

eMagazine



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Dear Professional Colleagues,

I am happy to meet and greet you all through the E-magazine. I hope you all had a wonderful Preparation for the Shivarathri Festival with family and friends. The month of February 2019 was very productive as many career awareness programs were conducted for both under graduate and Post graduate students. This month we were successful in our efforts to reach out to colleges and universities outside Mysore city and create awareness to students about CS. In the month of month of March 2019, we intend to conduct a two-day credit hour program for our members with topics focusing on "Emerging Compliance under Companies Act, 2013 and Related Corporate Laws" and we are expecting members to actively participate. I would like to wish the students who have cleared CS Examination December 2018 Session

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Chapter Activities

1. CAREER AWARENESS PROGRAM

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

S No.	Date	College Name	Speaker	No. of Participants
1	27.02.2019	Sree Nataraja Post Graduate Centre	CS Veerash Mysore Jagadish	90
2	28.02.2019	D Banumaiah's College of Commerce & Arts	CS Veerash Mysore Jagadish	75

2. Orientation Program for CS Students

Student orientation program was conducted on 2nd February, 2019 at the Chapter premises. More than 40 students participated and it was a well interacted program.

Management committee members talked to the students about different aspects of company secretary course. Program concentrated on CS as a career, structure of the course, exams and training, how important it is to get involved in the chapter activities to get groomed to be successful in the career and opportunities out there for a company secretary. Also talked about the oral coaching classes for students which will be conducted by the chapter and how it will help them to write exams with more confidence.





INC - 22 A: Active Form

In 2017 and 2018, the Ministry of Corporate Affairs had carried out Know Your Customer (KYC) initiative for directors to ascertain their identities. It was a part of larger efforts to go hard on entities that are suspected to be havens for illicit fund flows or in other words are Shell Companies.

However, the term 'Shell company' has not been defined under the Companies Act, 2013.

In keeping with their efforts to keep a check on the shell companies, a new initiative has been introduced. According to this, all the companies incorporated on or before 31st of December, 2017 are required to file the new form INC 22 A. This is called as the ACTIVE form.

Geo-Tagging:

The company must attach the photo of external Building of the Company as well as the photo showing one of the directors in its registered office whose Digital Signature is to be attached in the aforesaid e- form. Further, the Company has to provide longitude and latitude details about the location of the Company in e-form INC-22A. This information is called as Geo-Tagged information.

It is the process of adding geographical identification like latitude and longitude to various media such as a photo or video.

Details required in Form INC- 22 A

- Details regarding exact location such as latitude and longitude, of the Company.
- Photographs of external Building of the Company as well as the photo of the inside of the office, showing one of the directors in its registered office who is digitally signing the eform INC-22A
- Details of the Stock exchange, if the Company is a Listed Company

- Number of Directors in the Company
- Details of resolution passed by the Company and SRN no. of Form MGT-14 filed with Registrar of Companies, in case the number of Directors appointed in the Company exceeds the Maximum Limit prescribed under the Companies Act 2013
- List of Directors of the Company having the approved DIN status as on date of filing this form
- Name of the Individual Auditor/Audit firm
- Pan Number of the Individual Auditor/Audit firm
- Membership number of the Auditor
- Registration Number –In case of Audit firm
- Period for which the Auditor or Audit firm is appointed

Similarly, the details of the Managing Director or Chief Executive Officer or Manager, Whole-Time Director, have to be provided:

- (i) Number of roles or position held by the above personnels
- (ii) DIN number
- (iii) PAN
- (iv) Name
- (v) Designation

Company Secretary:

If the Company is required to appoint a Company Secretary as per the Companies Act – when the paid up capital of the Company is more than 5 crores, the form cannot be filed if the Company has defaulted in the appointment of a whole-time Company Secretary.

Event Based Compliances

Similarly, there are certain event based forms that need to be filed soon after such an event takes place. In case those forms are not filed, the Company will not be able to file Form INC 22 A. Some of the event based compliances and corresponding forms are:

1. When Authorised Capital is changed, Form SH-7 has to be filed
2. When Paid up capital is changed, Form PAS-3 has to be filed.
3. When the registered office of the Company is changed, Form INC-22 has to be filed.

In case, the event based forms are not filed within the stipulated period, Form INC – 22 A cannot be filed by the Company.

Due Date for Form INC 22 A

This form is required to be filed on or before 25th of April, 2019. If any Company fails to do so, it will be

marked as “*Active Non-Compliant*” by the ROC and later on the name of the Company shall be removed as per Section 12(9) of the Act.

After the due date for filing i.e 25th of April, 2019, if the Company wishes to file the E Form Active INC-22A, it can do so alongwith a fees of **Rs.10,000.00**. Only after the form is filed, the company’s status will be changed into “*Active Compliant*”.

Though this is a single form, it keeps an eye on Companies in a three-fold manner. It acts like a check on Companies which have not filed the annual financials and at the same time, Companies which have not appointed a Whole time Company Secretary are brought to book. Moreover, we come across instances where as many as 100 Companies operate from single premises. Geo-tagging will help identify such Companies.

All in all, a very good move from the MCA!



Words Worth Million

“The challenge of a leader is looking around the corner. And making the change before it’s too late to make the change”

-Indra Nooyi



Issue of Securities under Section 62 of Companies Act, 2013

Section 42 of the Companies Act, 2013 relating to the Issue of Shares on Private Placement basis has been substituted by the Companies (Amendment) Act, 2017 which came into force with effect from 07.8.2018 and accordingly Rule 14 of Companies (Prospectus of Securities) Rules, 2014 have also been substituted with new Rule 14

The following are Major conditions for issue of securities under Private placement

- ✓ Made only to a selected group of persons identified by Board i.e., Identified persons
- ✓ Offer shall not exceed to more than 200 people (excluding QIB or Employees under ESOPs) in a financial year for all kinds of securities together.
- ✓ Private placement offer cum application (PAS-4) shall be sent to identified persons and they don't have right to renounce.
- ✓ Any agreement to offer or allot or invite securities more than 200 persons will amount to public issue
- ✓ The offer shall be approved by the Shareholders of the Company by special resolution. Explanatory statement shall have necessary disclosures.
- ✓ For issue of non convertible debentures is within the limits of resolution passed under Section 180 then no special resolution is required under Rule 14.
- ✓ subscription money shall be paid by cheque or demand draft or other banking channel and not by cash
- ✓ Money raised shall be kept in separate bank account and shall not be utilized till the

allotment is made and Return of allotment is filed by the Company.

- ✓ Time limit to file Return of allotment is **15 days only**
- ✓ No fresh offer shall be made till the allotments under previous offer are completed.
- ✓ There is no limit for issue of securities to each such identified persons i.e., more than one issue of securities may be made to such identified persons.
- ✓ Restriction of number of identified persons i.e. 200 reckoned individually for each kind of securities.
- ✓ Allotment shall be made within 60 days and company shall pay interest @ 12% per annum in case of delay.

Preferential offer of Shares

The Provisions of Section 62 of the Companies Act, 2013, the issue of further shares which purport to increase in its subscribed capital. It means the Section does not deal with any of non-convertible shares as issue of such shares does not tantamount to increase in subscribed capital of the Company.

The provision deals with issue of shares on Rights basis, under ESOPs, Preferential offer to person other than existing shareholders, issue upon conversion of debentures or loan

Explanation to the Rule 13 (1) (i) of Companies (Share Capital and Debentures) Rules, 2014

“PREFERENTIAL OFFER” means an issue of shares or other securities, by a Company to any select person or group of persons on preferential basis

and does not include shares or other securities offered through a public issue, right issue, employee stock option scheme, employee stock purchase scheme or sweat equity issue or bonus issue or depository receipts issued in a country outside India or foreign securities.

Applicable Section and Rules of Companies Act, 2013: Section 62(1)(c) of the Companies Act, 2013 Read with Rule 13 of Companies (Share Capital and Debenture) Rules, 2014

Difference between Private Placement and Preferential Allotment:

PRIVATE PLACEMENT	PREFERENTIAL ALLOTMENT
It involves an issue of shares a selected group of persons who has been identified by the Board (<i>excluding qualified institutional buyers and employees</i>) whose number does not exceed 50 or such higher number (200 persons in aggregate in a financial year)	It involves offer to a <i>handful of investors who have agreed to make investment</i>
Private placement is pertaining to securities which are not convertible into equity shares at a later date	This covers the equity shares or convertible securities which will be convertible into equity shares at a later date
Private placement covers issue of securities to the persons other than existing share holders who are identified at the time of passing resolution	Preferential allotment applies in case of shares are issued to one or more new persons whether along with one or more existing investors or not.

In case of the Company is making offer to one or more of existing shareholders or all the existing shareholders should be in proportion to their existing shareholding, the Company shall also comply with Rule 14 of the Companies (Prospectus of Securities) Rules, 2014

Conditions: While making the Preferential offer a Company has to comply with the following conditions before issue:

1. Ensure Issue to be is authorized by Article of Association.
2. Approval from shareholders by way of Special Resolution is obtained and the allotment shall be made within a period of 12 months of passing such resolution
3. The following information shall be disclosed in the explanatory statement:
 - i. the objects of the issue;
 - ii. the total number of shares or other securities to be issued;

- iii. the price or price band at which the allotment is proposed;
- iv. basis on which the price has been arrived at, along with report of the registered valuer;
- v. relevant date with reference to which the price has been arrived at;
- vi. the class or classes of persons to whom the allotment is proposed to be made;
- vii. intention of promoters, directors or KMP to subscribe to the offer;
- viii. the proposed time within which the allotment shall be completed;
- ix. the names of the proposed allottees and the % of post preferential offer capital that may be held by them;
- x. the change in control, if any, in the company that would occur consequent to the preferential offer;

- xi. the number of persons to whom allotment on preferential basis have already been made during the year, in terms of number of securities as well as price;
- xii. justification for the allotment proposed to be made for consideration other than cash together with valuation report of the registered valuer.
- xiii. The pre issue and post issue shareholding pattern of the company

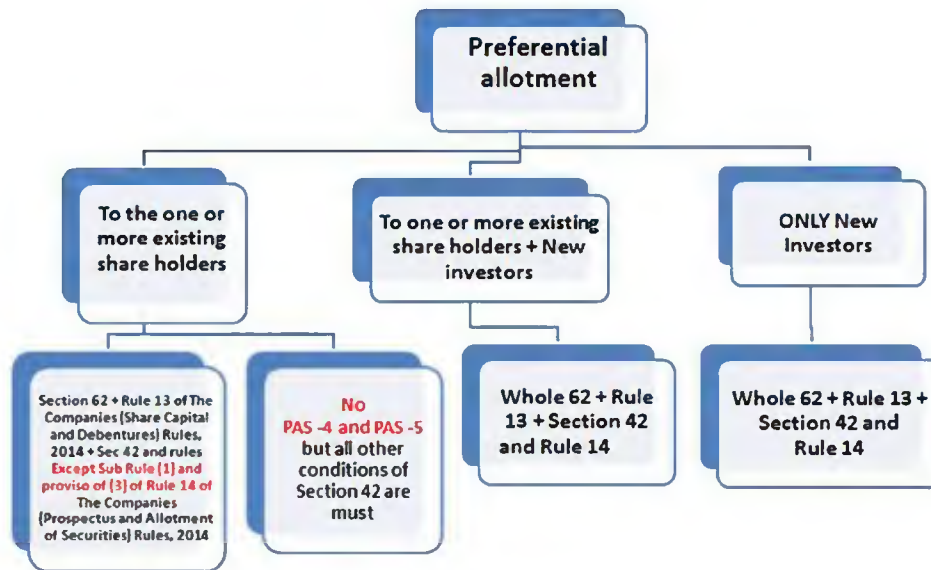
(ii) at the time, which shall not be earlier than 30 days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report given not earlier than 60 days of the date when the holder of security becomes entitled to apply for shares:

The company shall take a decision on above sub-clauses at the time of offer of convertible security itself and make such disclosure in explanatory statement

Pricing for Preferential Issue & Valuation Report

1. The price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer.
2. Price of the shares or other securities to be issued, either for cash or for consideration other than cash, shall be determined on the basis of valuation report.
3. Where convertible securities are offered, the price of the resultant shares pursuant to conversion shall be determined-
 - (i) either upfront at the time when the offer of convertible securities is made, on the basis of valuation report given at the stage of such offer, (or)

4. where shares or other securities are to be allotted for *consideration other than cash*, the valuation of such consideration shall be done by a registered valuer giving justification for the valuation
5. where the shares is issued for a *non-cash consideration*, such non-cash consideration shall be treated in the following manner in the books of account of the company-
 - (i) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the accounting standards; or
 - (ii) where above is not applicable, it shall be expensed as provided in the accounting standards.



Activity chart for preferential offer:

Sl. No	Event	Notice Period
1	Notice of Board Meeting	7 days of notice
2	Board Meeting	Pass necessary resolutions for approval for issue of shares, opening of separate bank account for preferential issue, fixing date time and venue of EGM and approving notice of EGM with explanatory statement File MGT 14 in case of Company is a Public Limited Company under Section 179(3)(c)
3	Notice of EGM	7 / 21* clear days notice from the date of board meeting
4	Preparation of Application	Letter of offer and Application to be circulated to the proposed investors in Form PAS-4 along with the share application form in case of one or more new investors.
5	Extra Ordinary General Meeting	Convene EGM and pass necessary resolutions
6	Filing of forms with RoC for passing special resolution	Within 30 days from the date of passing special resolution, In e-Form MGT-14
7	Filing of PAS 4 in form GNL-2 with RoC	Within 30 days of circulation of the offer letter
8	Receipt of Share Application form along with monies	Deposit in a separate Bank account opened for the purpose and shall not be used till allotment of shares and filing of PAS-3
9	Issue of Board Meeting Notice	For allotment of shares
10	Convene Board Meeting for allotment of securities	Board meeting convened at a shorter notice with the Directors' consent Allotment shall be made within 60 days
11	Return of Allotment with RoC in Form PAS -3	Within 15 days from the date of allotment
12	Issue of share certificates	Within 60 days from date of allotment

Disclaimer: The Article is intended to provide insight into the provisions of Section 42 and 62 of the Companies Act, 2013 relating to issue of securities under Private placement and preferential offer. This does not in any form opinion on the understanding and compliance of provisions of the Act. The reader is requested to make necessary study before using this article for their professional work



GST: Advance Rulings – Part 5

Applicant: M/s. B.M. Industries

Advance Ruling No. HAR / HAAR /R/2018-19/02

Brief Facts & Issues before the Authority

The applicant is a proprietary concern engaged in manufacturing and sales of aluminium profiles and also owned fixed assets, current assets and current liabilities. The applicant has proposed to merge its going concern with M/s. Bimal Aluminium Private Limited. As a well-settled principle, the merger will desist the proprietary concern and all its assets and liabilities will be transferred to the latter.

The applicant approached the Authority for Advance Ruling – Haryana with two issues, whether the applicant is liable to pay tax under the Central GST / State GST Act, consequent to the merger as a going-concern and whether the Input Tax Credit available in the credit or cash ledger account of the proprietorship firm can be transferred to the respective credit or cash ledger account of the latter?

Applicant's Contentions

The applicant has argued that the merger will be for consideration based on the valuation of assets and liabilities. Upon merger, all the assets and liabilities will be taken over by the merged company and its business will be continued and relied on Section 7 of the Central GST Act, 2017 where it was

mentioned that such transaction should not be construed as 'supply'.

Authority's Ruling

After considering all the issues, the Authority held in favour of the Applicant which as follows;

1. Whether the applicant is liable to pay tax under the Central GST / State GST Act, consequent to the merger as a going-concern? *No. Since the transfer of a business as a 'going concern' is not a 'Supply' as provided under Schedule II of the Central GST Act, 2017, not liable to pay tax under Central GST Act, 2017 or State GST Act, 2017*
2. Whether the Input Tax Credit available in the credit or cash ledger account of the proprietorship firm can be transferred to the respective credit or cash ledger account of the latter? *Yes, the Input Tax Credit available in the credit ledger can be transferred to the respective credit ledger account of the latter firm in which the going concern will get merged. However, transfer of available balance in electronic cash credit not be allowed to transfer as provided under Sub-Section (3) of Section 18 of the Central GST Act, 2017 or respective provision under State GST Act. To be continued.....*





Change Your Definition of Giving

I read this the other day, In Naples Italy, when people order for coffee they will order few extra and pay for that which is called “suspended coffee”. If the place offers full meal they might order and pay for few “suspended complete meal” also. Whenever some needy people come and order for already paid “suspended meal/coffee or whatever the place offers”, they have their meal for the day. And it is spreading around the world. Another example which I thought was a nice gesture was when a person in a remote South Indian village goes and visits people with special talents. They may be working for their livelihood or doing a special service. He will interview those people and write about them in the local newspaper which gives them the free advertisements and people in need of such service can avail of such services that which otherwise goes unnoticed. Now with more than 100 articles like this, he has published a book which includes all these articles and selling it for Rs 80. And the money goes to special children’s school. Rs 80 is not heavy for anybody’s purse, but collectively it will be lot of money. This is a “Double Dhamaka” which helps the whole society in a different way.

Philanthropist Sudha Murty from Infosys foundation says Donating 100 crore isn’t more valuable than teaching 100 children. She illustrates with the story of a woman she met in a small town. “This house wife was bored with the empty hours at home after children go to school. She thought of doing something worthwhile and developed a personal hygiene module and started teaching this at four government schools around her home. So every morning, when her children leave for school, she would visit these schools and teach the children about the personal hygiene. It’s this kind of drive that can change society. People say, ‘Sudha Murty can afford to give because she has a lot of money.’ But it’s not only about the money. I consider this housewife’s brand of philanthropy much better than that of many people, including mine, because I have financial backing, the support of a foundation... she doesn’t have much and yet she is making a difference”.

So like the saying goes “where there is a will there is a way” let us think of what we can do for the society, however small it could be, this gesture will go a long way to create a better society.





GST Amendment Act, 2018 – Part II

As we are aware GST Amendment Act, 2018 has been made effective for the changes effective from 01.02.2019 vide Notification 02/2019 dtd:29.01.2019 for some of the Provisions. Considering the requirement of new Return formats to be notified, couple of changes in the GST Amendment Act, 2018 dealing with Returns have been deferred for its applicability. a quick glance of the key changes effective from 01.02.2019 are as per below:

Section 39: Furnishing of Returns

Reference to filing of return on or before twentieth day of the month succeeding such calendar or part thereof has been omitted and a proviso has been inserted under sub-section (1) to enable Government to notify certain class of registered returns for furnishing of returns

Also, a Proviso inserted in sub-section (7) notifying the Government to formulate rules for payment of tax as per the return to be filed

Insertion of Section 43A: Procedure for furnishing return and availing Input tax credit

(the above insertion is not given effect from 01.02.2019, rather another Notification is expected) This section prescribes the mechanism of furnishing of outward supplies by the supplier, which in turn entails the recipient to avail input tax credit. Also, a mutual responsibility casted on supplier and recipient for the tax payable as per outward supplies vis-à-vis ITC availed on inward supplies. A restriction has been placed on availment of ITC to the extent of 20% of the details

Section 49: Payment of Tax

An additional proviso has been added as to ensure that State GST to be used for set off against IGST after exhausting Central tax

Insertion of Section 49A: Utilisation of Input tax credit

(this provision is not yet enacted)

This section has been inserted as a non-obstinate provision to Section 49 towards utilisation of Input

Tax credit on account of IGST first to be exhausted before utilisation of Central or State tax

Section 54: Refund of tax

Sub-section 8 Clause (a) of the sub-section has been amended to restrict direct refund cases only to exports instead of zero-rated supplies. After this amendment, refund on account of zero-rate supply is available only for accumulated credits and not otherwise

In explanation for clause 2 amendment has been made to cover receipt of payment in INR to the extent permitted by RBI

Sub-clause (e) has been replaced with a new sub clause towards that the relevant date in case of refund on account of inverted tax structure shall be the due date for filing return under Section 39 for the period in which claim for refund arises.

Section 79: Recovery of tax

An explanation has been added after sub section 4 to indicate that the term “person” shall also include “distinct persons” as referred in Section 25

Section 107: Appeals to appellate authority

Clause (b) of sub section 6 has been amended to specify that mandatory pre-deposit of ten percent of tax in dispute, subject to a maximum of INR 25 crores.

Section 112: Appeals to appellate tribunal

Clause (b) of sub section 8 has been amended to provide that mandatory pre-deposit of twenty percent of tax in dispute over and above what was paid earlier u/s 107 by Appellant is subject to maximum of INR 50 crores

Section 143: Job work procedure

Insertion of proviso in sub-section (1) to provide for extension of one year and three years’ time for receipt of goods back from job worker where materials and moulds, dies etc. were sent to the job worker by principal. Extension can be given by the Commissioner. Sufficient cause to be shown and extension cannot be more than one year and two years respectively

Changes under IGST Act, 2018

Definitions:

Section 2(6): Clause (iv) has been amended to Indian Rupees to the extent allowed by RBI as a mode of receipt of export proceeds for the service provided

Section 2(16): Explanation has been amended to provide that a “governmental authority” can also be into carrying out any function entrusted to a Panchayat under article 243G of the Constitution.

Section 5: Levy & Collection – Reverse Charge Liability on receipt from unregistered Supplier

(this provision is not yet enacted as on 01.02.2019)
Sub-section 4 dealing with liability on reverse charge basis on receipt of supply from an unregistered supplier by a registered person has been replaced by a new subsection which narrows down the liability to specified class of registered receivers and in respect of only specified categories of goods and/or services received from unregistered suppliers

Section 12: Place of supply

Place of supply of services where supplier and recipient are in India-Place of supply of transportation service by mail or courier in relation to goods out of India shall be the place of destination outside India

Section 13: Place of Supply

Place of supply of services where either the location of supplier of service or of recipient is outside India – Place of supply of services in relation to goods

Second proviso under clause (a) has been amended to extend coverage to any other treatment or process (in addition to repairs covered earlier) on goods imported temporarily, before goods are exported without being put to use in India, Shall be location of recipient abroad.



M/s ABC Ltd., a manufacturer has appointed wholesale dealers and all the goods manufactured are distributed through the above said dealers. M/s ABC Ltd., directs the Dealers about the Trade Incentives and discount [primary] to be offered on periodical basis to the chain of stock dealer or sub-dealers on periodical basis. These schemes are called Turnover or volume discounts which are indicated on annual basis upfront before the goods are picked up by the wholesale dealers. However, there shall be some other promotional scheme or incentive [secondary] which are formulated on market condition specific by M/s ABC Ltd., Accordingly, M/s ABC Ltd., would like to understand the mechanism of valuation and issuance of Credit Noted as per Section 34 of CGST Act, 2017 for such incentives extended [secondary] as per the provisions of GST law.

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





Opinion To Last Month's Brainy Bits

Facts of the case:

- M/s ABC Ltd. (hereinafter referred as RP) a registered person under GST
- RP manufacture steel and supply the same. There is no exemption on the outward supplied
- In the course of manufacturing activity RP procures some inputs such as Coal and associated consumables which are used in generation of power to be captively consumed
- Power generation is an activity which is identified as Goods and there is an exemption notification in this regard Notification 02/2017 CT(R) dtd:28.06.2017 has been issued in this regard
- Power generated is captively used for manufacture of steel which is supplied on payment of relevant tax
- Unlike Central Excise rules, 2002 there exists no specific provisions under GST which deals with the mechanism for Captive consumption and its valuation related aspects
- RP has availed the benefit of Input Tax credit on procurement of Coal and allied consumables which are used for power generation.

Relevant Provision:

Section 2(59): Input

Section 2(62): Input Tax

Section 2(83): Outward supply

Section 7: Scope of Supply

Section 9: Levy and collection

Section 16: Input Tax Credit

Circular 79/53/2018-GST dtd: 31.12.2018

Conclusion:

Under GST there is no distinction placed on Intermediate products nor any specific provision dealt with valuation for such products evolved during the manufacturing process. The provision laid out under Supply or Levy is only on the goods supplied and not otherwise. Accordingly, though there are different process associated with Manufacturing activity, supply of final product i.e. finished goods evolved and supplied is going to determine the taxability provision for availment of Input tax. As per the same, the goods procured for captive power generation are eligible for availment of Input tax credit and there exists no provision dealing with evolvment of intermediate products if any.



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Solved cases of Supreme Court and NCLAT

Delhi Diaries 12

Whether CIRP Process under IBC is Maintainable in the Pendency of Winding up Process

The story of IBC is familiar to us all. The Companies Act, 1956 provided for a mechanism for winding up companies which are unable to fulfill their liabilities. This was found to be inadequate to address the burgeoning NPA Problem. Hence the Insolvency and Bankruptcy Code was brought in to solve the problem. As acknowledged by the Supreme Court in *Swiss Ribbons* the IBC has brought about a sea change in the way debt ridden companies are handled.

The question that arises from this understanding is this: When winding up action has been initiated against a company and the petition is pending, can action under the IBC also be initiated?

This question has been answered to some extent by the Supreme Court in *Forech India Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* In this case, A winding up petition had been filed against a company by an operational creditor and the same was pending. Reference had also been made to the Board for Industrial and Financial Reconstruction (BIFR) under Sick Industrial Companies Act which abated with the advent of the IBC.

Thereafter another operational creditor filed a petition against the same company under Section 9 of the IBC which was allowed to be withdrawn so that the operational creditor could approach the High Court and initiate a winding up petition which could be heard along with the pending winding up petition. In addition, a Financial Creditor also filed a petition against the same company under Section 7 of the IBC urging initiation of the CIRP. The petition of the financial creditor was admitted by the NCLT.

The appellant preferred an appeal before the NCLAT against the order of the NCLT admitting the petition.

The appellant relied upon Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 which provided for transfer of proceedings from High Court to NCLT in cases where the Petition had not yet been served on the respondent. In the present case as the petition had been served, it was apt that the High Court should continue with the winding up proceedings.

Per contra the counsel for the Respondent drew attention to the mandate of the IBC that the companies act would be suitably amended and contended that the whole purpose of the IBC would be derailed if it was held that the pendency of winding up petitions acted as a bar on IBC proceedings.

A divergence in views on the issue was noticed. The Bombay High Court in *Ashok Commercial Enterprises vs. Parekh Aluminex Limited*, had held that the notice referred to in for the purposes of transfer of proceedings was a pre-admission notice and hence, held that all winding up petitions where pre-admission notices were issued and served on the respondent will be retained in the High Court. On the other hand, the Madras High Court in *M.K. & Sons Engineering v. Eason Royelle Ltd.* had held that only such petitions where a winding up order is already made can be retained in the High Court as it was only post admission notice which was relevant.

The Supreme Court unambiguously resolved this conundrum by holding that “We are of the view that Rules 26 and 27 clearly refer to a pre-admission scenario as is clear from a plain reading of Rules 26 and 27, which make it clear that the notice contained in Form No. 6 has to be served in not less than 14 days before the date of hearing. Hence, the expression “was admitted” in Form No. 6 only means that notice has been issued in the winding up petition which is then “fixed for hearing before the Company Judge” on a certain day. Thus, the Madras High Court view is plainly incorrect whereas the Bombay High Court view is correct in law.”

The Supreme Court also took note of the non obstante clause in Section 238 of the IBC which provides that

“238. Provisions of this Code to override other laws.— The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

The Supreme Court however declined to interfere with the order of the NCLAT as the application of the financial creditor arose from different proceedings. However, liberty was granted to the appellant to seek a transfer of the winding up petition from the High Court to the NCLT.



News Room



EXPRESS NEWS

- Companies allowed to pass on volume benefit to consumers for GST cut
- MNCs now won't have to file CbC report in India
- India has finalized bilateral competent authority arrangement for exchange of CbC reports with US
- SBI chief says Jet Airways restructuring could be completed within a week
- India's trade deficit narrows sharply to a 17-month low in February

NCLAT refuses stay on NCLT nod to Arcelor Mittal plan; seek fresh distribution plan for bid amount

The National Company Law Appellate Tribunal Friday refused to stay a bankruptcy court order approving steel giant Arcelor Mittal's Rs 42,000 crore takeover bid for Essar Steel and sought a fresh plan for the distribution of bid amount between financial and operational creditors of the debt-laden firm.

Infotel opposes consolidation of Videocon cases at NCLT

Infotel Business Solutions, the parent company of Infotel Broadband, which was sold to Reliance Industries Ltd in 2010, has objected to the consolidation of insolvency proceedings of Videocon group at the National Company Law Tribunal (NCLT).

SEBI asks 2 Religare Cos to recover loans worth Rs 2,315 cr from Singhs

The regulator said all these entities have prima facie acted in a fraudulent manner in the diversion of funds thus violating rules.

The Securities and Exchange Board of India (SEBI) has directed Religare Enterprises and Religare Finvest to recover loans worth Rs 2,315.09 crore from the Singh brothers and entities related to them. Religare Finvest had advanced loans to promoter related entities — RHC Holding and ANR Securities

Tata Sons wins appeal against assessing Rs 759 crore as income

The Income Tax Appellate Tribunal (ITAT) has quashed an order assessing Rs 759 crore as income in the hands of Tata Sons as due provisions were not followed as regards jurisdiction over the assessment and transfer of the case.

KKR, Yes Bank and BOI AXA may take control of CG Power

the move is aimed at cleaning some of the recently reported related party issues and re-shaping the company, which otherwise has a clean track-record.





Companies Act, 2013

Updates on Amended Rules

MCA has amended Companies (Adjudication of Penalties) Rules, 2014, which is to be known as Companies (Adjudication of Penalties) Amendment Rules, 2019.

A person not below the rank of Registrar shall be appointed by the central government as adjudicating officers for adjudging penalty under the provisions of the Act.

The adjudicating officer is authorized to issue a written notice in the specified manner, to the company, to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days), why the penalty should not be imposed on it or him. Nature of non-compliance or default under

The reply to such notice shall be filed in electronic mode only within the period as specified in the notice. The act shall be clearly indicated in the notice.

The adjudicating officer shall pass an order,-

(a) Within thirty days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5).

(b) Within ninety days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5).

Companies (Adjudication of Penalties) Amendment Rules, 2019 dated 19th February 2019.

MCA has amended Companies (Incorporation) Rules, 2014, which is to be known as Companies (Incorporation) Amendment Rules, 2019.

The following clause shall be inserted, after rule 25 of Companies (Incorporation) Rules, 2014.

“25A. Active Company Tagging Identities and Verification (ACTIVE)

(1) Every company incorporated on or before the 31st December, 2017 shall file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) on or before 25.04.2019.

Provided that no request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as “ACTIVE-non-compliant”, unless “e-Form ACTIVE” is filed-

(i) SH-07 (Change in Authorized Capital)

(ii) PAS-03 (Change in Paid-up Capital)

(iii) DIR-12 (Changes in Director except cessation)

(iv) INC-22 (Change in Registered Office)

(v) INC-28 (Amalgamation, de-merger)

A late fee of rupees 10,000 will be charged for late filing of “ e-Form ACTIVE”

MCA has introduced the e-form ACTIVE (INC-22A), to facilitate the filings.

Companies (Incorporation) Amendment Rules, 2019, dated 21st February 2019.

Notifications

MCA has directed that all the companies, who avail supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days, shall file a half yearly return to the Ministry of Corporate Affairs stating the following;

1. The amount of payment due
2. The reasons of the delay

Such companies shall file the return in **MSMEForm 1.**

S.O. 368(E), Dated 22nd January 2019.