

eMagazine



For Private Circulation Only

NeSL

National E-Governance Services Ltd

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Vision

"To be a global leader in promoting good corporate governance"

Motto

सत्यं वद। धर्मं चर। इष्टकारं क्रेत। जगत्के। कर्तव्यं क्त्वा क्रेत। क्व।

Mission

"To develop high calibre professionals facilitating good corporate governance"



CS Veerash M.J.
Chairman
Mysore Chapter

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 Maha Shivarathri and Holi Festival with family and friends. The month of March 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 profession.

In the month of month of March 2019, we have conducted a two-day Residential Programme for our members with topics focusing on Emerging Compliance under Companies Act, 2013 and Related Corporate Laws” And it has exceeded our expected where we got nearly 100 participants across India and it was very interactive session and benefited from the session especially latest updates.

I would like to wish the students best of luck for students for upcoming exams.

Thank You,

-: Editorial Team:

CS Vijaya Rao

CS Sherene

CS Phani Datta

CS Parvati K.R

CS Ajay Madhaiah

CS Madhur N Agrawal

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Chapter Activities

1. Mega Career Awareness Program



On 06.03.2019, Chapter organised a Mega Career Counselling Programme at Government College for Women (Autonomous), Mandya. More than 1000 students from Commerce & Management stream attended the programme. Prof. Sathyanarayana, Principal, Welcomed the gathering and introduced the speaker. Mr. Narayana K B., Head, Department of Commerce & Business Administration proposed the vote of thanks.

CS Veerash Mysore Jagadish, Chairman, Management Committee conducted the session and explained the course offered by the Institute and the eligibility for the course, examination, requirements of training etc.

He highlighted the importance of making the right career choice so as to be successful in life. He also spoke about the role of a Company Secretary and importance of the profession of Company Secretary in the changing economic scenario. Brochures containing brief details of the Company Secretary Course were distributed to the participants

2. Two Day Seminar on Emerging Compliance under Companies Act, 2013 and Related Corporate Laws



Chapter had organized a two day seminar on March 15th and 16th at the chapter premises on the topic **Emerging Compliance under Companies Act, 2013 and Related Corporate Laws**. Dr. N.S. Rangaraju, Former Professor and Chairman, University of Mysore was the chief guest. CS Bhagwan Das Mohta, Practicing Company Secretary Bengaluru, and Mr M.G. Yathish Regional Officer, Karnataka state Pollution Control Board were the guest of honours.

The two days seminar covered the recent update on the following topics. Significant Beneficial Ownership Rules 2019 – CS Padmavathi K., PCS and Company Law Amendments & Ordinance – CS Devika S., PCS on the day one. Companies (Acceptance of Deposits) Amendments Rules, 2019 & MSME Compliances – CA K Gururaj Acharya, PCA and Insolvency and Bankruptcy Code – CS D Ravisankar, PCS on the day two. Students who cleared December 2018 exam got felicitated by the dignitaries.

Around 90 Company Secretaries & students from different parts of India participated in the seminar. CS Veerash Mysore Jagadish, Chairman welcomed the gathering and CS Vijaya Rao, Secretary did the vote of thanks.





The Banning of Unregulated Deposit Schemes Ordinance 2019 – Can it meet its Stated purpose?

1. Preamble to the Ordinance

The Government's quest to be "**An Eagle in the Financial Sky of the Country**" continues with one more Regulation coming in the form of an "Ordinance" called **The Banning of Un Regulated Deposit Schemes Ordinance, 2019 (No.7 of 2019)**, "**BURDS**" for brevity, which received Presidential ascent on 21st of February 2019.

The preamble to the Ordinance, without an iota of doubt, strongly portrays the English stance of the Government to keep the Indian Financial Skies clear of any dark clouds, the intent is welcome, especially in the light of many scams which have been carried out under the guise of such un-regulated deposits with a fake promise to deliver phenomenal returns, the Super Stars which readily come to our mind (Sanchita, Sharda and Sahara).

Now the Ordinance seeks –

- a. To provide a comprehensive mechanism to ban UnRegulated Deposit Schemes (BURDS);
- b. Protect the interest of Depositors; and
- c. Deal with all matters connected therewith [which is (a) and (b) above] or incidental thereto.

But the mute questions that still beg an answer - did we need an Ordinance in such a tearing hurry? Is the issue so alarming and so pervasive that an ordinance is the demand of the day? Or would not have the current financial regulations with suitable strengthening capable of addressing and arresting this menace?

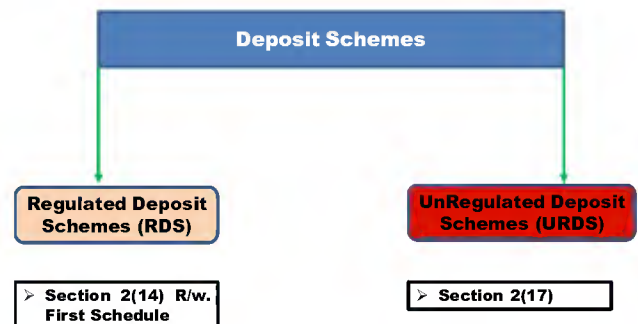
No doubt it's a menace which fastens itself on financially weaker sections of the society and taking un-due advantage of their lack of financial skills and knowledge.

After all an Ordinance is to a great extent, a deviation to the democratic legislative process of the Country and should only be used in extraordinary circumstances or compelling reasons.

2. Central Theme of the Ordinance

As evident from the name of the ordinance, the central purpose of it is to deal with an iron hand on all types of deposits which partake the character of an Un-Regulated Deposit Scheme, and here to outside the supervision and control of any regulatory agency/s of the Country as on date.

Hence in line with its stated objective, BURDS clearly demarcates Deposits Schemes under two distinctive buckets-



3. Key Definitions and its import

3.1. What is the type of Deposit Scheme/s that are sought to be banned?

Section 2(4) of BURDS provides a very wide and inclusive definition of “Deposit” and has given it three distinct limbs, which can be given an acronym “MPB”

Limbs	Key Words	Characteristics
1	M- Money	There has be an amount of Money received by way of an- <ul style="list-style-type: none"> - Advance or - Loan or - Any other Form
2	P- Promise	A Promise to return whether after a specified period or otherwise, Either <ul style="list-style-type: none"> - In Cash or - In Kind or - In Specified Services
3	B- Benefits	Benefits, with or without in the Form of- <ul style="list-style-type: none"> - Interest - Bonus - Profit share - Or any other form

Of Course exceptions have been carved out of the above all inclusive definitions and the same are listed under Sec.2 (4) (a) to (l), which is basically normal loans, capital contributions (Partnerships, LLP’s etc.), buyer or supplier credits, etc.

3.2. What are UnRegulated Deposit Schemes (URDS)?

The same has been covered under Sections 2(17) of BURDS, and again has three limbs to identify the same

Limbs	Key Words	Characteristics
1	SA- Scheme or Arrangement	There has to be some Scheme or Arrangement under which Deposits are accepted or solicited
2	WOB- Way of Business	Such acceptance or solicitation should be a way of business for the Deposit Seeker
3	RDS- Regulated Deposit Scheme	The deposits/amounts so collected is not coming within the purview of RDS as provided under Col.3 of the First Schedule to BURDS

The deposit seeker however has the onus of proving that he is not guilty of violating the provisions of Sec.2(17) and some the key legal challenges he may mount (and thereby circumvent the well intentioned thoughts of the law makers) -

- a. The transactions itself does not come within the ambit of “Deposit” as defined U/s. 2(4) of BURDS
- b. There is no regular scheme or arrangement, a one-off transaction or a transaction necessity due to normal business arrangement or requirements; or
- c. Such schemes or arrangements are not his normal “Way of Doing Business” which is common parlance would mean that such scheme or arrangement of taking deposits are not the primary area or activity the deposit seeker was founded on or focuses on in its business operations.

4. Criminal Consequences

As has become the norm of the day- almost all economic legislations have criminal liability as a deterrent clause and overriding CrPC (Criminal Procedure Code) is most instances.

We may in the days to come to see two sets of CrPC's one for "Economic & Financial Crimes" and the other "Normal Crimes".

BURDS is no exception; let's glance through the criminal liabilities which would crystalize for any violation-

4.1. Offences and Punishment

- Covered under Chapter VI covering Section 21 to 27
- All demeanour Cognizable and Non-bailable, except
 - Section 22 Violations (deals with punishment for contravening Sec.4) and
 - Section 26 violations (deals with punishment for contravening Sec.10)

4.2. Investigation, Search and Seizure

- Covered under Chapter VII covering Section 28 to 32
- Sec.31 gives power to SHO (Station House Officer), sub delegating the same to any subordinate (including hawaladar) authorised by SP rank officer to enter, search and seize without warrant.

5. Author's Observations

History sides with us- Mere Legislation are never a deterrent to prevent or reduce crime, financial or otherwise.

Hence apart from good intentioned legislations, which are debated and agreed to by the society at large there is a simultaneous and may be more urgent need for-

5.1. A strong Justice Delivery system (Justice Delayed is Justice Denied);

5.2. Financial crimes (Blue Colored ones) require officers with a good understanding of financial matters and SHO and hawaladars are not the most appropriate officers to carry out search and seizures in such cases. May be SIFO would have been a better choice with some sort of check and balance.

5.3. Thirdly in such URDS matters the lower strata of society are the worst affected and the deposit seekers always have an upper hand due to their financial and other clouts, this is quite evident from the various scams of the said nature and hence it is the need of the hour that the concerned regulator should have a special team to represent the depositors under a class action suit so that the small depositors are not further harassed and penalized by delays. Interim financial relief should be provided so that depositors do not suffer financial hardship till the matter reach a finality, which could be years together.

5.4. Fourthly the existing regulations like SEBI, RBI, IRDA, Companies Act, etc. could itself have been strengthened to take care of this menace instead of introducing a new piece of legislation. All the said financial regulators have sufficient experience and expertise in dealing with financial scams (however some minor efforts have been done in the ordinance to address this issue).

5.5. And lastly any new piece of legislation would have to wind down its natural course before stabilization and muster judicial scrutiny which is fairly a long time frame. Financial crimes have shown to be much more adept and more nibble footed like a chameleon.

The war between the Eagle and Chameleon may at first instance, look like a battle of the un-equals but chameleon seems to be escaping from the deadly claws.





NeSL as an Information Utility – towards ease of IBC Proceeding

Introduction

The Insolvency and Bankruptcy Board of India (“IBBI”) has granted the final approval to National e-Governance Services Ltd. (NeSL), allowing it to become the first information utility (“IU”) under the Insolvency and Bankruptcy Code, 2016 (“the Code”). Earlier in June, 2017, IBBI had granted an in-principle approval to NeSL to establish the IU. As quoted by S Ramann, MD & CEO, NeSL “We are pleased to receive a go-ahead from the regulator recently. Within strict timelines, we are also endeavoring to put in place infrastructure and commitments under IBC and in that respect exploring various synergies with banks, financial institutions and Indian Bank Association (IBA),”

An Information Utility is a professional organization (which is registered with IBBI under Section 210 of IBC, 2016 as per the eligibility criteria prescribed) that will collect financial information, get the same authenticated by other parties connected to the debt & store the same and provide access to the Resolution Professionals, Creditors and other stake holders in the Insolvency Resolution Process, so that all stake holders can make decisions based on the same information.

As per RBI Notification dated December 19, 2017, Submission of Financial Information to Information Utilities According to Section 215 of Insolvency and Bankruptcy Code (IBC), 2016, a financial creditor shall submit financial information and information relating to assets in relation to which any security interest has been created, to an information utility (IU) in such form and manner as may be specified by regulations. Chapter V of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, which has come into force with

effect from April 1, 2017, has specified the form and manner in which financial creditors are to submit this information to IUs. Further, as per Section 238 of the IBC, 2016 the provisions of the 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 IBBI Board requires every Information Utility to set up a Governing Board for ensuring that the Information Utility takes into account the objectives sought to be achieved by the Code. NeSL is owned and promoted by leading public institutions like State Bank of India, Life Insurance Corporation, Canara Bank, Bank of Baroda, ICICI Bank, CDSL, HDFC, Axis Bank, Union Bank of India and NABARD among others.

Objectives

The New Law IB, 2016 consolidates the existing framework and creates a new institutional structure, by setting up of Information Utility Companies, which will store all the credit information of Corporates/entities/persons; The Certificate & data furnished by IUs are accepted by NCLT/DRTs as legal evidence. This IU set-up is estimated to contribute considerably for declining of NPAs in banking sector, as the code aims to resolve the insolvencies in a time bound manner. Such IUs, once set up, will help the National Company Law Tribunal (NCLT) in taking decisions and implementation of IBC.

The information utilities plays a significant role and shall act as a regulated information agency which shall accept, electronically record, get authentication, maintain and provide access to financial information to the persons as may be

specified in the Act, e.g., creditors, Adjudicating Authority and other persons having interest in the information and also serve the below objectives :

- Low time to resolution.
- Low loss in recovery
- Higher levels of debt financing across more debt instruments.
- To promote entrepreneurship
- Consolidate and amend the laws relating to Restructuring and insolvency resolution of corporates, partnership firms and individuals

An Information Utility shall be required to register with Insolvency and Bankruptcy Board of India (IBBI), as specified in IBC, 2016, to carry on business as an Information Utility and has to obtain a Certificate of Registration from IBBI. The details of eligibility criteria etc., are furnished in Regulation 3 of Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017. They need to be complied with while applying for registration. As per Section 210 of IBC, 2016, the IBBI may order for suspension or cancellation of Certificate of Registration granted to an Information Utility, on certain grounds mentioned therein.

Services furnished by Information Utilities

IUs provide the core services and other services under IU Regulations in accordance with IBC Code. (Section 3(9). “Core services” means services rendered by an information utility for-

- Accept electronic submission of financial information.
- Safe and accurate recording of financial information.
- Authenticating and verifying the financial information submitted by a person.
- Providing access to information stored with the information utility to persons as may be specified.

Functions and Obligations of Information Utilities

The obligations & functions are as under:

- Create and store information in a universally acceptable format

- Accept electronic submissions of financial information from persons who are under obligation to submit the financial information under sub section (1) of Section 215 of IBC, 2016, in such form and manner as may be specified by Regulations
- Accept in specified form and manner, electronic submission of financial information from persons who intend to submit such information
- Meet such minimum service quality standards as may be specified by the Regulations
- Get the information received from various persons authenticated by all concerned parties before storing such information
- Provide access to the financial information stored by it to any person who intends to access such information in such manner as may be specified by Regulations
- Publish such statistical information as may be specified by Regulations
- Have inter-operability with other information utilities

Any person may submit financial information to the information utility or access the information from the information utility on payment of requisite fee in such form and manner as may be specified by IU Regulations. Before submitting the financial information, the person/entity has to enroll itself as a “User” with the Information Utility by declaring its identity and producing the identity documents like- Aadhaar, PAN, CIN Number etc. NeSL would be verifying the identity and only thereafter, User Registration will be done and User Id informed, by e-mail. For Institutions like- Banks/FIs, a Super User would be created with a facility to create sub-users. Details would be communicated to individual banks/FIs. As per Section 3 (23), the word “Person” includes- an individual, a Hindu Undivided Family, a Company, a Trust, a Partnership, a Limited Liability Partnership; and any other entity established under a statute and includes a person resident outside India. Financial information in relation to a person, means, one or more of the following categories of information, namely

- Records of the debt of the person;
- Records of liabilities when the person is solvent;
- Records of assets of person over which security interest has been created;

- Records, if any, of instances of default by the person against any debt;
- Records of the balance sheet and cash flow statements of the person; and
- Such other information as may be specified.

Any party connected to a Debt viz., Creditor (Either Financial Creditor or Operational Creditor), Debtor (or his authorized representative like Auditor), Co-Applicant, Co-borrower, Guarantor, can furnish the information to an IU. Section 215(2) stipulates that Financial Creditor shall furnish the information on a debt to an Information Utility. Similarly, the Operational Creditor is also required to furnish the information on an operational Debt to an IU. It can be submitted in Form C – Data Input File Format prescribed & published by NeSL in its Web-site.

All debt information irrespective of its health can be submitted to the IU. Accounts in Standard Assets category and before getting delinquent have greater chances of getting authenticated by the borrower, which the Creditor can fall back on in case of default and ideally, the updation of information by financial creditor is preferred on weekly basis. However periodicity of updation is left to the choice of individual banks, for the present. Section 3(13) defines the default as non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and not repaid by the debtor. In cases where Insolvency Resolution Process has commenced, the Resolution Professional can submit the information on the proceedings of meetings, records etc. in a Debt Account to the Information Utility, for storing. An IU is required to extend such a service.

On receipt of information submitted by a Registered User, an Information Utility shall assign a Unique Identifier to the information including records of debt, acknowledge the User and notify the User of Unique identifier to the Information (Debt), the terms and conditions of authentication/verification and the manner in which the information can be accessed by other parties. An Information Utility in all cases shall enable the User (Registered as User) to view the data on which the information was last updated, the status of authentication/verification while providing access to information.

Process of Information Authentication

As per the provisions of IBC, 2016 & IU Regulations, the financial information furnished by one of the parties connected to a debt needs to be verified &

authenticated by all other parties connected to the debt by affixing their digital signature or Aadhar based e-signature. NeSL would be storing the authenticated information with it, for providing access to the persons specified in the Act, during the Insolvency Resolution Process. All the parties connected to Debt need to electronically authenticate the information with an IU, in order to store the information. The party authenticating the information is provided with an option to review and affix his remarks item-wise for the data, while authenticating the information furnished by an Information Utility. Such disputed details would be referred back to financial creditor/banks for resolution. In case if the Borrower (Corporate Debtor) does not authenticate the Debt information or Default in an account then such cases which are pending for authentication beyond 7 days would be referred back to Financial Creditor/Banks for resolution.

For accessing information from an Information Utility, a person has to pay such fees and access/retrieve such information in such form and manner as has been specified in the Regulations. The applicant is required to submit the prescribed request for retrieval of information. The format is published in NeSL's Web-site. On receiving the request, NeSL would verify his/her identity, his/her relationship to the debt and on being satisfied, would enable access to the connected debt information.

NeSL, as IU would enable access to the information stored with it, only to parties connected to Debt, Insolvency Resolution Professionals, Liquidators, Adjudicating Authority and IBBI as per Regulation 23 and it would also preserve the information stored with it for a period of 8 years from the date closure of debt or from the date of last update in a debt a/c where all necessary care is exercised by an IU, following the standard practices.

Significance of information stored with an Information Utility

The authenticated information stored with an IU is treated as legal evidence in the Insolvency Resolution Process. The authenticated information cannot be repudiated. It helps in establishing the facts of borrowing and facts of default. Therefore, this enables saving of time in Resolution Process before the Adjudicating Authority. The purpose of this is to remove information asymmetry and dependency on the debtor's management for critical information that is needed to swiftly resolve

insolvency, however, the NeSL, as Information Utility, would be collecting the fee for extending its various services like- User Registration, Submission of information, Authentication, Retrieval, Upload of documents / Documents holding fee, etc. Its fee structure for various services is available on its Website.

Any person not satisfied with the service offered by NeSL as an Information Utility may lodge his/her grievance in the Web-based Grievance Redressal Mechanism enabled in its website. NeSL would resolve all such grievances in a time bound manner, within 7 working days and inform the Complainant by e mail. In case the maker of the representation is not satisfied with the reply, he can escalate the

matter to Grievances Redressal Committee of NeSL, which would be examined by the said Committee and resolution would be ensured in 10 working days. Any person aggrieved by the functioning of an Information Utility may file a complaint with IBBI.

<https://www.nesl.co.in>

<https://www.thehindu.com/business/markets/>

<https://www.thehindubusinessline.com/money-and-banking/corporation-bank-in-pact-with-nesl/article24997587.ece>

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/>

<https://www.financialexpress.com › INDUSTRY>





GST: Advance Rulings – Part 6

Applicant: M/s. Caltech Polymers Private Limited

Brief Facts & Issues before the Authority

The applicant is engaged in the manufacture and sale of footwear. To complying Section 46 of the Factories Act, 1948, the applicant provides exclusive canteen services for its employees. The applicant recovers the canteen's running expenses on 'no profit' basis from its employees.

Applicant's Contention

The applicant has believed that 'Canteen Service' does not fall under the ambit of term 'supply' since the same is not in the course or furtherance of its business. His contention is that the company just complying a statutory requirement of another law by recovering the actual expenditure without any profits. The applicant also relied on a 'Mega Exemption Notification No. 25/2012- ST Dated 20.06.2012' wherein services in relation to supply of food or beverages by a canteen maintained in a factory covered under the Factories Act, 1948 was exempted.

The Applicant has approached the Authority for Advance Ruling - Kerala seeking clarification whether reimbursement of food expenses from employees for the canteen provided by the company comes under the definition of outward supplies and taxable?

Authority's Ruling

The Authority while deciding the said Issue observed that in the pre-GST period vide Sl. No. 19 and 19A of Notification No. 25/2012 ST dated 20.06.2012 as amended by Notification No. 14/2013-Service Tax dated 22.10.2013 the 'services provided in relation to serving of food or beverages by a canteen maintained in a factory

covered under the Factories Act, 1948 (63 of 1948), including a canteen having the facility of air-conditioning or central air-heating at any time during the year' was exempted from service tax. But, there is no similar provision under the GST laws.

The Authority by relying on four issues held that recovery of food expenses from the employees for the canteen services as 'Outward supply' under sub-section (83) of Section 2. Firstly, the term 'Business' as provided under sub-section (17) of Section 2 of the GST Act, 2017, where it reads as (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit (b) any activity or transaction in connection with or incidents or ancillary to sub-clause (a). Secondly, on Schedule II of the said Act, provides certain activities as a supply of goods or supply of services. Thirdly, the terms 'Supply' as provided under clause (a) of sub-section (1) of Section 7 and "Supplier" as provided in sub-section (105) of Section 2 of the said Act and lastly but most importantly on 'Consideration' under sub-section (31) of Section 2 of the Act.

Appellate Authority for Advance Ruling (AAAR)

Aggrieved by this Ruling, the Applicant has moved the AAAR - Kerala. However, while dismissing the Appeal, the AAAR held that supply of food items to the employees for consideration in the canteen run by the applicant would come under the definition of 'supply' and would be taxable under GST laws.

To be continued.....



CS MINERVA

Commentary on Cancellation/Surrender/Deactivation of DIN - Series- 16

Provisions: Section 153 r/w Section 155 of Companies Act 2013 (Act) r/w Rule 11, Rule 12A of Companies (Appointment and Qualification of Directors) Rules 2014.

Section 153:

Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government in such form and manner and along with such fees as may be prescribed.

Provided that the Central Government may prescribe any identification number which shall be treated as Director Identification Number for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.

Section 155

No individual, who has already been allotted a Director Identification Number under section 154, shall apply for, obtain or possess another Director Identification Number.

Rule 11- Cancellation or Surrender or Deactivation of DIN.

(1) The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received alongwith fee as specified in Companies (Registration Offices and Fees) Rules, 2014 from any person, cancel or deactivate the DIN in case -

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as a person of unsound mind by a competent Court;

(e) if the concerned individual has been adjudicated as an insolvent:

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

(f) on an application made in [Form DIR-5](#) by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN:

Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

Explanation.- For the purposes of clause (b) -

- (i) the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation;
- (ii) the term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the Central Government.

(2) The Central Government or Regional Director (Northern Region), or any officer authorized by the Central Government or Regional Director

(Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with rule 12A:

The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.

Commentary

1. Following are the only reasons for surrendering DIN:
 - a. Having multiple DINs. In other words basic rule is One individual, only one DIN;
 - b. DIN was obtained in a wrongful manner or by fraudulent means;
 - c. Death of the concerned individual;
 - d. The concerned individual is declared as a person of unsound mind by a competent court;
 - e. The concerned individual has been adjudicated as insolvent;Data related to both the DIN shall be merged with the validly retained DIN number in case of duplicate DIN.
2. Authority to Cancel the DIN: Regional Director (RD) Northern Region.
3. Meaning of wrongful manner: In case DIN is obtained by submitting
 - Illegal document; or
 - Incomplete document; or
 - Suppression of material information; or
 - On the basis of wrong certification; or
 - False or misleading information; or
 - By misrepresentation.
4. Meaning of fraudulent means: If DIN obtained with an intention to deceive any other person or any authority (including Central Government)
5. Natural Justice: in case DIN cancellation on the ground of 'wrongful manner or by fraudulent means', before cancellation of such DIN, an opportunity of being heard shall be given to the concerned individual.
6. Application e-Form: Form-DIR-5
7. Information and documents to be provided in the Form-DIR-5:

Name of the Applicant;

- Fathers' Name of the Applicant;

- Reasons for surrender of DIN (any of the reason as explained in point-1);
- In case the Applicant is retaining any DIN, in such case retaining DIN details;
- Particulars of surrendering DIN;
- Contact number and email id of the Applicant;
- Proof of identity of the applicant (like Voters Identity Card/ Passport/ Driving License/ Aadhaar Card/ PAN Card);
- Proof of residence of the applicant (like passport, election (voter identity) card, and ration card, driving license, electricity bill, telephone bill or aadhaar);
In case of Indian applicant, documents should not be older than 2 months from the date of filing of the e-Form.
In case of foreign applicant, address proof should not be older than 1 year from the date of filing of the e-Form.
- Affidavit including declaration from the Applicant stating that retained DIN will be updated with all associated CIN/LLPIN.

8. Signing and Certification of e-form-DIR-5: Form shall be signed by the applicant and certified by a practicing chartered accountant or practicing company secretary or cost accountant in practice. In case of death of an individual, e-form can be signed by any DIN holder, who is applying for surrender of DIN.
9. Deactivation of DIN: As per Rule-12A of the Companies (Appointment and Qualification of Directors) Rules, 2014, every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.
In case of non-filing of DIR-3 KYC on or before the due date, the DIN will be de-activated. However, on filing of DIR-3-KYC, DIN shall be re-activated.
10. Fees: The challan fees for filing e-form-DIR-5 is Rs.1,000/-
The challan fees for filing e-form-DIR-3-KYC on or before due date is Nil. However, fees for filing thereafter is Rs.5,000/-



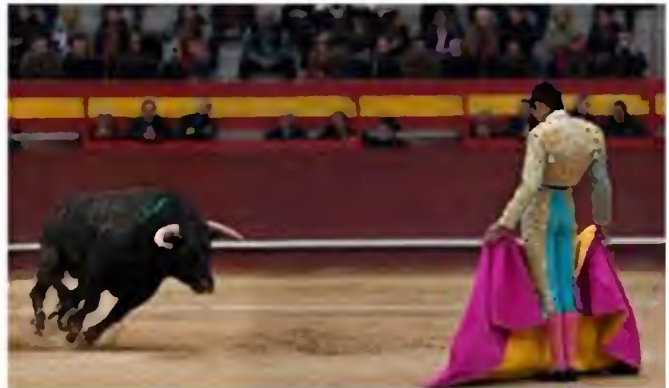
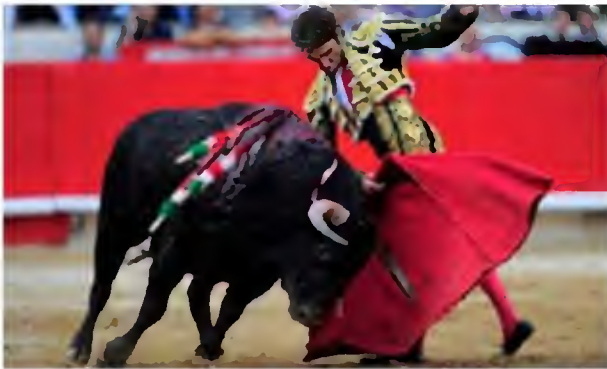
Living Room...



Bull Fighting

The word Spain is synonymous with football and bull fighting. During early times, bull fighting was a noble sport. The ferocious bull is let into the ring where the matador tames the bull by fixing the lance on the bull's back. It is interesting to know that the Matador (one who fights) dares the Bull, knowing the ferociousness of a muscular animal almost 5 times his weight.

Life gives us a lot of challenges, struggles and tempests that toss us around. The strife sometimes is scary and alarming. We see the weight of the burden but we fail to see our strength to harness the situation. Just like the Matador who stands alone in the ring with people around enjoying the fight, we always have onlookers around us seeing us struggle but never lend a shoulder to stand with us. That is the time life teaches us the most valuable lesson "fight the hardest" yes, fighting our fears, complexes, egos, pride, shame and insecurities and standing firm amidst adversities and trials.





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M/s XYZ Ltd., a company registered in the state of Karnataka are in to the business of providing IT enabled services. Employees of M/s XYZ Ltd., travel abroad for providing onsite services to their customers. In this regard, M/s XYZ Ltd., gives amount in foreign currency to the employee who travel abroad for meeting the expense in relation travel, food and accommodation to be incurred outside India. Examine whether M/s XYZ Ltd., has to pay any GST on reverse charge basis for such expenses incurred outside India

Please send your opinion to,

enewsletter.icsimysore@gmail.com



Opinion To Last Month's Brainy Bits

Facts of the case

- M/s ABC Ltd., a manufacturer hereinafter referred as Supplier
- Supplier appoints wholesale/ retail stock dealer for sale of goods manufactured by them
- There shall be discounts extended by the supplier to the above said Dealers which are of two types
 - Type 1 hereinafter referred as Primary discount which are within the cognizance of both the supplier and the dealer appointed. These discounts include Trade discount, Turnover discount or cash discounts
 - Type 2 hereinafter referred as Secondary discount which are decided by the supplier on the basis of market situation and stock holding position at various levels. These discounts are under absolute control and position of the supplier and Dealer have no role to play in it
- Supplier receive the consideration from Dealer as per the supply terms and credit period extended to various Dealers
- Supplier extends the concession in supply value by way of issuing Credit Note under Section 34 of CGST Act, 2017 with reference to Primary discount
- Supplier issues a Non-GST Credit Note i.e. a financial Credit Note for accommodating the secondary discounts
- All the transactions between the Supplier and Dealers are at Arm's length price and none of them are related to each other

- Supplier doesn't enter into for any exclusive supply or Dealership mechanism with any of the supplies made for the goods manufactured by them

Relevant citations

Section 2(31): Consideration

Section 15: Value of Taxable supply

Section 16: Eligibility and conditions for claiming Input Tax credit

Section 34: Credit and Debit Notes

Circular No.92/11/2019-GST dtd:07.03.2019

Conclusion

- Relevance of Supply terms as per the contractual obligation is relevant for the value to be determined under Section 15
- Reference to the term and meaning Consideration has no specific means to either include or exclude any of the amount in the value of Supply. Also, there exists no reference to any deeming fiction for apportionment of the value of supply by way of a Credit Note unlike the Service tax provision
- Reference to Section 15(3) gives a clarity for the value of supply not to include the Primary discount being offered and there exists due contracts with the supplier in this regard
- Adjustment of consideration by way of secondary discount by issuing a financial

credit note is only a reduction in the supply value to be received and this mechanism has no implication for Input tax reversal as referred to Section 16(2) of CGST Act, 2017

- Secondary discount is a mechanism for extending a reduction in the consideration by the supplier on the need basis of the market situation for adducing the business scenario and this mechanism has no implications attached with Proportionate reversal of Input Tax credit under Section 17 of CGST Act, 2017
- Reference to Circular 92 also clarifies the position of the supplier towards availability of Input tax credit in tact in relation to the secondary discounts and no necessity for reversal of any tax credit in this regard
- Supplier cannot issue any Credit note under Section 34 of CGST Act, 2017 toward the secondary discounts for the reason the same are not in compliance with Section 15(3) of CGST Act, 2017
- However, a reference to Advance Ruling in case of MRF Ltd., Order No.05/AAR/2019 dtd: 22.01.2019 in the state of Tamil Nadu in respect of availability of ITC in the hands of the recipient is very relevant to examine. Though this advance ruling doesn't deter the position of the supplier, there is a necessity to have a harmonious reading of the Circular No.92 and Advance Ruling in case of MRF Ltd., for better tax compliance at the Supplier and Recipient end

Words Worth Million

Live as if you were to die tomorrow. Learn as if you were to live forever

—Mahatma Gandhi



Delhi Diaries 13

Dharani Sugars v. Union of India – Aftermath of the Judgment in Swiss Ribbons

In the February 2019 edition of this column, we examined the arguments addressed for the respective sides in *Swiss Ribbons v. Union of India* and the eventual result of the petitions which had challenged the constitutional validity of the Insolvency and Bankruptcy Code, 2016. In some petitions in the same batch, the petitioners also challenged the constitutional validity of Section 35AA and 35AB of the Banking Regulation Act introduced by way of Amendment with effect from 04.05.2017 and a circular issued by the Reserve Bank of India by which the RBI sought to bring in a new framework for resolution of stressed assets. As a follow through from *Swiss Ribbons*, the judgment in *Dharani Sugars* adjudicated upon the remaining items under challenge.

For an understanding of the issues involved in the matter, it is important to advert to Section 35A of the Banking Regulation Act, 1949

35A Power of the Reserve Bank to give directions. —

(1) Where the Reserve Bank is satisfied that—

(a) in the [public interest]; or

[(aa) in the interest of banking policy; or]

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

Further, by Amendment in 2017, which validated an ordinance preceding it, the following provisions were introduced immediately after Section 35A

35AA. The Central Government may, by order, authorise the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the Insolvency and Bankruptcy Code, 2016.

Explanation.—For the purposes of this section, “default” has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

35AB. (1) Without prejudice to the provisions of section 35A, the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets. (2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.'

Pursuant to the introduction of the above provisions, the RBI issued a notification on "Resolution of Stressed Assets - Revised Framework" which provided *inter alia* for identification of stressed assets, categorization of stressed assets on the basis of period of default, implementation of the resolution plan and provided timelines for large accounts to be referred under IBC for resolution. Specifically it provided that in case of Accounts with aggregate exposure of over Rs. 2000 Crores, lenders would have to file insolvency application singly or jointly if the account had been in default for a period of 180 days. The said notification also provided for resolution outside of the Insolvency and Bankruptcy Code, whereby it was provided that the resolution plan would have to ensure that the borrower entity is no longer in default with any of the lenders.

The counsel for the petitioners argued at length on the peculiar problems faced by the various sectors. For instance, it was argued on behalf of the Power Sector that it was regulated both on the side of demand and supply and as such a turnaround of the business was not in the hands of the Company. In such a situation, to treat companies in the Power Sector on par with other companies would be to treat unequals equally and hence a violation of the equal protection of law guaranteed under the Constitution.

Further it was argued that Section 35A of the RBI Act was introduced by way of amendment in 1956 and could not possibly have contemplated the Insolvency and Bankruptcy Code and hence the broad power conferred under Section 35A cannot extend to the present legislation.

The Petitioners also relied upon the report of the Parliamentary Standing Committee on the problems ailing the power sector and buttressed their arguments. It is to be noted that reports of the Parliamentary Committee hold value under Section 70 of the Evidence Act, pursuant to the judgment of the Constitution Bench of the Supreme Court in *Kalpana Mehta*.

On behalf of the RBI, it was argued that a wide leeway was to be given to the government and its organs in economic matters. Further the counsel for the RBI relied upon the speech of the Finance Minister, Shri Arun Jaitley who stated at the time of the introduction of Section 35AA that it was being introduced in abundant caution though RBI had the power to direct banks to initiate insolvency proceedings under Section 35A.

The Court examined the principles of interpretation of statutes at length and broadly held on the various points as follows:-

1. An earlier legislation can apply to later developments which could not have been contemplated at the time of the legislation.
2. When two provisions overlap in the field of their operation, they should be harmoniously interpreted in such a way that no other provision is rendered otiose. Hence between Section 35A and Section 35AA it is Section 35AA which would be applicable to RBI notifications relating to insolvency code.
3. Section 35AA contemplates action by the RBI only when the Government authorizes it to. Hence in the absence of any authorization by the Government, the RBI could not have issued a notification such as the one under challenge.

On the basis of the above reasoning, the Court set aside the RBI notification under challenge on the basis that the RBI had not been authorized by the Government to issue such as notification, as required by Section 35AA of the Banking Regulation Act.

Further the Court held that all actions taken under the said circular would also fall.



Usage of Technology to Prevent Corruption

"Quest for excellence begins and ends with people"
-Anonymous

Corruption is an endemic and spreads in a mushroom spell. Technology is the panacea to curb this menace. Ramifications of corruption have a deeper impact on resources of the country by building up a parallel economy. Mixed economy as a choice allows both Public Sector and Private Sector to thrive and flourish together. A slogan that "improves the productivity of the internal debts to curb the external debt problem" is a formula to walk head erect in the international arena keeping sovereignty intact is nullified by the root cause of corruption. Corruption has a wider web to cover the terrorists on one hand and fellow citizens on the other hand. Money laundering deteriorated to a stage where technology has failed to detect the passage through which money reaches the anti-social elements of the society. The last straw to break through the camel's hump is to upgrade technology which helps keep surveillance on money related transactions. The pros and cons of the system are to be analyzed and suitable policy prescriptions are to be placed in the right place by using technology.

Prevention of corruption was the motto behind any technology upgraded so far. Anti-Money Laundering (AML) and Know Your Customer (KYC) are some of the initiatives derived to curb the menace. Chief Vigilance Commission (CVC) working as an Antharchakshu (The Inner Eye) in the system to root out corruption and pioneered many technological innovations to identify and punish the guilty. JAI VIGYAN is a new coinage to emphasize the usage of technology in bringing out a revolution in every endeavor taken to improve aspects related to walks of life. Identifying transactions carried out in individuals' Bank accounts has now reaching Anti-Corruption Bureaus in an orderly manner by

way of improved technology coupled with stringent rules. Transactions involve more than two lakh rupees are only by way of instruments like cheque or demand drafts and influx of cash is now limited thereby paving way for DIGITAL INDIA. Demonetization is also one of the remedies to avoid parallel economy but it is an activity which cannot be carried out most frequently as easily as the usage of technology. The vehicles of anti-corruption squads are yet to catch the dirt of tracks of many villages where corruption has horrendous implications and obviously Technology is only the way which covers them all under one gargantuan umbrella like linking Aadhar number to all accounts. The major setback in implementation of many anti-corruption initiatives like LOKPAL bill are bottlenecks in bringing corruption free environment. An estimated 4.5 billion dollar external debt is reluctantly shouldering every citizen which can be wiped out once unaccounted money kept in foreign banks returns to the main stream.

World has been reduced to a size of football due to technological innovations and the word Vasudaiva Kutumbakam became practically true. On set of Globalization has paved way for Delicensing and De-regulation thereby the cornerstones for a corrupt free society with the usage of technology has become a realistic dream. Drawing out strategies in implementation other than technological streaming proved nit picking and day dreaming. Corruption ends with the fire wall of technology in built for every money transaction made and data available on a single platform. Enough vigil on cash transactions barricading avenues of infiltration by identifying the origin and cutting off the source from where it

generated is one of the well-established strategies besides making them accountable in the ambit of Indian Penal Code (IPC). When tricolour unfurled over the historic redfort the silver lining that independence will usher in a better tomorrow but the scenes of poverty.

With potbellied children and famished mothers everywhere and quantum leap in the agricultural yield has prevented citizen go unfed and undraped.

The reason is obviously people indulging in Corruption and as a result of which dwindling all benefits before it reaches the needy and the poor. Honesty and Financial Integrity are totally lacking in society and have become precious commodities. Sense of values is disappearing in individuals and fighting against corruption is nothing but opening the Pandora's Box. Technical Jargons written on a diary of a prosecution is unable to sustain the difficulty in bringing out the culprit on trial and deface the magnanimity of repercussions in the system as it percolates from the pinnacle of higher echelons, down to the hands of implementation. Rhetorically many theories and prophecies are turning into cock and bull stories of achievements. It is better late than never; to come up with concrete ideas to curb the menace of corruption with the speedy implementation of technology in place as follows

Technology to detect the source from where transaction emanated and stringent law to punish them

Technology to get data of all money transactions on a single platform to have easy surveillance

Technology to detect violation of AML and KYC guidelines

Technology to spread the message of corrupt free society as a tool for economic interdependence

Technology easily available at the hands of anti-corruption cells/bureaus/squads

Technology to alarm firewall at the very incidence of huge amount of cash transactions

Technology to reduce the multitier processing of payments and receipts

Technology to augment the digitalized transactions

Technology to educate village peasant about technical know-hows

Technology to link Aadhar card in every stage of Financial activity.

Technology to have data of all assets procured by Individuals and compulsory registration.

Technology to bring entire country under Wi-Fi zone to give impetus to mobile friendly transactions

Technology to upgrade Enterprise Data

Management systems in every business venture.

Technology brings transparency in the system and help keep surveillance on corruption. Technology coupled with the anti-corruption laws works out as a remedy to root out corruption.

The perennial data web at the hands of anti-social elements mar the very structure of technological ingenuity getting utilized for the wrong purpose and a firewall of security is necessary in all stages of implementation. Technology to evolve a network which facilitates common man to transact everything on Mobile is a solid step towards eradicating corruption from its roots. Plastic money in digital form proved lucrative and prolific at the hands of the citizens and every rupee transacted goes with a digital signature and Dream of DIGITAL INDIA is translated into action. Data Management is also important to bring policy prescriptions at right time and it is possible only with the usage of technology at its best. Nevertheless, Technology in place and Stringent laws to punish the culprits should go hand-in-hand and work as two faces of the same coin. DIGITAL INDIA is on the anvil and will usher in a better tomorrow giving a sense of pride that India becomes CORRUPTION FREE.



EXPRESS NEWS

- OC Tanner acquires India-based employee recognition company Kwench
- *WPI inflation rises to 3.18% in March*
- Foxconn to begin mass production of iPhones in India
- Dozens of Indian start-ups in fray to become unicorns in FY19, say experts
- New Sebi strictures on subsidiaries make accountants even more accountable
- IMF predicts 'delicate year' for world economy, warns India about inflation

The tool errant India Inc managers have come to fear, for good reason

The government's move comes after the Serious Frauds Investigation Office (SFIO) stumbled upon deep irregularities on the part a number of top executives of the company that is caught in the middle of a Rs 91,000-crore financial mess. A probe in on to find out how independent directors at IL&FS gave their nod to proposals.

IBBI working to provide accountable and competent valuers: MS Sahoo

The IBC has helped financial and operational creditors recover over Rs 68,000 crore through successful resolutions of stressed assets in 88 cases according to IBBI data.

Businesses with turnover over Rs 2 crore can now start filing GST audit reports for FY18

Businesses with an annual turnover of over Rs 2 crore can now start filing GST audit reports for fiscal 2017-18 as GST Network (GSTN) has made its format available on its portal. The audit report for 2017-18, the first year of the goods and services tax (GST) implementation, is to be filed by June 30.

