procurement of goods and services may increase in the hands of the association.
- If there are any other High Court judgement or the Supreme Court overturns the Madras High Court,

there is a potential risk of payment of differential taxes and interest in future. Penalty may also be leviable at the first level by the Department authorities.

- The Department at the level of scrutiny and adjudication may not consider such judgement and pass orders in the favour of the Department relying upon their own interpretations. Thereafter, only at the higher appellate levels, such judgement may be relied upon. This may result in potential litigation cost in the hands of RWAs.

CONCLUSION

Undoubtedly, this judgement of Madras High Court has brought in a ray of hope for those RWAs who had been charging GST on the balance exceeding Rs. 7500. However for the others, this decision has also reopened a lot of questions regarding the value of taxable supply for RWAs especially for the ones who had made peace with it after relying upon the adverse circular and AARs. These categories of persons should not blindly rely upon the said judgement before considering all the pros and cons of the decision being taken by them. One should be ready for the future consequences depending on the stand taken by them. Thereby, RWAs have been forced to rethink their strategy and it is hoped that this article can be of some assistance to them.

* * * * *

Success is not final, failure is not fatal: it is the courage to continue that counts.

– Winston Churchill.



*I alone cannot change the world, but I can cast a stone across
the water to create many ripples.*

– Mother Teresa



What you do speaks so loudly that I cannot hear what you say.

– Ralph Waldo Emerson



By CA Aditya Dhanuka & CA Harsha Garg

Other Charges collected by the builder

Goods and Services Tax law was implemented with the objective of providing seamless flow of Input Tax Credit which in the erstwhile tax regime was available to builders in a restrictive manner. The builders had to pay multitude of taxes such as VAT, Excise Duty, Service Tax, etc., the credit of which were not explicitly available against output tax liability. With the implementation of Goods and Services Tax law, admissibility of Input Tax Credit paid on Inputs, Input Services and Capital Goods ruled out the cascading effect of taxes for builders.

The rate prescribed for construction services involving transfer of property in land via notification 11/2017-CT(R) dated 28th June 2017, as amended from time to time, was 18% with one-third deduction in total amount as value of land or undivided share in land transferred along with construction service, which was then amended for residential properties w.e.f. 1st April 2019 as 7.5% / 1.5% without the benefit of ITC.

Builders provide multiple services along with construction services to home buyers, such as facility to park car, access to club house, preferential location charges, maintenance services, etc. With the concept of composite supply incorporated in the Goods and Services Tax law, the controversy of classifying the other services as construction services or treating them independently has been reignited since the implementation of the new tax regime, which was more or less being settled in the erstwhile Service Tax Law. The conundrum exists as one-third deduction in

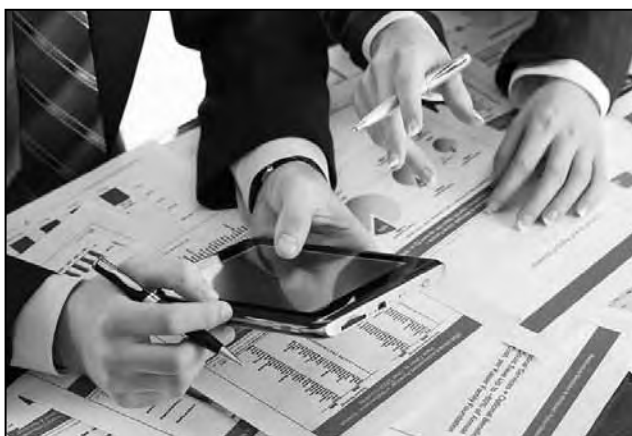
total value is available for construction service wherein transfer of property in land or undivided share of land is involved and classifying the other services as construction service will make the other services eligible for such abatement.

The provisions of composite supply laid in the Goods and Services Tax law provide that **composite supply** means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply and the liability on

such a composite supply, comprising of two or more taxable supplies, one of which is a principal supply, shall be treated as supply of such principal supply.

Preferential Location Charges commonly referred to as PLC is an additional charge that a home buyer pays for securing a unit with a better or prime location within the same apartment complex. The builders

charge for preferential location on certain units which are more appealing. These charges are determined along with the value of apartment to arrive at the total value for the apartment. The builder provides these services in the ordinary course of business and any buyer can avail the same, if they prefer so. The PLC services is provided in addition to the construction service and therefore, can be said to be provided in conjunction with construction service. On that account, it can be said to be a composite supply wherein construction



service may be the principal supply.

However, it can conversely be argued that the element of PLC would not be classified as a composite supply along with supply of construction service, as PLC is subject to the choice of buyer, whether he wants to incur the same or not and hence cannot be treated as naturally bundled.

A project generally has varied options of right to use car parking space from which the buyer can choose, such as, open car parking space, covered space, mechanical car parking or etc. The buyer has an option to opt for such service either at the time of buying the apartment or anytime later. The right to use car parking space is a service provided by the builder wherein the right to use a space is given to the buyer. The said right is provided in a restrictive manner. Often this right is mistaken as a part of construction service but what is not considered is merely because two supplies are provided under the same agreement does not make it identical. While one is construction service wherein transfer of property in land is involved and the other service is one where right to use such land is given, cannot be regarded as one and same. Therefore, the right to car park should not be perceived as a part of construction service, as right to use land is provided in this supply and hence, abatement available for construction service wherein transfer of property in land is involved should not be applied.

The West Bengal bench of Authority for Advance Ruling in the case of Bengal Peerless Housing Development Company Limited held that service relating to preferential location shall be treated as composite supply, construction service being the principal supply. Entire value of composite supply is, therefore to be treated, for the purpose of taxation, as supply of construction service. Similar classification shall apply on right to use car parking space and common areas and facilities. However, the West Bengal Appellate Authority for Advance Ruling in the same matter held that no abatement prescribed for construction service under sl. No. 3(i) read with paragraph 2 of Notification No. 11/2017-CT (R)



dated 28th June 2017 as amended from time to time is applicable on the value of Preferential Location Service and right to use car parking space realized separately from the buyers.

In light of the above ruling, classification and taxability for the right to use car parking has been correctly perceived

in its true sense. However, charges for providing preferential location services remain a mystery as it can be comprehended as a composite service with construction being the principal supply for builders, however when linked to the erstwhile Service tax era, a special category of service namely Builders Special Services having a separate tax collection head 00440616 was also in existence to take care of such services provided by the builders, which specifically included services for providing preferential location on which no abatement was available.

Charges for providing access to club house and for maintenance of the apartments have been clearly perceived as services other than construction services provided by builders and therefore, the abatement available for construction services do not apply on them.

Whether monies received by builder towards Sinking fund or corpus fund is chargeable to tax or not is another pain area for the builders. Amount received towards sinking fund or corpus fund is collected for future maintenance of the apartment which is of capital nature. Usage of sinking fund or corpus fund in the near future is uncertain. These are therefore treated as deposits by the builder. The definition of consideration provided in the Central Goods and Services Tax Act, 2017 lays down that deposit shall not be considered as payment for supply unless the supplier applies such deposit as consideration for the supply. Hence, sinking fund or corpus fund should be treated as consideration towards supply on their application and accordingly, tax should be discharged at the time of such application when actual supply is made.

In case of M/s Prestige South Ridge Apartment Owner's Association, the Authority of Advance Ruling

in Karnataka has considered Sinking Fund or Corpus Fund as a deposit which is not liable to tax on receipt as it does not form part of consideration towards supply of services. Tax is to be discharged on such deposit when the same is applied as consideration towards supply of service. Similar ruling has been provided by the Authority on Advance Ruling of Gujarat in case of Capital Commercial Co-op (Service) Society Limited, where it has been held that common maintenance fund/ deposit which is non-refundable in nature is liable to tax under Goods and Services Tax law but tax is to be discharged when the deposit is utilized at the time of actual supply of service and not on receipt. In contrary to the above rulings, in case of M/s. Olety Landmark Apartment Owner's Association, the Authority on Advance Rulings in Karnataka has held that amount collected by the applicant towards sinking fund amounts to advances mean for future supply of services to members, covered under SAC 9995 as "Services of Membership Association" and

are taxable to GST @18% in terms of Sl. No. 33 of Notification No. 11/2017- Central Tax (Rate) dated 28th June, 2017 as amended, as the time of supply is receipt of the advance amounts in terms of Section 13(2)(a) of The CGST Act, 2017.

The real estate sector has been in a dilemma of classifying the other services as construction service or considering them as a distinct service since the service tax regime and the same continues in the current tax regime as well. The essential reason being as to whether some of these services qualify to be classified as construction service and chargeable to applicable rate 1%/5%/ 12% (effective rate of tax) or they would be taxed at higher rate of 18%. Several builders had sought help from the Authority in Advance Ruling as discussed above, but divergent views have been expressed by the authorities as well. Assessee engaged in Real Estate Sector expect clarification on such classification issues by the department officials to avoid undesired future litigations.

* * * * *

Take up one idea. Make that one idea your life--think of it, dream of it, live on that idea. Let the brain, muscles, nerves, every part of your body, be full of that idea, and just leave every other idea alone. This is the way to success."

- Swami Vivekananda



Though the duck swims smoothly on water, underneath it has to struggle and pedal. Nothing comes easier in life without struggle. So stay motivated.-

- Anonymous



"People who succeed have momentum. The more they succeed, the more they want to succeed, and the more they find a way to succeed. Similarly, when someone is failing, the tendency is to get on a downward spiral that can even become a self-fulfilling prophecy."

- Tony Robbins



By **CA Anil Goel**
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Good Practices for Liquidators while Handling Liquidation Assignments

Introduction

Liquidators are bestowed with the crucial responsibility of putting the Corporate Debtor to sleep under the Insolvency and Bankruptcy Code, 2016 (“the Code”). The fulfilment of this responsibility is equivalent to walking on a tightrope- every step to be marked with caution in the prospect of reaching the other end successfully. This article scouts the Code and Regulations pertaining to the Liquidation to provide a short guide to the Liquidator for handling liquidation assignments.

Consultation with Stakeholders’ Consultation Committee

Unlike in the Corporate Insolvency Resolution Process there is no Committee of Creditors binding the hands of liquidators. The liquidators are given authority as well as autonomy to take certain decisions without any requisite requirement of approval from the Committee. The Stakeholders’ Consultation Committee, though not equipped with the vast powers of CoC keeps the actions of the liquidator in check. There are certain decisions for which consultation from the SCC is mandatory. As per Regulation 31A of Liquidation Process Regulations, 2016 SCC has powers only to provide consultation on the matters provided under Regulation 32 of the Liquidation Process Regulations i.e. only for taking decision on the manner of sale of assets. SCC has no other powers as per regulations. However, it is pertinent to note that the liquidators are not bound by their decision.

However, the limited role of SCC in the liquidation should not faze liquidators’ intention to work in the best interest of the Committee. The following good practices can be adopted by Liquidators to build transparency, trust and credibility in the process and to improve effectiveness of the efforts for sale

of assets. The suggestions of members may help in maximisation of recovery from the assets: -

1. **Special Invitees** – Although the constitution of SCC is provided in Regulation 31A and all the financial creditors are not the members of the SCC. It is recommended that other financial creditors who have some stake in the corporate debtor may be invited in all the meetings and all the information may be shared with them also.
2. **Frequency of SCC meetings** – It is recommended that two meetings in a quarter should be held and the progress and work done by the liquidator may be informed to all the financial creditors
3. **Fixation of Reserve Price** – Although, the Liquidator is required to sell the assets at reserve price which is based on the liquidation value as assessed by two registered valuers, yet the fixation of reserve price may be consented in SCC meeting based on the market feedback and perception of the market price of the Liquidator and other stakeholders. However, the reserve price cannot be less than the liquidation value. Similarly, for any reduction in the reserve price, the consent of the creditors may be taken in the SCC meetings.
4. **Correct Valuation of Assets** – Liquidator can fix the reserve price based on the liquidation value of the assets as per the report of registered valuers. In case the valuation is incorrect because of any gap in the understanding or sharing of information about the assets, the entire Liquidation Process can be delayed and may lead to frustration. The reserve price cannot be reduced sharply as per the regulations and reducing the reserve price gradually will take substantial time. The Liquidator must engage with the valuers and

provide them the facts and circumstances of the assets and also the market feedback of the price. The valuation can be different for sale as a going concern, slump sale, business as a going concern or sale on piecemeal basis. The registered valuers must be informed of

the intention of the Liquidator / SCC regarding the manner of sale as per Regulation 32 of Liquidation Process Regulations.



5. **Monthly Progress Report** – The Liquidator may provide a monthly progress report to all the SCC members and other financial creditors who have some stake in the corporate debtor. The progress report should include efforts made by the Liquidator for sale of assets, leads generated, details of prospective buyers, progress in litigations, assets sold, difficulties faced, etc.
6. **Quarterly Progress Report** – The Liquidators are required to file a quarterly progress report to NCLT, that report should also be circulated to members and other financial creditors. The Liquidator is also required to attach and audited Income and Expenditure account of the corporate debtor, the same also be circulated to members and other financial creditors.
7. **Liquidation cost and Fund Flow** - The Liquidators may share the liquidation cost and fund flow statement every calendar quarter with the members and other financial creditors.
8. **Information of prospective buyers** – The Liquidator may share the information about prospective buyers/leads with name and contact details to assure upmost transparency in the Liquidation Process to the stakeholders. The stakeholders may take feedback from the leads/prospective buyers regarding the conduct of the Liquidator with regard to sharing of information of assets by the Liquidator, attending to queries, handholding for e-auction process and may also take the feedback for market price of the assets. The sharing of leads/prospective buyers may be shared after the e-auction is concluded to protect

from any attempt of cartelisation.

9. **Effective Lead Generation Process** –

The Liquidator may use various means to generate leads for sale of assets such as posting of assets on all property portals, bulk SMS on filtered data, bulk WhatsApp

messages, bulk emails, posting on various WhatsApp groups, banner advertisement on property portals, banners on the asset site or in the neighbourhood, reaching out to local property dealers, approaching specialised marketeers i.e. scrap dealers, textile machinery dealers, second hand machinery dealers, vehicle dealers, etc.

10. **Use of technology for Lead management and development** – The Liquidators can use lead management software and digital numbers for lead management and development to maintain complete records of leads and to avoid any loss of leads. Specially trained case officers are required for sale of assets and to deal with prospective buyers.

CHALLENGES FACED BY LIQUIDATORS

The identification of the problems is necessary to come up with constructive solutions. The prior identification and analysis of challenges help liquidators to be prepared and equipped for the journey. These are some following challenges that are faced by the liquidators-

1. **Difficulties faced while obtaining relinquishment of security interest** – The interpretation of section 53 of IB Code has not yet achieved finality and there are apprehensions in the minds of financial creditors having exclusive charge or first charge on some assets that the Liquidator may disburse the proceeds of sale of assets by considering all financial creditors at par. As per one interpretation, all the financial creditors would be treated at par after the assets are relinquished in favour of liquidation estate and the priority of charge and value of security of each financial creditors would not be considered by the Liquidator while distributing the proceeds of sale of assets. In the absence of finality,

some financial creditors are not relinquishing their security interest in favour the Liquidator and also it leads to litigation. The matter have been clarified by Insolvency Law Committee in its report dated 26/03/2018 and has further adjudicated by Ahmedabad Bench in the case of Technology Development Board vs. Anil Goel and the same matter is pending before NCLAT and order is expected within March 2021.

2. **Attachment of assets by Enforcement Agencies (Criminal cases)** - The Liquidators are not able to sell the assets if attached by any enforcement agencies under The Prevention of Money Laundering Act, 2002, etc. Despite insertion of section 32A in the Code, the assets are not being de-attached and litigation is pending in all the cases.
3. **Attachment of assets by other authorities (Civil Cases)** - Although the law is settled that all the attachments to assets under civil laws would be removed, but the process is not automatic and applications are required to be filed before NCLT and litigation consume substantial time. The attachments by central tax authorities, state tax authorities, SEBI, labour laws, or any other court under a commercial dispute are very common. Contradictory judicial pronouncements are available on the powers of NCLT to pass an order for de-attachment of assets.
4. **Stay by different courts** - Although IBC provide that no court has any jurisdiction on the matters which are under IBC, yet various courts are granting stay on sale of assets on applications filed by different parties e.g. workmen, land development agencies, third parties having some interest in the assets, unpaid sellers under the Sales of Goods Act, etc. The process for getting the stay vacated is very time consuming and may frustrate the process and cause of undue delay.
5. **Dispute on the title or possession of the Asset** - The Liquidators are facing challenges of dispute over the title or ownership of the assets e.g. missing original title deeds; lease

cancelled by land development agencies because of unauthorised construction or pending dues; disputes of sale transactions before mortgage; valid tenancy rights; identification of the property and demarcation disputes; right of way disputes; etc. It may be mentioned that rights of tenants under a valid tenancy is protected and tenants cannot be evicted during Liquidation Process

6. **Realisation from sundry debtors, advances and claims** - The Liquidator is supposed to recover from all these current assets, however various difficulties are faced e.g. lack of information about parties, non-availability of supporting documents e.g. purchase order, invoices, delivery proofs etc.; KYC of customers; limitation period etc. The Liquidator is unable to recover amount from these current assets despite efforts.
7. **NCLT declined to interfere in recovery from sundry debtors etc.** - NCLT is rejecting the applications filed by Liquidator for recovery of sundry debtors etc. as they are directing to Liquidator to approach appropriate court for recovery process. This trend would delay the Liquidation process tremendously as the Liquidator will have to run to different courts of the country based on the Jurisdiction of each party. The newly inserted regulation 37A in Liquidation process regulations captioned as "Assignment of not readily realisable assets" is also not helping as there is no market for sale of these kind of assets. The dissolution of the company would be delayed till the recovery process of sundry debtors is pending.

Conclusion -

In the mammoth task taken up by the Liquidators, the translucency and doubts can be shed away by early identification of problems and observing best practices. It is important to take SCC in consultation to establish faith and in extension it takes some percentage of burden off the shoulders of Liquidators. Some challenges can be beyond the control of the Liquidator. The only solution in the periphery is to be well prepared for legal impediments.

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In the long run, the sharpest weapon of all is a kind and gentle spirit.

– Anne Frank



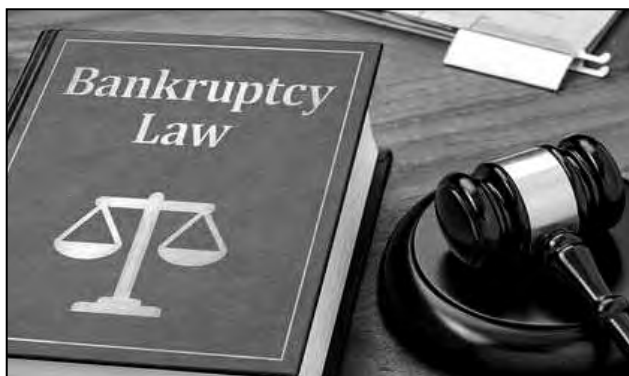
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Evaluation Matrix under IBC, 2016

The Insolvency and Bankruptcy Code, 2016 (*hereinafter referred to as “the Code”*) received the assent of the President of India on the 28th day of May 2016. Ever since then the Code has been amended from time to time to better the efficacy of its objective. The sole purpose of the Code is to maximize the value of assets of insolvent companies in a time bound manner along with to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. A company undergoes the corporate insolvency resolution process (*hereinafter referred to as “CIRP”*) to come out of insolvency. Herein, the approval of the most beneficial resolution plan is the final step of CIRP. In case the resolution plan is not approved by either the COC or the Adjudicating Authority the company goes into liquidation.

From the above we can hereby conclude that drafting and approval of resolution plan is the most important aspect in the whole CIRP. But one must also keep in mind that evaluating the most appropriate resolution plan to be implemented is equally important. Initially when resolution plans were received from multiple Resolution Applicants (*hereinafter referred to as “RA”*) there was no such set of standard parameters to evaluate the best of the Resolution Plan. For this reason, pursuant to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018, effective from 6th February 2018 the concept of evaluation matrix and fair value was introduced.



As per the definition given in clause (ha) of Regulation 2 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2018, (*hereinafter referred to as “the CIRP Regulations”*) evaluation matrix means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval.

The basic idea behind Evaluation Matrix (*hereinafter referred to as “the EM”*) is to provide a set of standards based on which resolution plan shall be assessed and marks shall be allotted to the resolution plans based on these set standards and whichever resolution plan achieves the highest marks is the preferred and accepted resolution plan. It is a barometer for testing a resolution plan aiding the Resolution Professional (*hereinafter referred to as*

the “RP”) to rank the resolution plans in order of their competence and acceptance.

The EM consists of two parts:

- Quantitative Parameters and
- Qualitative Parameters

QUANTITATIVE PARAMETERS

The quantitative parameters, as the name suggests lay out the financial standards on which the resolution plans received shall be assessed. Some of the quantitative parameters are briefly discussed herein below:

- **Upfront cash payment:** It means the amount that shall be paid by the resolution applicant immediately after the plan is approved by the Adjudicating Authority to financial and other creditors. This shall be computed by calculating the amount being paid to the different categories of creditors.
- **Net Present Value (NPV) of continuing portion of debt inclusive (both interest and principal):** The resolution professional shall compare the NPV of the balance cash flows using discounting factor. Discounting rates may vary depending on the age bucket in which the cash flow falls.
- **Term of resolution plan:** This refers to the period over which the RA intends to complete the implementation of the resolution plan after approval of resolution plan by NCLT.
- **Fresh Equity Infusion for financial creditors:** This shall be computed based upon the amount of equity infused and factoring to the extent of shareholding proposed to be offered to financial creditors.
- **Arrangements regarding sale or transfer of all or part of assets of the corporate debtor:** Assessment shall be based on arrangements made by Resolution Applicant to sell unencumbered assets of the corporate debtor other than in the ordinary course of the business if such sale is yielding better realisation of value under the facts and circumstances of the case.
- **Corporate Restructuring of corporate debtor:** The RP shall assess the plan suggesting for any corporate restructuring of the Corporate Debtor and how beneficial it shall be for the CD's survival as a going concern and for the creditors as well.
- **Acquisitions made by Resolution Applicant in the immediate past 5 financial years:** the RP shall judge the RA on its past success rate in mergers and acquisitions and its attempts to turnaround any distressed assets into a profitable investment. Past success to be judged based on EBITDA improvement (both absolute and % EBITDA margin) of acquired company post acquisition.
- **Reasonableness of financial projections/ Eventuality of honouring proposed commitment:** This refers to the reasonableness of assumptions in the business plan submitted by the RA and assessment of risks and mitigations related to implementation of the resolution plan. The analysis shall be made of assumptions with respect to, but not limited to, revenue, growth rate, gross margin, asset turnover ratio and net working capital.
- **Reasonableness of financial projections and likelihood of honouring proposed commitments:** The RP shall assess whether the financial projections given by the RA are realistic and achievable within the given span of time. The RP shall assess the RA's likelihood of honouring proposed commitments covering future business plan, capacity enhancement, forward/backward integration, modernization/upgradation, and ability of resolution applicant to keep corporate debtor as a going concern.
- **Risk Assessment and Mitigation Plans:** The RP shall look for the possible risk factors that the RA has anticipated and how he intends to mitigate them.
- **External Credit Rating of the Resolution Applicant:** This shall refer to the credit rating assigned by an accredited credit rating agency, to the fund-based facilities availed by the RA.
- **Adherence to financial Discipline/Record of regulatory/ Record of regulatory compliance:** The RP shall assess the RA's level of adherence to financial discipline and record of regulatory compliance based upon CIBIL Score, CRILC data, MCA data and any other data available in the public domain.

QUALITATIVE PARAMETERS

The qualitative parameters talk about the quality factors that the resolution applicant and resolution plan present. Some of the qualitative parameters are briefly discussed herein below:

- **Experience of resolution applicant in the sector in which Corporate Debtor is operating:** The Resolution Professional shall give more preference to an applicant who has more experience and knowledge in the industry or sector to which the Corporate Debtor belongs.

While preparing the EM we need to keep in mind the following:

- the criteria and parameters set for assessing the resolution plan shall vary for every company depending upon the industry to which it belongs along with the individual history of the company. For instance, the evaluation matrix of a real estate company shall not be the same as that of a manufacturing company.
 - The marks allotted for qualitative and quantitative categories may vary from case to case.
 - For ease of making comparison every criterion is allotted weightage based on its relevance to the company. For instance, if a group of companies go into CIRP then the EM can state one its parameters as “whosoever gives a combined resolution plan for all group companies shall be given more weightage over an applicant who submits plan for only one of the group companies.”
 - The EM shall specify the scoring Methodology meaning it shall specify how the resolution applicants shall be scored on individual parameters. Moreover, the RP can state that the scoring assigned initially is subject to change based on any additional information or on any other situation before approval of the Resolution Plan by the Committee of Creditors.
 - Maximum terms of repayment should also be defined while giving instructions to the Resolution Applicants – such as 5/ 10 years, depending upon the case.
 - Scoring on qualitative criteria should be undertaken before the detailed evaluation of quantitative criteria so as not to influence the scoring of qualitative parameters.
- One must keep in mind that the parameters set by the RP must be approved by the Committee of Creditors. Only then can the RP share the EM with the prospective RAs. The sole intent and purpose behind EM should be to ensure equitable treatment of all stakeholders. Making scoring uncertain to the creditor receiving the monies may help achieve this. Additionally, another advantage of implementing the above framework would be that serious players who bring in a significant amount of their own capital would have a greater chance of emerging successful in the process, as compared to those who rely only on the cash flows of the Corporate Debtor.

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*Every great dream begins with a dreamer. Always remember,
you have within you the strength, the patience, and the passion to reach
for the stars to change the world.*

– Harriet Tubman



In three words I can sum up everything I've learned about life: It goes on.

– Robert Frost



*Sing like no one's listening, love like you've never been hurt, dance like nobody's
watching, and live like it's heaven on earth.*

– Mark Twain

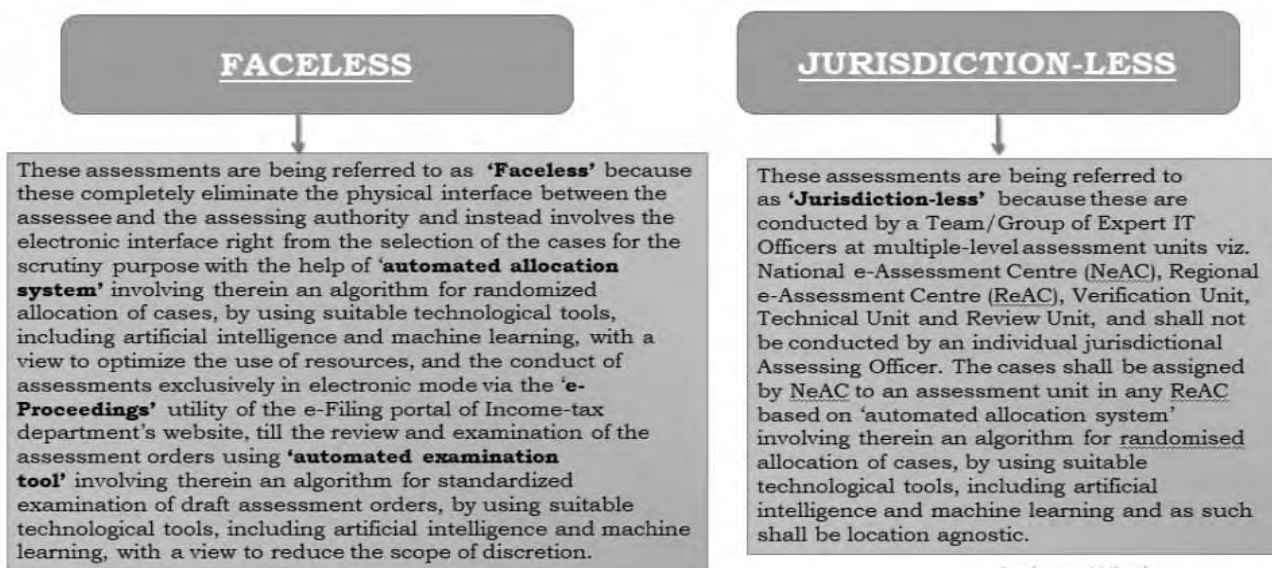


Income Tax - Faceless: The Way beyond

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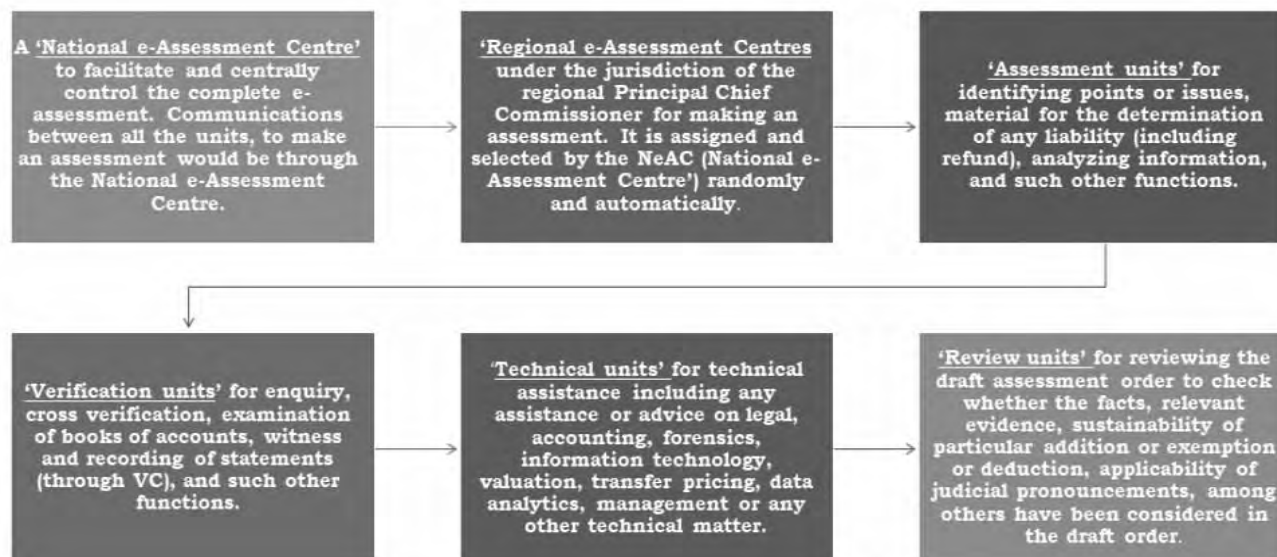
Background Structure of the Scheme

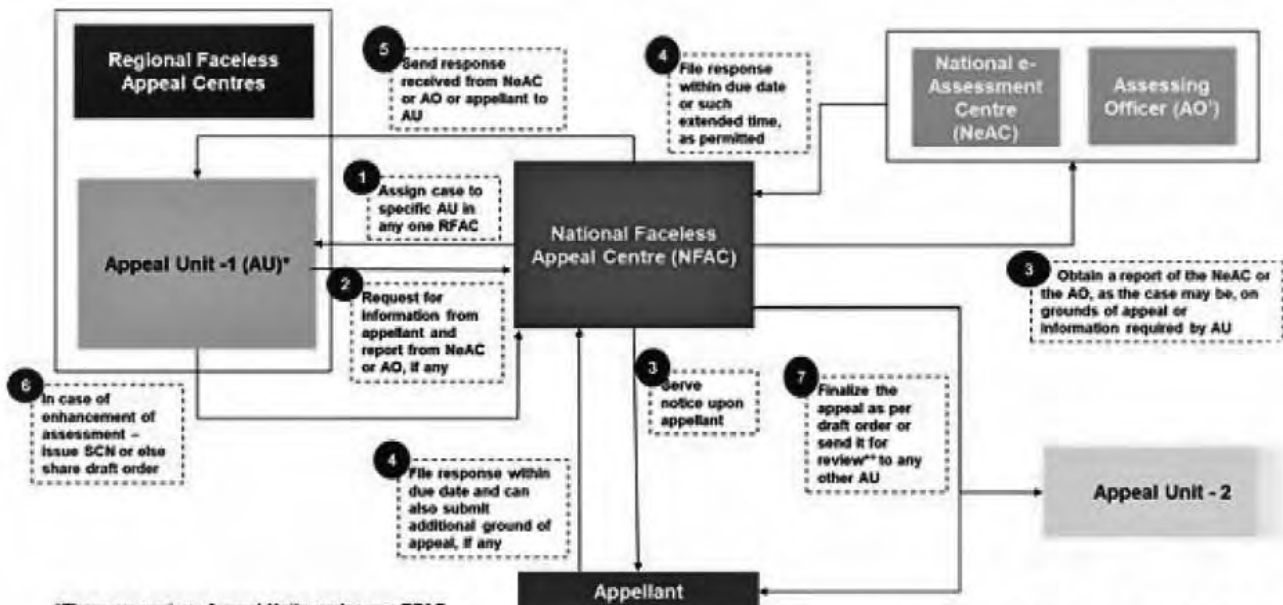
Key Features



Activate Windows

Structure: Faceless Assessments

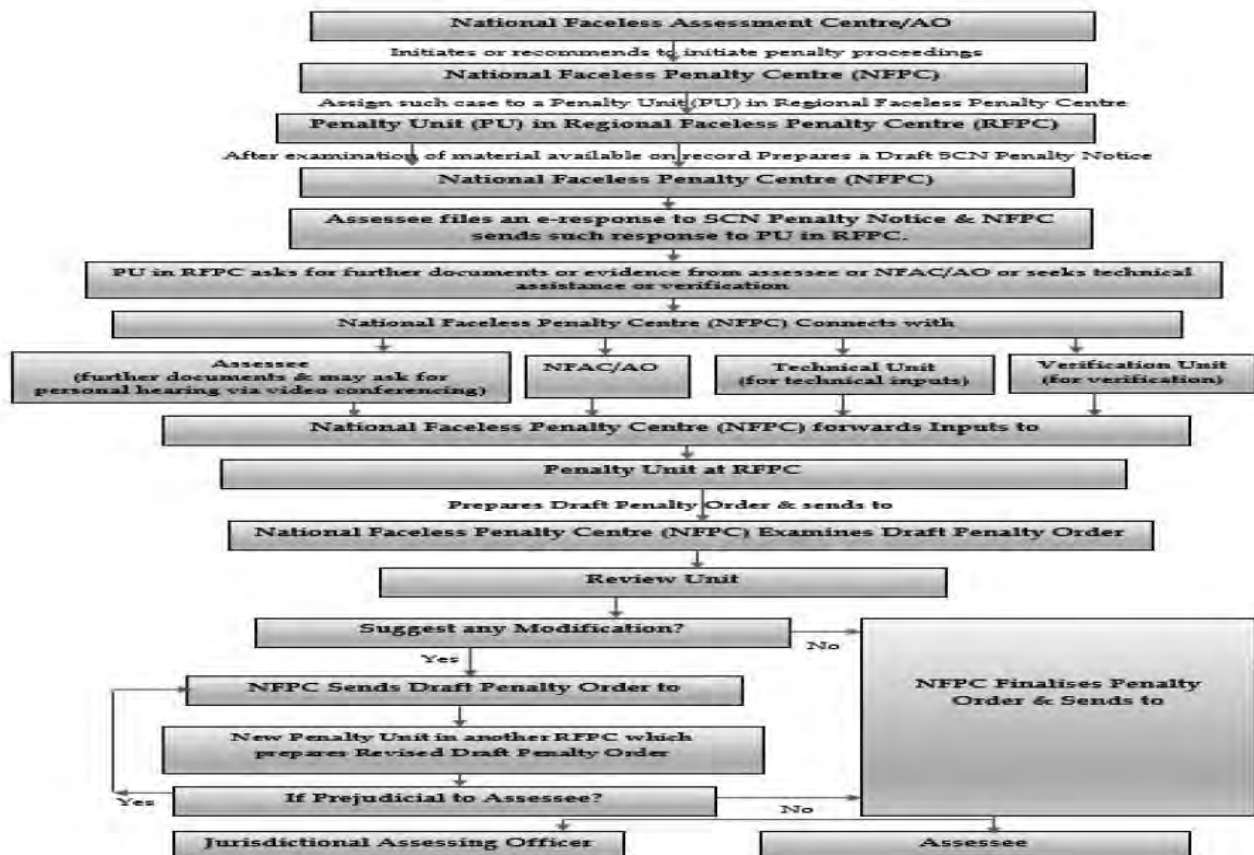


Structure: Faceless Appeal

*There are various Appeal Units under one RFAC

** Review of draft order is required in certain specified circumstances. In case where Appeal Unit 2 suggest for variations in the order, then NFAC shall send the order to Appeal Unit 3 which will issue SCN in case where suggestion leads to enhancement and then follow the rest of the steps. In any other cases, pass draft order as per the scheme

Note - There are many iterations between AU, NFAC, NeAC or AO and appellant with respect to submission of additional ground of appeal, submission of additional evidence, if any, or with respect to any other details required by AU.

Structure: Faceless Penalty

KEY ISSUES**Role of NeAC**

The NeAC is the key interface primarily responsible for all communications with taxpayers and facilitates conduct of the proceedings in a centralized manner and act as 'single point of contact' between the taxpayers and the different units in the tax department. The segregation of responsibilities across teams seeks to achieve the objective of team-based assessment, and collective decision making as against one officer applying discretion to decide on a matter in the earlier regime.

This role of NeAC at times, causes hindrance between the smooth functioning of the Assessment/Appeal Matters in terms of procedural delays and duplicity of work by each unit having to report the matter to the NeAC and then being communicated to the assessee and vice versa

In terms of the process of faceless assessment, broadly speaking, the tax department's IT system selects cases for scrutiny assessment using risk-based criteria identified through data analytics. NeAC issues notices initiating assessment proceedings and seeking information from the taxpayers.

Video conference facility

While responding to the show cause notice, the taxpayer may also request for a personal hearing through video conferencing. From experience and to maintain the faceless nature of the proceedings, the tax officer is generally not visible on video conference, while they can see the taxpayer and their authorized representatives.

However, in some cases, the submissions filed by taxpayers were not considered while finalizing the order, and the request for a videoconference was also not approved. Representations have been made to the tax authorities to consider some cases on video conference mode only. In certain cases, being aggrieved by the orders of the NeAC, some taxpayers have also approached courts on the principles of natural justice

Online submissions

Currently, the Income Tax portal has limitations in terms of size of files that could be uploaded, thereby requiring multiple uploads in case of voluminous submissions by the taxpayer.

The ability of taxpayers to explain complex transactions and voluminous details only through written submissions sometimes poses a challenge under the faceless assessment scheme. This also requires the taxpayer to draft precise and reader-friendly submissions, so that it can be easily understood by tax authorities.

Adjournments

There are adequate provisions for seeking an adjournment under the faceless assessment scheme. However, at times, it becomes a bit challenging task in certain situations especially where very strict timelines are set to respond to questions. Taxpayers should plan in advance where they want to seek an adjournment. Better planning may help to address such concerns and avoiding unintended complications in assessment order leading to further litigation.

Conclusion and Way forward

The scheme has brought about greater flexibility for taxpayers and professionals representing before tax authorities. It has resulted in substantial time savings on account of travel to tax office, waiting time over there, etc.

Also, online submission of responses outside of regular office hours has helped the taxpayers and their representatives in better time management.

In a nutshell, the faceless assessment scheme is a significant tax reform and a step in the right direction to achieve ease of doing business and bringing in more transparency and certainty in tax matters. Success of this scheme is the joint responsibility of both sides and with increased collaboration between tax authorities and taxpayers; the scheme can result in better quality assessments in future.

* * * * *

A successful man is one who can lay a firm foundation with the bricks others have thrown at him.

– David Brinkley



By CA Mohit Bhuteria

Waiver of loans – A foreseeable COVID-triggered circumstance

The Covid-19 pandemic has turned lives upside down - health concerns to job losses to business crisis. Given the overall impact on the economy, businesses are faced with crippling repayment ability and purchasing power. Most are meeting their financial liabilities by cutting expenditure, digging into their reserves, selling investments or even borrowing further. In such circumstances, it is common for business to seek loan waivers, rent waivers and other favours. The bigger question, however, remains that whether the Government will favour the favour-providers and the favour-takers by waiving off the taxes as well? Let's say, for example, rent. The Statute does not allow a deduction for rent waivers from the annual lettable value taxed under the head "house property" unless it is proved that the rent cannot be realized within the meaning of the Explanation to Section 23(1) of the Income Tax Act, 1961 ("the Act") as per the conditions laid down in Rule 4 of the Income Tax Rules, 1962. Therefore, despite of the fact that the owner had showered a favour upon the tenant and the rent has actually not been realized in full, but he may have to still pay tax on the full annual lettable value of the house property.

A similar tax conundrum can be foreseen in the case of business loan waivers, both from the lenders' and the borrowers' perspective. Business loans may have been taken for capital asset acquisition or for meeting the working capital requirements of the business. Waiver of a loan is voluntarily waiving the liability of the borrower by the lender. It is a positive act. By waiving the loan, the borrower is absolved from repaying the loan. The House of Lords in the classic case of **British Mexican Petroleum Co. Ltd. Vs. IRC** (1932) 16 Tax Cases 570 (HL) held that "a debt forgone by the creditors does not become the income of the debtor".

Whether waiver of loan is a "benefit or perquisite" or "remission of a trading liability"?

Waiver of loan results in the borrower having extra cash in his hand. Therefore, the issue arises as to whether waiver of loan is taxable as "value of any benefit or perquisite" under Section 28(iv) or taxable as a remission of liability under Section 41(1) of the Act in the hands of the borrower?

Section 2(24)(vd) read with section 28(iv) of the Income-tax Act, 1961 deems the value of any benefit or perquisite, **whether convertible into money or not**, arising from business or the exercise of a profession, as income of the recipient, taxable as business income.

The term 'whether convertible into money or not' suggests that the benefit or perquisite must be in kind. That is to say, what is sought to be taxed is a benefit which is either convertible into money or not convertible into money but not "money".

Section 41(1) provides that **where an allowance or deduction has been made in the assessment** for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first- mentioned person) and subsequently during any previous year, the first- mentioned person has obtained, **whether in cash or in any other manner whatsoever**, any amount in respect of such loss or expenditure or some benefit in respect of such **trading liability** by way of **remission or cessation thereof**, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be **profits and gains of business or profession** and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.

The objective behind this section is simple. It is made to ensure that the assessee does not get away with a double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to deduction allowed earlier in case of remission of such liability.

The two provisions have been dealt with by the Hon'ble Apex Court in the case of **Mahindra and Mahindra Ltd.**¹ wherein the loan was taken to purchase toolings (i.e. falling under the category of plant & machinery) for manufacture of heavy vehicles. The principal amount of loan was waived off by the assessee. The Assessing Officer found that with waiver of loan credits became part of business income under section 28, whereas the Commissioner (Appeals), while confirming that action, also held that it could also be assessed under section 41(1) as remission of a trading liability.

The matter travelled to the Supreme Court where the following observations were made:

- In order to invoke the provision of section 28(iv), the benefit which is received has to be in some other form rather than in the shape of money. In the instant case, waiver of loan has resulted in the borrower having extra cash in his hand. Hence, it cannot be taxed under the provisions of section 28(iv)
- In the context of S. 41(1), the revenue contended that although the assessee had taken loan for purchasing capital asset, but when such asset is capitalized, the assessee claims depreciation. So he has claimed the benefit of depreciation allowance. To this the Court observed that depreciation is merely reduction of value of asset due to wear and tear. This deduction is not due to the loan.
- Section 41(1) particularly deals with the remission of trading liability. The assessee had acquired capital assets from the amount borrowed. Therefore, waiver of loan amounted to cessation of liability other than trading liability. Hence, the loan waived could not be taxed under Section 41(1) also.

The Apex Court remarks in this landmark judgment have been relied upon in a plethora of judicial pronouncements. Whatever be the purpose of loan, the benefit will always be in the form of money, so

it cannot be taxed under Section 28(iv) for which the reasoning is clear from this judgement. However, can Section 41(1) not be attracted in case of waiver of a working capital loan, being in the nature of a trading liability?

The Bombay High Court in **Solid Containers Ltd.**² distinguishing Mahindra's 2003's case³, held that if loan is taken for acquiring capital asset, waiver thereof could not constitute business income. Whereas, if loan is for trading purpose and was treated as such from the very beginning in the books of account, waiver thereof may result in income: more so when it was transferred to profit and loss account. The relevant para is as under:

"The facts of the present case are entirely different in as much as it was a loan taken for trading activity and ultimately, upon waiver the amount was retained in business by the assessee. Thus, the principle stated by the Supreme Court in the case of T.V. Sundaram Iyengar & Sons Ltd. (supra) would be squarely applicable to the facts of the present case. The amount which initially did not fall within the scope of the provisions rendering it liable to tax subsequently have become the assessee's income being part of the trading of the assessee. Similar view was also taken by a Bench of Madras High Court in the case of CIT v. Aries Advertising (P.) Ltd. [2002] 255 ITR 510. The court took the view that the assessee because of trading operation became richer by the amount which had been transferred and/or retained in the Profit and Loss Account of the assessee."

In **Rollatainers Ltd.**⁴ case also, the Delhi High Court treated waive off of loan taken from banks for working capital requirements as taxable u/s 41(1).

However, the observations of the Madras High Court in the case of **Iskraemeco Regent Ltd. vs. CIT**⁵ as regards to the nature of bank loan in the business are also noteworthy. The High Court has laid down as under:

"It is a well-established principle of law that every deposit of money would not constitute a trading receipt. Broadly, though a receipt may be in connection with the business, it cannot be said that every such receipt is a trading receipt. Therefore, the amount referable to the loans obtained by the assessee towards the purchase of its capital asset would not constitute a trading receipt. The said issue has been fortified by

the judgement of this court in *CIT vs. A.V.M. Ltd.* [1984] 146 ITR 355.”

In **Comfund Financial Services (I) Ltd. Vs. DCIT**⁶, the assessee was dealing in shares and securities, making payment for purchase of shares out of its overdraft account with the bank. The assessee incurred huge losses and consequently, there was a remission of this loan along with interest by the bank. The Court held that:

a) “...The assessee had incurred expenses in past or even in this year towards the purchase price of shares and securities brought from other parties and that the payments in that regard were made by the assessee out of its overdraft account with Deutsche Bank (DB). When DB remitted or waived the principal amount of such loan, it cannot be said that any portion of the purchase price was waived by recipients of such prices. The expenses towards purchases had already been incurred and there was no remission from the side of the said sellers of securities, etc., in favour of the assessee out of such purchase prices. The transactions between the assessee and DB (apart from those relating to direct purchases and sales of shares and securities between the two parties) **are mostly of the nature of loan transactions.** These transactions are therefore on **capital account.** The waiver or remission of the liability towards loan incurred by the assessee cannot, therefore, be considered to constitute a revenue income in the hands of the assessee...”

In **CIT Vs M/s. Xylon Holdings Pvt. Ltd.**⁷, the Court held that “the nature of the loan should be looked into and the decision of *Solid Containers* would not apply in the present case, as it is covered by the *Mahindra* case.”

In the case of **CIT v. Compaq Electric Ltd's**⁸ case where a parent company funded the business operations of a loss-making wholly owned subsidiary and later on in view of consistent losses, a part of the loan was waived off, the Karnataka High Court held that “The whole object is to avoid double benefit to the assessee. In the instant case, the amount claimed as capital receipt is in respect to which there was no allowance or deduction claimed by the assessee for the previous year. Therefore, when its creditor has waived the repayment of the said amount, it amounts to a capital receipt and not a revenue receipt. As the

assessee did not have the benefit of any allowance or deduction in respect of the said amount, section 41 is not attracted.”

The SLP⁹ against this decision was dismissed by the Supreme Court for low tax effect. However, in the dismissal Order, the remarks of the Apex Court are noteworthy:

“Not only there is no tax effect, the matter is also covered against the petitioners as per the Judgment of this Court in the case of Commissioner v. Mahindra and Mahindra Ltd. [2018] 93 taxmann.com 32/255 Taxman 305/404 ITR 1 (SC).”

So even though the facts in *Mahindra's* case were distinguishable for the loan in that case was taken to acquire capital asset, however, the remarks of the Hon'ble Supreme Court, though not a verdict, but being from the horses' mouth, may have a binding effect. As said in *Municipal Committee, Amritsar v. Hazara Singh* (Criminal Appeal No. 228 of 1972) (SC), “Judicial property, dignity and decorum demand that being the highest judicial tribunal in the country even obiter dictum of the Supreme Court should be accepted as binding.”

In **CIT Vs. Tosha International Ltd**¹⁰, the amount of loan and interest due by assessee to banks and financial institutions was waived. The same having never been claimed by assessee as deduction, the Court held that the waiver of interest and part of principal by banks/financial institution did not give rise to profits chargeable to tax under Sec.41(1).

In **Mohsin Rehman Penkar v. CIT**¹¹, it has been held that “It is impossible to see how a mere remission which leads to the discharge of the liability of the debtor can ever become income for the purposes of taxation.”

In **CIT v. Dholgiri Industries (P) Ltd.**¹², it has been held that “where principal amount of loan being never claimed by assessee as its expenditure, its waiver would not amount to income of assessee.”

Recently, in **Pr. CIT v. SICOM Ltd.**¹³ case, loan was taken from the Govt. of Maharashtra for purchase of raw material. The waiver was of principal, and the revenue raised the ground that the waiver by Maharashtra Govt. of liability u/s. 41(1)/28(iv) is in character of stock-in-trade and certainly a trading liability. The High Court however without dealing specifically with

the ground, ruled in favour of the assessee holding that “we are of the considered opinion that the decision of the Supreme Court as extracted above, is squarely applicable to the facts of the present case.”

Whether waiver of loan is a “receipt” without consideration?

Although apparently the Supreme Court verdict in Mahindra’s case has largely favoured the assessee and has brought relief to many, it can be consciously used as a weapon by the revenue as well to grab hold of the assessee under Section 56 of the Act. Waiver of loans, as the Court said, results in the borrower having extra cash in his hand. Can this not be seen as “receipt” of a sum of money “without consideration” and be taxed under section 56(2)(x) of the Act in the hands of the borrower?

It is important to read the words and phrases used in a Statute in the context in which they have been used. The term “receipt” as used in the judgement delivered by the Hon’ble Supreme Court is in a different context as that used under the provision of Section 56(2)(x). Under Section 56(2)(x), the “receipt” should be of a “sum of money” or of specified “property” referred to therein. Waiver of loan is not actually a receipt of a sum of money as spoken in the context of Section 56(2)(x). Further, one may argue that Section 56(2)(x) is anti-abusive provisions inserted with an intention to curb money laundering and not to tax a waiver of a genuine loan.

Further, to escape the garb of the provisions of Section 56(2)(x), existence of “consideration” is mandatory, even though it may not be adequate. The consideration for the waiver of principal amount of loan could be in the form of the borrower continuing to pay interest (as in the case of Mahindra & Mahindra) or in the form of receiving part installment or early repayment of part installment or in any other form.

In *Jai Pal Gaba vs. ITO*¹⁴, it was even held that *waiver of part loan in one-time settlement was not without consideration, but the condition of depositing the remaining part of loan immediately and performance of other formalities, was an adequate consideration for waiver and therefore, the provisions of section 56(2)(vi) could not be applicable so as to bring waiver of loan amount to tax as income from other sources.*

Whether waiver of loan forms part of “Book Profits”?

We know that MAT is a self-contained code. Once an

item is credited to P&L it will fall within the ambit of “Book Profits” under MAT unless there are specific exclusions. Therefore, another issue which needs to be considered is whether the income will be taxable in the hands of the borrower when the loan waiver has been written back and credited to P&L A/c, as an “extraordinary item” and forms part of book profit under section 115JB of the Act.

The Hon’ble Supreme Court in the case of *Indo Rama Synthetics (I) Ltd. vs. CIT*¹⁵, held that “...unless an adjustment has the effect of increasing the net profit as shown in the profit and loss account, that entry cannot be said to be a credit to the profit and loss account and, therefore, though the amount has been literally credited to the profit and loss account, however, in substance there is no credit to profit and loss account.”

In *B B Infrotech Ltd vs ITO*¹⁶ (confirmed by Kar HC 396 ITR 420) it was held that *remission of bank loan disclosed in profit and loss account as per requirement of Schedule VI of Companies Act cannot be excluded for purpose of computing book profits under section 115JB even though same was shown as capital receipt in notes to accounts.*

However, after considering the above decision, the Mumbai Tribunal in *M/s. JSW Steel Limited v ACIT*¹⁷ held that *it was never the intention of the legislature that to tax any receipts which is not taxable per se within the tax provision.*

But again in *B & B Infrotech Ltd.*¹⁸, the Karnataka High Court held that *the provisions of S. 115JB have overriding effect upon other provisions of Act and, thus, any deduction which is otherwise not provided by Explanation would be outside scope of operation of S. 115JB.* Therefore, for assessee opting for tax regime under Section 115BAA, MAT will not be applicable, hence this question may not hold any relevance. But others may have to consider the impact of loan waivers under MAT.

Waiver of interest: Whether taxable under Section 41(1)?

The pre-condition to tax a liability remitted under Section 41(1) is that an allowance or deduction should have been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee. Therefore, in case interest paid is claimed as deduction under Section 36(1)(iii) of the Act and the same is remitted, then the interest

remitted can be brought to tax under Section 41(1) of Act. However, if the assessee has not claimed any deduction with respect to the liability remitted, then Section 41(1) cannot be triggered. For instance,

- where the assessee's returns claiming deduction of interest were treated as non est for not responding to Notice u/s 139(9), then deduction cannot be said to have been claimed by the assessee: **Rayala Corporation**¹⁹
- If due to operation of Section 43B in case of loans taken from Banks, any deduction could not be claimed then no addition can be made u/s. 41(1): **ACIT v. Spel Semiconductor Ltd.**²⁰
- if assessee claims expenditure but ultimately if there is a loss and such loss cannot be set off under section 72, then the assessee cannot be said to have derived any benefit by claiming the expenditure: **Mula Pravara Electric Co-op. soccity Ltd.**²¹

What happens when pre-operative interest capitalized to the cost of asset is waived off?

'Availing of loan' and 'claim of depreciation' are two distinct things. Pre-operative interest being of capital nature in origin would not change its character to revenue receipt on being waived, hence not taxable u/s 41(1) as held in **Shri Kansara Modular Ltd. v. ACIT**²².

Having discussed the implications of loan waivers in the hands of the borrowers, let us analyse tax implications of loan waivers from the **Lender's perspective**.

Where the lender is in the business of money-lending:

When the lender is in the business of money-lending and the loans granted are written off in their books, deduction can be claimed u/s 36(1)(vii) as "Bad debts" subject to conditions u/s 36(2) of the Act. The conditions include:

- (i) bad debt or part thereof should be written off as irrecoverable in the accounts of the previous year;
In **T.R.F. Ltd. v. CIT**²³, the Supreme Court held that "After 1-4-1989, it is not necessary for assessee to establish that debt, in fact, has become irrecoverable; it is enough if bad debt is written off as irrecoverable in accounts of assessee"

- (ii) debt or part thereof should have been taken into account in computing the income of previous year or earlier previous years;

Section 36(1)(iii) makes no distinction between principal and interest; it uses the word "debt". Even if the assessee had never credited advance money to its profit and loss account in any of years, in **Mahindra & Mahindra vs. DCIT**²⁴, the Tribunal held that "income offered by assessee in form of interest itself formed part of entire debt owned by assessee and since assessee had offered to tax a part of debt, requirement of section 36(2) stood satisfied and assessee became eligible to claim deduction under section 36(1)(vii)"

- (iii) or such debt represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

Therefore, what happens when lending is not the primary business of the assessee but is only an incidental object in the memorandum of association. Corporates may deploy surplus funds as inter-corporate loans to earn interest. However, for the fact that such interest is offered to tax as business income, can there be a plea that the debt written off represents money lent in the ordinary course of the business of money-lending carried on by the assessee?

In **Poysha Oxygen (P) Ltd. v. ACIT, Circle 14(1)**²⁵, the Assessing Officer observed that the objects clause of the memorandum of association of the assessee-company did not contain the activity of money-lending as an object, and, therefore, the giving of the amount of Rs. 1 crore to 'G' was not in the ordinary course of the business of money-lending. On this aspect, the Tribunal held as under:

"...the circumstance whether a transaction is or is not within the company's power has no bearing on the nature of the transaction, or on the question whether the profits arising therefrom are capital accretion or revenue income...."

...if the interest of Rs. 17,40,984 was assessed as business income of the appellant in the assessment order for the assessment year 1996-97 and the interest on the loan was similarly assessed in the assessment order for the assessment year 1997-98, both in orders passed under section 143(3) of the Act, the revenue cannot turn around now and say that the advance to FMLC was not a money-lending advance."

In **CIT vs. ABC Bearing Limited**²⁶ the Bombay High Court held that,

“The finding of fact recorded by the Income Tax Appellate Tribunal in para 5 of its order is that the appellant was engaged in the business of advancing loans and interest received from the intercorporate deposits have been assessed as business income in the past. Since the said intercorporate deposits had become bad, the appellant in the assessment year in question had written off that amount. Since the interest income from the intercorporate deposits have been assessed as business income, in the facts of the present case allowing the claim of the appellant in writing off the intercorporate deposits cannot be faulted.”

In **Goetze India Ltd. v. DCIT**²⁷, it was held that,

“8.From the chart of money lent and interest earned thereon it is clear that lending of money by way of ICD was carried on as a part of organized and regular business activity. Huge amount of interest is earned thereon. Thus it cannot be said that the lending of money was only a casual activity or one time placing of fixed deposit. The appellant usefully lent money, realized them and redeployed the fund as per the borrowers requirement. This was carried on by way of regular business activity. Taxing the same under the head “Profits and gains of business” is a testimony to the fact that the interest was earned in the course of carrying on business. It is too late in the day for the revenue to contend that interest income should be taxed under the head “Income from other sources”. Thus it can be said that the appellant was carrying on business of money lending in its ordinary course. In view of the matter the condition as set out under section 36(1)(vii) read with section 36(2)(i) is satisfied and hence claim of the appellant is allowable...”

The Bangalore Tribunal in **M/s. Wendt (India) Ltd., vs. JCIT**²⁸ and the **Mumbai Tribunal in Jindal Iron and Steel Co. Pvt. Ltd. vs. DCIT**²⁹, have also expressed similar views, ruling in favour of the assessee.

In fact, whenever a loan has been extended on grounds of commercial expediency and later, the same is written off, the Courts have allowed deductions to the assessee.

In **S.A. Builders’** case, a parent company had borrowed funds and lent interest free to its subsidiary. It was observed that the parent was substantially interested in the business of the subsidiary as a shareholder and the subsidiary had deployed the funds in its business, therefore the Court was of the view that what is relevant is that whether amount advanced to sister concern was by way of commercial expediency. It is immaterial if the loan was given to sister concern or third party so long as commercial expediency can be seen.

The above judgement was in the context of interest allowability u/s 36(1)(vii) on the funds borrowed by the parent for lending to subsidiary however, an analogy can be drawn that waiver of loan, even though interest free, is a business loss if granted on ground of commercial expediency.

In **PCIT vs. Hybrid Financial Services Ltd.**³⁰ dated 11.02.2020 relying on SC’s case in **TRF Ltd. vs. CIT**³¹, the Bombay High Court made an important observation:

“there is no requirement under the Act that the bad debt has to accrue out of income under the same head i.e ‘income from business or profession’ to be eligible for deduction. This is not a requirement of law. All that is required is that the debt in question must be written off by the assessee in its books of accounts as irrecoverable.”

In **Jackie Shroff v. ACIT**³², where the actor had lent money interest free to his wife’s production house and later couldn’t recover the amount lend, the Tribunal held that *“It is true that the borrowed amount in question was not utilized by the assessee in its own business, but had been advanced as interest free loan to its sister concern. However, in our opinion, that fact is not really relevant. What is relevant is whether the assessee advanced such amount to its sister concern as a measure of commercial expediency.... When the moneys are advanced as measure of commercial expediency such advances are in the nature of business advances and the write off such advances by the assessee should be allowed as deduction u/s. 37(1) or u/s. 28 of the Act as business loss.”*

A bad debt in general sense is where one tries to recover the debt but fails and hence writes it off. A waiver on the other hand, is a positive act whereby the lender may be approached by the borrower and looking at a weak financial position of the borrower, the lender may exercise his right to waive off the debt.

Thus, if the assessee has a vested business interest in lending a sum of money, such waivers can be claimed as business loss under Section 28 of the Act itself. Where the same is claimed as business loss, there may even be no requirement to satisfy the conditions u/s 36(2) or 37(1) of the Act for that matter.

While the legal position so lies, it is hoped and expected of the Revenue to view loan waivers as “reasonable” in the current COVID scenario and look into the surrounding facts and circumstances of the case to acknowledge bonafide and genuine cases of waivers.

- ¹ CIT v. Mahindra and Mahindra Ltd. [2018] 93 taxmann.com 32/255 Taxman 305
- ² Solid Containers vs. DCIT [2009] 308 ITR 417 (Bombay)
- ³ Mahindra & Mahindra Ltd. v. CIT [2003] 261 ITR 501
- ⁴ ACIT v Rollatainers Ltd. ITA 127 OF 2011
- ⁵ Iskraemeco Regent Ltd. vs. CIT [2011] 196 TAXMAN 103 (Mad.)
- ⁶ Comfund Financial Services (I) Ltd. V. DCIT [1998] 67ITD 304
- ⁷ CIT v. Xylon Holdings Pvt. Ltd. [2012] 26 taxmann.com 333 (Bomb.)
- ⁸ CIT v. Compaq Electric Ltd [2011] 16 taxmann.com 385(KAR.)
- ⁹ CIT v. Compaq Electric Ltd [2019] 101 taxmann.com 400 (SC)
- ¹⁰ CIT v. Tosha International Ltd. [2009] 176 Taxmann 187 (Delhi)
- ¹¹ Mohsin Rehman Penkar v. CIT [1948] 16 ITR 183 (Bom.) (HC)
- ¹² CIT v. Dholgiri Industries (P) Ltd [2014] 266 CTR 111 (MP.) (HC)
- ¹³ Pr. CIT v. SICOM Ltd [2020] 116 taxmann.com 410 (Bombay)
- ¹⁴ Jai Pal Gaba vs. ITO [2019] 108 taxmann.com 494 (Chandigarh - Trib.)
- ¹⁵ Indo Rama Synthetics (I) Ltd. vs. CIT (2011) 330 ITR 363 (SC)
- ¹⁶ B B Infrotech Ltd vs ITO[2015] 155 ITD 1040 (Bang Trib)
- ¹⁷ M/s. JSW Steel Limited v ACIT (2017) (82 taxmann com 210)
- ¹⁸ B & B Infratech Ltd. V. ITO [2016] 76 taxmann.com 188 (Karnataka)
- ¹⁹ CIT V.Rayala Corporation Pvt Ltd [2013] 36 taxmann.com 285 (Madras)
- ²⁰ ACIT v. Spel Semiconductor Ltd [2013] 35 taxmann.com 304 (Chennai Trib.)
- ²¹ Mula Pravara Electric Co-op.society Ltd. V.DCIT [2018] 98 Taxmann.com 419 (Pune Trib.)
- ²² Shri Kansara Modular Ltd. v. ACIT [2013] 32 taxmann.com 217 (Jodhpur - Trib.)
- ²³ T.R.F. Ltd. v. CIT [2010] 190 Taxman 391 (SC)
- ²⁴ Mahindra & Mahindra vs. DCIT [2020] 113 taxmann.com 230 (Mum-Trib)
- ²⁵ Poysha Oxygen (P.) Ltd. v. ACIT, Circle 14(1) [2008] 19 SOT 711
- ²⁶ CIT vs. ABC Bearing Limited (ITA No. 2262 of 2009)
- ²⁷ Goetze India Ltd. v. DCIT 119 TTJ 351 (ITAT Delhi)
- ²⁸ M/s. Wendt (India) Ltd., vs. JCIT (ITA No.269/Bang/2010)
- ²⁹ Jindal Iron and Steel Co. Pvt. Ltd. vs. DCIT ITA no. 6298/Mum./2009
- ³⁰ PCIT vs. Hybrid Financial Services Ltd [ITA 1265 of 2017] (Bom HC)
- ³¹ TRF Ltd. vs. CIT [2010] 323 ITR 397 (SC)
- ³² Jackie Shroff v. ACIT [2019] 101 taxmann.com 455 (Mumbai - Trib.)

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*Twenty years from now you will be more disappointed by the things
that you didn't do than by the ones you did do.*

– Mark Twain



*Life is ten percent what happens to you and ninety percent
how you respond to it.*

– Charles Swindoll

Non-Compliance with Laws and Regulations (NOCLAR)

By **Mr. Ranjeet Kr Agarwal**

Institute of Chartered Accountants of India has made NOCLAR provisions applicable from **1st April, 2022** while revising its Code of Ethics 2020. This NOCLAR provisions are equally applicable for both **Members in Practice** and **Members in Employment with Listed Entities**.

A distinguishing mark of the Accountancy Profession is its acceptance of the responsibility to act in the public interest.

Chartered Accountants which are being termed as Professional Accountants are required to comply with the Code of Ethics, Fundamental Principles and Conceptual Framework. Fundamental Principles talks about Integrity, Objectivity, Professional Competence and Due Care, Confidentiality and Professional behaviours.

The conceptual framework talks about Five kinds of threats i.e.

- Self Interest Threat,
- Self Review Threat,
- Advocacy Threats,
- Familiarity Threat &
- Intimidation Threat.

This framework also specifies an approach for a professional accountant to:

- a. Identify threats to compliance with the fundamental principles;
- b. Evaluate the threats identified; and
- c. Address the threats by eliminating or reducing them to an acceptable level.

A self-interest or intimidation threat to compliance with the principles of integrity and professional behaviour is created when a professional accountant

becomes aware of non-compliance or suspected non-compliance with laws and regulations.

SA 250 also talks about the Auditor's Responsibilities relating to Laws and Regulations in an Audit of Financial Statements which has been made applicable since **1-4-2009**

Responsibility of the Auditor as per SA 250

This SA is designed to assist the auditor in identifying material misstatement of the financial statements. He is responsible for obtaining a reasonable assurance that the financial statements as a whole are free from any material misstatement. He has to obtain sufficient audit evidence regarding compliance with provisions of laws and regulations.

NOCLAR in case of Professional Accountant who is in Employment with Listed Entities

This provision is applicable if a professional accountant came across or made aware of non-compliance or suspected non-compliance in the course of carrying out professional activities in two situations;

- (a) Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the employing organization's financial statements; and
- (b) Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the employing organization's financial statements, but compliance with which might be fundamental to the operating aspects of the employing organization's business, to its ability to continue its business, or to avoid material penalties.

Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, which

are contrary to the prevailing laws or regulations committed by the following parties:

- (a) The professional accountant's employing organization;
- (b) Those charged with governance of the employing organization;
- (c) Management of the employing organization; or
- (d) Other individuals working for or under the direction of the employing organization.

Examples of laws and regulations which this section addresses include those that deal with:

- Fraud, corruption and bribery.
- Money laundering, terrorist financing and proceeds of crime.
- Securities markets and trading.
- Banking and other financial products and services.
- Data protection.
- Tax and pension liabilities and payments.
- Environmental protection.
- Public health and safety.

Non-compliance might result in fines, litigation or other consequences for the employing organization, potentially materially affecting its financial statements. Importantly, such non-compliance might have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public.

A professional accountant who encounters or is made aware of matters that are clearly inconsequential is not required to comply with this section. Whether a matter is clearly inconsequential is to be judged with respect to its nature and its impact, financial or otherwise, on the employing organization, its stakeholders and the general public.

Responsibilities of All Professional Accountants

If protocols and procedures exist within the professional accountant's employing organization to address non-compliance or suspected non-compliance, the accountant shall consider them in determining how to respond to such non-compliance.

Many employing organizations have established protocols and procedures regarding how to raise non-compliance or suspected non-compliance internally. These protocols and procedures include, for

example, an ethics policy or internal whistle-blowing mechanism. Such protocols and procedures might allow matters to be reported anonymously through designated channels.

Responsibilities of Senior Professional Accountants in Service

Senior professional accountants in service are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organization's human, financial, technological, physical and intangible resources. There is a greater expectation for such individuals to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance than other professional accountants within the employing organization because of their roles, positions and spheres of influence within the employing organization.

Obtaining an Understanding of the Matter

Depending on the nature and significance of the matter, the senior professional accountant might cause, or take appropriate steps to cause, the matter to be investigated internally. The accountant might also consult on a confidential basis with others within the employing organization or Institute, or with legal counsel.

Addressing the Matter

If the senior professional accountant identifies or suspects that non-compliance has occurred or might occur, the accountant shall, discuss the matter with the accountant's immediate superior, if any. If the accountant's immediate superior appears to be involved in the matter, the accountant shall discuss the matter with the next higher level of authority within the employing organization.

The purpose of the discussion is to enable a determination to be made as to how to address the matter. The senior professional accountant shall also take appropriate steps to:

- (a) Have the matter communicated to those charged with governance;
- (b) Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority;
- (c) Have the consequences of the non-compliance or

suspected non-compliance rectified, remediated or mitigated;

- (d) Reduce the risk of re-occurrence; and
- (e) Seek to deter the commission of the non-compliance if it has not yet occurred.

In addition to responding to the matter in accordance with the provisions of this section, the senior professional accountant shall determine whether disclosure of the matter to the employing organization's external auditor, if any, is needed. Such disclosure would be pursuant to the senior professional accountant's duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

Determining Whether Further Action Is Needed

The senior professional accountant shall assess the appropriateness of the response of the accountant's superiors, if any, and those charged with governance.

In light of the response of the senior professional accountant's superiors, if any, and those charged with governance, the accountant shall determine if further action is needed in the public interest.

The determination of whether further action is needed, and the nature and extent of it, will depend on various factors, including:

- The legal and regulatory framework.
- The urgency of the situation.
- The pervasiveness of the matter throughout the employing organization.
- Whether the senior professional accountant continues to have confidence in the integrity of the accountant's superiors and those charged with governance.
- Whether the non-compliance or suspected non-compliance is likely to recur.
- Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organization, investors, creditors, employees or the general public.

Further action that the senior professional accountant might take includes:

- Informing the management of the parent entity of the matter if the employing organization is a member of a group.
- Disclosing the matter to an appropriate authority

as specified under respective law

- Resigning from the employing organization.

Resigning from the employing organization is not a substitute for taking other actions that might be needed to achieve the senior professional accountant's objectives under this section. However, there might be limitations as to the further actions available to the accountant. In such circumstances, resignation might be the only available course of action.

Seeking Advice

As assessment of the matter might involve complex analysis and judgments, the senior professional accountant might consider:

- Consulting internally.
- Obtaining legal advice to understand the accountant's options and the professional or legal implications of taking any particular course of action.
- Consulting on a confidential basis with the Institute.

Determining Whether to Disclose the Matter to an Appropriate Authority

Disclosure of the matter to an appropriate authority would be precluded if doing so would be contrary to law or regulation. Otherwise, the purpose of making disclosure is to enable an appropriate authority to cause the matter to be investigated and action to be taken in the public interest.

The determination of whether to make such a disclosure depends in particular on the nature and extent of the actual or potential harm that is or might be caused by the matter to investors, creditors, employees or the general public. For example, the senior professional accountant might determine that disclosure of the matter to an appropriate authority is an appropriate course of action if:

- The employing organization is engaged in bribery
- The employing organization is regulated and the matter is of such significance as to threaten its license to operate.
- The employing organization is listed on a securities exchange and the matter might result in adverse consequences to the fair and orderly market in the employing organization's securities or pose a systemic risk to the financial markets.

- It is likely that the employing organization would sell products that are harmful to public health or safety.
- The employing organization is promoting a scheme to its clients to assist them in evading taxes.

The determination of whether to make such a disclosure will also depend on external factors such as:

- Whether there is an appropriate authority that is able to receive the information, and cause the matter to be investigated and action to be taken. For example;
ICAI : is an appropriate authority in case of complaint of professional misconduct against a professional accountant, whether in public practice or in service.
SEBI : in the case of fraudulent financial reporting
- Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.
- Whether there are actual or potential threats to the physical safety of the senior professional accountant or other individuals.

If the senior professional accountant determines that disclosure of the matter to an appropriate authority, if required, is an appropriate course of action in the circumstances, that disclosure is permitted. When making such disclosure, the accountant shall act in good faith and exercise caution when making statements and assertions.

Imminent Breach

In exceptional circumstances, the senior professional accountant might become aware of actual or intended conduct that the accountant has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having first considered whether it would be appropriate to discuss the matter with management or those charged with governance of the employing organization, the accountant shall exercise professional judgment and determine whether to disclose the matter immediately

to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach.

Documentation

In relation to non-compliance or suspected non-compliance that falls within the scope of this section, the senior professional accountant is encouraged to have the following matters documented:

- The matter.
- The results of discussions with the accountant's superiors, if any, and those charged with governance and other parties.
- How the accountant's superiors, if any, and those charged with governance have responded to the matter.
- The courses of action the accountant considered, the judgments made and the decisions that were taken.
- How the accountant is satisfied that the accountant has fulfilled its responsibility.

Note 1 : There is further provision regarding Responsibilities of Professional Accountants Other than Senior Professional Accountants also in this particular section of NOCLAR applicable to Professional Accountants in Employment with Listed Entities.

Note 2 : There is further provision regarding responding to non-compliance with laws and regulations during the course of Audit engagements of Listed Entities.

Conclusion: *This provisions of NOCLAR has been introduced by ICAI w.e.f 1st April, 2022 on the line of International Ethical Standards Board of Accountants (IESBA) of IFAC. This provision will bring huge impact on the Corporate Governance in Corporate World as Chartered Accountants working as Senior Positions in Listed Entities would not be able to ignore/hide the non compliances going on in their organisations and they would also be required to bring these non compliances to the knowledge of Management/Auditor/Regulator in that order. External Auditors would demand adequate assistance from these Professional Accountants as far as bringing the facts to their knowledge while reporting on the true and fair of the Financial Statements of these organisations.*

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By CA. Pankaj Agrwal

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Amendment in Schedule III to the Companies Act, 2013 and its implications

I. Non-Ind AS Compliant companies

1. Rounding off of figures

1.1. Now the figures of financial statements to be compulsorily rounded off based on 'total income' instead of based on 'turnover'. This unit of measurement to be used uniformly. The requirement is

1.1.1. If total income is less than one hundred crores to round off to the nearest hundreds, thousands, lakhs or millions or decimals thereof.

1.1.2. In case total income is one hundred crores or more to round off to the nearest lakhs, millions or decimals thereof.

2. Balance Sheet

2.1. Now heading 'Property, Plant and Equipment' is to be read as 'Property Plant and Equipment and Intangible assets'.

2.2. Tangible Assets will now be read as 'Property, Plant and Equipment'.

3. Share Capital

3.1. Now, it is required to disclose the Promoters' shareholding at the end of year and % change during the year.

3.2. "Promoter" here means a person –

a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

b) who has control over the affairs of the company directly or indirectly whether as a shareholder, director or otherwise; or

c) In accordance with whose advice, directions or instructions the Board of

Directors is accustomed to act; This does not apply to a professional who acts in his professional capacity.

3.3. The change in shareholding is to be given with reference to the beginning of the year.

4. Short-term Borrowings

4.1. Current maturities of Long-term borrowings will be disclosed as Short-term borrowing instead of showing the same as part of Current Liabilities.

5. Trade Payables

5.1. Now ageing schedule of trade payable is to be given. Presently, there is no requirement of ageing schedule. The trade payable to be shown in 2 categories MSME and others and to be further classified as Disputed and non-disputed. The ageing to be done for less than one year, 1-2 years, 2-3 years and more than 3 years. This is to be done from due date of payment. In case, there is no due date, it is to be done from the date of transaction. Unbilled dues also to be disclosed separately.

5.2. The impact of GST Act is to be kept in view. Proviso to Section 16(2) requires reversal of Input Tax Credit in case payment of supply along with tax has not been made within one hundred eighty days. While making such disclosures, it is to be ensured by auditors that in all such cases where liability is outstanding for a period exceeding six months whether input tax credit if availed has been reversed.

5.3. The applicability of the provisions of the Prohibition of Benami Property Transactions Act 1988 (Benami Law) is also required to be

looked into, mainly in cases which are shown as disputed or are long outstanding.

- 5.4. Benami Law defines the term “property” in its widest possible terms and the definition of ‘Benami transaction’ as given in section 2(9)(B), 2(9)(C), and 2(9)(D) may get attracted.

6. **Property Plant and Equipment**

- 6.1. In reconciliation of the gross and net carrying amount of each class of assets, amount of change due to revaluation (if change is 10% or more in the aggregate of the net carrying value of each class) is also to be shown separately.

7. **Intangible Assets**

- 7.1. In reconciliation of the gross and net carrying amount of each class of assets, amount of change due to revaluation (if change is 10% or more in the aggregate of the net carrying value of each class) is also to be shown separately.

8. **Long-term loans and advances and Other non-current assets**

- 8.1. Security Deposits will be shown under the heading other non-current assets instead of Long-term Loans and advances.

9. **Trade Receivables (Long-term and Short-term)**

- 9.1. Ageing of trade receivables between less than 6 months, 6 months to 1 year, 1-2 years, 2-3 years and more than 3 years is required to be given.
- 9.2. This ageing is to be further bifurcated between undisputed – considered good and undisputed – considered doubtful and Disputed – considered good and Disputed – considered doubtful.
- 9.3. Unbilled transactions to be shown separately. Its impact on GST liability has to be seen.
- 9.4. Ageing to be done from the due date. In the absence of any due date, it is to be seen from the date of transaction.

10. **Borrowing from Banks and Financial Institutions**

- 10.1. The end use of the borrowings from banks and financial institutions is required to be seen at the balance sheet date. Matching of loan with

corresponding assets has to be done to ensure that it has been used for the purpose for which it has been taken.

Additional Regulatory Information

11. **Title deeds of Immovable Property not held in the name of the Company**

- 11.1. There is requirement in CARO 2016 requiring auditors to report whether the title deeds of immovable properties are held in the name of the company, and if not, to provide the details thereof. Further, it was restricted to properties held as part of fixed assets only. Now, it covers all line items wherever, immovable property may have been shown.

- 11.2. Now, Schedule III is amended and provides a format for details to be provided by the company in case title deed is not held by the company in its name. This information to be given in the following format:

- 11.2.1. Relevant line item in the balance sheet

- 11.2.2. Description of item of property

- 11.2.3. Gross Carrying value

- 11.2.4. Title deeds held in the name of

- 11.2.5. Whether title deed holder is a promoter, director or relative of promoter/director or employee of promoter/director

- 11.2.6. Property held since which date

- 11.2.7. Reasons for not being held in the name of company. If in dispute, it is also to be indicated.

- 11.3. Auditor is also required to give this information in his CARO report as per amended CARO 2020.

- 11.4. Here, the provisions of the Prohibition of Benami Property Transactions Act, 1988 is also to be kept in mind. Can such properties where legal titles are held by someone else and for which consideration has been provided by the company be treated as ‘benami’ within the meaning of that Act. The only exception given is only to the transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882, if under, any

law for the time being in force,-

- (i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold the ownership of such property
- (ii) stamp duty on such transaction or arrangement has been paid; and
- (iii) the contract has been registered.

12. **Revaluation**

- 12.1. If Property, Plant and equipment has been revalued, it is to be disclosed whether such revaluation was done by a registered valuer.

13. **Loans or Advances to promoters, directors, KMP and the related parties**

- 13.1. If such loans are repayable on demand or without specifying any terms or period of repayment, the following information need to be given in respect of each type of borrower viz. Promoters, Directors, KMPs and related parties.

- 13.1.1. Amount of loan or advance in the nature of loan outstanding

- 13.1.2. Percentage to the total Loans and Advances in the nature of loans.

14. **Capital Work in progress**

- 14.1. Ageing of capital work in progress classifying between less than 1 year, 1-2 years, 2-3 years and more than 3 years to be given.

- 14.2. Capital work in progress to be classified between Projects in progress and projects temporarily suspended

- 14.3. Capital work in progress whose cost has overrun and its completion is overdue, its project wise completion schedule is to given. Details of suspended projects to be given separately.

15. **Intangible assets under development**

- 15.1. As required for capital work in progress, similar information of ageing schedule and completion schedule in respect of Intangible assets under development is also to be given.

16. **Benami Property**

- 16.1. The company is required to disclose the following information in respect of proceedings initiated against the company under the Prohibition of Benami Property Transactions Act, 1988:

- a) Details of such property including year of acquisition
- b) Amount
- c) Details of Beneficiaries
- d) If property is in the books, then reference to the item in the Balance-sheet
- e) If property is not in the books, then the fact shall be stated with reasons
- f) If the proceedings against the company as a bettor or as transferor, the details thereof.
- g) Nature of proceedings, status and the company's view on same.

17. **Borrowings from banks or financial institutions**

- 17.1. Where borrowing has been taken on the basis of security of current assets, the company is required to confirm:

- 17.1.1. Whether the quarterly returns or statements of current assets filed are in agreement with the books of accounts;

- 17.1.2. If not, summary of reconciliation and reasons of material discrepancies, if any to be adequately disclosed.

18. **Willful defaulter**

- 18.1. If a company is declared willful defaulter by any bank or financial institution or other lender, the following details shall be given:

- 18.1.1. Date of declaration of willful defaulter

- 18.1.2. Details of defaults (amount and nature of defaults)

19. **Relationship with Struck off Companies**

- 19.1. Now a company is required to disclose the following in respect of the transactions with companies which has been struck off:

- a) Name of Struck Off Company
- b) Nature of transactions with struck-off

company viz. Investments in securities, receivable, payables, Shares held by struck off company, and other outstanding balances.

- c) Balance outstanding
- d) Relationship with the Struck off company, if any, to be disclosed.

19.2. The applicability of the provisions of Benami law in respect of liabilities payable to struck off companies to be examined.

20. **Registration of Charges or satisfaction with ROC**

20.1. If there is any default in getting the charge registered or satisfied beyond the statutory period, it shall be disclosed with reasons thereof.

21. **Compliance with number of layers of companies**

21.1. If the company has not complied with the number of layers prescribed in law i.e. 1+2 layers, the names and CIN of the companies beyond the third layers and the relationship/ extent of holding is to be disclosed.

22. **Ratios**

22.1. Now every company is required to disclose the following ratios:

- a) Current Ratio
- b) Debt-Equity Ratio
- c) Debt Service Coverage Ratio
- d) Return on Equity Ratio
- e) Inventory turnover ratio
- f) Trade Receivables turnover ratio
- g) Trade Payables turnover ratio
- h) Net capital turnover ratio
- i) Net profit ratio
- j) Return on Capital employed
- k) Return on Investment.

22.2. The numerator and denominator adopted for computing the above ratios are also to be disclosed. If there is change in ratio by more than 25%, it is to be explained.

23. **Compliance with approved Scheme(s) of Arrangements**

23.1. The company is to make a statement in case of amalgamation that effect in books of accounts has been given in accordance with 'the scheme' and with 'the accounting standard'. In case of any deviation, it needs to be explained.

24. **Utilization of Borrowed funds and Share Premium**

24.1. If a company has advanced or loaned or invested funds (either borrowed funds or share premium or any other sources or kind of funds) i.e. any fund owned, borrowed or otherwise, to any other person or entity including foreign entities (Intermediaries) with the understanding (whether recorded in writing or otherwise) that the Intermediary shall:

- i. Directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by, or on behalf of the company or
- ii. Provide any guarantee or security or the like to or on behalf of the ultimate beneficiaries.

In above cases, the following information is to be provided:

- (i) Date and amount of fund advanced, loaned or invested in Intermediaries with complete details of each Intermediary.
- (ii) Date and amount of fund further advanced or loaned or invested by such Intermediaries to other intermediaries or Ultimate Beneficiaries along with complete details of ultimate beneficiaries.
- (iii) Date and amount of guarantee, security or the like provided to or on behalf of the Ultimate beneficiaries.
- (iv) Declaration to be given that provisions of FEMA has been complied with and there is no violation of Prevention of Money Laundering Act.

24.2. If a company has received any fund from any other person or entity with understanding that it will be lent to company identified by or on behalf of the funding company, all the information as required in 24.1 above will be required to be given by recipient company also.

25. **Profit and Loss Account**

25.1. The nomenclature of “Total Revenue” will now become “Income”.

25.2. One line item ‘Grants or donations received’ is added for section 8 companies as revenue from operations.

25.3. **Undisclosed Income**

25.3.1. A company is required to provide details of any income surrendered or disclosed during the year unless there is immunity from making disclosure under any scheme. It is also to be stated whether previously unrecorded income and related assets have been recorded during the year in books or not.

26. **Corporate Social Responsibility**

26.1. The following information where company is covered under section 135 of the Companies Act is to be provided:

- (i) Amount required to be spent during the year
- (ii) Amount of expenditure incurred
- (iii) Shortfall at the end of the year
- (iv) Total of previous years shortfall
- (v) Reason for shortfall
- (vi) Nature of CSR activities
- (vii) Details of related party transactions, e.g. contribution to a trust controlled by the company in relation to CSR expenditure
- (viii) Where a provision is made with respect to a liability incurred by entering into a contractual obligation, the movement in provisions to be shown separately.

27. **Crypto Currency or Virtual Currency**

27.1. If the company has traded or invested in crypto currency or virtual currency, the following disclosure to be made:

- (i) Profit or loss on transactions involving Crypto Currency or Virtual currency.
- (ii) Amount of currency held at the reporting date.
- (iii) Deposits or advances received from any person for the purpose of trading

or investing in Crypto Currency/virtual currency.

II Ind AS Compliant Companies

All the requirements and changes which have been made for non-Ind AS companies are made for Ind AS compliant companies also. In addition the following specific changes are also made:

1. Lease liabilities are to be shown as line item on main balance sheet under the heading Financial Liabilities in non-current liabilities as well as current liabilities.

2. **Statement of Changes in Equity**

2.1. The following changes have been made in the statement of changes in equity:

- (i) Changes in Equity Share Capital due to prior period errors to be shown separately. The statement of equity share capital to be prepared for current reporting period as well as previous reporting period.
- (ii) Statement of Other Equity also required to be prepared for current reporting period as well as previous reporting period.
- (iii) The requirement to give description of the purposes of each reserve has been dispense with.

3. **Trade Receivable (Non-Current and Current)**

3.1. Ageing is to be done as required for non-Ind As compliant companies. However, here classification of receivables is to be done between good, significant increase in credit risk, and credit impaired instead of good and doubtful.

4. **Other Financial Assets**

4.1. Other financial assets are to be classified as

- (i) Security Deposits
- (ii) Bank Deposits with more than 12 months maturity
- (iii) Others (to be specified)

5. Current maturities of long-term borrowings will now form part of borrowings instead of Other Financial Liabilities.

Limited Liability Partnership (Amendment) Act, 2021

By Mr. Mayur Agrawal

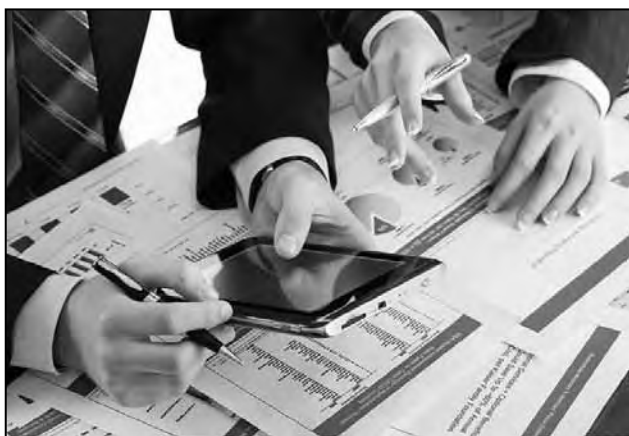
A Limited Liability Partnership (LLP) is a hybrid business form that gives the benefits of limited liability of a company and the flexibility of a partnership. LLPs are popular due to less compliance requirements as compared with a company where compliance burden is increasing day by day.

The Hon. Finance Minister in her Budget Speech this year had mentioned about several significant changes in the area of corporate laws. She mentioned, the decriminalizing of the procedural and technical compoundable offences under the Companies Act, 2013, has been completed. It has been proposed to next take up decriminalization of the Limited Liability Partnership (LLP) Act, 2008. In connection with the budget proposal to decimalize the LLP Act, 2008 and governments effort to foster ease of doing business as well as to encourage the startups ecosystem, the LLP Amendment Bill, 2021 was introduced in parliament.

After getting approval from both the houses of Parliament, LLP Amendment Bill, 2021 was approved by the President of India on 13th August, 2021 and became LLP (Amendment) Act, 2021 (Amendment Act). This is the first-time changes are being made to the LLP Act since it came into effect in 2009. There have been 29 amendments made to LLP Act 2008 by LLP Amendment Act 2021. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Key highlights of the Amendment

1. **Resident of India:** For the purpose of Designated Partner the term resident of India now means a person who has stayed in India for a period of not less than One Hundred and Twenty days during the financial year. NRIs will hail this decision where by they can become resident Designated Partners within 120 days as compared to erstwhile 182 days.
2. **Certain offences decriminalized:** The act decriminalize 12 offences under LLPs. Currently, there are 24 penal provisions in the LLP Act, 21 compoundable offences, and 3 non-compoundable offences. After the amendments, the penal provisions will be cut to 22 with compoundable offences reduced to 7 and non-compoundable offences will remain the same. The decriminalized cases will be shifted to an "In-house Adjudication Mechanism" which would help reduce the burden of criminal courts.
3. **Rectification of name of LLP:** The Act states that the Central Government may direct an LLP to change its name on certain grounds such as the name being undesirable or identical to a trademark pending registration. The provisions prior to amendment prescribe fine if LLP fails to comply with such direction. The Act removes some of these grounds, and empowers the Central Government to allot a new name to such an LLP instead of levying a fine.



4. **Standards of Accounting & Auditing:** In absence of any specific provision, LLPs are required to comply with the Generally Accepted Accounting Principles (GAAP). It had been discussed in the past that it is important to make accounting standards applicable on certain class of LLPs particularly LLPs engaged in manufacturing activities. The act authorizes the central government to prescribe the standards of accounting and auditing for certain classes of LLPs, in consultation with the National Financial Reporting Authority.

5. **Introduction of Small LLP:** The Companies Act, 2013 had provided for the concept of small companies for the first time. Such small companies enjoy several privileges such as concise board's report, fewer board meetings, reduced penalties, non-applicability of Cash Flow etc. The rationale behind such relaxations is to promote ease of doing businesses for MSMEs.

With similar intent, the Amendment Act has introduced the concept of small LLPs. Such a provision will facilitate lesser compliances burden, lesser fee or additional fees for small LLPs. The Amendment Act provides that small LLP means LLP where (i) the contribution from partners is up to Rs 25 lakh (may be increased up to five crore rupees), (ii) turnover for the preceding financial year is up to Rs 40 lakh (may be increased up to Rs 50 crore). The Central Government may also notify certain LLPs as start-up LLPs through notifications.

6. **Stringent Punishment for Fraud:** The bill proposes to increase the maximum term of imprisonment from two years to five years for any fraudulent activity and a fine between Rs. 50,000 to Rs. 5,00,000 can also be imposed.

7. **Compounding of offences by Regional Director:** Under the Amendment Act, the Central Government may compound any offence under the Act which is punishable only with a fine. The amount imposed may be up to the maximum fine prescribed for the offence. The Act amends this to provide that a Regional Director (or any officer above his rank), appointed by the Central Government, may compound such offences. The amount imposed must be within the minimum and maximum fine for the offence. If an offence by an LLP or its partners was compounded, then a

similar offence cannot be compounded within a three-year period.

8. **Appointment of Adjudicating Officers:** Under the Act, the Central Government may appoint adjudicating officers for awarding penalties under the Act. These will be Central Government officers not below the rank of Registrar. Appeals against orders of the Adjudicating Officers will lie with the Regional Director. The corporate affairs ministry is also working towards setting up an e-adjudication platform as part of the new version of the MCA21 portal.

9. **Special courts:** The Act allows the central government to establish special courts for ensuring speedy trial of offences under the Act. The special court will consist of: (i) a Sessions Judge or an Additional Sessions Judge, for offences punishable with imprisonment of three years or more; and (ii) a Metropolitan Magistrate or a Judicial Magistrate, for other offences. They will be appointed with the concurrence of the Chief Justice of the High Court. Appeals against orders of these special courts will lie with High Courts.

10. **Appeals to Appellate Tribunal:** The Amendment Act prescribes that appeals against orders of the NCLT lie with the National Company Law Appellate Tribunal (NCLAT). The Act adds that appeals cannot be made against an order that have been passed with the consent of the parties. Appeals must be filed within 60 days (extendable by another 60 days) of the order.

Conclusion

Finance Minister Nirmala Sitharaman has said these are very important amendments and will bring positivity in the LLP eco-system. She said that with the passage of the bill, criminal offences will be brought down while ease of doing business will go up and partners will have more flexibility. The latest amendments will provide coverage to a lot of small and large enterprises and provide the benefits of a company as well as traditional partnership firms. However, in order to provide more opportunities to the nascent businesses, more ease in the norms is required in terms of capping of additional fees, easy exit opportunities and allowing waiver of additional fees in cases having genuine grounds among others.



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Critical Approach Towards Concurrent Audit in Banks

1.1 Introduction :

DEFINITION OF BANK :

The word banking is “accepting, for the purpose of lending of investment of deposits of money from public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise”- Section 5(b).

Thus, banking interalia is accepting deposits from public & investing the same showing prudence & care that the money can be repaid to depositors on demand. Thus, for taking care of money & other allied activities of bank a sound internal audit system is required which will play a important role in bringing effectiveness in risk management & internal control. Concurrent audit is internal control system to prevent incidence of errors & fraudulent manipulations.

What is concurrent Audit

It is a systematic and timely examination of financial transactions on a continuous basis at the time of happening of the event. It is not a test check rather a substantial checking. It ensures accuracy, authenticity & compliance with procedures & guidelines of bank.

Difference between Internal Audit & Concurrent Audit

Internal Audit is a periodic audit i.e it may be conducted monthly/quarterly/half yearly/yearly basis but Concurrent audit is the immediate checking of transaction.

Core Functions of Bank :-

- ⊙ Deposit.
- ⊙ Advances.
- ⊙ Foreign Exchange transactions.

- ⊙ Cash Management.
- ⊙ Bill Payment/Locker/Safe deposit vault.
- ⊙ Others.

1.2 Starting of concurrent Audit :

- A) Go through appointment letter & terms of appointment.
- B) Periodicity of report. Within which date report to be submitted & to whom.
- C) Format of reporting. Whether report to be submitted through system or manually.
- D) Contact branch for Loan policy, Power Chart (Loaning & Financial), Interest rate circular & Charges circular etc.

After reporting to branch :

- ❖ Try to understand size of the branch & volume of work.
- ❖ obtain Weekly statement which gives a fair idea of Deposit, Advance of the said branch.
- ❖ Staff complement to be determined after going through the business portfolio of the branch.
- ❖ Ask the branch which computer software they use.
- ❖ Try to get hold of software manual so that you can understand quickly how you can open the computer programme & go through different menus.
- ❖ Ask the branch to give user ID/ password without which you may not be able to carry on your work.

Branch Characteristics :

- ❖ Each branch has got its own character like If it

is located in Residential Area its Deposit may be more. If it is located in Business area its Advance size may be more. There may be some branch whose deposit & advance both are substantial.

Planning :

- ❖ After going through various existing features of the branch prepare a detailed Audit programme.
- ❖ Programme must include periodicity of checking. Extent of checking.
- ❖ Particular attention to be given on Compliance of PMLA Act – KYC norms
- ❖ Audit prog must include checking of CIBIL/ CERSAI registration/Registration of charge with MCA.

1.3 Deposit :

Deposit may be a i) LOW COST DEPOSIT or ii) HIGH COST DEPOSIT

- ❖ Low-Cost deposit – Current Account & Savings Account Balance.
- ❖ High-Cost deposit – FDR/RD or any other term deposits.

CHECKING OF DEPOSIT ACCOUNTS :

Deposits in bank are of varied nature. It depends purpose of the account holder. As a CA one has to take note of the followings :

1. A/c Opening form correctly filled with all supporting like Aadhar Card, PAN card. Duly introduced.
2. A/c opening form duly verified by officer with his PA no. A/C opening & closing to be checked in depth particularly if the a/c closed in short span.
3. All the KYC proof duly verified with originals & duly recorded & KYC norms has been duly complied.
4. Details noted in CBS system.
5. Signature & Photo scanned.
6. Whether account opening Form correctly stored.
7. A/c No, Customer ID, Date specified in Application.
8. Whether introducers signature duly verified.
9. Staff FD usually gets additional interest. Check

whether first name is of the staff.

10. In case of senior citizen age proof evidence must be on record.
11. In case of premature withdrawal check whether proper charges has been levied.

CASH MANAGEMENT :

Bank earns on interest they lend thus maintaining huge cash balance means loss of interest. So

CA must take care on :-

- ❖ Conduct surprise check of cash.
- ❖ Check cash in hand with cashier's cash book with denomination.
- ❖ Insurance cover.
- ❖ Expenses in cash if any to be checked in depth.
- ❖ Excess cash must be deposited in Currency chest or excess cash must be deposited with nearest branch who needs cash.
- ❖ Weekly monitoring of cash is very essential for concurrent auditors.

LOCKER :

- ❖ Whether Locker Register maintained.
- ❖ Whether Locker rent collected as per size of locker.
- ❖ Whether policy for locker up to date.
- ❖ Any suspicious operation in the locker which is transparent like frequent visit etc.

1.4 Analysis of Advances :

Due to huge NPA CA must go in depth for all advances irrespective of their size, security available etc. CA must check in depth classification of advance, whether classification done by system & correct reporting is done by branch about stock statement submission, SMA classification Irregularity in the account etc. In depth study is required in case of ever greening in borrowal accounts.

FUND BASED

- ❖ Cash credit.
- ❖ Term loan.
- ❖ Packing credit.
- ❖ Demand loan.

- ❖ Overdraft.
- ❖ Bill facility (both Inland & Foreign)
- ❖ Advance against Bill for Collection.
- ❖ Bridge loan.
- ❖ COVID Loan or any other temporary loans.
- ❖ Any other facility where bank fund is going out.

NON-FUND BASED

- ❖ Letter of credit both DA/DP (Inland & Foreign)
- ❖ Bank Guarantee (Inland & Foreign)

CHECKING OF ADVANCE ACCOUNTS :

Obtain a list of existing Advance parties with following information:-

- ❖ Name & Address, CIN (incase of company)
- ❖ Sanctioned limit.
- ❖ Category of advance - MSME, NON MSME, AGRICULTURAL, PRIORITY SECTOR etc.
- ❖ Last date of sanction if the account reviewed then when was the last review held. Who conducted review & why latest renewal not done.
- ❖ Date of last stock statement (in case of cash credit Hypothecation/ Packing credit)
- ❖ Present outstanding (Limit Wise)
- ❖ Position of Insurance & Amount (Fire/Burglary)
- ❖ In case of Term loan EMI amount & outstanding.

STUDY OF CASH CREDIT :

- ❖ Whether DP allowed as per stock statement not more than 90 days old.
- ❖ Check from previous stock statement whether goods declared are not old.
- ❖ Check location of stock properly declared and this tallies with Insurance declaration.
- ❖ Check value declared & whether it is as per past trend.
- ❖ Whether valuation of stock done followed as per ICAI guidelines / Bank sanction letter
- ❖ Obsolete stock/ Returned stock to be excluded from DP.
- ❖ Stock statement must be signed by authorized

signatory of the borrower.

Bank is also sanctioning limit against Book debt in such cases:-

- ❖ Whether book debt statement enclosed with every stock statement.
- ❖ Check whether Book debts accepted for computation of DP is as per terms of sanction.
- ❖ Usually, bank accepts Book debts up to 90 days and above 90 days not considered while computing DP though all book debt to be disclosed stating age.
- ❖ In case bank sanction letter provides that book debt statement to be certified by CA then check whether same has been done with UDIN.
- ❖ Sundry creditors for goods to be excluded while computing DP.
- ❖ Ensure proper Margin has been maintained for stock/ Book debt while computing DP.
- ❖ Usually Margin against book debt is higher as compared to stock. However there may be some exception to this.
- ❖ If the bank sanction letter states Advance to suppliers to be included while computing DP then DP may be allowed otherwise ensure that advance to suppliers excluded.
- ❖ Some bank allows netting of book debt with sundry creditors in such case check whether DP computation correctly done.
- ❖ Example of Computation of DP :-

Particulars	Normal DP Computation	DP Computation by Netting of Creditors with Debtors
Limit (Cash Credit)	Rs 100.00 lakhs	Margin as stipulated by Bank
Stock As Per Stock Statement	Rs 125.00 lakhs	Stock 25%
Book debt (upto 90 days)	Rs 60.00 lakhs	Book Debt 40%
Sundry creditors for goods	Rs 35.00 lakhs	
Computation of DP	Conventional Method	Setting off Debtors with Creditors
Stock (Less margin)	Rs 93.75 lakhs	Rs 93.75 Lakhs
Less Creditors	Rs -35.00 lakhs	-
Stocks available for DP [A]	Rs 58.75 lakhs	Rs 93.75 lakhs
Add Book debt	Rs 60.00 lakhs	Rs 60.00 lakhs
Less Creditors		Rs -35.00 lakhs
Less margin for book debt	Rs -24.00	Rs -10.00 lakhs (60-35) x 40%
Book debt available for DP [B]	Rs 36.00 lakhs	Rs 15.00 lakhs
TOTAL DP [A+B]	Rs 94.75 lakhs	Rs 108.75 lakhs

Thus, under 2nd method borrower is getting additional DP.

TEA ADVANCE : (Agricultural advance)

In case of tea advance computation of DP is based on monthly deficit as submitted by the borrower in cash flow.

INSURANCE :

- ❖ Check the bank sanction letter about insurance of stock & whether same has been followed.
- ❖ Insurance amount must be on the basis of average stock holding of the borrower.
- ❖ There is a general perception among the borrower that they will take insurance to the extent of limit which means stocks are under insured.
- ❖ Check validity of the insurance.
- ❖ Fire policy & Burglary are two separate policy.
- ❖ If the account is secured by hypothecation of plant & machinery or Term loan sanctioned against P&M then policy to taken as per terms of sanction.
- ❖ Check whether location of stock/P & M etc mentioned in Insurance.
- ❖ Bank clause : Name of the financing bank must be mentioned in the Policy.
- ❖ In case limit is secured by Collateral security of building or in case of House building loan ensure proper insurance taken by bank. Even in case of staff housing loan policy to be taken.
- ❖ In case of small limits to shop owners etc Shopkeeper policy is being issued by Insurance companies. Check whether the same is as per sanction.
- ❖ In case of tea advance Stock insurance to be obtained (Fire & Special peril) & Burglary. Some bank's are insisting for Hail storm insurance also.

PACKING CREDIT:

- ❖ Limit sanctioned by bank for export known as packing credit.
- ❖ Usually in PC Account drawings/DP allowed on order wise i.e for each export order advance is allowed.
- ❖ Exceptions are allowed by RBI in case of some

type of Industry like Jute etc where continuous account is maintained.

- ❖ Interest subvention is allowed on packing credit.
- ❖ Usually its operations in packing credit are similar to Cash Credit account except in some cases.
- ❖ Export proceeds first credited in packing credit.
- ❖ Packing credit is allowed for 90 days but it may be extended to 360 days.
- ❖ Packing credit cannot be adjusted from inland proceeds i.e in rupee. However in case of non adjustment of PC out of export proceeds, borrower may adjust the account in Rupee but for which cash credit interest to be applied.
- ❖ Insurance / Stock statement etc to be submitted as per terms of sanction.
- ❖ Inspection of stocks/stock audit to be carried.

IN DEPTH STUDY BY CONCURRENT AUDITOR :

- ❖ Check credit & debit summation in the account. (Credit summation represents Sales proceeds received in addition to other proceeds if any received)
- ❖ Check Insurance cover in depth.
- ❖ Check whether monthly inspection carried by branch.
- ❖ Check whether account reviewed / Renewed on yearly basis & audited Balance sheet is on record.
- ❖ Whether CIBIL is held on record.
- ❖ Whether CERSAI done on mortgage if any.
- ❖ Whether Charge Registered or Modified with MCA. Please study CHG 1 through which charge of the bank is filed. Any charge against stock is a FLOATING CHARGE.
- ❖ Whether inspection charges duly debited.
- ❖ Whether Interest levied correctly / CIBIL charges and other charges duly recovered.

DOCUMENTATION :

- ❖ Every bank has its own set of documents duly printed. Concurrent auditor to check
- ❖ whether appropriate document taken (i.e.- Document taken for stock, book debt,

Hypothecation of Plant & machinery etc etc.)

- ❖ In case of mortgage (equitable) proper recital written on Mortgage register & Search report is on record.
- ❖ Proper CERSAI/ MCA charge created.
- ❖ Documents are duly vetted by Legal experts and opinion is on record.
- ❖ All undertaking etc / Guarantee/ corporate guarantee etc as per terms of sanction is on record.
- ❖ In case of loan to corporate proper resolution is on record.

In case of Term loan :

- A) Ensure fund disbursed as per terms of sanction.
- B) All original Money receipts are kept on record.
- C) Critically examine project report or TEV study report with the machinery purchased. There may be a tendency of some dishonest borrower to give the quotation for some type & subsequently purchased other type or cheaper quality.
- D) Proper Resolution of Board in respect of Working Capital/ non fund based facilities & Term loan etc is on record.
- E) Check whether common seal affixed properly i.e Proper resolution in terms of Article of Association.
- F) Check whether DUE DILIGENCE report duly obtained. (applicable for all types of facilities above 20 cores)
- G) Check Search report of MCA site.
- H) Check Appropriate resolution under sec180 of companies act 2013 is on record.
- I) Balance confirmation letter to be held on record periodically.
- J) Demand promisory note to be obtained for cash credit etc loans.

In case of Demand Loan/OD :

- A) If it is against FDR it must be duly discharged & Lien marked.
- B) LIC – Assignment to be done in favour of bank.

- C) NSC etc. : Assignment from the post office to be got done.

FOR NON-FUND BASED :

Letter of Credit - How it operates :-

- ❖ LC may of two types DA & DP. DA means documents against acceptance.
- ❖ DP means documents against payment.
- ❖ In DA LC beneficiary gets time for payment which varies as per terms of LC. But documents released as per terms.
- ❖ In DP LC payment to be made immediately to bank for getting the documents

Bank Guarantee :

- ❖ Guarantee issued by the bank on behalf of its customer means bank will accept the liability & honour the commitment on behalf of the customer in the event of default.
- ❖ It is issued To Electricity Board/ Tender/ in lieu of SD/Bid bond/performance guarantee etc.
- ❖ Pl note that if any guarantee is issued by bank for any disputed claim 100% margin to be kept.

Bill Purchase :

Bank other than advance against book debts also sanction bill purchase facility for inland sales as well as for export sales.

- ❖ In case of purchase inland bills a CA must check sanction letter terms.
- ❖ Whether the bill is accompanied by RR/ TR of approved transporter.
- ❖ Past history of bill realization.
- ❖ Power of attorney executed in favor of bank for collection of payment.
- ❖ Buyer of the goods CR is held on record to ensure credit worthiness.
- ❖ Any other terms specified in sanction letter to be complied with.
- ❖ If the bills are under LC (DA/DP) see whether Terms of LC has been complied.

* * * * *



Collected by
Mrs. Poonam Sanghai

FEW KEYNOTES OF Shri Bhagwat Gita



Covetousness = father of all sins. If you satisfy desire, it leads to GREED. If desire is fulfilled, it leads to anger.



Kill the enemy within = Desire and anger are your bitter enemies. If they reside in you, you do not need any external enemies.



Soul lacks nothing = Expansion is our nature. Expand ME not MINE.



Destructive Hell = Lust, anger and greed are three gates to self-destruction hell.



Identify, Recognize and Accept equality in life.



Never shrink in fear = Fear is due to worry. Fear factor is a DISABILITY.



A mind full of thoughts about Money cannot concentrate nor meditate.



It is better to live your own destiny imperfectly than to live an imitation of somebody else's life with perfection.



When meditation is mastered the mind is unwavering like the flame of a lamp in a windless place.



Look to your own duty, do not tremble before it.



Discipline attains perfection. Indisciplined man is in bondage.

Life of a Fighter Jet Pilot of Air Force

Compiled by
Flight Lieutenant Shivam Sureka

Fighter pilot, these two words coined together bring to my mind a larger than life image of a man with a heart of a lion, a happy go lucky attitude and with the spirit of adventure. This childhood dream of all boys (and girls too) comes as a reality for a hand picked few, for whom the gush of adrenaline is a digestive routine and to whom the valour and courage are the way of life.

The era of kick the tyre and light the fire has gone with vampires and spitfires when mark of fighter pilot used to be a leather helmet on his skull, a wristwatch on his right hand and a cigar in his left. No more do the Ray Bans of this side of eye determine a fighter pilot but it is the grey matter on the other side that makes this man superior. Where pursuit of perfection is the main goal, where survival is the biggest achievement, job satisfaction becomes just a daily phenomenon.

Only birds were destined to fly lest Mother Nature would have given wings to human beings. But this man has a streak of eccentricity in defying these very laws of nature at least twice daily and for this he has to be an achiever every time because nature is cruel to defaulters, this man has no margin of error. Only success can make him see the next dawn. So obviously the demands of his profession are enormous - extreme hard work, perfect psychomotor skills, prudent, fast actions, will to survive, the highest degree of physical fitness, extreme commitment, dauntless spirit and a good sense of humor to bind them all in one package.

For him, aggressiveness is a virtue and ego is a must, though always laced with prudence, once removed from his aircraft he is totally different man, a perfect

mama's boy and an obedient husband or a caring father, a man of emotion and compassion, totally akin to his ruthless working environment. His aircraft is his first wife and he loves his life and his wife and his near and dear ones too.

Nor Law nor Duty

Bade Him Fight

Nor Public Men,

Nor Cheering Crowds

A Lonely Impulse of Delight

Drove to This Tumult

When people in big cities are sleeping a carefree slumber, they may not be aware they could be just minutes away from enemy weapon and sure death, but for this man of grit, with jet slept onto his back and missiles on his wings he is eager to spring into action unmindful of the fact that within minutes he can be pitched against a potent enemy, requiring him to snap decision which will make the difference of life and death for him. All this and more, in an environment where all the physiological and mental faculties degrade.

A man with whom the nation trusts a weapon platform of mass destruction and costing hundreds of crores a piece. But this man shows his integrity and discipline by protecting all, be it a poor farmer or a helpless child, a hawala tainted minister or a money churning stock broker, he pardons them all for their petty follies; by sticking to his pledge always and every time...

"Great minds discuss great ideas; average minds discuss events; small minds discuss people."

– Eleanor Roosevelt

FUTURE PROOF

Quotes

- *“Thanks to technology, we now have access to the entirety of human knowledge from a device that fits in our pocket. The internet is humanity’s greatest gift.”*
- *“In the past, businesses were built on the brick-and-mortar model, transactions were done in triplicate, using carbon paper, and success was based on educational background and certificates. Fast forward to today. The internet, connectivity and emerging technologies have completely changed the game. To compete and survive in this new era requires a disruptive approach.”*
- *“In a world where everything is connected, where machines can talk, learn and mimic humans, a world where machines are employable, where performance is at its peak, innovation at its finest and job loss at its highest. There is only one spot left to transform and that is YOU.”*
- *“With the rise of Artificial Intelligence. the future certainly has the potential to draw more on an individual’s talents than certificates.”*
- *“The secret to growth in this new era of disruptive technologies is being willing to ‘learn and relearn’ even if what you knew previously brought you success.”*
- *“Educating yourself about technology and automation now gives you an excellent opportunity to future-proof your skills or business and helps amplify your potential”*
- *“Human labour does not stand a chance against disruptive technologies. Artificial Intelligence can handle insurance claims, do basic bookkeeping, manage investment portfolios, do legal research, and perform HR tasks.”*
- *“Robots cannot be injured or killed in the line of work and can be used in situations far too dangerous for human risk. Robots are more hygienic and deliver a finished product at a fraction of the time it takes a human. Faster output leads to increased sales. No matter how cheap human labour may become, buying highly skilled robotics is still cheaper as one pays only once.”*
- *“Revolutions bring disruptions and disruptions bring opportunities.”*
- *“You can do more today with your life by having just an internet connection and that’s an opportunity our parents and grandparents never had.”*

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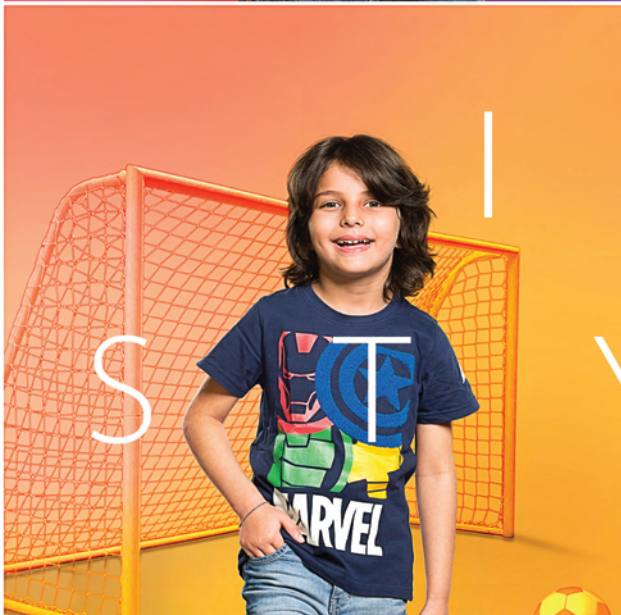
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