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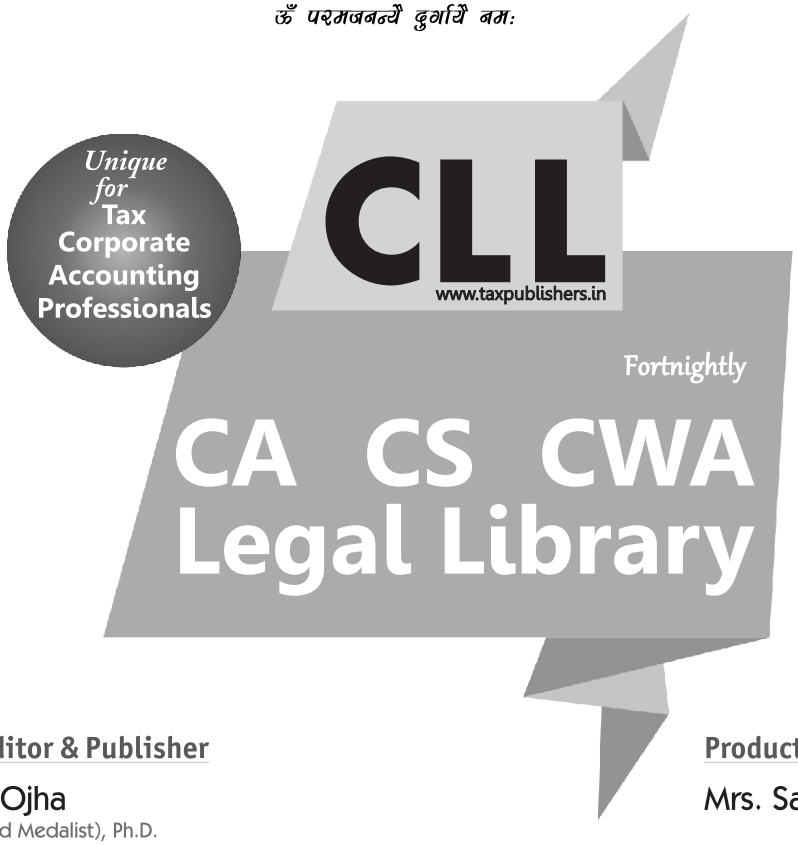

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GST

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MEDIA LIBRARY

■ New upgraded IT system for GST by July, e-invoicing to be implemented from Oct 1

The GST Council on Saturday demanded Infosys to upgrade the Information Technology (IT) backbone by July 30. In the meantime, the council decided to defer introduction of e-invoicing till September 30.

Non-executive Chairman of Infosys, Nandan Nilekani, who made a presentation before the Council on Saturday has suggested that in order to smoothen the rollout of the new return system, and to ensure a better uptake, the transition may be made in an incremental manner. He suggested that the process may be initiated by addressing the compliance related issues first, so that the problem of tax evasion and gaming of the system due to non-linking of FORM GSTR-1 and FORM GSTR-3B is addressed immediately.

Nilekani informed the Council that to augment the capacity of the IT system to concurrently handle 3 lakh taxpayers from the present level of 1.5 lakh taxpayers, hardware procurement process has been initiated, which is slightly impacted by the Covid-19 pandemic. He sought time till January 31, 2021 to complete the task. However, the Council decided to cut short the time to July 30, 2020.

To support the timely implementation of various initiatives, the Council gave a go ahead for deployment of additional manpower (60 in number) on T&M (Time and Material) basis and assured that both on procurement of additional hardware and hiring of manpower, expeditious approvals would be given. However, the GST Council insisted on immediate removal of technical glitches in filing returns.

Considering proposed change in the IT system, it has been decided to implement e invoicing system from October 1, while new return will also be introduced from the same date. Earlier, April 1 was the date for these two aspects.

www.thehindubusinessline.com dt. 16-03-2020

■ AARs can determine place of supply under the GST regime: Kerala HC

The Kerala High Court has paved the way for the Authority for Advance Rulings (AARs) to decide the place of supply under the goods and services tax (GST) regime. This is an important settlement of a legal issue in GST since AARs have not been going into this matter, saying it is beyond their jurisdiction.

Place of supply rules are key elements, particularly for services, under the GST regime, as this tax is destination-based. The rules define whether the transaction will be counted as intra-state or inter-state, or export, and accordingly levy of state GST, central GST and integrated GST as well as exemptions from these taxes will be determined.

Niraj Bagri, partner Dhruva Advisors, said an Indian unit supplied information technology-enabled services to its parent located in the US. The company went to Kerala-based AAR to know whether it could take benefit of export of services and be exempted from GST. However, AAR said it cannot go into the place of supply provisions, which are one of the key determinants to know whether export of services happened. If place of supply provisions happen outside India, then it would be treated as export of services. The other conditions for services to be treated as exports are supply provider should be in India, recipient should be outside, and payment should be in foreign exchange etc.

www.business-standard.com dt. 11-03-2020

■ GST collection crosses Rs 1-trn mark for the fourth month in a row in Feb

Goods and Services Tax (GST) collection crossed the Rs 1-trillion-mark for the fourth month in a row in February at Rs 1.05 trillion. The GST collection, which grew 8.3 per cent year-on-year (y-o-y) in the month, was a tad lower than Rs 1.10 trillion mopped up in the previous month.

GST collection had grown 8.1 per cent y-o-y in January. The mop-up could have been much higher, but tax on imports fell 2 per cent y-o-y. However, experts ruled out the impact of the coronavirus outbreak in China on imports since these are contracted three months in advance.

The earlier GST collection target for FY20 required January and February mop-up to be at Rs 1.15 trillion each and that for March to be at Rs 1.25 trillion. However, the Centre truncated the target for its part of the GST, compensation cess and integrated GST by Rs 51,000 crore in the revised estimates for FY20.

The collections have exceeded Rs 1-trillion-mark each month since November. However, experts said it could be due to blockage of input credits. "One will have to see how much of it is due to restriction and blockage of input credits, which has been happening in the last three months or so," said Pratik Jain, partner PwC. He said the GST Council should look into this since it could lead to a fall in the GST collections later.

www.business-standard.com dt. 02-03-2020

PROFESSIONALS' INPUT LIBRARY

GST—COUNCIL MEETING

Summary of 39th GST Council Meeting Decisions Taken on 14th March, 2020

▸ *The GST Council has taken some very important decisions in its 39th meeting held on 14-3-2020. The learned author provides an overview of the same in the write-up.*

– CA. Vikas Agarwal

1. Introduction

The Government in its 39th GST General Council meeting on 14-03-2020 has taken the following major decisions:

(i) Threshold limit for GST Audit

Earlier for the purpose of GST Audit (GSTR-9C-Reconciliation Statement), the requirement of sales is Rs. 2 Crores. Now, relaxation has been provided by increasing the limit to Rs. 5 Crores. Earlier limit was Rs. 2 Crores, so now most of the MSME would be out of the preview of the audit.

(ii) Extension of due date for Annual Returns and Reconciliation Statement

Due date for filing the GSTR-9 and GSTR-9C for financial year 2018-19 to be extended to 30-06-2020 from the earlier due date of 31st March,

2020. This has provided major relief not only to the assessees but also to the professionals considering the workload of March ending.

(iii) Late Fees Waiver of Annual Return and Reconciliation Statement

Late fees to be waived for delayed filing of GSTR-9 and GSTR-9C for financial years 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs. 2 crores. This is a relief for the Tax payers as earlier penalties for the delay were Rs. 200 per day which is very high. Due to this, most of the assessees who are willing to file GSTR-9 can file their GST Returns now which they were earlier not filing because of late fees.

(iv) Related to Interest Liability

Interest is to be charged on Net Cash Liability instead of Gross Liability. This amendment has been made retrospectively from 01-07-2017). Earlier, the department had issued many Notices to the taxpayers involving the Penal Interest running in thousands of crores of rupees demanding Interest on Gross Amount. But now, this confusion is settled and the Interest would be applicable in case of only Net Cash Liability, i.e., Gross Liability – Input credit available.

(v) Extension of GSTR 3B and GSTR 1

The government was planning to bring new GST Forms w.e.f. 01-04-2020. However, now for existing filing of GSTR-3B and GSTR-1 is to be continued till 30-09-2020. New GST Return forms which were going to be implemented are likely to cause a lot of hardship as the taxpayers were already facing problems in the existing GST Portal. Now, New Returns would be applicable from 1st October, 2020 onwards.

(vi) Revocation of Cancelled GST Number

The government has cancelled many GST registrations on its own because of many reasons. There were certain time limits up to which the taxpayers have to apply for revocation of cancellation of registrations. However, due to lack of knowledge many taxpayers have not applied for revocation for cancellation of registration. But, now one-time measure has been proposed for filing of an application for revocation of cancellation of registration up to 30-06-2020 (applicable to cancelled registration till 14-03-2020). GSTN cancellation was done in number of cases, so now taxpayers can apply for revocation.

(vii) KYS Scheme

A new scheme of Know Your Supplier (KYS) has been introduced by the government. Approval has been given for "Know Your Supplier" scheme. The MSME could get an overview regarding the Potential supplier so that loss of the Input credit could be avoided.

(viii) E-Invoicing

Earlier, the E- Invoicing is to be mandatorily implemented from 01-04-2020 for turnover above Rs. 100 Crores. But, now dates for implementation of e-invoicing and QR Code to be extended up to 01-10-2020.

(ix) Refund

The government has now allowed for the refund to be sanctioned in both cash and credit in case of excess payment of tax.

(x) Recovery of GST Refund

To provide for recovery of refund on the export of goods where export proceeds are not realized within the time prescribed under FEMA.

(xi) Ceiling limit of Export Supply for Refund

Ceiling to be fixed for the value of the export supply for the purpose of calculation of refund on zero-rated supplies.

(xii) Exemptions under IGST

Extension of the present exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU Schemes up to 31-03-2021.

2. Conclusion

These are some of the major issues which were taken into considerations in this meeting. In this meeting many reliefs are provided to the taxpayers and GST Council has considered major issues like GSTR-9 and 9C, Refund, Exports, new GST scheme, Exports, etc. Further, time extension is also given to the software Developer Infosys to handle multiple taxpayers at a time. Thus, many positive outcomes have come to light in this meeting.

□□□

GST—RCM ON COPYRIGHT

Reverse Charge on Copyright Services Provided by an Author to a Publisher

▸ *The present write-up attempts at making an overview of levy of Goods and Services Tax on supply of copyright services by an author to a publisher located in the taxable territory.*

– CA. Satyadev Purohit

1. Introduction

As per charging section 9(1) of the Central Goods and Services Tax Act, 2017 (in short, "CGST Act"), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both and the tax shall be collected by the taxable person.

Sub-section (3) of section 9 of the CGST Act provides for levy of tax on reverse charge basis. Accordingly, the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of the Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

In exercise of the powers conferred under sub-section (3) of section 9 of the CGST Act and sub-section (3) of section 5 of the IGST Act, the Central Government vide *Notification No. 13/2017-Central Tax (Rate), dt. 28-6-2017* and *Notification No. 10/2017-Integrated Tax (Rate), dt. 28-6-2017* has specified certain services, in respect of which the whole of central tax/integrated tax is required to be paid on reverse charge basis by the recipient of the such service. Input tax credit cannot be utilized for payment of tax on reverse charge basis. Tax on reverse charge basis is required to be paid by making debit in electronic cash ledger.

2. Reverse charge on supply of copyright services by an author to a publisher [Position during 1-7-2017 to 30-9-2019]

As per S. No. 9 of *Notification No. 13/2017-Central Tax (Rate), dt. 28-6-2017*, as it existed during the period 1-7-2017 to 30-9-2019, in respect of supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic to a publisher, music company, producer or the like, located in the taxable territory, the recipient of service, i.e., publisher, music company, producer or the like was liable to pay tax on reverse charge basis.

The relevant text of the Notification reads as under:

S. No.	*Category of service*	*Supplier of service*	*Recipient of service*
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic.	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory

The implication of the above entry was as under:

(i) The publisher, music company, producer, etc., receiving services from an author, music composer, photographer, artist or the like, were liable to get registered and pay tax on reverse charge basis irrespective of its turnover.

(ii) Supplier of service, i.e., author, music composer, photographer, artists or the like was not liable to get registered where the recipient of service was liable to pay whole of tax on reverse charge basis, even if the

turnover of the author, music composer, photographer, artist exceeds Rs. 20 lakh (Rs. 10 lakh in case of special category States).

(iii) If, however, the supplier of service, i.e., author, music composer, photographer, artists or the like effects any other taxable supply and the aggregate turnover from providing such supply exceeds Rs. 20 lakh, he shall be liable to get registered and pay tax on forward charge basis in respect of such supply. However, in respect of services provided to a publisher, music company, producer, etc., the recipient of service was liable to pay tax on reverse charge basis.

(iv) The recipient of service was liable to pay tax on reverse charge basis by utilizing electronic cash ledger. Input tax credit could not be utilized for payment of tax on reverse charge basis.

3. Reverse charge on supply of copyright services by an author to a publisher [Position from 1-10-2019 and onwards]

Owing to requirement of paying tax on reverse charge basis, an anomaly arose in those cases, where an author himself got registered under the GST law and started paying tax on forward charge basis in respect of other supplies made by him. However, the publisher was liable to pay tax on reverse charge basis in respect of copyright services supplied by such author.

Publishers normally deal in exempt goods, i.e., books, periodicals and journals. Hence, they are not required to get registered and pay tax in respect of exempt supplies. However, owing to responsibility cast by S. No. 9 of *Notification No. 13/2017-Central Tax (Rate), dt. 28-6-2017*, they were required to get registered and pay tax on reverse charge basis. This requirement had posed undue hardship in those cases where author is already registered and is paying tax on forward charge basis.

Keeping in view of such difficulties, S. No. 9 of *Notification No. 13/2017-Central Tax (Rate), dt. 28-6-2017* has been substituted and in place of S. No. 9 two new entries viz. S. No. 9 and S. No. 9A have been inserted by *Notification No. 22/2019-Central Tax (Rate), dt. 30-9-2019*, with effect from 1-10-2019.

Newly replaced S. No. 9 deals with reverse charge on supply of service by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.

Supply of services by an author to a publisher are notified under newly incorporated S. No. 9A of the said Notification, the relevant text of the said entry reads as under:

S. No.	*Category of service*	*Supplier of service*	*Recipient of service*
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the 'Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory Provided that nothing contained in this entry shall apply where, - (i) the author has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST Commissioner, as the case may be, that he exercises the option to pay central tax on the service specified in column (2), under forward charge in accordance with section 9(1) of the Central Goods and Service Tax Act, 2017 under forward charge, and to comply with all the provisions of Central Goods and Service Tax Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option; (ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher.

For the Financial Year 2019-20, the declaration was required to be filed on or before 31-10-2019 and for the option to be effective from the

commencement of subsequent financial year, the declaration is required to be filed before the commencement of such financial year.

The Annexure I and Annexure II are appended to *Notification No. 22/2019-Central Tax (Rate), dt. 30-9-2019* and the same are not reproduced here.

The implications of the new entry 9A are as under:

(i) The publisher receiving copyright services from an author is liable to get registered and pay tax on value of supply received from the author irrespective of its turnover.

(ii) Supplier of copyright service, i.e., author is not liable to get registered where the recipient of service is liable to pay tax on reverse charge basis, even if the turnover of the author exceeds Rs. 20 lakh (Rs. 10 lakh in case of special category States).

(iii) If the supplier of service, i.e., author effects any other taxable supply and the aggregate turnover from providing such supply exceeds Rs. 20 lakh, he shall be liable to get registered and pay tax on forward charge basis in respect of such supply. However, in respect of services provided to a publisher the recipient of service would continue to pay tax on reverse charge basis.

(iv) If any author takes registration under the CGST Act and he files a declaration in Annexure I to the effect that he exercises the option to pay central tax on forward charge basis and to comply with all the provisions of the Act, the publisher shall not be liable to pay tax on reverse charge basis in respect of supply received from such author. However, in respect of copyright service received from other authors, the publisher shall continue to pay tax on reverse charge basis.

(iv) The recipient of service was liable to pay tax on reverse charge basis by utilizing electronic cash ledger. Input tax credit could not be utilized for payment of tax on reverse charge basis.

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CENTRAL GOODS AND SERVICES TAX ACT, 2017–CGST-CGST (NOTIFICATION)

Notification No. 08/2020 – Central Tax, dtd. 2-3-2020 [F. No. 20/06/03/2020 – GST]

Central Goods and Services Tax (Second Amendment) Rules, 2020

G.S.R.....(E).—In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

1. (1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2020.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, with effect from the 1st March, 2020, in rule 31A, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the Organising State, whichever is higher.

Explanation:–For the purposes of this sub-rule, the expression "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.".

Note: The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, vide number G.S.R. 610 (E), dated the 19th June, 2017 and last amended vide notification No. 02/2020 - Central Tax, dated the 01st January, 2020, published vide number G.S.R. 4 (E), dated the 01st January, 2020.

CGST (Press Release)

Press Release dtd. 14-3-2020

39th Meeting of the GST Council—Law and Procedure Related Changes

The GST Council, in its 39th meeting held on 14-03-2020, has made the following recommendations:

1. Measures for Trade facilitation

a. Interest for delay in payment of GST to be charged on the net cash tax liability w.e.f. 01-07-2017 (Law to be amended retrospectively).

b. Where registrations have been cancelled till 14-03-2020, application for revocation of cancellation of registration can be filled up to 30-06-2020 (extension of period of application as one-time measure to facilitate those who want to conduct business).

c. Annual Return:

i. Relaxation to MSMEs from furnishing of Reconciliation Statement in **FORM GSTR-9C**, for the financial year 2018-19, for taxpayers having aggregate turnover below Rs. 5 crores;

ii. Due date for filing the Annual return and the Reconciliation Statement for financial year 2018-19 to be extended to 30-06-2020; and

iii. Late fees not to be levied for delayed filing of the Annual return and the Reconciliation Statement for financial year 2017-18 and 2018-19 for taxpayers with aggregate turnover less than Rs. 2 crores.

d. A new facility called 'Know Your Supplier' to be introduced so as to enable every registered person to have some basic information about the suppliers with whom they conduct or propose to conduct business.

e. The requirement of furnishing **FORM GSTR-1** for 2019-20 to be waived for taxpayers who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate) dated 07-03-2019 by filing **FORM CMP-02**.

f. A special procedure is being prescribed for registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 and are undergoing the corporate insolvency resolution process, so as to enable them to comply with the provisions of GST Laws during the CIRP period.

g. A special procedure for registered persons in Dadra and Nagar Haveli & Daman and Diu during transition period, consequent to merger of the UTs w.e.f. 26-01-2020; transition to be completed by 31-05-2020.

h. Extension of due dates for **FORM GSTR-3B** for the month of July, 2019 to January, 2020 till 24th March, 2020 for registered persons having principal place of business in the Union territory of Ladakh. Similar extension is also recommended for **FORM GSTR-1** & **FORM GSTR-7**.

i. Bunching of refund claims allowed across financial years to facilitate exporters.

a. Extension of the time to finalize e-Wallet scheme up to 31-03-2021; and

b. Extension of the present exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU schemes up to 31-03-2021.

2. Deferment of E-invoice and QR Code

a. Certain class of registered persons (insurance company, banking company, financial institution, non-banking financial institution, GTA, passenger transportation service etc.) to be exempted from issuing e-invoices or capturing dynamic QR code; and

b. The dates for implementation of e-invoicing and QR Code to be extended to 01-10-2020.

3. Deferment of e-wallet Scheme

a. Extension of the time to finalize *e-Wallet scheme up to 31-03-2021; and*

b. Extension of the *present exemptions from IGST and Cess on the imports made under the AA/EPCG/EOU schemes up to 31-03-2021.*

4. Continuation of existing system of furnishing **FORM GSTR-1 & FORM GSTR-3B** till September, 2020;

5. Other new initiatives

a. Seeking information return from Banks;

b. To curb fake invoicing and fraudulent passing of ITC, restrictions to be imposed on passing of the ITC in case of new GST registrations, before physical verification of premises and Financial KYC of the registered person.

6. Issuance of circulars in respect of

a. Clarification in apportionment of ITC in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules;

b. Appeals during non-constitution of the Appellate Tribunal;

c. Clarification on refund related issues; and

d. Clarification on special procedure for registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016, undergoing the corporate insolvency resolution process.

7. Amendments to the CGST Rules

Key amendments are as below:

a. Procedure for reversal of input tax credit in respect of capital goods partly used for affecting taxable supplies and partly for exempt supplies

under rule 43 (1) (c);

b. ceiling to be fixed for the value of the export supply for the purpose of calculation of refund on zero rated supplies;

c. to allow for refund to be sanctioned in both cash and credit in case of excess payment of tax;

d. to provide for recovery of refund on export of goods where export proceeds are not realized within the time prescribed under FEMA; and

e. to operationalize Aadhaar authentication for new taxpayers.

8. Certain amendments to be carried out in the GST laws.

Note: *The recommendations of the GST Council have been presented in this release in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/Notifications or amendment in GST laws which alone shall have the force of law.*

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S. 9 **CENTRAL GOODS AND SERVICES TAX ACT, 2017**

Levy of GST—***Impact of rate of GST on an International competitive bidding***—*Whether original price bid could be revised so as to include applicable rate of GST*

Since there was no discretion in the bidders or employer to consider and include GST at a rate other than that which is applicable, therefore, there was no illegality done by State authorities in allowing the bidder to correct and rectify the original price bid placed by it, according to applicable rate of GST.

Decision: Against the petitioner

➲ ***Larsen and Toubro Ltd. v. State of Bihar and Ors. 2019 TaxPub(GST) 895 (Pat-HC)***

S. 16

Zero-rated supply—***Refund of IGST***—*Refund on a transaction which was otherwise zero-rated transaction—Scope of section 16*

Where subject transaction in fact came under section 16 with effect from 1-7-2017 and was zero-rated supply and assessee had already drawn or availed the higher rate of duty drawback, therefore authorities were directed to pay the balance amount, i.e., IGST minus higher rate of duty drawback already availed by assessee within the time granted by this Court and avoid the additional burden of interest payment on IGST refund.

Decision: In assessee's favour

➲ ***G NXT Power Corp. v. UOI 2019 TaxPub(GST) 913 (Ker-HC) : (2019) 71 GSTR 461 (Ker) : (2019) 29 GSTL 616 (Ker) : (2019) 95 KLJ 417 (Ker)***

S. 54

Refund of excess tax paid—***Difficulties faced in entertainment, processing and allowance of the refund claims made under section 54***

Meetings should be held between all stakeholders, wherein representatives of petitioners, and all the respondents were present so that all the issues raised in the present petition were taken up in the spirit of resolving the same for the better administration and implementation of the indirect tax regime in the larger interest of the nation. Petitioners were directed to make a bullet point presentation, listing all the issues as are raised in present petition, and such other issues as may be outstanding.

Decision: Directions issued

➲ ***Sales Tax Bar Association (Regd.) & Anr. v. UOI & Ors. 2019 TaxPub(GST) 928 (Del-HC) : (2019) 76 GST 755 (Del) : (2019) 31 GSTL 236 (Del)***

S. 54

Refund of excess tax paid—***Unutilized amount from electronic credit ledger***

The Court proposes to dispose of the writ application with a direction to GST authorities to look into the matter and take an appropriate decision in accordance with law within a period of 15 days

Decision: In assessee's favour

➲ ***Red Coin Paper Product v. Dy. Commr. of ST 2019 TaxPub(GST) 915 (Guj-HC) : (2019) 27 GSTL 183 (Guj)***

S. 69

Power to arrest—***Search and seizure***—*Grant of regular bail—Validity of*

Since assessee was in custody from 4-7-2018, but taking into account the fact that it was involved in a case involving fraud of Rs. 19.50 Crores and alleged offence was an economic offence which requires to be dealt with seriously and mere long custody would not be a ground for releasing him on bail.

Decision: Against the assessee

➲ ***Jatinder Manro v. Directorate General of Goods & Services Tax (Intelligence) 2019 TaxPub(GST) 1016 (P&H-HC)***

S. 79

Recovery of tax—***Stay of demand***—*Grant of*

conditional stay

On assessee paying 10% of the disputed tax as a condition for maintaining appeal before authorities, authority should proceed to consider and pass orders on the said application preferred by assessee within a month from the date of receipt of a copy of this judgment and recovery of amounts confirmed against assessee by order, including steps to encash bank guarantee, should be kept in abeyance.

Decision: In assessee's favour

➲ ***Minar Iron & Metals (P) Ltd. v. State Tax Officer 2019 TaxPub(GST) 1047 (Ker-HC)***

S. 109

Constitution of Appellate Tribunal and Benches—***Constitution of GST Tribunal***—*Jurisdiction to decide the location of Bench—Validity of*

The role of the State is confined to determine the place of area benches. Insofar as the determination of location of the State Bench is concerned, it remained in the domain of the Central Government for which the matter was under consideration before Central Government. These provisions have not been considered at all, hence, *prima facie* the judgment appears to be bereft with non-consideration of the facts. Thus, Central Government should proceed in accordance with section 109(6)

Decision: Directions issued

➲ ***Jai Baba Amarnath Industries v. State of U.P. & Ors. 2019 TaxPub(GST) 929 (All-HC)***

S. 129

Seizure of goods—***Detention order***—*Release of detained goods*

Since the present petition was filed only to release the goods being packing materials/aluminum foils, in the light of the averments made in the affidavit-in-reply filed on behalf of authorities, wherein they did not object to release of the goods in question, petition deserved to be allowed.

Decision: In assessee's favour

➲ ***Montage Enterprises (P) Ltd. v. State of Gujarat 2019 TaxPub(GST) 1013 (Guj-HC) : (2019) 76 GST 717 (Guj) : (2019) 30 GSTL 457 (Guj)***

S. 130

Confiscation of goods and vehicle—***Release of detained goods along with conveyance***—*Validity*

Authorities were directed to forthwith release the conveyance in question upon the petitioner depositing such amount with them and amount so deposited by petitioner should be treated as a deposit, subject to the final outcome of proceedings under section 130. Authorities should afford the petitioner a reasonable opportunity of hearing and thereafter, pass an order under section 130.

Decision: In assessee's favour

➲ ***Devrajbhai Vikrambhai Sambad v. State of Gujarat 2019 TaxPub(GST) 1454 (Guj-HC)***

S. 140

Transitional provisions—***Input tax credit***—*Permission for manual filing of GST TRAN-1—Migration to GST regime*

Since assessee was unable to fill the TRAN-1 Form on account of bona fide difficulties, accordingly, a direction was issued to Authorities to permit assessee to either submit the TRAN-1 form electronically by opening the electronic portal for that purpose or allow it to tender said form manually on or before 15-10-2019.

Decision: In assessee's favour

➲ ***Krish Automotors (P) Ltd. v. UOI & Ors. 2019 TaxPub(GST) 930 (Del-HC) : (2019) 76 GST 805 (Del) : (2019) 71 GSTR 386 (Del)***

S. 140(3)

Transitional credit—***Input credit***—*GST TRAN-1 could not be filed on account of technical glitches*

Where difficulty in filling up a correct credit amount in form TRAN-1 was genuine, direction was issued to either open the portal so as to enable the assessee to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 31-12-2019.

Decision: In assessee's favour

➲ ***A.B. Pal Electricals (P) Ltd. v. UOI & Ors. 2019 TaxPub(GST) 1446 (Del-HC) : (2020) 33 GSTL 8 (Del)***

S. 140(3)

Transitional credit—***Input credit***—*GST TRAN-1 could not be filed on account of technical glitches*

Where difficulty in filling up a correct credit amount in form TRAN-1 was genuine, direction was issued to either open the portal so as to enable the assessee to again file TRAN-1 electronically or to accept manually filed TRAN-1 on or before 31-8-2019.

Decision: In assessee's favour

➲ ***Lantech Pharmaceuticals Ltd. v. Pr. Commr. of GST 2019 TaxPub(GST) 1089 (AP-HC) : (2019) 31 GSTL 392 (AP)***

S. 140(3)

Transitional credit—***Input credit***—*GST TRAN-1 could not be filed on account of technical glitches*

Where difficulty in filling up a correct credit amount in form TRAN-1 was genuine, direction was issued to either open the portal so as to enable the assessee to again file TRAN-1 electronically or to accept a manually filed TRAN-1 on or before 30th November, 2019.

Decision: In assessee's favour

➲ ***Asian Casts & Forgings (P) Ltd. v. UOI & Ors. 2019 TaxPub(GST) 1450 (P&H-HC)***

S. 140(3)

Transitional credit—***Input credit***—*Refund of Input tax credit*

Where Form GST TRAN-1 was not made available on the web portal of authorities assessee could not be made to suffer on account of failure on the part of authorities in devising smooth transition to GST regime with effect from 1-7-2017, from the erstwhile indirect taxation structure and even after passage of over two years, authorities have not remedied their omissions and failures by taking corrective steps, therefore, authorities were directed to refund the amount to assessee within four week from today.

Decision: In assessee's favour

➲ ***Vision Distribution (P) Ltd. v. Commr. of SGST & Ors. 2020 TaxPub(GST) 35 (Del-HC)***

General

GST—***Challenge to order issued under U.P. Entertainment and Betting Tax Act***—*Act Repealed on 1-7-2017*

Where assessee challenged order issued District Magistrate under the U.P. Entertainment and Betting Tax Act, 1979, which was repealed by the GST Act on 1-7-2017, he was directed to approach appropriate authority under the GST.

Decision: Directions issued

➲ ***Rajesh Sharma v. State of U.P. & Anr. 2018 TaxPub(GST) 595 (All-HC)***

INCOME TAX

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CBDT

■ **Vivad se Vishwas scheme; I-T officials up in arms over CBDT diktat**

Tax officials have threatened to go for a series of protests against the Central Board of Direct Taxes' (CBDT's) demand of bringing 100 per cent disputed cases under the Vivad se Vishwas scheme and linking its success with the performance of the officials. The move comes after the direct tax body put out a directive, asking officials to bring all the disputed cases under the scheme, failing which they would be assessed adversely and their future posting made accordingly.

The Income Tax Employees Federation and the Income Tax Gazetted Officers' Association, which together constitute 97 per cent of the workforce in the department, said this is demoralising for the work force. "It is difficult to accept how the scheme's success is being put on the shoulders of the field officers."

www.business-standard.com dt. 05-03-2020

TAX EVASION

■ **Rent from children not a tax evasion tool, rules ITAT**

Receiving rent from your children will not be treated as tool for tax evasion, provided it is for genuine tax-saving arrangement, Income Tax Appellate Tribunal (ITAT) has ruled.

ITAT is a quasi judicial institution set up in January, 1941 and specialises in dealing with appeals under the Direct Taxes Acts, such as Income Tax Act 1961. The orders passed by the ITAT are final, an appeal can be made to the High Court only if a substantial question of law arises for determination. An order by ITAT is binding on the concerned parties and can be used as persuasive in similar matter.

The said matter here involves an income-tax assessment order where the official did not accept the claim of the assesee, who is the petitioner. He had claimed a loss of Rs. 15,32,120 on account of interest (on borrowed capital) at Rs. 21,62,120, adjusting it against the rental income of Rs. 9 lakh. The said rent was, on the basis of a field enquiry by the Assessing Officer (AO), found to be from the assessee's major son and daughter, Neha Pathan, residing along with the other family members.

Nobody would, in the view of the AO, charge rent (for residence) from his own son and daughter, given that both are unmarried and living together with the family in their own property. The arrangement was therefore regarded merely as a tax-reducing device adopted by the assessee and liable to be ignored. Treating the house as a self-occupied property, the AO restricted the claim of interest to Rs. 1.50 lakh, which was confirmed later by the appellate officer.

The assessee claimed that there was nothing to show that the arrangement, duly supported by written agreements and furnished, was fake or a make-believe. Also, it was said that the rental income cannot be overlooked or disregarded merely because it arises from close family members.

www.thehindubusinessline.com dt. 12-03-2020

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FINANCE BILL, 2020—CHARITABLE TRUST

Registration of Charitable Trusts, Institutions Etc., in Wake of Amendment Proposed by Finance Bill, 2020

▸ *The Finance Bill, 2020 has proposed substantial amendments in provisions dealing with exemption in case of charitable trusts, institutions, etc. All the existing as well as new exempt entities have to undergo with new process of registration. The present write-up highlights the new scheme of registration of charitable trusts, institutions, etc.*

– CA. Nisha Bhandari

1. Reasons for change in process of registration of trusts, institutions, etc.

The present process of registration of trusts, institutions, funds, university, hospital etc under section 12AA or under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10, and approval of association, university, college, institution or company etc need improvement with the advent of technology and keeping in mind the practical issue of difficulty in obtaining registration/approval/notification before actually starting the activities.

It is also felt that the approval or registration or notification for exemption should also be for a limited period, say for a period not exceeding five years at one time, which would act as check to ensure that the conditions of approval or registration or notification are adhered to for want of continuance of exemption. This would in fact also be a reason for having a non-adversarial regime and not conducting roving inquiry in the affairs of the exempt entities on day to day basis, in general, as in any case they would be revisiting the concerned authorities for new registration before expiry of the period of exemption. This new process needs to be provided for both existing and new exempt entities.

2. Conditions for applicability of exemption under sections 11 and 12

Section 12A(1) provides for the conditions to be fulfilled by any trust or institution subject to which exemption under sections 11 and 12 shall be available to it. The Finance Bill, 2020 has proposed to insert a new clause (ac) in section 12A(1) so as to provide that notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,–

(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA, [as it stood immediately before its amendment by the Finance Act, 2020] within three months from the date on which this clause has come into force;

(ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;

(iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;

(iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;

(v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;

(vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought,

and such trust or institution is registered under section 12AB.

3. Procedure for registration under new regime

The Finance Bill, 2020 has proposed to insert a new sub-section (5) in section 12AA so as to provide that nothing contained in said section shall apply on or after the 1-6-2020. Thus registration procedure provided in the existing section 12AA would become inoperative w.e.f. 1-6-2020. Simultaneously a new section 12AB has been proposed to be inserted to provide a new procedure w.e.f. 1-6-2020. The scheme of new registration procedure is as under–

(i) Registration in case of application made under sub-clause (i) of new clause (ac) of section 12A(1)

As per section 12AB(1)(a) the Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years

and send a copy of such order to the concerned entity.

Thus the trust or institution registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] or under section 12AA, [as it stood immediately before its amendment by the Finance Act, 2020] shall apply upto 31-8-2020 and registration shall be provided without enquiry for a period of next five years. In other words it can be said that the registration of existing trust will be revalidated for a period five years.

(ii) Registration in case of application made under sub-clauses (ii)/(iii)/ (iv)/(v)

As per section 12AB(1)(b), the Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,–

(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about–

(A) the genuineness of activities of the trust or institution; and

(B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; and

(ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),–

(A) pass an order in writing registering the trust or institution for a period of five years;

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard.

and send a copy of such order to the trust or institution.

Thus all trusts, institutions, etc., registered under new section 12AB, or has been provisionally registered under section 12AB or where registration has become inoperative due to first proviso of section 11(7) or in case of any modifications in their objects shall get registered after making adequate enquiry by the Principal Commissioner or Commissioner.

(iii) Registration in case of application made under sub-clauses (vi) of section 12A(1)(ac)

As per section 12AB(1)(c), the Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought and send a copy of such order to the trust or institution.

Thus an entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.

4. Status of pending applications

Sub-section (2) of section 12AB provides that all applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section will come into force, shall be deemed to be an application made under proposed sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

Thus the application pending for approval, registration, as the case may be, shall be treated as application in accordance with the new provisions, wherever they are being provided for.

5. Time period for passing order of registration

Sub-section (3) of the proposed section 12AB provides that the order under clause (a), sub-clause (ii) of clause (b) and clause (c) of sub-section (1) shall be passed, in such form and

manner as may be prescribed, before the expiry of the period of three months, six months and one month respectively, calculated from the end of the month in which the application was received. Thus–

Particulars	*Starting from the end of month in which application received*
(i) Revalidation of existing registration	▪ Within three months
(ii) Fresh or new registration	▪ Within six months
(iii) Provisional registration	▪ Within one month

6. Cancellation of registration under new scheme

Sub-section (4) of the proposed section 12AB provides that where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.

Sub-section (5) further provides that without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that,–

(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,

then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.

7. Amendment of similar nature in clause 10(23C)

In order to give same impact in case of approval required under section 10(23C), as discussed above in relation to section 12A and 12AA requisites amendments have also been proposed in relevant provisos to section 10(23C).

8. Concluding remarks

(i) An entity approved or registered under clause (23C) of section 10, section 12AA as the case may be, shall be required to apply for approval or registration as the case may be, and on doing so, the approval or registration in respect of the entity shall be valid for a period not exceeding five previous years at one time calculated from 1-4-2020.

(ii) An entity making fresh application for approval under clause (23C) of section 10, for registration under section 12AA, for approval under section 80G shall be provisionally approved or registered for three years on the basis of application without detailed enquiry even in the cases where activities of the entity are yet to begin and then it has to apply again for approval or registration which, if granted, shall be valid from the date of such provisional registration. The application of registration subsequent to provisional registration should be at least six months prior to expiry of provisional registration or within six months of start of activities, whichever is earlier.

□□□

FINANCE BILL, 2020—TCS

Enlargement of Scope of TCS by Finance Bill, 2020

▸ *The Finance Bill, 2020 has proposed certain amendments in section 206C so as to widen and deepen the scope of tax collection at source. The present write-up aims at analysing all these amendments to keep abrest the readers with latest development.*

– CA. Nisha Bhandari

1. Widening the scope of TCS provision

Section 206C provides for the collection of tax at source (TCS) on business of trading in alcohol, liquor, forest produce, scrap etc. Sub-section (1) of section 206C, provides that every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of certain goods a sum equal to specified percentage, of such amount as income-tax.

In order to widen and deepen the tax net the Finance Bill, 2020 has proposed to amend section 206C to levy TCS on the following —

(i) Remittance through Liberalised Remittance Scheme (LRS);

(ii) Sale of overseas tour package;

(iii) Sale of goods above specified limit.

2. TCS on foreign remittance through LRS and on sale of tour package

The Finance Bill, 2020 has proposed to insert a new sub-section (1G) in section 206C w.e.f. 1-4-2020 so as to levy TCS on overseas remittance and for sale of overseas tour packages.

(i) Person liable to collect tax

(a) An authorised dealer receiving an amount or an aggregate of amounts of seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India.

(b) A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package.

(ii) Rate of TCS

The rate of tax at source in such case shall be 5 per cent. By virtue of section 206CC, the rate of TCS shall be ten per cent in case of non-furnishing of PAN or aadhaar to the authorized dealer or to seller of overseas tour package as the case may be.

(iii) Time of TCS

The tax shall be collected at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier.

(iv) Non-applicability of proposed sub-section (1G)

By virtue of the proviso to sub-section (1G), the above TCS provision shall not apply if the buyer is,–

(a) liable to deduct tax at source under any other provision of the Act and he has deducted such amount.

(b) the Central Government, a State Government , an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person notified by the Central Government in the Official Gazette for this purpose subject to such conditions as specified in that notification.

(v) Meaning of "authorized dealer"

As per Explanation (i) to sub-section (1G) "authorised dealer" means a person authorised by the Reserve Bank of India under sub-section (1) of section 10 of the Foreign Exchange

Management Act, 1999 to deal in foreign exchange or foreign security.

(vi) Meaning of "overseas tour programme package"

As per Explanation (ii) to sub-section (1G) "overseas tour program package" means any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

3. TCS on sale of goods in certain cases

The Finance Bill, 2020 has also proposed to insert a new sub-section (1H) in section 206C w.e.f. 1-4-2020 so as to levy TCS on sale of goods above specified limit.

(i) Person liable to collect tax

As per sub-section (1H) of section 206C, a seller of goods is liable to collect TCS on consideration received from a buyer in a previous year in excess of fifty lakh rupees.

As clarified via Explanation (b) to section 206C(1H), only those seller whose total sales, gross receipts or turnover from the business carried on by it exceed ten crore rupees during the financial year immediately preceding the financial year, shall be liable to collect such TCS. The Central Government may however notify person, subject to conditions contained in such notification, who shall not be liable to collect such TCS.

(ii) Rate of TCS

The tax shall be collected at the rate of 0.1 per cent on consideration. However, by virtue of amended section 206CC the tax shall be collected at the rate of one per cent in case of non-furnishing of PAN or aadhaar.

(iii) Non-applicability of provision

In the following cases tax shall not be collected at source under sub-section (1H)—

(a) If the buyer is liable to deduct tax at source under any other provision of this Act and has deducted such amount. [Second proviso to sub-section (1H)];

(b) No TCS is to be collected from the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority as defined in Explanation to clause (20) of section 10 or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification. [Explanation (a) to sub-section (1H)].

4. Summing up

As a consequence of amendment proposed under section 206C by the Finance Bill, 2020—

(i) An authorised dealer receiving an amount or an aggregate of amounts of seven lakh rupees or more in a financial year for remittance out of India under the LRS of RBI, shall be liable to collect TCS, if he receives sum in excess of said amount from a buyer being a person remitting such amount out of India, at the rate of five per cent. In non-PAN/Aadhaar cases the rate shall be ten per cent.

(ii) A seller of an overseas tour program package who receives any amount from any buyer, being a person who purchases such package, shall be liable to collect TCS at the rate of five per cent. In non-PAN/ Aadhaar cases the rate shall be ten per cent.

(iii) A seller of goods is liable to collect TCS at the rate of 0.1 per cent. on consideration received from a buyer in a previous year in excess of fifty lakh rupees. In non-PAN/Aadhaar cases the rate shall be one per cent.

All these amendments will take effect from 1-4-2020.

□□□

FINANCE BILL, 2020—FEES AND PENALTY

Fees and Penalty—As Introduced by Finance Bill, 2020

▸ *The present write-up highlights the amendments proposed by the Finance Bill, 2020 relating to levy of fee or penalty for default in compliance of certain provisions and relating to e-penalty provision.*

– Pawan Prakash

1. Levy of penalty for flase entry, etc., in books of account

The Finance Bill, 2020 has proposed to insert a new section 271AAD w.e.f. assessment year 2020-21 so as to levy penalty for false or omission of entry in books of account.

(i) Reason for insertion of section 271AAD

In the recent past after the launch of Goods & Services Tax (GST), several cases of fraudulent input tax credit (ITC) claim have been caught by the GST authorities. In these cases, fake invoices are obtained by suppliers registered under GST to fraudulently claim ITC and reduce their GST liability. These invoices are found to be issued by racketeers who do not actually carry on any business or profession. They only issue invoices without actually supplying any goods or services. The GST shown to have been charged on such invoices is neither paid nor is intended to be paid. Such fraudulent arrangements deserve to be dealt with harsher provisions under the Act.

Therefore, it is proposed to introduce a new provision in the Act to provide for a levy of penalty on a person, if it is found during any proceeding under the Act that in the books of accounts maintained by him there is a (i) false entry or (ii) any entry relevant for computation of total income of such person has been omitted to evade tax liability.

(ii) Penalty when leviable under section 271AAD

As provided in sub-section (1) of section 271AAD, without prejudice to any other provisions of this Act, if during any proceeding under this Act, it is found that in the books of account maintained by any person there is–

(i) a false entry; or

(ii) an omission of any entry which is relevant for computation of total income of such person, to evade tax liability,

the assessing officer may direct for levy of penalty.

Sub-section (2) of new section 271AAD provides that without prejudice to the provisions of sub-section (1), the assessing officer may direct that any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry or omits or causes to omit any entry referred to in that sub-section then also penalty shall be levied.

Thus, any other person, who causes in any manner a person to make or cause to make a false entry or omits or causes to omit any entry, shall also pay penalty.

(iii) Amount of penalty

The amount of penalty under section 271AAD shall be a sum equal to the aggregate amount of such false or omitted entry.

(iv) False entry for purpose of penalty under section 271AAD

As clarified via Explanation to section 271AAD, for the purposes of this section, "false entry" includes use or intention to use–

(a) forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or

(b) invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or

(c) invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.

2. Penalty and fee for failure to furnish statements, etc.

(i) Requirement as regards filing of statement of donation and issuance of certificate to donee

Certain provisions of the Income Tax Act provide that an exempt entity may accept donations or certain sum for utilisation towards their objects or activities in respect of which the payer, being the donor, gets deduction in computation of his income. At present, there is no reporting obligation by the exempt entity receiving donation/any sum in respect of such donation/ sum. With the advancement in technology, it is now feasible to standardise the process through which one-to-one matching between what is received by the exempt entity and what is claimed as deduction by the assessee. This standardisation may be similar to the provisions relating to the tax collection/ deduction at source, which already exist in the Act. Therefore, the entities receiving donation/sum will require to furnish a statement in respect thereof, and to issue a certificate to the donor/payer and the claim for deduction to the donor/payer would be allowed on that basis only.

For this purpose suitable amendments have been proposed in sections 35 and 80G. In order to ensure proper compliance in this regard fee and penalty has also been proposed to be levied in cases where there is failure to furnish the statement or certificate.

(ii) Insertion of section 271K

The Finance Bill, 2020 has proposed to insert a new section 271K in the Income Tax Act w.e.f. 1-6-2020 to levy penalty for failure to furnish statement etc. The proposed section 271K provides that without prejudice to the provisions of this Act, the assessing officer may direct that a sum not less than ten thousand rupees but which may extend to one lakh rupees shall be paid by way of penalty by–

(i) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia), of sub-section (1) of section 35, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or

(ii) the institution or fund, if it fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section.

(iii) Fee for default in furnishing statement or certificate

The Finance Bill, 2020 has also proposed to insert a new section 234G so as to levy fee in case of default in furnishing statement or certificate. Sub-section (1) of the proposed section 234G provides that without prejudice to the provisions of this Act, where,–

(a) the research association, university, college or other institution referred to in clause (ii) or clause (iii) or the company referred to in clause (iia) of sub-section (1) of section 35 fails to deliver or cause to be delivered a statement within the time prescribed under clause (i), or furnish a certificate prescribed under clause (ii) of sub-section (1A) of that section; or

(b) the institution or fund fails to deliver or cause to be delivered a statement within the time prescribed under clause (viii) of sub-section (5) of section 80G, or furnish a certificate prescribed under clause (ix) of the said sub-section,

it shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

Sub-section (2) of the proposed section 234G provides that the amount of fee referred to in sub-section (1) shall,–

(a) not exceed the amount in respect of which the failure referred to therein has occurred;

(b) be paid before delivering or causing to be delivered the statement or before furnishing the certificate referred to in sub-section (1).

3. Provision for e-penalty

In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced.

Section 274 of the Income Tax Act provides for the procedure for imposing penalty under Chapter XXI of the Act. In response to a show cause notice issued by the assessing officer (AO), assessee or his authorised representative is still required to visit the office of the assessing officer. With the advent of the E-Assessment Scheme-2019 and in order to ensure that the reforms initiated by the Department to eliminate human interface from the system reaches the next level, it is imperative that an e-penalty scheme be launched on the lines of E-assessment Scheme, 2019.

Therefore, the Finance Bill, 2020 has proposed to insert a new sub-section (2A) in section 274 so as to provide that the Central Government may notify an e-scheme for the purposes of imposing penalty so as to impart greater efficiency, transparency and accountability by,–

(a) eliminating the interface between the assessing officer and the assessee in the course of proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.

It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, for issuing notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of imposing penalty shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31-3-2022. It is proposed that every notification issued shall be required to be laid before each House of Parliament.

This amendment will take effect from the assessment year 2020-21.

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Clarifications on Provisions of the Direct Tax Vivad se Vishwas Bill, 2020

During the Union Budget, 2020 presentation, the "*Vivad se Vishwas*" Scheme was announced to provide for dispute resolution in respect of pending income tax litigation. Pursuant to Budget announcement, the Direct Tax Vivad se Vishwas Bill, 2020 (Vivad se Vishwas) was introduced in the Lok Sabha on 5-2-2020. The objective of *Vivad se Vishwas* is to inter alia reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process. Subsequently, based on the representations received from the stakeholders regarding its various provisions, official amendments to *Vivad se Vishwas* have been proposed. These amendments seek to widen the scope of Vivad se Vishwas and reduce the compliance burden on taxpayers.

2. After introduction of *Vivad se Vishwas* in Lok Sabha, several queries have been received from the stakeholders seeking clarifications in respect of various provisions contained therein. Government has considered these queries and decided to clarify the same in form of answers to frequently asked questions (FAQs). These clarifications are, however, subject to approval and passing of *Vivad se Vishwas* by the Parliament and receiving assent of the Hon'ble President of India.

QUESTIONS ON SCOPE/ELIGIBILITY (Q. No. 1 - 24)

Question No. 1 : *Which appeals are covered under the Vivad se Vishwas?*

Answer : Appeals pending before the appellate forum [Commissioner (Appeals), Income Tax Appellate Tribunal (ITAT), High Court or Supreme Court, and writ petitions pending before High Court (HC) or Supreme Court (SC) or special leave petitions (SLPs) pending before SC as on the 31st day of January, 2020 (specified date) arc covered. Cases where the order has been passed but the time limit for filing appeal under the Income-tax Act, 1961 (the

Act) against the order has not expired as on the specified date are also covered, Similarly, cases where objections filed by the assessee against draft order are pending with Dispute Resolution Panel (DRP) or where DRP has given the directions but the Assessing Officer (AO) has not yet passed the final order on or before the specified date are also covered. Cases where revision application under section 264 of the Act is pending before the Principal Commissioner or Commissioner are covered as well. Further, where a declarant has initiated any proceeding or given any notice for arbitration, conciliation or mediation as referred to in clause 4 of the Bill is also covered.

Question No. 2 : *If there is no appeal pending but the case is pending in arbitration, will the taxpayer be eligible to apply under Vivad se Vishwas? If yes what will be the disputed tax?*

Answer : An assessee whose case is pending in arbitration is eligible to apply for settlement under *Vivad se Vishwas* even if no appeal is pending. In such case assessee should fill the relevant details applicable in his case in the declaration form. The disputed tax in this case would be the tax (including surcharge and cess) on the disputed income with reference to which the arbitration has been filed.

Question No. 3 : *Whether Vivad se Vishwas can be availed for proceedings pending before Authority of Advance Ruling (AAR)? If a writ is pending against order passed by AAR in a HC will that case be covered and how disputed tax to be calculated?*

Answer : *Vivad se Vishwas* is not available for disputes pending before AAR. However, if the order passed by AAR has determined the total income of an assessment year and writ against such order is pending in HC, the appellant would be eligible to apply for the *Vivad se Vishwas*. The disputed tax in that case shall be calculated as per the order of the AAR and accordingly, wherever required, consequential order shall be passed by the AO. However, if the order of AAR has not determined the total income, it would not be possible to calculate disputed tax and hence such cases would not be covered. To illustrate, if AAR has given a ruling that there exists Permanent Establishment (PE) in India but the AO has not yet determined the amount to be attributed to such PE, such cases cannot be covered since total income has not yet been determined.

Question No. 4 : *An appeal has been filed against the interest levied on assessed tax; however, there is no dispute against the amount of assessed tax. Can the benefit of the Vivad se Vishwas be availed?*

Answer : Declarations covering disputed interest (where there is no dispute on tax corresponding to such interest) are eligible under *Vivad se Vishwas*. It may be clarified that if there is a dispute on tax amount, and a declaration is filed for the disputed tax, the full amount of interest levied or leviable related to the disputed tax shall be waived.

Question No. 5 : *What if the disputed demand including interest has been paid by the appellant while being in appeal?*

Answer : Appeals in which appellant has already paid the disputed demand either partly or fully are also covered. If the amount of tax paid is more than amount payable under *Vivad se Vishwas*, the appellant will be entitled to refund without interest under section 244A of the Act.

Question No. 6 : *Can the benefit of the Vivad se Vishwas be availed, if a search and seizure action by the Income Tax Department has been initiated against a taxpayer?*

Answer : Case where the tax arrears relate to an assessment made under section 143(3) or section 144 or section 153A or section 153C of the Act on the basis of search initiated under section 132 or section 132A of the Act are excluded if the amount of disputed tax exceeds five crore rupees in that assessment year.

Thus, if there are 7 assessments of an assessee relating to search & seizure, out of which in 4 assessments, disputed tax is five crore rupees or less in each year and in remaining 3 assessments, disputed tax is more than five crore rupees in each year, declaration can he filed for 4 assessments where disputed tax is five crore rupees or less in each year.

Question No. 7 : *If assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO. Can he avail the Vivad se Vishwas with respect to such additions?*

Answer : If an appellate authority has set aside an order (except where assessment is cancelled with a direction that assessment is to be framed de novo) to the file of the AO for giving proper opportunity or to carry out fresh examination of the issue with specific direction, the assessee would be eligible to avail *Vivad se Vishwas*. However, the appellant shall also be required to settle other issues, if any, which have not been set aside in that assessment and in respect of which either appeal is pending or time to file appeal has not expired. In such a case disputed tax shall be the tax (including surcharge and cess) which would have been payable had the addition in respect of which the order was set aside by the appellate authority was to be repeated by the AO.

In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).

Question No. 8 : *Imagine a case where an appellant desires to settle concealment penalty appeal pending before CIT(A), while continuing to litigate quantum appeal that has travelled to higher appellate forum. Considering these are two independent and different appeals, whether appellant can settle one to*

exclusion of others? If yes, whether settlement of penalty appeal will have any impact on quantum appeal?

Answer : If both quantum appeal covering disputed tax and appeal against penalty levied on such disputed tax for an assessment year are pending, the declarant is required to file a declaration form giving details of both disputed tax appeal and penalty appeal. However, he would be required to pay relevant percentage of disputed tax only. Further, it would not be possible for the appellant to apply for settlement of penalty appeal only when the appeal on disputed tax related to such penalty is still pending.

Question No. 9 : *Is there any necessity that to qualify under the Vivad se Vishwas, the appellant should have tax demand in arrears as on the date of filing declaration?*

Answer : *Vivad se Vishwas* can be availed by the appellant irrespective of whether the tax arrears have been paid either partly or fully or are outstanding.

Question No. 10 : *Whether 234E and 234F appeals are covered?*

Answer : If appeal has been filed against imposition of fees under sections 234E or 234F of the Act, the appellant would be eligible to file declaration for disputed fee and amount payable under *Vivad se Vishwas* shall be 25% or 30% of the disputed fee, as the case may be.

If the fee imposed under section 234E or 234F pertains to a year in which there is disputed tax, the settlement of disputed tax will not settle the disputed fee. If assessee wants to settle disputed fee, he will need to settle it separately by paying 25% or 30% of the disputed fee, as the case may be.

Question No. 11 : *In case where disputed tax contains qualifying tax arrears as also non-qualifying tax arrears (such as, tax arrears relating to assessment made in respect of undisclosed foreign income):*

(i) Whether assessee is eligible to the *Vivad se Vishwas* itself?

(ii) If eligible, whether quantification of disputed tax can exclude/ignore non-qualifying tax arrears?

Answer : If the tax arrears include tax on issues that are excluded from the *Vivad se Vishwas*, such cases are not eligible to file declaration under *Vivad se Vishwas*. There is no provision under *Vivad se Vishwas* to settle part of a pending dispute in relation to an appeal or writ or SLP for an assessment year. For one pending appeal, all the issues are required to be settled and if anyone of the issues makes the declaration invalid, no declaration can be filed.

Question No. 12 : *If a writ has been filed against a notice issued under section 148 of the Act and no assessment order has been passed consequent to that section 148 notice, will such case be eligible to file declaration under Vivad se Vishwas?*

Answer : The assessee would not be eligible for *Vivad se Vishwas* as there is no determination of income against the said notice.

Question No. 13 : *With respect to interest under section 234A, 234B or 234C, there is no appeal but the assessee has filed waiver application before the competent authority which is pending as on 31 January, 2020? Will such cases be covered under Vivad se Vishwas?*

Answer : No, such cases are not covered. Waiver applications are not appeal within the meaning of *Vivad se Vishwas*.

Question No. 14 : *Whether assessee can avail of the Vivad se Vishwas for some of the issues and not accept other issues?*

Answer : Refer to answer to question no 11. Picking and choosing issues for settlement of an appeal is not allowed. With respect to one order, the appellant must chose to settle all issues and then only he would be eligible to file declaration.

Question No. 15 : *Will delay in deposit of TDS/TCS be also covered under Vivad se Vishwas?*

Answer : The disputed tax includes tax related to tax deducted at source (TDS) and tax collection at source (TCS) which are disputed and pending in appeal. However, if there is no dispute related to TDS or TCS and there is delay in depositing such TDS/TCS, then the dispute pending in appeal related to interest levied due to such delay will be covered under *Vivad se Vishwas*.

Question No. 16 : *Are cases pending before DRP covered? What if the assessee has not filed objections with DRP and the AO has not yet passed the final order?*

Answer : Yes, a person who has filed his objections before the DRP under section 144C of the Act and the DRP has not issued any direction on or before the specified date as well as a person in whose case the DRP has issued directions but the AO has not passed the final assessment order on or before the specified date, is eligible under *Vivad se Vishwas*.

It is further clarified that there could be a situation where the AO has passed a draft assessment order before the specified date. Assessee decides not to file objection with the DRP and is waiting for final order to be passed by the AO against which he can file appeal with Commissioner (Appeals). In this situation even if the final assessment order is not passed on or before the specified date, the assessee would be considered as the appellant and would be eligible to settle his dispute under *Vivad se Vishwas*. Disputed tax in such case would be computed based on the draft order. In the declaration form, the appellant in this situation should indicate that time to file objection with DRP has not expired.

Question No. 17 : *If CIT (Appeals) has given an enhancement notice, can the appellant avail the Vivad se Vishwas after including proposed enhanced income in the total assessed income?*

Answer : The amendment proposed in the *Vivad se Vishwas* allows the declaration even in cases where CIT (Appeals) has issued enhancement notice on or before 31st January, 2020. However, the disputed tax in such cases shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued.

Question No. 18 : *Are disputes relating to wealth tax, security transaction tax, commodity transaction tax and equalisation levy covered?*

Answer : No. Only disputes relating to income-tax are covered.

Question No. 19 : *The assessment order under section 143(3) of the Act was passed in the case of an assessee for the assessment year 2015-16. The said assessment order is pending with ITAT. Subsequently another order under section 147/143(3) was passed for the same assessment year and that is pending with CIT (Appeals)? Could both or one of the orders be settled under Vivad se Vishwas?*

Answer : The appellant in this case has an option to settle either of the two appeals or both appeals for the same assessment year. If he decides to settle both appeals then he has to file only one declaration form. The disputed tax in this case would be the aggregate amount of disputed tax in both appeals.

Question No. 20 : *In a case there is no disputed tax. However, there is appeal for disputed penalty which has been disposed off by CIT (Appeals) on 5th January 2020. Time to file appeal in ITAT against the order of Commissioner (Appeals) is still available but the appeal has not yet been filed. Will such case be eligible to avail the benefit?*

Answer : Yes, the appellant in this case would also be eligible to avail the benefit of *Vivad se Vishwas*. In this case, the terms of availing *Vivad se Vishwas* in case of disputed penalty/interest/fee are similar to terms in case of disputed tax. Thus, if the time to file appeal has not expired as on specified date, the appellant is eligible to avail benefit of *Vivad se Vishwas*. In this case the appellant should indicate in the declaration form that time limit to file appeal in ITA T has not expired.

Question No. 21 : *In a case ITAT has quashed the assessment order based on lack of jurisdiction by the AO. The department has filed an appeal in HC which is pending. Is the assessee eligible to settle this dispute under Vivad se Vishwas and if yes how disputed tax be calculated as there is no assessment order?*

Answer : The assessee in this case is eligible to settle the department appeal in HC. The amount payable shall be calculated at half rate of 100%, 110%, 125% or 135%, as the case may be, on the disputed tax that would be restored if the department was to win the appeal in HC.

Question No. 22 : *In the case of an assessee prosecution has been instituted and is pending in court. Is assessee eligible for the Vivad se Vishwas?*

Answer : No. However, where only notice for initiation of prosecution has been issued with reference to tax arrears, the taxpayer has a choice to compound the offence and opt for *Vivad se Vishwas*.

Question No. 23 : *If the due date of filing appeal is after 31-1-2020 the appeal has not been filed, will such case be eligible for Vivad se Vishwas?*

Answer : Yes

Question No. 24 : *If appeal is filed before High Court and is pending for admission as on 31-1-2020, whether the case is eligible for Vivad se Vishwas?*

Answer : Yes

QUESTIONS RELATED TO CALCULATION (Q.No. 25-40)

Question No. 25 : *In a case appeal or arbitration is pending on the specified date, but a rectification is also pending with the AO which if accepted will reduce the total assessed income. Will the calculation of disputed tax be calculated on rectified total assessed income?*

Answer : The rectification order passed by the AO may have an impact on determination of disputed tax, if there is reduction or increase in the income and tax liability of the assessee as a result of rectification. The disputed tax in such cases would be calculated after giving effect to the rectification order passed, if any.

Question No. 26 : *Refer to question number 5. How will disputed tax be calculated in a case where disputed demand including interest has been paid by the assessee while being in appeal?*

Answer : Please refer to answer to question no. 5. To illustrate, consider a non search case where an assessee is in appeal before Commissioner (Appeals). The tax on returned income (including surcharge and cess) comes to Rs. 30,000 and interest under section 234B of Rs.1,000. Assessee has paid this amount of Rs. 31,000 at the time of filing his tax return. During assessment an addition is made and additional demand of Rs. 16,000 has been raised, which comprises of disputed tax (including surcharge and cess) of Rs. 10,000 and interest on such disputed tax of Rs.6000. Penalty has been initiated separately. Assessee has paid the demand of Rs. 14,000 during pendency of appeal; however interest under section 220 of the Act is yet to be calculated. Assessee files a declaration, which is accepted and certificate is issued by the designated authority (DA). The disputed tax of Rs. 10,000 (at 100%) is to be paid on or before 31st March 2020. Since he has already paid

Rs. 14,000, he would be entitled to refund of Rs. 4,000 (without section 244A interest). Further, the interest leviable under section 220 and penalty leviable shall also be waived.

Question No. 27 : *Refer to question no. 7. How will disputed tax be computed in a case where assessment has been set aside for giving proper opportunity to an assessee on the additions carried out by the AO?*

Answer : Please refer to answer to question no. 7. To illustrate, return of income was filed by the assessee. The tax on returned income was Rs. 10,000 and interest was Rs. 1,000. The amount of Rs. 11,000 was paid before filing the return. The AO made two additions of Rs. 20,000/- and Rs. 30,000/-. The tax (including surcharge and cess) on this comes to Rs. 6,240/- and Rs. 9,360/- and interest comes toRs.2,500 and Rs.3,500 respectively. Commissioner (Appeals) has confirmed the two additions. ITAT confirmed the first addition (Rs. 20,000/-) and set aside the second addition (Rs. 30,000/-) to the file of AO for verification with a specific direction. Assessee appeals against the order of ITAT with respect to first addition (or has not filed appeal as time limit to file appeal against the order has not expired). The assessee can avail the *Vivad se Vishwas* if declaration covers both the additions. In this case the disputed tax would be the sum of disputed tax on both the additions i.e. Rs. 6240/- plus Rs. 9,360/-.

In such cases while filling the declaration form, appellant can indicate that with respect to the set-aside issues the appeal is pending with the Commissioner (Appeals).

Question No. 28 : *What amount of tax is required to be paid, if an assessee wants to avail the benefit of the Vivad se Vishwas?*

Answer : Under the *Vivad se Vishwas*, declarant is required to make following payment for settling disputes:

A. In appeals/writ/SLP/DRP objections/revision application under section 264/arbitration filed by the assessee -

(a) In case payment is made till 31st March, 2020-

(i) 100% of the disputed tax (125% in search cases) where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty levied or leviable), or

(ii) 25% of the disputed penalty, interest or fee where dispute relates to disputed penalty, interest or fee only.

(b) In case payment is made after 31st March, 2020 –

(i) 110% of the disputed tax (135% in search cases) where dispute relates to disputed tax (excess amount over 100% limited to the amount of interest and penalty), or

(ii) 30% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

However, if in an appeal before Commissioner (Appeals) or in objections pending before DRP, there is an issue on which the appellant has got favourable decision from ITAT (not reversed by HC or SC) or from the High Court (not reversed by SC) in earlier years then the amount payable shall be half or 50% of above amount.

Similarly, if in an appeal before ITAT, there is an issue on which the appellant has got favourable decision from the High Court (not reversed by SC) in earlier years then the amount payable shall be half or 50% of above amount.

B. In appeals/writ/SLP filed by the Department -

(a) In case payment is made till 31st March, 2020-

(i) 50% of the disputed tax (62.5% in search cases) in case of dispute related to disputed tax or

(ii) 12.5% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

(b) In case payment is made after 31st March, 2020 -

(i) 55% of the disputed tax (67.5% in search cases) in cases of dispute related to disputed tax, or

(ii) 15% of the disputed penalty, interest or fee in case of dispute related to disputed penalty, interest or fee only.

Question No. 29 : *Whether credit for earlier taxes paid against disputed tax will be available against the payment to be made under Vivad se Vishwas?*

Answer : The amount payable by the declarant under *Vivad se Vishwas* shall be determined by the DA under clause 5. Credit for taxes paid against the disputed tax before filing declaration shall be available to the declarant. Please refer to example at question no. 26 above. If in that example against disputed tax of Rs. 10,000 an amount of Rs. 8,000/- has already been paid, the appellant would be required to pay only the remaining Rs. 2,000/- by 31st March 2020.

Question No. 30 : *Where assessee settles TDS appeal or withdraws arbitration (against order under section 201) as deductor of TDS, will credit of such tax be allowed to deductee?*

Answer : In such cases, the deductee shall be allowed to claim credit of taxes in respect of which the deductor has availed of dispute resolution under *Vivad se Vishwas*. However, the credit will be allowed as on the date of settlement of dispute by the deductor and hence the interest as applicable to deductee shall apply.

Question No. 31 : *Where assessee settles TDS liability as deductor of TDS under Vivad se Vishwas (i.e., against order under section 201), when will he get consequential relief of expenditure allowance under proviso to section 40(a)(i)/(ia)?*

Answer : In such cases, the deductor shall be entitled to get consequential relief of allowable expenditure under proviso to section 40(a)(i)/(ia) in the year in which the tax was required to be deducted.

To illustrate, let us assume that there are two appeals pending; one against the order under section 201 of the Act for non-deduction of TDS and another one against the order under section 143 (3) of the Act for disallowance under section 40(a)(i)/(ia) of the Act. The disallowance under section 40 is with respect to same issue on which order under section 201 has been issued. If the dispute is settled with respect to order under section 201, assessee will not be required to pay any tax on the issue relating to disallowance under section 40(a)(i)/(ia) of the Act, in accordance with the provision of section 40(a)(i)/(ia) of the Act.

In case, in the order under section 143(3) there are other issues as well, and the appellant wants to settle the dispute with respect to order under section 143(3) as well, then the disallowance under section 40(a)(i)/(ia) of the Act relating to the issue on which he has already settled liability under section 201 would be ignored for calculating disputed tax.

If the assessee has challenged the order under section 201 on merits and has won in the Supreme Court or the order of any appellate authority below Supreme Court on this issue in favour of the assessee has not been challenged by the Department on merit (not because appeal was not filed on account of monetary limit for filing of appeal as per applicable CBDT circular), then in a case where disallowance under section 40(a)(i)/(ia) of the Act is in consequence of such order under section 201 and is part of disputed income as per order under section 143(3) in his case, such disallowance would be ignored for calculating disputed tax, in accordance with the proviso to section 40(a)(i)/(ia) of the Act.

It is clarified that if the assessee has made payment against the addition representing section 40(a)(i)/(ia) disallowance, the assessee shall not be entitled to interest under section 244A of the Act on amount refundable, if any, under *Vivad se Vishwas*.

It is further clarified that if the assessee wish to settle disallowance under section 40(a)(i)/(ia) in a search case on the basis of settlement of the dispute under section 201, he shall be required to pay higher amount as applicable for search cases for settling dispute in respect of that TDS default under section 201.

Question No. 32 : *When assessee settles his own appeal or arbitration under Vivad se Vishwas, will consequential relief be available to the deductor in default from liability determined under TDS order under section 201?*

Answer : When an assessee (being a person receiving an income) settles his own appeal or arbitration under *Vivad se Vishwas* and such appeal or arbitration is with reference to assessment of an income which was not subjected to TDS by the payer of such income (deductor in default) and an order under section 201 of the Act has been passed against such deductor in default, then such deductor in default would not be required to pay the corresponding TDS amount. However, he would be required to pay the interest under sub-section (1A) of section 201 of the Act. If such levy of interest under sub-section (1A) of section 201 qualifies for *Vivad se Vishwas*, the deductor in default can settle this dispute at 25% or 30% of the disputed interest, as the case may be, by filing up the relevant schedule of disputed interest.

Question No. 33 : *Where DRP order passed on or after 1st July, 2012 and before 1st June, 2016 have given relief to assessee and Department has filed appeal, how assessed tax to be calculated?*

Answer : If department appeal is required to be settled, then against that appeal the appellant is required to pay only 50% of the amount that is otherwise payable if it was his appeal.

Question No. 34 : *Appeals against assessment order and against penalty order are filed separately on same issue. Hence there are separate appeals for both. In such a case how disputed tax to be calculated?*

Answer : Please see question no. 8. Further, it is clarified that if the appellant has both appeal against assessment order and appeal against penalty relating to same assessment pending for the same assessment year, and he wishes to settle the appeal against assessment order (with penalty appeal automatically covered), he is required to give details of both appeals in one declaration form for that year. However, in the annexure he is required to fill only the schedule relating to disputed tax.

Question No. 35 : *If there is substantive addition as well as protective addition in the case of same assessee for different assessment year, how will that be covered? Similarly if there is substantive addition in case of one assessee and protective addition on same issue in the case of another assessee, how will that be covered under Vivad se Vishwas?*

Answer : If the substantive addition is eligible to be covered under *Vivad se Vishwas*, then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of the assessee or in the case of another assessee.

Question No. 36 : *In a case ITAT has passed order giving relief on two issues and confirming three issues. Time to file appeal has not expired as on specified date. The taxpayer wishes to file declaration for the three issues which have gone against him. What about the other two issues as the taxpayer is not sure if the department will file appeal or not?*

Answer : The *Vivad se Vishwas* allow declaration to be filed even when time to file appeal has not expired considering them to be a deemed appeal. *Vivad se Vishwas* also envisages option to assessee to file declaration for only his appeal or declaration for department appeal or declaration for both. Thus, in a given situation the appellant has a choice, he can only settle his deemed appeal on three issues, or he can settle department deemed appeal on two issues or he can settle both. If he decides to settle only his deemed appeal, then department would be free to file appeal on the two issues (where the assessee has got relief) as per the extant procedure laid down and directions issued by the CBDT.

Question No. 37 : *There is no provision for 50% concession in appeal pending in HC on an issue where the assessee has got relief on that issue from the SC?*

Answer : If the appellant has got decision in his favour from SC on an issue, there is no dispute now with regard to that issue and he need not settle that issue. If that issue is part of the multiple issues, the disputed tax may be calculated on other issues considering nil tax on this issue.

Question No. 38 : *Addition was made under section 143(3) on two issues whereas appeal filed only for one addition. Whether interest and penalty be waived for both additions?*

Answer : Under *Vivad se Vishwas*, interest and penalty will be waived only in respect of the issue which is disputed in appeal and for which declaration is filed. Hence, for the undisputed issue, the tax, interest and penalty shall be payable.

Question No. 39 : *DRP has issued directions confirming all the proposed additions in the draft order and the AO has passed the order accordingly. The issues confirmed by DRP include an issue on which the taxpayer has got favourable order from ITAT (not reversed by HC or SC) in an earlier year. The time limit to file appeal in ITAT is still available. The taxpayer is eligible for Vivad se Vishwas treating the situation as taxpayer's deemed appeal in ITAT. In this case how will disputed tax be calculated? Will it be 100% on the issue allowed by ITAT in earlier years or 50%?*

Answer : In this case, on the issue where the taxpayer has got relief from ITAT in an earlier year (not reversed by HC or SC) the disputed tax shall be computed at half of normal rate of 100%, 110%, 125% or 135%, as the case maybe.

Question No. 40 : *Where there are two appeals filed for an assessment year- one by the appellant and one by the tax department, whether the appellant can opt for only one appeal? If yes, how would the disputed tax be computed?*

Answer : The appellant has an option to opt to settle appeal filed by it or appeal filed by the department or both. Declaration form is to be filed assessment year wise i.e. only one declaration for one assessment year. For different assessment years separate declarations have to be filed. So the appellant needs to specify in the declaration form whether he wants to settle his appeal, or department's appeal in his case or both for a particular assessment year. The computation of tax payable would be carried out accordingly.

QUESTIONS RELATED TO PROCEDURE (Q.No. 41-50)

Question No. 41 : *How much time shall be available for paying the taxes after filing a declaration under the Vivad se Vishwas?*

Answer : As per clause 5 of *Vivad se Vishwas*, the DA shall determine the amount payable by the declarant within fifteen days from the date of receipt of the declaration and grant a certificate to the declarant containing particulars of the tax-arrear and the amount payable after such determination. The declarant shall pay the amount so determined within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the DA in the prescribed form. Thereafter, the DA shall pass an order stating that the declarant has paid the amount. It may be clarified that 15 days is outer limit. The DAs shall be instructed to grant a certificate at an early date enabling the appellant to pay the amount on or before 31st March, 2020 so that he can take benefit of reduced payment to settle the dispute.

Question No. 42 : *If taxes are paid after availing the benefits of the Vivad se Vishwas and later the taxpayer decides to take refund of these taxes paid, would it be possible?*

Answer : No. Any amount paid in pursuance of a declaration made under the *Vivad se Vishwas* shall not be refundable under any circumstances.

Question No. 43 : *Where appeals are withdrawn from the appellate forum, and the declarant is declared to be ineligible under the Vivad se Vishwas by DA at the stage of determination of amount payable under section 5(1) or, amount determined by DA is at variance of amount declared by declarant and declarant is not agreeable to DA's determination of amount payable, then whether the appeals are automatically reinstated or a separate application needs to be filed for reinstating the appeal before the appellate authorities?*

Answer : Under the amended procedure no appeal is required to be withdrawn before the grant of certificate by DA. After the grant of certificate by DA

under clause 5, the appellant is required to withdraw appeal or writ or special leave petition pending before the appellant forum and submit proof of withdrawal with intimation of payment to the DA as per the same clause. Where assessee has made request for withdrawal and such request is under process, proof of request made shall be enclosed.

Similarly in case of arbitration, conciliation or mediation, proof of withdrawal of arbitration/conciliation/mediation is to be enclosed along with intimation of payment to the DA.

Question No. 44 : *Clause 5(2) requires declarant to pay amount determined by DA within 15 days of receipt of certificate from DA. Clarification is required on whether declarant is to also intimate DA about fact of having made payment pursuant to declaration within the period of 15 days?*

Answer : As per clause 5(2), the declarant shall pay the amount determined under clause 5(1) within fifteen days of the date of receipt of the certificate and intimate the details of such payment to the DA in the prescribed form and thereupon the DA shall pass an order stating that the declarant has paid the amount.

Question No. 45 : *Will DA also pass order granting expressly, immunity from levy of interest and penalty by the AO as well as immunity from prosecution?*

Answer : As per clause 6, subject to the provisions of clause 5, the DA shall not institute any proceeding in respect of an offence; or impose or levy any penalty; or charge any interest under the Income-tax Act in respect of tax arrears. This shall be reiterated in the order under section 5(2) passed by DA.

Question No. 46 : *Whether DA can amend his order to rectify any patent errors?*

Answer : Yes, the DA shall be able to amend his order under clause 5 to rectify any apparent errors.

Question No. 47 : *Where tax determined by DA is not acceptable can appeal be filed against the order of designated authority before [ITAT, High Court or Supreme Court?*

Answer : No. As per clause 4(7), no appellate forum or arbitrator, conciliator or mediator shall proceed to decide any issue relating to the tax arrears mentioned in the declaration in respect of which order is passed by the DA or the payment of sum determined by the DA.

Question No. 48 : *There is no provision for withdrawal of appeal/writ/SLP by the department on settlement of dispute?*

Answer : On intimation of payment to the DA by the appellant pertaining to department appeal/writ/SLP, the department shall withdraw such appeal/writ/SLP.

Question No. 49 : *Once declaration is filed under Vivad se Vishwas, and for financial difficulties, payment is not made accordingly, will the declaration be null and void?*

Answer : Yes it would be void.

Question No. 50 : *Where the demand in case of an assessee has been reduced partly or fully by giving appeal effect to the order of appellate forum, how would the amount payable under Vivad se Vishwas be adjusted?*

Answer : In such cases, after getting the proof of payment of the amount payable under *Vivad se Vishwas*, the AO shall pass order under the relevant provisions of *Vivad se Vishwas* to create demand in case of assessee against which the amount payable shall be adjusted.

QUESTIONS RELATED TO CONSEQUENCES (Q.No. 51-55)

Question No. 51 : *Will/here be immunity from prosecution?*

Answer : Yes, clause 6 provides for immunity from prosecution to a declarant in relation to a tax arrears for which declaration is filed under *Vivad se Vishwas* and in whose case an order is passed by the DA that the amount payable under *Vivad se Vishwas* has been paid by the declarant.

Question No. 52 : *Will the result of this Vivad se Vishwas be applied to same issues pending before AO?*

Answer : No, only the issues covered in the declaration are settled in the dispute without any prejudice to same issues pending in other cases. It has been clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

Question No. 53 : *If loss is not allowed to be adjusted while calculating disputed tax, will that loss be allowed to be carried forward?*

Answer : As per the amendment proposed in *Vivad se Vishwas*, in a case where the dispute in relation to an assessment year relates to reduction of Minimum Alternate Tax (MAT) credit or reduction of loss or depreciation, the appellant shall have an option either to (i) include the amount of tax related to such MAT credit or loss or depreciation in the amount of disputed tax and carry forward the MAT credit or loss or deprecation or (ii) to carry forward the reduced tax credit or loss or depreciation. CBDT will prescribe the manner of calculation in such cases.

Question No. 54 : *If the taxpayer avails Vivad se Vishwas for Transfer Pricing adjustment, will provisions of section 92CE of the Act apply separately?*

Answer : Yes, secondary adjustment under section 92CE will be applicable. However, it may be noted that the provision of secondary adjustment as contained in section 92CE of the Act is not applicable for primary adjustment made in respect of an assessment year commencing on or before the 1st day of April 2016. That means, if there is any primary adjustment for assessment year 2016-17 or earlier assessment year, it is not subjected to secondary adjustment under section 92CE of the Act.

Question No. 55 : The appellant has settled the dispute under Vivad se Vishwas in an assessment year. Whether it is open for Revenue to take a stand that the additions have been accepted by the appellant and hence he cannot dispute it in future assessment years?

Answer : Please refer answer to question no. 52. It has been clarified in Explanation to clause 5 that making a declaration under *Vivad se Vishwas* shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a part in appeal or writ or in SLP to contend that the declarant or the income tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.

CORRIGENDUM

Corrigendum to Circular No. 4 of 2020, dtd. 16-01-2020, [F.No.275/192/2019-IT(B)], dtd. 5-3-2020

Income Tax Deduction from Salaries During the Financial Year 2019-2020 Under Section 192 of the Income Tax Act, 1961

In *Circular No.04/2020 dated 16th January, 2020* on the above mentioned subject, it is to state that Para 3.1 under heading "Method of Tax Collection" is modified as below:

For sentenced of Para 3.1:

No tax however will be required to be deducted at source in a case unless flie estimated salary income including the value of perquisites for the Financial Year exceeds Rs 2,50,000/- or Rs 3,00,000/- or Rs 5 00 000- as the case may be, depending upon the age of the employee.'

May be read as:

No tax, however, will be required to be deducted at source in a case unless the estimated salary income including the value of perquisites is taxable after giving effect to the exemptions, deductions and relief as applicable.

2. In view of the above, *Circular No. 04/2020* may accordingly be treated as modified to this extent.

NOTIFICATIONS

Notification No. 16/2020, dtd. 5-3-2020 [F.No.370142/22/2019-TPL]

Section 47(viiab)—Exemption from Transfer—Notified Securities

S.O. 986(E).—In exercise of the powers conferred by sub-clause (d) of clause (viiab) of section 47 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the following securities for the purposes of the said sub-clause, namely:-

(i) foreign currency denominated bond;

(ii) unit of a Mutual Fund;

(iii) unit of a business trust;

(iv) foreign currency denominated equity share of a company;

(v) unit of Alternative Investment Fund,

which are listed on a recognised stock exchange located in any International Financial Services Centre in accordance with the regulations made by the Securities and Exchange Board of India under the Securities and Exchange Board of India Act 1992 (15 of 1992) or the International Financial Services Centres Authority under the International Financial Services Centres Authority Act 2019 (50 of 2019), as the case may be.

Explanation.- For the purposes of this notification,–

(a) "Mutual Fund" means a Mutual Fund specified under clause (23D) of section 10 of the Income-tax Act, 1961.

(b) "Alternative Investment Fund" shall have the meaning assigned to it in clause (b) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

2. This notification shall come into force with effect from 1st April 2020.

Notification No. 17/2020, dtd. 13-3-2020 F. No. 173/10/2014-ITA-I]

Section 115AD—Foreign Institutional Investor—Notified

S.O. 1057(E).—In exercise of the powers conferred by clause (a) of the Explanation to section 115 AD of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies that a non-resident being an Eligible Foreign Investor which operates in accordance with the Securities and Exchange Board of India, circular IMD/HO/FPIC/CIR/P/2017/003 dated 04th January, 2017, shall be deemed as Foreign Institutional Investor (FII) for the purposes of transactions in securities made on a recognised stock exchange located in any International Financial Services Centre (IFSC), where the consideration for such transaction is paid or payable in foreign

currency.

Explanation. - for the purpose of this notification, -

(a) "International Financial Services Centre" shall have the same meaning as assigned to it in clause (q) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(b) "recognised stock exchange" shall have the same meaning as assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43 of the Income-tax Act, 1961;

(c) the expression "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

PRESS RELEASES

Press Release, dtd. 4-3-2020

TDS Surveys by Income Tax Department Unearths Huge Defaults in Deduction and Deposit

In a major breakthrough, the TDS wing of the Income Tax Department has unearthed default of tax deducted at source (TDS) of Rs. 324 crore in the case of a major Telecom Operator in Delhi. The company did not make the required TDS of 10% under section 194J of the Income-tax Act, 1961 on technical contracts worth Rs. 4000 crore. The amount is further liable to go up once the enquiry is completed.

Several hospitals of the city were found openly flouting the norms of TDS and tax collected at source (TCS) and were paying less tax to the Income Tax Department. During the survey, at two premier hospitals, one with more than 2500 bed capacity and the other with 700 bed capacity, it was found that the former was not making any TDS on construction contracts as statutorily required under section 194C/ 194J, while the latter was deducting tax at the rate of 10% only on salary paid to the doctors, instead of the present TDS rate of 30% applicable for salary payments.

Enquiries during the survey revealed that the terms of appointment between the hospital and the doctors indicated an employer-employee relationship on which the hospital was required to deduct tax at 30% instead of 10% as was being made by the hospital. TDS defaults of Rs. 70 crore and Rs. 20 crore respectively were detected in the said hospitals. Further enquiry revealed that the hospitals were also not making the required TDS at 10% from the maintenance charges paid for the hitech sophisticated operation theatre and diagnostic equipments.

Furthermore, it was seen that many hospitals were still not complying with the TCS norms which came into effect from June 1, 2016 under which, on any cash payment received in excess of Rs. 2 lakh, the hospital was required to collect TCS @1% and deposit it to the Government account.

In another TDS survey conducted on a prominent Real Estate Group in Delhi in the first week of the March, 2020, after credible data analysis of previous years, analysis of TDS compliance patterns by the various group companies, their ITR filings and tax auditor reports and real time data generated by CPC-TDS, it was seen that the deductor having already deducted tax in earlier years, had not deposited the deducted taxes in government account.

During the survey, verification and analysis indicated outstanding TDS liability and interest payable of Rs. 214 crore. Major TDS default related to the payment of interest on outstanding loans. The Real Estate Company had taken huge loans on which interest payments were credited from time to time, TDS was duly deducted during various financial years but was not deposited to Government account. Since it was a case of non-compliance, interest at the rate of 1.5% for every month or part of the month is to be paid from the date on which such tax is deducted to the date on which such tax is actually deposited to Government account.

In another action by the TDS Wing of the Department, TDS default of approximately Rs. 3200 crore was detected in the case of a major oil company pursuant to survey under section 133A of the Act. The defaults included short deduction of tax and non deduction of tax respectively. Short deduction of tax pertained to TDS under section 194J for several years on payment of Fee for Technical Services for installation and maintenance of high tech oil refineries, payments for chemical process of re-gasification and transportation of LNG. Default of non deduction was detected on composite contracts involving service and purchase of products on which TDS @2% should have been deducted but which was not deducted resulting in the said default.

The Income Tax Department has, in recent times, stepped up enforcement action against TDS default cases as this category of revenue contributes to over 45% of the total direct tax collection in the country. As per Rules, the TDS has to be paid to the credit of the central government within seven days from the end of the month in which the deduction is made.

Press Release, dtd. 5-3-2020

CBDT Issues FAQs on Direct Tax Vivad se Vishwas Scheme, 2020

The '*Vivad se Vishwas*' Scheme was announced during the Union Budget, 2020, to provide for dispute resolution in respect of pending income tax litigation. Pursuant to the Budget announcement, the Direct Tax *Vivad se Vishwas* Bill, 2020 (hereinafter called *Vivad se Vishwas*) was introduced in the Lok Sabha on 5th of February, 2020 and passed by it on 4th of March, 2020. The objective of *Vivad se Vishwas*

is to inter alia reduce pending income tax litigation, generate timely revenue for the Government and benefit taxpayers by providing them peace of mind, certainty and savings on account of time and resources that would otherwise be spent on the long-drawn and vexatious litigation process. Subsequently, based on the representations received from the stakeholders regarding its various provisions, official amendments to *Vivad se Vishwas* have been proposed. These amendments seek to widen the scope of *Vivad se Vishwas* and reduce the compliance burden on taxpayers.

After introduction of *Vivad se Vishwas* in Lok Sabha, several queries have been received from the stakeholders seeking clarifications in respect of various provisions contained in the Scheme. After considering various queries received from stakeholders, CBDT has clarified the same in the form of answers to frequently asked questions (FAQs) vide *Circular No.7/2020 dated 04-03-2020*. The FAQs contain clarifications on scope/eligibility, calculation of disputed tax, procedure related to payment of disputed tax and consequential benefits to the declarant. These FAQs are available on the official website of the Income Tax Department at *https://www.incometaxindia.gov.in/ communications/ circular/circular_no_7_2020.pdf.*

It is reiterated that these clarifications are, however, subject to approval and passing of *Vivad se Vishwas* by the Parliament and receiving assent of the Hon'ble President of India.

Press Release, dtd. 2-3-2020

Income Tax Department Conducts Search on a Group of Individuals, Hawala Dealers and Businessmen in Raipur

On 27-02-2020, Income Tax Department conducted a search on a group of individuals, hawala dealers and businessmen in Raipur. The search action was mounted on the basis of credible inputs, intelligence and evidence of generation of huge unaccounted cash from liquor and mining business and transfer of the same to public servants, huge cash deposits during demonetization period, accommodation entries from shell companies, undisclosed investment in properties etc. Subsequently, based on evidences found during search, a few other premises were also covered in consequential actions.

Incriminating documents and electronic data seized during the search show that substantial amount of illegal gratification was being paid to public servants and others every month. Further, daily details of unaccounted sales, bank accounts opened in the names of employees having transactions worth crores and an unaccounted bank account have been found. Details of benami vehicles, hawala transfers, transfer to Kolkata-based companies and creation of shell companies with huge land bank have also been found and seized. Search has also resulted in seizure of substantial amount of cash. The total unaccounted transactions unearthed till date are over Rs. 150 crore and the figure is likely to substantially increase after the seized evidences and leads found during the search are further scrutinized and investigated. The search action and investigations are continuing and a number of Prohibitory Orders have been placed, including on several bank lockers.

Press Release, dtd. 29-2-2020

Income Tax Department Conducts Search on Prominent Metal Processing and Financing Group in Tamil Nadu

On 25-02-2020, the Income Tax Department conducted a search in the case of a prominent business group based in Chennai dealing in the business of non-ferrous metal processing in lead, copper and aluminium and Money Lending activities. The group is said to have reported a turnover of more than a thousand crore and engaged in a number of businesses such as plastic manufacture and financing activities.

The highlight of the search is the discovery of hidden cloud servers other than the servers regularly used by the group for accounting, containing unaccounted transaction details often referred by the group as "kaccha" accounts. Similarly, large amount of encrypted data was retrieved from a pen drive which was tracked and obtained from a third party premise. The pen drive and the database was decrypted to gather information about the unaccounted capital accumulated by the group. Evidences were also gathered for the introduction of unaccounted funds as bogus share premium in one of the group companies.

Large number of property documents, Promissory notes, post dated cheques taken as collateral security etc in the money lending business were recovered during the search and have been seized. As per evidence detected during the search, the search action resulted in cash seizure of Rs. 1 crore and detection of unaccounted income exceeding Rs. 400 crore. The investigations are still ongoing and the Department is in the process of finalizing the proceedings.

RULE

Notification No. 15/2020, dtd. 5-3-2020 [F.No. 370142/5/2020-TPL]

Income Tax (7th Amendment) Rules, 2020—Amendment of Rule 17C

G.S.R. 159(E).–In exercise of the powers conferred by clause (xii) of sub-section (5) of section 11 read

with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely: -

1. Short title and commencement

(1) These rules may be called the Income-tax (7th Amendment) Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962, in rule 17C, after clause (v), the following clause shall be inserted, namely: -

"(va) investment made by a person, authorised under section 4 of the Payment and Settlement Systems Act, 2007, in the equity share capital or bonds or debentures of a company–

(A) which is engaged in operations of retail payments system or digital payments settlement or similar activities in India and abroad and is approved by the Reserve Bank of India for this purpose; and

(B) in which at least fifty-one per cent of equity shares are held by National Payments Corporation of India."

Note: The principal rules were published in the Gazette of India, Extraordinary, Part-II, Section-3, Sub-section (ii) vide *number S.O. 969 (E) dated the 26th March, 1962* and were last amended vide *notification number G.S.R. 124(E) dated the 17th February, 2020.*

OTHER STATUTES OF FORTNIGHT

(Other Statutes as under which have not gone in print owing to paucity of space are available on website http://www.taxpublishers.in/Journal_CLL.aspx for going through or download)

THE DIRECT TAX VIVAD SE VISHWAS ACT, 2020 (GAZETTED ON 17-3-2020)

The Direct Tax Vivad Se Vishwas Act, 2020—No. 3 of 2020, dt. 17-3-2020

NOTIFICATION

Notification of 'designated authority' under 'the Direct Tax Vivad Se Vishwas Act, 2020—*F.No. Pr. CCIT/Lko/Judl./VSV/ Vol.2I/2019-20, dtd. 18-3-2020*

Notification of 'designated authority' under the Direct Tax Vivad Se Vishwas Act, 2020—*F.No. Pr.CCIT/(Hqrs.) (Coord.)/Delhi/ VSV/Designated Authority/2019-20/ 8641, dtd. 18-3-2020*

THE DIRECT TAX VIVAD SE VISHWAS RULES, 2020

The Direct Tax Vivad Se Vishwas Rules, 2020—*Notification No. 18/2020, dtd. 18-3-2020 [F. No. IT(A)/1/2020-TPL]*

SELECT CASE LAW LIBRARY

(Full Reports with Headnotes on our website http://www.taxpublishers.in/Journal_CLL.aspx)

S. 2(47)(v) **INCOME TAX ACT, 1961**

Capital gains—***Transfer under section 2(47)(v)***—*JDA—No transfer of possession to joint developer*

Possession had not been given to developer by assessee society. In fact developer had filed a suit for specific performance in 2014 which was still pending before High Court. Hence, there was no transfer within the meaning of section 2(47)(v) read with section 53A of Transfer of Property Act, 1882, even based on part performance of the contract and accordingly, there could not be any incidence of capital gains.

Decision: In assessee's favour

➲ ***ITO v. State Bank of India Staff Vaibhav Co-op. HSG. Ltd. 2019 TaxPub(DT) 5016 (Mum-Trib)***

S. 10AA

Deduction under section 10AA—***Scaling down of profit***—*Re-allocation of expenses*

Merely because an assessee makes an extraordinary profit, it would not lead to the conclusion that same was organized/arranged for that the onus remains undischarged by AO, except for presence of suspicious circumstances, as such adjustments made by the AO scaling down the deduction under section 10AA, was, therefore, without sanction of law.

Decision: Matter remanded

➲ ***SJR Commodities & Consultancies (P) Ltd. v. ITO 2019 TaxPub(DT) 4665 (Mum-Trib)***

S. 12AA

Charitable trust—***Registration under section 12AA***—*Allowability—Assessee-engaged in running a play school*

Running a playschool, did not fit into the concept of education even more despite claim of upgradation (up to Fifth Standard) with effective from 1-4-2017, no evidence with regard thereto had been furnished.

Accordingly, denial of registration under section 12AA was justified.

Decision: Against the assessee

➲ ***Green Educational Society v. CIT 2019 TaxPub(DT) 4613 (Asr-Trib)***

S. 12AA

Charitable trust—***Registration under section 12AA***—*CIT(E) being not satisfied with genuineness of activities of assessee*

Where surplus generated by society engaged in providing education, was ploughed back for education purposes, it could safely be concluded that such society was existing solely for educational purposes and not for purposes of profit. Thus, it would be entitled for registration under section 12AA.

Decision: In assessee's favour

➲ ***Sanatam Dharam Educational Charitable Society v. CIT 2019 TaxPub(DT) 5100 (Asr-Trib) : (2019) 178 ITD 242 (Asr-Trib)***

S. 12AA(3)

Charitable trust—***Cancellation of registration under section 12AA***—*Receipt of capitation fee by educational trust*

Receipt of capitation fee by educational institution and non-recording thereof by assessee, educational trust, in regular books of account was in total violation of section 13(1)(c) and, therefore, cancellation of registration under section 12AA was justified.

Decision: Against the assessee

➲ ***Prathyusha Educational Trust v. Asstt. CIT 2019 TaxPub(DT) 4854 (Chenn-Trib)***

S. 14A

Disallowance under section 14A—***Expenditure against exempt income***—*Assessee having sufficient interest free funds*

Where assessee was having sufficient interest free funds available with it, more than amount invested for earning the dividend, the disallowance under section 14A read with rule 8D would not be permissible.

Decision: In assessee's favour

➲ ***Pr. CIT v. Gujarat State Fertilizers & Chemicals Ltd. 2019 TaxPub(DT) 4559 (Guj-HC)***

S. 14A

Disallowance under section 14A—***Expenditure against exempt income***—*Disallowance of management and trusteeship fee, interest and administrative expenses*

Management and trusteeship fee had not been debited to profit and loss account, accordingly same could not be disallowed under rule 8D(2)(i). Further, investments were made out of sufficient own funds available with assessee, accordingly, no disallowance of interest expenditure under rule 8D(2)(ii) was called for. Accordingly, disallowance to the extent of 0.5% of average value of the investment as provided under rule 8D(2)(iii) was only sustainable.

Decision: Partly in assessee favour

➲ ***Rural Electrification Corporation Ltd. v. Dy. CIT 2019 TaxPub(DT) 4857 (Del-Trib)***

S. 28(i)

Business loss—***Capital loss or Revenue loss***—*Loss on sale of fertilizer bonds*

Where assessee received fertilizer bonds from Government against subsidy income duly credited in its profit and loss account, the loss occurred on sale of such bonds would be allowable as business loss.

Decision: In assessee's favour

➲ ***Pr. CIT v. Gujarat State Fertilizers & Chemicals Ltd. 2019 TaxPub(DT) 4559 (Guj-HC)***

S. 28(i)

Business loss—*Loss towards option premium*

The issue as to whether option premium was solely and exclusively incurred for diamond business relatable to non-SEZ unit and therefore, loss had been rightly claimed against the profits of non SEZ unit.

Decision: Matter remanded

➲ ***SJR Commodities & Consultancies (P) Ltd. v. ITO 2019 TaxPub(DT) 4665 (Mum-Trib)***

S. 32(1)(ii)

Depreciation—***Allowability***—*Payment of non-compete fees*

The expression 'or any other business or commercial rights of similar nature' used in Explanation 3 to section 32(1)(ii) was wide enough to include payment of non-compete fees. Accordingly, assessee had rightly claimed depreciation on non-compete fees, being an intangible asset.

Decision: In assessee's favour

➲ ***Pr. CIT v. Piramal Glass Ltd. 2019 TaxPub(DT) 4572 (Bom-HC)***

S. 35(1)(ii)

Business deduction under section 35(1)(ii)—***Donation to scientific research organisation***—*Impact of withdrawal of recognition with retrospective effect*

Donor (i.e. assessee) could not be affected due to subsequent withdrawal of recognition with retrospective effect, accordingly AO was directed to grant deduction under section 35(1)(ii).

Decision: In assessee's favour

➲ ***Gujarat Agrochem (P) Ltd. v. ACIT 2019 TaxPub(DT) 4614 (Mum-Trib)***

S. 36(1)(iii)

Business deduction under section 36(1)(iii)—***Allowability***—*Interest paid on borrowed funds for gaining controlling interest of a subsidiary*

Assessee would be entitled to deduction of interest paid on borrowed funds under section 36(1)(iii), when the investment was made for acquiring the controlling interest in shares of subsidiary company.

Decision: In assessee's favour

➲ ***Pr. CIT v. Piramal Glass Ltd. 2019 TaxPub(DT) 4572 (Bom-HC)***

S. 36(1)(iii)

Business deduction under section 36(1)(iii)—***Interest on borrowed capital***—*Assessee having made investments in sister concern out of sufficient own funds*

As investments in sister concern were made out of sufficient own funds available with assessee, therefore, no proportionate disallowance of deduction under section 36(1)(iii) was called for.

Decision: In assessee's favour

➲ ***Dy. CIT v. Khurana Rolling Mills (P) Ltd. 2019 TaxPub(DT) 4981 (Chd-Trib) : (2019) 73 ITR (Trib) 613 (Chd-Trib)***

S. 36(1)(viii)

Business deduction under section 36(1)(viii)—***Reserve created by financial corporation, etc.***—*Assessee seeking deduction of addition made to income*

Deduction under section 36(1)(viii) is available on income for 'long-term finance'. AO was directed to verify, if additions to income were in the nature of income from long-term finance and if so allow the benefit. Ceiling for deduction under section 36(1)(viia)(c) would also be revised accordingly.

Decision: In assessee's favour (by way of remand)

➲ ***Rural Electrification Corporation Ltd. v. Dy. CIT 2019 TaxPub(DT) 4857 (Del-Trib)***

S. 37(1)

Business expenditure—***Provision for post-retirement medical benefit of employees***—*Creation of provision on the basis of acturial valuation and liability being definite*

Provision for post-retirement medical benefit of employees had been created on the basis of actuarial calculation on a scientific basis and liability was not contingent but definite, accordingly, no disallowance could be made.

Decision: In assessee's favour

➲ ***Rural Electrification Corporation Ltd. v. Dy. CIT 2019 TaxPub(DT) 4857 (Del-Trib)***

S. 41(1)

Business income—***Remission or cessation of trading liability***—*Surplus from assignment of loan having been taken for acquisition of capital asset*

Since assignment of loan at present value of future liability was not cessation or extinguishment of liability as loan had to be repaid by the third party and, therefore, resulting surplus could not be taxed under section 41(1), that too when loan had been taken for acquisition of capital asset.

Decision: In assessee's favour

➲ ***Cable Corporation of India Ltd. v. Dy. CIT 2019 TaxPub(DT) 4698 (Mum 'C'-Trib) : (2019) 177 ITD 223 (Mum 'C'-Trib) : (2019) 201 TTJ (Mum 'C'-Trib) 1009***

S. 45

Capital gains—***Conversion of firm into company***—*Transfer of capital asset—Violation of conditions provided in section 47(xiii)*

On violation of conditions provided in proviso to clause (xiii) of section 47, when transfer of capital asset is brought within the ambit of section 45, the liability to pay tax on profits and gains of such transfer of capital asset, falls not on erstwhile firm but on successor company. Hence, the assessee firm was not liable to be assessed for capital gains as result of violation of conditions provided in clause (xiii) of section 47.

Decision: In assessee's favour

➲ ***K.T.C. Automobiles v. Dy. CIT 2019 TaxPub(DT) 4722 (Ker-HC) : (2019) 266 Taxman 117 (Ker) : (2019) 311 CTR (Ker) 905***

S. 47(xiii)

Capital gains—***Transaction regarded as transfer under section 47(xiii)***—*Conversion of partnership firm into company*

Revaluation of capital asset of assessee-firm before its conversion as a company and crediting the enhanced value of the asset to current account of partners and treating it, as loan from the partners in account of the company would amount to violation of clause (c) of the proviso to section 47(xiii) and thus, the said transaction would amount to transfer of capital asset within the purview of section 45.

Decision: Against the assessee

➲ ***K.T.C. Automobiles v. Dy. CIT 2019 TaxPub(DT) 4722 (Ker-HC) : (2019) 266 Taxman 117 (Ker) : (2019) 311 CTR (Ker) 905***

S. 54

Capital gains—***Deduction under section 54***—*Assessee did not deposit amount in capital gains account scheme before due date prescribed under section 139(1)—Sale proceeds were utilized for construction of residential house within the three years itself*

Where sale proceeds were utilized for construction of residential house within the three years itself and it is not a pre-condition to invest the money in the specified Central Govt. Scheme of the sale proceeds

if the property is purchased and constructed for residential purposes, therefore, deduction under section 54 could not be denied to assessee.

Decision: In assessee's favour

➲ ***Vijay Chaudhary v. ITO 2019 TaxPub(DT) 4835 (Del-Trib)***

S. 54

Capital gains—***Deduction under section 54***—*Sale proceeds of residential house utilized in acquisition of plot—Possession of plot could not be acquired due to developer's failure*

Amount utilized by the assessee in the acquisition of land should be construed as amount invested in purchase/construction of residential house the intention of the statute as provided in section 54 had been fully satisfied by the assessee in the present case though plot was not handed by the developer due to his own failure.

Decision: In assessee's favour

➲ ***Varun Seth v. Asstt. CIT 2019 TaxPub(DT) 4538 (Del 'F'-Trib) : (2019) 177 ITD 499 (Del 'F'-Trib) : (2019) 201 TTJ (Del 'F'-Trib) 423***

S. 54B

Capital gains—***Deduction under section 54B***—*When the part of land was not cultivable, whether denial of claim was justified*

For claiming benefit under section 54B it is not necessary that the entire land should be used for cultivation. Therefore, even if any part of land is under cultivation for two years immediately preceding the date of transfer, it would be sufficient to claim exemption under section 54B. Merely because of admission of proportionate disallowance, the assessee could not be denied the benefit to which he was eligible.

Decision: In assessee's favour

➲ ***Rajendra Bastimal Chordiya v. ITO 2019 TaxPub(DT) 4885 (Pune-Trib)***

S. 54F

Capital gains—***Deduction under section 54F***—*Investment by assessee in construction on the plot belonging to spouse*

A liberal interpretation has to be given to section 54F which is a beneficial provision, accordingly, assessee was entitled for deduction under section 54F as regards sale proceeds invested in the plot belonging to her husband especially in view of the fact that assessee and her husband were living together and also sale proceeds received by the assessee were used for construction of house.

Decision: In assessee's favour

➲ ***Siriki Appala Kondamma v. ITO 2019 TaxPub(DT) 5090 (Visakha Trib)***

S. 56

Income from other sources—***Interest on fixed deposits***—*Deposits made by societies out of interest on loan waived by assessee—AO alleging diversion of taxable income*

Subject FDRs created out of corpus funds were in control of co-operative societies and amount lying in their bank account, could be withdrawn by them for specified purposes. In view of this, interest in question on those FDRs accrued to those said co-operative societies. Also, societies had been showing interest income in their hands on which deduction under section 80P was claimed, hence, there was no reason to treat interest earned by societies as assessee's income.

Decision: In assessee's favour

➲ ***Rural Electrification Corporation Ltd. v. Dy. CIT 2019 TaxPub(DT) 4857 (Del-Trib)***

S. 56(2)(viib)

Income from other sources—***Fair market value of premium on share***—*Report of valuer under DCF method—Valuation done by valuer as per mandate of statute*

Under section 56(2)(viib) read with rule 11UA(2) if law provides the assessee to get the valuation done from a prescribed expert as per the prescribed method, then the same cannot be rejected because neither the AO nor the assessees have been recognized as expert under the law.

Decision: In assessee's favour

➲ ***Cinestaan Entertainment (P.) Ltd. v. ITO 2019 TaxPub(DT) 4550 (Del 'B'-Trib) : (2019) 177 ITD 809 (Del 'B'-Trib) : (2019) 200 TTJ (Del 'B'-Trib) 459***

S. 68

Income from undisclosed sources—***Addition under section 68***—*Assessee received advances from customers and the same were subsequently adjusted against goods sold to them*

When assessee received advances from customers and the same were subsequently adjusted against goods sold to them, then, the advances could not be treated as unexplained cash credit under section 68, therefore, addition under section 68 made by AO on account of unexplained cash advances was deleted.

Decision: In assessee's favour

➲ ***Sanjay Agarwal v. ITO 2019 TaxPub(DT) 4987 (Kol-Trib)***

S. 68

Income from undisclosed sources—***Addition under section 68***—*Unexplained credit—Separate maintenance of books by assessee and his proprietorship concern*

Where assessee and his proprietorship concern were maintaining separate books of account, the assessee might have his own capital of 'X' amount and yet his capital contribution in capital account of a proprietorship concern could be more than 'X' amount because such funding of capital could be not

only out of own capital but out of other available funds as well. Therefore, the addition made on account of unexplained credit due to difference in capital account of assessee and his proprietorship concern was liable to be deleted.

Decision: In assessee's favour

➲ ***Pr. CIT v. Ajay Jaysukhlal Mehta 2019 TaxPub(DT) 4551 (Guj-HC)***

S. 80IB

Deduction under section 80-IB—***Allowability***—*Certain residential units exceeded the built-up area of 1000 ft.*

Assessee would be eligible for deduction on *'pro rata'* basis to the number of residential units that complied with the requirement of section 80-IB of the maximum built-up area.

Decision: In assessee's favour

➲ ***Pr. CIT v. SG Estate Ltd. 2019 TaxPub(DT) 5111 (Del-HC)***

S. 80IB/80IC

Deduction under section 80IB/80-IC—***Allowability***—*Activity being intrinsically connected with assessee's business*

Where manufacture and supply of boxes was essential for housing electronics meters so as to make it convenient for use by the consumers, such activity being intrinsically connected with assessee's business of manufacture of electric meters, would qualify for deduction under section 80-IB/80-IC.

Decision: In assessee's favour

➲ ***CIT v. Secure Meters Ltd. 2019 TaxPub(DT) 5110 (Raj-HC)***

S. 80IC

Deduction under section 80IC—***Delay of 01 day in filing the return of income beyond the prescribed period***—*Assessee had not filed the return of income within the stipulated period as provided under section 139(1)—Allowability of deduction*

Where the delay of 1 day in on-line filing of return occurred not due to any negligence of the assessee, rather, the reason for the same was beyond the control of the assessee, therefore matter was remanded back to AO to examine the limited aspect as to whether the assessee, otherwise, was entitled to claim deduction under section 80-IC of the Act and if so found eligible, AO would allow the claim accordingly.

Decision: In assessee's favour by way of remand

➲ ***Shree Ganesh Concast Group of Industries v. Dy. CIT 2019 TaxPub(DT) 4650 (Chd-Trib)***

S. 92B

Transfer pricing—***International transaction***—*AMP expenses*

Unless TPO could establish direct benefit accruing to foreign AE, it was very difficult to accept existence of international transaction. Matter was remanded to TPO for deciding it afresh after affording adequate opportunity of being heard to assessee.

Decision: Matter remanded

➲ ***Adidas India Marketing (P) Ltd. v. ITO 2019 TaxPub(DT) 5021 (Del-Trib)***

S. 92C

Transfer pricing—***Computation of ALP***—*Adjustment of notional interest accrued on account of delayed payment by AE*

Notional interest accrued on account of delayed payment by AE could not be treated as part of assessee's income.

Decision: In assessee's favour

➲ ***CIT v. Secure Meters Ltd. 2019 TaxPub(DT) 5110 (Raj-HC)***

S. 92C

Transfer pricing—***Computation of ALP***—*Corporate guarantee provided by assessee to its A.E.*

Where corporate guarantee provided by assessee to its AE, was part of the commercial activity of assessee and where assessee incurred no cost when it provided such benefit to its AE, there was no requirement to made adjustment on account of such corporate guarantee provided by assessee.

Decision: In assessee's favour

➲ ***CIT v. Secure Meters Ltd. 2019 TaxPub(DT) 5110 (Raj-HC)***

S. 133A

Survey—***Income on account of undisclosed sundry debtors surrendered by assessee***—*AO treating the same as deemed income under sections 69, 69A/B/C—Surrender purely related to business activity*

Since no evidence was found to show that surrendered income represented any undisclosed income/investment/expenditure, the source of which had not been disclosed by assessee, it could not be regarded as deemed income under sections 68, 69, 69A, 69B and 69C. Surrender offered by assessee on account of undisclosed sundry debtors was purely related to business carried out by the assessee and no undisclosed business activity had been found during survey. Therefore, same had to be assessed as business income and assessee was entitled to claim set-off of losses against the income assessed as per provisions of section 115BBE.

Decision: In assessee's favour

➲ ***Dy. CIT v. Khurana Rolling Mills (P) Ltd. 2019 TaxPub(DT) 4981 (Chd-Trib) : (2019) 73 ITR (Trib) 613 (Chd-Trib)***

S. 144C(13)

Transfer pricing—***Dispute resolution panel***—*Directions of DRP not followed by AO*

In terms of section 144C(13), AO was bound to pass final assessment order in conformity with directions of DRP. Therefore, assessment order to the extent of ALP adjustment as regards impugned transactions was remanded back to AO to comply with directions of DRP.

Decision: Matter remanded

➲ ***Adidas India Marketing (P) Ltd. v. ITO 2019 TaxPub(DT) 5021 (Del-Trib)***

S. 148

Reassessment—***Reason for issuing reassessment notice not furnished to assessee***—*Validity*

Where assessee was not furnished reason for reopening the assessment by AO along with reassessment notice under section 148, the order of reassessment could not be upheld and the matter was remanded back to AO with the directions to first decide the objection of assessee after giving adequate opportunity of being heard to assessee.

Decision: In assessee's favour by way of remand

➲ ***IFFCO Tokio General Insurance Co. Ltd. v. DCIT 2019 TaxPub(DT) 4784 (Del-Trib)***

S. 194IA

Tax deduction at source—***Under section 194-IA***—*Purchase of agricultural land on piece-meal basis Combined value of three properties exceeding Rs. 50 lakhs and seller and khasra number being the same*

Assessee in instant case had purchased three properties on three different dates. This indicated that assessee had purchased the land on piece meal basis. Since value mentioned in each sale deed was less than Rs. 50 lakhs, therefore, section 194-IA would not be applicable to assessee merely because the seller and Khasra number of the three properties was same.

Decision: In assessee's favour

➲ ***Shiv Shakti Builders & Developers v. ITO 2019 TaxPub(DT) 4648 (Del-Trib)***

S. 195

Tax deduction at source—***Under section 195***—*Payment of buying agency commission to non-resident*

Services rendered by non-resident outside India were purely in the nature of procurement services and could not be characterized as 'managerial', 'technical' or 'consultancy' services and thus, could not be taxed in absence of a permanent establishment in India, accordingly, liability to withhold tax under section 195 did not arise.

Decision: In assessee's favour

➲ ***Adidas India Marketing (P) Ltd. v. ITO 2019 TaxPub(DT) 5021 (Del-Trib)***

S. 195

Tax deduction at source—***Under section 195***—*Payment to non-resident towards order procurement services rendered outside India*

Order procurement services could not be considered as technical or consultancy services as per definition given in relevant Article to DTAA and, therefore, related payments made by assessee were business profits of non-resident and since non-resident was not having PE in India, no taxability arose and assessee was not liable to withhold tax under section 195.

Decision: In assessee's favour

➲ ***Pure Software (P) Ltd. v. ITO 2019 TaxPub(DT) 4639 (Del-Trib)***

S. 195

Tax deduction at source—***Under section 195***—*Referral fees to foreign concern, for introducing clients to assessee—Whether fee for technical services*

Services rendered by foreign concern for introducing a client did not "make-available" any technical knowledge, experience, skill, know-how or processes to assessee, therefore, related payment did not fall within the realm of "Fees for included services" as envisaged in Article 12 of the Indo-US, DTAA and payment made to foreign concern constituted its business profits within the meaning of Article 7 Indo-USA DTAA, and in the absence of any Permanent Establishment of the said foreign concern in India, no taxability arose and, therefore, assessee was not liable to withhold tax under section 195.

Decision: In assessee's favour

➲ ***Knight Frank (India) (P) Ltd. v. Asstt. CIT 2019 TaxPub(DT) 4471 (Mum-Trib) : (2020) 203 TTJ (Mum-Trib) 117***

S. 220(6)

Recovery—***Attachment of resulting company's bank accounts***—*Notice of reopening of assessment of amalgamating company not received by resulting company*

When resulting company had not received notice of reopening of assessment of amalgamating company, then, order of assessment that came to be passed pursuant to the notice of reopening of assessment, was not against the resulting company, thus, notice of recovery was set aside and attachment of the resulting company's bank accounts was lifted.

Decision: In assessee's favour

➲ ***Hinal Estates (P) Ltd. v. UOI & Anr. 2019 TaxPub(DT) 4719 (Bom-HC) : (2019) 266 Taxman 411 (Bom)***

COMPANY LAW/SEBI

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COMPANY LAW

■ Cabinet nod for foreign listing of firms, decriminalising offences

The Union Cabinet on Wednesday approved 72 changes to the Companies Act 2013, with a thrust on decriminalising compoundable offences and allowing direct foreign listing for domestic companies to boost "Brand India". The nod for the Companies amendment Bill, likely to be tabled in the ongoing Parliament session, has been given to ease compliance burden related to corporate social responsibility (CSR) by exempting companies with obligation to spend Rs 50 lakh or less. Such companies will not be required to have a CSR committee. Also, if a company spends more than the required 2 per cent of its average profit in any given year, it can carry forward the excess amount to the subsequent financial years.

"We want to bring ease of doing business for stakeholders. Our priority is to decriminalise by removing sections that result in criminality when it is not intended," Nirmala Sitharaman, finance and corporate affairs minister, told reporters.

A new section, 129A, is proposed to be added for prescribed classes of unlisted companies, which will file results on a periodic basis in addition to annual filing, to make "the periodic economic data more scientific". The government plans to re-categorise 23 of the 66 compoundable offences, which will be dealt with by an in-house adjudicating framework. For 11 offences, the Bill proposes to limit the penalty and remove the imprisonment clause. The quantum of penalty will also be reduced for six defaults that had already been decriminalised. With respect to allowing domestic firms to list on foreign exchanges, Corporate Affairs Secretary Injeti Srinivas said the enabling provision would be introduced in the Act and a detailed framework of rules would be brought in the next few months. Currently, Indian companies only have the option of American Depository Receipt (ADR) or Global Depository Receipt (GDR) route to tap foreign investors. A press statement said the move would increase the attractiveness of the technology sector, provide an alternative source of capital, and broaden the investor base.

www.business-standard.com dt. 05-03-2020

NCLT

■ Govt ramps up capacity of the NCLT Benches to boost decision-making

The government is ramping up the capacity of the National Company Law Tribunal (NCLT) Benches to boost decision-making and reduce delays. It will set up dedicated Benches for insolvency and bankruptcy cases and add 40 new positions for NCLT, said Injeti Srinivas, secretary, corporate affairs ministry to the standing committee on finance. "When the NCLT was set up, IBC was never in the picture. It was only set up as a company law court. The IBC has now sort of dominated," Srinivas said.

Because of the increase in IBC cases, which are getting primacy at the NCLT, company cases are getting badly delayed. The government is also planning to set up specialised Benches for competition law to reduce the burden of the appellate tribunal, which is referred to on all matters from company law and IBC to competition law and the national financial reporting authority. The corporate affairs ministry has finalised the recruitment rules for NCLT Benches. The total sanctioned strength for regular staff in NCLT is 320. Around 725 people are engaged on outsource mode in NCLT. Separately, three to four law clerks have been engaged for each Bench. "In the NCLT, of 63, 48 are in position...Now that the recruitment rules are ready, we are very hopeful that in six months or so all the regular staff will be in position," Srinivas said. Since inception, close to 62,000 cases came to the NCLT. These include the ones which transferred from board of industrial and financial reconstruction and high courts. Of these, more than 40,000 cases were disposed and 21,500 cases were pending. The government estimates that the number of cases being referred to the NCLT is rising at a rate of 10 per cent. The load of cases is expected to go up, as more stressed companies knock on the doors of the Tribunal.

The corporate affairs ministry is also planning to increase the threshold for cases referred through the IBC to the tribunal from the current limit of Rs 1 lakh. "The law permits us to go up to Rs 1 crore, but of course, a lower threshold actually has a deeper impact on behaviour because there is a fear of being pulled into the IBC process. But of course, this is being revisited," Srinivas said. For speedy disposal of cases, the government on March 15 constituted another Bench of the National Company Law Appellate Tribunal at Chennai to hear the appeals against the orders of NCLT Benches. It will have jurisdiction of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, Telangana, Lakshadweep, and Puducherry.

www.business-standard.com dt. 17-03-2020

NFRA

■ Statutory auditors get a breather on NFRA-2 form

Statutory auditors have been given more time to file their form NFRA-2 — which specifies the format of annual return — for financial year 2018-19 with

the National Financial Reporting Authority (NFRA), the independent audit regulator. They can now file this form within 150 days from the date of its publication on NFRA's website i.e., 150 days from December 9, when it was published on website. It may be recalled that the corporate affairs ministry (MCA) had, in December last year, given a breather for statutory auditors who were earlier required to file the NFRA-2 form with NFRA by November 30. It had then said that the form NFRA-2 could be filed with NFRA within 90 days from the day on which it was published on the website of the authority. This meant that auditors had time till March 9 to file the comprehensive annual return for 2018-19. Now, this time limit has been extended by two more months — by May 9, this form has to be filed. One of the reasons for extending the timeline in November 2019 was that the NFRA came up with the format very late and closer to the November 30 deadline. As the information sought was quite extensive, more time was required and representations were made to the MCA to extend the last date of filing, sources said. Even with the revised deadline of March 9, auditors are not able to provide comprehensive information that is sought to be obtained by the regulator. So, after some representation again, the last date is being extended by another 60 days, they said.

www.thehindubusinessline.com dt. 09-03-2020

SEBI

■ Fast-track rights issue: SEBI comes out with guidelines for REITs, InvITs

Markets regulator SEBI on Friday put in place a framework for emerging investment instruments REITs and InvITs for issuance of units under the fast-track rights issue mode. This comes after the regulator earlier this month allowed fast-track rights issue by (REITs) and infrastructure investment trusts (InvITs) without filing draft offer document with SEBI.

In a circular, the regulator said listed REITs and InvITs desirous of issuing units under fast-track rights issue will have to comply with certain guidelines. The units of these instruments should be listed on any stock exchange for a period of at least three years immediately preceding the record date and all the units of the InvIT and REIT are held in demat form on the record date. Among other conditions, the average market capitalisation of public unit holding of InvIT and REIT each should be at least Rs 250 crore and these investment instruments need to redress at least 95 per cent of the complaints received from the investors till the end of the quarter immediately preceding the month of the record date. SEBI said there should not be any regulatory action imposed on the InvIT and REIT in the three years preceding the year in which rights issue has been proposed. The imposition of monetary fines by stock exchanges on the InvIT will not be a ground for ineligibility for undertaking issuances under this clause. Further, there should not be any show-cause notices issued or prosecution proceedings initiated or pending against these instruments or their promoters or directors; they also should not have settled any alleged violation under the settlement mechanism; and units of InvIT and REIT should not be suspended from trading as a disciplinary measure during last three years immediately preceding the record date.

www.business-standard.com dt. 14-03-2020

■ One commodity, one exchange: SEBI proposes a China like model for MCX

To deepen and grow commodity markets in India with an intention to make India a price-setter than a price-taker, the Securities and Exchange Board of India has proposed, 'one commodity, one exchange' plan even though currently multiple exchanges are allowed to launch contract on the same commodity to create competition and give choice to investors.

As of now, the Multi Commodity Exchange (MCX) is a major player in metals, precious metals and energy contracts, while National Commodity and Derivatives Exchange (NCDEX) in agriculture) segment and Indian Commodity Exchange (ICEX) in diamonds, paddy and steel. However, according to the regulator, the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) are not able to grow and the SEBI argues that if exchanges focus on one or two commodities then they can grow meaningfully. SEBI's reason for moving to a new proposal is that under the existing system, exchanges' focus shifts to meeting competition rather than developing market in their own commodities and liquidity gets fragments in more than one exchanges. An industry official said, "there is a need for an approach similar to the product patent for commodities contracts. When one exchange does proper research and launches a contract it is easier for others to duplicate that. SEBI's proposal is good in that way because when one exchange brings some uniqueness, it gets time and enough incentive to develop and create liquidity in that contract." He added that SEBI seems to be following a China-like model for an Indian commodity market.

www.business-standard.com dt. 17-03-2020

STOCK EXCHANGE

■ Many NSE-listed companies yet to appoint women independent director

As many as 150 of India's top 1,000 companies by market value are yet to appoint a woman independent director, with just a month to meet the regulator's mandate, according to data compiled by market tracker nseinfobase.com, run by Prime Database. Corporate governance experts and board members attributed this to sheer inertia on part of

companies in meeting the mandate. Some also said there was a strong bias against women that still existed in the top echelons of the corporate hierarchy.

"Woman leaders of today are still struggling because of the mindset of the business owners, many of whom are not lending themselves to unconscious bias training and inclusion conversations," said Saundarya Rajesh, the founder of diversity and inclusion consulting firm Avtar Group. "A lot of corporates are doing gender sensitisation awareness and training managers. However, even while the middle management women are gaining from these, women in the top management are not gaining that much ... when it comes to CXOs and boards, the bias against women is still pretty strong," she said.

In 2018, the Uday Kotak Committee formed by the Securities and Exchange Board of India had recommended that at least one woman independent director be on the board of the top 500 listed entities by market capitalisation by April 1, 2019. All the top 1,000 listed entities, according to it, must have a female independent director by April 1, 2020.

www.economictimes.indiatimes.com dt. 03-03-2020

PROFESSIONALS' INPUT LIBRARY

COMPANIES ACT, 2013—CARO, 2020

Key Modifications Under CARO, 2020 : Additional Reporting Requirements

▸ *The Companies (Auditor's Report) Order, 2016 (CARO, 2016) has been superseded by CARO, 2020 by inserting new clauses and amending few previous ones. The learned author has highlighted the significant new insertions made by the CARO, 2020 in this article.*

– Pragya Lalwani

1. Introduction

The Companies (Auditor's Report) Order is an order wherein auditor(s) report on certain clauses as mentioned therein. The Central Government after consultation with the National Finance Reporting Authority issued the Companies (Auditor's Report) Order, 2020 [CARO, 2020] which has been notified on 25-2-2020. The CARO, 2020 replaces the CARO, 2016 and is annexed to every audit report made by the Auditor under section 143 of the Companies Act, 2013 for financial years commencing on or after 1-4-2019 without change in the applicability on class of companies. Key modifications with respect to the order have been provided hereunder:

2. Disclosure regarding fixed assets, revaluation of assets and benami transactions

As per para 3(i) of the CARO, 2020, disclosure regarding Property, Plant and Equipment recognised as fixed assets; intangible assets being maintained by the company has to be made. Further, for the immovable properties (except the property obtained by the company on lease) title of which is not with the company, disclosures to be made are: (a) Description of such immovable property; (b) Gross carrying value; (c) title owner; (d) owned by promoter, director, their relative or employee; (e) range of period held and; (f) reasons for not being held in name of company.

It also requires that if the company has revalued its fixed assets or intangible assets or both during the year, following disclosures should be made:

(i) Whether the revaluation is based on the valuation by a Registered Valuer;

(ii) Specify the amount of change, if change is 10% or more in the aggregate of the net carrying value of each class of such asset.

The CARO, 2020 also requires compulsory disclosure by auditor regarding any proceedings pending or initiated against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 and rules made thereunder, if any, in its financial statements.

3. Disclosure when statements filed with banks regarding working capital limits above Rs. 5 crore not in line with books of account

Any discrepancy noticed while the physical verification of the inventory, it has to be properly dealt with in the books of account only when such discrepancy is more than or equal to 10% in aggregate for each class of inventory.

Further, if the company sanctioned with working capital limits in excess of five crore rupees from banks or financial institutions on the basis of security of current assets; and the quarterly returns or statements filed with them by the company, are not in agreement with the company's books of account, then details *in re* have to be given.

4. Income disclosed during tax assessments not recorded in books

The CARO with para 3(viii) uncovers the companies that are not disclosing their income in the books of account. According to this clause, if any transaction not being recorded in the books of account has been disclosed or surrendered as income during the tax assessments, then auditor has to report whether the previously unrecorded income has been properly recorded in the books of account during that year.

5. Disclosure regarding wilful defaulter

In addition to disclosure regarding defaults made in respect of repayment of loans or other borrowings or payment of interest, it is required to disclose if the company is a declared wilful defaulter by any bank or financial institution or other lender. Further, if any term loans taken or funds raised on short term basis, their application, utilisation or any diversion and other details need to be reported. Also, details regarding loans raised or funds taken in respect of company's subsidiaries, joint ventures or associate companies and default in its repayment by the company shall be reported in the CARO, 2020.

6. Reporting of fraud and whistle-blower complaints

Apart from details of fraud in respect of company, the CARO, 2020 also requires an auditor to report the whistle-blower complaints received by the company, whether considered by him. Also, whether the report under section 143(12) has been filed by the auditor to the Central Government in Form ADT-4.

7. Disclosure regarding internal audit

The CARO, 2020 requires a statutory auditor to disclose as to whether the internal audit system of a company is commensurate with the size and nature of its business. Further, to ensure that he has considered the internal audit reports of the Internal Auditors.

8. Carrying on non-banking financial activities without valid certificate or fulfilling criteria of Core Investment Company (CIC)

The auditor is required to report whether company has conducted any Non-Banking Financial or Housing Finance activities without obtaining a valid Certificate of Registration from the Reserve Bank of India (RBI) as per the Reserve Bank of India Act, 1934.

Further, whether the company is a CIC according to RBI and is fulfilling the criteria of a CIC. In case, the company is an exempted or unregistered CIC, it is required to check whether it continues to fulfil such criteria. Moreover, if there are more than one CIC in a group, auditor is required to indicate a number of CICs under that group in the CARO, 2020. [*Inference from clause (xvi) of para 3*].

9. Disclosure regarding any cash losses incurred

Clause (xvii) of para 3 of the CARO, 2020 has been re-instated from the CARO, 2015 which was deleted in the CARO 2016. Accordingly, auditor is required to disclose the amount of cash losses in the order, if any, incurred by the company in the financial year and in the immediately preceding financial year.

10. Disclosure regarding resignation of statutory auditors

Under the CARO, 2020, resignation of statutory auditors is also required to be disclosed, if any. Further, the auditor is required to consider the issues, objections or concerns raised by the outgoing auditors and report it in the order. It is also necessary for a new auditor to communicate and consider the concerns of the outgoing ones.

11. Disclosure of any material uncertainty regarding meeting of existing liabilities

The CARO, 2020 requires the auditor to disclose the financial position of the company by

considering the financial ratios, ageing and expected dates of realisation of financial assets and payment of financial liabilities, other information accompanying the financial statements and the auditor's knowledge of the Board of Directors and management plans. Para 3(xix) of the CARO, 2020 requires the auditor to make opinion on the basis of above factors that no material uncertainty exists as on the date of the audit report that company is capable of meeting its liabilities existing at the date of balance sheet as and when they fall due within a period of one year from the balance sheet date.

12. Disclosure regarding transfer of unspent amount on CSR

The CARO, 2020 specifically requires the disclosure regarding the transfer of unspent amount to a Fund specified in Schedule VII to the Companies Act, 2013 within a period of six months of the expiry of the financial year in compliance with second proviso to section 135(5) of such Act.

However, pursuant to any ongoing project, disclosure regarding the transfer of unspent amount under section 135(5) to a special account in compliance with the provision of section 135(6) of the Companies Act, 2013 has to be made. [*Clause (xx) of para 3*]

Section 135(5) stipulates the requirement of certain per cent of net profits for relevant period to be spent pursuant to Corporate Social Responsibility (CSR) policy. On failure to spend the unspent amount has to be transferred to the Fund specified in Schedule VII within six months of expiry of financial year.[*Second proviso to section 135(5)*].

Further, section 135(6) requires that such unspent amount pursuant to any ongoing project, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer.

13. Disclosure regarding qualifications or adverse remarks in CARO of companies included in consolidated financial statements

Alike the CARO, 2016 the, CARO, 2020 does not apply to the auditor's report on consolidated financial statements but with an exception of clause (xxi) of para 3.

According to para 3(xxi) of the CARO, 2020, if any qualifications or adverse remarks have been made by the respective auditors in the Companies (Auditor's Report) Order (CARO) and reports of the companies included in the consolidated financial statements, then following disclosure is required to be made:

(a) indicate the details of such companies;

(b) paragraph numbers of such CARO report containing the qualifications or adverse remarks.

CURRENT STATUTES LIBRARY

COMPANIES (AMENDMENT) BILL, 2020-BILL

Bill No. 88 of 2020

As introduced in Lok Sabha

A

BILL

further to amend the Companies Act, 2013.

Be it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:-

1. Short title and commencement

(1) This Act may be called the Companies (Amendment) Act, 2020.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Amendment of section 2

In the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the principal Act), in section 2, in clause (52), the following proviso shall

be inserted, namely:-

"Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.".

3. Amendment of section 8

In section 8 of the principal Act, in sub-section (11),-

(a) the words "with imprisonment for a term which may extend to three years or" shall be omitted;

(b) for the words "twenty-five lakh rupees, or with both", the words "twenty-five lakh rupees" shall be substituted.

4. Amendment of section 16

In section 16 of the principal Act,-

(i) in sub-section (1), in clause (b), for the words "period of six months", the words "period of three months" shall be substituted;

(ii) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter:

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.".

5. Amendment of section 23

In section 23 of the principal Act, after sub-section (2) and before the Explanation, the following sub-sections shall be inserted, namely:-

"(3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the 30 provisions of this Chapter, Chapter I V, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament.".

6. Amendment of section 26

In section 26 of the principal Act, in sub-section (9),-

(a) the words "with imprisonment for a term which may extend to three years or" shall be omitted

(b) for the words "three lakh rupees, or with both", the words "three lakh rupees'' shall be substituted.

7. Amendment of section 40

In section 40 of the principal Act, in sub-section (5),-

(a) the words "with imprisonment for a term which may extend to one year or" shall be omitted;

(b) for the words "three lakh rupees, or with both", the words "three lakh rupees" shall be substituted.

8. Amendment of section 48

In section 48 of the principal Act, sub-section (5) shall be omitted.

9. Amendment of section 56

In section 56 of the principal Act, for sub-section (6), the following sub-section shall be substituted, namely:-

"(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.".

10. Amendment of section 59

In section 59 of the principal Act, sub-section (5) shall be omitted.

11. Amendment of section 62

In section 62 of the principal Act, in sub-section (1), in clause (a), in sub-clause (i), after the words "less than fifteen days", the words "or such lesser number of days as may be prescribed" shall be inserted.

12. Amendment of section 64.

In section 64 of the principal Act, in sub-section (2),-

(a) for the words "one thousand rupees", the words "five hundred rupees" shall be substituted;

(b) for the words "or five lakh rupees whichever is less", the words "subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default" shall be substituted.

13. Amendment of section 66

In section 66 of the principal Act, sub-section (11) shall be omitted.

14. Amendment of section 68

In section 68 of the principal Act, in sub-section (11),-

(a) the words "with imprisonment for a term which may extend to three years or" shall be omitted;

(b) for the words "three lakh rupees , or with both", the words "three lakh rupees" shall be substituted.

15. Amendment of section 71

In section 71 of the principal Act, sub-section (11) shall be omitted.

16. Amendment of section 86

In section 86 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:-

"(1) If any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.".

17. Amendment of section 88

In section 88 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-

"(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.".

18. Amendment of section 89

In section 89 of the principal Act,-

(a) for sub-section (5), the following sub-section shall be substituted, namely:-

"(5) If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.";

(b) for sub-section (7), the following sub-section shall be substituted, namely:-

"(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.";

(c) after sub-section (10), the following sub-section shall be inserted, namely:-

"(11) The Central Government may by notification, exempt any class or classes of persons from complying with any of the requirements of this section, except sub-section (10), if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.".

19. Amendment of section 90

In section 90 of the principal Act,-

(a) for sub-section (10), the following sub-section shall be substituted, namely:-

"(10) If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.";

(b) for sub-section (11), the following sub-section shall be substituted, namely:—

"(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day,after the first during which such failure continues, subject to a maximum of one lakh rupees.".

20. Amendment of section 92

In section 92 of the principal Act,-

(a) in sub-section (5),-

(i) for the words "fifty thousand rupees", the words "ten thousand rupees" shall be substituted;

(ii) for the words "five lakh rupees", the words "two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default" shall be substituted;

(b) in sub-section (6), for the words "punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of two lakh rupees" shall be substituted.

21. Amendment of section 105

In section 105 of the principal Act, in sub-section (5),-

(a) for the words "who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees", the words "who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees" shall be substituted;

(b) in the proviso, for the word "punishable", the word "liable" shall be substituted.

22. Amendment of section 117

In section 117 of the principal Act,-

(i) for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.";

(ii) in sub-section (3), in clause (g), for the second proviso, the following proviso shall be substituted, namely:-

"Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business by,-

(a) a banking company;

(b) any class of non-banking financial company registered under . Chapter IIIB of the Reserve Bank of India Act, 1934 (2 of 1934), as may be prescribed in consultation with the Reserve Bank of India;

(c) ny class of housing finance company registered under the National Housing Bank Act, 1987 (53 of 1987), as may be prescribed in consultation with the National Housing Bank; and.".

23. Amendment of section 124

In section 124 of the principal Act, for sub-section (7), the following sub-section shall be substituted, namely:-

"(7) If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.".

24. Amendment of section 128

In section 128 of the principal Act, in sub-section (6),-

(a) the words "with imprisonment for a term which may extend to one year or" shall be omitted;

(b) the words "or with both" shall be omitted.

25. Insertion of new section 129A

After section 129 of the principal Act, the following section shall be inserted, namely:-

"129A. Periodical financial results.—The Central Government may, require such class or classes of unlisted companies, as may be prescribed,-

(a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed;

(b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and

(c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.".

26. Amendment of section 134

In section 134 of the principal Act, for sub-section (8), the following sub-section shall be substituted, namely:-

"(8) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.".

27. Amendment of section 135

In section 135 of the principal Act,-

(a) in sub-section (5), after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.";

(b) for sub-section (7), the following sub-section shall be substituted, namely:-

"(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every

officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.";

(c) after sub-section (8), the following sub-section shall be inserted, namely:-

"(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.".

28. Amendment of section 137

In section 137 of the principal Act, in sub-section (3),-

(a) for the words "one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees", the words "ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh 40 rupees," shall be substituted;

(b) for the words "one lakh rupees", the words "ten thousand rupees" shall be substituted;

(c) for the words "five lakh rupees", the words "fifty thousand rupees" shall be substituted.

29. Amendment of section 140.

In section 140 of the principal Act, in sub-section (3), for the words "five lakh rupees", the words "two lakh rupees" shall be substituted.

30. Amendment of section 143

In section 143 of the principal Act, for sub-section (15), the following sub-section shall be substituted, namely:-

"(15) If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall,-

(a) in case of a listed company, be liable to a penalty of five lakh rupees; and

(b) in case of any other company, be liable to a penalty of one lakh rupees.".

31. Amendment of section 147

In section 147 of the principal Act,-

(a) in sub-section (1),-

(i) the words "with imprisonment for a term which may extend to one year or" shall be omitted;

(ii) for the words "one lakh rupees, or with both", the words "one lakh rupees" shall be substituted;

(b) in sub-section (2), the words ", section 143" shall be omitted.

32. Amendment of section 149

In section 149 of the principal Act, in sub-section (9), the following proviso shall be inserted, namely:-

"Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.".

33. Amendment of section 165

In section 165 of the principal Act, for sub-section (6), the following sub-section shall be substituted, namely:-

"(6) If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.".

34. Amendment of section 167

In section 167 of the principal Act, in sub-section (2),-

(a) the words "with imprisonment for a term which may extend to one year or" shall be omitted;

(b) for the words "five lakh rupees, or with both", the words "five lakh rupees" shall be substituted.

35. Amendment of section 172

For section 172 of the principal Act, the following section shall be substituted, namely:-

"172.—If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees, and in case of continuing failure, with a further penalty of five hundred rupees for each day during which such failure continues, subject to a maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.".

36. Amendment of section 178

In section 178 of the principal Act, in sub-section (8), for the words "punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both", the words "liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees" shall be substituted.

37. Amendment of section 184

In section 184 of the principal Act, in sub-section (4), for the words "punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both", the words "liable to a penalty of one lakh rupees" shall be substituted.

38. Amendment of section 187

In section 187 of the principal Act, for sub-section (4), the following sub-section 5 shall be substituted, namely:-

"(4) If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.".

39. Amendment of section 188

In section 188 of the principal Act, in sub-section (5),-

(a) in clause (i), for the words "punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both", the words "liable to a penalty of twenty-five lakh rupees" shall be substituted;

(b) in clause (ii), for the words "punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees", the words "liable to a penalty of five lakh rupees" shall be substituted.

40. Amendment of section 197

In section 197 of the principal Act, in sub-section (3), after the words "whole-time director or manager,", the words "or any other non-executive director, including an independent director" shall be inserted.

41. Amendment of section 204

In section 204 of the principal Act, in sub-section (4), for the words "punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees", the words "liable to a penalty of two lakh rupees" shall be substituted.

42. Amendment of section 232

In section 232 of the principal Act, for sub-section (8), the following sub-section shall be substituted, namely:-

"(8) If a company fails to comply with sub-section (5), the company and every officer of the company who is in default shall be liable to a penalty of twenty thousand rupees, and where the failure is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.".

43. Amendment of section 242

In section 242 of the principal Act, in sub-section (8),-

(a) the words "with imprisonment for a term which may extend to six months or" shall be omitted;

(b) for the words "one lakh rupees, or with both", the words "one lakh rupees" shall be substituted.

44. Amendment of section 243

In section 243 of the principal Act, in sub-section (2),-

(a) the words "with imprisonment for a term which may extend to six months or" shall be omitted;

(b) for the words "five lakh rupees, or with both", the words "five lakh rupees" shall be substituted.

45. Amendment of section 247

In section 247 of the principal Act, in sub-section (3), for the words "punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees", the words "liable to a penalty of fifty thousand rupees" shall be substituted.

46. Amendment of section 284

In section 284 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:-

"(2) If any person required to assist or cooperate with the Company Liquidator under sub-section (1) does not assist or cooperate, the Company Liquidator may make an application to the Tribunal for necessary directions.

(3) On receiving an application under sub-section (2), the Tribunal shall, by an order, direct the person required to assist or cooperate with the Company Liquidator to comply with the instructions of the Company Liquidator and to cooperate with him in discharging his functions and duties.".

47. Amendment of section 302.

In section 302 of the principal Act,-

(a) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) The Tribunal shall, within a period of thirty days from the date of the order,-

(a) forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company; and

(b) direct the Company Liquidator to forward a copy of the order to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.";

(b) sub-section (4) shall be omitted.

48. Amendment of section 342

In section 342 of the principal Act, sub-section (6) shall be omitted.

49. Amendment of section 347

In section 347 of the principal Act, in sub-section (4),-

(a) the words "with imprisonment for a term which may extend to six months or" shall be omitted;

(b) for the words "fifty thousand rupees, or with both", the words "fifty thousand rupees" shall be substituted.

50. Amendment of section 348.

In section 348 of the principal Act,-

(a) for sub-section (6), the following sub-section shall be substituted, namely:-

"(6) Where a Company Liquidator, who is an insolvency professional registered under the Insolvency and Bankruptcy Code, 2016 (31 of 2016) is in default in complying with the provisions of this section, then such default shall be deemed to be a contravention of the provisions of the said Code, and the rules and regulations made thereunder for the purposes of proceedings under Chapter VI of Part IV of that Code.";

(b) sub-section (7) shall be omitted.

51. Amendment of section 356

In section 356 of the principal Act, for sub-section (2), the following sub-sections hall be substituted, namely:-

"(2) The Tribunal shall-

(a) forward a copy of the order, within thirty days from the date thereof, to the Registrar who shall record the same; and

(b) direct the Company Liquidator or the person on whose application the order was made, to file a certified copy of the order, within thirty days from the date thereof or such further period as allowed by the Tribunal, with the Registrar who shall record the same.".

52. Insertion of new Chapter XXIA

After section 378 of the principal Act, the following Chapter shall be inserted, namely:-

'CHAPTER XXIA

Producer Companies

PART I : Preliminary

378A. Definitions

In this Chapter, unless the context otherwise requires,-

(a) "active Member" means a Member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles;

(b) "Chief Executive" means an individual appointed as such under sub-section (1) of section 378W;

(c) "inter-State co-operative society" means a multi-State co-operative society as defined in clause (p) of section 3 of the Multi-State Co-operative Societies Act, 2002 (39 of 2002) and includes any co-operative society registered under any . other law for the time being in force, which has, subsequent to its formation, extended any of its objects to more than one State by enlisting the participation of persons or by extending any of its activities outside the State, whether directly or indirectly or through an institution of which it is a constituent;

(d) "limited return" means the maximum dividend as may be specified by the articles;

(e) "Member" means a person or Producer Institution (whether incorporated or not) admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as such;

(f) "mutual assistance principles" means the principles set out in sub-section (2) of section 378G;

(g) "officer" includes any director or Chief Executive or Secretary or any person in accordance with whose directions or instructions part or whole of the business of the Producer Company is carried on;

(h) "patronage" means the use of services offered by the Producer Company to its Members by participation in its business activities;

(i) "patronage bonus" means payments made by a Producer Company out of its surplus income to the Members in proportion to their respective patronage;

(j) "primary produce" means -

(i) produce of farmers, arising from agriculture (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers; or

(ii) produce of persons engaged in handloom, handicraft and other cottage industries; or

(iii) any product resulting from any of the above activities, including by-products of such products; or

(iv) any product resulting from an ancillary activity that may assist or promote any of the aforesaid activities or anything ancillary thereto; or

(v) any activity which is intended to increase the production of anything referred to in sub-clauses (i) to (iv) or improve the quality thereof;

(k) "producer" means any person engaged in any activity connected with or relatable to any primary produce;

(l) "Producer Company" means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956 (1 of 1956);

(m) "Producer Institution" means a Producer Company or any other institution having only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not having any of the objects referred to in section 378B and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles;

(n) "withheld price" means part of the price due and payable for goods supplied by any Member to the Producer Company; and as withheld by the Producer Company for payment on a subsequent date.

PART II : Incorporation of Producer Companies and other matters

378B. Objects of Producer Company

(1) The objects of the Producer Company shall relate to all or any of the following matters, namely:-

(a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit:

Provided that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;

(b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;

(c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

(d) providing education on the mutual assistance principles to its Members and others;

(e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;

(f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce;

(g) insurance of producers or their primary produce;

(h) promoting techniques of mutuality and mutual assistance;

(i) welfare measures or facilities for the benefit of Members as may be decided by the Board;

(j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;

(k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.

(2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

378C. Formation of Producer Company and its registration.

(1) Any ten or more individuals, each of them being a producer or any two or more Producer Institutions, or a combination of ten or more individuals and Producer Institutions, desirous of forming a Producer Company having its objects specified in section 378B and otherwise complying with the requirements of this Chapter and the provisions of this Act in respect of registration, may form an incorporated company as a Producer Company under this Act.

(2) If the Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall, within thirty days of the receipt of the documents required for registration, register the memorandum, the articles and other documents, if any, and issue a certificate of incorporation under this Act.

(3) A Producer Company so formed shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.

The Producer Company may reimburse to its promoters all other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof shall be subject to the approval at its first general meeting of the Members.

On registration under sub-section (2), the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this Chapter apply, without, however, any limit to the number of Members thereof, and the Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company under this Act.

378D. Membership and voting rights of Members of Producer Company.

(1) (a) In a case where the membership consists solely of individual Members, the voting rights shall be based on a single vote for every Member, irrespective of his shareholding or patronage of the Producer Company.

(b) In a case where the membership consists of Producer Institutions only, the voting rights of such Producer Institutions shall be determined on the basis of their participation in the business of the

Producer Company in the previous year, as may be specified by articles:

Provided that during the first year of registration of a Producer Company, the voting rights shall be determined on the basis of the shareholding by such Producer Institutions.

(c) In a case where the membership consists of individuals and Producer Institutions, the voting rights shall be computed on the basis of a single vote for every Member.

(2) The articles of any Producer Company may provide for the conditions, subject to which a Member may continue to retain his membership, and the manner in which voting rights shall be exercised by the Members.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), any Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.

(4) No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.

(5) A Member, who acquires any business interest which is in conflict with the business of the Producer Company, shall cease to be a Member of that Company and be removed as a Member in accordance with the articles.

378E. Benefits to Members

(1) Subject to the provisions made in articles, every Member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares, in proportion to the produce supplied to the Producer Company during the financial year to such extent and in such manner and subject to such conditions as may be decided by the Board.

(2) Every Member shall, on the share capital contributed, receive only a limited return:

Provided that every such Member may be allotted bonus shares in accordance with the provisions contained in section 378ZJ.

(3) The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 378ZI, may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting.

378F. Memorandum of Producer Company

The memorandum of association of every Producer Company shall state-

(a) the name of the company with "Producer Company Limited" as the last words of the name of such Company;

(b) the State in which the registered office of the Producer Company is to situate;

(c) the main objects of the Producer Company shall be one or more of the objects specified in section 378B;

(d) the names and addresses of the persons who have subscribed to the memorandum;

(e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount;

(f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with sub-section (2) of section 378J;

(g) that the liability of its members is limited;

(h) against the subscriber's name, the number of shares each takes subscriber :

Provided that no subscriber shall take less than one share;

(i) that in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

378G. Articles of association

(1) There shall be presented, for registration to the Registrar of the State to which the registered office of the Producer Company is, stated by the memorandum of association, to be situate-

(a) memorandum of the Producer Company;

(b) its articles duly signed by the subscribers to the memorandum.

(2) The articles shall contain the following mutual assistance principles, namely:-

(a) the membership shall be voluntary and available, to all eligible persons who, can participate or avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership;

(b) each Member shall, save as otherwise provided in this Chapter, have only a single vote irrespective of the shareholding;

(c) the Producer Company shall be administered by a Board consisting of persons elected or appointed as directors in the manner consistent with the provisions of this Chapter and the Board shall be accountable to the Members;

(d) particulars on limited return on share capital;

(e) the surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by-

(i) providing for the development of the business of the Producer Company;

(ii) providing for common facilities; and

(iii) distributing amongst the Members, as may be admissible in proportion to their respective participation in the business;

(f) provision for the education of Members, employees and others, on the principles of mutuality and techniques of mutual assistance;

(g) the Producer Company shall actively co-operate with other Producer Companies (and other organisations following similar principles) at local, national or international level so as to best serve the interest of their Members and the communities it purports to serve.

(3) Without prejudice to the generality of the foregoing provisions of sub-sections (1) and (2), the articles shall contain the following provisions, namely:-

(a) the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares;

(b) the manner of ascertaining the patronage and voting right based on patronage;

(c) subject to the provisions contained in sub-section (1) of section 378N, the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement by rotation, qualifications for being elected or continuance as such and the terms of office of the said directors, their powers and duties, conditions for election or co-option of directors, method of removal of directors and the filling up of vacancies on the Board, and the manner and the terms of appointment of the Chief Executive;

(d) the election of the Chairman, term of office of directors and the Chairman, manner of voting at the general or special meetings of Members, procedure for voting, by directors at meetings of the Board, powers of the Chairman and the circumstances under which the Chairman may exercise a casting vote;

(e) the circumstances under which, and the manner in which, the withheld price is to be determined and distributed;

(f) the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both;

(g) the contribution to be shared and related matters referred to in sub-section (2) of section 378ZI;

(h) the matters relating to issue of bonus shares out of general reserves as set out in section 378ZJ;

(i) the basis and manner of allotment of equity shares of the Producer Company in lieu of the whole or part of the sale proceeds of produce or products supplied by the Members;

(j) the amount of reserves, sources from which funds may be raised, limitation on raising of funds, restriction on the use of such funds and the extent of debt that may be contracted and the conditions thereof;

(k) the credit, loans or advances which may be granted to a Member and the conditions for the grant of the same;

(l) the right of any Member to obtain information relating to general business of the company;

(m) the basis and manner of distribution and disposal of funds available after meeting liabilities in the event of dissolution or liquidation of the Producer Company;

(n) the authorisation for division, amalgamation, merger, creation of subsidiaries and the entering into joint ventures and other matters connected therewith;

(o) laying of the memorandum and articles of the Producer Company before a special general meeting to be held within ninety days of its registration;

(p) any other provision, which the Members may, by special resolution recommend to be included in the articles.

378H. Amendment of memorandum

(1) A Producer Company shall not alter the conditions contained in its memorandum except in the cases, by the mode and to the extent for which express provision is made in this Act.

(2) A Producer Company may, by special resolution, not inconsistent with section 378B, alter its objects specified in its memorandum.

(3) A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days from the date of adoption of any resolution referred to in sub-section (2):

Provided that in the case of transfer of the registered office of a Producer Company from the jurisdiction of one Registrar to another, certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the Producer Company.

(4) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

378-I. Amendment of articles

(1) Any amendment of the articles shall be

proposed by not less than two-thirds of the elected directors or by not less than one-third of the Members of the Producer Company, and adopted by the Members by a special resolution.

(2) A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within fifteen days from the date of its adoption.

378J. Option to inter-State co-operative societies to become Producer Companies

(1) Notwithstanding anything contained in sub-section (1) of section 378C, any inter-State co-operative society with objects not confined to one 5 State may make an application to the Registrar for registration as Producer Company under this Chapter.

(2) Every application under sub-section (1) shall be accompanied by-

(a) a copy of the special resolution, of not less than two-thirds of total members of inter-State co-operative society, for its incorporation as a Producer Company under this Act;

(b) a statement showing-

(i) names and addresses or the occupation of the directors and the Chief Executive, if any, by whatever name called, of such co-operative; and

(ii) list of members of such inter-State co-operative society;

(c) a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 378B;

(d) a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clauses (a) to (c) are correct.

(3) When an inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name with any word or expression to show its identity preceding it.

(4) On compliance with the requirements of sub-sections (1) to (3), the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-operative society applying for registration is registered and thereby incorporated as a Producer Company under this Chapter.

(5) A co-operative society formed by producers, by federation or union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any federation or unions of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application under sub-section (1) and to obtain registration as a Producer Company under this Chapter.

(6) The inter-State co-operative society shall, upon registration under sub-section (1), stand transformed into a Producer Company, and thereafter shall be governed by the provisions of this Chapter to the exclusion of the law by which it was earlier governed, save in so far as anything done or omitted to be done before its registration as a Producer Company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.

(7) Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for deletion of the society from its register.

378K. Effect of incorporation of Producer Company

Every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company (hereafter in this Chapter referred to as the date of transformation) shall be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.

378L. Vesting of undertaking in Producer Company

(1) All properties and assets, movable and immovable, of, or belonging to, the inter-State co-operative society as on the date of transformation, shall vest in the Producer Company.

(2) All the rights, debts, liabilities, interests, privileges and obligations of the inter-State co-operative society as on the date of transformation shall stand transferred to, and be the rights, debts, liabilities, interests, privileges and obligations of, the Producer Company.

(3) Without prejudice to the provisions contained in sub-section (2), all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society as on the date of transformation for or in connection with their purposes, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Producer Company.

(4) All sums of money due to the inter-State co-operative society immediately before the date of transformation, shall be deemed to be due to the Producer Company.

(5) Every organisation, which was being managed immediately before the date of transformation by the inter-State co-operative society shall be managed by the Producer Company for such period, to such extent and in such manner as the circumstances may require.

(6) Every organisation which was getting financial, managerial or technical assistance from the inter-State co-operative society, immediately before the date of transformation, may continue to be given financial, managerial or technical assistance, as the case may be, by the Producer Company, for such period, to such extent and in such manner as that company may deem fit.

(7) The amount representing the capital of the erstwhile inter-State co-operative society shall form part of the capital of the Producer Company.

(8) Any reference to the inter-State co-operative society in any law other than this Act or in any contract or other instrument, shall be deemed to be reference to the Producer Company.

(9) If, on the date of transformation, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company under section 378C or transformation of the inter-State co-operative society as a Producer Company under section 378J, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Chapter had not come into force.

378M. Concession, etc., to be deemed to have been granted to Producer Company

With effect from the date of transformation, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business of the inter-State co-operative society under any law for the time being in force shall be deemed to have been granted to the Producer Company.

378N. Provisions in respect of officers and other employees of inter-State co-operative society

(1) Notwithstanding anything contained in section 378-O, all the directors in the inter-State co-operative society before the incorporation of the Producer Company shall continue in office for a period of one year from the date of transformation and in accordance with the provisions of this Act.

(2) Every officer or other employee of the inter-State co-operative society (except a director of the Board, Chairman or Managing Director) serving in its employment immediately before the date of transformation shall, in so far as such officer or other employee is employed in connection with the inter-State co-operative society which has vested in the Producer Company by virtue of this Act, become, as from the date of transformation, an officer or, as the case may be, other employee of the Producer Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave travel concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the erstwhile inter-State co-operative society if its undertaking had not vested in the Producer Company and shall continue to do so as an officer or, as the case may be, other employee of the Producer Company.

(3) Where an officer or other employee of the inter-State co-operative society opts under sub-section (2) not to be in employment or service of the Producer Company, such officer or other employee shall be deemed to have resigned.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or . in any other law for the time being in force, the transfer of the services of any officer or other employee of the inter-State co-operative society to the Producer Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(5) The officers and other employees who have retired before the date of transformation from the service of the inter-State co-operative society and are entitled to any benefits, rights or privileges, shall be entitled to receive the same benefits, rights or privileges from the Producer Company.

(6) The trusts of the provident fund or the gratuity fund of the inter-State co-operative society and any other bodies created for the welfare of officers or employees shall continue to discharge functions in the Producer Company as was being done hitherto in the inter-State co-operative society and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Producer Company.

(7) Notwithstanding anything contained in this Act or in any other law for the time being in force or in the regulations of the inter-State co-operative society, no director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or substantial part of the business and affairs of the inter-State co-operative society shall be entitled to any compensation against the inter-State co-operative society or the Producer Company for the loss of office or for the premature termination of any contract of management entered into by him with the inter-State co-operative society.

PART III

Management of Producer Company

378-O. Number of directors

Every Producer Company shall have at least five and not more than fifteen directors:

Provided that in the case of an inter-State co-operative society incorporated as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

378P. Appointment of directors

(1) Save as otherwise provided in section 378N, the Members who sign the memorandum and the articles may designate therein the Board of Directors, not . less than five, who shall govern the affairs of the Producer Company until the directors are elected in accordance with the provisions of this section.

(2) The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company:

Provided that in the case of an inter-State co-operative society which has been registered as a Producer Company under sub-section (4) of section 378J in which at least five directors [including the directors continuing in office under sub-section (1) of section 378N] hold office as such on the date of registration of such company, the provisions of this sub-section shall have effect as if for the words "ninety days", the words "three hundred and sixty-five days" had been substituted.

(3) Every person shall hold office of a director for a period not less than one year but not exceeding five years as may be specified in the articles.

(4) Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director.

(5) Save as otherwise provided in sub-section (2), the directors of the Board shall be elected or appointed by the Members in the annual general meeting.

(6) The Board may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit:

Provided that the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so provided by its articles:

Provided further that the maximum period, for which the expert director or the additional director holds office, shall not exceed such period as may be specified in the articles. if,-

378Q. Vacation of office by directors

(1) The office of the director of a Producer Company shall become vacant

(a) he is convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(b) the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days;

(c) he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director;

(d) the Producer Company, in which he is a director-

(i) has not filed the annual accounts and annual return for any continuous three financial years; or

(ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more;

(e) default is made in holding election for the office of director, in the Producer Company in which he is a director, in accordance with the provisions of this Act and articles;

(f) the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason.

(2) The provisions of sub-section (1) shall, as far as may be, apply to the director of a Producer Institution which is a member of a Producer Company.

378R. Powers and functions of Board

(1) Subject to the provisions of this Act and articles, the Board of Directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that Company is authorised so to do.

(2) In particular and without prejudice to the generality of the foregoing powers, such powers may include all or any of the following matters, namely:-

(a) determination of the dividend payable;

(b) determination of the quantum of withheld price and recommend patronage to be approved at general meeting;

(c) admission of new Members;

(d) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans;

(e) appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles;

(f) exercise superintendence, direction and control over Chief Executive and other officers appointed by it;

(g) cause proper books of account to be maintained; prepare annual accounts to be placed before the annual general meeting with the report of the auditor and the replies on qualifications, if any, made by the auditors;

(h) acquisition or disposal of property of the Producer Company in its ordinary course of business;

(i) investment of the funds of the Producer Company in the ordinary course of its business;

(j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative;

(k) take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.

(3) All the powers specified in sub-sections (1) and (2) shall be exercised by the Board, by means of resolution passed at its meeting on behalf of the Producer Company.

Explanation.—For the removal of doubts, it is hereby declared that a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it.

378S. Matters to be transacted at general meeting

The Board of Directors of a Producer Company shall exercise the following powers on behalf of that Company, and it shall do so only by means of resolutions passed at the annual general meeting of its Members, namely:-

(a) approval of budget and adoption of annual accounts of the Producer Company;

(b) approval of patronage bonus;

(c) issue of bonus shares;

(d) declaration of limited return and decision on the distribution of patronage;

(e) specify the conditions and limits of loans that may be given by the Board to any director; and

(f) approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.

378T. Liability of directors

(1) When the directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company.

(2) Without prejudice to the provisions contained in sub-section (1), the Producer Company shall have the right to recover from its director-

(a) where such director has made any profit as a result of the contravention specified in sub-section (1), an amount equal to the profit so made;

(b) where the Producer Company incurred a loss or damage as a result of the contravention specified in sub-section (1), an amount equal to that loss or damage.

(3) The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.

378U. Committee of directors

(1) The Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in the efficient discharge of its functions:

Provided that the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.

(2) A committee constituted under sub-section (1) may, with the approval of the Board, co-opt such number of persons as it deems fit as members of the committee:

Provided that the Chief Executive appointed under section 378W or a director of the Producer Company shall be a member of such committee.

(3) Every such committee shall function under the general superintendence, direction and control of the Board, for such duration, and in such manner as the Board may direct.

(4) The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.

(5) The minutes of each meeting of the committee shall be placed before the Board at its next meeting.

378V. Meetings of Board and quorum

(1) A meeting of the Board shall be held not less than once in every three months and at least four such meetings shall be held in every year.

(2) Notice of every meeting of the Board of Directors shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

(3) The Chief Executive shall give notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be liable to a penalty of five thousand rupees:

Provided that a meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board.

(4) The quorum for a meeting of the Board shall be one-third of the total strength of directors, subject to a minimum of three.

(5) Save as provided in the articles, directors including the co-opted director, may be paid such

fees and allowances for attendance at the meetings of the Board, as may be decided by the Members in the general meeting.

378W. Chief Executive and his functions

(1) Every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than 5 Members.

(2) The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation.

(3) Save as otherwise provided in articles, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.

(4) The Chief Executive shall be entrusted with substantial powers of management as the Board may determine.

(5) Without prejudice to the generality of sub-section (4), the Chief Executive may exercise the powers and discharge the functions, namely:-

(a) do administrative acts of a routine nature including managing the day-to-day affairs of the Producer Company;

(b) operate bank accounts or authorise any person, subject to the general or special approval of the Board in this behalf, to operate the bank account;

(c) make arrangements for safe custody of cash and other assets of the Producer Company;

(d) sign such documents as may be authorised by the Board, for and on behalf of the company;

(e) maintain proper books of account; prepare annual accounts and audit thereof; place the audited accounts before the Board and in the annual general meeting of the Members;

(f) furnish Members with periodic information to apprise them of the operation and functions of the Producer Company;

(g) make appointments to posts in accordance with the powers delegated to him by the Board;

(h) assist the Board in the formulation of goals, objectives, strategies, plans and policies;

(i) advise the Board with respect to legal and regulatory matters concerning the proposed and ongoing activities and take necessary action in respect thereof;

(j) exercise the powers as may be necessary in the ordinary course of business;

(k) discharge such other functions, and exercise such other powers, as may be delegated by the Board.

(6) The Chief Executive shall manage the affairs of the Producer Company under the general superintendence, direction and control of the Board and be accountable for the performance of the Producer Company.

378X. Secretary of Producer Company

(1) Every Producer Company having an average annual turnover exceeding five crore rupees or such other amount as may be prescribed in each of three consecutive financial years shall have a whole-time secretary.

(2) No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980 (56 of 1980).

(3) If a Producer Company fails to comply with the provisions of sub-section (1), the Company and every officer of the Company who is in default, shall be liable to a penalty of one hundred rupees for every day during which the default continues subject to a maximum of rupees one lakh:

Provided that in any proceedings against a person in respect of a default under this sub-section, no penalty shall be imposed if it is shown that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the Company was such that it was beyond its capacity to engage a whole-time secretary.

378Y. Quorum

Unless the articles require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.

378Z. Voting rights

Save as otherwise provided in sub-sections (1) and (3) of section 378D, every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.

PA RT IV

General meetings

378ZA. Annual general meetings

(1) Every Producer Company shall in each year, hold, in addition to any other meetings, a general meeting, as its annual general meeting and shall specify the . meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a Producer Company and that of the next:

Provided that the Registrar may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by a period not exceeding three months.

(2) A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.

(3) The Members shall adopt the articles of the Producer Company and appoint directors of its Board in the annual general meeting.

(4) The notice calling the annual general meeting shall be accompanied by the following documents, namely:-

(a) the agenda of the annual general meeting;

(b) the minutes of the previous annual general meeting or the extraordinary general meeting;

(c) the names of candidates for election, if any, to the office of director including a statement of qualifications in respect of each candidate;

(d) the audited balance-sheet and profit and loss accounts of the Producer Company and its subsidiary, if any, together with a report of the Board of Directors of such Company with respect to-

(i) the state of affairs of the Producer Company;

Share capital.

(ii) the amount proposed to be carried to reserve;

(iii) the amount to be paid as limited return on share capital;

(iv) the amount proposed to be disbursed as patronage bonus;

(v) the material changes and commitments, if any, affecting the financial position of the Producer Company and its subsidiary, which have occurred in between the date of the annual accounts of the Producer Company to which the balance-sheet relates and the date of the report of the Board;

(vi) any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges;

(vii) any other matter which is required to be, or may be, specified by the Board;

(e) the text of the draft resolution for appointment of auditors;

(f) the text of any draft resolution proposing amendment to the memorandum or articles to be considered at the general meeting, alongwith the recommendations of the Board.

(5) The Board of Directors shall, on the requisition made in writing, duly signed and setting out the matters for the consideration, made by one-third of the Members entitled to vote in any general meeting, proceed to call an extraordinary general meeting in accordance with the relevant provisions contained in Chapter VII.

(6) Every annual general meeting shall be called, for a time during business hours, on a day that is not a public holiday and shall be held at the registered office of the Producer Company or at some other place within the city, town or village in which the registered office of the Company is situate.

(7) A general meeting of the Producer Company shall be called by giving not less than fourteen days prior notice in writing.

(8) The notice of the general meeting indicating the date, time and place of the meeting shall be sent to every Member and auditor of the Producer Company.

(9) Unless the articles of the Producer Company provide for a larger number, one-fourth of the total number of members of the Producer Company shall be the quorum for its annual general meeting.

(10) The proceedings of every annual general meeting alongwith the report of the Board of Directors, the audited balance-sheet and the profit and loss account shall be filed with the Registrar within sixty days of the date on which the annual general meeting is held, with an annual return alongwith the filing fees as applicable under the Act.

(11) In the case where a Producer Company is formed by Producer Institutions, such Institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf:

Provided that a Producer Institution shall not be represented if such Institution is in default or failure referred to in clauses (d) to (f) of sub-section (1) of section 378Q.

PART V

Share capital and Members rights

378ZB. Share capital

(1) The share capital of a Producer Company shall consist of equity shares only.

(2) The shares held by a Member in a Producer Company, shall as far as may be, be in proportion to the patronage of that company.

378ZC. Special user rights

(1) The producers, who are active Members may, if so provided in the articles, have special rights and the Producer Company may issue appropriate instruments to them in respect of such special rights.

(2) The instruments of the Producer Company issued under sub-section (1) shall, after obtaining approval of the Board in that behalf, be transferable to any other active Member of that Producer Company.

Explanation.— For the purposes of this section, the expression "special right" means any right relating to supply of additional produce by the active Member or any other right relating to his produce which may be conferred upon him by the Board.

378ZD. Transferability of shares and attendant rights

(1) Save as otherwise provided in sub-sections (2) to (4), the shares of a Member of a Producer Company shall not be transferable.

(2) A Member of a Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares alongwith any special rights, to an active Member at par value.

(3) Every Member shall, within three months of his becoming a Member in the Producer Company, nominate, in the manner specified in articles, a person to whom his shares in the Producer Company shall vest in the event of his death.

(4) The nominee shall, on the death of the Member, become entitled to all the rights in the shares of the Producer Company and the Board of that Company shall transfer the shares of the deceased Member to his nominee:

Provided that in a case where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.

(5) Where the Board of a Producer Company is satisfied that-

(a) any Member has ceased to be a primary producer; or

(b) any Member has failed to retain his qualifications to be a Member as specified in articles, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board:

Provided that the Board shall not direct such surrender of shares unless the Member has been served with a written notice and given an opportunity of being heard.

PART V I

Finance, accounts and audit

378ZE. Books of account

(1) Every Producer Company shall keep at its registered office proper books of account with respect to-

(a) all sums of money received and expended by the Producer Company and the matters in respect of which the receipts and expenditure take place;

(b) all sales and purchase of goods by the Producer Company;

(c) the instruments of liability executed by or on behalf of the Producer Company;

(d) the assets and liabilities of the Producer Company;

(e) in case of a Producer Company engaged in production, processing and manufacturing, the particulars relating to utilisation of materials or labour or other items of costs.

(2) The balance-sheet and profit and loss accounts of the Producer Company shall be prepared, as far as may be, in accordance with the provisions contained in section 129.

378ZF. Internal audit

Every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949).

378ZG. Duties of auditor under this Chapter

Without prejudice to the provisions contained in section 143, the auditor shall report on the following additional matters relating to the Producer Company, namely:-

(a) the amount of debts due alongwith particulars of bad debts, if any;

(b) the verification of cash balance and securities;

(c) the details of assets and liabilities;

(d) all transactions which appear to be contrary to the provisions of this Chapter;

(e) the loans given by the Producer Company to the directors;

(f) the donations or subscriptions given by the Producer Company;

(g) any other matter as may be considered necessary by the auditor.

378ZH. Donation or Subscription by Producer Company

A Producer Company may, by special resolution, make donation or subscription to any institution or individual for the purposes of-

(a) promoting the social and economic welfare of Producer Members or producers or general public; or

(b) promoting the mutual assistance principles:

Provided that the aggregate amount of all such donations and subscriptions in any financial year shall not exceed three per cent. of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made:

Provided further that no Producer Company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

378ZI. General and other reserves

(1) Every Producer Company shall maintain a general reserve in every specified in financial year, in addition to any reserve maintained by it as may be articles.

(2) In a case where the Producer Company does not have sufficient funds in any financial year for transfer to maintain the reserves as may be specified in articles, the contribution to the reserve shall be shared amongst the Members in proportion to their patronage in the business of that Company in that year.

378ZJ. Issue of bonus shares

Any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares

by capitalisation of amounts from general reserves referred to in section 378ZI in proportion to the shares held by the Members on the date of the issue of such shares.

PART VII

Loans to Members and investments

378ZK. Loan, etc., to Members

The Board may, subject to the provisions made in articles, provide financial assistance to the Members of the Producer Company by way of-

(a) credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months;

(b) loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances:

Provided that any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

378ZL. Investment in other companies, formation of subsidiaries, etc.

(1) The general reserves of any Producer Company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.

(2) Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.

(3) Any Producer Company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company by special resolution in this behalf.

(4) Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified under sub-section (2), or subscription of capital under sub-section (3), for an amount not exceeding thirty per cent. of the aggregate of its paid-up capital and free reserves:

Provided that a Producer Company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.

(5) All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.

(6) The Board of a Producer Company may, with the previous approval of Members by a special resolution, dispose of any of its investments referred to in sub-sections (3) and (4).

(7) Every Producer Company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares; the date of acquisition; and the manner and price at which any of the shares have been subsequently disposed of.

(8) The register referred to in sub-section (7) shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts therefrom.

PART VIII

Penalties

378ZM. Penalty for contravention

(1) If any person, other than a Producer Company registered under this Chapter, carries on business under any name which contains the words "Producer Company Limited", he shall be punishable with fine which may extend to ten thousand rupees for every day during which such name has been used by him.

(2) If a director or an officer of a Producer Company, who wilfully fails to furnish any information relating to the affairs of the Producer Company required by a Member or a person duly authorised in this behalf, he shall be liable to imprisonment for a term which may extend to six months and with fine equivalent to five per cent. of the turnover of that Company during the preceding financial year.

(3) If a director or officer of a Producer Company-

(a) fails to hand over the custody of books of account and other documents or property in his custody to the Producer Company of which he is a director or officer; or

(b) fails to convene annual general meeting or other general meetings,

he shall be punishable with fine which may extend to one lakh rupees, and in the case of a continuing default or failure, with an additional fine which may extend to ten thousand rupees for every day during which such default or failure continues.

PART IX

Amalgamation, merger or division

378ZN. Amalgamation, merger or division, etc.,to form new producer companies

(1) A Producer Company may, by a resolution passed at its general meeting,-

(a) decide to transfer its assets and liabilities, in whole or in part, to any other Producer Company, which agrees to such transfer by a resolution passed at its general meeting, for any of the objects specified in section 378B;

(b) divide itself into two or more new Producer Companies.

(2) Any two or more Producer Companies may, by a resolution passed at any general or special meetings of its Members, decide to-

(a) amalgamate and form a new Producer Company; or

(b) merge one Producer Company (hereafter in this Chapter referred to as "merging company") with another Producer Company (hereafter in this Chapter referred to as "merged company").

(3) Every resolution of a Producer Company under this section shall be passed at its general meeting by a majority of total Members, with right of vote not less than two-thirds of its Members present and voting and such resolution shall contain all particulars of the transfer of assets and liabilities, or division, amalgamation, or merger, as the case may be.

(4) Before passing a resolution under this section, the Producer Company shall give notice thereof in writing together with a copy of the proposed resolution to all the Members and creditors who may give their consent.

(5) Notwithstanding anything contained in articles or in any contract to the contrary, any Member, or any creditor not consenting to the resolution shall, during the period of one month of the date of service of the notice on him, have the option,-

(a) in the case of any such Member, to transfer his shares with the approval of the Board to any active Member thereby ceasing to continue as a Member of that Company; or

(b) in the case of a creditor, to withdraw his deposit or loan or advance, as the case may be.

(6) Any Member or creditor, who does not exercise his option within the period specified in sub-section (5), shall be deemed to have consented to the resolution.

(7) A resolution passed by a Producer Company under this section shall not take effect until the expiry of one month or until the assent thereto of all the Members and creditors has been obtained, whichever is earlier.

(8) The resolution referred to in this section shall provide for-

(a) the regulation of conduct of the affairs of the Producer Company in future;

(b) the purchase of shares or interest of any Members of the Producer Company by other Members or by the Producer Company;

(c) the consequent reduction of its share capital, in case of purchase of shares of one Producer Company by another Producer Company;

(d) termination, setting aside or modification of any agreement, howsoever arrived between the company on the one hand and the directors, secretaries and manager on the other hand, apart from such terms and conditions as may, in the opinion of the majority of shareholders, be just and equitable in the circumstances of the case;

(e) termination, setting aside or modification of any agreement between the Producer Company and any person not referred to in clause (d):

Provided that no such agreement shall be terminated, set aside or modified except after giving due notice to the party concerned:

Provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property, made or done by or against the Producer Company within three months before the date of passing of the resolution, which would if made or done against any individual, be deemed in his insolvency to be a fraudulent preference;

(g) the transfer to the merged company of the whole or any part of the undertaking, property or liability of the Producer Company;

(h) the allotment or appropriation by the merged company of any shares, debentures, policies, or other like interests in the merged company;

(i) the continuation by or against the merged company of any legal proceedings pending by or against any Producer Company;

(j) the dissolution, without winding up, of any Producer Company;

(k) the provision to be made for the Members or creditors who make dissent;

(l) the taxes, if any, to be paid by the Producer Company;

(m) such incidental, consequential and supplemental matters as are necessary to secure that the division, amalgamation or merger shall be fully and effectively carried out.

(9) When a resolution passed by a Producer Company under this section takes effect, the resolution shall be a sufficient conveyance to vest the assets and liabilities in the transferee.

(10) The Producer Company shall make arrangements for meeting in full or otherwise satisfying all claims of the Members and the creditors who exercise the option, within the period specified in sub-section (4), not to continue as the Member or creditor, as the case may be.

(11) Where the whole of the assets and liabilities of a Producer Company are transferred to another Producer Company in accordance with the provisions of sub-section (9), or where there is merger under sub-section (2), the registration of the first mentioned Company or the merging company, as the

case may be, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.

(12) Where two or more Producer Companies are amalgamated into a new Producer Company in accordance with the provisions of sub-section (2) and the Producer Company so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forthwith on such registration and each of the Companies shall thereupon cease to exist as a corporate 5 body.

(13) Where a Producer Company divides itself into two or more Producer Companies in accordance with the provisions of clause (b) of sub-section (1) and the new Producer Companies are registered in accordance with the provisions of this Chapter, the registration of the erstwhile Producer Company shall stand cancelled forthwith and that Company shall be deemed to have been dissolved and cease to exist as a corporate body.

(14) The amalgamation, merger or division of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, merger or division, may be continued or commenced by, or against, the concerned resulting company, or merged company, as the case may be.

(15) The Registrar shall strike off the names of every Producer Company deemed to have been dissolved under sub-sections (11) to (14).

(16) Any member or creditor or employee aggrieved by the transfer of assets, division, amalgamation or merger may, within thirty days of the passing of the resolution, prefer an appeal to the Tribunal.

(17) The Tribunal shall, after giving a reasonable opportunity to the person concerned, pass such orders thereon as it may deem fit.

(18) Where an appeal has been filed under sub-section (16), the transfer of assets, division, amalgamation or merger of the Producer Company shall be subject to the decision of the Tribunal.

PART X

Resolution of disputes

378ZO. Disputes

(1) Where any dispute relating to the formation, management or business of a Producer Company arises-

(a) amongst Members, former Members or persons claiming to be Members or nominees of deceased Members; or

(b) between a Member, former Member or a person claiming to be a Member, or nominee of deceased Member and the Producer Company, its Board of Directors, office-bearers, or liquidator, past or present; or

(c) between the Producer Company or its Board, and any director, office-bearer or any former director, or the nominee, heir or legal representative of any deceased director of the Producer Company,

such dispute shall be settled by conciliation or by arbitration as provided under the Arbitration and Conciliation Act, 1996 (26 of 1996) as if the parties to the dispute have consented .in writing for determination of such disputes by conciliation or by arbitration and the provisions of the said Act shall apply accordingly.

Explanation.—For the purposes of this section, a dispute shall include-

(a) a claim for any debt or other amount due;

(b) a claim by surety against the principal debtor, where the Producer Company has recovered from the surety amount in respect of any debtor or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or amount due be admitted or not;

(c) a claim by Producer Company against a Member for failure to supply produce as required of him;

(d) a claim by a Member against the Producer Company for not taking goods supplied by him.

(2) If any question arises whether the dispute relates to formation, management or business of the Producer Company, the question shall be referred to the arbitrator, whose decision thereon shall be final.

PART XI

Miscellaneous provisions

378ZP. Strike off name of Producer Company

(1) Where a Producer Company fails to commence business within one year of its registration or ceases to transact business with the Members or if the Registrar is satisfied, after making such inquiry as he thinks fit, that the Producer Company is no longer carrying on any of its objects specified in section 378B, he shall make an order striking off the name of the Producer Company, which shall thereupon cease to exist forthwith:

Provided that no such order cancelling the registration as aforesaid shall be passed until a notice to show cause has been given by the Registrar to the Producer Company with a copy to all its directors on the proposed action and reasonable opportunity to represent its case has been given.

(2) Where the Registrar has reasonable cause to believe that a Producer Company is not maintaining any of the mutual assistance principles specified, he shall strike its name off the register in accordance with the provisions contained in section 248.

(3) Any Member of a Producer Company, who is aggrieved by an order made under sub-section (1), may appeal to the Tribunal within sixty days of the order.

(4) Where an appeal is filed under sub-section (3), the order of striking off the name shall not take effect until the appeal is disposed of.

378ZQ. Provisions of this Chapter to override other laws

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such Act or law or instrument in so far as the same are not varied by, or are inconsistent with, the provisions of this Chapter shall apply to the Producer Company

378ZR. Application of provisions relating to private companies

All the limitations, restrictions and provisions of this Act, other than those specified in this Chapter, applicable to a private company, shall, as far as may be, apply to a Producer Company, as if it is a private limited company under this Act in so far as they are not in conflict with the provisions of this Chapter.

PART XII

Re-conversion of Producer Company to inter-State co-operative society

378ZS. Re-conversion of Producer Company to inter-State co-operative society

(1) Any Producer Company, being an erstwhile inter-State co-operative society, formed and registered under this Chapter, may make an application-

(a) after passing a resolution in the general meeting by not less than two-thirds of its Members present and voting; or

(b) on request by its creditors representing three-fourth value of its total creditors, to the Tribunal for its re-conversion to the inter-State co-operative society.

(2) The Tribunal shall, on the application made under sub-section (1), direct holding meeting of its Members or such creditors, as the case may be, to be conducted in such manner as it may direct.

(3) If a majority in number representing three-fourths in value of the creditors, or Members, as the case may be, present and voting in person at the meeting conducted in pursuance of the directions of the Tribunal under sub-section (2), agree for re-conversion, if sanctioned by the Tribunal, be binding on all the Members and all the creditors, as the case may be, and also on the company which is being converted:

Provided that no order sanctioning re-conversion shall be made by the Tribunal unless the Tribunal is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the company, such as the latest 15 financial position of the company, the latest report of the auditor on the accounts of the company, the pendency of any investigation proceedings in relation to the company under Chapter XIV, and the like.

(4) An order made by the Tribunal under sub-section (3) shall have no effect until a certified copy of the order has been filed with the Registrar.

(5) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(6) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees, for each copy in respect of which default is made.

(7) The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Tribunal thinks fit, until the application is finally disposed of.

(8) Every Producer Company, which has been sanctioned re-conversion by the Tribunal, shall make an application under the Multi-State Co-operative Societies Act, 2002 (39 of 2002) or any other law for the time being in force for its registration as multi-State co-operative society or co-operative society, as the case may be, within six months of sanction by the Tribunal and file a report thereof to the Tribunal and the Registrar of Companies and to the Registrar of the Co-operative Societies under which it has been registered as a multi-State co-operative society or co-operative society, as the case may be.

378ZT. Power to modify Act in its application to Producer Companies

(1) The Central Government may, by notification, direct that any of the provisions of this Act (other than those contained in this Chapter) specified in the said notification-

(a) shall not apply to the Producer Companies or any class or category thereof; or

(b) shall apply to the Producer Companies or any class or category thereof with such exception or adaptation as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the

session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

378ZU. Power to make rules

The Central Government may make rules for carrying out the purposes of this Chapter.'.

53. Amendment of section 379

In section 379 of the principal Act, in sub-section (1), the proviso shall be omitted.

54. Amendment of section 392

In section 392 of the principal Act,-

(a) the words "with imprisonment for a term which may extend to six months or" shall be omitted;

(b) for the words "five lakh rupees, or with both", the words "five lakh rupees" shall be substituted.

55. Insertion of new section 393A

After section 393 of the principal Act, the following section shall be inserted, namely:-

"393A. Exemptions under this Chapter—The Central Government may, by notification, exempt any class of-

(a) foreign companies;

(b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,

as may be specified in the notification, from any of the provisions of this Chapter and a copy of every such notification shall, as soon as may be after it is made, be laid before both Houses of Parliament.".

56. Amendment of section 403

In section 403 of the principal Act, in sub-section (1), for the third proviso, the following proviso shall be substituted, namely:-

"Provided also that where there is default on two or more occasions in submitting, filing, registering or recording of such document, fact or information, as may be prescribed, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of such higher additional fee, as may be prescribed.".

57. Amendment of section 405

In section 405 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:-

"(4) If any company fails to comply with an order made under sub-section (1) or sub-section (3), or furnishes any information or statistics which is incorrect or incomplete in any material respect, the company and every officer of the company who is in default shall be liable to a penalty of twenty thousand rupees and in case of continuing failure, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.".

58. Amendment of section 410

In section 410 of the principal Act,-

(i) in the opening portion, the words "not exceeding eleven" shall be omitted;

(ii) in clause (b), for the word, figures and letter "section 53N", the word, figures and letter "section 53A" shall be substituted.

59. Insertion of new section 418A

After section 418 of the principal Act, the following section shall be inserted, namely:-

"418A. Benches of Appellate Tribunal—(1) The powers of the Appellate Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson:

Provided that a Bench of the Appellate Tribunal shall have at least one Judicial Member and one Technical Member.

(2) The Benches of the Appellate Tribunal shall ordinarily sit at New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:

Provided that the Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the Appellate Tribunal, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 (12 of 2003) and under section 61 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).".

60. Amendment of section 435

In section 435 of the principal Act, in sub-section (1), for the words "offences under this Act, by notification", the words and figures "offences under this Act, except under section 452, by notification" shall be substituted.

61. Amendment of section 441

In section 441 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:-

"(5) If any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4), the maximum amount of fine for the offence proposed to be compounded under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.".

62. Substitution of new section for section 446B

For section 446B of the principal Act, the following section shall be substituted, namely:-

'446B. Lesser penalties for certain companies.—Notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

Explanation.—For the purposes of this section,-

(a) "Producer Company" means a company as defined in clause (l) of section 378A;

(b) "start-up company" means a private company incorporated under this Act or under the Companies Act, 1956 (1 of 1956) and recognised as start-up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal Trade.'.

63. Amendment of section 450

In section 450 of the principal Act, for the words "punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues", the words "liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person" shall be substituted.

64. Amendment of section 452

In section 452 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:-

"Provided that the imprisonment of such officer or employee, as the case may be, shall not be ordered for wrongful possession or withholding of a dwelling unit, if the court is satisfied that the company has not paid to that officer or employee, as the case may be, any amount relating to-

(a) provident fund, pension fund, gratuity fund or any other fund for the welfare of its officers or employees, maintained by the company;

(b) compensation or liability for compensation under the Workmen's Compensation Act, 1923 (19 of 1923) in respect of death or disablement.".

65. Amendment of section 454

In section 454 of the principal Act, in sub-section (3), the following proviso shall be inserted, namely:-

"Provided that in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.".

66. Amendment of section 465

In section 465 of the principal Act, in sub-section (1),-

(a) the first proviso shall be omitted;

(b) in the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted;

(c) in the third proviso, for the words "Provided also that", the words "Provided further that" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Companies Act, 2013 (the Act) was enacted to consolidate and amend the law relating to companies. The Act introduced significant changes relating to disclosures to stakeholders, accountability of directors, auditors and key managerial personnel, investor protection, corporate governance and an in-house adjudication mechanism to adjudicate civil lapses without involving criminal courts.

2. In view of constant endeavour of the Government to facilitate greater ease of living to law abiding corporates, a Company Law Committee (CLC) consisting of representatives from Ministry, industry chambers, professional institutes and legal fraternity was constituted on the 18th September, 2019, to decriminalise some more provisions of the Act, based on their gravity and to take other concomitant measures to provide further ease of living for corporates in the country. After careful analysis, the CLC submitted its report in November, 2019.

3. Based on the recommendations of the CLC and internal review by the Government, it is proposed to amend various provisions of the Act to decriminalise minor procedural or technical lapses under the provisions of the said Act, into civil wrong; and considering the overall pendency of the courts, a principle based approach was adopted to further remove criminality in case of defaults, which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest. In addition, the Government also proposes

to provide greater ease of living to corporates through certain other amendments to the Act.

4. The Companies (Amendment) Bill, 2020, inter alia, provides for the following, namely:-

(a) to decriminalise certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest;

(b) to empower the Central Government to exclude, in consultation with the Securities and Exchange Board, certain class of companies from the definition of "listed company", mainly for listing of debt securities;

(c) to clarify the jurisdiction of trial court on the basis of place of commission of offence under section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be;

(d) to incorporate a new Chapter XXIA in the Act relating to Producer Companies, which was earlier part of the Companies Act, 1956;

(e) to set up Benches of the National Company Law Appellate Tribunal;

(f) to make provisions for allowing payment of adequate remuneration to nonexecutive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases;

(g) to relax provisions relating to charging of higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in section 403;

(h) to extend applicability of section 446B, relating to lesser penalties for small companies and one person companies, to all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups;

(i) to exempt any class of persons from complying with the requirements of section 89 relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;

(j) to reduce timelines for applying for rights issues so as to speed up such issues under section 62;

(k) to extend exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117;

(l) to provide that the companies which have Corporate Social Responsibility spending obligation up to fifty lakh rupees shall not be required to constitute the Corporate Social Responsibility Committee and to allow eligible companies under section 135 to set off any amount spent in excess of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years;

(m) to provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases;

(n) to provide for specified classes of unlisted companies to prepare and file their periodical financial results;

(o) to allow direct listing of securities by Indian companies in permissible foreign jurisdictions as per rules to be prescribed.

5. The Notes on clauses explain in detail the various provisions of the Bill.

6. The Bill seeks to achieve the above objectives.

New Delhi
The 6th March, 2020 NIRMALA SITHARAMAN

NOTES ON CLAUSES

Income Tax

Clause 2 of the Bill seeks to amend clause (52) of section 2 of the Companies Act, 2013 (the Act) to insert a new proviso that enables the Central Government to exclude certain companies, based on listing of certain securities on recognized stock exchanges, as may be provided by rules, in consultation with Securities and Exchange Board from the definition of listed companies.

Clause 3 of the Bill seeks to amend sub-section (11) of section 8 of the Act to omit the punishment of imprisonment in relation to an officer who is in default for the offence mentioned therein.

Clause 4 of the Bill seeks to amend clause (b) of sub-section (1) of section 16 of the Act to reduce the time limit of compliance from six months to three months for the direction provided in the provision. It also seeks to substitute sub-section (3) of the said section, to provide for allotment of a new name to the company by the Central Government, in case of default in complying with the direction under sub-section (1) instead of imposing punishment for non-compliance for such default.

Clause 5 of the Bill seeks to insert a new sub-section (3) in section 23 of the Act to allow a class of public companies to list certain class of securities on stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be provided by rules. It is further proposed to insert a new sub-section (4) in the said section so as to empower the Central Government to exempt, by notification, any class or classes of public companies referred to in the said sub-section (3) from any of the provisions of Chapter III, Chapter IV, section 89, section 90 or section 127 of the Act.

Clause 6 of the Bill seeks to amend sub-section (9) of section 26 of the Act to omit the punishment of imprisonment in relation to every person who is knowingly a party to the issue of prospectus in contravention of the said section.

Clause 7 of the Bill seeks to amend sub-section (5) of section 40 of the Act to remove punishment of imprisonment in case of any default in complying with the provisions of the said section.

Clause 8 of the Bill seeks to omit sub-section (5) of section 48 of the Act, to remove the penal provisions in case of any default in complying with said section.

Clause 9 of the Bill seeks to amend sub-section (6) of section 56 of the Act to provide for monetary penalty for company and its officers in default in case of failure to comply with sub-sections (1) to (5) of the said section.

Clause 10 of the Bill seeks to omit sub-section (5) of section 59 of the Act to remove the penal provisions in case of any default in complying with the order of the Tribunal under the said section.

Clause 11 of the Bill seeks to amend sub-clause (i) of clause (a) of sub-section (1) of section 62 of the Act to enable the Central Government to provide by rules such days lesser than fifteen for deeming the decline of the offer made under the said provision.

Clause 12 of the Bill seeks to amend sub-section (2) of section 64 of the Act to modify the amount of monetary penalty provided therein in case of default made in complying with sub-section (1).

Clause 13 of the Bill seeks to omit sub-section (11) of section 66 of the Act to remove the penal provisions in case of any default in complying with sub-section (4) of the said section.

Clause 14 of the Bill seeks to amend sub-section (11) of section 68 of the Act to omit the punishment of imprisonment in relation to an officer of the company who is in default for the offence specified therein.

Clause 15 of the Bill seeks to omit sub-section (11) of section 71 of the Act to remove the penal provisions in case of any default in complying with the order of the Tribunal under the said section.

Clause 16 of the Bill seeks to substitute sub-section (1) of section 86 of the Act to provide for monetary penalty, in case of failure to comply with the provisions of Chapter VI of the Act.

Clause 17 of the Bill seeks to substitute sub-section (5) of section 88 of the Act to provide for monetary penalty, in case of failure to comply with the provisions of sub-sections (1) and (2) of the said section.

Clause 18 of the Bill seeks to substitute sub-sections (5) and (7) of section 89 of the Act to provide monetary liability, for failure in making a declaration or in filing of a return, as the case may be, under sub-sections (1), (2), (3) or (6) of the said section. It also seeks to insert a new sub-section (11) to enable the Central Government to notify a class or classes of persons who shall be unconditionally or subject to such conditions, as may be specified in such notification, be exempted from complying with the said section, except sub-section (10).

Clause 19 of the Bill seeks to substitute sub-sections (10) and (11) of section 90 of the Act to provide for monetary penalty, for failure in making a declaration, maintaining register, filing of information, or taking necessary steps, as the case may be, in sub-sections (1), (2), (4) or (4A) of the said section.

Clause 20 of the Bill seeks to amend sub-section (5) of section 92 to modify the amount of monetary penalty provided therein in case of default made in complying sub-section (4) of the said section. The said clause further seeks to provide monetary penalty for default under sub-section (6) of the said section.

Clause 21 of the Bill seeks to amend sub-section (5) of section 105 of the Act to provide for monetary penalty in case, invitations for proxies are issued at expense the of company.

Clause 22 of the Bill seeks to substitute sub-section (2) of section 117 of the Act to modify the amount of monetary penalty for company and its officers in default for failure to comply with sub section (1) of said section. It also seeks to substitute the second proviso to clause (g) of sub-section (3) of the said section to enable the Central Government to exempt any class of non-banking financial companies registered under Chapter IIIB of Reserve Bank of India Act, 1934 and any class of housing finance companies registered under the National Housing Bank Act, 1987 from filing of resolutions passed to grant loans or give guarantees or to provide security in respect of loans under clause (f) of sub-section (3) of section 179 of the Act in the ordinary course of their business.

Clause 23 of the Bill seeks to substitute sub-section (7) of section 124 of the Act to provide for monetary penalty for company and its officers in default for failure to comply with the provisions of the said section.

Clause 24 of the Bill seeks to amend sub-section (6) of section 128 of the Act to omit the punishment of imprisonment in relation to an officer who is in default for the offence mentioned therein.

Clause 25 of the Bill seeks to insert a new section 129A in the Act to empower the Central Government to provide by rules such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar within thirty days from the end of that period as specified in the rules.

Clause 26 of the Bill seeks to substitute sub-section (8) of section 134 of the Act to provide for monetary penalty on the company and its officers in default in case of failure in complying with said section.

Clause 27 of the Bill seeks to amend sub-section (5) of section 135 of the Act by inserting a proviso thereto to allow companies, which have spent an amount in

excess of the requirement provided under the said sub-section, to set off such excess amount out of their obligation in the succeeding financial years in such manner as may be provided by rules. It further seeks to substitute sub-section (7) of the said section to provide that if a company defaults in complying with sub-sections (5) or (6) of the said section, such company and every officer of such company who is in default shall be liable to a monetary penalty. It also seeks to insert a new sub-section (9) in the said section to provide that the requirement of constitution of Corporate Social Responsibility Committee shall not be applicable, in case the amount required to be spent under sub-section (5) of the said section does not exceed fifty lakh rupees.

Clause 28 of the Bill seeks to amend sub-section (3) of section 137 of the Act to modify the amount of monetary penalty in case of default made in complying with sub-section (1) or sub-section (2) of the said section.

Clause 29 of the Bill seeks to amend sub-section (3) of section 140 of the Act to modify the amount of monetary penalty, in case of default made in complying with sub-section (2) of the said section by the auditor.

Clause 30 of the Bill seeks to substitute sub-section (15) of section 143 of the Act to provide for monetary penalty on an auditor, cost accountant or company secretary in practice who fail to comply with sub-section (12) of the said section.

Clause 31 of the Bill seeks to amend sub-section (1) of section 147 of the Act to omit the punishment of imprisonment in relation to an officer who is in default for the offence mentioned therein. It also seeks to amend sub-section (2) to omit the reference of section 143 mentioned therein.

Clause 32 of the Bill seeks to amend sub-section (9) of section 149 of the Act to insert a new proviso which provides that an independent director may receive remuneration, if a company has no profits or inadequate profits in accordance with Schedule V of the Act.

Clause 33 of the Bill seeks to substitute sub-section (6) of section 165 of the Act to modify the amount of monetary penalty, in case of a default committed under the said section.

Clause 34 of the Bill seeks to amend sub-section (2) of section 167 of the Act to omit the punishment of imprisonment for the offence mentioned therein.

Clause 35 of the Bill seeks to substitute section 172 of the Act to provide for monetary penalty, in case of default in complying with the provisions of Chapter XI of the Act for which no specific punishment or penalty has been provided.

Clause 36 of the Bill seeks to amend sub-section (8) of section 178 of the Act to provide for monetary penalty in case of any default in compliance with sections 177 and 178.

Clause 37 of the Bill seeks to amend sub-section (4) of section 184 of the Act to provide for monetary penalty in case of default of sub-sections (1) and (2) of the said section.

Clause 38 of the Bill seeks to substitute sub-section (4) of section 187 of the Act by providing for monetary penalty in case of default by a company or officer of the company in complying with the provisions of the said section.

Clause 39 of the Bill seeks to amend clause (i) of sub-section (5) of section 188 of the Act by replacing the punishment for imprisonment or fine with monetary penalty and further to amend clause (ii) of the said sub-section by replacing fine with monetary penalty.

Clause 40 of the Bill seeks to amend sub-section (3) of section 197 of the Act to provide that if a company fails to make profits or makes inadequate profits in a financial year, any non-executive director of such company, including an independent director, shall be paid remuneration in accordance with Schedule V of the Act.

Clause 41 of the Bill seeks to amend sub-section (4) of section 204 of the Act to provide monetary penalty for contravention of the provisions of the said section.

Clause 42 of the Bill seeks to substitute sub-section (8) of section 232 of the Act to provide for monetary penalty on failure to comply with the sub-section (5) of the said section.

Clause 43 of the Bill seeks to amend sub-section (8) of section 242 of the Act to omit the punishment of imprisonment in relation to an officer in default for the offence mentioned therein.

Clause 44 of the Bill seeks to amend sub-section (2) of section 243 of the Act to omit the punishment of imprisonment in relation to an officer in default for the offence mentioned therein.

Clause 45 of the Bill seeks to amend sub-section (3) of section 247 of the Act by providing for monetary penalty in place of fine when a valuer contravenes the provisions of the said section.

Clause 46 of the Bill seeks to substitute sub-section (2) of section 284 of the Act to provide that when a person required to assist a Company Liquidator under sub-section (1) of the section does not do so, then the Company Liquidator may make an application to the Tribunal for necessary directions. It also seeks to insert a new sub-section (3) to provide that the Tribunal may direct such person to comply with the directions of the Company Liquidator.

Clause 47 of the Bill seeks to substitute sub-section (3) of section 302 of the Act to provide that the Tribunal shall forward a copy of the order of dissolution to the Registrar, and direct the Company Liquidator to also forward such copy to the Registrar, who shall record in the register relating to the

company a minute of the dissolution of the company. It also seeks to omit sub-section (4) of the said section.

Clause 48 of the Bill seeks to omit sub-section (6) of section 342 of the Act.

Clause 49 of the Bill seeks to amend sub-section (4) of section 347 of the Act by omitting the punishment for imprisonment in relation to a person for the offence mentioned therein.

Clause 50 of the Bill seeks to substitute sub-section (6) of section 348 of the Act to provide that if a Company Liquidator, who is an Insolvency Professional, is in default in complying with the provisions of the section, the default will be a contravention of the Insolvency and Bankruptcy Code, 2016, and the rules and regulations made thereunder. The said clause also seeks to omit sub-section (7) of the said section.

Clause 51 of the Bill seeks to substitute sub-section (2) of section 356 of the Act to provide that the Tribunal shall forward a copy of the order to the Registrar, and direct the Company Liquidator or the person on whose application such order was made to also file a certified copy of the order with the Registrar within thirty days of the order.

Clause 52 of the Bill seeks to insert a new Chapter as Chapter XXIA relating to Producer Companies on similar lines as provided in the Companies Act, 1956.

Clause 53 of the Bill seeks to omit the proviso to sub-section (1) of section 379 of the Act.

Clause 54 of the Bill seeks to amend section 392 of the Act to omit the punishment of imprisonment in relation to an officer who is in default for the offence mentioned therein.

Clause 55 of the Bill seeks to insert a new section 393A in the Act to empower the Central Government to exempt any class of foreign companies or companies incorporated or to be incorporated outside India, from any of the provisions of Chapter XXII of the Act by notification to be laid before both Houses of Parliament.

Clause 56 of the Bill seeks to substitute the third proviso to sub-section (1) of section 403 of the Act to provide that where there is a default on two or more occasions in submitting, filing, registering or recording of prescribed documents the same shall be done on payment of such higher additional fee as may be provided by rules.

Clause 57 of the Bill seeks to substitute sub-section (4) of section 405 of the Act to provide for payment of monetary penalty in case a company fails to comply with an order made under sub-section (1) or sub-section (3) of the said section, or furnishes any incorrect information.

Clause 58 of the Bill seeks to amend section 410 of the Act by removing the restriction provided on the number of Judicial and Technical members that the Central Government may appoint in the Appellate Tribunal.

Clause 59 of the Bill seeks to insert a new section 418A in the Act to provide for constitution of Benches of the Appellate Tribunal and related provisions.

Clause 60 of the Bill seeks to amend sub-section (1) of section 435 of the Act to provide that the offence under section 452 of the Act shall be excluded from the applicability of section 435 of the Act.

Clause 61 of the Bill seeks to substitute sub-section (5) of section 441 of the Act to provide that if any officer or employee of the company fails to comply with the order of Tribunal or Regional Director or any other officer authorised by the Central Government the maximum amount of fine shall be twice the amount provided in the corresponding section in which the punishment for such offence is provided.

Clause 62 of the Bill seeks to substitute section 446B of the Act to provide for payment of lessor monetary penalty by a start-up company, Producer Company, One Person Company or small company on failure to comply with provisions of the Act which attract monetary penalties.

Clause 63 of the Bill seeks to amend section 450 of the Act to provide for monetary penalty in case where a company or any officer of a company or any other person makes contraventions of any provision of the Act for which no penalty or punishment is provided elsewhere in the Act.

Clause 64 of the Bill seeks to insert a proviso in sub-section (2) of section 452 of the Act to provide that the imprisonment of officer or employee of the company specified under the said sub-section shall not be ordered in case of wrongful possession or withholding of a dwelling unit is concerned and such officer or employee has not received certain statutory dues from the company.

Clause 65 of the Bill seeks to amend sub-section (3) of section 454 of the Act to insert a new proviso to provide that no monetary penalty shall be imposed when such default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer.

Clause 66 of the Bill seeks to omit the first proviso to sub-section (1) of section 465 of the Act.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill empowers the Central Government to provide by rules under clause (52) of section 2 of the Act, in consultation with the Securities and Exchange Board, class of companies that have listed or intend to list such class of securities that shall not be included within the definition of listed company.

Sub-clause (ii) of clause 4 of the Bill empowers the Central Government to provide by rules, under sub-section (3) of section 16 of the Act, the manner in which the Central Government shall allot a new name to a company that defaults in complying with directions issued under sub-section (1) of that section.

Clause 5 of the Bill empowers the Central Government under sub-section (3) of section 23 of the Act to provide by rules, such class of public companies which may list such class of securities on permitted stock exchange in permissible foreign jurisdictions or other jurisdictions as may be provided in such rules. Further, the said clause also empowers the Central Government to exempt, by notification, any class or classes of public companies from any of the provisions of Chapter III, Chapter IV, section 89, section 90 or section 127 of the Act.

Clause 11 of the Bill empowers the Central Government to provide by rules under sub-clause (i) of clause (a) of sub-section (2) of section 62 of the Act, a time limit of lesser number of days than the fifteen-day limit specified therein.

Sub-clause (c) of clause 18 of the Bill empowers the Central Government to notify, under sub-section (11) of section 89 of the Act, any class or classes of persons who may be exempted, conditionally or unconditionally, from the requirement of compliance with the provisions of that section, if the same is considered necessary in the public interest.

Sub-clause (ii) of clause 22 of the Bill empowers the Central Government to provide by rules under the second proviso to clause (g) of sub-section (3) of section 117 of the Act, any class of non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934, or any class of housing finance company registered under the National Housing Bank Act, 1987, to whom nothing contained in this provision shall apply, in respect of a resolution passed to grant loans or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 of the Act in the ordinary course of its business.

Clause 25 of the Bill empowers the Central Government under the proposed new section 129A to provide by rules, the form for preparation of the financial results of the company on such periodical basis in respect of such class or classes of unlisted companies; the manner of obtaining approval of the Board of Directors and completing audit or limited review of such periodical financial results; and the fees to file a copy with the Registrar within a period of thirty days of completion of the relevant period.

Sub-clause (a) of clause 27 of the Bill empowers the Central Government to provide by rules, under the proviso to sub-section (5) of section 135 of the Act, the manner in which the company may set off any amount spent in excess of the requirement provided in the said sub-section in a particular financial year, against the requirements in the succeeding financial years.

Clause 52 of the Bill empowers the Central Government to provide by rules, the form and manner in which an application is to be made for approval of the alteration of the provisions of memorandum relating to the change of the place of registered office from one State to another, under sub-section (4) of section 378H of the Act; the amount of average annual turnover exceeding which a Producer company, shall be required to have a whole-time secretary, under sub-section (1) of 378X of the Act; any other mode in which the general reserves of a Producer Company, shall be invested under sub-section (1) of 378ZL of the Act; notify any of the provisions of the Act (other than those contained in the Chapter XXIA of the Act) that shall either not apply or apply with certain exceptions or adaptations, under sub-section (1) of section 378ZT of the Act; for the purposes of Chapter XXIA of the Act, under section 378ZU of the Act.

Clause 55 of the Bill empowers the Central Government under the proposed new section 393A to exempt, by notification, any class of foreign companies or companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, from the provisions of Chapter XXII of the Act.

Clause 59 of the Bill empowers the Central Government to notify under the proposed new section 418A, in consultation with the Chairperson, places apart from New Delhi where the Benches of the Appellate Tribunal may be set up. The said clause also seeks to empower the Central Government to notify, after consultation with the Chairperson, additional Benches of the Appellate Tribunal, as deemed necessary, to hear appeals under the Competition Act, 2002 and the Insolvency and Bankruptcy Code, 2016.

The matters in respect of which rules may be made under the proposed legislation are matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

Extracts from the Companies Act, 2013 (18 of 2013)

* *

8. Formation of companies with charitable objects etc.,

(1) * * * *

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten

lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

* * * * * * * * * * *

16. Rectification of name of company

(1) *(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999 (47 of 1999), made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

* * * * * * * * * * *

(3) If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.

CHAPTER III

Prospectus and allotment of securities

Part I.—*Public offer*

23. Public offer and private placement

(1) A public company may issue securities-

* * * * * * * * * *

(2) A private company may issue securities-

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

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

Explanation.—For the purposes of this Chapter, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

26. Matters to be stated in prospectus

(1) * * * * * * * * *

(9) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

* * * * * * * * * *

40. Securities to be dealt with in stock exchanges

(1) * * * * * * * * * *

(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

48. Variations of shareholders' rights

(1) * * * * * * * * * *

(5) Where any default is made in complying with the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

56. Transfer and transmission of securities

(1) * * * * * * * * * *

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

59. Rectification of register of members

(1) * * * * * * * * * *

(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

62. Further issue of share capital

(1) * * * * * * * * * *

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

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

64. Notice to be given to Registrar for alteration of share capital.

(1) *

(2) where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.

66. Reduction of share capital.

(1) * * * * * * * * * *

(11) If a company fails to comply with the provisions of sub-section (4), it shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

68. Power of company to purchase its own securities

(1) * * * * * * * * * *

(11) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchage Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

Explanation I.—For the purpose of this section and section 70, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

Explanation II.—For the purpose of this section, "free reserves" includes securities premium account.

CHAPTER V

Acceptance of Deposits by Company

71. Debentures

(1) * * * * * * * * * *

(11) If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

86. Punishment for contravention

If any company contravenes any provision of this Chapter, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

CHAPTER VII

Management and Administration

88. Register of members

(1) * * * * * * * * * *

(5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.

89. Declaration in respect of beneficial interest in any share

(1) * * * * * * * * * *

(5) If any person fails, to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), without any reasonable cause, he shall be punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

* * * * * * * * * *

(7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

* * * * * * * * * *

90. Register of significant beneficial owners in a company

(1) * * * * * * * * * *

(10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees

but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A) fails to do so or denies inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

* * * * * * * * * *

92. Annual return

(1) * * * * * * * * * *

(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

* * * * * * * * * *

105. Proxies

(1) * * * * * * * * * *

(5) If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or wilfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees:

Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

117. Resolutions and agreements to be filed

(1) * * * * * * * * * *

(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

(3) The provisions of this section shall apply to-

* * * * * * * * * *

(g) resolutions passed in pursuance of sub-section (3) of section 179:

* * * * * * * * * *

Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and

124. Unpaid dividend account

(7) If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

CHAPTER IX

Accounts of Companies

128. Books of account, etc., to be kept by company

(1) * * * * * * * *

(6) If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial Officer or such other person. of the company shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

134. Financial statement, Board's report, etc.

(1) * * * * * * * * * *

(8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every

officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

135. Corporate social Responsibility

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director:

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

* * * * * * * * * *

(7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

137. Copy of financial statement to be filed with Registrar.

(1) * * * * * * * * * *

(3) If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein the company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

140. Removal, resignation of auditor and giving of special notice.

(1) * * * * * * * * * *

(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

143. Powers and duties of auditors and auditing standards

(1) * * * * * * * * * *

(15) If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

* * * * * * * * * *

147. Punishment for contravention

(1) If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.

(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees or four times the remuneration of the auditor, whichever is less:

Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less.

* * * * * * * * * *

165. Number of directorship

(1) * * * * * * * * * *

(6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall be liable to a penalty of five thousand rupees for each day after the first during which such contravention continues.

* * * * * * * * * *

167. Vacation of office of director

(1) * * * * * * * * * *

(2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be

less than one lakh rupees but which may extend to five lakh rupees, or with both.

* * * * * * * * * *

172. Punishment

If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

* * * * * * * * * *

178. Nomination and remuneration Committee and Stakeholders Relationship Committee.

(1) * * * * * * * * * *

(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both:

Provided that inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.

Explanation.—The expression "senior management" means personnel of the company who are members of its core management team excluding Board of Directors comprising all members of management one level below the executive directors, including the functional heads.

* * * * * * * * *

184. Disclosure of interest by director

(1) * * * * * * * * * *

(4) If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both.

187. Investments of company to be held in its own name.

(4) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

188. Related party transactions.

(1) * * * * * * * * * *

(5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,-

(i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and

(ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

* * * * * * * * * *

197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

(1) * * * * * * * * * *

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.

* * * * * * * * * *

204. Secaterial audit for bigger companies

(1) * * * * * * * * * *

(4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

* * * * * * * * * *

232. Merger and amalgamation of companies

(1) * * * * * * * * * *

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.

* * * * * * * * * *

242. Powers of Tribunal

(1) * * * * * * * * * *

(8) If a company contravenes the provisions of

sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

* * * * * * * * * *

243. Consequence of termination or modification of certain agreements

(1) * * * * * * * * * *

(2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

* * * * * * * * * *

CHAPTER XVII

Registered valuers

247. Valuation by registered valuers

(1) * * * * * * * * * *

(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

* * * * * * * * * *

284. Promoters, directors, etc., to cooperate with Company Liquidator

(1) * * * * * * * * * *

(2) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

* * * * * * * * * *

302. Dissolution of company by Tribunal

(1) * * * * * * * * * *

A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.

If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

* * * * * * * * * *

342. Prosecution of delinquent officers and members of company

(1) * * * * * * * * * *

(6) If a person fails or neglects to give assistance required by sub-section (5), he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

* * * * * * * * * *

344. Disposal of books and papers of company

(1) * * * * * * * * * *

(4) If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

* * * * * * * * * *

348. Information as to pending liquidations

(1) * * * * * * * * * *

If a Company Liquidator contravenes the provisions of this section, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for everyday during which the failure continues.

If a Company Liquidator makes wilful default in causing the statement referred to in sub-section (1) audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, or with both.

* * * * * * * * * *

356. Powers of Tribunal to declare dissolution of company void

(1) * * * * * * * * * *

(2) It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to ten thousand rupees for every day during which the default continues.

* * * * * * * * * *

CHAPTER XXII

Companies incorporated outside India

379. Application of Act to foreign companies

(1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:

Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament.

* * * * * * * * * *

392. Punishment for contravention

Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

* * * * * * * * * *

CHAPTER XXV

Companies to furnish information or statistics

405. Power of Central Government to direct companies to furnish information or statistices

(1) * * * * * * * * * *

(4) If any company fails to comply with an order made under sub-section (1) or subsection (3), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.

* * * * * * * * * *

410. Constitution of Appellate Tribunal

The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a chairperson and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, 3[for hearing appeals against-

(a) the orders of the Tribunal or of the National Financial Reporting Authority under this Act; and

(b) any direction, decision or order referred to in section 53N of the Competition Act, 2002 (12 of 2002) in accordance with the provisions of that Act].

* * * * * * * * * *

CHAPTER XXVIII

Special courts

435. Establishment of Special Courts

(1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

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441. Compounding of certain offences

(1) * * * * * * * * * *

(5) Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.

* * * * * * * * * *

446B. Lesser penalties for One Person Companies or small companies

Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, subsection (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or 2[liable to a penalty which shall not be more than one-half of the penalty specified in such sections.

* * * * * * * * * *

450. Punishment where no specific penalty or punishment is provided

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine

which may extend to one thousand rupees for every day after the first during which the contravention continues.

* * * * * * * * * *

454. Adjudication of penalties

(1) * * * * * * * * * *

(3) The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

* * * * * * * * * *

465. Repeal of certain enactments and savings

(1) The Companies Act, 1956 (1 of 1956) and the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961) (hereafter in this section referred to as the repealed enactments) shall stand repealed:

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not 1 of 1956. been repealed until a special Act is enacted for Producer Companies:

Provided further that until a date is notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 (1 of 1956) in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall contunue to apply as if the Companies Act, 1956 has not been repealed:

Provided also that provisions of the Companies Act, 1956 (1 of 1956) referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 (6 of 2009) shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed.

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further to amend the Companies Act, 2013.

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(Smt. Nirmala Sitharaman,
Minister of Finance and Corporate Affairs)

General Circular

General Circular No. 07/2020, dtd. 5-3-2020 [F. NO. 7/39/2019-CL-I]

National Financial Reporting Authority—Constitution of—Extension of Last Date of Filing of Form NFRA-2

In continuation of the *Ministry's General Circular No. 14/2019 dated 27th November, 2019* and after due examination, it has been decided that the time limit for filing of Form NFRA-2, for the reporting period Financial Year 2018-19, will be 150 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

2. This issues with the approval of Competent Authority.

General Circular No. 09/2020, dtd. 12-3-2020 [F. NO. 01/34/2013/CL-V]

Relaxation of Additional Fees and Extension of Last Date In Filing of MGT-7 (Annual Return) and AOC-4 (Financial Statement) For UT of J&K And UT of Ladakh

In continuation to *General Circular No. 03/2020 dated 31-1-2020* and keeping in view of the requests received from various stakeholders stating that due to disturbances in internet services and the normal work was affected in the UT of J&K and UT of Ladakh and sought extension of time for filing of financial statements for the financial year ended 31-3-2019. Therefore, it has been decided to further extend the due date for filing of e-forms AOC-4, AOC-4 (CFS) AOC-4 XBRL and e-form MGT-7 upto 30-6-2020, for companies having jurisdiction in the UT of J&K and UT of Ladakh without levy of additional fee.

2. This issues with the approval of the competent authority.

NOTIFICATIONS

Notification F. No. 1/13/2013 CL-V, VOL-IV, dtd. 12-3-2020

Companies (Incorporation) Second Amendment Rules, 2020—Amendment in Form No. INC-28

In exercise of the powers conferred by section 3, sub-section (1) of section 7 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely: -

1. (1) These rules may be called the Companies (Incorporation) second Amendment Rules, 2020.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the Companies (Incorporation) Rules, 2014, in the Annexure, in Form No.INC-28, in serial number 5, in clause (a) after sub-clause (ii), the following shall be inserted, namely.-

"(iii) Section of Insolvency and Bankruptcy Code, 2016 under which order passed"."

Notification F. No. 1/16/2013 CL-V (PT-I), dtd. 12-3-2020

Companies (Registration Offices and Fees) Second Amendment Rules, 2020—Amendment in Form No. GNL-2

In exercise of the powers conferred by sections 396, 398, 399, 403 and 404 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Registration Offices and Fees) Second Amendment Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, in Form No. GNL-2,

(i) in serial number 3, after item number "Form 159 of the Companies (Court) Rules, 1959", the following item shall be inserted, namely.-

"Filing under Insolvency and Bankruptcy Code, 2016".

(ii) after the first verification column, the following shall be inserted, namely.-

"Particulars of the person signing and submitting the form

Name

Capacity

File No. 05/05/2015-CSR, dtd. 13-03-2020

Invitation for Public Comments on the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020

Corporate Social Responsibility (CSR) for companies has been mandated through Companies Act, 2013 which came into effect since 01.04.2014. Section 135 of the Act enumerates the provisions concerning CSR and the Companies (Corporate Social Responsibility Policy) Rules, 2014 prescribes the rules for implementation. All these were notified on 27th February, 2014 and came into effect since 01.04.2014. The Companies (Amendment) Act, 2019 amended section 135 dealing with Corporate Social Responsibility. The Companies (Amendment) Act, 2019 received President's assent and was published in Official Gazette on 31st July, 2019.

2. In order to operationalize the Companies (Amendment) Act, 2019, the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 has been drafted for carrying out amendments in the Companies (CSR Policy) Rules, 2014.

3. Public comments are therefore hereby solicited on the draft Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020. The draft Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 may be accessed at the web link mentioned below and comments, if any, may be submitted online therein by end of business hours on 28th March, 2020 positively.

http://feedapp.mca.Rov.in/csr/

4. Stakeholder may please note that comments should not be sent separately through e-mail or hard copy and should be sent only through the web link created for the purpose.

Government of India Ministry of Corporate Affairs

Notification, dtd. New Delhi, the March, 2020

G.S.R...(E).- In exercise of the powers conferred by section 135 and subsections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:-

1. Short title and commencement

(1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 2, in sub-rule (1)

(i) for clause (c), the following clause shall be

substituted, namely :-

"(c) Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these Rules, but shall not include the following, namely-

i) Activities undertaken in pursuance of normal course of business of the company.

ii) Any activity undertaken by the company outside India.

iii) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.

iv) activities that significantly benefit the employees of the company and their families.

Provided that in case of any activity having less than twenty five percent employees as its beneficiary, then such activity shall be deemed to be CSR activity under these rules.";

(ii) for clause (e), the following clause shall be substituted, namely :-

"(e) "CSR Policy" means a statement containing the approach and direction given by the board of a company, as per recommendations of its CSR Committee, for selection, implementation and monitoring of activities to be undertaken in areas or subjects specified in Schedule VII of the Act."

(iii) for clause (f), the following clause shall be substituted, namely :-

"(f) "International Organization" means an organization notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply."

(iv) after clause (f) , following sub-clauses shall be inserted, namely:-

"(g) "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: -

(i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

(ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, (1 of 1956) shall not be required to be re-calculated in accordance with the provisions of the Act:

Provided further that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

(h) "Ongoing Projects" means a multi-year project undertaken by a Company in fulfillment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall also include such projects that were initially not approved as a multi-year project but whose duration has been extended beyond a year by the Board based on reasonable justification.

(i) "Public Authority" means 'Public Authority' as defined in sub-clause (h) of section (2) of Right to Information Act, 2005."

3. In the said Rules, in Rule 3, in sub-rule (2), in clause (b) for the words, brackets and figure 'sub-section (2) to (5)', the words, brackets and figure 'sub-section (2) to (8)' shall be substituted;

4. In the said Rules, for rule 4, the following rules shall be substituted, namely:-

"CSR Implementation

(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through:

(a) a company established under section 8 of the Act, or

(b) any entity established under an Act of Parliament or a State legislature.

Provided that such company/entity, covered under clause (a) or (b), shall register itself with the central government for undertaking any CSR activity by filing the e-form CSR-1 with the Registrar along with prescribed fee.

Provided further that the provisions of this sub-rule shall not affect the CSR projects or programmes that were approved prior to the commencement of the Companies (CSR Policy) Amendment Rules, 2020.

(2) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

(3) A company may engage international organizations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

Provided that a company may also engage an international organization for implementation of a CSR project subject to prior approval of the central government.

(4) Board of a company shall satisfy itself that the funds so disbursed have been utilized for the

purpose and in the manner as approved by it and Chief financial Officer or the person responsible for financial management shall certify to the effect.

(5) In case of ongoing projects, the Board of a company shall monitor the implementation of the project with reference to the approved timelines and year wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period."

5. In the said Rules, in rule 5, for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following:

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of Rule 4;

(c) the modalities of utilization of funds and implementation schedules for the projects or programmes; and

(d) monitoring and reporting mechanism for the projects or programmes.

(e) Details of need and impact assessment, if any, undertaken by the company."

6. In the said Rules, Rule 6 shall be omitted.

7. In the said Rules, for rule 7, the following rules shall be substituted, namely:-

"CSR Expenditure:

(1) The board shall ensure that the administrative overheads incurred in pursuance of sub-section (4) (b) of section 135 of the Act shall not exceed five percent of total CSR expenditure of the company for the financial year.

Provided that a company undertaking impact assessment, in pursuance of sub-rule (3) of Rule 8, may incur administrative overheads not exceeding ten percent of total CSR expenditure for that financial year.

(2) Any surplus arising out of the CSR projects or programmes or activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and action plan of the company.

(3) The CSR amount may be spent by a company for creation or acquisition of assets which shall only be held by a company established under section 8 of the Act having charitable objects or a public authority.

Provided that any asset created by a company prior to the commencement of Companies (CSR Policy) Amendment Rules, 2020, shall within a period of One hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the board based on reasonable justification.

(4) Unspent balance, if any, towards fulfilment of CSR obligation at the time of commencement of these Rules shall be transferred within a period of thirty days from the end of Financial Year 2020-21 to special account viz., 'Unspent Corporate Social Responsibility Account' opened by the company and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year."

8. In the said Rules, in rule 8, after sub-rule (2), following sub-rule shall be inserted, namely:-

"(3) A company having the obligation of spending average CSR amount of Rs 5 Crore or more in the three immediately preceding financial years in pursuance of sub section 5 of Section 135 of the Act, shall undertake impact assessment for their CSR projects or programmes, and shall disclose details of the same in its Annual Report on CSR."

9. In the said Rules, for rule 9, the following rules shall be substituted, namely:-

"Display of CSR activities on its website:

The Board of Directors of the company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website for public viewing, as per the particulars specified in the Annexure."

10. In the said Rules, after rule 9, following rule shall be inserted, namely:-

"Rule 10 :National Unspent Corporate Social Responsibility Fund :

(1) The Central Government shall establish a fund called the "National Unspent Corporate Social Responsibility Fund" (herein after referred as "the Fund") for the purposes of sub-section (5) and (6) of section 135 of the Act. The Fund shall be utilized for the purposes of undertaking CSR projects in the in areas or subjects specified in schedule VII of the Act. Provided that until such fund is created the unspent CSR amount in terms of provisions of sub-section (5) and (6) of section 135 of the Act shall be transferred by the company to any fund as specified in schedule VII of the Act.

(2) The manner of administration, authority for administration of the Fund shall be in accordance with such guidelines as may be prescribed by the Central Government from time to time."

11. In the said rules, in the annexure,-

(i) The e-form CSR-1 shall be inserted, namely:

[Form Not Reproduced]

Note. The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 129(E), dated the 27th February, 2014 and were subsequently amended by notification number G.S.R. 644(E), dated the 12th September, 2014, notification number G.S.R. 43(E), dated the 19th January, 2015 and notification number G.S.R. 540 (E) dated 23rd May, 2016, notification number G.S.R. 895(E) dated 19th September, 2018.

SEBI–CIRCULAR

Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/33, dtd. 11-3-2020

Amendment in 'Rights and Obligations of Members, Authorized Persons and Clients' of FMC Circular No. FMC/COMPL/IV/KRA-05/11/14 dtd. 26-02-2015

1. SEBI, vide *circular no. SEBI/HO/MIRSD/MIRSD2/CIR/P/2016/92 dated September 23, 2016*, *inter-alia* specified that provisions of *FMC circular No. FMC/COMPL/IV/KRA-05/11/14 dated February 26, 2015* shall be applicable to all commodity derivatives exchanges including regional commodity derivatives exchanges for compliance by their members.

2. *Clause 42 of Annexure-3:* 'Rights and Obligations of Members, Authorized Persons and Clients' of FMC circular No. FMC/COMPL/IV/KRA-05/11/14 dated February 26, 2015, specifies the following:

In case, client opts to receive the contract note in electronic form, he shall provide an appropriate email id (created by the client) to the member (Kindly refer Appendix A of Annexure 3). Member shall ensure that all the Rules/Business Rules/Bye-Laws/Circulars issued from time to time in this regard are complied with. The client shall communicate to the member any change in e-mail id through a physical letter. If the client has opted for internet trading, the request for change of email id may be made through the secured access by way of client specific user id and password.

The Appendix A specified in the above clause is the ECN (Electronic Contract Note) Declaration Form in which e-mail id is required to be written in own handwriting of the client.

3. *Clause 48 of Annexure-3:* 'Rights and Obligations of Members, Authorized persons and Clients' of FMC circular dated February 26, 2015, specifies the following:

The Electronic Contract Note (ECN) declaration form will be obtained from the client who opts to receive the contract note in electronic form. This declaration will remain valid till it is revoked by the client.

4. *Clause 37 of Annexure-4:* 'Rights and Obligations of Stock Brokers and Clients' of SEBI circular no. CIR/MIRSD/16/2011 dated August 22, 2011 specifies the following:

In case, client opts to receive the contract note in electronic form, he shall provide an appropriate e-mail id to the stock broker. The client shall communicate to the stock broker any change in the email-id through a physical letter. If the client has opted for internet trading, the request for change of email id may be made through the secured access by way of client specific user id and password.

5. As per the aforementioned clauses, clients in commodity derivatives segment are required to submit a physical form for providing e-mail id, if they wish to receive contracts notes in electronic form. Whereas, clients in segments other than commodity derivatives segment are required to provide an appropriate email id to the stock broker.

6. *For ease of investors with regard to receiving electronic contract notes, it has been decided to replace the clause 42 of Annexure-3:* 'Rights and Obligations of Members, Authorized Persons and Clients' of FMC circular No. FMC/COMPL/IV/KRA-05/11/14 dated February 26, 2015, with clause 37 of Annexure-4: 'Rights and Obligations of Stock Brokers and Clients' of SEBI circular no. CIR/MIRSD/16/2011 dated August 22, 2011. Further, clause 48 of Annexure-3: 'Rights and Obligations of Members, Authorized Persons and Clients' of FMC circular No. FMC/COMPL/IV/KRA-05/11/14 dated February 26, 2015, shall stand rescinded.

7. Stock Exchanges are directed to

7.1 make necessary amendments to the relevant Bye-laws, Rules and Regulations for the implementation of the above decision;

7.2 bring the provisions of this circular to the notice of their members and also disseminate the same on their websites; and

7.3 communicate to SEBI, the status of implementation of the provisions of this circular in their monthly report.

8. This circular is issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

Circular No. SEBI/HO/DDHS/DDHS/CIR/P/2020/35, dtd. 13-3-2020

Amendments to Guidelines for Rights Issue, Preferential Issue and Institutional Placement of Units by a Listed REIT

1. Rights Issue

SEBI issued *circular SEBI/HO/DDHS/DDHS/CIR/P/2020/09 dated January 17, 2020* (hereinafter "rights issue circular") providing guidelines for rights issue of units by a listed REIT. The circular stands modified as under:

1.1 The existing clause 11 and 12 shall be re-numbered as 13 and 14 respectively and the following shall be inserted as clause 11 and 12 before the re-numbered clauses:

"11. A REIT satisfying the conditions mentioned below and desirous of issuing units under fast track rights issue shall, for such an issue, follow guidelines specified in this circular except those under sub-clauses 3.1, 3.2, 3.7 and 3.8:

11.1 the units of the REIT have been listed on a stock exchange for a period of at least three years immediately preceding the record date;

11.2 all the units of the REIT are held in demat form on the record date;

11.3 the average market capitalisation of public unit holding of the REIT is at least two hundred and fifty crore rupees;

11.4 the REIT is in compliance with the listing and disclosure requirements of the REIT Regulations;

11.5 the REIT has redressed at least ninety-five per cent. of the complaints received from the investors till the end of the quarter immediately preceding the month of the record date;

11.6 no show-cause notices have been issued or prosecution proceedings have been initiated by the Board and pending against the REIT, parties to the REIT or their respective promoters or partners or directors as on the record date;

11.7 the REIT, parties to the REIT or their respective promoters or partners or directors has not settled any alleged violation of securities laws through the consent or settlement mechanism with the Board during three years immediately preceding the record date;

11.8 units of the REIT have not been suspended from trading as a disciplinary measure during last three years immediately preceding the record date;

11.9 no regulatory action has been imposed on the REIT in the three years preceding the year in which rights issue is proposed;

Provided that imposition of only monetary fines by stock exchanges on the REIT shall not be a ground for ineligibility for undertaking issuances under this clause.

11.10 there shall be no conflict of interest between the lead merchant banker(s) and the REIT or parties to the REIT in accordance with the applicable regulations;

11.11 The sponsor and sponsor group shall mandatorily subscribe to their rights entitlement and shall not renounce their rights, except to the extent of renunciation within the respective sponsor group or for the purpose of complying with minimum public shareholding norms prescribed under the REIT Regulations, 2014;

11.12 there are no audit qualifications on the audited accounts of the REIT in respect of those financial years for which such accounts are disclosed in the letter of offer;

Explanation: For the purpose of this circular, "audit qualifications" shall be those disclosed under applicable accounting standard relating to modification to the opinion in the independent auditor's report and requires a qualified opinion, adverse opinion or disclaimer of opinion for material misstatements.

12. The REIT shall file the letter of offer with the Board in accordance with sub-clause 3.9 and shall pay fees to the Board as specified in Schedule II of REIT Regulations for issuing units through fast track rights issue route."

1.2 Clause 7 (a) of Annexure I is modified as under:

"Provided if the REIT has undertaken any acquisition or disposal of any material asset(s)after the latest period for which financial information is disclosed in the letter of offer but before the date of filing of the letter of offer, the financial information should be prepared on a pro forma basis certified by statutory auditors of the REIT for the last completed financial year and the stub period (if any)."

2. Preferential and Institutional Placement

The following clauses of SEBI *circular SEBI/HO/DDHS/DDHS/CIR/P/2019/142 dated November 27, 2019* providing guidelines for preferential issue and institutional placement of units by listed REITs stand modified as under:

2.1 Clause 3.1 of Annexure I is modified as under:

"The units allotted to sponsor(s) and sponsor group shall be locked-in for a period of three years from the date of trading approval granted for the units:

Provided that units not more than twenty-five percent of the total unit capital of the REIT shall be locked-in for three years from the date of trading approval:

Provided further that units allotted in excess of twenty-five percent of the total unit capital of the REIT shall be locked-in for one year from the date of trading approval."

2.2 The proviso to the paragraph 7(a) of Annexure III is modified as under:

"Provided that if the REIT has undertaken any acquisition or disposal of any material assets after the latest period for which the financial information is disclosed in the placement document but before the date of placement document, the pro forma financial statements shall be prepared and certified by statutory auditors for the last completed financial year and the stub

period (if any)."

2.3 The existing paragraph (b) under clause 7 shall be re-numbered as (c) and the following shall be inserted before the re-numbered (c):

"(b) Summary of the audited standalone financial statements of the assets proposed to be acquired for the previous three years and the stub period (if any)"

2.4. Clause 11 is added to Annexure III is as under:

"The lead merchant banker shall ensure that the information contained in the draft placement document and placement document and the particulars as per audited financial statements are not more than six months old from the issue opening date:

Provided that REITs which are in compliance with REIT Regulations and guidelines issued thereunder may file unaudited financials with limited review for the stub period in the current financial year, subject to making necessary disclosures in this regard including risk factors."

3. This circular is being issued in exercise of powers conferred under section 11(1) of the Securities and Exchange Board of India Act, 1992 and Regulation 33 of the REIT Regulations.

4. This Circular is available on the website of the Securities and Exchange Board of India at www.sebi.gov.in under the category "Legal" and under the drop down "Circulars".

NOTIFICATION

Notification No. SEBI/LAD-NRO/GN/2020/07, dtd. 6-3-2020

Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2020— Amendment in Regulations 26 And 28

In exercise of the powers conferred by section 30, read with clause (c) of sub-section (2) of section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations to further amend the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, namely:-

1. These Regulations may be called the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2020.

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, -

I. in regulation 26,-

i. first proviso to sub-regulation (1) shall be substituted by the following clause, namely, -

"Provided that in case of a gold exchange traded fund scheme, the assets of the scheme being gold or gold related instruments may be kept in the custody of a custodian registered with the Board".

II. in regulation 28, -

i. sub-regulation (4) shall be substituted by the following clause, namely, -

"28(4). The sponsor or asset management company shall invest not less than one percent of the amount which would be raised in the new fund offer or fifty lakh rupees, whichever is less, and such investment shall not be redeemed unless the scheme is wound up:

Provided that the investment by the sponsor or asset management company shall be made in such option of the scheme, as may be specified by the Board."

OFFICE ORDER

Office Order F. No. Legal-35/3/2020, dtd. 6-3-2020

Constitution of High Level Committee for Preparation of Investigation Manual for Serious Fraud Investigation Office (SFIO)

With the approval of Competent Authority, a Committee with following composition is hereby constituted to prepare an Investigation manual for Serious Fraud Investigation Office (SFIO):

Sl. No.	*Members*	*Role*
1.	Mr. Injeti Srinivas, Secretary, Ministry of Corporate Affairs	Chairperson
2.	Mr. Amardeep Singh Bhatia, Director Serious Fraud Investigation Office*	Member & Convener
3.	Mr. Sanjay Shorey, Director (L&P), Ministry of Corporate Affairs	Member
4.	Mr. Balwinder Singh, Special Director Central Bureau of Investigation (Retd.)	Member
5.	Special Director, Directorate of Enforcement	Member
6.	Mr. D. P. Singh, Senior Advocate	Member
7.	Mr. K. K. Manan, Senior Advocate	Member
8.	Mr. Arvind Nigam, Senior Advocate	Member
9.	Mr. Ajay Bahl, Managing Partner, AZB & Partners, Law firm	Member

10.	Dr. Sarasu Esther Thomas & Mr. Kunal Ambasta, National Law School of India University (NLSIU), Bengaluru	Member
11.	Prof. (Dr.) Mamata Biswal, Gujarat National Law University (GNLU), Gandhinagar	Member
12.	Mr. Ashish Garg, President, Institute of Company Secretary of India*	Member

(*ICSI & SFIO shall provide logistic and technical support to the Committee and they will notify the nodal officer for the same.)

2. Terms of Reference:

i. The committee shall devise an all-encompassing manual for carrying out the effective investigations in tune with the provisions of relevant Acts and it shall provide an effective and relevant manual encompassing the procedures and methodologies for Investigating Officers.

ii. In conjunction with other Committees of the Board, the Committee shall raise awareness of the relevant Acts and the Investigation Process, aimed at encouraging Investigating Officers to uphold the highest standards of professional practice and conduct.

iii. It shall assess and make recommendations on any learning points arising from past experiences and cases which may have an impact or influence on SFIO investigation strategy or policy statements.

iv. It shall contribute its expertise and insight to the reviews of the existing investigation process, recommending changes to the existing investigation process for consideration.

v. The Committee shall analyze the investigating procedures followed by other investigating agencies and incorporate the relevant procedures in the manual.

vi. Based on an initial examination of accessible documents/existing procedures and methodologies followed by SFIO, it shall develop a more detailed analysis of issues in light of relevant corporate frauds and effective modalities to tackle challenges

vii. It shall provide the practical and productive procedures for maintenance of records for the purpose of investigation

viii. It shall also provide the methodology for maintaining the investigation diary and updation of the same by the competent authority.

ix. It shall establish the standard operating procedure for taking the requisite approval of the competent authorities by the Investigating Officers.

x. It shall define the scope of powers and procedures required and conferred upon the Investigating Officers by various relevant Acts.

xi. It shall prepare the manual which may plug all the possible and probable loopholes which may hamper the investigation or the prosecution thereof.

xii. It shall analyze and specify the applicability of the Code of Criminal Procedure and Code of Civil Procedure to SFIO and implications thereof.

xiii. It shall provide advice and guidance on other matters as may be requested by the Ministry and SFIO.

3. The Committee to prepare the Standard Operating Procedure Investigation manual for Serious Fraud Investigation Office within 45 days from the first meeting of the Committee and submit it to the Ministry.

4. Terms and conditions:

i. The Committee shall submit its report within 45 days from the date of holding its first meeting.

ii. It is proposed that Institute of Company Secretaries of India (ICSI) and SFIO shall render necessary secretarial assistance and logical support to the High Level Committee. SFIO & ICSI shall jointly provide technical support to the Committee.

iii. In the first meeting of the Committee, SFIO shall give the presentation highlighting the present practices/procedures followed by SFIO, issues/challenges, gaps in existing manual, procedures followed by other investigating agencies, comparative analysis with other investigating agencies, etc. SFIO shall also place the existing manual & changes brought therein before the Committee during the first meeting. An advance soft copy may be shared by SFIO with members of the committee to enable them to come prepared.

iv. The Committee may devise its own procedure to conduct its meetings including inter alia, invite any person(s) of appropriate standing, knowledge and expertise in the fields of economics, law, banking, investigation, etc.; meet at any place in India; constitute sub-committee for providing inputs to the committee and for deliberating upon policy matters.

5. The non-government outstation members shall be entitled to TA/DA as per guidelines issued by DOE vide OM No. 19047/1/2016-E.IV dated 14-9-2017 as detailed below:

i. Travel by air in executive class in domestic airlines within the country.

ii. Reimbursement of AC taxi charges as per actual for travel within the city.

iii. Reimbursement for hotel accommodation/ guest house of up to Rs. 7500/- per day.

iv. Reimbursement of food bills not exceeding Rs. 1200/- per day.

6. This issues with the approval of the competent authority.

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S. 10F **COMPANIES ACT, 1956**

Appeals against the orders of the Company Law Board—***Appeal against allowability of application for condonation of delay in filing rejoinder***—*Power to review or recall its own order*

Though CLB had no power to review or recall its own order, once the order had attained finality, only recourse open to aggrieved party was to approach Appellate Court for relief, thus, the CLB's order of allowability of application filed by shareholder for condonation of delay in filing rejoinder taking recourse to Regulations 43 and 44 was set aside.

Decision: In favour of appellant

➲ ***Mohanlal Hargovinddas Bidi Udyog (P) Ltd. v. Jyotsnaben P. Patel 2020 TaxPub(CL) 22 (MP-HC)***

S. 111A

Rectification of register on transfer—***Appeal against allowability of condonation of delay in filing petition***—*Delay in filing petition against refusal of registration of shares due to collection of necessary documents—Sufficient reason*

Though shareholder had occurred delay in filing petition against refusal of registration of shares due to collection of documents, which were necessary documents for arriving at a decision of the case, therefore, an application for condonation of delay in filing the petition was rightly allowed by Tribunal.

Decision: Against the appellant

➲ ***Akal Spring Ltd. & Ors. v. Amrex Marketing (P) Ltd. 2020 TaxPub(CL) 14 (NCLAT-New Delhi)***

S. 397 & 398

Oppression and mismanagement—***Petition against illegal removal from directorship***—*Absence of resignation—Conducting of Board meeting without association of minority shareholders*

Though minority shareholders were permanent directors of the company and they were not liable for retirement by rotation, except by way resigning his/her office or dies, they had never resigned as a directors, therefore, their removal from directorship were illegal and contrary to articles of association of the company and law, which was set aside.

Decision: In favour of petitioner

➲ ***Puttanarayanappa Nadikeraiah v. Bindu Labels (P) Ltd. 2020 TaxPub(CL) 26 (NCLT-Bengaluru) : (2019) 4 CLJ 319 (NCLT-Bengaluru)***

S. 434, 433 & 439

Company when deemed unable to pay its debts—***Application for dismissal of winding up petition***—*Termination of master services agreement—Whether company being a creditor under section 434(1) eligible to file winding up petition*

Though winding up petition was presented after termination of master services agreement, therefore, contention of purchaser that the company was neither a creditor nor an assignee *qua* purchaser under section 434(1) was not tenable, thus, application for dismissal of the winding up petition was rejected.

Decision: Against the applicant

➲ ***Megasoft Ltd. v. Infoglx Inc. 2019 TaxPub(CL) 1098 (Mad-HC) : (2019) 215 Comp.Cas 219 (Mad)***

S. 529A & 529

Overriding preferential payments—***Appeal against direction to meet liabilities of workmen and costs of security provided by liquidator***—*Liability upon bank for taking over mortgaged property*

Though security of secured creditor was deemed to be subject to a *pari passu* charge in favour of workman to extent of workman's dues and liable to pay portion of expenses incurred by liquidator for preservation of security, thus, possession of property was handed over to bank after payment of workmen's dues and costs of security provided by liquidator

Decision: Against the appellant

➲ ***IDBI Bank Ltd. v. Electra Power (P) Ltd. & Anr. 2020 TaxPub(CL) 15 (Del-HC)***

S. 621A

Compounding of certain offences—***Appeal against order of compounding regarding use of discretionary power by CLB***—*Absence of any specific restriction/parameters—CLB empowered to take decision in a given case whether to compound or not*

Though SFIO filed an appeal against order of compounding regarding use of discretionary power by CLB, but there was absence of any specific restriction/parameters that could be followed in considering compounding of cases, the CLB was empowered to take decision in a given case whether to compound or not, thus, no infirmity was found in the order of the CLB.

Decision: Against the appellant

➲ ***Serious Fraud Investigation Office v. IL & FS Engineering & Construction Company Ltd. 2019 TaxPub(CL) 1142 (AP-HC) : (2019) 215 Comp.Cas 282 (AP)***

S. 241 **COMPANIES ACT, 2013**

Oppression and mismanagement—***Appeal against rejection of petition***—*Illegal removal from post of Executive Chairman—Conversion of company in*

violation of section 14

Though actions of removal of director from post of Executive Chairman and conversion of company from public to private in violation of section 14 were taken by majority group illegally, which were prejudicial and oppressive to members, including minority group, thus, the actions were set aside.

Decision: In favour of appellant

➲ ***Cyrus Investments (P) Ltd. v. Tata Sons Ltd. 2020 TaxPub(CL) 163 (NCLAT-New Delhi) : (2020) 154 CLA 47 (NCLAT-New Delhi)***

S. 241, 242 and 244

Oppression and mismanagement—***Appeal against maintainability of petition***—*Pendency of legal heir's claim relating to shares before Court of competent Jurisdiction—Waiver of requirement under section 244*

Though claim of legal heir relating to shares of deceased shareholder was pending in a suit before Court of competent jurisdiction, therefore, this was a fit case for waiver under section 244 and for that application under sections 241 and 242 should be heard on merit, thus, appeal filed by the company against maintainability of petition was rejected.

Decision: Against the appellant

➲ ***Oswal Greentech Ltd. v. Pankaj Oswal & Ors. 2020 TaxPub(CL) 24 (NCLAT-New Delhi) : (2019) 217 Comp.Cas 520 (NCLAT-New Delhi)***

Art. 226 **CONSTITUTION OF INDIA, 1950**

Power of High Court to issue certain writs—***Petition for quashing of Final Observation made by SEBI regarding price of open offer for acquiring shares***—*Non-offering of price paid to person acting in concert—Actual price of shares as per 8(2)(c) of SAST Regulations, 2011*

Though UOI was not person acting in concert with LIC, therefore, shares issued to the UOI at price of Rs. 71.82 per share were not actual price as per regulations 8(2)(c), offer price of Rs. 61.73 per share, as being offered by LIC, was correct as per justification given at Letter of Offer, thus, petition for quashing of Final observation made by SEBI was dismissed.

Decision: Against the petitioner

➲ ***Vijay Prakash v. SEBI & Ors. 2019 TaxPub(CL) 1076 (All-HC) : (2019) 4 CLJ 35 (All) : (2019) 153 CLA 75 (All)***

S. 15A **SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992**

Penalty for failure to furnish information, return, etc.—***Appeal against imposition of penalty***—*Neither deliberate intention nor any fraud or loss caused to any investor—Reduction of penalty*

Though non-disclosures within stipulated period under PIT and SAST Regulations, violated provisions of the regulations and consequently, penalty became leviable even though not deliberate, there was neither disproportionate gain by the appellants nor any fraud or loss was caused to any investor, thus, quantum of penalty was reduced.

Decision: Partly in favour of appellant

➲ ***Annand Sarnaaik v. Securities Exchange Board of India, Mumbai 2019 TaxPub(CL) 1085 (SAT - Mumbai)***

S. 15HA

Penalty for fraudulent and unfair trade practices—***Appeal against imposition of penalty***—*Non-receipt of either show cause notice or communication of date of hearing—Opportunity of hearing*

Though Adjudicating Officer imposed penalty upon appellant under section 15HA for violation of PFUTP Regulations, but the appellant had neither received show cause notice nor any date of hearing was communicated, thus, the order was set aside and Adjudicating Officer was directed to provide adequate opportunity of hearing to the appellant.

Decision: In favour of appellant

➲ ***Praveen Poddar v. SEBI 2019 TaxPub(CL) 1104 (SAT - Mumbai)***

S. 15T

Appeal to the Securities Appellate Tribunal—***Appeal against direction to revise offer price for acquiring shares of target company***—*Adoption of proposed offer price as per two valuers' report—Opportunity of raising objections regarding valuation arrived at by CA not provided to acquirer*

Though SEBI appointed a CA after considering report of two valuers' report and on basis of the CA's report, the SEBI directed to revise offer price, but opportunity of raising objections regarding valuation arrived at by the CA was not provided to acquirer, thus, the case was remitted back to the SEBI for taking an appropriate decision after considering the objections.

Decision: Partly in favour of appellant

➲ ***Tenneco Inc. v. SEBI 2019 TaxPub(CL) 657 (SAT)***

OTHER COMMERCIAL/LABOUR LAWS

CONTENTS

SUBJECT INDEX

MEDIA LIBRARY

CCI

■ CCI is examining 17 laws for compliance, says chairman Ashok Kumar Gupta

The Competition Commission of India (CCI) is examining 17 pieces of legislation across different sectors to check if they are compliant with competition laws, Ashok Kumar Gupta, chairman of the CCI, said on Friday. "There are a number of rules that need to become compliant with competition regulations. Maybe some of them already are... We will examine it in detail," Gupta said. The anti-trust watchdog will identify inadvertent policy-induced restrictions on competition, if any.

Gupta was speaking on the sidelines of a national conference on the economics of competition law. Stressing the need for antitrust regulations to match the economic realities of the time, Gupta said, "In digital markets, enforcement priorities and remedies should generate optimal deterrence of anticompetitive conduct while preserving the incentives for innovation." He also said the CCI is finalising its report on the telecom sector and competition practices within it. The commission had conducted a similar study on the e-commerce sector. Soon after the study was made public, the CCI had ordered an investigation into Flipkart and Amazon for offering deep discount and their preferred seller model.

While the e-commerce companies managed to get an interim stay on the probe, the CCI is likely to submit an affidavit in the Delhi High Court to explain its stance soon, Gupta said.

The chairman also highlighted the green channel system for deemed approval of combination schemes with nearly 30 per cent of the cases notified to the CCI this year processed under the automatic system. "This channel will promote a speedy and transparent process for approval of combinations as also to create a culture of self-compliance."

www.business-standard.com dt. 07-03-2020

IBC

■ IBC provides new lifeline to save stressed firms from premature deaths

The insolvency law provides a new lifeline for stressed companies to save them from premature death, IBBI Chairman M S Sahoo said on Friday.

The Insolvency and Bankruptcy Code (IBC) provides for a time-bound and market-linked resolution of stressed assets.

Speaking at an event here, Sahoo said the IBC provides a new lifeline to a company which has a value and has to be saved from premature death.

Exemplifying his point, Sahoo said the average life of S&P 500 companies has reportedly come down from 90 years to 18 years over the last century.

There is a kind of danger to the life of a business and at times, freedom results in unfair battles at market place, he noted.

As many as 190 companies have been rescued till December 2019 through resolution plans and they owed Rs 3.8 lakh crore to creditors.

The Insolvency and Bankruptcy Board of India (IBBI) is a key institution in the insolvency ecosystem.

www.business-standard.com dt. 07-03-2020

EPFO

■ EPFO reduces interest rate on employee provident fund to 8.5%

Retirement fund body Employees Provident Fund Organisation (EPFO) on Thursday lowered the interest rate on deposits to 8.50 per cent for the current financial year (FY20) from 8.65 per cent in 2018-19. The decision was taken at a meeting of the central board of trustees (CBT) of the EPFO.

"EPFO lowered interest rate on employee provident fund to 8.50 per cent for 2019-20 from 8.65 per cent in 2018-19," said Labour Minister Santosh Gangwar after the meeting.

Now, the labour ministry requires the finance ministry's concurrence on the matter. Since the Government of India is the guarantor, the finance ministry has to vet the proposal for the EPF interest rate to avoid any liability on account of a shortfall in the EPFO income for any financial year.

The finance ministry has been nudging the labour ministry to align the EPF interest rate with other small saving schemes run by the government, such as the public provident fund and post office saving schemes.

The move means that salaried employees would earn lower returns for the financial year ending March 31, 2020. The EPFO was offering subscribers an interest of 8.65 per cent in 2018-19. It had provided 8.65 per cent rate of interest for 2016-17 and 8.55 per cent in 2017-18. The rate of interest in 2015-16 was slightly higher at 8.8 per cent.

The EPFO invests 85 per cent of its annual accruals in the debt market and 15 per cent in equities through exchange-traded funds.

At the end of March last year, the EPFO had a cumulative investment of Rs 74,324 crore in equities, fetching a return of 14.74 per cent.

www.business-standard.com dt. 06-03-2020

PROFESSIONALS' INPUT LIBRARY

LIMITED LIABILITY PARTNERSHIP ACT, 2008—SETTLEMENT SCHEME

LLP Settlement Scheme, 2020 : One Time Opportunity for Defaulting LLPs

▸ *In order to promote ease of doing business, Government of India has announced a settlement scheme for LLPs on March 4, 2020 granting one time relaxation to defaulting companies from the burden of paying excessive cumulative additional fee while filing pending documents.*

– Pragya Lalwani

1. Bankground

Limited Liability Partnership being in existence since ages is known for its hybrid structure having the benefits of both a company and a partnership firm with minimum compliance requirements. Limited Liability Partnership (LLP) with its outer structure appears to be a company with limited liability of its members but as regards internal structure it would work as traditional partnership. Due to such flexibility in op-

erations, enterprises are encouraged to register as LLP. LLP is also required to file certain documents or returns, though it came to notice of the Government that many LLPs have defaulted in filing required documents because of which the records with the Registry are not updated. In view of large number of representations received for waiver of fee or condonation of delay in filing required documents for reducing the excessive financial burden, the Government decided to provide a one-time relaxation from the additional fee to defaulting LLPs and came up with a settlement scheme named 'LLP Settlement Scheme, 2020'.

2. Need and object of Scheme

It was found that a large number of LLPs were not filing their statutory documents viz., information with regard to LLP agreement and changes therein, notice of appointment of partner or designated partner and other documents to be filed annually, in timely manner with the Registrar, i.e., on the due date of filing. It led to non-updation of records available in the electronic registry and their non-availability for inspection by the stakeholders. Such default would also impose criminal liability on the LLPs and its designated partners and they cannot be closed until compliances are made.

Further, the Government noted that additional fees charged under section 69 for per day default has created excessive burden on LLPs as no maximum limit is set which resulted in non-filing of the Forms. Thus, need was felt by the Government to provide a one time opportunity to the defaulting LLPs, by allowing condonation of delay in filing pending statutory documents with the Registrar and serve as a compliant LLP. Therefore, the LLP Settlement Scheme, 2020 was announced by the Ministry of Corporate Affairs to bring non-compliant LLPs into the legal fold by providing them window of 90 days, i.e., three months to complete overdue filings. Thereafter, Registrar may take any action against the defaulting LLPs under the LLP Act, 2008, not availing the Scheme and yet in default in filing documents as required under the Act.

3. Analysis of section 69

Section 69 deals with payment of additional fee in case of default.

Any document or return required to be filed or registered under the LLP Act, 2008 with the Registrar, if, not filed or registered in time provided therein, it may be filed or registered after that time up to a period of three hundred days from the date within which it should have been filed, on payment of additional fee. Such fee would be one hundred rupees for every day of such delay in addition to any fee as is payable for filing of such document or return.

Such document could also be filed after the period of three hundred days on payment of fee or additional fee as specified above.

Thus, hundred rupees has to be paid per day for delay but no upper limit is prescribed in the section, thus, posing financial burden on LLPs defaulting in filing documents for years.

4. Time period and applicability of the Scheme

The LLP Settlement Scheme, 2020 would be in operation from 16-3-2020 to 13-6-2020.

Within such period of 90 days, every defaulting LLP is permitted to file belated documents which were due for filing until 31st October, 2019 in accordance with the provisions of this Scheme.

Scheme would apply on filing of following documents :

(i) Form 3, i.e., Information with regard to LLP agreement and changes therein, if any;

(ii) Form 4- Notice of appointment, cessation, change in name/ address/ designation of a designated partner or partner and consent to become a partner or designated partner;

(iii) Form 8 providing for Statement of Account and Solvency (Annual/Interim);

(iv) Form 11-Annual return of LLP.

It is to be noted that the Scheme would not apply to the LLPs which has made application for striking off its name of company from the register in Form 24 to the Registrar as per the provisions of rule 37(1) of LLP Rules, 2009.

5. Payment of additional fee during window provided under Scheme

The defaulting LLPs may themselves avail of the scheme for filing documents which have not been filed in time but became due, by paying additional fee of ten rupees per day for delay in addition to any fee as is payable for filing of

such document. Further, such payment of additional fee shall be subject to maximum of five thousand rupees per document.

In other words, during the scheme period, the additional fee of hundred rupees per day is reduced to ten rupee per day, further, capped at five thousand rupees per document. Also, only those statutory documents could be filed which are due upto 31-10-2019, thus, any document due to be filed after such date and is not filed on time may attract additional fee of hundred rupees per day.

6. Immunity from prosecution where scheme availed of

According to *General Circular No. 6/2020 dt. 4-3-2020*, a defaulting company who has filed its pending documents till 13-6-2020 and made the default good would get immunity from the prosecution by the Registrar for the default of not filing the overdue returns or documents.

□□□

INSOLVENCY AND BANKRUPTCY CODE, 2016—PERSONAL GUARANTORS

Institution of Bankruptcy Proceedings against Personal Guarantors

▸ *This article aims at enlightening readers about the provisions and aspects related to the process and forms of making applications for initiating bankruptcy proceedings against personal guarantors to corporate debtors, withdrawal of such applications, etc., under the Insolvency and Bankruptcy Code, 2016.*

– Pragya Bhandari

1. Prologue

Many times a corporate debtor takes a loan guaranteed by another corporate person or an individual (personal guarantor to the corporate debtor). The lender may pursue a remedy against the corporate debtor or the guarantor, when a default in repayment of the loan is made. The Insolvency and Bankruptcy Code, 2016 ('the Code') has brought personal guarantor of a corporate debtor under its purview. Earlier, the Code was limited to adjudication of cases of corporate insolvency and corporate guarantors, however, with the expansion of the scope of the Code by bringing personal guarantor of a corporate debtor under itself, creditor can initiate bankruptcy proceeding against a personal guarantor, further, personal guarantor can himself also be able to approach the Adjudicating Authority to claim their own bankruptcy. In this regard, the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 as well as the Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 have been notified *w.e.f. 1-12-2019* that would apply to bankruptcy process for personal guarantors to corporate debtors so that faster resolution would be available to bankruptcy cases of personal guarantor of corporate debtor. Proceedings against the corporate debtor as well as personal guarantors may be initiated simultaneously before Adjudicating Authority.

Sections 121 to 123 read with the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 provide for the process and forms of making applications for initiating bankruptcy proceedings against personal guarantors to corporate debtors, withdrawal of such applications and further provisions thereof. In case of the death of the corporate guarantor, the bankruptcy proceedings would be maintainable against their legal representatives.

2. Guarantor —Meaning of

The meaning for 'guarantor' has been enunciated under rule 3(1)(f) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which means 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.

3. Adjudication for bankruptcy of personal guarantor

Insolvency and Bankruptcy for individuals would be governed by the provisions of Part III of the Code and Debt Recovery Tribunal would act as Adjudicating Authority having territorial jurisdiction over the place where the individual debtor actually resides or carries on business or personally works for gain and can entertain an application under the Code regarding such person. However, according to section 60 of the Code, where an application for insolvency resolution or liquidation proceeding of a corporate debtor is pending before the National Company Law Tribunal (NCLT), an application related to insolvency resolution or liquidation or bankruptcy of a corporate guarantor or a personal guarantor would also be filed before the NCLT.

Insolvency resolution, liquidation or bankruptcy proceeding of a corporate guarantor or a personal guarantor of the corporate debtor pending in any court or Tribunal would stand transferred to the NCLT dealing with insolvency resolution or liquidation proceeding of such corporate debtor.

4. Filing of an application

An application for initiation of the bankruptcy process of personal guarantors to corporate debtors can be filed by the guarantor himself or by one or more creditors.

(i) Filing of an application by guarantor

Personal guarantors can themselves approach to the Adjudicating Authority to claim their own bankruptcy. For this purpose, an application for initiation of the bankruptcy process is required to be filed by the guarantor himself in Form A along with an application fee of two thousand rupees under rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019. *[Section 122]*

(ii) Filing of an application by creditor

Creditors may initiate bankruptcy proceedings against a personal guarantor to corporate debtor by filing an application with the Adjudicating Authority, either by himself or jointly with other creditors in terms of section 123 of the Code. Such application should be filed in Form B under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 along with a fee of two thousand rupees. In case of a joint application, the creditors may nominate one amongst themselves to act on behalf of all the creditors.

If a secured creditor makes an application for bankruptcy *qua* the unsecured debt, the secured and unsecured parts of the debt would be treated as separate debts.

5. Service of copy of application

The guarantor is required to serve a copy of the application filed by him to every creditor and the corporate debtor for whom the guarantor is a personal guarantor, however, creditor would serve forthwith a copy of the application filed by him to the guarantor and the corporate debtor for whom the guarantor is a personal guarantor.

6. Documents to be annexed with application

The application filed by the debtor or creditor must be *inter-alia* accompanied with following details and documents as may be specified:

(a) the records of insolvency resolution process undertaken under Chapter III of Part III of the Code;

(b) a copy of the order passed by the Adjudicating Authority under Chapter III of Part III permitting the applicant to file for initiation of bankruptcy;

(c) details of the debts owed by the debtor to the creditor as on the date of the application for bankruptcy if the applicant is a creditor;

(d) the statement of affairs of the debtor in such form and manner as may be prescribed, on the date of the application for bankruptcy if the applicant is the corporate guarantor, etc.

If an application made by a creditor in respect of a debt which is secured, has to be accompanied with a statement by the creditor having the right to enforce the security that he shall, in the event of a bankruptcy order being made, give up his security for the benefit of all the creditors of the bankrupt person or a statement by the creditor stating that the application for bankruptcy is only in respect of the unsecured part of the debt and also stating the estimated value of the unsecured part of the debt.

It is pertinent to note that the application and accompanying documents should be filed in electronic form, as and when such facility is made available and as directed by the Adjudicating Authority. However, till such facility is made available, the applicant may submit accompanying documents and wherever they are bulky, in electronic form, in scanned, legible portable document format in a data storage device such as compact disc or a USB flash drive acceptable to the Adjudicating Authority.

7. Time period for filing application

An application for initiating bankruptcy process of personal guarantors to corporate debtors should be filed within three months from the Adjudicating Authority passing an order rejecting an application for initiation of corporate insolvency process against the guarantor in terms of section 100(4) of the Code or rejecting a repayment plan under the insolvency process in terms of section 115(2) of the Code or declaring that the repayment plan has not been fully implemented in respect of all persons bound by it within the period as mentioned in the repayment plan in terms of section 118(3) of the Code.

8. Operation of interim moratorium

In terms of section 124, on the date of making of an application of initiation of bankruptcy proceedings with the Adjudicating Authority, an interim moratorium would be declared till the bankruptcy commencement date. It means, interim moratorium would cease to have effect on the date of admission of such application. During the interim moratorium period, neither fresh legal action can be initiated nor any pending legal action be continued against the property of the corporate guarantor in respect of any of their debts.

9. Suggesting IP to act as bankruptcy trustee

The applicant may propose an insolvency professional to act as the bankruptcy trustee in its application.

10. Appointment of insolvency professional as bankruptcy trustee

If an insolvency professional is proposed as the bankruptcy trustee in the application for bankruptcy under section 122 or section 123, then the Adjudicating Authority will direct the Board within seven days of receiving the application to confirm that there are no pending disciplinary proceedings against such insolvency professional. If no insolvency professional has been proposed, the Adjudicating Authority would direct the Board within seven days of receiving the application to nominate a bankruptcy trustee for the bankruptcy process. The Board would confirm or reject or nominate, as the case may be, a bankruptcy trustee within ten days of receiving the direction of the Adjudicating Authority. On the basis of such confirmation or nomination, the Adjudicating Authority will appoint the bankruptcy trustee.

For the purpose of such confirmation or nomination, the Board may share the database of the insolvency professionals, including information about disciplinary proceedings against them, with the Adjudicating Authority from time to time as well as a panel of the insolvency professionals, who may be appointed as bankruptcy trustee, with the Adjudicating Authority.

11. Withdrawal of application for bankruptcy proceedings

The application for initiation of bankruptcy proceedings once filed, can only be withdrawn with the permission of the Adjudicating Authority.

CURRENT STATUTES LIBRARY

BANKING–NOTIFICATION

DOR.No.BP.BC.41/08.12.014/2019-20, dtd. March 17, 2020

Issue of Long Term Bonds by Banks—Financing of Infrastructure and Affordable Housing

Please refer to the *circular DBOD.BP.BC.No.25/08.12.014/2014-15 dated July 15, 2014* and subsequent circulars on the above subject. Also refer to the *circular DBR.BP.BC.No.42/08.12.014/2016-17 dated December 1, 2016* advising that for the purpose of definition of 'Infrastructure Lending', banks and select All India Term-Lending and Refinancing Institutions may be guided by the Gazette Notifications issued by the Department of Economic Affairs, Ministry of Finance, Government of India, from time to time.

2. For the purpose of circular dated July 15, 2014 mentioned above, 'Infrastructure sub-sectors' and 'affordable housing' have been defined under paragraphs 2(i) and 2(ii) of the Annex therein. Affordable housing[1] has since been included in the harmonised master list (HML) of infrastructure sub-sectors issued vide gazette notification dated August 13, 2018. For lending to infrastructure sector, banks/FIs shall continue to follow the definition of affordable housing projects as per the definition in the HML, as amended from time to time.

3. On account of inclusion of affordable housing under the HML, it has now been decided to align the definition of lending to affordable housing under the above-mentioned circular dated July 15, 2014 with the definition provided in the HML of infrastructure sub-sectors. Accordingly, for the purpose of issue of long terms bonds, it is advised as under:

Lending to affordable housing for individual units

Existing definition	*Revised definition*
Housing loans eligible under priority sector lending by the RBI (please see the Appendix to the circular dated July 15, 2014 and as updated from time to time), and also housing loans to individuals upto Rs. 50 lakhs for houses of values upto Rs. 65 lakhs located in the six metropolitan centres viz. Mumbai, New Delhi, Chennai, Kolkata, Bengaluru and Hyderabad and Rs. 40 lakhs for houses of values upto Rs. 50 lakhs in other centres for purchase/construction of dwelling unit per family.	Housing loans eligible to be classified under priority sector lending (as updated from time to time) and housing loans to individuals for acquiring dwelling units within the prescribed threshold under the affordable housing definition in the HML.

[1] "Affordable Housing" is defined as a housing project using at least 50% of the Floor Area Ratio (FAR)/Floor Space Index (FSI) for dwelling units with carpet area@ of not more than 60 square meters.

@ "Carpet Area" shall have the same meaning as assigned to it in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016.

DoS.CO.PPG.BC.01/11.01.005/2019-20, dtd. March 16, 2020

COVID-19—Operational and Business Continuity Measures

As you are aware, the World Health Organization (WHO) has declared the recent outbreak of the novel coronavirus disease (COVID-19) a pandemic indicating significant and ongoing person-to-person spread in multiple countries, with the uncertainty about the extent of spread and the likely impact on the global economy. Several confirmed cases have also been detected in India, which highlight the need of a co-ordinated strategy for handling the emerging situations for protecting the resilience of the Indian financial system.

2. While the Government of India, in co-ordination with the state machineries, is already taking steps for preventing and controlling the local transmission of disease, further steps, including the indicative list presented below, are required to be taken by the respective banks/financial institutions as a part of their existing operational and business continuity plans:

(a) Devising strategy and monitoring mechanism concerning the spread of the disease within the organisation, making timely interventions for preventing further spread in case of detection of infected employees including travel plans and quarantine requirements as well as avoiding spread of panic among staff and members of the public;

(b) Taking stock of critical processes and revisiting Business Continuity Plan (BCP) in the emerging situations/scenarios with the aim of continuity in critical interfaces and preventing any disruption of

services, due to absenteeism either driven by the individual cases of infections or preventive measures;

(c) Taking steps of sharing important instructions/ strategy with the staff members at all levels, for soliciting better response and participation and sensitizing the staff members about preventive measures/steps to be taken in suspected cases, based on the instructions received from health authorities, from time-to-time;

(d) Encourage their customers to use digital banking facilities as far as possible.

3. Besides taking steps as above for ensuring business process resilience, supervised entities should also assess the impact on their balance sheet, asset quality, liquidity, etc. arising out of potential scenarios such as further spread of COVID-19 in India and its effect on the economy, contagion from wider disruption in the global economy and the global financial system, etc. Based on the above studies, they should take immediate contingency measures to manage the risks under intimation to us.

4. As the situation requires to be monitored closely, both from business and social perspective, a Quick Response Team may be constituted for the purpose, which shall provide regular updates to the top management on significant developments and act as a single point of contact with regulators/outside institutions/agencies.

RBI/DPSS/2019-20/174, DPSS.CO.PD.No.1810/ 02.14.008/2019-20, dtd. 17-3-2020

Guidelines on Regulation of Payment Aggregators and Payment Gateways

This has reference to Reserve Bank of India (RBI) circular DPSS.CO.PD.No.1102/02.14.08/2009-10 dated November 24, 2009 on 'directions for opening and operation of accounts and settlement of payments for electronic payment transactions involving intermediaries'.

A reference is also invited to the discussion paper placed on the RBI website on guidelines for regulation of Payment Aggregators (PAs) and Payment Gateways (PGs). Based on the feedback received and taking into account the important functions of these intermediaries in the online payments space as also keeping in view their role vis-a-vis handling funds, it has been decided to (a) regulate in entirety the activities of PAs as per the guidelines in Annexure 1, and (b) provide baseline technology-related recommendations to PGs as per Annexure 2.

Detailed guidelines to this end are appended. It may be noted that these guidelines are issued under Section 18 read with Section 10(2) of the Payment and Settlement Systems Act, 2007 and shall come into effect from April 1, 2020 other than for activities for which specific timelines are mentioned.

ANNEXURE

[Not Reproduced]

Competition Act, 2002–Notification

Notification S.O. 1034(E) [F. NO. COMP-05/6/2020-COMP-MCA], dtd. 11-3-2020

Section 54 of The Competition Act, 2002—Power to Exempt—Exemption From Application of Provisions of Sections 5 and 6 to Banking Company

In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 (12 of 2003), the Central Government hereby exempts a Banking Company in respect of which the Central Government has issued a notification under section 45 of the Banking Regulation Act, 1949 (10 of 49), from the application of the provisions of sections 5 and 6 of the Competition Act, 2002, in public interest for a period of five years from the date of publication of this notification in the Official Gazette.

ESI–Notice

No.: P-11/14/Misc./1/2019-Rev., dtd. 16-3-2020

Relaxation in Time Period for Deposit of Contribution

Keeping in view the pandemic in the form of "Corona virus" (COVID-19) in the country, the Director General has relaxed the provision as entered in regulations 26 & 31 of 'The Employees' State Insurance (General) Regulations, 1950'. The proviso of regulation 31 shall be read as 45 days instead of 15 days for the contribution payable for the month of February & March, 2020 only.

The ESI contribution for the month of February, 2020 & March 2020 can be filed & paid up to 15th April, 2020 & 15th May 2020 instead of 15th March, 2020 & 15th April, 2020 respectively.

FEMA – CIRCULAR

A.P. (DIR Series) Circular No. 22, dtd. 17-3-2020 [RBI/2019-20/177]

Settlement System Under Asian Clearing Union (ACU) Mechanism

The Board of Directors of ACU have decided to permit Japanese Yen for settling payments among the ACU member countries. Accordingly, clause (a) and (b) of Article IV of the General Provisions of Agreement establishing the Asian Clearing Union have been revised and the Asian Monetary Unit is now denominated as "ACU Dollar", "ACU Euro" and "ACU Yen" which shall be equivalent in value to one US Dollar, one Euro and one Japanese Yen respectively.

2. Attention of Authorised Dealer Category - I banks (AD banks) is invited to Regulations 3 and 5 of Notification No. FEMA 14(R)/2016-RB [Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016] dated May 02, 2016 and the necessary amendments reflecting the above, which have been notified in the Gazette of India on March 06, 2020.

3. In order to facilitate transactions / settlements, effective March 06, 2020, participants in the Asian Clearing Union will have the option to settle their transactions either in ACU Dollar or ACU Euro or in ACU Japanese Yen.

4. Further, AD banks are allowed to open and maintain ACU Dollar, ACU Euro and ACU Japanese Yen accounts with their correspondent banks in other participating countries. All eligible payments are required to be settled by the concerned banks through these accounts.

5. The amended Memorandum of Procedure for Channelling Transactions through Asian Clearing Union (ACU) [Memorandum ACM] is enclosed.

6. Notwithstanding the above, it may be noted that as per *circular RBI/2015-16/441 A.P. (DIR Series) Circular No. 81 dated June 30, 2016*, operations in 'ACU Euro' has been temporarily suspended with effect from July 01, 2016.

7. AD banks may bring the contents of this circular to the notice of their constituents concerned.

8. The directions contained in this circular has been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and is without prejudice to permissions / approvals, if any, required under any other law.

NOTIFICATION

Notification No. FEMA 14(R)/(2)/2020/-RB [ADVT.- III/4/EXTY./491/191], dtd. 4-3-2020

Foreign Exchange Management (Manner of Receipt and Payment) (Second Amendment) Regulations, 2020—Amendment in Regulations 3 and 5

In exercise of the powers conferred by section 47 of the Foreign Exchange Management Act, 1999 (42 of 1999), the Reserve Bank of India makes the following amendments in the Foreign Exchange Management (Manner of Receipt and Payment) Regulations, 2016 [Notification No. FEMA 14(R)/2016-RB dated May 02, 2016] (hereinafter referred to as 'the Principal Regulations'), namely:

1. Short title and commencement

i. These Regulations may be called the Foreign Exchange Management (Manner of Receipt and Payment) (Second Amendment) Regulations, 2020.

ii. They shall come into force from the date of their publication in the official Gazette.

2. In the Principal Regulations,

(i) in sub-Regulation 1 (A) of Regulation 3, the following shall be substituted, namely:—

"Members of Asian Clearing Union (ACU)"

(ii) in sub-Clause (a) of clause (i) of sub-Regulation (1)(A) of Regulation 3, the following shall be substituted, namely:

"Receipt for export of eligible goods and services by debit to the ACU Dollar account and/or ACU Euro account and/or ACU Japnese Yen account in India of a bank of the member country in which the other party to the transaction is resident or by credit to the ACU Dollar account and/or ACU Euro Account and/or ACU Japnese Yen account of the authorized dealer maintained with the correspondent bank in that member country;"

(iii) in sub-regulation 1(A) of Regulation 5, the following shall be substituted, namely:

"Members of Asian Clearing Union (ACU)"

(iv) in sub-Clause (a) of clause (i) of sub-Regulation (1)(A) of Regulation 5, the following shall be substituted, namely:

"Payment for import of eligible goods and services by credit to ACU Dollar account and/or ACU Euro account and/or ACU Japnese Yen account in India of a bank of the member

country in which the other party to the transaction is resident or by debit to the ACU Dollar account and/or ACU Euro account and/or ACU Japnese Yen account of the authorized dealer maintained with the correspondent bank in that member country:"

Insolvency and Bankruptcy Code, 2016– General Circular

General Circular No. 08/2020, dtd. 6-3-2020 [F. No. 01/02/2019-CL-V]

Filing of Forms in Registry (MCA-21) By Insolvency Professional (Interim Resolution Professional (IRP) or Resolution Professional (RP) or Liquidator) Appointed Under Insolvency and Bankruptcy Code, 2016—Supersession of Circular No. 04/2020, dtd. 17-2-2020

In supersession of earlier *Circular No. 04/2020 dated 17-02-2020,* the following clarification is issued for statutory compliances in respect of companies under Corporate Insolvency Resolution Process (CIRP).

(i) The IRP/RP/Liquidator would have to first file the NCLT order approving him as the IRP/RP/Liquidator in Form INC-28 by selecting the drop down box in field 5(a)(iii) by selecting the appropriate section of IBC 2016. After filling in the form, the IRP/RP/Liquidator while affixing his DSC, shall choose his designation as "CEO" in the declaration box for the purpose of filing only and choose "Others" from the Drop down Menu.

(ii) The Master Data for change in the status of the company from "Active"/"Inactive" to CIRP/Liquidation or CIRP/Liquidation to "Active" shall be effected on the basis of Formal Change Request Form submitted by IBBI to e-governance Cell, MCA(HQ). Since this function has been centralized, Registrars of Companies shall not raise and forward CRF either to the e-gov cell or to service provider for the above mentioned purpose.

(iii) The IRP/RP/Liquidator shall be responsible for filing all the eforms in the MCA portal and sign the form in the capacity of CEO in order to meet filing protocol in the existing forms architecture. However, this shall in no way affect his legal status as IRP/RP/Liquidator. All filings of eforms including AOC-4 and MGT-7 shall be filed through e-form GNL-2 by way of attachments till the company is under CIRP. In the existing field no. 3 of form no. GNL-2, IRP/RP/Liquidator will choose radio button "Filings under IBC"

(iv) Against date of event and Board Resolution in INC-28 and GNL-2, date of order of NCLT/NCLAT/Court may be mentioned.

2. It is further clarified that in respect of companies which are marked under CIRP in the Registry, Annual Return (e-form No. MGT-7) and Financial Statement (e-form AOC-4) and other documents under the provisions of the Companies Act, 2013, in accordance with directions issued by the NCLT/NCLAT/Courts, shall be filed as attachments with e-form GNL-2 against the payment of one time normal fee only, till such time the company remains under CIRP. Separate GNL-2 forms shall be filed for each such document, by the IRP/RP.

3. It is also clarified that the concerned IRP/RP of every company which was under CIRP prior to the issue of this circular, shall also file e-form INC-28 for such companies and thereafter proceed to file other documents/fact/information as required under the Act and Rules thereunder through e-form GNL-2.

4. This issues with the approval of the competent authority.

Insurance–Circular

Circular No. IRDAI/NIL/CIR/MISC/058/03/2020, dtd. 5-3-2020

Guidance on Insurance Claims Arising In North East Delhi Caused By Riots

1. The tragic riots in North East Delhi during last week of February, 2020 have had a serious impact on people, property and business in North East Delhi.

2. The Authority is aware that General Insurers, Life Insurers and Stand-Alone-Health Insurers may have written policies that extend to lives and property pertaining to the affected areas. In this situation, all insurers are advised to act immediately for fair and speedy settlement of claims.

3. Accordingly, the Authority issues the following instructions to Insurers:

a. to nominate a Senior Officer who would act as a nodal officer for Delhi State, who would be coordinating/facilitating the settlement of all the claims that are reported in the affected areas.

b. to publish in press and through State Government, the contact details of offices/special arrangements set up for this purpose.

c. to initiate immediate steps for quick registration of claims.

d. to engage adequate number of surveyors immediately in the affected areas to ensure that all claims are promptly assessed expeditiously and payments of claims/on account payments are disbursed within 15 days.

e. to create extensive awareness campaign in the affected areas duly highlighting the measures taken by you.

4. In order to gauge the magnitude of loss, all General/Life/Stand-Alone-Health Insurers are advised to submit information relating to insurance claims related to North-East Delhi Riots on weekly basis in the format attached.

5. Please take urgent steps to co-ordinate with Delhi Government on the above.

Circular No. IRDAI/LIFE/CIR/MISC/060/03/2020, dtd. 6-3-2020

Clarification/Modification To Master Circular on Point of Sales Products and Persons—Life Insurance Dated 2-12-2019

After examining the requests of certain Life Insurers and representation of Life Insurance Council on the Master Circular on Point of Sales Products and Persons - Life Insurance (hereinafter referred to as "Master Circular") ref No. IRDAI/LIFE/CIR/MISC/215/12/2019 dated 2nd December, 2019, the following clarifications/modifications are issued by exercising the powers vested under clause 27 of the Master Circular with immediate effect.

1. Clause 26 of the Master Circular is substituted by the following:

In cases of other than Single Premium mode, where premium paying term (PPT) is different from the policy term (PT) -

(i) PPT shall not be less than five years.

(ii) The PPT being different from policy term shall be clearly communicated to the prospect at the Point of Sale and in KFD.

2. Clause 16 of the Master Circular is substituted by the following:

16.1 The existing Non-POS products which meet the parameters of the allowed categories of POS Life Insurance products may be filed, subject to the boundary conditions as applicable to POS Life products, under existing provisions of "minor modification", enclosing KFD. The Waiting Period clause, if applicable, shall continue to be made part of proposal form as well as KFD. The minor modification should also contain the certificate of CEO and Appointed Actuary of the Life Insurer that the existing product meets the applicable parameters mentioned in the Annexure II to the Master Circular.

16.2 The Insurers shall ensure adequate IT systems and internal controls so that POSP-LI sell policies only upto the allowed POS Life product parameters. IT systems shall also capture the POS Life policies sold through regular non-POS channels. Insurers shall submit a certificate stating that their existing IT systems and internal controls are in compliance to these Guidelines, signed by CEO and Appointed Actuary both in the case of minor modifications and File and Use application in case of new products where POSP-LI is also part of distribution channel. No change in POS Agency Code should be allowed once the policy master record is created except for orphan policies in which case change may be allowed after following due process.

16.3 The gap of at least one year from the last approval/modification of the product mentioned in the Circular "Use and File procedure for certain modifications under existing products and riders offered by Life Insurers" bearing No. 124 dated 26th July, 2019 is not applicable to these Circular provisions.

16.4 The Insurers may continue to offer existing POS products till March 2020 and ensure appropriate systems and sales readiness prior to modifications of the existing Non-POS products.

3. The Maturity Benefit mentioned in Annexure II (b) of the Master Circular (under Non-Liked, Non-Participating Endowment Product) to be read as "Guaranteed Maturity Benefit in absolute amount".

4. In Annexure-V of the Master Circular, signature of Chief Compliance Officer is substituted for that of AA and CEO.

5. Monthly review of complaints of Unfair Business Practices and mis-selling for business completed through this Channel must be done and corrective action initiated.

Circular No. IRDAI/HLT/REG/CIR/055/03/2020, dtd. 4-3-2020

Modifications Guidelines on Standard Individual Health Insurance Product

1. Reference is invited to the Guidelines on Standard Individual Health Insurance Product (Ref: IRDAI/HLT/REG/CIR/001/01/2020 dated 1-1-2020) mandating all general and standalone health insurance companies offer Arogya Sanjeevani Policy. In partial modification of these guidelines, the following norms are issued.

2. In terms of the provisions of Regulation 4(iii) of

IRDAI (Issuance of e-Insurance Policies) Regulations, 2016 providing policy document in physical form is mandatory when policies are issued in electronic form directly to the policyholders. Since features of Arogya sanjeevani policy are common across the industry and as the terms and conditions of the policy are already specified by the Authority, with the objective of reducing the operating costs and to pass on this benefit of reduced operational cost to the policyholders by way of affordable premiums, insurers are allowed to issue the policy contract of Arogya Sanjeevani Policy in electronic/digital format. The digital form of the policy contract may be forwarded through e-mail or a link shall be provided in the certificate of insurance. However, where policyholder specifically seeks the physical form of the policy contract, the same shall be provided by the insurer.

3. Every insurer offering Arogya Sanjevani Policy shall provide a certificate of insurance to the policyholder indicating the availability of health insurance coverage. The certificate shall have a reference to access detailed terms and conditions of the policy contract.

4. This has the approval of the competent authority.

Circular No. IRDAI/HLT/REG/CIR/054/03/2020, dtd. 4-3-2020

Guidelines on Handling of Claims Reported Under Corona Virus

1. In respect of the products filed and cleared as per the provisions of Guidelines on product filing in Health Insurance Business (Ref: IRDA/HLT/REG/CIR/150/07/2016) dated 29th July 2016, where coverage is granted for treatment of hospitalization expenses, in order to alleviate the hardships that may be caused to the policyholders, all claims reported under corona virus shall be handled as per the following norms.

(i) Where hospitalization is covered in a product, insurers shall ensure that the cases related to Corona virus disease (COVID-19) shall be expeditiously handled.

(ii) The costs of admissible medical expenses during the course of treatment including the treatment during quarantine period shall be settled in accordance to the applicable terms and conditions of policy contract and the extant regulatory framework.

(iii) All the claims reported under COVID 19 shall be thoroughly reviewed by the claims review committee before repudiating the claims.

2. In order to provide need based health insurance coverage, insurers are introducing products for various specific diseases including vector borne diseases. For the purpose of meeting health insurance requirements of various sections, insurers are advised to design products covering the costs of treatment for Corona Virus.

3. These instructions are issued under the provisions of section 14(2)(e) of IRDA Act, 1999 and shall come in to force with immediate effect.

4. This has the approval of the competent authority.

LLP–Press Release

Press Release, dtd. 11-3-2020

Frequently Asked Questions on LLP Settlement Scheme, 2020 Issued by The Ministry of Corporate Affairs, Government of India

Q. 1. What is LLP Settlement Scheme, 2020?

A. 1. "LLP Settlement Scheme, 2020 is a scheme to give a Onetime relaxation in additional fees to the defaulting LLPs to make good their default by filing pending documents viz. Form Nos 3, 4, 8 and 11 and to serve as a compliant LLP in future. Refer General Circular No 2/2020 available at the link - http://www.mca.gov.in/Ministry/pdf/GeneralCircular06 04032020.pdf

Q. 2. What is the objective of this Scheme?

A. 2. The Ministry of Corporate Affairs, as part of Government's constant efforts to promote ease of doing business, has decided to introduce a scheme namely "LLP Settlement Scheme, 2020", by allowing a One-time condonation of delay in filing statutorily required documents with the Registrar.

Q. 3. Whether this Scheme is permanent?

A. 3. No, it is one time relaxation, as part of Government's constant efforts to promote ease of doing business it has been decided to give a Onetime relaxation in additional fees to the defaulting LLPs to make good their default by filing certain pending documents and to serve as a compliant LLP in future.

Q. 4. What is the time period of the Scheme?

A. 4. The Scheme shall come into force on the 16th March, 2020 and shall remain effective up to 13th June, 2020 (both days inclusive).

Q. 5. What is defaulting LLP as per the Scheme?

A. 5. "Defaulting LLP" means a LLP registered under the Limited Liability Partnership Act, 2008 which has made a default in filing of documents on the due date(s) specified under the LLP Act, 2008 and rules made there under.

Q. 6. Whether an LLP is required to file an application to the Registrar to avail the Scheme?

A. 6. No, the defaulting LLPs may themselves avail of the scheme for filing documents which have not been filed or registered in time on payment of additional fee and statutory fee.

Q. 7. What shall be the manner of payment of fees and additional fee on filing belated document for seeking immunity under the Scheme?

A. 7. Under the scheme, for the belated documents, the LLP shall pay

Statutory filing fees as prescribed under the LLP Act and rules made there under along with

an additional fee of Rs. 10 per day, provided that such payment of additional fee shall not exceed Rs. 5,000/- per document.

Q. 8. Whether additional fee of Rs. 10 per day is for all forms in aggregate or individually?

A. 8. Additional fee of Rs. 10 per day is payable per document and not in aggregate. Thus, if there is there is delay of 300 days for one form and 330 days for another form, then for the form where delay is 300 days, additional fee will be Rs. 3,000 and for another form where delay is for 330 days, additional fee will be Rs. 3,300.

Q. 9. Whether cap of Rs. 5,000/- on additional fee is for all forms in aggregate or individually?

A. 9. Cap on additional fee of Rs. 5,000 is applicable per document and not in aggregate. Thus, if there is there is delay of 900 days, then additional fee for the form at the rate of Rs. 10 per day works out to Rs. 9,000 which is more than Rs. 5,000 and therefore additional fee will be Rs. 5,000 for the form.

Q. 10. On which filing the Scheme shall be applicable?

A. 10. Scheme shall be applicable only on filing of following documents:

i. Form-3- Information with regard to limited liability partnership agreement and changes, if any, made therein;

ii. Form-4- Notice of appointment, cessation, change in name/address/designation of a designated partner or partner and consent to become a partner/designated partner;

iii. Form-S; Statement of Account & Solvency (Annual or Interim);

iv. Form-11- Annual Return of Limited Liability Partnership (LLP).

Q. 11. The Scheme shall be applicable for delay in submission of any form applicable to LLP?

A. 11. No. The Scheme is not applicable to any form other than Form No. 3, Form No. 4, Form No. 8 and Form No. 11.

Q. 12. For which LLPs this Scheme is not applicable?

A. 12. This Scheme shall not apply to LLPs which have made an application in Form 24 to the Registrar, for striking off its name from the register as per provisions of Rule 37(1) of the LLP Rules, 2009.

Q. 13. Documents for which period in the past, a defaulting LLP is permitted to file?

A. 13. "defaulting LLP" is permitted to file belated documents, which were due for filing till 31st October, 2019 in accordance with the provisions of this Scheme.

Q. 14. Is there any immunity from prosecution in respect of document(s) filed under the scheme?

A. 14. Yes, the defaulting LLPs, which have filed their pending documents till 13th June 2020 and made good the default, shall not be subjected to prosecution by Registrar for such defaults.

Q. 15. What action Registrar can take on the defaulting LLPs which have not availed this Scheme after conclusion of the same?

A. 15. On the conclusion of the Scheme, the Registrar shall take necessary action under the LLP Act, 2008 against the LLPs which have not availed this Scheme and are in default in filing of documents as required under the provisions of LLP Act, 2008 in a timely manner. The defaulting LLPs may be subjected to prosecution by Registrar for such defaults.

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002–Notification

Notification S.O. 931 (E) [F. No. 31/52/2019-DRT], dtd. 2-3-2020

Section 4 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—Cancellation of Certificate of Registration—Notified Authority to Decide Appeal of an Asset Reconstruction Company

Shri Suchindra Misra, Joint Secretary in the Department of Financial Services, Ministry of Finance, Government of India is designated by the Central Government to decide the appeal of an Asset Reconstruction Company under the provisions of subsection (2) of section 4 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002). This is published for general information.

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S. 34 **ADVOCATES ACT, 1961**

Power of High Courts to make rules—***Advocate debarred from practising in case of misconduct***—*Violation of Articles of Constitution of India—Whether High Court empower to debar lawyer for professional misconduct*

High Court had no power to frame rules to debar lawyer for professional misconduct, thus, exercise of disciplinary control by High Court would amount to usurpation of powers of Bar Council of Tamil Nadu and Puduchery conferred under the Advocates Act.

Decision: In favour of petitioner

➲ ***R. Muthukrishnan v. Registrar General, High Court of Madras 2019 TaxPub(CL) 279 (SC)***

S. 4 **BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988**

Prohibition of the right to recover property held Benami—***Appeal against rejection of suit***—*Purchase of flat in name of employee—Fiduciary relationship between employer and employee*

Though Trial Court rejected suit on ground that suit was barred by virtue of provisions of section 4, but the plaint when reading as a whole, it was clear that such a relationship was pleaded though specific word "fiduciary" had not been used, therefore, the suit was restored back to file of the Trial Court to decide matter on merits.

Decision: In favour of appellant

➲ ***Guruswami Ganga Naikar v. Ms. Vaishali Mohan Kshirsagar 2019 TaxPub(CL) 472 (Bom-HC)***

Art. 226 **CONSTITUTION OF INDIA, 1950**

Power of High Courts to issue certain writs—***Petition against order of ED***—*Maintainability of petition—Availability of alternate and efficacious remedy*

Where petitioner filed petition against order of ED, but the petitioner had an alternate and efficacious remedy against the order made by the ED, to Appellate Tribunal and all contentions including contention with regard to breach of principles of natural justice could always be raised before Appellate Authority, thus, the petition was dismissed.

Decision: Against the petitioner

➲ ***Muktar Minerals (P) Ltd. v. Special Director of Enforcement 2019 TaxPub(CL) 779 (Bom-HC)***

S. 23 **CONSUMER PROTECTION ACT, 1986**

Appeal—***Rejection of complaint filed for refund of amount***—*Deficiency in service—No commitment of supply of instrument with on-board laundry facility*

When there was no commitment of supply of instrument with on-board laundry facility, then, buyer could not insist on on-board laundry facility and there could not be any installation of equipment without installation of 1KVA Online UPS as part of pre-installation requirements, thus, compliant filed for refund of amount on basis of deficiency in service was rightly rejected.

Decision: Against the appellant

➲ ***Dr. D.J. De Souza v. Managing Director, CPC Diagnostics (P) Ltd. 2019 TaxPub(CL) 570 (SC)***

S. 23

Appeal—***Direction to builder to refund amount with interest***—*Possession of flat not offered by builder within time—Whether purchaser compelled to accept possession whenever it offered by builder*

Though builder failed to fulfill his contractual obligation of obtaining occupancy certificate and offering possession of flat to purchaser within time stipulated in agreement, the purchaser could not be compelled to accept possession whenever it was offered by builder, thus, National Commission rightly directed builder to refund amount with interest.

Decision: Against the appellant

➲ ***Pioneer Urban Land & Infrastructure Ltd. v. Govindan Raghavan 2019 TaxPub(CL) 476 (SC)***

S. 3 **FOREIGN EXCHANGE MANAGEMENT ACT, 1999**

Dealing in foreign exchange, etc.—***Transaction in foreign exchange by branch of company without RBI's license***—*Involvement of company's employee in the transaction—Imposition of penalty*

Where Varanasi Branch of appellant-company undertook a transaction in foreign exchange with another company without holding license from the RBI to conduct the said business of money exchange, the penalty imposed upon appellant was justified.

Decision: Against the appellant

➲ ***Reliance Money Express Ltd. v. Jt. Director, Directorate of Enforcement 2019 TaxPub(CL) 546 (ATFEMA)***

S. 13

Penalties—***Suspension of passport in investigation conducted under FEMA***—*Request for alternate mode of examination by Video Conferencing—Whether action of respondents to impound the passport of petitioner sustainable*

Where Enforcement Directorate suspended the passport of petitioner for non-appearance in person before the concerned officers investigating the viola-

tion of the provisions of FEMA, however, petitioner voluntarily requested for his examination by teleconferencing which was not accepted by the ED, then, the order suspending the passport of the petitioner was to be set aside.

Decision: In favour of petitioner

➲ ***Junaid Iqbal Mohammed Memon v. UOI & Ors. 2019 TaxPub(CL) 545 (Del-HC)***

S. 13 & 3

Penalties—***Appeal against imposition of penalty***—*Dealing in illegal trade of foreign exchange—Absence of evidence*

Though there was no cogent evidence against jeweller that dealing in foreign exchange without general or special permission of RBI, merely on basis of statement of a person, who was absconding, no case against the jeweller for dealing in illegal trade of foreign exchange was made out, thus, order of imposition of penalty was set aside.

Decision: In favour of appellant

➲ ***Sachin A. Mehta v. Special Director, Directorate of Enforcement 2019 TaxPub(CL) 1337 (ATFEMA)***

S. 19

Appeal to Appellate Tribunal—***Interim order by Appellate Tribunal to pre-deposit amount for grant of stay***—*Objection by appellant for non-consideration of current income-tax return—Grant of opportunity to appellant to submit relevant documents*

Where appellant filed an appeal on the ground that the Appellate Tribunal directed him to deposit a sum for grant of stay without considering his current income tax returns, it was just to grant an opportunity to appellant to place all the records before the Tribunal.

Decision: In favour of appellant

➲ ***R. Viswanathan v. Appellate Tribunal For SAFEMA, FEMA, PMLA, NDPS, PEPT 2019 TaxPub(CL) 549 (Mad-HC)***

S. 21 **INSOLVENCY AND BANKRUPTCY CODE, 2016**

Committee of creditors—***Application for admission of claim and allowability of authorised representative to attend CoC meetings***—*Whether claim of applicants disputed by member of CoC*

Though there was no provisions in I&B Code empowering CoC to decide claim of co-creditors, Members of the CoC could not dispute claim of applicants in any manner, the applicants had produced certificates from bank as proofs of advancing loans to corporate debtor, thus, claim of the applicants was admitted and representative of the applicants was permitted to attend the CoC meeting.

Decision: In favour of applicant

➲ ***Nikheel Kumar Mahendra Kumar v. Ashok Magnetics Ltd. 2019 TaxPub(CL) 32 (NCLT-Chennai)***

S. 138 **NEGOTIABLE INSTRUMENTS ACT, 1881**

Dishonour of cheque due to insufficiency, etc., of funds in the account—***Initiation of criminal prosecution on basis of forged and fabricated documents***—*Acquittal of accused â€" Leave to appeal sought for*

Where cheque in question issued towards the Life Insurance Policy and the cheque presented by the complainant for encashment was one and the same, it could be said that the complainant forged and fabricated the documents in order to initiate criminal prosecution against the accused.

Decision: Against the applicant

➲ ***Harilal Khurdhan Ram v. Murlidhar Gamaprasad 2019 TaxPub(CL) 237 (Bom-HC)***

S. 138

Dishonour of cheque due to insufficiency, etc., of funds in the account—***Remand to judicial custody***—*Sought permission for bail—Whether bail can be granted*

Where petitioner was remanded to judicial custody for investigation of an offence under section 138, the petitioner could be released on bail on furnishing personal bond and surety bond.

Decision: In favour of petitioner

➲ ***Ramesh Sharma v. State of H.P. & Anr. 2019 TaxPub(CL) 207 (HP-HC)***

S. 138

Dishonour of cheque due to insufficiency, etc., of funds in the account—***Signature of petitioner on cheque***—*Establishment of liability of petitioner to make payment—Whether the issuance of summons to petitioner by the Trial Court justified*

Where *prima facie* case was made out against the accused for commission of offence under section 138, then, the petition filed under section 482 against the action initiated against the accused under section 138, was to be dismissed.

Decision: Against the petitioner

➲ ***Vipin Kr. Gupta v. Sarvesh Mahajan 2019 TaxPub(CL) 240 (Del-HC)***

S. 138

Dishonour of cheque for insufficiency, etc., of funds in account—***Appeal against order of conviction***—*Existence of legally enforceable debt—Non-filing of FIR in respect of stolen of cheque and application for sending disputed cheque to Handwriting Expert for examination of signatures*

Though neither FIR was lodged in respect of stolen of cheque nor application was filed for sending dis-

puted cheque to Handwriting Expert for examination of her signatures, the cheque for repayment of loan was issued by drawer in discharge of legal liability, which was returned by Bank on instructions of drawer, thus, drawer was rightly held guilty for offence under section 138.

Decision: Against the appellant

➲ ***Shrimati Ragini Gupta v. Piyush Dutt Sharma 2019 TaxPub(CL) 564 (MP-HC)***

S. 138

Dishonour of cheque for insufficiency, etc., of funds in account—***Judgment of Trial Court regarding conviction of drawer set aside by Appellate Court***—*Capacity of giving loan to borrower not proved by lender—Rebuttal of presumption*

Though lender had failed to prove beyond reasonable doubt that he had given loan to drawer and cheque was issued for repayment of the loan, perusal of the record showed that the drawer had been able to rebut statutory presumption, thus, Appellate Court had rightly set aside judgment of Trial Court regarding conviction of the drawer for an offence under section 138.

Decision: Against the petitioner

➲ ***Sanjay Verma v. Gopal Halwai 2019 TaxPub(CL) 560 (Del-HC)***

S. 138

Dishonour of cheque for insufficiency, etc., of funds in account—***Petition for quashing of complaints***—*Disputed facts—Exercise of extra-ordinary inherent jurisdiction under section 482 Cr.P.C*

Though contents of communication regarding "stop payment" were disputed by cheque holder and document confirming outstanding amount relied upon by the cheque holder was disputed by drawer, therefore, on such disputed facts, complaints under section 138 could not be quashed by High Court by invoking extra ordinary inherent jurisdiction under section 482 of Cr.P.C.

Decision: Against the petitioner

➲ ***Sant Lal Aggarwal v. Anand Prakash Bansal Dharamvir & Co. 2019 TaxPub(CL) 561 (Del-HC)***

S. 138

Dishonour of cheque for insufficiency, etc., of funds in account—***Rejection of application under section 91 of Cr.P.C. for seeking income tax return of lender***—*Going on evidence stage of lender—Borrower entitled to put up application after clarification of lender position*

Though evidence stage of lender was going on and the lender was not cross-examined yet, therefore, borrower could put up his defence by asking question to the lender and the lender would clarify his position and thereafter the borrower would be entitled to put up application under section 91 of Cr.P.C. for seeking income-tax return of the lender before Trial Court.

Decision: Against the petitioner

➲ ***Sarnam Singh v. Kaluram Klosiya 2019 TaxPub(CL) 562 (MP-HC)***

S. 141 & 138

Offences by companies—***Dishonour of cheque***—*Involvement of directors in transactions of company—Invocation of vicarious liability*

Where complainant filed complaint under section 138 for dishonour of cheque issued by accused company and moreover there was evidence to prove involvement of directors of accused company in transactions of company, directors were to be held vicarious liable under section 141 of the Act.

Decision: Against the petitioner

➲ ***Rakesh P. Gupta v. State Trading Corporation of (India) Ltd. & Ors. 2019 TaxPub(CL) 206 (Bom-HC)***

S. 5 **PREVENTION OF MONEY LAUNDERING ACT, 2002**

Attachment of property involved in money laundering—***Petition against order of provisional attachment of property***—*Availability of statutory remedy against action—Exercised of discretionary and extraordinary power*

When company had an efficacious alternate remedy of showing cause to provisional attachment order before Adjudicating Authority where proceedings for adjudication with regard to the order would be held and statutory remedy of appeal was available to the company, then, petition under Articles 226 and 227 against the order was not maintainable.

Decision: Against the petitioner

➲ ***Wave Hospitality (P) Ltd. v. UOI & Ors. 2019 TaxPub(CL) 719 (Del-HC)***

S. 5 & 24

Attachment of property involved in money-laundering—***Appeal against confirming of provisional attachment order of cash***—*Reasons to believe—Owner failed to discharge his burden as required under section 24*

Though there were sufficient reasons explained by ED as well as Adjudicating Authority in attaching cash involved in this appeal and confirmation of the same respectively, but owner had failed to discharge his burden as required under section 24, thus, appeal against confirming of provisional attachment order of cash was dismissed.

Decision: Against the appellant

➲ ***Bharat Bhushan Swain v. Jt. Director, Directorate of Enforcement, Bhubaneswar 2019 TaxPub(CL) 579 (ATPMLA)***

S. 17

Search and seizure—***Appeal against initiation of complaint and for release of seized property***—*Prosecution complaint filed against dead person—Expiry of statutory period of ninety days of retention of property*

Though no prosecution complaint was filed when owner was alive and after his death, no complaint was maintainable against dead person, legal representative was also not made as party in the complaint and statutory period of ninety days of retention of the property had already expired, thus, direction was given for release of the seized property.

Decision: In favour of appellant

➲ ***Amlendu Pandey v. Dy. Director, Directorate of Enforcement, Mumbai 2019 TaxPub(CL) 709 (ATPMLA)***

S. 17

Search and seizure—***Appeal against order of retention of documents and Indian currency***—*Non-filing of prosecution complaint against appellant—Non-returning of properties and records after expiry of 90 days*

Though Adjudicating Authority allowed application under section 17(4) of retention of documents and Indian currency, but neither prosecution complaint was filed against appellant nor properties and records had returned after expiry of 90 days, thus, the order was set aside and direction was given to ED for return of the documents/records.

Decision: In favour of appellant

➲ ***Sanjeev Kapoor v. Deputy Director, Directorate of Enforcement, Delhi 2019 TaxPub(CL) 577 (ATPMLA)***

S. 20

Retention of property—***Appeal against order of AA confirming retention of property under section 8(3)***—*Expiry of period of retention of properties—Non-filing of prosecution complaint*

Though no prosecution complaint was filed within period of 90 days from date of passing retention order regarding seized records against company, therefore, ED was directed to return the property retained by the ED as prescribed period of 90 days under section 8(3)(a) had already expired.

Decision: In favour of appellant

➲ ***Krishna Merchants (P) Ltd. v. Asstt. Director, Directorate of Enforcement, Kolkata 2019 TaxPub(CL) 713 (ATPMLA)***

S. 20

Retention of property—***Appeal against order of AA confirming retention of property under section 8(3)***—*Expiry of period of retention of properties—Non-filing of prosecution complaint and non-proving of nexus of money laundering with seized properties*

Though nothing had been brought on record to prove that seized properties had any nexus or link whatsoever with money laundering and no prosecution complaint had also been filed against owner of the properties, thus, ED was directed to return the properties retained by the ED as prescribed period of 90 days under section 8(3)(a) had already expired.

Decision: In favour of appellant

➲ ***Arvind Gupta v. Deputy Director Directorate of Enforcement, Delhi 2019 TaxPub(CL) 578 (ATPMLA)***

S. 26

Appeal to Appellate Tribunal—***Appeal against attachment of mortgaged property***—*Mortgaged property acquired by mortgagor prior to commission of crime—No involvement of proceeds of crime in acquiring of mortgaged properties*

Though mortgagor purchased properties prior to commission of crime and bank had also created charge over the properties prior to commission of scheduled offence, therefore, mortgaged properties were not acquired out of any proceeds of crime as per section 2(1)(u), thus, order of attachment of the mortgaged properties was set aside.

Decision: In favour of appellant

➲ ***Branch Manager, Central Bank of India v. Deputy Director, Directorate of Enforcement, Mumbai 2019 TaxPub(CL) 582 (ATPMLA)***

S. 26

Appeal to Appellate Tribunal—***Appeal against attachment of mortgaged property***—*Mortgaged property acquired by mortgagor prior to commission of crime—No involvement of proceeds of crime in acquiring of mortgaged properties*

When mortgagor purchased properties prior to commission of crime and bank had also created charge over the properties prior to commission of scheduled offence, then, it meant that mortgaged properties were not acquired out of any proceeds of crimes as per section 2(1)(u), thus, order of attachment of the mortgaged properties was set aside.

Decision: In favour of appellant

➲ ***Union Bank of India v. Deputy Director, Directorate of Enforcement, Mumbai 2019 TaxPub(CL) 583 (ATPMLA)***

S. 26

Appeal to Appellate Tribunal—***Appeal against attachment of mortgaged property***—*Non-recording of valid reason to believe regarding possession of 'proceeds' of crime—No involvement of proceeds of crime in acquiring of mortgaged properties*

When mortgagor purchased properties prior to commission of crime and bank had also created charge over the properties prior to commission of scheduled offence, then, it meant that mortgaged

properties were not acquired out of any proceeds of crimes as per section 2(1)(u), thus, order of attachment of the mortgaged properties was set aside.

Decision: In favour of appellant

➲ ***Bajaj Finance Ltd. v. Dy. Director, Directorate of Enforcement & Ors., Jaipur 2019 TaxPub(CL) 711 (ATPMLA)***

S. 9 **SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

Complaint of sexual harassment—***No reasonable opportunity of hearing given to petitioner***—*Breach of principles of natural justice—Whether complaint against sexual harassment sustainable*

Where respondent filed complaint of sexual harassment against the petitioner, however, petitioner was neither provided the copy of the complaint nor they were granted any opportunity to file a response in writing during the process of enquiry, same was against the principles of natural justice and, thus, complaint was not sustainable.

Decision: In favour of petitioner

➲ ***Tushar v. Internal Complaints Committee & Ors. 2019 TaxPub(CL) 646 (Karn-HC) : (2019) 41 LLR 609 (Karn)***

S. 58(c) **TRANSFER OF PROPERTY ACT, 1882**

Mortgage by conditional sale—***Appeal against rejection of suit for ejectment of mortgagor***—*Absence of condition for reconveying mortgaged property—Whether section 37(a) contained under State Act repugnant to section 58(c)*

Though section 37(a) of State Act is repugnant to section 58(c) of Transfer of Property Act, therefore, transaction was deemed to be a mortgage by a conditional sale in absence of conditions of proviso to section 58(c), thus, appeal filed by buyer against rejection of suit for ejectment of mortgagor was dismissed.

Decision: Against the appellant

➲ ***Atul Chandra Das (D) v. Rabindra Nath Bhattacharya 2019 TaxPub(CL) 569 (SC)***

CUSTOMS

CONTENTS

MEDIA LIBRARY

■ **Customs duty on e-transmissions: India, South Africa make new submission at WTO**

India and South Africa have made a new submission at the World Trade Organisation against the proposed extension of the moratorium on customs duty on electronic transmissions, raising concerns on the possible inclusion of digitisable goods in its scope that could severely hit developing countries.

"Today, members (countries) are waking up to the weighty impact of the moratorium assuming the scope of the moratorium is centred on digitised and digitisable goods...The moratorium will be equivalent to developing countries giving the digitally advanced countries duty-free access to our markets," said a recent joint communication by India and South Africa to the General Council of the WTO.

The moratorium has been getting extensions every two years since 1998, when it was first introduced. It is due for an extension at the Ministerial Conference of the WTO, in June. The moratorium got temporarily extended for six months in December 2019, which was an unusual measure, as there was a delay in the scheduling of the conference.

www.thehindubusinessline.com dt. 16-03-2020

CURRENT STATUTES LIBRARY

CIRCULAR

Circular No. 15/2020-Customs, dtd. 28-2-2020 [F. No.450/26/2019-Cus IV]

Implementation of Automated Clearance on All-India Basis–Regarding

Kind reference is invited to *Board`s Circular No 05/2020-Customs dated 27-01-2020* vide which facility of automated clearance was implemented on a pilot basis at two customs locations-Chennai Customs House and Jawaharlal Nehru Customs House with effect from 06-02-2020.

2. Board has reviewed the implementation of the pilot roll-out of automated clearance at the two customs locations.

3. It has now been decided to extend the facility of automated clearance of Bills of Entry to all customs formations where the Customs EDI system is operational, with effect from 05.03.2020.

4. The important features of the automated clearance are as follows-

i. The facility will only be for ICES locations where RMS is enabled and fully functional.

ii. All the Customs Compliance Verification (CCV) requirements under the Customs Act, rules, instructions etc will be done by the designated proper officer of Customs.

iii. The CCV would operate even while duty has not been paid or payment is under process.

iv. After completion of CCV, the proper officer of customs, on satisfaction that the goods are ready for clearance, will confirm the completion of the CCV for the particular Bill of Entry in the Customs System.

v. On confirmation of payment of applicable duty, the Customs System will then electronically give clearance to the Bill of Entry.

5. The detailed requirements and changes in ICES shall be communicated to field formations by way of ICES- Advisory from DG Systems.

6. Suitable Trade Notice/ Standing order may please be issued to guide the trade and industry. Difficulty, if any, faced in implementation may be brought to the notice of Board immediately.

NOTIFICATIONS (TARIFF)

Notification No. 15/2020-Customs, dt. 13-3-2020 [F. No. 354/123/2014 –TRU (Pt-1)]

Amendments in Notification No. 18/2019–Customs, dt. 6-7-2019

G.S.R. (E).—In exercise of the powers conferred by section 111 of Finance Act, 2018 (13 of 2018), read with sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 18/2019-Customs, dated the 6th July, 2019, published in the Gazette of India, Extraordinary, Part

II, Section 3, Sub-section (i), vide number G.S.R. 475 (E), dated the 6th July, 2019, namely:-

In the said notification, in the Table,-

(i) against Sl. No. 1, for the entry in column (4), the entry "Rs. 10 per litre" shall be substituted;

(ii) against Sl. No. 2, for the entry in column (4), the entry "Rs. 10 per litre" shall be substituted;

2. This notification shall come into force with effect from the 14th March, 2020.

OTHER STATUTES OF FORTNIGHT

(Other Statutes as under which have not gone in print owing to paucity of space are available on website http://www.taxpublishers.in/Journal_CLL.aspx for going through or download)

NOTIFICATION (NON-TARIFF)

Amendments in Notification No. 36/2001–Cus, (N.T.), dt. 3-8-2001—*Notification No. 18/2020-Customs (N.T.), dt. 28-2-2020 [F. No. 467/01/2020 -Cus-V]*

Amendments in Notification No. 15/2020–Cus, (N.T.), dt. 20-2-2020—*Notification No.19/2020 - Customs (N.T.), dt. 4-3-2020 [F.No.468/01/2020-Cus.V]*

Rate of Exchange for Conversion of Foreign Currencies into Indian Rupees—Regarding—*Notification No. 20/2020 - Customs (N.T.), dt. 5-3-2020 [F.No. 468/01/2020-Cus.V]*

Amendments in Notification No. 20/2020–Cus, (N.T.), dt. 5-3-2020—*Notification No. 21/2020 - Customs (N.T.), dtd. 9-3-2020 [F.No.468/01/2020-Cus.V]*

Amendments in Notification No. 20/2020–Cus, (N.T.), dt. 5-3-2020—*Notification No.22/2020 - Customs (N.T.), dtd. 12-3-2020 [F.No.468/01/2020-Cus.V]*

Amendments in Notification No. 20/2020–Cus, (N.T.), dt. 5-3-2020—*Notification No. 23/2020 - Customs (N.T.), dtd. 13-3-2020 [F.No.468/01/2020-Cus.V]*

Amendments in Notification No. 36/2001–Cus, (N.T.), dt. 3-8-2001—*Notification No. 24/2020-CUSTOMS (N.T.), dtd. 13-3-2020 [F. No. 467/01/2020 -Cus-V]*

NOTIFICATION (N.T./CAA/DRI)

Amendments in Notification No. 13/2020–Cus, (N.T./CAA/DRI), dt. 3-2-2020—*Notification No. 17/2020-Customs (N.T./CAA/DRI), dtd. 3-3-2020 [F. No. DRI/HQ-CI/50D/CAA-51/2019-CI]*

Appointment of Common Adjudicating Authority—Regarding—*Notification No. 18/2020-Customs (N.T./CAA/DRI), dtd. 3-3-2020 [F. No. DRI/HQ-CI/50D/CAA-9/2020]*

Appointment of Common Adjudicating Authority—Regarding—*Notification No. 19/2020-Customs (N.T./CAA/DRI), dtd. 3-3-2020 [F. No. DRI/HQ-CI/50D/CAA-10/2020]*

Amendment in Notification No. 128/2016–Customs (N.T.), dt. 25-10-2016—*Notification No. 21/2020-Customs (N.T./CAA/DRI), dt. 6-3-2020 [F. No. DRI/HQ-CI/50D/CAA-13/2020]*

NOTIFICATION (ANTI DUMPING DUTY)

Imposition of Anti Dumping Duty on Chlorinated Polyvinyl—Regarding—*Notification No. 05/2020-Customs (ADD), dtd. 7-3-2020 [F.No.354/110/2019 – TRU]*

Continuation of Anti Dumping Duty on Sheet Glass—Regarding—*Notification No. 06/2020-Customs (Add), dt. 12-3-2020 [F. No. 354/30/2020 –TRU)]*

SELECT CASE LAW LIBRARY

(Full Reports with Headnotes on our website http://www.taxpublishers.in/Journal_CLL.aspx)

S. 72 **CUSTOMS ACT, 1962**

Goods improperly removed from warehouse, etc.—***Concessional rate of duty***—*Removal of goods in contravention of section 72(1)(a) and section 72(1) (d)*

Where assessee cleared the goods to DTA or EPCG holders during the period August to September 2003 and during this period *Notification No. 53/97* was not in currency, *Notification No. 52/2003* was only operational, since assessee was entitled to clear the used capital goods in terms of the policy as well as customs notification, therefore, assessee's submission that non obtaining of permission does not take away the applicability of notification allowing a concessional rate of duty, was acceptable.

Decision: In assessee's favour

➲ ***Fontasey Engineering Exports (P) Ltd. v. CCE 2020 TaxPub(EX) 17 (CESTAT-Mum) : (2020) 371 ELT 586 (CESTAT-Mum)***

S. 112(b)

Penalty—***Enhancement of penalty***—*Import of different type of 'Catheters'—Imposition of*

Where assessee was regularly importing the Catheter during the period 23-11-2005 to 17-3-2011 and was paying Customs Duty and no objection was

raised by Department during these six years regarding any violation made by assessee, therefore, there was no mis-declaration on the part of assessee while filing the Bill of Entry and penalty could not be levied.

Decision: In assessee's favour

➲ ***Kaaizeen Meditech (P) Ltd. v. CC 2020 TaxPub(EX) 35 (CESTAT-Bang)***

S. 112(b)

Penalty—***Aiding and abetting the importer to undervalue the imported furniture***—*Imposition of*

Where Commissioner had misread the evidence on record and had come to conclusion on the basis of involvement of assessee in other cases wherein assessee had confessed his guilty, and had also approached Settlement Commission along with other importers and paid the penalty of Rs. 10,000 imposed by the Settlement Commission, therefore, Revenue had failed to establish the charge against assessee on merits and imposition of penalty on assessee was not tenable in law.

Decision: In assessee's favour

➲ ***V. Ramesh v. CC 2020 TaxPub(EX) 11 (CESTAT-Bang)***

S. 114

Penalty—***Advance License Scheme***—*Forged documents submitted to the licensing authority against ex-bond bills of entry—Imposition of*

Where alleged failure of assessee to produce customs attested copies of packing list was not a significant pointer as goods claimed to have been imported in 2006 were subject to verification after a gap of eight years and discrepancies pointed out in verification report did not suffice to conclude that goods were in conformity with descriptions in the three bills of entry cited in show cause notice, therefore, appeal of assessee was allowed.

Decision: In assessee's favour

➲ ***Ayaz Ahmed Ansari v. Commr. of Cus. 2020 TaxPub(EX) 8 (CESTAT-Mum)***

S. 124

Show cause notice—***Revocation of Customs Broker (CB) License***—*Forfeiture of security deposit*

High Court in case of *Santon Shipping Services v. The Commr. of Cus., The Customs, Excise And Service Tax Appellate Tribunal (CMA No. 730 of 2016, dated 13-10-2017)* had occasion to consider whether the time-limit prescribed in Regulation for proceedings of revocation of license is mandatory or directory. Non-compliance of the time limit prescribed in the Regulation is fatal and the order of revocation of license passed without complying with the time limit cannot sustain.

Decision: In assessee's favour

➲ ***Shriwin Shipping & Logistics v. Commr. of Cus. 2020 TaxPub(EX) 46 (CESTAT-Chenn)***

S. 127B

Application for settlement of cases—***Imposition of penalty by Settlement Commission***—*Rejection of rectification application—Misdescription and undervaluation of imported goods*

Assessee had fully and truly disclosed its liability, and had deposited the same and cooperated with the proceedings, Settlement Commission held that assessee was entitled to have the case settled, under section 127C(5). Accordingly, the case was settled.

Decision: In assessee's favour

➲ ***Honeycom Synergies v. Commr. of Cus. & Ors. 2020 TaxPub(EX) 24 (Del-HC) : (2020) 371 ELT 248 (Del)***

S. 135

Offences and prosecution—***Bail application***—*Grant of*

Where section 135 states that any person, in relation to any goods in any way mainly concerned in any fraudulent evasion or attempt at the evasion of any duty chargeable thereon should be punished with imprisonment for a term which may extend to seven years and with fine and since AIU had not filed any documentary evidence about the value of wrist watch, therefore, *prima facie* receipt disclosed that value of watch was below Rs. 10 lakhs and there was no need to keep assessee behind bar.

Decision: In assessee's favour

➲ ***Kavinkumar Chandresh Mehta v. Air Custom Officer 2020 TaxPub(EX) 38 (Session for Greater Bombay)***

Notification No. 5/2019-Customs

Benefit of exemption—***Release of imported goods from Pakistan***—*Rate of duty*

Issue was decided in case of *M/s. Rasrasna Food (P) Ltd. v. UOI & Ors. (Civil Writ Petition No. 11887 of 2019, decided on 26-8-2019)* where it was held that without going into vires of notification, assessee would be liable to pay duty as was applicable at the time of filing of bill of entry coupled with the fact of imported goods having entered territory of India on 16-2-2019 prior to the issuance of notification. Revenue should release goods within seven days on payment of duty as declared.

Decision: In assessee's favour

➲ ***Goodwill Traders v. UOI & Ors. 2020 TaxPub(EX) 23 (P&H-HC)***

S. 2 **CUSTOMS TARIFF ACT, 1975**

Classification of goods—***Electronic Sensor Paver Vogel Model 1800-2 with AB 600-2***

Since language of condition No. 38 in the Exemption Notification No 621/2002-Cus is clear and

unambiguous, there was no need to resort to interpretative process in order to determine whether the said condition is to be imparted strict or liberal construction, however, assessee did not dispute the same but have relied upon subsequent clarification issued by Joint Secretary (TRU) clarifying that benefit of similar exemption notification would be admissible to constituents of consortium, therefore, benefit could not be provided to assessee.

Decision: Against the assessee

➲ ***GMR Infrastructure Ltd. v. Commr. of Cus. 2020 TaxPub(EX) 18 (CESTAT-Mum)***

S. 2

Classification of goods—***Import of multiplexers, satellite receivers, test and measurement equipments, computers, software and rack***—*Rejection of declared value*

Issue was squarely covered by decision of CESTAT in assessee's own case *Brigadier R Deshpande, M/s. Indusind Media & Communication. Ltd. v. Commr. of Cus.,(2018 (363) E.L.T. 572 (Tri. - Del.))* where it was held that imported goods were rightly classifiable under heading 8525 and exactly identical imports were affected by assessee and even quantities, unit value and FOB value as per the six invoices filed in respect of imports made was identical, therefore, matter was remanded back to adjudicating authority for re-computation of differential duty and penalties

Decision: In assessee's favour (by way of remand)

➲ ***Indusind Media & Communications Ltd. v. Commr. of Cus. 2020 TaxPub(EX) 34 (CESTAT-Mum)***

S. 2

Classification of goods—***Inactive dried yeast***—*Animal feed supplement—Classified under CTH 2309 90 20 or under CTH 2102 20 00*

Where entire heading 2309 talks of preparations of a kind used in animal feeding and by no stretch of imagination, products imported by assessee were preparations of a kind animal feeding, therefore, they could not be classified along with animal feed merely by virtue of the inclusive definition given in the explanatory notes for the heading 2309 CETA and classification of yeast was correctly arrived of by Revenue under CTH 2102 20 00.

Decision: Against the assessee

➲ ***Zymonutrients (P) Ltd. v. Commr. of Cus. 2020 TaxPub(EX) 19 (CESTAT-Chenn)***

S. 8 **CUSTOMS VALUATION RULES, 1988**

Valuation of imported goods—***Pharmaceutical gelatin (capsule grade)***—*Addition of 20% of the FOB value as adjusted freight component*

Where rejection of declared value and re-determination of the same in terms of rule 10(2) by original authority was in conformity with statutory provisions. However, considering the fact that assessee had entertained the reasonable belief regarding non-inclusion of the element of freight in the transaction value, redemption fine imposed on it can be reduced in the interest of justice.

Decision: Partly in assessee's favour

➲ ***Customs Capsule (P) Ltd. v. Commr. of Cus. 2020 TaxPub(EX) 13 (CESTAT-Mum) : (2020) 371 ELT 546 (CESTAT-Mum)***

CENTRAL EXCISE

CONTENTS

MEDIA LIBRARY

■ Excise duty on petrol, diesel up by Rs 3 per litre as oil prices decline

The government on Saturday hiked excise duty on petrol and diesel by a steep Rs 3 per litre each to garner about Rs 39,000 crore additional revenue as it repeated its 2014-15 act of not passing on gains arising from slump in international oil prices.

Retail prices of petrol and diesel will not be impacted by the tax changes as state-owned oil firms adjusted them against the recent fall in oil prices and the likely trend in the near future, industry officials said.

According to a notification issued by the Central Board of Indirect Taxes and Customs, special excise duty on petrol was hiked by Rs 2 to Rs 8 per litre in case of petrol and to Rs 4 a litre from Rs 2 in case of diesel.

Additionally, road cess was raised by Re 1 per litre each on petrol and diesel to Rs 10.

With this, the total incidence of excise duty on petrol has risen to Rs 22.98 per litre and that on diesel to Rs 18.83.

The tax on petrol was Rs 9.48 per litre when the Modi government took office in 2014 and that on diesel was Rs 3.56 a litre.

Officials said the increase in excise duty will result in annual increase of government revenues by about Rs 39,000 crore. The gains during the remaining three weeks of the current fiscal would be less than Rs 2,000 crore.

Petrol and diesel prices, which are changed on a daily basis, were cut by 13 paise and 16 paise respectively as oil companies adjusted the excise duty hike against the drop in prices that warrants from international rates slumping the most since the Gulf war.

Petrol now cost Rs 69.87 a litre in Delhi and a litre of diesel comes for Rs 62.58.

The government had between November 2014 and January 2016 raised excise duty on petrol and diesel on nine occasions to take away gains arising from plummeting global oil prices.

www.business-standard.com dt. 14-03-2020

CURRENT STATUTES LIBRARY

CENTRAL EXCISE–NOTIFICATION (TARIFF)

Notification No. 3/2020-Central Excise, dtd. 13-3-2020 [F.No. 354/123/2014-TRU (Pt-1)]

Amendments in Notification No. 05/2019–CE, dt. 6-7-2019

G.S.R. (E).—In exercise of the powers conferred by section 147 of Finance Act, 2002 (20 of 2002), read with section 5A of the Central Excise Act, 1944 (1 of 1944) (herein after referred to as the Excise Act), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 05/2019-Central Excise, dated the 6th July, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 488(E), dated the 6th July, 2019, namely:-

In the said notification, in the Table,-

(i) against Sl. No. 1, for the entry in column (4), the entry "Rs. 10 per litre" shall be substituted;

(ii) against Sl. No. 2, for the entry in column (4), the entry "Rs. 4 per litre" shall be substituted;

2. This notification shall come into force with effect from the 14th March, 2020.

Notification No. 4/2020-Central Excise, dtd. 13-3-2020 [F. No. 354/123/2014 –TRU (Pt-1)]

Amendments in Notification No. 04/2019–CE, dt. 6-7-2019

G.S.R. (E).—In exercise of the powers conferred by section 112 of Finance Act, 2018 (13 of 2018), read with section 5A of the Central Excise Act, 1944 (1 of 1944) (herein after referred to as the Excise Act), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 04/2019-Central Excise, dated the 6th July, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 487(E), dated the 6th July, 2019, namely:-

In the said notification, in the Table,-

(i) against Sl. No. 1, for the entry in column (4), the entry "Rs. 10 per litre" shall be substituted;

(ii) against Sl. No. 2, for the entry in column (4), the entry "Rs. 10 per litre" shall be substituted;

2. This notification shall come into force with effect from the 14th March, 2020.

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S. 4 **CENTRAL EXCISE ACT, 1944**

Valuation—***Includibility of insurance and freight in assessable value***

Apex Court in case of *Commissioner of Central Excise, Noida v. M/s. Accurate Meters Ltd. (2009 (235) ELT, 581 (SC) : 2009 TaxPub(EX) 0690 (SC))* had held that amount claimed by way of transportation charges and insurance could not be considered for determining the value of the electric meters supplied.

Decision: In assessee's favour

➲ ***Ashok Transformers (P) Ltd. v. CCE & ST 2019 TaxPub(EX) 638 (CESTAT-Ahd)***

S. 4A

Valuation—***Related party transaction***—*Short payment of duty*

Where duty paid in cash was an incentive to assessee and if the same was taken into account then assessee had earned the profit on the goods sold, in fact, cash incentive was given by way of duty paid in cash was shared with their buyers. In that circumstance, show cause notice issued by Revenue was not sustainable.

Decision: In assessee's favour

➲ ***Platinum IT Solutions v. Commr. of Cus. & CE 2019 TaxPub(EX) 655 (CESTAT-Chd)***

S. 11

Demand of excise duty—***Adjustment of short paid duty with excess duty paid***—*Job Work*

The controversy involved in present case was related to adjustment, which was done by assessee before this Court as adjustment was done by assessee by adjusting the excess amount already paid towards duty in subsequent months. No case for interference was made out in the present appeal.

Decision: In assessee's favour

➲ ***Commr. of CGST & CE v. Bhagirath Coach & Metals Fabricators (P) Ltd. 2019 TaxPub(EX) 644 (MP-HC)***

S. 11B

Refund—***Rate of Interest on Refund of duty paid***—*Applicability of section 11B—Allowability*

Where to clarify the rate of interest in the range of 5% to 30%, statute itself had empowered Central Government to fix any rate of interest for the time being by way of a notification and this clarifies that once there is a notification of Central Government fixing 6% as the rate of interest same has to be followed as having power of statute, therefore appeal of assessee was dismissed.

Decision: Against the assessee

➲ ***Devendra Udyog v. Commr. of CGST 2019 TaxPub(EX) 652 (CESTAT-NDel)***

S. 11BB

Refund—***Interest on delayed refund***—*Applicability of section 11B—Allowability*

Where no reasons had been given for not granting interest on delayed refund in the order and the fact that sanctioned refund was merely belatedly paid but instead, first adjusted against some other demand and then later on disbursed to assessee and even the Board had clarified that interest becomes payable after the expiry of a period of three months from the date of receipt of application under sub-section (1) of section 11BB. Original authority was directed to quantify the interest.

Decision: In assessee's favour

➲ ***Jindal Praxair Oygn Company (P) Ltd. v. CCE & ST 2019 TaxPub(EX) 664 (CESTAT-Bang)***

S. 35

Appeal (Tribunal)—***Maintainability of appeal***—*Appeal dismissed on the ground of time bar*

Where as per section 35, an appeal to Commissioner (A) is required to be filed within 60 days from the date of receipt of the order by person who is aggrieved by such order and delay of approximately 27 days in filing the appeal was within condonable power of Commissioner (A), therefore matter was remanded back to Commissioner (A) with a direction to decide the case on merits.

Decision: In assessee's favour by way of remand

➲ ***Shree Banashankari Steel & Alloys (P) Ltd. v. CCT & CE 2019 TaxPub(EX) 647 (CESTAT-Bang)***

S. 35B

Appeals (Tribunal)—***Assessee sought extension of time for complying with conditional order***

On the date on which appeal was dismissed by CESTAT by order, assessee had not complied with pre-deposit condition. Therefore order as such was unassailable. Therefore, no question of law, much less any substantial question of law, arose for consideration in the above appeal and appeal was dismissed.

Decision: Against the assessee

➲ ***Zenotech Laboratories Ltd. v. CCE, Cus. & ST 2019 TaxPub(EX) 517 (Telangana) : (2019) 367 ELT 587 (Telangana)***

S. 35F

Pre-deposit—***Interest of delayed refund***—*Relevant date for calculation of interest*

The issue was examined by the Tribunal in case of M/s. *Fujikawa Power & M/s. Kenzo International v. CCE & ST, Chandigarh-I (Final Order No. 61041-61042/2019, dated 26-11-2019)*, where it was held that assessee was entitled to claim interest on delayed refund from the date of deposit till its realization.

Decision: In assessee's favour

➲ ***Marshall Foundry & Engg. (P) Ltd. v. Commr. of CGST 2019 TaxPub(EX) 637 (CESTAT-Chd)***

S. 40

Protection of action taken under the Act—***Specific statutory remedy provided which is to be exercised within prescribed time-limit***

When a specific statutory remedy is provided, especially in a tax statute, which is to be exercised within a prescribed time-limit, the said remedy necessarily excludes the exercise of jurisdiction by a Civil Court. In case a remedy had not been provided in Excise Act in respect of the orders in suits, it might have been possible to contend that filing of the suits was not impliedly barred. Thus, all the three Civil Revision Petitions were allowed.

Decision: Against the assessee

➲ ***Superintendent of C. Ex. v. St. Xavier Match Works 2019 TaxPub(EX) 510 (Mad-HC) : (2019) 367 ELT 568 (Mad)***

Chapter 2710 **CENTRAL EXCISE TARIFF ACT, 1985**

Classification of goods—***Classification of imported intermediate goods***—*Reformate—Validity*

Since Chemical Examiner Report was not comprehensive and therefore, it could not be concluded on basis of the report that product, i.e., reformate is motor spirit adhering to BIS: 2796-1995 standards for EURO II, III, IV Standards.

Decision: In assessee's favour

➲ ***CCE v. Bharat Petroleum Corporation Ltd. 2019 TaxPub(EX) 654 (CESTAT-Bang)***

Chapter 73 or 84

Classification of goods—***Manufacture of various forged and cast items being subsequently used by***

buyers for manufacture of machinery parts—*Validity*

Where assessees were also doing a drilling operation and have explained that drilling was done to create a hole on the item for the purpose of providing a hold for other operations and for purpose of carrying these items from one place to another and such drilling operations had no impact on the essential character of the item manufactured by assessee, classification could not change solely on the ground of drilling operation.

Decision: In assessee's favour

➲ ***Techno Forge Ltd. v. CCE & ST 2019 TaxPub(EX) 643 (CESTAT-Ahd) : (2020) 371 ELT 539 (CESTAT-Ahd)***

Chapter 8424

Classification of goods—***Manufacturing of PVC pipes***—*Validity*

Where there was no allegation by Department that the said pipes have been sold/utilised for general purposes and product manufactured by them was nothing but a PVC pipe, the same was being used as an integral part of the drip irrigation system being manufactured by their company and hence their company was calling them as parts of Micro/drip irrigation system, classification of the same was correctly done under CETH 8424 and not under CETH 3917.

Decision: In assessee's favour

➲ ***Nagarjuna Fertilizers & Chemicals Ltd. v. CCE, Cus. & ST 2019 TaxPub(EX) 658 (CESTAT-Hyd)***

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S. 55 **ANDHRA PRADESH VALUE ADDED TAX ACT, 2005**

Penalty—***Alternative remedy of appeal***—*Violation of the principles of natural justice—Allowability of*

Where section 55(2) states that any VAT dealer, who issues a false tax invoice or receives and uses a tax invoice, knowing it to be false, should be liable to pay a penalty of 200% of tax shown on the false invoice and expression used in section 55(2) is "tax shown on the false invoice". Therefore, it was not relatable to actual turn over but tax as shown in false invoice and accordingly penalty was justified.

Decision: Against the assessee

➲ ***Bhaskara Fertilizers Limited v. C.T.O. & Ors. 2019 TaxPub(VAT) 464 (AP-HC) : (2019) 66 GSTR 442 (AP)***

S. 15 **HARYANA VALUE ADDED TAX ACT, 2003**

Assessment—***Notice VAT N-2 not served to assessee before framing the assessment***—*Not raising the issue before first appellate authority*

In the absence of service of notice VAT N-2 within limitation period, all assessment proceedings are vitiated and rendered illegal and *void ab inition.* Non-raising of this issue before the assessing authority and first appellate authority could not cure this fatal defect in assessment proceedings.

Decision: In assessee's favour

➲ ***Kamal CED Solution LLP v. State of Haryana 2018 TaxPub(VAT) 500 (HTT) : (2018) 60 PHT 36 (HTT)***

R. 11(7) **KERALA VALUE ADDED TAX RULES, 2005**

Compounding proceedings—***Rejection of application of compounding***—*Liability to tax*

Tribunal had rightly affirmed the liability of tax on secondary machines because assessee had failed to substantiate its claim with evidence that the secondary machines were actually discarded and were not operating.

Decision: Against the assessee

➲ ***Shaijo M.M. v. State of Kerala 2019 TaxPub(VAT) 33 (Ker-HC)***

S. 27 **TAMIL NADU VALUE ADDED TAX ACT, 2006**

Assessment—***Escaped turnover***—*Liability arising out of mis-match—Validity of assessment order*

Where AO had not dealt with issue of mis-match as per the guidelines issued in *JKM Graphics Solutions* case, matter was remanded back to AO to

re-consider the said issue once again, by following the guidelines/directions issued in said case.

Decision: In assessee's favour by way of remand

➲ ***GKS Industries v. Asstt. CST 2019 TaxPub(VAT) 24 (Mad-HC)***

S. 27(4)

Penalty under section 27(4)—***Non-recording of satisfaction as to willful evasion of tax***—*Leviability*

Where AO imposed penalty on assessee, without recording his satisfaction that the escapement of tax was due to willful non-disclosure of turnover by assessee, matter was remitted back to AO for reconsidering the issue once again, after receiving the reply from assessee.

Decision: In assessee's favour (by way of remand)

➲ ***GKS Industries v. Asstt. CST 2019 TaxPub(VAT) 24 (Mad-HC)***

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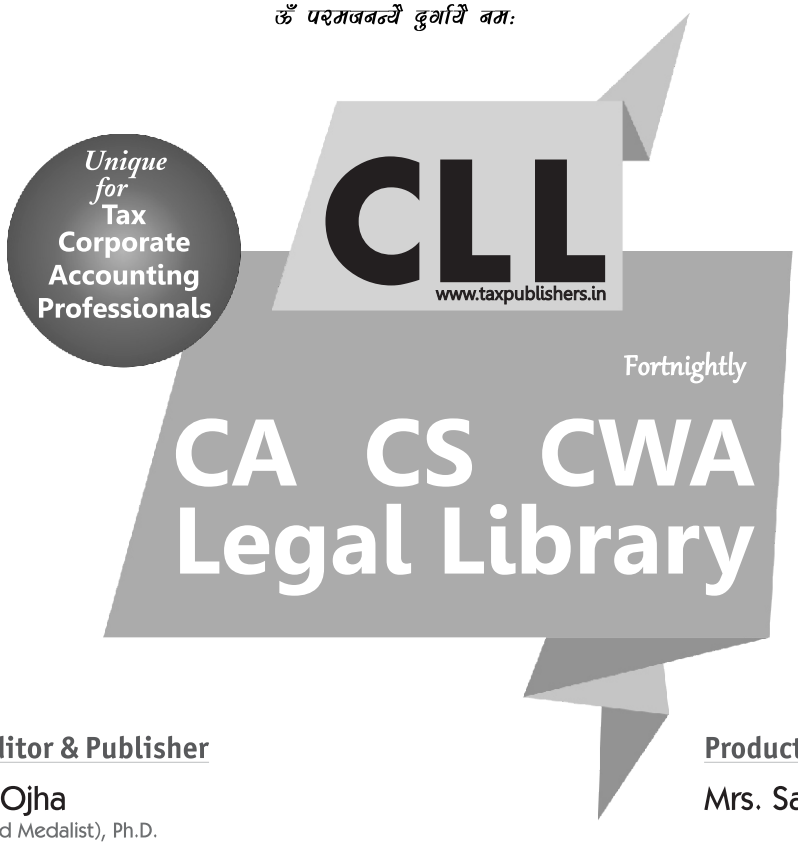

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