

187th Edition

November 2019

eMagazine



Mysuru Chapter



Articles:

Investor Education and Protection (IEPF)	
Fund Amendment Dated 14 th Aug 2019	04
Social Finance Why is it and Why it Matters	09
GST: Advance Rulings –Part 13	12

Columns:

From Chairman's Desk	02
Words Worth Millions	13
Living Room	14
GST Suite	15
Brainy bits	19
Delhi Diaries	20
Tech News	22
News Room	23
Regulatory Update	24

For Private Circulation Only

Vision

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

Motto

सत्यं वद। धर्मं चर। इष्टकारे फेद लग्नेके, उलेवेद लेपु फेद केव।

Mission

"To develop high calibre professionals facilitating good corporate governance"

with ICSI



<https://www.facebook.com/ICSI>



https://twitter.com/ICSI_CS



<https://www.linkedin.com/in/the-institute-of-company-secretaries-of-india-icsi-a5899a102/>



CS Veerash M.J.
Chairman
Mysore Chapter

Dear Professional Colleagues

I am happy to meet and greet you all through the E-magazine. Hope all had good time with family, Celebrating Deepavali. I am happy to inform you all that, Chapter conducted Orientation programme for foundation students, around 40 students took part in that programme. Also Conducted Fit India Walkathon, Importance of being fit has been explained to our CS Students, Finally Career Awareness Programme was held in Maharanis College for commerce students, Nearly 100 Students were participated and informed students the importance of studying professional courses.

In the month of January 2020, we are planning to conduct a One-day Programme for our members, Topics and date will be finalized soon. Looking forward for your valuable participation.

Thank You,

-: Editorial Team:

CS Vijaya Rao
CS Phani Datta
CS Parvati K.R
CS Ajay Madhaiah
CS Madhur N Agrawal

-: Support Team:

Komal Kumar M
Keerthana Gopal
Matruka B.M.

**Join
5900+ members'
strong**

"CSMysore" eParivaar

<http://www.groups.google.com/group/csmysore>

Now it's easy to receive the eMagazine directly into your personal mail id.

Click <http://goo.gl/PV90lr> and fill-in simple info.

You may send this link to your friends too!

Please write your comments and feedback to us:

enewsletter.icsimysore@gmail.com

Disclaimer

Views and other contents expressed or provided by the contributors are their own and the Chapter does not accept any responsibility. The Chapter is not in any way responsible for the result of any action taken on the basis of the contents published in this newsletter. All rights are reserved.

Chapter Activities

1. Career Awareness Program

Chapter conducted 01 Career Awareness Program during the month of October 2019. The details are as follows.

S No.	Date	College Name	Speaker	No. of Participants
1	18.10.2019	Maharani Commerce & Management College	CS Veerash Mysore Jagadish	110

2. Fit India - Fit ICSI



On 4th October, 2019 Chapter organized walkathon on the occasion of 51st foundation day of ICSI institute. CS Veerash Mysore Jagadish, Chairman of the chapter welcomed the gathering. Fitness pledge has been observed during the event. CS Vijaya Rao, Secretary of the chapter delivered the vote of thanks. CS Phani Datta, Member of Managing Committee was also present during the occasion.

3. Orientation Program for Foundation Students



On 04th October, 2019 Chapter organized the One day orientation program for the Foundation level students. The session was inaugurated by the Chairman of Mysore Chapter CS Veerash Mysore Jagadish. Various topics have been covered (About the institute, online services, training, exams, syllabus etc.) in the session which will be helpful for the Foundation students. Around 40 students participated in the event.

4. Video Session on GST



As per the HQ direction, Chapter organized a video session on GST in the topic Concept of Supply and Input tax credit on 21st October, 2019 for the oral coaching and the commerce students of the colleges. Around 30 students participated in the session.





Investor Education and Protection Fund (IEPF) Amendment dated 14th August 2019

Background

Section 205C of the Companies Act 1956

Investor Education and Protection Fund (IEPF) has been established under Section 205C of the Companies Act, 1956 by way of Companies (Amendment) Act, 1999 for promotion of Investors' Awareness and Protection of their interests.

Section 125 of Companies Act 2013 Section 125 empowers Central Government to establish a Fund to be called the Investor Education and Protection Fund (IEPF).

Notification of Section 125 in a phased manner

On **13 January 2016** Sub - Sections (5), (6), & (7) have been notified

On **05 September, 2016** Sub-Sections (8), (9), (10) & (11) have been notified and made effective from 07 September, 2016 and

On **05 September 2016** Sub-sections (1) to (4), (6) [with respect to the manner of administration of IEPF] have been notified and are effective from 07 September, 2016

Amendment on 14 August 2019

MCA has notified on 14th August 2019 amendments in the Investors Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (Principle Rule, 2016) and the new Rules will be called the Investors Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019. This

Rules brought in Digitization in process for deposit and claim.

Sub Rule 2, 3, 5, 6, 7 and 8 and Schedules are amended

The changes are in Definition, Fund, Statement to be furnished to the Fund, Manner of transfer of Shares, Refund to Claimant from the Fund, Power to direct for payment of Fund and Schedules are amended for documents and procedures

2. Digitization in IEPF deposit and claim

- Under Rule 2 ,now in definition of Company, transferee company in covered in respect of the assets and liabilities of transferor company which it may have to transfer to IEPF;
- Under Rule 3 in Fund all money to be transferred except shares received under disgorgement of securities pursuant to section 38 (4) of the Act and CG can also give grant to IEPF.
- Under Rule 5, major changes as a new Form IEPF-1 to be filed by the Companies and remit the funds online in 30 days from the date it is due . Companies are required to file Form IEPF-1A along with excel sheet for the submissions made earlier in 60 days that is by 13 Oct 2019. The Companies are also required to file Form IEPF-2 in 60 days (earlier it was 90 days) with statement of

unclaimed and unpaid amount as on Financial year (not as on AGM)

- Under Rule 6, for manner of transfer of shares in DEMAT account of IEPF, the shares for which the beneficial owner has encashed dividend warrants or any dividend amount in the bank account of the owner during last 7 years shall not be required to be transferred.
- The Companies are also required to transfer shares in DEMAT account of IEPF in respect of which dividend has been transferred to IEPF on or before the 7th September 2016, shall also be transferred by the company in the name of Investor Education and Protection Fund.
- The Companies are now required to file Form IEPF-4 in 30 days of its Corporate Action for transfer of all benefits (except Rights) on such shares which are transferred to IEPF.
- Under Rule 7 Refund to Claimants from the Fund,
- Now after filing Form IEPF-5 the Claimant has to submit documents as mentioned in the Rule to the company for verification,
- Nodal Officer to be either Director, of CFO or CS and even there is Deputy Nodal Officer, the Nodal Officer is liable for all actions. If no Nodal Officer is appointed by the Company, all Directors will be treated as Nodal Officer. Details of Nodal Officer is required to be given to IEPF in Form IEPF-2 in 15 days that is by 29 August 2019 and any change in 7 days
- The Legal Heir can be direct Claimant with IEPF and he is not required to complete transmission process with the Company
- Other sub rules are modified for verification process

- Under Rule 8 Form IEPF-6 is deleted and the Company is required to file Form IEPF-2 as per Rule 5 (8) with the details required as on closure of for which AGM is called .

- Schedules are added for documentation and process for deposit and claims by electronically , online payment and e-verification is standardized with time line

3. Amount forming part of IEPF -section 125

- Unpaid dividend;
- Share Application money due for refund;
- Matured deposits;
- Matured debentures;
- Interest accrued on the above amounts;
- Grants and Donations received
- Under Section 38 (4) disgorgement or disposal of securities

4. Due date of amount to be transfer to IEPF

Any money transferred to the Unpaid Dividend Account of a company in pursuance to section 124(5) which remains unpaid or unclaimed for a period of Seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to IEPF.

5. Refund from IEPF

- Claimant to fill Form IEPF 5 on the website of IEPF along with the fees and send it to the company along with required documents for the verification of claim.
- Company to send the Verification report of claim to the IEPF in the pre-decided format along with all the documents within 15 days of receiving the claim.
- For a Monetary refund, IEPF shall initiates e-Payment in the Claimant's Bank Account.
- If Shares are reclaimed, the shares will be credited to the Claimant's Demat account by IEPF.

6. Recent amendments in IEPF AUTHORITY (accounting audit transfer & refund) Rules, 2016

- Transferee Company shall transfer unpaid/unclaimed amount in respect of Assets and Liabilities of Transferor Company.
- Company shall remit the amount under Section 125 Online along with Form IEPF-1 within 30 days of it becoming due.
- Any company has not filed statement or filed in any other form than Excel shall submit details in Form IEPF-1A along with Excel Template within 60 days of notification.
- Within 60 days of AGM and thereafter till completion of 7 years identify unclaimed amount as on closure of FY for which the AGM is called and furnish on its website and on website of MCA.
- Company required to credit amounts or shares to the fund or has already deposited the amount or transferred the shares to IEPF shall nominate a Nodal Officer, who shall either be a Director or CFO or CS of the company, for the purposes of verification of claims and coordination with IEPF Authority.
- Within 30 days from the date of receipt of claim the Company shall send an online verification report to MCA in Form IEPF-5 along with Documents submitted by Claimant.

7. Documents to be submitted to MCA to register transmission of securities held in physical mode

- **Shares held Singly with Nomination:**
 - Transmission request Form
 - Death Certificate
 - Copy of PAN Card
 - Original Share Certificate
 - Any Government ID Proof
- **Shares held Singly Without Nomination:**

- Documentary requirement for Nomination
 - **Affidavit from all Legal Heirs on a Non-Judicial Stamp Paper**
 - a. For Value of Securities upto Rs. 200,000
 - b. Succession Certificate or Probate of Will or Letter of Administration
- OR
- a. NOC from all Legal Heir or Copy of Family Settlement Deal & Indemnity Bond indemnifying the STA or Issuer Company
 - b. For Value of Securities more than Rs. 200,000
 - c. Succession Certificate or Probate of Will or Letter of Administration

➤ **Shares held Jointly with Nomination**

- Transmission request Form
- Copy of Death Certificate
- Copy of PAN Card
- Original Share Certificate
- Any Government ID Proof

➤ **Shares held Jointly without Nomination**

- Documentary requirement for Nomination
- **Affidavit from all Legal Heirs on a Non-Judicial Stamp Paper**
 - a. For value of Securities upto Rs. 200,000
 - b. Succession Certificate or Probate of Will or Letter of Administration or Court Decree

OR

- NOC from all Legal Heir(s) or Copy of Family Settlement Deed & Indemnity Bond indemnifying the STA or Issuer Company
- For Value of Securities more than Rs. 200,000
- Succession Certificate or Probate of Will or Letter of Administration or Court Decree

8. Documents to be submitted to MCA to register transmission of securities held in Demat mode

- **Shares held Singly with Nomination**
 - a. Transmission Request Form
 - b. Death Certificate
 - c. Copy of PAN Card
 - d. Copy of Transaction Statement duly Certified by DP
 - e. Any Government ID Proof
 - f. Shares are held Singly without Nomination

- **Documentary requirement for Nomination**

- **Affidavit from all Legal Heir(s) on a Non-Judicial Stamp Paper**

- a. For Value of Securities upto Rs. 200,000
- b. Succession Certificate or Probate of Will or Letter of Administration or Court Decree

OR

- a. NOC from all Legal Heir(s) or Copy of Family Settlement Deed & Indemnity Bond indemnifying the STA or Issuer Company
- b. For Value of Securities more than Rs. 200,000
- c. Succession Certificate or Probate of Will or Letter of Administration or Court Decree

- **Shares are held Jointly with Nomination**

- Transmission Request Form
- Copy of Death Certificate
- Copy of PAN Card
- Copy of Transaction Statement duly Certified by DP
- Any Government ID Proof

- **Shares are held Jointly without Nomination**

- **Documentary requirement for Nomination**
- Company shall verify and retain all the Original documents submitted by the Claimant

- **Affidavit from all Legal Heir(s) on a Non-Judicial Stamp Paper**

- a. If Value of Securities upto Rs. 200,000
- b. Succession Certificate or Probate of Will or Letter of Administration or Court Decree

OR

- a. NOC from all Legal Heir(s) or Copy of Family Settlement Deed & Indemnity Bond indemnifying the STA or Issuer Company
- b. If Value of Securities more than Rs. 200,000
- c. Succession Certificate or Probate of Will or Letter of Administration or Court Decree

9. Documents to be submitted to MCA for loss of securities held in physical mode

- Notarized Copy of FIR/ Police Complaint
- Surety Affidavit Equal to Market Value of Shares along with Proof of Identity attested by Notary
- Indemnity Bond by Surety duly attested by Notary
- Copy of Advertisement issued in One English Newspaper having Nationwide Circulation & in One Regional Newspaper, if the Market Value of Shares is Greater than Rs. 10,000

10. Procedure for disposing claims under IEPF

- Company shall be responsible for Verifying the genuineness and entitlement of the Claimant

- Company shall be responsible to verify the Amount & Shares involved in Claims according to E-filing made by it to IEPF
- Company shall submit E-verification report to IEPF
- IEPF shall follow the following procedure while Disposing Claims:
- Verify Completeness of all information provided in Form IEPF-5
- Matching of Information with Scanned Documents attached with Claims
- Affidavit & Other Supporting documents for Change or Variation in Name
- Affidavit & Other Supporting documents for Change or Variation in Address
- Indemnity on Stamp paper in name of Claimant
- Verification of PAN details of Claimant with Client Master List (CML)
- In case of claims related to Physical Securities, authentication of Scanned Copy of Certificate shall be attached with Form IEPF-5
- Verification & Matching of DEMAT Account No., Name of Claimant, PAN, Address from CML
- Matching of Client Master List (CML) of Unclaimed Suspense Account, if any Shares are Transferred from Unclaimed Suspense Account
- Verification of Transaction Statement of Unclaimed Suspense Account
- Verification of Amount due to Claimant from E-form IEPF-1 or INV-1 or IEPF-1A

11. Forms revised

- **FORM NO. IEPF-1A**– Statement of amounts credited to IEPF-in 30days on such amount becoming due to be credited in IEPF as per Rule 5 (1)
- **FORM NO. IEPF-1A**– Statement of amounts credited to IEPF-Section 205C of CA 1956, one time in 60 days as per Rule 5 (4A) from this notification of 14.08.2019 that is by 13.10.2019
- **FORM NO. IEPF-2**
 - a. Statement of unclaimed and unpaid amounts as per Rule 5 (8) on the date of closure of FY for which AGM is held
 - b. Details of Nodal Officer and changes as per Rule 7(2B)
- **FORM NO. IEPF-4** – Statement of shares transferred to IEPF after Corporate Action
- **FORM NO. IEPF-5** – Application to IEPF for claiming unpaid amounts and shares out of IEPF

Disclaimer

*This legal update is not intended to be a form of solicitation or advertising for any purpose. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely

information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate thereafter. No person should act on such information without appropriate professional advice based on the circumstances of a particular situation. The views expressed in this article are solely of the authors of this article





Social Finance – What is it and Why it Matters

The perspective

Environmental, social, and governance (ESG) aspirations and trends world over are rapidly reshaping the world economy and impacting investors perceptions and actions. Resource scarcity, climate-related impacts, global health dangers, social instability, and substantial demographic changes already are presenting business leaders with issues and influencing decision making that will determine future business success and investment performance. Today a progressively significant number of investors recognize the importance of these global trends to their investment decisions and are adjusting their asset allocation and investment-management strategies accordingly.

Social finance is an approach to managing investments that generate financial returns while including measurable positive social and environmental impact. Social finance includes a full range of investment strategies and solutions across asset classes that can provide an array of risk-adjusted returns tailored to investor intent. Social finance is an approach to managing money which delivers a social dividend and an economic return.

Social finance is often used to describe the lending and investment into companies who consider themselves social enterprises, charities, co-operatives, and other impact-focused organizations. The term can include community investing, microfinance, investing in socially-responsible and sustainable businesses, social impact bonds, and social enterprise lending. Outcome-based philanthropic grant making and program-related investments, sometimes referred to as venture philanthropy, also fall under the umbrella of social finance.

Not too long ago, the notion of generating social good along with financial returns was considered a fringe idea by most investors. But recently the area of “social finance” has started to enter the mainstream and receive consideration from Wall Street giants and some of the world’s largest institutional investors

Defining Social Finance

There are a number of different definitions of the term social finance - it is an approach to managing money to solve societal challenges. Others use the term social finance to describe investment and lending to non-profits, charities, or social enterprises. Most social finance investors expect both a social and economic return for these investments. From a government perspective, the term social finance may spark conversations related to community bonds and social impact bonds which are innovative instruments that help to leverage government spending.

If you have only recently heard this terminology, it is not because social finance is a new phenomenon. Investors of various types have been assisting non-profits and social enterprise with finance for many years. The only reason some are hearing terms like social finance and impact investing for the first time now is because these mechanisms are growing rapidly in popularity as tools to increase social benefits to society. Increasingly, people want to invest their money in organizations and ventures that align with their personal values. Donors and investors alike are starting to ask more questions about how their money is being used. In particular, investors are asking where their financial return on investment is coming from, and when unsatisfactory answers are given, these investors are looking for alternative solutions.

Rachel Kalbfleisch of the International Development Research Centre (IDRC) defines it as a

collection of approaches to managing money that create value for society or the environment, often while producing a financial return. In other words, social finance is a movement that covers various ways of using finance—via socially responsible investments, micro-loans, community investments, and so on—to achieve a social or environmental impact. Social Finance delivers resources to communities and enterprises overlooked by conventional outlets and ensures that all investments produce a social gain or benefit. All funding recipients are assessed first on their capacity to deliver meaningful benefit to either the people or the community they serve and then on their ability to repay the loans.

Social finance is a tool that seeks to mobilize private capital for the public good. It creates opportunities for investors to finance projects that benefit society and for community organizations to access new sources of funds. Some social finance investors want to incorporate values-based investing with altruistic objectives, seeking competitive returns from investments with a broad focus on ESG opportunities. Others may want to narrow that focus, and may select investments that further some specific environmental or social goals

Social finance investments:

- involve access to capital that has a positive impact not only financially but also on society as a whole;
- can be made by different types of investors. These include charitable foundations, retail investors, credit unions, chartered banks, governments and institutional investors such as pension funds;
- can be made to a variety of organizations that seek to have a positive impact in their communities. These include registered charities, non-profit organizations, co-operatives and businesses that consider the social effects of their activities;
- can be made using a variety of financial tools, including loans, community bonds, equity investments and social impact bonds; and
- can help non-profit organizations and charities become more successful. Though it does not replace traditional government funding, social finance can help organizations attract new financial

resources to help them address social issues.

How Social Finance differs from Traditional Finance

Social Finance is an alternative model of financing projects, which differs from conventional approach. It demands that investments produce both a social and a financial return. In other words, it seeks tangible social benefits for community. Social finance is a field that seeks to dovetail capitalist aspirations and social progress. Social finance is the spirit of the economic future and will be propelled by experts who possess both acumen and a determination to maximize the human and ecological benefit of each investment. Omar Selim, chief executive of values-based Arabesque Asset Management remarked, “We find a remarkable correlation between diligent sustainability business practices and economic performances.” Social finance can help more people, especially those most vulnerable, contribute to and share in the prosperity of their community and society. According to a 2015 study by the Global Impact Investing Network, investors reported that their portfolio performance overwhelmingly met or exceeded their expectations for social and environmental impact *and* financial return.

Measuring impact of Social Finance

While impact investing continues to gather momentum, inadequate and unstructured measurement approaches could prevent it from realizing its full potential. The most prominent feature of impact investing is a focus on measuring the social and environmental return that it generates. In response, much effort has been undertaken to develop effective measurement systems, but significant confusion remains around the notions of ‘non-financial return’ and ‘impact’, and their assessment in practice.

Charting the Path forward

The investments made today will determine whether future generations will be able to live within the boundaries of our natural resources and social systems. In the face of massive demographic shifts, these investments also will ensure that the economy continues to grow and deliver value for investors. We believe the future of finance will take into account the risks and opportunities of social

and environmental trends and will harness the power of capital markets to drive positive change.

Going forward, social finance faces a broad set of opportunities and challenges. Ellie Howard of Cicero Group suggests that “in time, social finance will become inherent to the practice of investing in line with the progression to a conscious economy”, but that “the sector first needs to establish itself” In other words, what is now somewhat of a fringe concept—investing to achieve measurable social impact—will eventually become inextricable from “plain-old” normal investing. When that happens, we’ll have an economy that includes social impact in its core calculus; that incorporates more of the full costs and benefits of doing business; and that is more “conscious” of the impacts it has.

There are many ways of using wealth to support personal values while effecting societal or environmental change. To get started with social finance, investors and their families should identify their goals and motivations. Doing so will provide some direction as to how, where and which social finance strategies may help achieve those goals. Wealth advisors can serve as valuable resources in helping investors identify and understand which investment options are designed to provide the optimal blend of impact and investment results. By leveraging advisors’ knowledge and experience, investors can feel confident that they are on the path toward the intersection of their own wealth and values.

Achieving the ambitious sustainable development goals (SDGs) by 2030 will require an investment of an estimated \$5 to \$7 trillion per year. In India alone, the funding requirement has been estimated to the tune of a financing gap of \$565 billion.

Closing this gap requires action on several fronts ; efficient and effective domestic resource mobilisation, social outcome-focused investments to ensure that money is spent well and harnessing private capital for good. The field is new and evolving fast in India. The impact of investing market in India has followed the trends and challenges of the global impact investment industry.

References

- Arvidson, A., Lyon, F., McKay, S., Moro, D. (2010) The ambitions and challenges of SROI, Third Sector Research Centre working paper 49
- Barrow, C. (1997) Environmental and Social Impact Assessment: an introduction. Edward Arnold
- Clifford, J., Markey, K. and Malpani, N. (2013) Measuring social impact in social enterprise: the state of thought and practice in the UK, E3M
- Ebrahim, A. (2013) Let’s be realistic about measuring impact, Harvard Business Review blog March 13 2013
- Grabenwarter, U. and Liechstenstein, H. (2011) In search of gamma: an unconventional perspective on impact investing, IESE working paper
- Nguyen-Trung, T. (2012) From value to worth: why the impact investing ‘asset class’ debate matters, Good Generation 5th June 2012





GST: Advance Rulings – Part 13

1. *Whether gifts distributed in furtherance of business are eligible to claim Input Tax Credit?*

M/s. Surfa Coats (India) Pvt. Ltd. (AAR – Karnataka), Advance Ruling No. KAR ADRG 28/2019 dated 12.09.2019

The applicant is engaged in the business of manufacturing of interior and exterior surface paints. In order to promote his business, the applicant gives incentives to its dealers in the form of goods and services including local and foreign trips without levying GST. Since free goods and service does not qualify as ‘Supplies’ under GST Laws, the applicant sought an advance ruling on the aforesaid question. The Authority for Advance Ruling, Karnataka, relying on Section 7, Clause (h) of sub-section (5) of Section 17 of the Central GST Act, 2017 and CBIC Circular No. 92/11/2019 GST dated 07.03.2019 held that the applicant is not eligible to avail the Input Tax Credit under the GST Laws.

2. *Whether the volume discount received on the purchase and sale of vehicles are liable to GST?*

M/s. Kwalitiy Mobikes Pvt. Ltd. (AAR – Karnataka) Advance Ruling No. KAR ADRG 76/2018 dated 24.09.2019

The applicant is an authorized dealer of Harley-Davidson India who manufactures high-end two-wheeler motorcycles. Since the applicant is an authorized dealer, eligible for volume discount on both i.e. commission earned from retail sales and also on the purchase of over and above the prescribed sales target. Under this arrangement, the supplier will issue a credit

note which won't affect either selling or purchasing price. Hence, no such effect on GST collected in the invoices. The Authority for Advance Ruling observed that in both cases i.e. the amount received by the applicant as volume discount and commission received for selling more than targeted numbers are in the nature of incentive. Hence, the Authority held that volume discount received on the purchase and sale of vehicles without any adjustment is not liable for GST. Also, the Authority held that the applicant needs not to raise invoices in the aforesaid transactions.

3. *Whether the expenses incurred by the staff members on behalf of the company which periodically reimbursed attract GST? Whether RCM applicable to remuneration paid to the Directors?*

M/s. Alcon Consulting Engineers (India) Pvt. Ltd. (AAR–Karnataka) Advance Ruling No. KAR ADRG 83/2019 dated 25.09.2019

The applicant is in the business of providing consultancy services including surface survey, map making, project management consultancy services for construction projects, engineering advisory services to both Government agencies as well as the general public throughout India. The applicant generally incurs certain expenses, for instance, travelling expenses, reimbursement of transportation and food expenses, vehicle hire charges, mechanical charges among others. The applicant sought advance rulings on the aforesaid two questions. Clause 1 of the Schedule III of the Central GST Act, 2017 deals with certain activities and

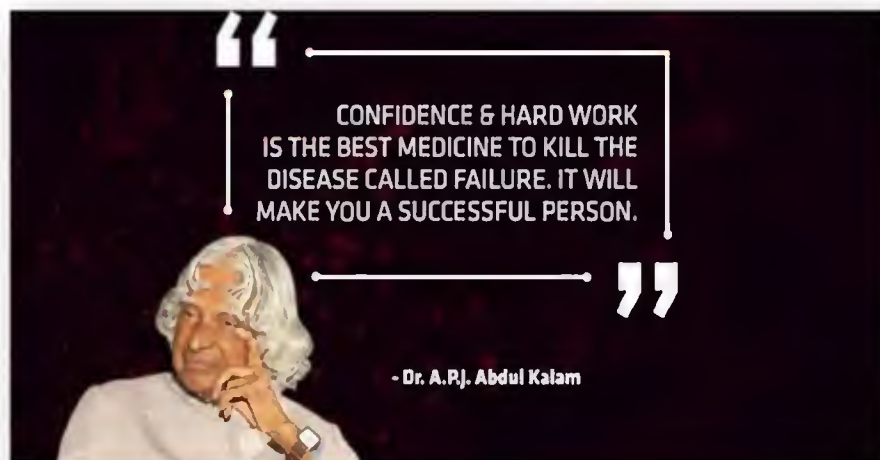
transactions required to be treated as a supply of goods or services. Further, consideration defined under clause (31) of Section 2 of the Central GST Act, 2017 covers such amount paid by the employee to the supplier of service as if it is paid by the above applicant himself. The reimbursed amount may not be a consideration, however, if tax is leviable, it shall be on the services rendered by the employee on behalf of the applicant irrespective of that amount paid by the employee or the applicant though the

same has been reimbursed later. As far as Director's remuneration concerned the company is located in the taxable territory and his remuneration paid for the services supplied by the Director to the applicant company. Hence, the Authority for Advance Ruling held that both amounts paid to the employees and remuneration paid to the Directors as taxable and subject to RCM respectively.

To be continued...



Words Worth Million





Professionalism

What is professionalism? Is it a dress code? Is it limited to a certain industry or profession? Is it behaviour? Or code of conduct? Is it the same for all across the profession or industry? We often hear calls to “be professionals” in the workplace, to “be professional” at a job interview, or stories of employees receiving warnings for “being unprofessional”, but it’s not always clear what exactly we mean by the term “professional”.

According to the Merriam Webster dictionary, professionalism is “the conduct, aims, or qualities that characterize or mark a profession or a professional person”

Professionalism, then, must vary across professions. One profession’s professionalism can be unprofessional to another profession or within a profession across work environments or times.

Though specifics may vary widely across professions, environments, and times, perhaps we can characterize some general features of professionalism. “Professionalism” often involves being reliable, competent, dependable, respectful, confident, and accountable; in addition, it often requires integrity and accordance with appropriate norms of hygiene and presentation. “Professionalism” also often requires one to keep personal matters separate from those of one’s profession.

Why does “professionalism” matter? Why does it exist at all? Looking to its function, we see some common purposes served by professional norms:

1. professional norms minimize the chances of crossing sensitive boundaries with subordinates, clients, and superiors in the workplace;
2. professional norms can increase workplace efficiency, improving personal and organizational chances of success (whatever that may entail);
3. when boundaries are crossed and conflicts occur, professional norms help to minimize the damage they cause;
4. and finally, compliance with professional norms allows individuals to signal their willingness to defer to community procedures and practices, allowing institutional gatekeepers to trust them and award them with responsibilities and privileges.

In a nutshell, then, professionalism is that which enables professionals to succeed professionally. By practicing professionalism, we professionals signal our status and allegiances to the individuals and institutions of our profession. Ideally, by acting professionally, we also maximize our organizations’ chances to succeed.





Input Tax credit Restriction under Rule 36(4) of GST Rules, 2017

A new sub-rule (4) has been inserted in Rule 36 restricting the Availment of Input Tax credit by a Registered person vide Notification 49/2019 CT Dtd:09.10.2019. The Rule inserted is as below:

*“Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, **shall not exceed 20 per cent. of the eligible credit available** in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”*

Through this Rule, there is a restriction of Input Tax being casted on the Registered person for availment of Input Tax credit. Following are the relevant aspects being imposed:

- Input Tax credit restriction is only in relation to Invoice or a Debit Note received from a Supplier requiring to furnish a statement under Section 37(1)
- Tax details duly uploaded by the supplier under Section 37(1) shall be called as Eligible credits for the relevant Tax period
- Input Tax credit in relation to Invoice or Debit Note not duly uploaded under Section 37(1) shall be restricted upto 20% of the Eligible credits

Important aspects to be noted post implementation of the above Rule:

- Rule has a proposal for restricting of Input Tax credit only and not for deciding

eligibility or ineligibility of a particular Tax credit

- Enabling provision under Section 43A has not yet been notified to give effect to the above Rule
- Clarity is missing in computing the Eligible credit for arriving at the 20% ceiling when credits are populated for the current month and earlier months also
- Rule if given authority by virtue of Section 43A insertion, then the same shall be effective from October 2019 and supplies made prior to the above date has no implication for restricting the Input Tax credit

Circular No.123/ 2019 dtd:11th November 2019 has been issued to bring clarity in relation to implementation of above Rule 36(4). Overview of the clarity provided in the Circular is as below:

- This being a new provision restriction is not imposed through Common portal
- It is the responsibility of the Taxpayer that credit is availed in terms of Rule36(4)
- Responsibility for examining the eligibility and relevant workings in line with the above amendment on self-assessment basis

Also, few question and answers have been clarified by way of this Circular as below:

Query1: What are the Invoices/ Debit Notes on which restriction under Rule 36(4) shall apply

Answer: Restriction is imposed in the case of Invoice/ Debit Notes which are required to be uploaded by the Supplier under Section 37(1) and which have not been uploaded. Restriction imposed only on credits availed after 09.10.2019

Comment: Restriction only for the missing credits or credits appearing after the due date

Query2: whether the restriction has to be calculated supplier wise or consolidated basis

Answer: The restriction imposed is not supplier wise. The credit available under Rule 36(4) is linked to the eligible credit from all the suppliers against all the supplies uploaded by the suppliers leaving the blocked credits under Section 17.

Comment: Credits populated in current month against which ITC is availed on Proportionate basis in earlier months, does it participate in above equation.?

Query4: How much ITC can be availed on the missing Invoice/ Debit Note along with Eligible ITC

Ref	Credits as per Books	Credits appearing in Portal	Credits Missing in Portal	Total Credit available as per Rule 36(4)
1	10,00,000	600,000	400,000	600,000 + 120,000
2	10,00,000	700,000	300,000	700,000 + 140,000
3	10,00,000	850,000	150,000	850,000 + 150,000

Query5: When can balance ITC be claimed in case availment of ITC is restricted as per Rule 36(4)

Answer: Recipient can claim ITC on the missing credits on which a proportionate credit has been availed in the subsequent months provided details of invoices are uploaded by the suppliers

Query3: What would be the amount of Input tax credit available in respect of Invoices/ Debit Notes whose details have not been uploaded by the suppliers?

Answer: Input tax credit in respect of missing invoices/ Debit note shall be restricted to the extent of 20% of the Eligible credit uploaded by the supplier under Section 37(1) as on the due date. Tax payer has to ascertain the same from auto-populated GSTR2A as available on the due date for filing Form GSTR1

Comment: GSTR2A being dynamic, ascertaining the ITC for the suppliers who have filed GSTR1 on or before due-date is a great challenge

Comment: Tracker for partial availment and subsequent availment for balance amount on the basis of either Invoice uploaded or criteria of 83%

<End of Circular>

Below is the scenario of compliance requirement of Credits to be filed/ uploaded by the corresponding

suppliers indicating the Break even point at which there can be eligibility of 100% Input Tax credit

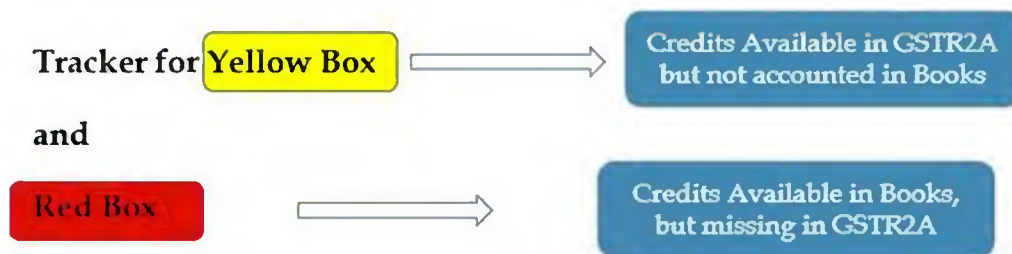
and non-application of Rule 36(4)

Total credit as per Books	Credit Available in Portal	Credit Missing in Portal	Proportionate Credit allowed	Total Credit as per Rule 36(4)
100	60	40	12	72
100	75	25	15	90
100	81	19	16.2	97.2
100	82	18	16.4	98.4
100	83	17	16.6	99.6
100	84	16	16	100

Considering the enormous amount of work involved in keeping a track for the eligible credits vis-à-vis the proportionate credits to be availed,

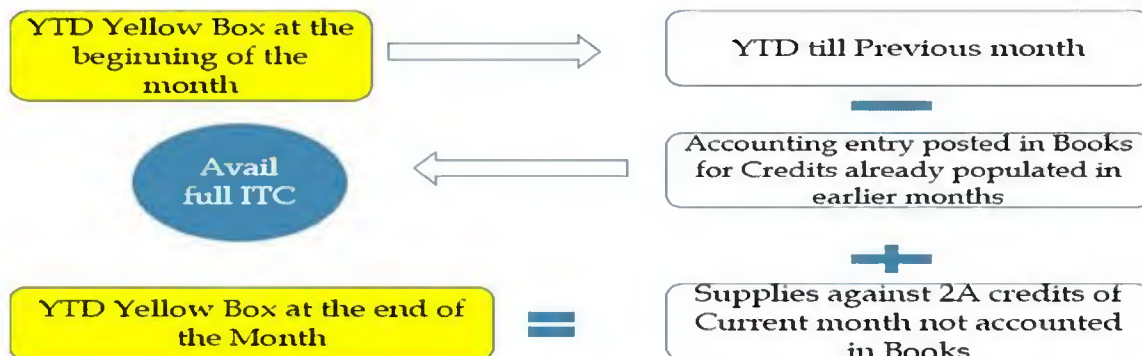
below is the relevant plan of action recommended to have a better tracking:

Step1: Tracking of Missing Credits vis-à-vis un-accounted Credits

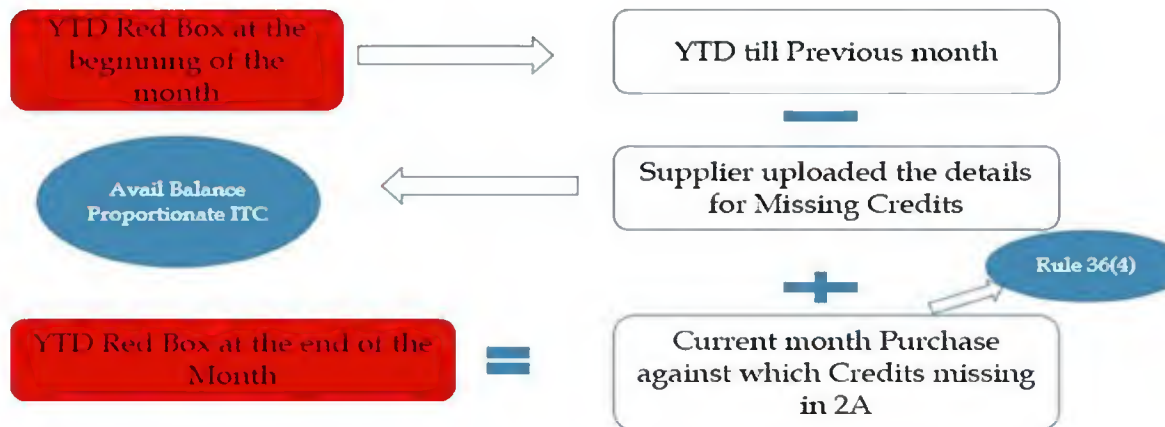


Step2: Tracking Credits populated in earlier months against which Accounting entry posted in

the Books of Accounts during the Current month and fresh entries in 2A for which no entry posted



Step3: Tracking for the credits not appearing on portal in earlier months, however entry appearing on the portal post follow-up or so



Conclusion:

There are many challenges which have not been duly thought of by the learned authorities concerned before making the above amendment for the below mentioned aspects:

- Fate of credits missing for the supplies made by the small-time suppliers who have opted to file the returns on Quarterly basis for GSTR1
- There is no control for locking the credits appearing before the same gets amended by the supplier post availment of Input Tax credit
- GSTR2A report is Dynamic in nature for data being populated on the basis of GSTR1 uploaded by supplier at different point in time. No control exists for the user to have a track in this regard
- Maintaining a track of each invoice for the Credit availed vis-à-vis proportionate credit availed and tracking for supplier filing status
- Availability of Infrastructure and suitable resources in rural areas to have a clarity of

this amendment and compliance thereof on a monthly basis

Though this is new challenge which every trade is experiencing, unless the automation is made on the Common portal with reasonable care before its implementation, Trade & Industry is going to experience a big chaos and nightmare for having a proper compliance in this regard. Also, Trade organisations have to make a strong representation with the authorities concerned to examine possibility & feasibility for implementation of such changes in the law having conducted a pilot study at ground level.

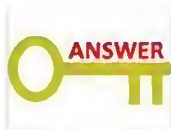
Disclaimer:

The above views expressed are as per the understanding of the present GST provisions by the author. Any corrections or suggestions may be sent to praveen@gella.in. It is recommended to take expert opinion for having better clarity in this regard



M/s ABC Ltd., received goods for Repair and return back. Value of repair activity is Rs.100,000/-. Confirm whether M/s ABC Ltd., need to issue E-way Bill for sending back the goods post repair activity to the customer concerned.

*Please send your opinion
to, enewsletter.icsimysore@gmail.com*



Opinion To Last Month's Brainy Bits

M/s ABC Ltd., has incurred expense in relation to Import of service during January 2019. However, tax under RCM has been paid during October 2019. Examine the compliance under GST law for the above payment

Facts of the Case:

- M/s ABC Ltd., (hereinafter called as recipient) has incurred expense in relation to Import of services during January 2019
- Recipient has paid Tax on RCM basis for the above expense during October 2019
- Recipient would like to understand the eligibility of Tax paid on RCM basis during October 2019

Legal provisions:

- Section 2(62): Input Tax credit
- Section 2(82): Output Tax credit
- Section 2(98): Reverse charge
- Section 16(4): Input Tax credit
- Section 13(3): Time of supply for services
- Section 31(3)(f) issuance of self-tax invoice

Conclusion:

Recipient has paid tax on RCM basis during October 2019 for the services received under RCM for the expense incurred during January 2019. Recipient has to raise a self-tax invoice under Section 31(3)(f) for the services received during January 2019. As

per the provisions of Section 13, Time of Supply to pay tax on RCM shall be earlier of either payment or 60days from the date of receipt of services recorded in the Books.

In the present scenario recipient has paid tax during October 2019 beyond the stipulated due date for remittance. Reference to Section 16, input tax credit in relation to an invoice or debit note shall not be allowed **after the due date** for filing of return under Section 39 for the month of September following the end of the relevant financial year. The recipient has paid tax during October 2019 is a point of relevance to examine for eligibility of Credit pertaining to F.Y 2018-19. Due date for availment of Input tax credit in the present case is restricted for availment till date of filing relevant return under Section 39 for the month of September 2019. Accordingly, the recipient can avail the credit on payment of tax under RCM to government if the same is paid and accounted on or before the due date for filing return under Section 39





Vikram Hegde, Advocate
No. 10, Lawyers' Chambers
Supreme Court of India
New Delhi - 110001
vikramhegde87@gmail.com



Solved cases of Supreme Court and NCLAT

Delhi Diaries 20

Committee of Creditors of Essar Steel v. Satish Kumar Gupta – Another exposition on several issues pertaining to Insolvency and Bankruptcy Code

In the November 2018 edition of this column, we had seen what the Supreme Court had held on interpretation of Section 29A of the Insolvency and Bankruptcy Code in its judgment in *Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors* which pertained to the Essar Steel insolvency. Now, almost like a religious festival like Deepavali or Thanksgiving that comes by every year around the same time, the Supreme Court has again rendered an opinion on the very same Essar Steel insolvency on 15th November, 2019.

After the 2018 judgment, in July this year, the NCLAT had purported to approve the resolution plan submitted by Arcelor, there had been some significant deviations. The NCLAT had held that the resolution plan cannot differentiate between secured and unsecured creditors as also barred any discrimination between financial and operational creditors and thus adopted a method of calculation to be paid 60.7% of their admitted claims. The NCLAT had also held that there can be no reliance upon Section 53 of the IBC when distributing the financial package between the various claimants. The NCLAT had also permitted classification among the operational creditors on the basis of size of admitted amount and had also allowed an inflation of the operational debt on the basis of belated claims even after the approval of the resolution plan.

The Committee of Creditors (COC) claimed that the IBC does not contemplate equal treatment of Financial and Operational Creditors and only contemplates equitable treatment. The COC also claimed that financial creditors have a superior status as against operational creditors and that if secured financial creditors are treated on par with unsecured creditors, such secured creditors will rather vote for liquidation rather than Corporate Resolution, which is contrary to the main objective sought to be achieved by the Code. The COC was supported in its arguments by SBI which is a secured creditor.

On behalf of the unsecured creditor, i.e., Standard Chartered Bank, it was contended that the role of the COC was limited to considering the feasibility and viability of the resolution plan and does not include the manner of distribution of the amount payable by the resolution applicant to the erstwhile creditors of the corporate debtor. If such a power is given to the COC, the unsecured creditor contended that it would lead to a serious conflict of interest where the majority can ride roughshod over the minority.

The operational creditors contended that priorities of payment which would apply in the case of liquidation could not apply when a corporate debtor is being run as a going concern otherwise operational creditors would not be paid.

The Court delved into the role of the resolution professional *vis a vis* resolution plans and also the role of the prospective resolution applicant and reiterated the 2016 regulations on these points.

Considering the role of the Committee of Creditors, the Court held that the very fact that feasibility and viability of the plan was left to the Committee of Creditors included within its scope the manner of distribution of funds among the various classes of creditors. The Court underlined that it is the commercial wisdom of the majority of creditors which is to determine through negotiation with the prospective resolution applicant as to the manner in which corporate resolution process should take place.

This being the case, the Court looked at the jurisdiction of the Adjudicating Authority and the Appellate authority when they consider the resolution plan approved by the Committee of Creditors. The Court affirmed that the judicial review of the decisions of the Committee of Creditors was limited and cannot trespass upon the business decisions of the Committee of Creditors except to the extent provided under Section 30(2) of the Code.

The Court also noted its own judgment in *Swiss Ribbons* rendered early this year which had recognized that an important objective of the Code was maximization of value of the assets so that they are run as going concerns. Hence, while the adjudicating authority cannot interfere with the business decisions of the COC, the Adjudicating Authority can ensure that crucial operational

creditors are paid during the resolution process to avoid choking off the Corporate Debtor and to ensure that it remains a going concern.

As regards equality between secured and unsecured creditors, the Court relied upon the UNCITRAL Legislative Guide which provides for the equitable treatment of similarly situated creditors and noted that the entire objective of the code would be defeated if an “equality for all” principle was adopted and secured creditors were incentivized to opt for liquidation instead of approval of resolution plan. The Court further held that fair and equitable dealing of operational creditor’s rights under the regulation involved resolution plan stating as to how it has dealt with the interests of the operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately thus supporting the independence of the COC.

Thus the Supreme Court set aside the deviations by the NCLAT and upheld the original decision of the Committee of Creditors. On the question of disputed claims, the Court set aside the order of the NCLAT insofar as their decision that the entire claim be included.

The Court also held the period of 330 days for the resolution process could be exceeded in exceptional cases.





TECH NEWS

GRAPHENE

Komal Kumar M
CS Executive Student
Komalkumarm677@gmail.
com



Graphene is one of the most interesting materials on Earth. Graphene is a carbon just like coal and diamond but its atomic structure is different from others, hexagonal in structure. Graphene is light in weight, hard in structure and flexible in use. By using graphene we can actually make the mobile screens flexible, batteries can last long for days without charging, we can use it in computers for building of circuits, if we print the circuits of electricity on water proof fabric using graphene we can actually twist, wash, iron without breaking the circuit. It can be used to make bullet proof suits lighter, and also it can be used in the construction of space ships because it has extreme temperature withstanding ability when compared to rubbers used in modern space ships.

As per scientists, they are still researching on the applications of graphene due to its unique atomic structure and flexibility. They say that we can actually build an elevator to space due to its structure, which makes it the hardest material ever known to mankind.

Scientists are still trying to improve production of graphene, but till now they have been able to produce just a barrel of it. Due to the nature of the material we can anticipate its diverse usage in the future.



when
LIFE gives you a 100
reasons
to cry, show life
1000 that you have a
reasons to SMILE



EXPRESS NEWS

- Consumer spending declines for first time in four decades
- India's PC market up 15.8% on year in Q2: IDC India
- Govt notifies rules under insolvency law for resolution of financial service providers excluding Banks
- Arcelor Mittal Says Looking To Close Essar Steel Acquisition Soon
- GSK consumer MD to head residual business post HUL deal completion

ET Explains: How Essar Steel verdict changes the rules of the game for future bankruptcy cases

In a landmark judgment, the Supreme Court has upheld the supremacy of the Committee of Creditors comprising the financial creditors of the bankrupt firms over the distribution of claims.

Mumbai infrastructure gets a \$500 million AIIB boost

Asian Infrastructure Investment Bank (AIIB) on Friday announced a USD 500-million loan to help build rail and road infrastructure in the megapolis. With this, the Beijing headquartered developmental bank's overall commitment to the country has gone up to nearly USD 3 billion, making it the largest borrower with a 30 percent share.

Tax cut shores up India Inc's profit, but Revenues slip

ET Intelligence Group: India Inc's revenue dropped marginally in the September quarter, the first decline in nine quarters, reflecting demand-side woes, destocking of piled-up inventories and a

higher base effect in the form of double-digit growth in the year earlier. However, net profit grew in double digits, helped by a cut in corporate tax rate and buoyed by the financial sector

If govt lets Voda Idea go belly up, top banks to take big hit; FDI image hurt

A combined massive loss of Rs 74,000 crore by telecom majors Bharti Airtel and Vodafone Idea may have a significant bearing on the economy as well as on the banking sector.

Deadline for filing GST annual returns extended, forms simplified

The earlier deadline for filing of GSTR-9 and GSTR-9C for 2017-18 was November 30, 2019, while that for 2018-19 was December 31, 2019.

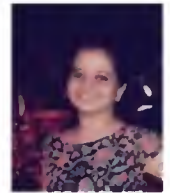
In a relief to taxpayers, the government on Thursday extended the due dates for filing GST annual returns for 2017-18 to December 31 and for the financial year 2018-19, to March 31 next year.



Regulatory Updates

Companies Act, 2013

Compiled by:
Matruka B.M.
Professional student Mysore



Updates on Amended Rules

MCA has amended Companies National Financial Reporting Authority Rules, 2018, which is to be known as National Financial Reporting Authority (Amendment) Rules, 2019.

In the Principal rules, in rule 5, the figures, letters and words "30th November every year in Form NFRA-2" shall substitute the figures, letters and words "30th April every year in such form as may be specified by the Central Government".

In the said rules, following proviso shall be inserted after sub-rule (5) of rule 11.

"Provided that where the disposal does not take place within the said period, the Division shall record the reasons for not disposing off the show-cause notice within the said period, and the chairperson, may, after taking into account the reasons so recorded, extend the aforesaid period by such additional period not exceeding ninety days as he may consider necessary:

Provided further that the chairperson may, if he thinks fit, grant the said extension of period more than once."

MCA has introduced **Form NFRA-2**, which shall be inserted in the annexure of the said rules after Form NFRA-1.

Form NFRA-2 is an e-form to be filed by an auditor with the NFRA.

National Financial Reporting Authority (NFRA) Amendment Rules 2019, dated 5th day of September, 2019.

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

In rule 25A, sub-rule 1, fourth proviso, for the item (iii), the following shall be substituted

"(iii) DIR-12 (changes in Director except in case of:

(a) cessation of any director or

(b) appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of sub-section (1) of section 149 on account of disqualification of all or any of the director under section 164.

(c) appointment of any director in such company where DINs of all or any its director(s) have been deactivated.

(d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of this Act or under the Insolvency and Bankruptcy Code, 2016)."

The following rule shall be inserted after sub-rule 1 of Rule 28 of the principal rule,

"(2) The Regional Director shall examine the application referred to in sub-rule (1) and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects.

(3) The certified copy of order of the Regional Director, approving the alternation of memorandum for transfer of registered office company within the same State, shall be filed in Form No.INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order."

Companies (Incorporation) Eighth Amendment Rules 2019, dated 16th day of October, 2019.

