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House Journal

ACAE

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

Changing Dynamics

Highlights

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Editorial

Dear Members,

Today Indian economy is one of the fastest growing economies in the world and is currently at an inflexion point. To sustain this trajectory, the country requires better governance, technology and regulations. Finance has always been one of the key drivers for any growing economy, whereas Technology has become an integral part of our lives with the digital revolution in the last decade. These trends have led to the transformation of the role of professionals in the development of the economy.

Over the years we have seen the introduction of various laws and regulations that have caused us to evolve our way of working. Introduction of Goods & Service Tax; Insolvency & Bankruptcy Code; Faceless Assessment, Faceless Appeal and Taxpayer Charter under Income Tax Act; Registered Valuers Rules; etc. have caused us to grow our profession and have created many new opportunities for us.

The ongoing Covid crisis posed a challenge before us and had brought our work to a stand-still with the nation-wide lockdown. Even today the work has still not resumed with full force. However, we have carved-out ways to transform our operations and are seeing widespread adoption of Digital and Cloud technology. The Courts & Tribunals have started taking up urgent matters and all the sessions are being conducted via virtual mode. Carrying out audit, filing of returns, filing of compliance forms, etc. are all being done today from the comfort of our homes by carrying out installation of cloud servers at work place. The seminars, conducted to enhance our knowledge, have transformed into webinars and are seeing even greater participation by the professionals.

Keeping the above in mind we present to you, with immense pleasure, this issue of the journal on "Changing Dynamics". We have tried to cover the latest developments, amendments, evolution, etc. under various aspects of our profession. We have collated together articles from various experts covering topics like Income Tax, Goods & Service Tax, Companies Act, Information Technology, Insolvency & Bankruptcy Code, Capital Markets, etc. We hope you will find this issue informative.

Thanking You,

CA Ayush Jain
Chairman
House Journal Sub Committee
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President Speaks

Dear Professional Colleagues,

Season's Greetings to you all!!!

This is my first communication to you and this is the first inaugural E-journal from ACAE.

We are pleased to inform you that during this period ACAE has organized two major Refresher Courses / Workshop : One was a Three day series on Accounting Standards, CARO – 2016 and related topics and another was Five day series on Goods & Services Tax Act. Both the virtual events were one of its kind in the form of educational course(s) on respective subjects with eminent speakers across India with very good acknowledgement from members.

ACAE is regularly organizing its well conceptualized event of "Group Discussion" every week on a fixed date & time to promote knowledge and interactive skills amongst its members more particularly younger ones.

Our **Annual Bijoya and Diwali Get Together** in a virtual cum physical mode are again unique in nature where members and their family will be participating with a lot of enthusiasm.

Work at our New Office is going on at its full swing.

My sincere thanks go to the Editorial Board under the Chairmanship of CA Ayush Jain for the First E-journal of ACAE during the year 2020-21 under my tenure as President. All the members of Editorial Board deserves accolades and I thank them for their sincerity and dedication in bringing out this E-journal before you in such a short span of time.

On this note, I would like to conclude with warm greetings on upcoming festivities.

Stay Safe and Healthy

With Warm Regards

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Partnership under Indian Partnership Act, 1932- Immovable properties contributed as capital by a Partner in a Partnership firm- Registration whether compulsory

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1. **It** is often seen that in a partnership constituted under the Indian Partnership Act, 1932, the partners bring capital into the firm either in cash or by way of introduction of the assets both movable and immovable owned by them as capital into the firm. If the introduction is by way of cash, then the same is recorded in the books of the firm as cash in hand and the relevant partner's capital account is credited as introduction to capital. However, in case the assets in kind is contributed then the question arises, how it is to be recorded and at what value and what is the status of the ownership of the said assets as far as the partner contributing the said asset to the capital vis-à-vis the partnership firm and other partners are concerned. Moreover, in case the asset contributed in kind is immovable property then the question of registration also crops up.

2. **The** Income-tax Act,1961 in this regard deals with the said issue in Section 45(3) of the Income-tax Act,1961 which reads as follows:-

Section 45(3) The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

Thus, as per the said section, the transfer of an asset from the partner to the firm is treated as transfer and capital gain is chargeable in the year in which the transfer takes place and the consideration is deemed to be the value at which it is recorded in the books of the firm. Thus, the law makers have left it entirely on the partners and firm to plan their affairs by recording the asset in kind at any value (subject to the GAAR provisions as well as the apex court decision referred to hereinbelow) as they wish and to calculate the capital gains/loss accordingly.

The said provisions were enacted in the Statute book by Finance Act, 1987 w.e.f. 1/4/1988 and the scope and effect of the said amendment was explained in CBDT Circular No 495 dated 22nd September, 1987 reported in (1987) 168 ITR 100-101.

Capital gains on transfer of firms' assets to partners and vice versa and by way of compulsory acquisition

24.1 One of the devices used by assessees to evade tax on capital gains is to convert an asset held individually into an asset of the firm in which the

individual is a partner. The decision of the Supreme Court in *Kartikeya V. Sarabhai* v. *CIT* [1985] 156 ITR 509 has set at rest the controversy as to whether such a conversion amounts to transfer. The Court held that such conversion fell outside the scope of capital gain taxation. The rationale advanced by the Court is, that the consideration for the transfer of the personal asset is indeterminate, being the right which arises or accrues to the partner during the subsistence of the partnership to get his share of the profits from time to time and on dissolution of the partnership to get the value of his share from the net partnership assets.

24.2 With a view to blocking this escape route for avoiding capital gains tax, the Finance Act, 1987 has inserted new sub-section (3) in section 45. The effect of this amendment is that profits and gains arising from the transfer of a capital asset by a partner to a firm shall be chargeable as the partner's income of the previous year in which the transfer took place. For purposes of computing the capital gains, the value of the asset recorded in the books of the firm on the date of the transfer shall be deemed to be the full value of the consideration received or accrued as a result of the transfer of the capital asset.

Thus, the provisions were introduced to plug the loophole of transferring the assets to the firm without paying any tax.

3. Thereafter the said provisions were interpreted by the Apex Court in the case of the case of Sunil Siddharth Bhai Vs CIT(1984) 4 SCC 519(SC) when the apex court observed that the expression "transfer of property" connotes the passing of rights in a property from one person to another. This passing of rights can be made in several manner including by a reduction of the exclusive interest in the totality of the rights of the original owner into a joint or shared interest with other persons. An exclusive interest in property is a larger interest than a share in that property. To the extent to which exclusive interest is reduced to a shared interest it would be transfer of interest. Therefore when a partner brings in his personal asset into the capital of the partnership firm as his contribution to the capital he reduces his exclusive rights in the asset to shared rights in it with the other partners of the firm. While he doesn't lose his rights in the asset altogether what he enjoys now is an abridged right which cannot be identified with the fullness of the right which he enjoyed in the asset before it entered the partnership capital.

The apex court thereafter referring to the decision in the case of Addanki Narayanappa Vs Bhaskara Krishtappa AIR 1966 SC 1300 observed as follows from that judgement:-

". . .whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing, to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone.

"The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership. The person who brought it in would, therefore, not be able to claim or exercise any exclusive right over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. As already stated, his right during the subsistence of the partnership is to get his share of profits from time to time as may be agreed upon among the partners and after the dissolution of the partnership or with his retirement from partnership of the value of his share in the net partnership assets as on the date of dissolution or retirement after a deduction of liabilities and prior charges."

4. Thus, the court dealt with at length the status of the property introduced as capital in the firm.

5. The apex court in the above case also considered the issue regarding registration by saying that when a person brings in even his immovable property as his contribution to the capital of the firm no written

document or registration is required under Section 17(1)(b) of the Registration Act, 1908. For this proposition, the apex court approved the view of the Patna High court in the case of **Firm Ram Sahay Mall Rameshwar Prasad Vs Bishwanath Prasad AIR 1963 Pat 221** and **Sudhansu Kanta Vs Manindra Nath AIR 1965 Pat 144**.

6. In **Firm Ram Sahay Mall Rameshwar Prasad Vs Bishwanath Prasad** (supra), the court held that no written or registered document is necessary for an individual to contribute any land or immovable property as a contribution against his share of the capital of a new partnership business. The same view was taken by a bench of Calcutta high court in the case of Prem Raj Brahmin Vs Bhani Ram Brahmin, ILR (1946) 1 Cal 191. It was held that a written document, and consequently, registration, is not necessary to bring in the separate properties of the partners into the partnership stock, and by virtue of Section 14 and 46 of the Indian Partnership Act and certain provisions of Indian Contract Act, they become the properties of the firm as soon as the partners intend to so bring them in and treat them as such. It was further laid down by their lordships that this sort of contribution or transfer is not prohibited by the Transfer of Property Act, 1882 or the Indian Registration Act, 1908.

7. In **Sudhansu Kanta Vs Manindra Nath** supra, the Court observed that the idea of ownership of real estate by a Hindu Coparcenary is unique. To some measure an immovable property owned by a partnership is akin to such a property belonging to HUF. The ownership vests in each member of the coparcenary but there is a restriction on his power of disposal. The coparceners may agree not to partition the joint property and that will be binding upon them though their heirs may not be bound by such agreement .Similarly during a partnership the partners cannot take away their property that they may put into the stock of partnership. The individual owner becomes a joint owner with the other partners. He retains an interest in the immovable property. Partnership is only the relationship between the partners. The firm is only an alias for the partners. When a firm is said to own a property, it is same as saying that the partners jointly own the property. Though in the mercantile world, the firm is used as a quasi-corporation, for sake of convenience, it is really not so.

8. Thus, in the light of above, the asset in the form of immovable property when contributed as capital in the partnership can be said to be jointly owned by all the partners and no registration under the Registration Act, 1908 is required for such ownership.

9. However, the said decisions having been pronounced in relation to the Partnership under the Indian Partnership Act, 1932 may not hold good in relation to the Limited Liability Partnership Act, 1908 which is a separate juristic entity, even though under the Income-tax Act, the definition of firm in Section 2(23) includes both the partnerships.

10. Having dealt with the above issue, a further question arises as to what happens when a partner having contributed his immovable property in the firm as capital subsequently retires from the firm. In such a situation, even though the immovable property is held in the books of the firm, but in the Registrar's record, the property is still held in the name of the partner since the Registration is not required to be done upon introduction as noted above. A question arises whether the property will be required to be registered in the name of the firm upon retirement of such partner. In this regard, the Kerala High court in the case of **George VJ & Ors Vs V. V. George & Ors (2010) 2 KLT 692(Ker)** while dealing with somewhat similar issues held as under:-

The Property of the partnership includes all property, rights and interests in property originally brought into the stock of the partnership or acquired by purchase or otherwise by or for the partnership or for its purposes in the course of its business. When a partner brings in his personal asset into the partnership as his contribution to the capital, an asset which till then was subject to the absolute ownership of that partner becomes subject to the rights of all the partners in the firm to share the profits of that asset and at the time of winding up of the partnership to sell the asset and claim share in the resultant asset if any (See Sujan Suresh Sawant v. Kamalakant Shantaram Desa, AIR 2004 Bombay 446). Partners may convert which was property of the partnership, moveable or immovable into separate property of the individual partner or property of the individual partners into property of the firm by agreement which may be express or implied. What is relevant is the intention of the partners. For such conversion no document, registered or otherwise is necessary. There must be some evidence to prove that intention. Such intention may even be proved by a course of conduct, for eg., by entries in the partnership books. The term 'partnership property' is generally used to denote everything to which the firm, i.e., all the partners qua the partners can be

considered to be entitled. The partners may be entitled jointly or in common to some property, and the same persons may happen to be partners, yet the property may not be partnership property.

Even when conversion of individual immovable property of the partner into property of the partnership is made as per a written instrument, it does not require registration compulsorily. ***A deed of release of his share in the partnership by a partner even though the partnership owns immovable property is not required to be registered as an instrument under Sec. 17(1)(b) of the Registration Act****. That is because even though a partner may be a co-owner of partnership property, he has no right to ask for a share in that property, but only that the partnership business be wound up including sale of the immovable property and to ask for his share in the resultant assets. That interest of a partner in the partnership assets, of moveable or immovable property is not a right, title or interest in immovable property within the meaning of Sec. 17(1)(b) of the Registration Act. The Madras High Court took that view in Venkataram v. Subba Rao, (1949) 49 Madras 738 which has been approved by the Supreme Court in Narayanappa v. Bhaskara Krishnappa, AIR 1966 SC 1300. The Supreme Court in Commissioner of Income-tax, West Bengal, Calcutta v. Juggilal Kamalapat, AIR 1967 SC 401 held that when partners relinquished their individual interest in moveable or immovable assets of partnership in favour of new partners by a deed of relinquishment it did not require registration as an instrument under Sec. 17(1)(b) of the Registration Act. In Gangadhar Madhavrao Bidwal v. Hanmantrao Vyankatrao Mungale ((1995) 3 SCC 205) there was an unregistered deed of dissolution of partnership which indicated that land was in joint ownership of both the partners. On facts it was held that property at the time of dissolution of partnership was partnership property and hence the deed of dissolution was not required to be registered and the recital in the document is admissible in evidence even in the absence of registration.*

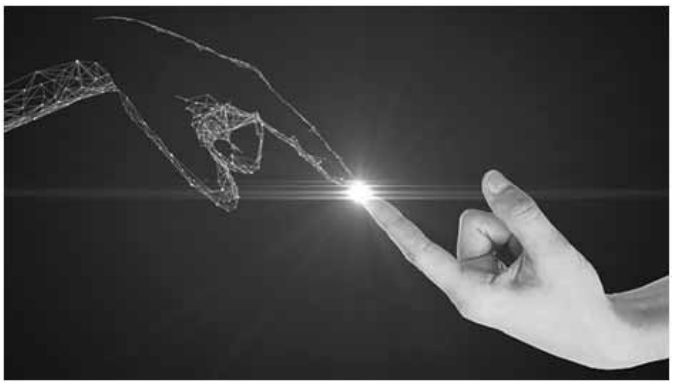
*Could such conversion happen at the time one or more of the partners retire from the partnership? Lindley says (See Page 458 of "The Law of Partnership", 14th Edn.) that conversion of joint property (of the firm) into separate property (of the partners) or vice-versa most frequently takes place when a firm and one of its partners carry on distinct trades; of <u>when a change occurs in a firm either by retirement of some or one of its members</u> or by introduction of a new partner. It is not the requirement of Sec. 14 of the Act that to become property of the partnership it must have been brought into the common stock at the time of its formation. That could happen during the continuance of the partnership or when a change occurs in the partnership by introduction of new partners or by the retirement of some or one of its members. But as the expression "partnership property" indicates when individual property of the partner is brought into the partnership at the eve of retirement of one or some of the partners, all the partners (including those who retire and bring in the property) qua partners should have the shared interest, i.e., shedding the individual interest which the retiring partner who owned the property had till then, he should share common interest over that property with other partners, a right to share the profits of that property and to seek winding up of the partnership including sale of the said property and demand a share in the resultant asset. Relinquishment by the retiring partners in favour of the continuing partners to attract operation of law under Sec. 14 of the Act and avoid necessity of registration as an instrument under Sec. 17(1)(b) of the Registration Act should be of their right or interest in the asset of the partnership of which they have only a right to share the profits or ask for winding up of the partnership including sale of the property and ask for share in the resultant asset****. If on the other hand one or more of the retiring partners convey their individual immovable property to the partnership or the continuing partners in their individual capacity, such conveyance cannot attract operation of law under Sec. 14 of the Act; it will be a conveyance of immovable property which does not come under Sec. 14 of the Act and would require registration depending on value of the property under Sec 17(1) (b) of the Registration Act.***

11. *T*hus in the light of aforesaid upon retirement of one or two partners, no registration under Registration Act, 1908 will be required qua the property which was owned by partnership firm and was introduced by the partners as capital contribution earlier. However, the position would be different when the partners convey their individual immovable property to the partnership or the continuing partners in their individual capacity in which case the registration would be necessary.
12. The above is the legal position, though without registration being recorded in the Registrar's office, the documents in the form of deeds of partnership and the retirement deed etc will have to be produced to the effect that registration is not required.

* * * * *

Digital Transformation – New Opportunity For Chartered Accountants

CA Sanjib Sanghi



This very famous Charles Darwin had said long back -

"It is not the strongest of the species that survives, nor the most intelligent that survives, it is the one that is most adaptable to change"

This saying perfectly holds true even today.

Kodak was once a market leader in Cameras. We couldn't have imagined quality clicks without a Kodak Camera. But now, it isn't there since it had failed to inhibit change and innovation in their business and eventually got disrupted. Same goes with Nokia who was once a market leader in mobile, the present situation we all know.

This change responsiveness is applicable to professionals also. The education, current skill-set and work experience of professionals are rapidly diminishing in value every year. Every year more jobs are being eliminated or reduced due to rapid advances in technology and automation. In near future, nobody will be looking for just an accountant for their business. Simultaneously, the Internet is continuously creating innumerable new career opportunities which is not restricted by current access to knowledge and skills, time and bandwidth constraints.

It's not just professionals who are vulnerable to digital disruption, it applies to organizations too.

Every organization now faces a choice between –"Innovation" or "Extinction" because whether they are ready or not **Digital Transformation** is reinventing business.

Digital Transformation is not just applying technology in business, it's about creating entirely new business models on the backbone of technology.

What is Digital Transformation?

Digital Transformation (DT or DX) refers to the usage of technology for creating new or modifying existing -

- Business Processes
- Business Culture
- Customer Experiences (CX)

in order to meet the dynamics of changing business and market requirements. This reinvention of business in this digital age is *Digital Transformation*.

It was not long back when we had IT (Information technology) teams, today it is important for everyone to understand technology. We are moving to a position where, agnostic of educational background & professional qualifications, we need to understand

technology to refresh your skills and experiences and be prepared to adapt to be able to operate in this changing business environment.

Clinging to the old way of doing things can be tempting, but the fact is that many of these workflows are highly manual, paper-based and labour-intensive which is costly and time consuming.

Digital Transformation helps in addressing these issues by creating new platforms of doing business that are fast, responsive, paper less, automated and real time.

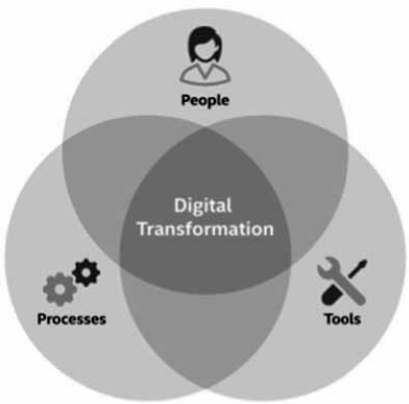
What is Digital Disruption?

New technologies are changing the face of business. How companies respond to these shifts in the digital landscape could determine whether they remain relevant in the marketplace.

A few popular examples of new-age companies which have disrupted various industries are:

- **Uber:** Revolutionized the experience of riding in a Cab
- **Amazon & Alibaba:** Revolutionized shopping experience
- **Linked In:** Revolutionized the way organisations hire talent
- **Netflix:** Revolutionized Entertainment industry
- **AirBnb& OYO:** Revolutionized hospitality industry

These depict how technology is changing the demand and expectations of consumers with its ***'everything on the tips'*** charm. So its time to either adapt to change or get obsolete.



What are the cornerstones of Digital Transformation?

- **People (Mindset):** Being adaptable to change.
- **Process (Skillset):** Learning, Unlearning and Relearning Skills.
- **Tools (Toolset):**Knowing the best available tools which commensurate the business requirement.

Benefits of Digital Transformation -

- Improved Service Quality
- Lower Operational Costs
- Greater Management of Resources
- Optimization of Productivity
- Accuracy in results
- Greater Customer Analytics (Insights)
- Fostering a Digital Culture
- Enabling Remote Workforce
- Digitalization of Business Operations
- Real-Time Flow of Information and Tracking
- New Level of Transparency and Customer Experience (CX)

What are the Emerging Technologies that are Reinventing Business?

Technology	How are they reinventing business
Artificial Intelligence (AI)	Making machines take decisions like humans
Blockchain Technology (BT)	Decentralization of information which cannot be changed
Cloud Computing	Storing Data on Cloud Servers which are accessible anytime, anywhere
Data Analytics	Forecasting of various scenarios based on patterns developed using past data
Internet of Things (IOT)	Connecting all machines and equipment's using Internet
Robotics Process Automation (RPA)	Using machines to automate mundane tasks (like excel macros)
Machine Learning	Making machines learn by self like humans

In order to make our profession thrive, we need to understand what's happening with all these new technologies and start repositioning ourselves as ***'advisers'*** to business houses.

It's hard to say exactly what impact emerging technology will have on a process-based industry such as the accountancy profession, but its high time for accountants to start preparing.

Opportunities for Professionals Ahead?

Today's accountants must ensure that the financials are updated on a real time basis, the reports are populated at the click of buttons, the data of everything connected

with your organisation – customer's data, vendors data, employees' data, data of customer's behaviour, data of industry insights are in place and lot more.

Forward-thinking professionals are choosing to embrace and harness the upside of other emerging technologies to fulfil their client's expectations.

A key element of this digital transformation journey is understanding the potential of your technology. Again, that doesn't mean asking "How much faster can we do things the same way?" It means asking "What is our technology really capable of, and how can we adapt our business and processes to make the most of our technology investments?"

Here the professionals can play a pivotal role as successful Digital Transformation requires the perfect blend of right leadership and right people.

Embracing the Change is the key to Professional Success

The key to the digital transformation is pairing people and machines together allowing each one to contribute in areas they are best skilled at. Machines can efficiently and accurately analyse a tremendous amount of data, they can spot patterns in the data and learn how to treat various kinds of data. With machines taking care of the mind-numbing and monotonous tasks, human can focus on higher-value strategic work and providing more fulfilling responsibilities, thereby delivering more in lesser time.

Embracing machines as our digital assistants will go a long way as this 'human-machine relationship' will unleash new territories of professional opportunities and growth in near future.

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"Men make history and not the other way around. In periods where there is no leadership, society stands still. Progress occurs when courageous, skillful leaders seize the opportunity to change things for the better."

– Harry S. Truman

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"The human voice can never reach the distance that is covered by the still, small voice of conscience."

– Mahatma Gandhi

Current position of Personal guarantor to Corporate under CIRP

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Ministry of Corporate Affairs has notified several sections of Insolvency and Bankruptcy Code, 2016 vide Notification dated 15/11/2019 insofar they relate to "Personal guarantor to corporate debtor" with effect from 01/12/2019. Sections which are notified are as under

i. Clause (e) of Section 2;

ii. Section 78 (except with regard to fresh start process) and Sections 79;

iii. Sections 94 to 187 (both inclusive);

iv. Clause (g) to Clause (i) of sub-section (2) of Section 239

v. Clause (m) to Clause (zc) of sub-section (2) of Section 239;

vi. Clause (zn) to Clause (zs) of sub-section (2) of Section 240;

and vii. Section 249.

Personal Guarantor has been defined in Rules as under : -

"a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part"

As per sec 60(2), adjudicating authority in relation to Personal Guarantor is NCLT, in case the guarantee has been given for corporate person and corporate insolvency resolution process or liquidation process is going on for said corporate debtor.

NCLT, Mumbai bench on 21st August, 2020 had admitted personal guarantee against Anil Ambani on instances of invoking personal guarantees by SBI against Reliance Group chairman Anil Ambani. The Mumbai bench of the NCLT allowed the initiation of insolvency resolution against Anil Ambani after two of the companies promoted by him failed to pay dues of Rs 1,200 crore that they had borrowed from State Bank of India.

Soon after the admission at NCLT, Anil Ambani approached a division bench of the Delhi High Court challenging the personal insolvency provisions of IBC. He has challenged the constitutional validity of the provision regarding the personal guarantee and bankruptcy and argued that there is no provision as such in the IBC for such an order.

Following the plea, the bench of Justice Vipin Sanghi and Justice Rajnish Bhatnagar ordered a stay on the case against Anil Ambani and directed him to not alienate any of his assets until further orders.

The Delhi High Court in its order directed that, in the meantime the proceedings in relation to the Corporate Insolvency Resolution Process (CIRP) would continue for the corporate debtors and while dealing with those proceedings the liability of the Anil Ambani (Personal Guarantor) may also be examined by the insolvency resolution professional.

State Bank of India thereafter filed a plea with the Hon'ble Supreme Court to vacate the said stay order on the Insolvency Resolution Process of the personal guarantor.

However, on 17th September,2020 the Hon'ble Supreme Court of India rejected State Bank of India (SBI) plea to initiate insolvency proceeding.

Several petitions were filed in different high courts challenging the notification issued on 15/11/2019. The Writ Petitioners also sought a declaration that Section 95, 96, 99, 100, 101 of the Insolvency and Bankruptcy Code, 2016

are unconstitutional in so far as they apply to personal guarantors of corporate debtors. Petitions were filed in Delhi and other high courts. Hearing at Delhi high court was scheduled on 10/11/2020.

Insolvency and bankruptcy board of India (IBBI) filed petition with Hon'ble Supreme Court to transfer all such petitions from different high courts to SC.

It was argued from other parties that the transfer should not be made on the following grounds :

a) Delhi High court hearing should be allowed to complete as it is only on 10/11/2020.

b) Supreme court will get opinion of High court.

c) Transfer petition should have been filed by Union of India in place of IBBI.

d) High court will dispose of the matter at an early date as the matters are lying with them whereas this court will take longer time for disposal.

It was argued by IBBI that different high courts may give different judgements and it will create more confusions.

Hon'ble Supreme Court on 29/10/2020 allowed the transfers to one bench of Supreme Court to avoid conflicting decisions by High Courts. IBC is at a nascent stage and it needs to be authoritatively settled for personal guarantors. It was also directed that no further writ petitions shall be entertained by any high court to challenge the notification dated 15/11/2019 related to personal guarantors.

NCLT, Mumbai bench have allowed admission of petition for personal guarantor on 28/10/2020. FLPL Logistics P Ltd defaulted in payment to Union Bank of India and was admitted to CIRP. Mr Anil Sanyal had provided personal guarantee of Rs. 40 Crores to Union Bank of Inida. Bank invoked the guarantee and filed petition under IBC against Mr Anil Sanyal to start the insolvency of personal guarantee. Mr Avneesh Srivastava has been appointed as Resolution Professional.

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"If a man is called to be a street sweeper, he should sweep streets even as Michelangelo painted or Beethoven composed music or Shakespeare wrote poetry. He should sweep streets so well that all the hosts of heaven and earth will pause and say, "here lived a great street sweeper who did his job well".

– Martin Luther King, JR

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"Education is the most powerful weapon which you can use to change the world."

– Nelson Mandela

Forensic Audit: Substitute or Supplement to Audit

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Introduction

A quick search for the meaning of fraud in the dictionary states that fraud is "deceit, impersonation with intent to deceive, criminal deception done with the intention of gaining an advantage.". According to another definition, fraud is "to create a misjudgment or maintain an existing misjudgment to induce somebody to make a contract" . Another definition says "it is to enrich oneself by intentionally reducing the value/worth of an asset in secret." Fault is another term encountered when studying the concept of fraud. Fault is defined in the dictionary as "wrong, mistake, error," "wrong, mistake, error committed involuntarily and unconsciously." Fault stems from the deficiencies originated from the person or environment. Intention is the most important element which distinguishes fraud from fault. Moreover, the person committing fraud has an objective of moral or material gain. Debugging frauds, which are heavily committed on documents, from faults and bringing them to light is a difficult but not impossible task. Experienced auditors could detect frauds, thanks to their knowledge and experience. Fraudsters definitely leave traces, and experienced auditors could find the fraud and the fraudster by tracking traces .

Forensic Audit

Corporate fraud has dominated the headlines of mainstream national news since the past several years. Accounting issues are now occurring all too often, constraining earnings reaffirmations, and are having a huge effect on the financial markets, companies' books, and most critically, on the entire economy. During the past few years, the number of corporate earnings

restatements due to aggressive accounting practices, accounting fraud or accounting irregularities have increased significantly and it has drawn much attention from regulators, analysts and investors; so it is not a new phenomenon. Accounting fraud is certainly not new, it has mislead the investors, auditors and the markets alike since the early days on Wall Street. And the recent cases involve sums of money far in excess of any before.

Fraudsters often display certain warning signs or red flags that they are engaging in dishonest activity, as reported by the Association of Certified Fraud Examiners (ACFE) Report to the Nation in 2016(Report to the Nations on Occupational Fraud and Abuse, 2016). It was seen that in 44 percent of the fraud cases, the cheats were living beyond their means. While on the other hand, in 36 percent of the fraud cases the fraudster had been experiencing financial problems.

The prevalence of fraud continues to increase across private and public sector organizations and across states. Fraud is a worldwide problem as no nations is protected from it, though developing countries and their various states suffer the most pain. The engagement that results from actual or anticipated dispute or litigations is described as Forensic accounting, which is a rapidly growing field of accounting. The term Forensic means appropriate for use in a court

of law, and it is to that standard Forensic Accountants mostly work. To determine whether an individual or an organization has engaged in any illegal financial activities, the investigative style of accounting, Forensic Accounting, is used. Specialized Forensic Accountant may work for public or government accounting firm. Forensic accounting has been in existence for several years, it has evolved over time to include several types of financial information inspection. Theft embezzlement, management and employee fraud, and other financial crimes are increasing, thus auditing and accounting personnel must have training and skills to identify those misconducts, both at the grassroots (local) level and the state level to better guarantee the states prospect in the area of fraud inhibition, restriction, recognition, examination and remediation.

Ideology of forensic accounting

The ideas of separating financial auditing from forensic accounting supports the premise that, unless it is investigative, financial auditing is not meant to investigate frauds, even though we have the provisions from the standard setter and regulators for auditor's fraud responsibility. Therefore, in the various researches about the participation of auditors in detection of frauds, one would observe that their statistics show low participation during the course of an audit. This attempt boldly explains the cornerstone of corporate auditing by distinguishing the levels of accountability, integrity, transparency, ethics, competence and independence, apart from emphasizing the scope of work, data gathering, review procedures and reporting.

Forensic accounting, therefore, emanates from social discourses, as the accounting profession tries to give an answer to a typical problem brought by the growth and diversity of opinions in the social science structure.

Characteristics of Forensic accounting

In order to expatiate on the peculiarities of forensic accounting, it is worthwhile giving it a broader view under the taxonomies of a sub-activity of accounting. Such a breakdown for forensic accounting involves the following:

a) Financial accounting, economics analysis, fiscal and criminal law, psychological, administrative and investigative dispensation;

b) Application of forensic standards – possibility to use the reports in a proof of Law in courts or tribunals,

c) Can be used in the following situations:

- ☑ Investigation of frauds - thorough investigation and calculation of the impact on the business and therefore suggesting the arrest of the culprit for a criminal suit. Today, in the IT environment, where users' profiles are very similar and access controls are somehow lacking, this becomes critical. A general problem in forensic identification arises when a suspect is observed to have a particular rare trait, or combination of traits, also known to be possessed by the criminal (Balding and Donnelly, 1995).
- ☑ Legal disputes and/or arbitration
- ☑ Preparation and submission of expert reports
- ☑ Supporting of Judges in subjects relating to accounting
- ☑ Verification of accounting records
- ☑ Supporting in due diligence.

Challenges in the present Audit methodology

The main difference between auditing and forensic accounting is that one performs audit to assist management in adequately implementing their strategies towards goal congruence, and also reports the true and fair state of affairs of a business to stakeholders to enable them make decisions while we perform forensic accounting to investigate conduct deviation and measurement of its impacts. Each forensic accounting job differs, and there are no generally accepted accounting principles for this practice area to provide guidance to practitioners on how to perform an engagement. It is an unstructured environment requiring self-motivation. On the contrary, audit is structured and is guided through generally accepted auditing standards and procedures. As we are aware, one of the main procedures reviewed by auditors is the segregation of duties. By segregation of duties, we mean definition of responsibility by exposing a clear line of authority when defining processes; they are all obvious steps of accounting for fraud. But in the vast majority of companies in which forensic accounting is requested and performed, this is lacking, thereby showing a point of vulnerability to be observed.

So the following tables showcase the main difference what we see in the methodology:

Differences Between Auditors and Forensic Accountants Regarding Error Identification, Error Prevention and Fraud Identification

	Error Identification	Error Prevention	Fraud Identification
Auditor	**X**	**X**	
Forensic Accountants			X

Fraud is nothing new . more than 40 different types of fraud have been defined in the Famous book “Arthashastra” by Kautilya in around 300 B.C already . But the scale and its

impact on auditors have brought in a new perspective on fraud. Also gone are the days when Audit community can hide behind the famous ruling of " Auditor is a Watchdog and not a blood hound". As uphold in the famous case of Livent, the expectation from Auditors are increasing with the changing times. It has also to do with large scale corporate frauds and public expectation from Auditors.

But with regulators worldwide upping the Ante on the auditor responsibility. Its high time to upgrade our approach and outlook toward the present audit methologies and what we can learn from forensic audit . In an effort to restore public trust in the audit profession, accounting standard setters have increased the steps auditors are expected to take in order to detect fraud. As a result of the Enron and WorldCom debacles, auditors are currently required to adhere to the requirements of **International Standard of Auditing ISA 240**. Under the guidance of this standard, auditors are required to participate in brainstorming sessions and consider the possibility that a material misstatement due to fraud could be present. Standard setters expected ISA 240 to increase auditors' awareness of the prevalence of fraud during their audit engagements.

Despite the standard setters' intentions to improve auditors' abilities to detect fraud, its observed on numerous instances where auditors failed to appropriately implement ISA 240.

Conclusion

Auditing has made great strides in the past decade, but it has not seemingly kept pace with the real-time economy. Some auditing approaches and techniques that were valuable in the past now appear outdated. Also, the auditing evolution has reached a critical juncture whereby auditors may either lead in promoting and adopting the future audit or continue to adhere to the more traditional paradigm in some manner. Future audit approaches would likely require auditors, regulators, and standards setters to make significant adjustments. This new prescription focuses on auditor assessment of internal controls, a very important step in the assurance of future systems that will be modular, computerized, and often outsourced. The accounting profession now faces an opportunity to further elevate the audit to a higher level of automation. It is imperative that accountants ultimately lead the way in adoption and implementation of the future audit such that they continue to be the professionals of choice relative to audit engagements of the future.

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"It's the action, not the fruit of the action, that's important. You have to do the right thing. It may not be in your power, may not be in your time, that there'll be any fruit. But that doesn't mean you stop doing the right thing. You may never know what results come from your action. But if you do nothing, there will be no result."

– Mahatma Gandhi

ITC RESTRICTIONS - Rule 36(4) and Rule 86A - An Insight

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The new addition to Rule 36 of the CGST Rules,2017 i.e. ITC Restriction of 10% is the much talked and debated amendment in the present time. Sub-rule (4) to Rule 36 of the CGST Rules, 2017 has been inserted vide Notification No. 49/2019-Central Tax, dated 09.10.2019.

Rule 36(4) has been reproduced below-

"Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 percent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37."

As clarified by **Circular No. 123/42/ 2019-GST dated 11th November, 2019**, restriction of Rule 36(4) will be applicable only on the invoices or debit notes on which credit is availed after 09.10.2019. The mentioned circular also specifies in its point 3 that-

The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder. Chapter V implies Section 16(1) and 16(2), which clearly tells subject to Section 41 and Section 43A.Now the big question mark is Section 43A, though inserted in Law is not yet effective. This is contradictory and has no legal validity. It canthus, be concluded that this sub-rule has been inserted without any basis. Litigative in future.

It should be noted that the above mentioned restriction is not imposed through the common portal and thereby it becomes the responsibility of the taxpayer to avail the credit in the terms of Rule 36(4) on self-assessment basis. Also, the restriction shall be available only on those invoices or debit notes which are required to be uploaded by the suppliers u/s 37(1). It implies that on RCM, IOG, IOS, ISD Credit restriction shall not be available.

The below mentioned example helps in determining the amount of ITC as per Rule 36(4)-

Example: If a person has procured supplies during the tax period on which he has paid GST of Rs. 10,000/- but the respective suppliers have only uploaded invoices amounting to a credit of Rs. 6,000/- then the recipient would be eligible to avail only

= Rs. 6,000 + [(20% of Rs. 6,000) or (Rs. 10,000 - Rs. 6,000), whichever is lower]

= Rs. 6,000 + [Rs. 1,200 or Rs. 4,000, whichever is lower]

= Rs. 6,000 + Rs. 1,200

= Rs. 7,200/-

Though the objective of the rule is to curb the revenue leakage, the implementation can be made only after the new returns are made operative.

Consequences of not complying with Rule 36(4)-

(1) Tax, interest and penalty shall be imposed at the time of Audit by the Department because Department will take the view of suppression.

(2) Credit rating shall be affected by non-compliance of this Rule.

Further, there are practical difficulties in implementing this rule. Enlisted below are the Practical issues in complying Rule 36(4)-

(1) GSTR-2A being a dynamic document is being updated on a

real time basis i.e. as and when GSTR-1 is filed by the vendor, Invoices are being reflected in GSTR-2A. Say, if vendors are filing GSTR-1 after the due date, then also the same appears in GSTR-2A, but Circular No. 123/42/2019-GST dated 11.11.2019 clarifies that auto populated GSTR-2A as available on the due date of filing of Form GSTR-1 under Section 37(1).

(2) GSTR-2A for a particular month, shall reflect invoices for that particular month only.

For example- GSTR-2A for the month of December 2019 will show invoices for December 2019 only. But there might be some invoices of previous months, the credit of whichis availed by the registered person in December 2019. How to deal with the same is a challenging thing.

(3) Notification No. 57/2017-Central Tax dated 15.11.2017, specifies that a specified class of registered persons can opt for quarterly filing of GSTR-1. Now, Rule 59 of the CGST Rules, 2017 specifies that in Form GSTR-1, the details of outward supply is required to be furnished u/s 37(1).Hence, it can be said that even though the vendors opt to file their GSTR-1 quarterly, the taxpayers can avail the respective credits in their monthly GSTR-3B. It is difficult to track the invoices related to quarterly return filers.

(4) The biggest challenge in this new sub rule is –

Rule 36(4) allows an option to avail 20%/10% of the ITC on the amount as reflected in GSTR 2A on account of invoices not uploaded by vendor within the due date for which the customer had received the goods/ services. Difficulty will arise in identifying the invoices on which 20%/10% provisional credit has been availed on the basis of provisional ITC when the vendor uploads the invoice. At the time of vendor upload, only 80% credit shall be available as 20%/10% is already availed on provisional basis.

(5) In some cases, it has been observed that, in GSTR-2A for say January 2020, invoices before January 2020 are also shown. In simple words, recipient has taken the credit before January 2020 but vendor is showing that invoice afterwards i.e. in January 2020. So, whether this invoice have to be removed from GSTR-2A figures for the calculations of Rule 36(4) for January 2020.

(6) GSTR-2A also reflects invoices on which recipient is liable to pay RCM. It is to be noted that these invoices should be removed for the calculations of Rule 36(4). If the invoices are not removed, then, GSTR-2A figures will get inflated by these invoices.

After Insertion of Rule 36(4), now the important thing is, the taxpayer has to continuously follow up with the supplier for the pending invoices not reflected in GSTR-2A.

Steps to be followed for the calculation of Rule 36(4) –

Step 1: Prepare a list of all the eligible credits as per books of accounts

Step 2: Now, from the prepared list, remove the invoices in respect of which no GSTR-1 is required to be filed by the vendor i.e.-

a) Credit booked on payment of taxes under RCM

b) IGST on Import of Goods

c) ISD Credit

Step 3: From the remaining list after point (2), reconcile the invoices with the entries appearing in GSTR-2A.

Step 4: Identify the invoices relating to quarterly return filers

Another ITC related restrictive provision has been inserted in form of Rule 86A of the CGST Rules, 2017.

Rule 86A-"Conditions of use of amount available in Electronic Credit Ledger" has been insertedby Notification No 75/2019-Central Tax dated 26.12.2019.

This Rule gives broad powers to Departmental officers and such powers should be used judiciously. It specifies that Commissioner or an officer authorized by him, not below the rank of Assistant Commissioner if has reasons to believe that ITC in Electronic Credit Ledger has been availed fraudulently or is ineligible then he may not allow debit of such amount (from ledger) for discharge of liability or may not allow claim of refund of unutilized amount.

The criteria to determine reasons to believe are mentioned below –

(1) ITC availed on invoices issued by a supplier,who has been **found non-existent** or **not conducting buinesss from registered place of address.**

(2) ITC availed but goods or services or both not received.

(3) ITC availed but the supplier has not paid respective tax to the Government.

(4) Person availing ITC is found non-existent or not conducting business from registered place of address.

(5) Person availing ITC is not in possession with tax invoice or debit note or other prescribed document as per Rule 36.

The important thing here is that the respective officer has to record the reasons in **WRITING** for restricting the use of amount in Electronic Credit Ledger.

Once the officer is convinced that the conditions for disallowing debit of Electronic Credit Ledger no longer exist, then debit shall be allowed.

This restriction shall lift after expiry of one year from the date of imposing such restriction.

Analysis –

(1) It is to be appreciated that as and when the registered person avails the credit in returns, it becomes **INDEFEASIBLE RIGHT** of the registered person. The Department cannot invoke its powers to stop him from utilizing such credit, unless the credit is found ineligible.

(2) One of the criteria for triggering Rule 86A is "Credit availed but tax has not been paid by the supplier to the Government". Now, keeping a track of, payment been done by the supplier or not is totally impossible. Because this cannot be analysed even with the 2A Report. Hence, this will definitely be a harassment to the genuine taxpayers.

(3) The GST Act does not even provide for the power for such rule. And, it is known understanding that Rules cannot override Act and the same has to be read along with the Act for better understanding. Thus, the legality of Rule 86A is questionable.

Thus, with the Government keen on keeping an eagles eye on the revenue leakages and also revenue augmentation, the above restrictions would surely help the government meet its estimated GST collections, though at the cost of the tax payer, without which the Government itself would fail. Hence the above provisions are surely to be litigated by the assesses in times to come and we need to wait for the judgment of the Hon'ble Courts to see how the events turn up in future.

Recent Challenge to the above rules

Kalpsutra Gujarat vs. The Union of India

[TS-749-HC-2020(GUJ)-NT]

Gujarat HC hears writ petition seeking striking of down Rule 86A of CGST Rules, 2017, in so far as it gives power to block ITC at no fault of registered recipient and to declare it ultra vires of Section 16 of CGST Act, 2017; Records Petitioner's plea to utilize the ITC until proved that supplier did not pay the tax after following up the provision of CGST Rules, 2017; Before the HC, the Petitioner further pleads for granting stay against recovery of ITC; HC issues notice while requiring Revenue to explain whether (i) omission on the part of the third party (Seller) in filing the GSTR-3B for the relevant period would be sufficient to block ITC of writ applicant (ii) for blocking ITC, the Department has invoked Rule 86A of the CGST Rules

Jariwala Sales Private Ltd. vs. Union Of India.

In this case the Hon'ble Gujarat High Court has accepted the writ and issued notice to Revenue to file a reply

M/s Gr Infraprojects Limited versus Union of India

[D.B. Civil Writ Petition No. 6337/2020]

Hon'ble Rajasthan High Court has issued notice to government, in case of Rule 36(4), which places a restriction on availment of ITC @10/20% over and above amount reflected in GSTR 2A, despite having valid Tax Invoice.

Sales Tax Bar Association (Regd.) &Anr. Vs. Union of India &Ors.

[TS-1152-HC-2019(DEL)-NT]

Delhi HC issues notice in a writ petition challenging Rule 36(4) which restricts ITC upto 20% of value of invoices in respect of invoices/debit notes whose details have not been uploaded by the suppliers; Petitioner challenges Rule 36(4) as being ultra vires section 41, 42 and 43 of the CGST Act r.w. section 16 which lays down the entire scheme of matching, verifying and validating credit; Moreover, Petitioner submits that Rule 36(4) finds its reference in Section 43A of CGST Act which overrides section 41 42 and 43, however this section has yet to be notified and hence, the rule purportedly issued thereunder cannot stand in the eyes of law.

Movement for GST Simplification vs. Union of India

[PUBLIC INTEREST LITIGATION]

A petition under Article 32 of the Constitution of India praying for a Writ ofMandamus or any other appropriate writs seeking issuance of specific guidelines and/or directions in respect of disallowance of Input Tax credit on the ground of non filling of return by supplier of goods rule 36(4) of CGST Act,2017 and disallowance of Input Tax credit on the ground of non filling of Form GSTR 3B within the limitation prescribed u/s 16(4) of CGST Act,2017 and also on the simplification of complex compliance and penal structure of Goods and Services Tax.

Society For Tax Analysis vs. Union of India

[R/SPECIAL CIVIL APPLICATION NO. 19529 OF 2019]

In this case the Hon'ble Gujarat High Court has accepted the writ and issued notice to Revenue to file a reply.

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Concept of job work under GST

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1. **Introduction**

Section 2(68) of the CGST Act, 2017 defines the term "job work" as under:

"Job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.

This means that job work under GST can cover all treatments or processes carried out by a person on another registered person's goods whether or not the same amounts to manufacture [results into a new product with distinct name character use or not]. A job worker under GST can be understood to be as follows:

i. The job worker should be engaged in treatment or processing activity.

ii. Such activity should be on goods supplied by a registered principal, In short during the job work, the ownership of materials sent should be all time should be with such principal and in no case, it should be transferred to another person.

iii. The activity would be carried under the instruction of the registered principal who owns the goods, and

iv. The processed goods would be sent back to the principal or on his instruction to other job worker or even to the customer of the principal.

2. **Job work Models**

Though job work is a commonly used term for all processes performed on materials by other persons, they may not necessarily fall within the ambit of job work for the purpose of GST law. To exactly determine what is to be construed as job work and the manner of their compliances within the GST law, one should understand three prominent models prevalent:

a. **Where goods used in the process belong to the job worker**– In some cases, job worker undertakes contract for completing the process by utilizing materials of his own. Where the job worker uses own materials in the process, it would still be covered under the scope of job work. For instance, a job worker may be contracted to for washing garments by utilizing the washing material of his own such as chemicals, detergent etc. In such situations, this would be treated as a job work service, through the job worker uses certain own goods in providing the service. The job worker may use 5-10% of own materials which would usually be in the nature of consumables.

b. **Where goods belong to the principal and job work is undertaken at principal's premises**– Where the material belongs to the principal but

the same is processed at the premises of the principal itself by an external labour, then it would be considered as job work as the definition of job work **does not require the job worker to carry out the activity at his own premise**. There may not be any requirement to file ITC-04 as the goods are not sent out or received from job worker in such a case. In effect, it means engagement of external contract labour by the principal for carrying out processing at his premises for which the service charges are paid to the labour for carrying out an activity, which would certainly be construed as job work.

c. **Where goods belong to the principal and job work is undertaken at job worker's premises**– Here the whole or substantially the whole material belongs to the principal. These are sent out for job work processing at job worker's premises. This is a pure case of job work as the activity is clearly covered by the definition. Intimation under Form ITC-04 is mandatory. Form ITC-04 should contain the entire details of challans in respect of goods sent out, transferred from one job worker to the other and the final goods received from the job worker by the principal. However, the requirement of filing of ITC-04 for the financial year 2017-18 and 2018-19 has been waived.

3. **Classification of job work as services**

The scope of supply is an inclusive definition and shall cover job work services under its ambit. Job work services made or agreed to be made by a person for a consideration shall be in the course or furtherance of business is taxable to GST.

Schedule II of the CGST Act, which sets out the activities to be treated as supply of goods or supply of services, provides that any treatment or process which is applied to another person's goods is a supply of services. Accordingly, the job worker is liable to GST at applicable rates on the consideration paid for the processing services by registered principal.

It is integral to the process of job work that the goods (main or part) should be belonging (or supplied) to another registered person. The process carried out on goods belonging to a registered person would only be covered within the scope of job work.

If the goods belong to an unregistered principal, then it may be treated as "*manufacturing services on physical inputs (goods) owned by others"* by way of treatment or process belonging to another person as provided in Schedule II and treated it to be a service but it would not amount to "job work" services in terms of the GST law.

4. **Sending and receiving back goods on job work**

Section 143 of the CGST Act prescribes the job work procedure to be followed. It provides that a registered person i.e., principal can under intimation and subject to prescribed conditions send any inputs or capital goods to a job worker for job work, without payment of any tax provided that:

(a) Inputs are brought back or supplied from the job workers premise within 1 year from the date it was sent out and

(b) Capital goods other than moulds and dies, jigs and fixtures, or tools are brought back or supplied from the job workers premise within 3 year from the date it was sent out.

This period of one and three years may by extended by the Commissioner for a further period of one and two years respectively on sufficient cause. Reversal of credit is not required to be done by the principal. Through the Finance Act 2020, the power of extension has been given to the jurisdictional Commissioner of the registered person.

In case of any failure, it shall be deemed that such inputs or capital goods have been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out, consequently it makes the principal to issue a tax invoice as on date and principal shall pay interest at the rate of 18% p.a. for minimum one or three years, as the case may be.

5. Job work charges

Once any transaction is covered by the scope of supply, the same would be taxable under the GST law at the rate prescribed in the rate notification[1] unless exempted[2] specifically. If the job worker is registered or liable to be registered, then the liability to pay GST on job work services shall be in the hands of job worker. Job worker shall be required to charge GST for the services provided by the job worker to the principal at the rate as prescribed in the rate notification.

6. Job Work on Principal to Principal basis

There is also a practice in the industry of principal to principal dealing with job workers where the registered principal would discharge the GST for the supply of goods to the job worker and the job worker being registered would charge back adding his value. In this case they would not be working in accordance with section 143 as the principal is sending goods to the job worker on payment of GST.

This model would have the following implications:

(a) The job worker should pay the value of goods + taxes to the principal for the purpose of availing credit of taxes paid. This would have huge impact on the working capital.

(b) The turnover of the job worker shall increase substantially and may be required to file GSTR-9 and GSTR-9C thereby increasing the compliance and cost.

(c) The exposure of GST, if any, would be on the entire value including the value of goods vis-à-vis only on his job work charges.

If the primary goods belong to the job worker, then the job worker would be treated as contract manufacturer. This means he would not be considered as a person only providing job work services. He would be treated as a person supplying the relevant goods itself. Depending on the goods getting supplied by the contract manufacturer, the classification of goods may differ and it would not be considered as a supply of service. One may find the HSN code of the goods supplied by such contract manufacturer and the tax rate would be charged accordingly. Examples could be where the fabric is owned by the job worker and some consumables are procured separately. In such cases the exemption for sending and receiving goods without payment of GST would not be available under section 143 of the CGST Act as it is not a case of job work.

7. Other relevant aspects

a. Job worker is not a hired labour and cannot be considered as a manpower supplier liable under reverse charge mechanism as the responsibility of the work is on the job worker.[3] This would be so even if the job worker works within the premises of the principal.[4] This may not be applicable under GST as payment of reverse charge is applicable only on security services and not manpower supply services.

b. Contractor who works under the direct control and supervision of the principal's quality control staff in their factory could be said to be a hired labour and consequently a manpower supplier.[5]

c. The job worker who crosses the threshold or wishes to opt for registration voluntarily and avail the input tax credits would be eligible for credit on the stocks in hand u/s 142.

8. Use of Incidental material by job work would not amount to not being treated as job work

Job worker is a person who contributes mainly through labour and skill, though done with the help of tool, gadgets or machinery. In case where job worker uses his own material entirely then it does not amount to job work services. However job worker uses his own materials 5-10% along with the goods sent by the principal, the activity could be considered as job work when the own materials used by job worker are minor items, when most of major products are supplied by registered principal it would be considered as a job worker services when price of minor additions are included in job work invoice.

In case some material such as dyes, threads, embroidery, accessories is used by the job workers in addition to the fabric/material supplied by the principal then such materials procured and used for job work by job worker would be charged to the principal along with the job work charges. The activity shall still be construed as job work within the terms of Section 143. Suppose let's say, in case of dyeing of fabrics, the fabric belongs to the manufacturer but the dye belongs to the job worker. The cost of such dyes may either be recovered separately or the entire value of service which may include the cost of dyes as well.

Mere addition of minor materials by job worker would not detract from treating as job work like a tailor stitching a shirt out of cloth supplied by principal, may use his own buttons, thread and lining cloth similarly held in case of Prestige[6]. If some negligible raw material is used by job worker, it would be still said as job work services if such use is only of incidental nature as confirmed in case of Madura coats.[7]

Further the government[8] clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

In case of Sujag Fine Chemicals[9] it was held that in absence of any restriction in notification the job worker can use his own material in job work similarly held in case Shakti Insulated Wires Ltd.[10] that the wording of the notification does not prohibit an assessee job worker utilizing other inputs in addition to the raw material received by him.

Conclusion

In the present competitive industry, it is very important for the MSMEs, trader and service providers to be aware of the legal implications under GST in order to avoid extra costs.

The main purpose of job work is to avoid the unnecessary GST cost when goods are sent for further processing. However, the principal has to ensure the proper records of documents, generation of the e way bill by principal or job worker where registered.

It is be noted that the goods sent for job work is required to be returned back/ sold from the premises of job worker within 1 year/3 years as the case maybe else the interest on deemed supply has to be paid from date when inputs/ capital goods were sent out of which would be cost to the principal thus he has to ensure the proper tracking of the goods one to one correlation from the date of removal and has to ensure goods well receive on time.

[1] Notification No. 11/2017- Central Tax (Rate) dt 28.06.2017 as amended from time to time.
[2] Notification No. 12/2017- Central Tax (Rate) dt 28.06.2017 as amended from time to time.
[3] Apex Electricals P Ltd Vs UOI – 1992 (61) ELT 413(Guj)
[4] Tata Iron & Steel Co ltd Vs CCE – 2003 (156) ELT 681 (T-K)
[5] Blue Star Ltd. Vs UOI- 2003 (161) 141(Bom)
[6] Prestige Engineering v. CCE 1994 (73) ELT 497 (SC)
[7] Madura coats v. Collector 1980 (6) ELT 582 (Cal HC)
[8] Circular No. 38/12/2018 dated 26.03.2018 (para 5)
[9] CC v. Sujag Fine Chemicals 2013 (295) E.L.T. 32 (Bom)
[10] Shakti Insulated Wires Ltd.v CCE 1999 (114) ELT 424 (Tribunal)

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"The world as we have created it is a process of our thinking. It cannot be changed without changing our thinking."

– Albert Einsteini

* * * * *

"It's only after you've stepped outside your comfort zone that you begin to change, grow, and transform."

– Roy T. Bennett

Removal of an Auditor and Director under the Companies Act, 2013-Procedure and some unintended impediments on the way

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Introduction

The provisions relating to the above are contained respectively under Sections 140 and 169 of the companies Act, 2013 (hereinafter referred to as "The Act"). While Section 140 corresponds to Section 225 of the previous Act, Section 169 replicates substantially the provisions of Section 284 of the 1956 Act. Although a common thread runs through the procedure to be adopted for this purpose under both the enactments-namely the requirement of a special notice from the members, there are certain subtle differences between the two Acts as outlined hereunder.

Differences between the present Act and the 1956 Act

The differences in the two statutes are being encapsulated as under:

1) Section 225 in the former Act only contemplated the provision of a special notice for removal of an auditor during the pendency of his tenure culminating in the approval of the shareholders by ordinary resolution. The present Act calls for approval by special resolution as also the previous approval of the Central Govt. This power has been delegated by the Central Govt. to the Regional directors in terms of notification dated 19.12.2016 and the application for this purpose has to be preferred in e-form RD-1. The procedure for removal of the auditor under the new Act is much more rigid.

2) Under Section 225 ,upon receipt of the notice, a copy thereof has to be forwarded to the Auditor so that he can prepare grounds for his representation in writing which can in turn be circulated to the members of the company. If the same has been received too late for circulation to members, the Auditor could, without prejudice to his right of being heard orally at the meeting, seek that the representation be read out at the meeting. Section 140 in the Act also provides substantially the same requirements.

3) Section 140 provides that the auditor sought to be removed shall be given a "reasonable opportunity of being heard". This expression was conspicuous by its absence in the previous Act which endowed the auditor only with the right of representation. We shall elaborate on the import of the above expression during the course of our discussion.

4) Section 190 of the previous Act stipulated, *inter alia*, that special notice should be given of the intention to move the resolution to the company not less than fourteen days before the meeting at which it is proposed to be moved, excluding the date of the notice and the date of the meeting. There was no provision in the law that the special notice should carry the support of a minimum majority of members. The Delhi HC in *Amar Nath Malhotra v MCS Limited (76 Comp.Cas 469)* based on an application of the decision in the celebrated English case of *Pedley v Inland Waterways Association Limited (1977)(1 All ER 209*)held

that the special notice served by the shareholder under section 190 for removal of the auditors should carry the support of the shareholders under Section 188.However, notwithstanding, Courts across the Country were of the unanimous view that even a single shareholder irrespective of his holding in the company could move for the removal of an auditor/ Director .The principle enunciated was that the right of the shareholders to remove a director being inherent in the statute, it could not be scuttled by a requirement that it should have the backing of a minimum majority. In fact Section 190 never contemplated that it should be read in conjunction with section 188.

The decisions given below ran contrary to the decision of the Delhi HC referred to above:

i) *Gopal Vyas v Sinclairs Hotels Transportation Ltd (68 Comp Cas 516)*

ii) *Prakash Roadlines Ltd v Vijay Kumar Narang (83 Comp Cas 569)*

iii) *Karnataka Bank Limited v A.B.Datar (79 Comp Cas 417).*

The present Act provides under Section 115 that the special notice from the shareholders for the above purposes shall require the support of not less than one percent of the total voting power in the company or members holding shares on which the aggregate sum not exceeding five lakhs of rupees has been paid up. The manner in which the company shall deal with the special notice is laid down under Rule 23 of the Companies (Management and Administration) Rules, 2014.The present Act therefore denies to the single shareholder the right to move the special notice unless he holds by himself the requisite voting power as laid down in Section 115 above.

Auditor/Director shall have a reasonable opportunity of being heard

As mentioned above, section 140(1) and Section 169 of the Act respectively provide the Auditor and the director sought to be removed with a reasonable opportunity of being heard. By a proviso introduced with effect from 21.2.2018 under Section 169(1), an Independent director re-appointed for a second term shall be removed only by a special resolution and after giving him a reasonable opportunity of being heard .

The expression "reasonable opportunity of being heard" contrasts with the entitlement of the director" to be heard on the resolution'' at the meeting as endowed under Section 284 (3) of the previous Act. The difference in terminology between the two Acts is subtle and the Supreme Court has in *Fazal Bhai Dhala v Custodian General, Executive Property (AIR 1961 SC 197)* explained the significance of the term as under:

"*The person concerned should be given a reasonable opportunity to be heard before any order prejudicial to him is made in revision. If this reasonable opportunity of being heard cannot be given without the service of the notice, the omission to serve the notice would be fatal. Where however, proper hearing can be given without service of notice, it does not matter at all and all that has to be seen is whether even though a notice was given, a reasonable opportunity of being heard was given."*

Another perspective to the concept of "reasonable opportunity of being heard" was provided by the Supreme Court in *Feda (P)Ltd v S.N.Bilgrami (AIR 1960 SC 415)*where the Court observed as follows:

"The requirement that a reasonable opportunity of being heard must be given has two elements; the first is that an opportunity must be given .the second is that this opportunity has to be reasonable. Both these matters are justiciable and it is for the court to decide whether an opportunity has been given and whether that opportunity was reasonable."

The present Act contemplates that before a decision is taken by the shareholders as to his removal, the director concerned shall be provided an opportunity to defend himself. It is up to the director to decide whether he shall exercise his right to defend himself and no decision on his removal shall *suo moto* be taken unless he is allowed to exercise his rights of being heard. The principles of natural justice shall be followed in the procedure adopted for removal. The right conferred under the present Act on the auditor/director proposed to be removed is much more valuable as opposed to the right conferred under the old Act.

Right of shareholders to remove directors

Under the Act, the right of shareholders to remove a director/Auditor is an unfettered right which should not be impeded through the imposition of restrictions not contemplated under the Statute. The articles should not impose conditions on the exercise of such rights, subject to compliance with the procedure laid down in the law. That the right to appoint and remove the directors is a creation of the statute and it is appropriately bestowed on the shareholders has been observed in *Prakash Roadlines Limited v Vijay Kumar Narang (83 Comp Cas 569*). The court also observed that the enforcement of the right of removal cannot be restricted by a court of law.

It was noted in *Karnataka Bank Ltd v Datar (AB)(79 Comp Cas 417)* that it is not open to any person to prevent a company from holding a meeting for the removal of a director.

Auditors'/Directors' right of representation

The concerned Auditor/director can, upon receipt of the proposal for his removal, provide a written representation setting out his defence, to the company which should ideally be attached with the notice convening the meeting. This of course assumes that the notice for the removal has been received well ahead of the time for dispatching notices for the general meeting to the members.

In the event that the director/Auditor does not wish to provide a written representation, he can reserve his right to make an oral submission to the members on the floor of the general meeting. The fact that the director has not provided a written representation does not in any way, prejudice his right of making an oral representation as is evident from a reading of Sections 140(4) and 169(3) respectively where it concerns the concerned auditor and director respectively. The choice is therefore entirely with the concerned director/Auditor.

Having said this, given the modalities that apply in particular to listed companies in transacting business in general meetings through the provision of a remote e-voting pattern, the existing procedure available in the law has to be necessarily tweaked appropriately for seeking approval of members for removal of the director/auditor.

Procedure for seeking shareholders' approval- Postal ballot is not allowed

Once the validity of the special notice under Section 115 for the removal of Auditor/director has been established, to bring the issue to a logical conclusion, it would be incumbent on the company to take necessary steps for taking the approval of the shareholders. Section 110(1)(b) of the Act provides that in respect of any item of business, other than ordinary business, and any business in respect of which directors or auditors have a right to be heard of at any general meeting, these shall not be transacted by postal ballot.

The proviso under Section 110 which was inserted with effect from 9.2.2018 by the Companies (Amendment) Act, 2017 clarifies that any item of business that needs to be transacted by a postal ballot may be concluded in a general meeting by a company which is required to offer an e-voting platform to its members.

Rule 22 of the Companies (Management and Administration) Rules 2014 sets out the procedure to be adopted for conducting business through a postal ballot process. From a reading of the Proviso under Rule 22 (16)(j) of the above Rules, it is clear that the postal ballot process shall apply in respect of all companies other than one person companies and companies where the number of members is restricted to two hundred. As Rule 20 of the above rules provides for the requirement of remote e-voting for companies whose equity shares are listed on stock exchanges and for other companies which have a shareholder base of one thousand or more, it follows that companies which are not listed and which do not have more than one thousand shareholders have to compulsorily resort to postal ballot for transacting items specified in Rule 22(16) of the above rules. Rule 22(16) has to be dovetailed into Rule 20 to make it compatible to the requirements of remote e-voting.

Considering the embargo laid down in Section 110 on transacting the item relating to removal of auditors and directors, it follows that companies which come under the ambit of the postal ballot requirements have to consider the resolutions for such removal on the floor of the house. They can either send the written representations received in time from the director/auditor along with the notice for the general meeting or alternatively include the item in the notice and allow the concerned person to make a representation orally on the floor of the meeting, apart from considering any written representation that may have been received after the dispatch of the notice which could be again circulated to the shareholders or put up in newspapers for their information.

Where requirement of remote e-voting applies- the hurdles that lie ahead

Section 108 of the Act read with Rule 20 of the Companies (Management and Administration) Rules, 2014 lays down that every company which has listed its equity shares on a recognized stock exchange and every other public company which has not less than one thousand members , shall provide a e-voting platform to enable their shareholders to vote on resolutions proposed to be considered at general meetings. This does not however suggest that the facility of voting on the floor of the meeting shall not be available to those members who have not availed of the remote e-voting platform. Such members can indeed cast their voting through ballots at the premises of the general meeting provided that they have not voted already in the e-voting platform.

Rule 20(4)(vi) of the above rules provide that the e-voting process shall be kept open for a minimum of three days and will close at 5 P.M on the date preceding the date of the general meeting.

As every item to be transacted in the case of companies belonging to the above genre have to be subjected to voting through the e-voting platform, as also considering that the substantial majority of shareholders will have exercised their votes electronically, there is practically no scope for a director/auditor to make a oral representation at the meeting. Even if they do so, it could have an impact limited to only those present at the meeting who have not yet cast

their votes. Due to the procedure involved in the e-voting process, listed companies will have to therefore insist that the director/Auditor provides a written representation in time before the dispatch of the notice for the general meeting so that the representation can be attached to the notice for the general meeting and also made a part of the e-voting process. This however assumes that the special notice under section 115 is received well ahead of time to ensure inclusion in the notice. This assumption goes against the grain of the statute.

Yet another difficulty that will be encountered shall arise from the fact that Rule 23(2) allows a company to act on the basis of a special notice which is valid if it is submitted fourteen days before the date of the meeting at which the resolution is proposed to be moved. By that time, the despatch of the notice for the general meeting would have concluded and the e-voting documents would have been received by the shareholders. The moot question in such circumstances is how will the company respond to the special notice. Legally it has no right to reject a valid special notice nor is it possible to transact the business of removal on the floor of the meeting. The law unfortunately does not provide for any exception/ safety net so as to enable the company to put through the item for the consideration of the meeting. It would also be a travesty of justice if the director /auditor sought to be removed were not allowed to represent himself . There would be denial of the principles of natural justice where the aggrieved director/auditor is concerned.

Thus the intent in the statute through the provision of a democratic process for dealing with a special notice would, we dare say, be scuttled unwittingly for a particular genre of companies. Ideally provisions of law should operate harmoniously paving the way for the objective set out to be achieved seamlessly. Unfortunately the regime of e-voting, a novelty under the new Act cannot work against the backdrop of Sections 140 and 169 and exceptions needs to be carved out in the law.

Conclusion

In the light of the foregoing discussion, we are therefore confronted with a catch 22 situation arising out of the incompatibility of Section 108 and the relevant rules thereunder to the provisions of Sections 140 and 169. To meet the ends of justice, it is imperative that an exception is chiseled out of the existing e-voting Rules so that the issue of removal of directors/auditors can be handled in adeptly in full compliance of the extant provisions in the law. Until that happens, listed companies will continue to be in tenterhooks confronted as they would be with the conundrum that the law on the subject poses at present to them.

* * * * *

"It's the action, not the fruit of the action, that's important. You have to do the right thing. It may not be in your power, may not be in your time, that there'll be any fruit. But that doesn't mean you stop doing the right thing. You may never know what results come from your action. But if you do nothing, there will be no result."

– Mahatma Gandhi

Decriminalization Of Compoundable Offences

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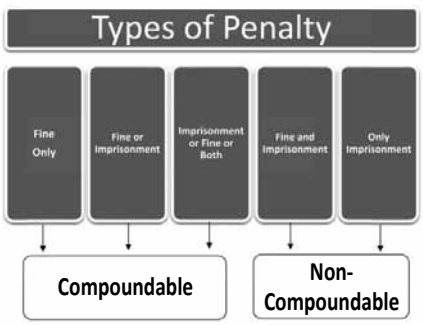
The term offence has not been defined under the Companies Act, 2013 (*hereinafter referred to as* "the Act"). However, as per section 3(38) of the General Clauses Act, 1897 "Offence" shall mean any act or omission made punishable by any law for the time being in force. When a company contravenes or does not abide by specific provisions of the Act or commits a default or does something prohibited or restricted under the Act, it is considered as an offence committed by the Company under the Act. These offences can be categorized as compoundable and non-compoundable.

Compoundable offences are those offences wherein the offender is given an opportunity to save itself from prosecution and thereby prolonged litigations by paying an amount specified under the Act. Section 441 of the Act provides that compounding can be opted when the offence is not punishable with imprisonment only or punishable with imprisonment and with fine. The following chart shall elaborate on the offense which are compoundable and non-compoundable.



The Act brought in many regulatory compliances for companies thereby affecting the ease of doing business. With increased number of filings and disclosures within given due dates it became difficult for companies to keep up with such deadlines along with carrying on their business activities. Furthermore, in case of any default the companies had to go through long litigation procedures and pay heavy penalties to make the default good.

The Ministry of Corporate Affairs vide its order dated 13.07.2018 formulated a Review Committee under the Chairmanship of Mr. Injeti Srinivas to review the offences and decriminalize some of the offences. The sole purpose was to provide ease of doing business to companies. The Committee submitted its report with recommendations to the MCA on 14.08.2018, wherein; the committee had advised and laid down certain innuendos for the MCA. The relevant recommendations regarding compoundable offences suggested by the Committee are as follows:

i. Re-categorizing of 16 offences out of 81 which are in the category of compoundable offenses to an in-house adjudication framework wherein defaults would be subject to penalty by an adjudication officer.

ii. Instituting a transparent and technology driven in house adjudication mechanism and increasing the transparency in the in-house adjudication mechanism by minimizing physical interface, conducting proceedings on an online platform and publication of the orders on the website.

iii. Strengthening the in-house adjudication mechanism by necessitating a related order for making good the default at the time of levying penalty, to subserve the ultimate aim of archiving better compliance.

iv. De-clogging the NCLT by enlarging the jurisdiction of Regional Director (RD) by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.

The outbreak of novel coronavirus brought the nation to an uncertain economic future. With the imposition of lockdown all businesses came to a

standstill. Companies have been unable to perform their day to day affairs as the used to prior to the pandemic. However, as they say desperate times call for desperate measures. Within a few months of lockdown companies resumed their business, some partially while other full-fledged. Companies carried on their activities by adopting different methods and altering their ways. The survival of many companies became challenging. The way of doing business has changed and businesses have now become more dependent on technology.

The Hon'ble Finance Minister of India vide press conference, dated 17.05.2020 then announced the fifth and last tranche of COVID-19 economic package targeted at building an "ATMANIRBHAR BHARAT". The announcement covered amendment of the Companies Act, 2013 which included decriminalization of various technical defaults under the Act, which are compoundable in nature.

The amendment apart from decriminalization of various offences also included the following:

1. Majority of the Sections deals with compoundable offences would be shifted to Internal Adjudication Mechanism (IAM).
2. Besides, powers of a regional director for compounding various offences would be enhanced to 58 Sections as compared to earlier 18 Sections.
3. Seven compoundable offences would be dropped altogether, and five offences will be dealt under alternative framework.

On 28th September, 2020 the Government of India enforced the Companies (Amendment) Act, 2020 (hereinafter referred to as the "Amendment Act"). In the Amendment Act, the offences committed under the following sections were decriminalised:

- Section 8 - Formation of companies with charitable objects.
- Section 26 - Matters to be stated in the prospectus
- Section 40 - Securities to be dealt with in stock exchanges
- Section 48 - Variation in shareholders' rights
- Section 59 - Rectification of register of members
- Section 68 - Power of companies to purchase its own shares
- Section 71 - Debentures
- Section 86 - Punishment for contravention related to registration of charges
- Section 90 - Register of significant beneficial owners in a company
- Section 128 - Books of accounts, etc., to be kept by the company
- Section 134 - Financial Statement, Board's Report, etc
- Section 135 - Corporate Social Responsibility.
- Section 147 - Punishment for contravention of provisions of section 139 to 146
- Section 167 - Vacation of office of Director
- Section 184 - Disclosure of Interest by Director
- Section 187 - Investment of Company to be held in its own name
- Section 188 - Related Party Transactions
- Section 242 - Contravention of order passed by the Tribunal with respect to alteration of Memorandum and Article of Association.
- Section 243 - Consequence of Termination or Modification of certain Agreements
- Section 284 - Promoters, Directors to cooperate with Company Liquidator
- Section 348 - Information as to pending liquidation

In addition to the above decriminalisation change, the penalty amount for the offences under the following sections were revised:

Section	Particulars	Amendment
48	Formation of companies with charitable objects	Full amount of penalty has been removed in case of non-compliance
56	Transfer and Transmission of Securities	For defaults made in complying with the provisions of sub section (1) to (5) the upper limit of the penalty amount has been Reduced for the company as well as officer in default. Now a fix penalty of Rs. 50,000/- is there in form of fine.
59	Rectification of register of members	Full amount of penalty has been removed in case of non-compliance
64	Notice to be given to Registrar for Alteration of Share Capital	The penalty amount has been reduced from Rs. 1,000/- per day to Rs. 500/- per day and the upper limit of Rs. 5,00,000/- has been reduced to Rs. 1,00,000/-
66	Reduction of Share Capital	Full amount of penalty has been removed in case of non-compliance of publishing the order of tribunal for reduction of share capital in manner as directed by tribunal.
71	Debentures	Full amount of penalty has been removed in case of non-compliance
86	Punishment for contravention related to registration of charges	The range of the penalty amount has been removed. Instead, for the company the penalty amount has been fixed to Rs. 5,00,000/- and for the officers in default the penalty amount has been fixed to Rs. 50,000/-.
88	Register of Members	The range of the penalty amount has been removed. Instead, for the company the penalty amount has been fixed to Rs. 3,00,000/- and for the officers in default the penalty amount has been fixed to Rs. 50,000/-.

Section	Particulars	Amendment
89(5) 89(7)	Declaration in Respect of Beneficial Interest in any Share	Per day penalty reduced to Rs. 200 per day with a maximum upper limit of Rs. 5,00,000 Earlier the fine run on per day basis till the default is made good but now the maximum limit has been inserted for amount of Rs. 5,00,000/- for a company and Rs. 2,00,000 in case of officer in default.
92(5) 92(6)	Annual Return	The penalty amount has been reduced to Rs. 10,000/- from Rs. 50,000/. Furthermore, in case of continuous default the upper limit has been revised to Rs. 2,00,000 from Rs. 5,00,000/- The range of the penalty amount has been removed. Instead, for the company secretary the penalty amount has been fixed to Rs. 2,00,000/-.
105	Proxies	Penalty amount has been reduced to Rs. 50,000/- from Rs. 1,00,000/-
117	Resolutions and Agreements to be filed	For a company the penalty amount has been reduced from Rs. 1,00,000/- to Rs. 10,000/- and in case of continuing default from Rs.500/- to Rs. 100/- per day. The upper limit has been reduced from Rs.25,00,000 to Rs. 2,00,000/- For officers in default the penalty has been reduced from Rs. 50,000/- to Rs. 10,000/- and in case of continuing default from Rs.500/- to Rs. 100/- per day. The upper limit has been reduced from Rs. 5,00,000/- to Rs. 50,000/-
124	Unpaid Dividend	For Company: Penalty amount reduced from Rs. 5,00,000/- to Rs. 1,00,000/-. However, in case of continuing failure a further penalty of Rs. 500/- per day shall be charged subject to maximum of Rs. 10,00,000 which previously was Rs. 25,00,000/-. For officers in default: Penalty amount reduced from Rs. 1,00,000/- to Rs. 25,000/-. However, in case of continuing failure a further penalty of Rs. 100/- per day shall be charged subject to maximum of Rs. 2,00,000 which previously was Rs. 5,00,000/-.
134	Financial Statements and Board's Report	For companies the range of penalty has been removed and has been fixed at Rs. 3,00,000/- and for officers in default the range of penalty has been removed and has been fixed at Rs. 50,000
137	Copy of Financial Statement to be filed with registrar	Per day penalty reduced from Rs. 1,000/- per day to Rs. 100/- per day. Upper Limit reduced from Rs. 10,00,000 to Rs. 2,00,000/-. For Director and officer in default the penalty has been reduced from Rs. 1,00,000 to Rs. 10,000/-. Upper Limit reduced from Rs. 5,00,000 to Rs. 50,000/-
140	Removal, resignation of auditor and giving of special notice	Penalty reduced from Rs. 5,00,000 to Rs. 2,00,000.
143	Powers and Duties of Auditors	Penalty specified separately for listed and other companies. For listed companies penalty of Rs. 5,00,000 has been imposed and for other companies penalty of Rs. 1,00,000 has been imposed.
165	Number of directorship	Per day penalty reduced from Rs. 5000/- to Rs. 2,000/- and an upper limit has been prescribed for penalty which is Rs.2,00,000/-
172	Contravention of any of the provisions of Chapter XII-Meetings of Board and its Powers	Penalty amount remains Rs. 50,000/-. However, in case of continuing failure a further penalty of Rs. 500/- per day shall be charged subject to maximum of Rs. 3,00,000 for a company and Rs. 1,00,000 for officer in default.
187	Investment by company to be held on its own name	For company penalty reduced from Rs. 25,00,000/- to Rs. 5,00,000/- and for officer in default penalty amount reduced from Rs. 1,00,000/- to Rs. 50,000/-
188	Related Party Transaction	Penalty amount increased for listed companies from Rs. 5,00,000 to Rs. 25,00,000 and for other companies the penalty amount has been fixed at Rs. 5,00,000
204	Secretarial Audit	Range of Rs. 1,00,000 to Rs. 5,00,000 has been removed and penalty amount has been fixed at Rs. 1,00,000.
232	Mergers and Amalgamation	Uniformed the penalty for company and officer reducing the upper penalty for companies from Rs. 25,00,000/- to Rs. 3,00,000/-.
247	Valuation by Registered valuer	Penalty amount reduced from Rs.1,00,000/- to Rs. 50,000/-
342	Prosecution of Delinquent Officers and Members of Company	Penalty removed
348	Information as of pending litigation	Penalty removed

The purpose of these amendments was to decriminalize those compoundable offences which are technical and procedural in nature and which does not involve larger public interest. The intention behind the proposed amendments was to provide ease of doing business to companies by reducing criminal liability and financial strain on companies to pay the penalty amount. Furthermore, it has also reduced the burden on Criminal courts and National Company Law Tribunal (NCLT). The outbreak of the Covid-19 pandemic has compelled the Government to give a relief package to the industries by decriminalizing certain compoundable offences and allow the companies to run their business with a little ease in these trying times.

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Growth of Indian Capital Markets

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To simply put, Capital Market is a market where long term Debt and Equity securities are traded. Capital markets are fundamental in the development of economy as they channel the investments required for long term sustainable growth. We will try to cover how Indian capital markets have grown over the years and what the future may hold for them.

Brief History:

Indian Capital Markets have a history of over 150 years and are one of the oldest in Asia. In 1875, Bombay Stock Exchange was the first one to open, soon followed by Ahmedabad Stock Exchange with growing textile mills and cotton business and Calcutta Stock Exchange with flourishing Jute, coal and tea business. The markets saw lot of ups and downs pre independence, but remained primitive in light of low industrialisation and British restrictions.

After the independence the capital markets started broadening with government focus on investments and setting up of key institutions like IFCI in 1948 followed by ICICI, IDBI, LIC and UTI amongst others which mobilized investor savings and channelized the same to capital markets. Pro capital market policies of 1980s gave the markets further momentum but real growthcame after economic liberalisation of 1990s which introduced key reforms for ending License Raj, inviting foreign investments, reducing SLR and CRR requirements and deregulating interest rates.

Central Government Securities (G-Sec) Market, State Development Loan (SDL) Market, Corporate Bond Market and Equity Markets which are major constituents of capital markets have all seen growth in last couple of decades as can be seen in Chart 1.

Chart 1: Growth in Outstanding Stock of the Indian Capital Markets

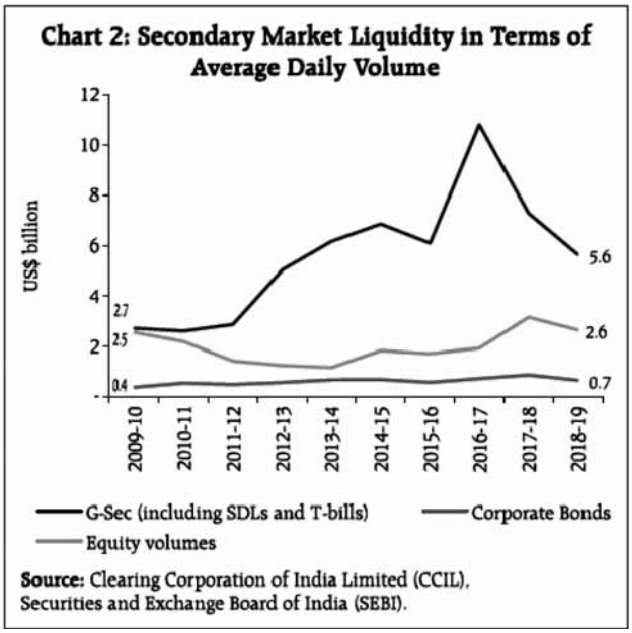
Source: Reserve Bank of India (RBI) and Securities and Exchange Board of India (SEBI).

Government Securities Market:

Government securities are mostly interest bearing debt securities issued by RBI on behalf of government of India and include central government securities (G-Sec) and state government securities (SDLs). The G-Secs are mostly fixed coupon bonds and their tenors go up to 40 years.

Introduction of electronic screen-based trading system, dematerialized holding, straight through processing, establishment of the Clearing Corporation of India Ltd. (CCIL) as the Central Counter Party (CCP) for guaranteed settlement, new instruments are some of the major aspects that have contributed to the rapid development of the G-Sec market.

Liquidity in the secondary market for government securities has also noticeably improved over the past decade. The average daily volume of G-Sec and SDL markets have remained higher than the corporate bond market and equity markets (Chart 2) though it is mainly concentrated in 10 year benchmark.



Corporate bond market:

A corporate bond is a debt instrument issued by private and public corporations. The corporate bond market has also registered healthy growth over the years. However depth of market is still limited as the finance and infrastructure companies account for more than 90% of debt issuance and highest rated bonds (AAA) make up more than half of total amount of outstanding.It is also a fact that most of the debt is still privately placed.

Recently RBI measures like providing liquidity in the corporate bond market has acted positively for the market as it has brought down finance cost significantly and also improved access for non-AAA rated securities. Improvement in corporate governance will be key to further development of this market in future.

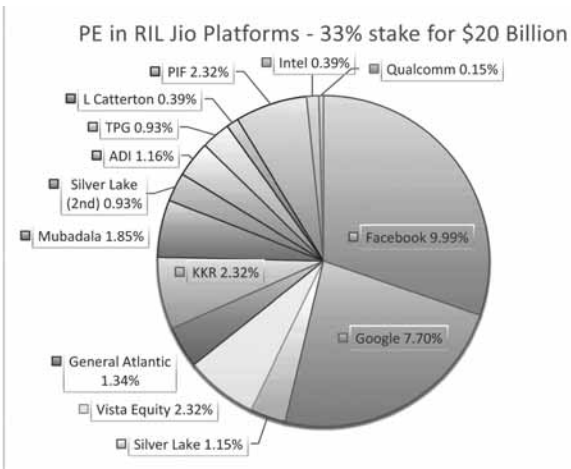
Equity markets:

This is the market where equity and preference share capital is raised through IPO and FPO and traded on stock exchanges like NSE and BSE under regulations of SEBI. It has investor base made up of Institutional investors like mutual funds, insurance companies, FIIs and retail investors.

The equity markets have grown greatly and the BSE index that was close to 1,000 at the time of liberalisation, has crossed 40,000 today. Institutional investors have played a critical role in this growth of equity markets. The Sensex was dominated by manufacturing companies and MNCs in 1991. Today it has much more depth with constituent companies in various sectors like banks, pharma, technology etc. while MNCs have been replaced by Indian companies.

One of the dramatic development of last few years would be thatthecapital that used to go to manufacturing industries earlier is now moving to new age businesses.Number of start-ups in Technology, FinTech and E-commerce space have disrupted the market and have changed how the product and services are being delivered. E-commerce start-ups like Amazon and Flipkart have changed the retail landscape, Paytm, PhonePe and others are changing the payment landscape, while the education start up like Byju's and Unacademy are changing the way the education is being delivered.

Start-up space has managed to raise significant long term funds from the domestic and global private equity funds. The significant fund raising has also soared the valuation of these companies to new heights and while many of them have become unicorns, some like Paytm and Byju's have become Decacorn (Valuation greater than $10 Billion). Even large corporate houses have been raising equity, for example Reliance raised equity of approximately $20 Billion from Facebook, Google and other funds for its wholly owned subsidiary Jio platforms, which is company's digital arm, by diluting roughly 33% stake.



As the investors in this start-ups will look for exit, the capital markets will see higheractivity in Initial Public Offerand Mergers & Acquisitions space. For example, US retail giant Walmart has acquired majority stake in Indian E-commerce company Flipkart, and given exit to PE fund SoftBank. Flipkart had earlier acquired online retail companies Myntra and Jabong. The IPO market which is already very active at the moment is also likely to get a boost in near future. While earlier the western capital markets were the preferred capital raising destination for technology companies, in coming days many start-ups may prefer to raise funds from Indian capital markets.

Technology as key driver:

Perhaps the most significant changethat is taking place is the impact of new age technologies like Artificial

Intelligence, Big Data,Block chain, Natural Language Processing, Machine Learning etc. on the way the capital markets function. These technologies will make the market much faster, more efficient and more economical as they may do away with large infrastructure requirements. We will see through couple of examples on how technology may transform markets.

The block chain technology, which is like a peer-to-peer decentralised digital ledger, may make the capital markets much more secured & fraud proof with the help of digital keys and audit trails. At the same time it will allow much faster transactions which may lead to better price discoveries compared to legacy systems.

Traditionally the bank loan decisions or financial market investing decisions are taken by humans based on the available documents and information, but technologies like Artificial Intelligence (AI) and Machine Learning (ML) may change that. AI and ML can quickly process the large amount of digital data that is generated in today's time, develop dynamic models and make better decisions. Already number of Fintech start-ups are using these technologies to process loan applications, assess risk of customer, personalise interest rates and accept or reject loans.

Geo-political changes:

There is a general expectation that emerging market especially India and China will have increasingly larger role in the issuance of capital and influence of stock exchanges. The post Covid world will also see India as a favoured destination of world with companies adopting strategies like "China plus one" wherein instead of placing their entire supply chain in one country, China, they will opt for a second country like India to reduce supply chain risk. US-China trade war of last year has also worked in favour of India.

The way forward:

The size of Indian market and kind of growth rate that are expected mean that India will stay preferred destination for global capital. If continuous reforms are carried out and corporate governance is strengthened, Indian capital markets are set to play the critical role in future.

Acknowledgements: *RBI Bulletin (www.bulletin.rbi.org.in), SEBI (www.sebi.gov.in)*

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In today's era of volatility, there is no other way but to re-invent. The only sustainable advantage you can have over others is agitility, that's it. Because nothing else is sustainable, everything else you create, somebody else will replicate.

– Jeff Bezoz

Managing Tech in Managing Wealth

Akash Rungta
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The financial services space has witnessed a high level of disruption through technology, which led to the coinage of the term "fintech" we know of today. Within financial services, the wealth management space has seen the most technological innovations after banking & payments. By wealth management, I refer to the entire realm – production (AMCs creating financial schemes & funds), reporting & review (advisory services) & sales (broking of various financial products). Another way to dissect wealth management is HNI vs Retail. Clients today expect the same level of personalization & nuanced offering that is provided by the likes of Netflix, Amazon, PayPal.

Let's first talk about the most important service expected from a wealth manager – advisory. Advisory covers various functions like generating investment strategies, asset allocation, product selection, reporting & aggregating etc. Wealth management experts are increasingly employing Artificial Intelligence to help advice and manage the investments of their clients. Automation of these core services makes it possible for the wealth management industry to provide clients with a customized service experience that's driven by AI. Since all the back-end processes involved in investment and portfolio advisory and management are taken care of by AI, the results that you get are highly objective and unbiased. It also brings greater levels of discipline into the process of wealth creation and management, enabling you to enjoy higher returns without being weighed down by human bias.

Previously, even though wealth managers and advisory experts were capable of manually devising wealth creation strategies, it was not possible to test these strategies in the real world. Therefore, the impact of such strategies couldn't be fully analyzed or predicted until they were actually implemented. This effectively made many solutions either a hit or a miss, often putting clients' investments at risk. With the evolution of wealth management, financial and wealth creation strategies can now be tested thoroughly under current market conditions and environments. This ability to back-test financial plans and strategies has made it possible to increase the accuracy of the decisions taken by wealth managers, while simultaneously reducing the risk factor. Advisors need to ensure they are communicating with clients in new and different ways. Not all clients have time to come into the office & thus expect interactions with their advisors to be efficient and direct. They also expect to be able to review information on their own at any time through a client portal and use online collaboration tools to check in with their advisor. This on-demand access provides an ultimate level of transparency.

Asset management companies (AMCs) have deployed technology in the investment process. Before technology overhauled the wealth management industry, portfolio advisors and wealth managers had to manually track the performance of equity stocks to predict their movements. This included sifting through tons of historical price data, charting of current price movements, and using multiple formulas for calculating and assessing technical indicators.However, recent developments in technology have changed the way experts help clients manage their wealth. In the current scenario, wealth management utilizes programmed algorithms and specialized tools to help predict the price movement of stocks. Artificial Intelligence has significantly increased the accuracy of price predictions and enhanced the ability to easily recognize entry and exit points. Wealth managers

are also increasingly utilizing algorithmic predictive analysis to identify the financial and non-financial assets that can help you achieve your financial and personal life goals.

Sales is the most visible aspect of wealth management & technology is playing its part here too. According to a McKinsey & Company report from June 2015, 40% to 45% of affluent consumers who changed their primary wealth management firm in the previous two years moved to a digitally-led firm. What's more, a full 72% of investors under the age of 40 said they would be comfortable working with a virtual financial advisor. The introduction of digital identification methods such as paperless Aadhaar e-KYC has allowed the practice of wealth management to evolve from dependence on manual intervention to entirely automated operations. In addition to this, the wealth management industry has also intelligently leveraged the automation of processes using Artificial Intelligence to onboard clients. Thanks to this excellent use of technology, the entire process of client introduction and management has now become effortless.

Talking from a funds perspective, there have been a rise in mutual funds, PMSs, AIFs which focus on the technology space. Information Technology companies make up ~17% of the Nifty, ~18% of Sensex, ~30% of S&P 500 etc. Tech stocks have delivered multifold returns over the last decade. Consequently, the biggest AMCs of the world like JP Morgan, Goldman Sachs etc have launched fund focused on the tech story.

If we look at the startup space, wealth management is a hot selling item. Especially on the retail front, various startups have made the investment process fully online for the investor. Payment platforms like Paytm have entered the mutual funds space. Various platforms like ET Money, Small case etc are making their mark in the mutual fund selling space. However, HNI wealth management is an area that still requires human intervention in a meaningful manner and cannot be entirely left to robo advisors.

To conclude, those wealth management firms that are able to embrace the new fin-tech tools, while simultaneously helping investors navigate an increasingly complex financial landscape, will be more likely to grow and thrive. The new era of modern technology is bringing a better wealth management experience, more client centric, more transparent, more cost effective, more personalized and generally easier for a broader client base to access. The evolution remains early in its journey, but the building blocks of change and industry improvement, which are good for all participants, are increasingly available and being put in place.

Note: *The views expressed are personal & do not represent those of people, institutions or organizations that writer is associated with.*

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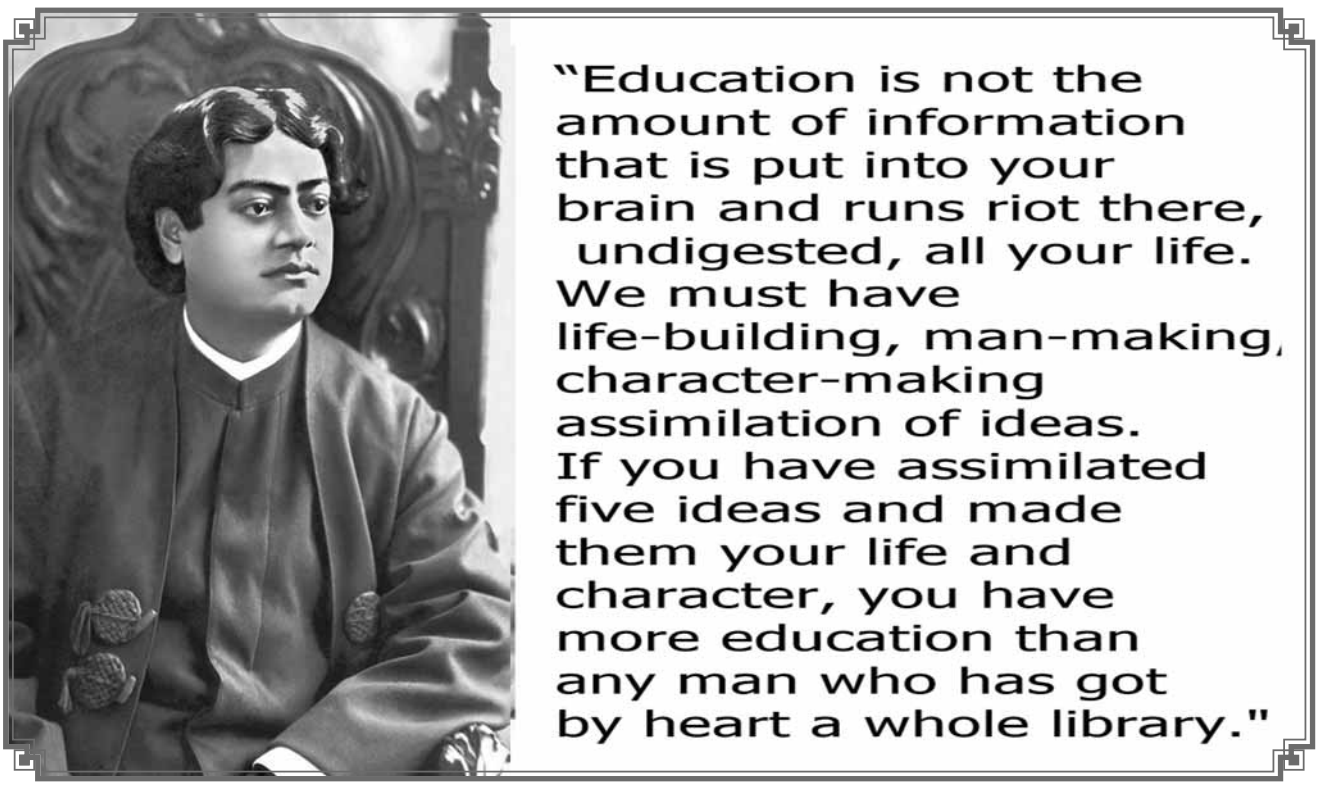

The Faceless Assessment Scheme, 2020 – An Overview

"Change is never easy, but always possible."

– Barack Obama

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Indian assessment structure has been long cooling its heels for transparency and citizen trust. Indian tax structure is among the most complex ones. The honest taxpayers have been eagerly waiting for some incentive & reward for honesty and some ease in procedures. It is probably the time now that some significant heed has been paid to these.

The Government had first brought in a pilot project in September 2019 named 'E-assessment Scheme, 2019' under which around 58,000 cases were selected and 13,000 assessments completed. The same scheme has now been revamped as per shortcomings faced and extended to the whole of India as the 'Faceless Assessment Scheme, 2020'. The Finance Act, 2018 amended Sec. 143 of the Income-tax Act, 1961 (Act) to incorporate enabling provisions for an assessment scheme to impart greater efficiency, transparency and accountability. Our Hon'ble Prime Minister formally unveiled the Scheme on the 13th of August 2020 and the CBDT further notified the Faceless Appeal Scheme, 2020 vide Notification nos. 76 and 77 dated 25 September 2020 (soon to be operational).

Structure of the Scheme

The implementing structure of the Scheme shall consist of the following components with their respective functions –

1) **National e-Assessment Centre (NeAC) –** nodal agency for facilitating e-assessment and central control. All inter-unit communication shall be through the NeAC. Further, all assessments shall be finalized by the NeAC. It shall be the only point of contact for correspondence and responses relating to the e-assessment between the Department and the assessee.
2) **Regional e-Assessment Centres (ReAC) –** regional level agencies for facilitating e-assessment and will be under the jurisdiction of the regional Principal Chief Commissioner
3) **Assessment Units(AU)–** for performing the e-assessments, identifying points or issues', materials for determining any liability (including refunds), analysis of information, and other related functions
4) **Verification Units (VU) -** for enquiry, cross verification, examination of books of accounts, witness and recording of statements, and such other functions
5) **Review Units (RU) -** for reviewing the draft assessment order to check whether all pertinent points, facts, relevant evidence and law and judicial decisions have been considered in the draft order, and
6) **Technical Support –** including legal, accounting, forensic, information technology, valuation, auditing, transfer pricing, data analytics, management or any assistance or advice on any other technical matter.

Procedure under the Scheme

1) Cases shall be selected by the system on the basis of certain internally coded flags identified by the system. NeAC shall issue Notice u/s 143(2) specifying issues for selection of case for assessment. Selection can be based on return filed and also in case of non-filing of return where the assessee failed to file when he/she was liable to do so. The notice shall be digitally signed & uploaded in the income tax account of the assessee and mailed to the registered email ID along with a real-time alert in the registered

mobile number. An intimation shall also be made by the NeAC to the assessees whose ongoing assessments have been migrated to faceless e-assessment.

2) The assessee shall have 15 days to respond to the said notice. There is no provision as of now for extension of this period.

3) The cases selected for e-assessment will be assigned by the NeAC to an Assessment Unit under any of the ReACs through an automated allocation system.

4) During the assessment, the AU shall make request to NeAC for –

   i) Obtaining such further information, document or evidence from assessee or any other person, as it may specify, and/or

   ii) Conducting certain enquiries and verification, and/or

   iii) Seeking technical assistance

5) Upon receipt of such request, NeAC shall issue appropriate notice or requisition to the assessee or specified person for obtaining information, documents, etc. The respondent is to file the response within specified period. For enquiry or verification and technical assistance, NeAC shall assign it to a VU or technical unit respectively through automated allocation system. Such responses and reports received shall be forwarded to the AU by the NeAC.

6) If assessee fails to comply with Notice u/s 142(1) or direction u/s 142(2A), NeAC will serve Show Cause Notice u/s 144 as to why Best Judgement assessment should not be done. If assessee fails to respond, NeAC shall intimate the AU of such failure. Currently, only assessments u/s 143 (Regular assessment) and 144 (Best Judgement) have been kept under the purview of the Scheme. AU shall make the assessment taking into account all relevant material on record. It shall prepare draft assessment order determining the demand or refund and details of penalty proceedings, if applicable. It shall send such draft assessment order to the NeAC.

7) NeAC, before finalizing the draft order, shall examine it in accordance with a specified risk management strategy and by way of an automated examination tool. It may finalise the assessment order as per the draft order, if there is no modification of returned income or tax payable or refundable, and serve upon the assessee the final assessment order along with Notice of Demand u/s 156 and Notice for initiation of penalty proceedings.

8) NeAC may assign the draft assessment order to an RU through automated allocation system for conducting review of such order. If RU concurs with the draft order, NeAC will finalise the order. If RU suggests modifications to the draft order, the NeAC assigns the draft order to an AU, other than the AU which drafted the draft order, through automated allocation system. The selected AU then makes the suggested modifications and sends a final draft assessment order to the NeAC. If there is no modification to returned income, NeAC finalizes the assessment else will send the draft order to assessee with show cause.

9) In case of no response from assessee, NeAC shall finalise the assessment order. In case response is received, it will forward to the AU for consideration and preparing revised draft assessment order.

10) NeAC shall finalise the revised draft order if the same is not prejudicial to the assessee else will provide the assessee an opportunity of being heard.

11) Upon completion of assessment & serving of final assessment order and demand notice to assessee, all electronic records shall be transferred to the assessee's jurisdictional Assessing Officer for post-assessment work, after approval of the Board.

12) Personal hearings and communication: There will be no personal appearance at any stage of assessment. All communications between the assessee & NeAC will be through electronic means and uploaded on the income tax account of the assessee. However, there is provision for allowing personal hearing in certain specific circumstances notified by the Principal CCIT of NeAC. Such hearing shall be done through video-conferencing, including use of any telecommunication software, and the same shall be recorded and treated as an oral submission.

Our role as professionals

The Scheme definitely sounds as an ideal one on canvas. However, the practical shortcomings shall come when they come. Many questions still remain unanswered such as the scope of review powers of the CIT u/s 263 under e-assessment, technical unpreparedness of the masses, etc. The implementation of the Scheme is of utmost importance as it will finally determine whether the Scheme is here to stay as a feather to the hat of our Indian direct tax system.

We, as professionals, need to play a pivotal role and become instrumental in successful implementation of the Scheme for improvement in the tax health of our country. Further, we need to strive to extract the maximum benefits from this system for our clients and the nation as a whole. To be able to do this, we need to remain at par with the constant amendments & clarifications, hone our written communication skills to be on point & meticulous with responses during e-assessments and communicate through appropriate forums as to the difficulties faced so that the same can be removed to smoothen the assessment process.

Taking an optimistic view of the future, we need to be catalysts for the change and remove all resistances in the way by becoming aware ourselves and educating others too about it in a positive perspective. *We have had a silver past and are on the way to a golden future...*

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Issuance of notice u/s 131(1A) after conclusion of Income Tax Search and Seizure u/s 132 - Legal Paradox

CA Mohit Gupta

Introduction:

Ever since the enactment of the original Income tax statute of 1922, the Income tax authorities have been vested with certain powers that are coterminous with the powers of a Court under the Code of Civil Procedure, 1908. Section 131 of the Income tax Act, 1961 is one such provision which includes, *inter alia,* the power to enforce the attendance of any person and examine him on oath.

The justification or rationale for these powers, depending on the reader's point of view, is amply supported by the well settled and pervasive judicial principle of 'audi alterem partem,' (no one be condemned unheard) in spite of the equally well settled principle that 'nobody can be compelled to render evidence against himself.

The powers u/s 131(1) are exercised for the proper administration of tax laws and for obtaining further elucidation, on information available with the authorities, from the assessee concerned. It enables the authorities to conduct inquiry and collect evidences in support of their contentions. It also helps to bring to light the correct facts and circumstances, for the purpose of carrying out proceedings under the Act and is treated to be equally fair to the Department as well as the assessee.

Section 131(1A) was introduced with effect from 1.10.1975 to empower the officers of the Investigation Wing (also to include officers authorized to carry out search operations i.e 'authorised officers'), to exercise the powers mentioned in the Section 131(1).

The said provision was introduced to nullify the effect of the ruling of the Calcutta High Court in the case of *UOI v. Gopal Das Gupta,* 1974 Tax LR 656 wherein the Court held that the officer of the Investigation Wing had no power to issue a notice u/s.131 and record a statement of the person under the said Section as the same was available to the assessing officer.

This practical difficulty was explained by the Departmental Circular No. 551 dated 23.1.1990 which was issued to explain the scope and effect of the amendment in the following words :

"… difficulty felt was that an authorized officer could record a statement on oath only during the course of search under the provisions of Section 132(4). Sometimes it becomes necessary to record a preliminary statement before the commencement of search for proper investigation. This was not possible as the Courts had held that such a preliminary statement before the search could not be recorded under the provisions of S. 132(4) ..."

To overcome these difficulties, the Income tax Act , Section 131(1A) was introduced to extend similar powers to an 'authorised officer' within the meaning of Sub Section (1) of Section 132 before he takes search and seizure action under clauses (i) to (v) of that sub section.

Section 131(1) and Section 131(1A) - Distinction and controversy:

Section 131 is comprised of two complementary sub sections relating to two different classes of officers. Whereas Section 131(1) empowers the jurisdictional assessing officer to issue summons, Section 131(1A) empowers the officers of the investigation wing *viz.* Assistant Director, Deputy Director or the Director of Income tax (Investigation).

Another point of distinction is that powers u/s 131(1) can be exercised

by the assessing officer only when any proceedings are pending before him in relation to that assessee. Whereas power u/s 131(1A) can be exercised notwithstanding that no proceeding is pending before the investigation officers. In other words, Section 131(1A) can also be invoked for the purposes of a preliminary inquiry before carrying out the search operations.

However, the controversy arises when the said Section i.e. Section 131(1A) is brought into play by the authorized officers after conclusion of search action u/s.132. The questions arise whether such acts on the part of the authorized officers are valid in view of the fact that the same powers are available to the assessing officer u/s 131 and whether, such exercise of power u/s 131(1A), after conclusion of action u/s.132, is valid.

By bringing both the provisions into play simultaneously, there occurs multiplicity of proceedings in connection with the same assessee for the same case; one before the assessing officer u/s 131(1) and another before the investigation officers u/s 131(1A).

In order to shed more light on the issue, let us analyse the scope of powers u/s 131(1A) and related issues.

Scope of power u/s 131(1A) :

The Section reads as under:

"If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director, or the authorised officer referred to in sub section (1) of section 132 before he takes action under clauses (i) to (v) of that sub section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub section (1) on the income tax authorities referred to in that sub section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income tax authority."

From the above, three important phrases emerge in relation with the exercise of powers u/s. 131(1A) that seize our attention in the present discussion. These are:

(a) Before he takes action under clauses (i) to (v) of S. 132;

(b) Has reason to suspect that income has been concealed; and

(c) Notwithstanding that no proceedings with respect to such person or class of persons are pending.

From a plain reading of the provision as aforesaid and the explanatory memorandum, the intent and the purpose of the legislature is clearly evident. The said provision enables the officers of the investigation wing to exercise the powers as mentioned before search and seizure action u/s.132(1), clauses (i) to (v) are applied. However, a recent trend is that even after conclusion of the search, the authorized officers keep summoning the person searched u/s.131(1A) to conduct a 'post search inquiry'.

Post search inquiry

The officers as aforesaid conducts 'post search inquiry' as called in common parlance. The searched assessee is summoned and his statement is recorded on the various assets/papers/books seized.

It is incumbent upon the 'authorised officers' to hand over the seized documents, statements recorded by them u/s. 132(4) and other material to the assessing officer for the purposes of completion of assessment procedure under Chapter XIV. In case a 'post search inquiry' is carried out, a report of the same is also forwarded, along with recommended lines of inquiry. This report is a confidential official document normally known as an Appraisal Report.

As a result, at the time of search assessment proceedings under Chapter XIV, it is often felt that, the jurisdictional assessing officer, gets unduly influenced by the findings in the appraisal report and thereby the assessing officer is unable to judiciously and independently analyze the case before him. This is more so when the said report is never forwarded to the person searched by the assessing officer.

It is a well laid down principle that the assessing officer is a quasi judicial authority having quasi judicial powers during the course of assessment. The Supreme Court in the case of *Sirpur Paper Mill Ltd.* v. *CWT,* [1970] 77 ITR 6 at pages 7 and 8 have upheld the above contention.

The need for independent application of mind by the assessing officer and non applicability of any guiding force is further stressed by the Supreme Court in the case of *Orient Paper Mills Ltd.* v. Union *of India,* AIR 1969 SC 48, 51. The Court held that:

"No authority, however high placed, can control the decision of a judicial or quasi judicial authority. That is the essence of our judicial system. It is true that the assessing authorities as well as appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act, they must act independently and impartially. They cannot be said to act independently if their judgement is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgements; they would essentially be the judgements of the authority that gave the directions and which authority had given those judgements without hearing the aggrieved party" *(Orient Paper Mills Ltd.* v.

Union of India, AIR 1969 SC 48, 51)

. . . their two functions are separate; while functioning as quasi judicial officers they should not allow their judgements be influenced by administrative considerations or by the instructions or directions given by their superiors." *(Orient Paper Mills Ltd.* v. *Union of India,* AIR 1969 SC 48, 51)

Similar view, in respect to the report sent to the assessing officer by the authorised officer, has also been expressed by the Madras Bench of the ITAT in the case *of Kirtilal Kalidas & Co. v. Dy. CIT* [1998] 67 ITD 57.3

Legal Paradox

Summoning the person searched u/s 131(1A) after conclusion of search also appears to be regressive in nature. Search action u/s 132 is an extreme step taken by the Income tax Department to unearth the undisclosed income/asset of a person. Prior to issuance of a warrant of authorization, the issuing authority should have adequate information which forms the 'reason to believe' that there is undisclosed income. However, the powers u/s 131(1A) are exercisable upon having a 'reason to suspect' the existence of undisclosed income.

Now, once a 'reason to believe' has been formed by the Department regarding the existence of the undisclosed asset/income and search operations have been carried out, formation of 'reason to suspect' for issuance of summons appears to be quite regressive and illogical. Hence, the practice of issuance of summons to the person searched u/s 131(1A), for the purpose of the post search inquiry, seems incorrect and tends to hit at the very root of the purpose behind the introduction of this sub section.

Powers much more enlarged in scope are already exercised by the Department on a person at the time of carrying out search and seizure operations. The provisions related to search operations are expansive enough to enable the officers to complete their investigation, within the provided framework. Hence, there cannot be an occasion in law to virtually carry out the same act once again by the same authorities by issuing summons u/s 131(1A) after exercising the powers as mentioned u/s.132.

There is a controversy in this respect. There are conflicting decisions of different courts Gujrat High Court in the case of *Arti Gases* v. *DIT (Inv.)* [2000] 113 Taxman 68/[2001] 248 ITR 55 has held that notices u/s 131(1A) can be issued after completion of search undertaken under the provisions of section 132, as it would be absolutely logical to call for information so as to have better particulars or to have complete idea about the material seized during the search.

Gujrat High Court in the case *of Neesa Leisure Ltd.* v. *Union of India* [2011] 16 taxmann.com 163/[2012] 204 Taxman 86/[2011] 338 ITR 460 has held how the satisfaction recorded by the Director General of Income tax has subsequently issued notices under section 131(1A) of the act.

The Allahabad High Court in case of *Dr. Roop* v. *CIT* [2012] 20 taxmann.com 205/209 Taxman 421 held as under:

"In respect of notice under section 131(1A) this Court observed that it confers powers on the authorities as mentioned in Section 131(1), if he has reason to suspect that any income has been concealed or is likely to be concealed notwithstanding that no proceedings with respect to such person, class of persons pending before him. It is only a enabling Section and does not in any manner affect the search and seizure operations carried out under section 132 of the Act. Section 132 is an independent code in itself. The Court held in paras 37 and 38 that the exercise of power under section 131(1A) is contemplated in a situation anterior to exercise of power under section 132. In other words before authorsing an officer to carry on search and seizure operation, the officers referred to in Section 132 (1) would exercise power under section 131(A) of the Act. Section 131(1A) operates in different fields than Section 132. Section 131(1A) occupies the field before issuing search and seizure warrants, while Section 132 comes into play thereafter, and thus the power under section 131(1A) cannot possibly be invoked before the power under section 132 is put into motion. If power is invoked, it will not affect the validity of search and seizure operations."

The Allahabad High Court in case of Dr. Mrs. *Anita Sahai* v. *DIT* [2004] 136 Taxman 247 has held that in case a notice is issued under section 131(1A) after search and seizure operation under section 132, it would show that there was neither reason to believe nor material before authorizing officer on basis of which he could issue a warrant under section 132. The judgement of the Hon'ble court is draconian from the angle of the department as it was held that issuance of 131(1A) post search u/s 132 was devoid of formation reasons to believe and in such circumstances very issue of warrant of authorization can be quashed at a later stage.

The court held as under:

"The respondents in their counter-affidavit had stated that it was respondent No. 4 who had sent the material to respondent No. 1 on the basis of which respondent No. 1 had recorded his satisfaction under section 132(1). It was respondent No. 4 himself who had issued summons under section 131(1A) after the search. As such, there could not possibly be any material, which could be the basis of having reason to believe in respondent No. 1. The very fact that respondents issued notice under section 131(1A) after the search and seizure operation under section 132 would show that there was neither reason to believe nor material before the authorising officer on the basis of which he could issue a

warrant under section 132. [Para 25]"

Interestingly, considering the decision of Dr. Mrs. Anita Sahai's case (supra) the Allahabad High Court have delivered a contrary decision in case of in case of Dr. V. S. Chauhan v. DIT, Investigations [2011] 12 taxmann.com 230/200 Taxman 413/336 ITR 533 wherein it was held that held as under:

"A fair reading of the aforesaid sub section would show that the power conferred on the Income-tax Authorities mentioned therein can be exercised—before ordering search and seizure under section 132. The exercise of power under section 131(1A) is contemplated in a situation anterior to exercise of power under section 132. In other words, before authorising an officer to carry on search and seizure operation, the Income-tax Authorities i.e. the Director General or Director or Joint Director or Assistant Director or Deputy Director or authorised officer referred to in sub section (1) to section 132 could exercise the power under section 131(1A) of the Act. The Income-tax Authorities are defined under section 116 of the Act. Power has been conferred under the aforesaid section to be exercised before the search and seizure operation with a view to collect the necessary information with regard to the intended search and seizure operation. The striking feature of the provision is that the Income-tax Authorities mentioned in sub section (lA) have been empowered to exercise the power notwithstanding the fact that no proceeding with respect to such person or class of person are pending before him or any other Income-tax Authority. The section is in the nature of enabling provision conferring the power on certain Income-tax Authorities. The section 131(1A) operates in a different field than section 132. Both these sections occupy different fields. Section 131(1A) occupies the field before issuing search and seizure warrant, while section 132 comes into play thereafter. The point which we want to bring home is that after search and seizure operation, the power under section 131(1A) cannot possibly be invoked in view of its plain language and if the power is invoked, it will not in any manner affect the validity of the search and seizure operation.

38. It may be noted that section 131(1A) was inserted in the Statute w.e.f. October 1, 1975. Earlier the judicial view was that the authorities under the Income Tax Act can exercise the power regarding the discovery/production of evidence etc. only in relation to a pending matter. To overcome it, section 131(1A) was enacted giving powers of discovery/production of evidence etc. to Director General, or Director or Joint Director etc. notwithstanding the fact that no proceeding is pending before them. The use of words "it shall be competent for him to exercise the powers confirmed under sub section (1) are indicative of confirmation of power on such officers even for the purposes of making any enquiry or investigation under sub section (1) of section 132. Section 131(1A) and Section 132 should be interpreted harmoniously.

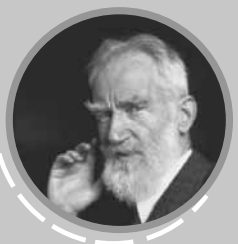
39. The above aspect of the case, it appears, was not brought to the notice of the Division Bench of this Court in the case of Dr. Anita Sahai (supra).

40. In any case, a futile exercise made by the department by issuing a notice under section 131 (1A) of the Act will not in any manner affect the search operation validly carried on within the four corners of section 132 of the Act."

Conclusion:

The Act has undergone conceptual and fundamental change in search and seizure operations after the introduction of new framework for the assessment of search cases. Consequential changes in Section 132 [for instance abolition of Section 132(5)] also leads to an inevitable conclusion that there is a clear demarcation between the authorities conducting investigation and the authorities passing the assessment order. Separate powers have been provided by the statute to both these authorities to enable them to exercise their authority in the right manner. However, whether or not these powers are coterminous or are they mutually exclusive is what is to be decided not only judicially but also administratively. As such the matter is still open to debate with both sides of arguments. To avoid further unwarranted litigation, clarity in this regard is also required by way of a necessary specific piece of legislation or otherwise.

* * * * *



Progress is impossible without change and those who cannot change their minds cannot change anything.

– George Bernard Shaw

Compliance Calendar

Due date	Particulars
Income Tax Act	
14th November, 2020	Issue of TDS certificate u/s 194IA , 194IB & 194M for the Month of September, 2020
15th November, 2020	Quarterly TDS certificate (other than salary) for the Quarter Ending September, 2020
30th November, 2020	Furnishing of Challan-cum-statement for TDS u/s 194IA, 194IB & 194M for the Month of October, 2020
30th November, 2020	Due Date for filing Belated & Revised return of income for Assessment Year 2019-20
7th December, 2020	Deposit of Tax Deducted at Source & Tax Collected at Source for the Month of November, 2020
15th December, 2020	Third installment of Advance Tax for Assessment Year 2021-22
15th December, 2020	Issue of TDS certificate u/s 194IA , 194IB & 194M for the Month of October, 2020
30th December, 2020	Furnishing of Challan-cum-statement for TDS u/s 194IA, 194IB & 194M for the Month of November, 2020
31st December, 2020	Due Date for furnishing Tax Audit Report u/s 92E for International transaction or Specified Domestic Transaction
31st December, 2020	Due Date for furnishing Tax Audit Report for Assessment Year 2020-21
31st December, 2020	Due Date for filing Return of Income for Assessment Year 2020-21 for Tax Payers not subject to Tax Audit
7th January, 2021	Deposit of Tax Deducted at Source & Tax Collected at Source for the Month of December, 2020
31st January, 2021	Due Date for filing Return of Income for Assessment Year 2020-21 for all Assessees subject to Tax Audit
31st January, 2021	Quarterly Statement of TDS deposited for the Quarter Ending December, 2020
Goods & Services Tax Act	
20th November, 2020	GSTR 3B for October, 2020 (AT more than 5 Cr in PY)
20th November, 2020	GSTR 5/5A for October, 2020
22nd November, 2020	GSTR 3B for October, 2020 (AT upto 5 Cr in PY) - (Group A: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep)
24th November, 2020	GSTR 3B for October, 2020 (AT upto 5 Cr in PY) - (Group B: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi)
11th December, 2020	Monthly GSTR-1 for the Month of November, 2020 (Turnover more than 1.50 Cr)
20th December, 2020	GSTR 3B for November, 2020 (AT more than 5 Cr in PY)
20th December, 2020	GSTR 5/5A for November, 2020

Due date	Particulars
22nd December, 2020	GSTR 3B for November, 2020 (AT upto 5 Cr in PY) - (Group A: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep)
24th December, 2020	GSTR 3B for November, 2020 (AT upto 5 Cr in PY) - (Group B: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi)
31st December, 2020	Annual GST Return (GSTR 9, GSTR 9A, GSTR 9B and GSTR 9C) for FY 2018-19
11th January, 2021	Monthly GSTR-1 for the Month of December, 2020 (Turnover more than 1.50 Cr)
13th January, 2021	Quarterly GSTR-1 for the Quarter October to December, 2020
18th January, 2021	GST CMP-08 for the Quarter October to December, 2020
20th January, 2021	GSTR 3B for December, 2020 (AT more than 5 Cr in PY)
20th January, 2021	GSTR 5/5A for December, 2020
22nd January, 2021	GSTR 3B for December, 2020 (AT upto 5 Cr in PY) - (Group A: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep)
24th January, 2021	GSTR 3B for December, 2020 (AT upto 5 Cr in PY) - (Group B: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi)
Companies Act	
28th November, 2020	Last date for filing of MGT-7 (Annual Return) with MCA (Within 30 days of AGM)
31st December, 2020	Last date for availing Company Fresh Start Scheme, 2020
31st December, 2020	Last date for availing LLP Settlement Scheme, 2020

* * * * *

"If you can't fly, then run. If you can't run, then walk. If you can't walk, then crawl. But whatever you do, you have to keep moving forward"

– Martin Luther King Jr.

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

(Registered under the Societies Registration Act, 1860)

An ISO 9001 : 2015 Certified Organisation

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GSTIN : 19AAATA7029F1ZV

2 pcs Pass Port Colour Photograph

APPLICATION FORM FOR MEMBERSHIP

To
The General Secretary,
Association of Corporate Advisers & Executives
6, Lyons Range, 3rd Floor, Unit - 2
Kolkata – 700 001

FOR OFFICE USE ONLY

Date of Receipt _____
Membership Approved on _____
Membership No. Allotted _____

Chairperson
Membership Development Sub-Committee ***General Secretary***

Dear Sir,

Please **ENROL** me/us as a **LIFE/GENERAL MEMBER** of the Association. I/We agree to abide by the Memorandum and Rules & Regulations of the Association.

1. Name in Full (IN BLOCK LETTERS) : _____
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Qualifications : _____
5. Occupation : _____
6. Name of the Concern with which associated : _____
7. GSTIN : _____
8. Designation : _____
9. CA/CS/ICWAI Membership No. : _____
10. Blood Group : _____ (Self) _____ (Spouse)
11. Date of Marriage : _____ Name of Spouse _____
12. Office Address : _____
13. Resident Address : _____
14. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
    Mobile : _____ E-mail : _____
15. Address where Circular etc. should be sent : ☐ Office ☐ Residence

I am/We are sending herewith Rs. _____ (Rupees _____)
by Cash/Cheque No. _____ Dated _____ Drawn on _____
towards ☐ Life Membership ☐ General Membership.

Place : _____
Date : _____

Signature of the Applicant

Proposed By : Name : _____
ACAE Membership No. : _____ Signature : _____

Seconded By : Name : _____
ACAE Membership No. : _____ Signature : _____

NOTES :
1. *Fee for Life Membership Rs. 11,800/- (for individuals only) (inclusive of GST)*
2. *Fee for General Membership :*
   a) *Annual Subscription Rs. 8850/- and Admission fees Rs. 8850/- (For Firm and Body Corporate) (inclusive of GST)*
   b) *Annual Subscription Rs. 1770/- and Admission fees Rs. 1770/- (for individual) (inclusive of GST)*
   c) *Annual Subscription will be half, if Membership Commences after 30th September of the year in which the membership is approved.*
3. *Cheques should be drawn in favour of* ***Association of Corporate Advisers & Executives****.*

Activities at a Glance ...

Sl.No.	Date	Topics & Speaker
1.0	**30.09.2020 (Virtual)**	**VCM on Decoding Companies Amendment Act 2020.** Chairman of the Session : CS S M Gupta, President, NCLT Kolkata Bar Association & Past President, ACAE. Speaker : CS Amit Gupta, Practicing Company Secretary, Lucknow. CA Mohit Bhuteria, Chairperson – Corporate Laws Sub-Committee.
2.0	**03.10.2020 (Virtual)**	**VCM on Faceless Assessment Scheme under the Income tax Act, 1961.** (1) Compliances under Faceless Scheme : Assessment and Appeals under the Income Tax Act, 1961. Speaker : Shri J P Khaitan, Senior Advocate, Calcutta High Court. (2) Faceless Scheme under the Income Tax Act, 1961. Speaker : CA Ramesh Kr Patodia. CA R R Modi, Chairperson – Direct Tax Sub-Committee.
3.0	**06.10.2020 (Virtual)**	**Group Discussion on TCS Provisions u/s 206C(1H), 194-O and 206C(1G).** Initiators : CA R R Modi and CA Rakesh Jain. CA Vikash Kr Banka, Chairperson – Group Discussions Sub-Committee.
4.0	**07.10.2020 (Virtual)**	**MCCI organized Webinar on The Enviable World of Personal Guarantees.** Chief Guest : Shri S J Mukhopadhaya, Immediate Past Chairperson of NCLAT. Moderator : Smt. Mamta Binani, Chairperson, Council on Legal Affairs, MCCI. Speakers : Shri Partha Sen, DGM, Stressed Assets Group, SBI, Kolkata. Shri Piyush Mishra, Partner, AZB & Partners. Association Partners : ACAE, IBC Laws, NCLT Kolkata Bar Association. Knowledge Partner : AZB & Partners.
5.0	**09.10.2020 (Virtual)**	**VCM on Section 206C(1H) – TCS on Sale of any Goods : Finer Issues.** Speaker : CA Bhupendra Shah, Mumbai. CA R R Modi, Chairperson – Direct Tax Sub-Committee.
6.0	**14.10.2020 (Virtual)**	**Group Discussion on Spill over effect of FY 17-18 to FY 18-29 Return.** Initiator : CA Navya Malhtora, New Delhi. CA Vikash Kr Banka, Chairperson – Group Discussions Sub-Committee.
7.0	**15.10.2020 (Virtual)**	**VCM on Documentation as per Standards on Auditing in Virtual World.** Speaker : CA Sripriya Kumar, Past Central Council Member, ICAI. CA Pramod Kr Mundra, Chairperson – Accounts & Audit Sub-Committee.
8.0	**17.10.2020 (Virtual)**	**VCM on SEBI Settlement Scheme 2020.** Speaker : CS (Dr.) S K Jain, Practicing Company Secretary, Mumbai. CA Mohit Bhuteria, Chairperson – Corporate Laws Sub-Committee.
9.0	**20.10.2020 (Virtual)**	**VCM on Recent Changes in Tax Audit Report.** Speaker : CA Pramod Jain, Vice-Chairman, Direct Taxes Committee, ICAI. CA R R Modi, Chairperson – Direct Tax Sub-Committee.
10.0	**21.10.2020 (Virtual)**	**Group Discussion on 3CD vs GST.** Initiator : CA Deepika Garg, Kolkata. CA Vikash Kr Banka, Chairperson – Group Discussions Sub-Committee.
11.0	**22.10.2020 (Virtual) :**	**VCM on Using MS Excel for Audit – Stat Audit, GST Audit, Tax Audit.** Speaker : CA D S Premnath, Hyderabad. CA Pramod Kr Mundra, Chairperson – Accounts & Audit Sub-Committee.
12.0	**23.10.2020 (Virtual)**	**Interactive Session on Network Architecture of office automation under present scenario – work from anywhere anytime.** Speaker : Shri Akshat Agarwal, Kolkata.
13.0	**28.10.2020 (Virtual)**	**Group Discussion on Recent Changes in Form 3CD and Income-Tax including ITR Forms.** Initiator : CA Ramesh Kr Patodia. CA Vikash Kr Banka, Chairperson – Group Discussions Sub-Committee.

Sl.No.	Date	Topics & Speaker
14.0	**04.11.2020 (Virtual)**	**Group Discussion on Charitable Trust (Income Tax).** Initiator : CA S S Gupta. CA Vikash Kr Banka, Chairperson – Group Discussions Sub-Committee.
15.0	**05.11.2020 - 07.11.2020 (Virtual)**	**VCM on Common errors in compliance of Accounting Standards, Schedule-III and CARO-2016. Implication and Penalties for non-compliance and Recent Judgement of NCLAT in ILFS case.** Speakers : CA (Dr.) Sanjeev Kr Singhal,Delhi; CA Sanjay Sharma, Bengaluru; CA (Dr.) Debashis Mitra; CA Alok Saraf, Bengaluru; CA Mohit Bhuteria; CS Ravi Varma. CA Pramod Kr Mundra, Chairperson – Accounts & Audit Sub-Committee and CA Mohit Bhuteria, Chairperson – Corporate Laws Sub-Committee.
16.0	**10.11.2020 (Virtual)**	**Lecture Meeting on GST – How E-Invoicing under GST will impact Business and Processes.** Speaker : CA Venugopal Gella, Bengaluru. CA Shivani Shah, Chairperson – GST/Indirect Tax Sub-Committee.
17.0	**11.11.2020 (Virtual)**	**Group Discussion on GST – Recent Changes in Portal, GSTR 2A vs GSTR 2B, GSTR 9 Spill over effect.** Initiator : CA Aanchal Kapoor, Amritsar. CA Vikash Kr Banka, Chairperson – Group Discussions Sub-Committee.
18.0	**17.11.2020 - 21.11.2020 (Virtual)**	**VCM Series on GST. Exports and Imports under GST including Refunds.** Speaker : CA Gaurav Gupta, Delhi. Input Tax Credit, Reversal of ITC, Blocked ITC, ITC on discount, gift, sample, dispose, exchange, Goods lost/ damaged by fire/ floods, etc., issues such as 16(4), 86A, 36(4) etc. Speaker : CA Jatin Harjai, Jaipur. How to respond to Notices/ Summons/ Enquiries in GST with common offences and penalties, Preparing for Departmental Audit, Inspection, Search and Seizure. Speaker : CA Jatin Christopher, Bengaluru. Mixed & Composite Supply, Works Contract and Job Work. Speaker : Adv Puneet Agrawal, Delhi. Invoice and Returns with proposed changes – Intricacies in GSTR 3B, GSTR 1, GSTR 2A, GSTR 2B, e Invoice, etc., E-Way Bills and its complications (Interception of Vehicles, Rights & Duties of the Assessee & Officers. Speaker : CA Venugopal Gella, Bengaluru. CA Shivani Shah, Chairperson – GST/ Indirect Tax Sub-Committee.
19.0	**22.11.2020 (Virtual)**	**Bijoya & Deepawali Get-together. Live on ACAE Youtube Channel.** Live performance by Adrija Saha, Singer. Cultural programme, Entertainment programme, Performance by ACAE Members and their families, Lucky draw and attractive prizes : Silver Coins. CA Niraj Harodia, Chairperson – Fellowship Sub-Committee.

ACAE AGM at a Glance ...

60th Annual General Meeting of Association of Corporate Advisers & Executives
held at The Lalit Great Eastern Kolkata, Great Ball Room 1, Kolkata – 700 069 on Saturday, the 26th September, 2020

On the dais (L to R), CA Anup Kumar Sanghai, Incoming President-ACAE, CA Vasudeo Agarwal, Past President-ACAE & CA Jitendra Lohia, Outgoing President -ACAE

CA Jitendra Lohia, Outgoing President -ACAE delivering his speech

CA Vasudeo Agarwal, Past President-ACAE addressing, sitting on the dais (L to R), CA Vivek Agarwal, Vice President - ACAE, CA Anup Kumar Sanghai, Incoming President-ACAE & CA Jitendra Lohia, Outgoing President -ACAE

On the dais (L to R), CA Vivek Agarwal, Vice President - ACAE, CA Anup Kumar Sanghai, Incoming President-ACAE & CA Jitendra Lohia, Outgoing President -ACAE

Handing over the batton to CA Anup Kumar Sanghai, Incoming President - ACAE by CA Jitendra Lohia, Outgoing President -ACAE.

Outgoing President, CA Jitendra Lohia pinning the Lapel Pin on Incoming President, CA Anup Kumar Sanghai at the 60th Annual General Meeting on 26.09.2020 at The Lalit Great Eastern Kolkata.

Delivering speech by CA Anup Kumar Sanghai, Incoming President - ACAE, sitting on the dais (L to R) CA Vivek Agarwal, Vice President - ACAE, CA Vasudeo Agarwal, Past President - ACAE & CA Jitendra Lohia, Outgoing President -ACAE.

Delivering speech by CA Santosh K Roongtaa, Past President - ACAE, sitting on the dais (L to R) CA Vivek Agarwal, Vice President - ACAE, CA Anup Kumar Sanghai, Incoming President - ACAE, CA Vasudeo Agarwal, Past President - ACAE & CA Jitendra Lohia, Outgoing President -ACAE.

Delivering speech by CA Anand Chopra, Past President - ACAE, sitting on the dais (L to R) CA Vivek Agarwal, Vice President - ACAE, CA Anup Kumar Sanghai, Incoming President - ACAE, CA Vasudeo Agarwal, Past President - ACAE & CA Jitendra Lohia, Outgoing President -ACAE.

Delivering speech by CA Kamal Nayan Jain, Past President - ACAE, sitting on the dais (L to R) CA Vivek Agarwal, Vice President - ACAE, CA Anup Kumar Sanghai, Incoming President - ACAE, CA Vasudeo Agarwal, Past President - ACAE & CA Jitendra Lohia, Outgoing President -ACAE.

Delivering speech by CA R. R. Modi, Past President - ACAE

Members attending the 60th Annual General Meeting on 26.09.2020 at The Lalit Great Eastern Kolkata, with CA Ranjeet Kumar Agarwal, Council Member, ICAI.

60th Annual General Meeting of Association of Corporate Advisers & Executives held at The Lalit Great Eastern Kolkata, Great Ball Room 1, Kolkata – 700 069 on Saturday, the 26th September, 2020

Members attending the 60th Annual General Meeting on 26.09.2020 at The Lalit Great Eastern Kolkata.

Group Photograph of Executive Committee Members in the 60th Annual General Meeting.

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ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

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