



Karnataka State Chartered Accountants Association (KSCAA)
Organizes



Web-Based Panel Discussion On

Impact in Corporate Law, Direct and Indirect tax Law Due to Lockdown

Panel of Speakers:

CA. Gururaj Acharya

CA. Naveen Khariwal

CA. Jatin Christopher

Anchor & Moderator:

CA. Pramod Srihari - *Joint Secretary, KSCAA*

On Friday, 24th Apr 2020 | Time : 4.00 PM to 6.00 PM



CA. Chandrashekara Shetty
President

CA.Chandan Kumar Hegde
Secretary

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Karnataka State Chartered Accountants Association (KSCAA)



Web based Panel discussion on

Issues in Corporate Law due to Lockdown

24th April 2020

CA K. Gururaj Acharya

acharya@kgacharya.com

I. Queries: Companies Fresh Start Scheme 2020?

1. Can a company to whom **notice u/s 248(1)** of CA act 2013 apply under this scheme
2. How to calculate the fee under CFSS-2020? If we try to calculate the fee with CIN number, **it shows normal fee + additional fee also.**
3. Whether this apply **regularization of Directorship**
4. Can This Be Used For **Filing Belated Charge** Forms Also ?
5. Is this Scheme applicable only to companies who are **still live on the MCA system ?**
6. Please clarify till what **date this is applicable?**
7. Can a Company which is registered in 2019 and has **not filed any forms till now**, make use of this Scheme? If so, what are the implications?

STRIKE OFF (S. 248)

Suo moto by Company (STK-2) or by ROC (STK1-5-7)

Grounds for Strike Off:

- (a) Failed to commence its business **within 1 yr of DOI.**
- (b) Not carrying on any business / operation for **2 immediately preceding FYs.**
- (c) Subscribers to MoA not paid subscription amount **within 180 days** & Form INC 20A (Declaration) not filed.
- (d) Co. not carrying on any business or operations, as revealed after physical verification carried out u/s 12(9).

I. Suggestions: Companies Fresh Start Scheme 2020

- i. Even normal fee should be reduced.
- ii. Last date needs to be revised to March 2021
- iii. Director's in default unable to regularize disqualification in Companies that are struck off. These directors have to wait till disqualification runs out.
- iv. Even companies struck off by MCA forcibly should be included. All DIN should be made active.
- v. **Why scheme not extended to Satisfaction of Charges?** Many Companies have missed filing this form within time allowed due to lack of knowledge. At present there is a lengthy procedure to cure this defect. Can representation be sent to MCA on this.

II. Concerns: LLP Settlement Scheme 2020 ?

1. In case a concern has **not got the audit from past 4 years** and has not filed returns. In such case what is the remedy available?

II. Suggestions: LLP Settlement Scheme 2020 ?

- i. No fee should be charged who are opting for settlement.
- ii. Last date needs to be revised to March 2021
- iii. **Good opportunity** since the fine was on per day basis.

III. Concerns: Annual returns & MCA filings for FY 2019-20?

1. Company has delayed collection of paid up capital from the share holders and also as a result has **delayed filing of form 20A, what are the consequences?**
2. Filing of INC 20 A (commencement of business) to filed within 180 days has been further extended for 180 days. Is it applicable to all companies whether incorporated in 2019,2020.
3. For **companies incorporated in January to March 2020** when they need to file MGT 7 & AOC 4 ?
4. Whether **ADT 1** is to be filed mandatorily for the **first auditor?**

III. Suggestions: Annual returns & MCA filings for FY 2019-20

- i. A little work is still left, and we can't go to our offices. I hope MCA will extend time to file the forms without penalizing with big penalties.
- ii. The last date of filing the returns should be extended upto 31-3-2021.
- iii. As the MSME Act is not amended, the delay due to carona needs to be captured as default in **MSME forms** this year for both half years and the audit report would have large number of cases to report.
- iv. **Forms should be simplified for small companies.** Same form should not be applicable for 100 crore capital and 1 lakh share capital.

IV. Doubts: COVID-19 & CSR?

1. **CSR spending after 31st March 2020 eligible for FY 2019-20 ?**
2. Whether contributions made to **CM & PM Relief funds** are considered as CSR activities?
3. Where **funds are available with company but not spent** and deferred, any **impact on audit?**
4. Can **donations made to Goshalas** be treated as CSR activity by a limited company?

a. Second proviso to S. 135 (5)

If co fails to spend 2% - Board shall, in its report, specify reasons for not spending (& unless unspent amount relates to any ongoing project, transfer such unspent amount to Fund specified in Sch VII, within 6 M of end of FY.)

b. S.135(6)

Any amt remaining unspent pursuant to any ongoing project as per Co's CSR policy, transfer to "Unspent CSR a/c" opened with Sch. Bank within 30 days from end of FY, and spend within 3 FYs from date of such transfer, else transfer it to a Fund specified in Sch VII, within 30 days from date of completion of 3rd FY.

~~C. Penalty Provision S.135(7)~~

~~For contravention of above provisions,~~

- ~~- Co shall be punishable with fine of Rs. 50,000/- to Rs. 25 lakhs and~~
- ~~- every OID shall be punishable with imprisonment for term extending to 3 yrs or with fine of Rs. 50,000/- to Rs. 5 lakhs, or with both.~~

CSR (S. 135)

THE COMPANIES (AMENDMENT) BILL, 2020 - AS INTRODUCED IN LOK SABHA

- Companies which have CSR spending obligation up to Rs. 50 Lacs shall not be required to constitute the CSR Committee - Functions of such Committee shall be discharged by BoD.
- Allow eligible companies U/s.135 to set off any amount spent in excess of their CSR spending obligation in a particular FY towards such obligation in for such number of succeeding FY and in such manner, as may be prescribed.

C. Penalty Provision S.135(7)

For contravention of S.135(5)/(6)

- Co shall be punishable with Penalty of 200% of amount not so transferred or Rs. 1 Cr. WIL and
- Every OID shall be punishable with 10% of amount not so transferred or Rs. 2 Lacs WIL

IV. Suggestions: CSR

- i. Contribution routed through social and charitable institutions should qualify under CSR.
- ii. Contribution to CM & PM relief fund should be counted as CSR spending

V. Pain points: Board Meetings & General Meetings due to COVID- 19 ?

1. **Whether Meetings can be conducted during lock-in period**, keeping social distancing intact
 - Can Board meetings of private companies be held in lock down period ie., from last week of Mar,20 till date?
2. All board Meetings & general meetings to be conducted via video conferencing due to covid.
How should drafts for resolutions & notice for resolutions circulated for these meetings.
3. How to conduct **board meetings of co operative bank** during lockdown
4. Board meetings through VC is permitted for acceptance of financials. In case of pvt ltd cos with only 2 individual shareholders (one of whom is residing outside India), accounts may be approved in this month, but the AGM would be conducted later.
Would a gap of 3-4 months between the board meeting & AGM be a concern? Assuming international flights would not resume till June 2020.
5. What are **revised due dates of Q4 BOD and AGM** due to COVID 19

V. Suggestions: Board Meetings & General Meetings due to COVID- 19

- i. Extend Due date for AGM so that more time is available for AOC 4 & MGT 7
 - Needs extension of time, for conducting AGMs
 - There should be a general revision of dates by 3 to 6 months necessarily.

- ii. Statutory audits must be done on time. **Statutory audits to be declared by Govt as essential services** and suitable relaxation to be given for Auditors.

- iii. Validity of online meetings to be examined.
 - All online Board meetings/AGMs to be legally allowed.
 - All online correspondences including services of meeting notices etc., are to permitted legally.

VI. Any other concerns - not specifically covered above ?

1. Due to sudden lock down some items dispatched did not reach customer, hence **revenue recognition is questionable**. Such sales would have been recognized as sales in normal times.
2. We have incorporated a company on 31/03/2020. However due to this Carona impact, we are **unable to get the stamp paper** to make rental agreement and also not able to open bank account. Accordingly not able to file the necessary form intime. Any lenience by MCA on this?
3. How to conduct **stock audit concurrent audit of bank and statutory audit** from home without visiting the branches and how to coordinate with staff and to provide training to staff
4. What precaution we need to take now regarding **going concern** of companies due to COVID-19
5. In light of this COVID-19, many companies will come for **windup**. Little light on this topic - Strike off vs court liquidation, best method for small companies, procedures, etc will help us.
6. Should we make **any comments in audit report** just like we did during demonetization year?

SUMMARY PROCEDURE FOR LIQUIDATION

S. 361 of CA, 2013 read with Part V of the Co's (Winding up) Rules, 2020

Applicability - Based on latest ABS	Less Than (Rs.)
Assets (book value)	1 Crore
O/s Deposits	25 Lakhs
O/s Loans including secured loan	50 Lakhs
Turnover	50 Crores
Paid-up capital	1 Crores

COVID 19 challenges – Implication on AUDIT REPORT

1. Report **new KAM** in response to additional audit work as a result of outbreak.
2. Addition of **“Material uncertainty in relation to going concern”** para, if relevant.
3. **“EOM” paragraph** relating to **significant uncertainty** arising from the outbreak
4. **Qualification or adverse opinion** in respect of inadequate disclosures in FS.
5. **IFC wrt FS Reporting – Additional Risks areas**

Is the following statement true –

Major impact of Covid is felt in April 2020. FY 19-20 should not have Covid disclosures.

VI. Any other Suggestions

- i. Deadline for submission of Audit Reports of co.op., societies, needs extension.
- ii. Govt. Should not levy any penalty for late filing of any type of return.
- iii. Misuse (of relief from wrongful termination) by threatening complaint to labour department not taken into consideration in advisory not to cut pay during lock down. **MSME affected due to nil sales but costs remain unchanged.**
- iv. Extension of timelines for various filing deadlines to be represented by KSCAA
- v. There will be **major bank loan defaults** by corporates. **Auditors should not be dragged into such defaults due to lockdown loss.**
- vi. **Major impact of Covid is felt in April 2020. FY 19-20 should not have Covid disclosures.**

Thank You

CA K. Gururaj Acharya

acharya@kgacharya.com

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