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Karnataka State Chartered Accountants Association (R)

NEWS BULLETIN

► IRP ► Interpretation ► RERA ► IPR
► Financial Reporting ► Taxation of VDAs

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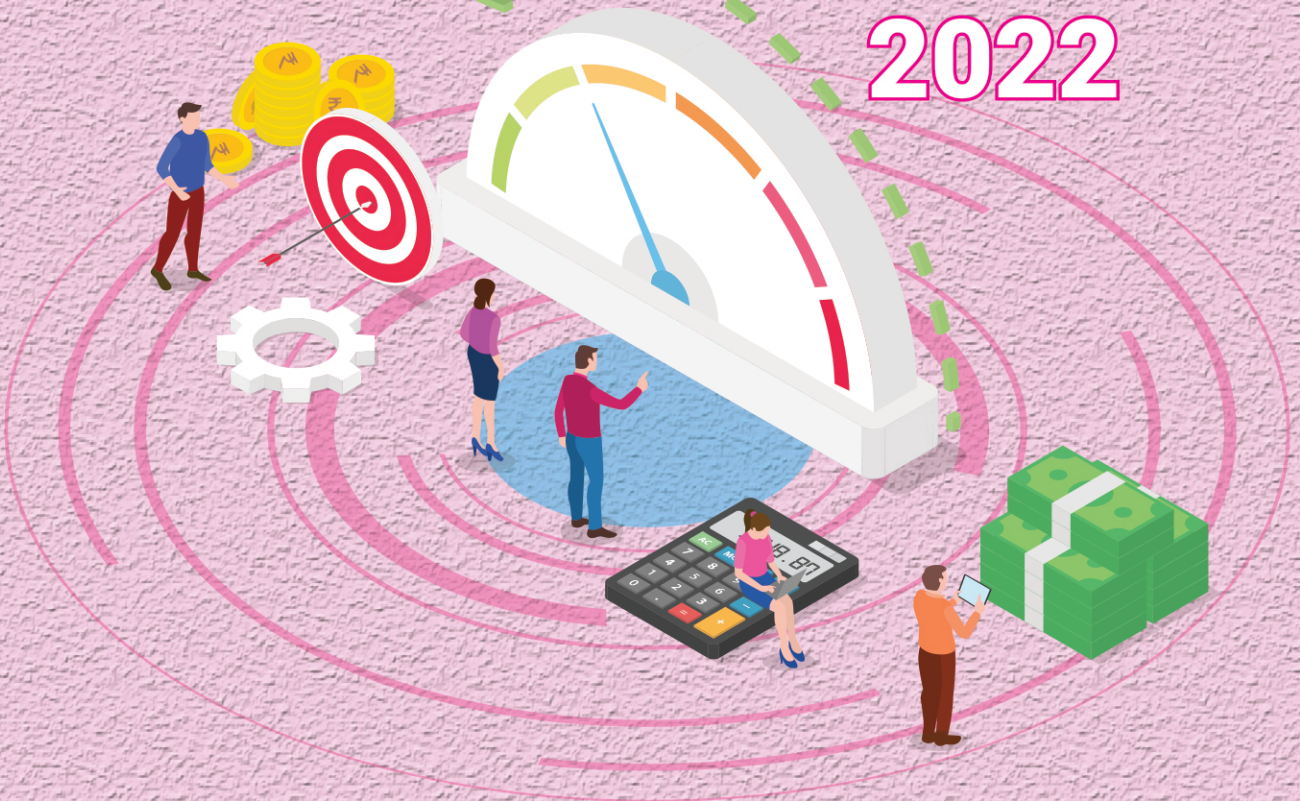
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BUDGET

2022





Dear Reader,

It is a pleasure to connect with all of you through this month's message and share my thought. This month prevails prominence with budget being presented as usual inspite of third wave of pandemic which hit all of us. While there have been many discussions about the outcome of budget, the attempt of government to persuade the economy to US\$ 5 Trillion economy and from there on giving a grand vision for next 2 decades, rather

to be prepared for 100th Year of India's independence is heartening to watch and understand. While we grew 9.2%, highest among all large economies, the roadmap ahead also ensures we grow at similar fashion and trend. Attempts are made to encourage and concentrate and capitalize on digital world, attempts like digital university, digital payments, digital mission, digital health eco system are few which found favours by this government.

The growth of third wave seems to be lesser and the economy seems to back to normal with all restriction in the state being removed. The informal sector which bears the brunt of frequent restrictions are breathing with ease, I only wish that we are not hit by another wave to jeopardize the normal life of citizens. Even for our profession, looking back – the last 24 months have taught us things which otherwise we wouldn't have learnt, the major learning is that of technology. Pandemic allowed greater penetration of technology into the profession than ever before, within a short period of time.

Our annual conference which was scheduled in the month of March every year is postponed to the month of May 2022 due to prevailing pandemic. We hope to see you, welcome you and create the same charm and vibrancy which our seniors have created in all of their conference, date and venue will be shortly announced. I case you have any plan/ ideas, you can also send your suggestion to me personally at president@kscaa.com.

News Roundup

Direct Tax

Where the slab rates under the income Tax Act largely remained unchanged in Union budget 2022-23, there were few tax proposals promoting voluntary tax compliance and reducing tax litigation by enabling filing of updated return of income, tax on virtual digital assets, reliefs to start-up/ manufacturing companies, clarification regarding non-deductibility of education cess and surcharge as business expenditure, amendments to the faceless assessment scheme to address challenges faced, rationalization of penalty provisions etc.

Other Judicial developments:

- ◇ **HC Karnataka**: Society registered Karnataka Souharda Sahakari Act, 1997 is a Co-operative Society for Sec. 80P relief.
- ◇ **ITAT Delhi**: Assessee eligible to file rectification application if he failed to claim statutory deduction while filing ITR.
- ◇ **HC Madras**: AO can't cancel trust registration until application for fresh registration filed u/s 12AB is disposed of.
- ◇ **ITAT Allahabad**: Co-operative banks are eligible to claim bad debts if RBI grants license of scheduled bank with retro effect.
- ◇ **HC Calcutta**: Income earned from hoarding advt. placed on foot over bridge & bus shelter eligible for deduction u/s 80-IA. Since construction of foot over bridge and bus shelter qualifies as infrastructure facility, income earned by assessee from advertisement on hoarding on foot over bridge and bus shelter constructed by it, would be eligible for deduction under section 80-IA.

Executive developments:

- ◇ CBDT notifies e-Advance Rulings Scheme, 2022; applicable w.e.f. 18-01-2022.

- ◇ CBDT notifies Rule to compute capital gains on sum received from ULIPs not exempt u/s 10(10D).
- ◇ CBDT notifies 'National Skill Development Corporation' for exemption under section 10(46).

Indirect Tax

The Union Budget 2022 brought with it certain welcome amendments such as digitisation of Customs and other measures to ease certain compliance. At the same time few amendments on ITC claim, adding more filters to claim would add to the working capital strain.

I would also like to bring to all your notice that the Gross GST Collections for the month of Jan, 2022 has been the highest ever since the time of introduction of GST and has surpassed a total of 1.4 lakh crores. Before I conclude, I would remind you once again that the annual return and reconciliation statement i.e., GSTR-9 & 9C for the financial year 2020-21 is falling due on 28th February 2022, therefore I urge all of you to plan your work and complete the filings within the due dates.

Corporate and Allied Laws

LLP – Launch of new way of e-filing for LLP on MCA portal – web based

The Ministry of Corporate Affairs is launching a new way of e-filing for LLP on MCA21 portal. All LLP filings going forward will be web based. This application is proposed to be launched on 06th Mar 2022 at 12:00 AM.

MSME – Extension of Udyog Aadhar Memorandum (UAM) validity upto 31.03.2022.

The Ministry of Micro, Small and Medium Enterprises vide Notification No. S.O.278(E) dated 19.01.2022 has provided that the existing enterprises registered prior to 30.06.2020 shall continue to be valid only for a period up to 31.03.2022.

RBI – Clarification on Acquisition / Transfer of Immovable Property in India by Overseas Citizen of India (OCI):

The RBI vide its press release dated 29-12-2021 has clarified that the Supreme Court Judgement dated 26-02-2021 in Civil Appeal 9546 of 2010 was related to provisions of FERA, 1973, which has been repealed under section 49 of FEMA, 1999. At present, NRIs/OCIs are governed by provisions of FEMA, 1999 and do not require prior approval of RBI for acquisition and transfer of immovable property in India, other than agricultural land/farm house/plantation property, as per the terms and conditions laid down in Chapter IX of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, dated October 17, 2019 (as amended from time to time), issued under section 46 of FEMA, 1999.

ICAI – FRN Compulsory for UDIN Generation w.e.f 01.02.2022.

- ◇ This is to state that Firm Registration Number (FRN) will be a compulsory field for generating UDIN from 12.00 am of 1st February 2022.

Let me close the current month message with a quote by James Clear, from his book 'Atomic Habits : An Easy & Proven Way to Build Good Habits & Break Bad Ones' - "All big things come from small beginnings. The seed of every habit is a single, tiny decision. But as that decision is repeated, a habit sprouts and grows stronger. Roots entrench themselves and branches grow. The task of breaking a bad habit is like uprooting a powerful oak within us. And the task of building a good habit is like cultivating a delicate flower one day at a time." With pandemic and frequent disruption of regular work for past two years, habits and discipline remain at core for all of us to remain focused.

Happy Reading!

Yours' faithfully,

CA. Chandan Kumar Hegde A.
President

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KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)

Upcoming Events



ASK AN

XPERT

@KSCAA Series



● Virtual panel discussion ● Focus to resolve questions raised by participants

GST Annual filing - Your query and experts' answer

Date - 18th Feb 2022, Friday

Timings - 4:30 to 7:30 PM



CA Annapurna Kabra



CA Shilpi Jain

Panelists

CA Annapurna Kabra
CA Shilpi Jain

Moderators

Mukul Sringeri
Deepa N

PLEASE CONTACT :

Indirect Tax Committee:

CA Subramanya B L, Chairman

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KSCAA Members,
Others Rs. 100 + GST

Accounting, Auditing And
Women Empowerment Committee
CA Deepabali Das, Chairperson



FEDERATION OF KARNATAKA CHAMBERS OF COMMERCE & INDUSTRY

Webinar on

**Intricacies in
Money Laundering
under PMLA**

Date - 19th February 2022, Saturday

Timings - 11:00 am to 12:00 pm

Registration

Free for KSCAA and FKCCI members,
Others Rs. 100 + GST



Adv. Swamini Ganesh
- Bangalore

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publication in the news bulletin / website.

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CA S. Krishnan

LEARNING ABOUT TEXTUAL INTERPRETATION

Introductory Remarks

1. The professionals of today especially Chartered Accountants are expected to possess knowledge in other areas of law and with this intention, this article has been coined.

While interpreting the provisions of a statute the textual interpretation should be matched with the contextual one. In other words, Statutes have to be construed so that every word has a place and that everything is in its place. To put it differently, Statutes are the embodiment of authoritative formula and the very words which are used constitute part of the law. By interpretation or construction is meant the process by which the Courts seek to ascertain the meaning of the Legislature through the medium of authoritative form in which it is expressed.

What is the meaning of context?

2. Context-What precedes and follows a word or passage as throwing light on its meaning, "it is a well-established rule of construction common to law and literature, and applicable alike to statutes and all other writings that the meaning of a word employed is to be determined not by taking the word in isolation but by taking it with its context, i.e., as a component part of the compound expressions which make up the clause, or even the whole document, to be interpreted [Colquhoun v. Brooks, (1899) 14 app Cas 493]. This rule, like all of the construction, is not absolute, nor a rule of law. It is recognised in the modern statutory definitions, which provide for the interpretation of specified terms in a particular way, "unless repugnant to subject or context," or "unless a contrary intention appears." [see Interpretation Act 1889 (52 & 53 Vict. c. 63; see Elphinstone, Conveyancing, 4th ed., 27; Maxwell on statutes, 3rd ed., 40; Hardcastle on statutes']

The parts which immediately precede or follow any

particular passage or text and determine its meaning.

Context is not limited to the context of the particular section in which the definition occurs but means the context of the whole act. Esher, M.R., In re Evans, (1891) 1 QB 144.

[Source-P.Ramanatha Aiyar's The Law Lexicon-5th edition-pages 369 and 370]

How a statute has to be interpreted-Few decisions of the Supreme Court-

3.1 Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others [1987] 1 SCC 42

"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase, and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases, and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses, we must look at the Act as a whole and discover what each section, each clause, each phrase, and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. -----"

3.2 The Supreme Court in the case of **Renaissance Hotel Holdings Inc. v.B.Vijaya Sai and others-** Civil Appeal No.404 of 2002-Judgment dated 19th January 2022 after referring to the observations of its earlier Bench in the case of **Peerless General Finance and Investment Co. Ltd. and others (supra)** held as under at para.61 of its judgment-

“It is trite law that while interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase, and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

3.3 The Supreme Court in **Kalidas Umedram v. State of Gujarat [1996] 7 SCC 635**, took the view that a deemed provision would not be a free licence to make use of the same defeating the object with which such provision is made. The Supreme Court made the following observations-

“It is true that the proviso envisages deemed permission if the Collector does not grant permission within three months from the date of the receipt of the application excluding the time as specified taken thereunder. But the condition is that land should be used for raising commercial crops but not for industrial purposes or for building purposes. Deemed permission would not be a free licence to use the land for any other purpose defeating the object of the grant. The public policy behind the grant is to augment agricultural production so as to enable the tiller of the soil economic empowerment and social and economic justice assured in the Preamble to the Constitution of India and Articles 38 and 46 to minimise inequalities in income and status. The State distributes under Article 39(b), its material resources to sub-serve the said purpose. Having obtained the grant or permission, the grantee-appellants cannot convert the land into non-agricultural use as well as for building houses. The sale of government land for a nominal amount was for the avowed constitutional purposes. After the conversion, the sale of the lands for

building purposes would be a windfall. Obviously, the public purpose of the grant and the constitutional goals would be defeated by this method of circumvention. The Government, therefore, is justified in cancelling the grant. Under the above circumstances, the Government was entitled to revoke the grant in respect of the entire extent of land.”

3.4 “An intention to produce an unreasonable result”, said Danckwerts, L.J. in **Artemiou v. Procopiou (1965) 3 ALL ER 539 All ER p. 544-I** “is not to be imputed to a statute if there is some other construction available”. Where to apply words literally would “defeat the obvious intention of the legislation and produce a wholly unreasonable result”, we must “do some violence to the words” and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in **Luke v. IRC [1963] AC 557**].

[**UOI v. Dharamendra Textile Processors [2008] 174 Taxman 571 (SC)**]

3.5 The Supreme Court in the celebrated case of **The Tata Engineering and Locomotive Company Ltd.v.The Gram Panchayat,Pimpri Waghere [1976] 4 SCC 177** observed that the correct approach is to construe the word in that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it and to ascertain the meaning of the word “house” one must understand the subject matter with respect to which it is used in order to arrive at the sense in which it is used or employed in a statute.

Decision of the Gujarat High Court

4. The Gujarat High Court in the case of **CIT (Exemptions) v. Addor Foundation [2020] 425 ITR 516 (Gujarat)** after extracting passage from the decision of the Supreme Court in the case of **Kalidas Umedram (supra)** [para 3.3 above] at para.20 of its judgment held that non-disposal of an application filed for seeking registration under section 12AA within 6 months as fixed by section 12AA(2) of the Income-tax Act would not result in a deemed grant of registration.

Cautionary remarks of Lawrence J.

5. The caution uttered by Lawrence J. in **Annicola Investments Ltd.'s case [1965] 3 All ER 850; [1966]**

2 WLR 1204 was that the same word occurring in different enactments has to be given a meaning in relation to the context, the object and the purpose of that enactment, has to be kept in mind.

Advice from Supreme Court on the usage of "words" in different enactments

6. The Supreme Court in the case of **Municipal Corporation of Delhi v. Children Book Trust [1992] 63 Taxman 385** observed at para.60 as follows-

"The rulings arising out of Income Tax Act may not be of great help because in the Income Tax Act "charitable purpose" includes the relief of the poor, education, medical relief, and the advancement of any other object of general public utility. The advancement of any other object of general public utility is not found under the Delhi Municipal Corporation Act. In other words, the definition is narrower in scope."

These observations were noted at para. 17 in the judgment of the Supreme Court in the case of **Queen's Educational Society v. CIT [2015] 372 ITR 699 (SC)** while disapproving reliance made by the **Uttarakhand High Court in the case of CIT v. Queens Educational Society [2009] 319 ITR 160 (Uttaranchal)** while deciding an issue with regard to the interpretation of provisions of section 10(23C)(iiiad) of the Act.

Concluding Remarks

7. It is apt to conclude this article by referring to the decision of the Calcutta High Court in the case of **CIT v. Smt. Shyama Devi Dalmia [1992] 194 ITR 114 (Cal.)** wherein the High Court made a distinction between building let out for a commercial purpose and for residential purpose by denying deduction in respect of new construction of property let out for commercial purposes as per the second proviso to section 23(1) of Act. This is what the Calcutta High Court held-

"The benefit conferred by clause (b) of the second proviso to section 23(1) of the Act could only be availed of if the building was actually used for residential purposes and not otherwise. The nature of the building let out determines the grant or denial of relief. Had the object of the Legislature been to allow this concession irrespective of the user of the building, it was not

necessary to qualify the word 'unit' by the expression 'residential'. An owner may construct a building with self-contained floors with the object of letting out the same to the tenants, but such letting out has to be for the purpose of residence of the tenants and not otherwise. A residential unit is that which is used as a residence. Admittedly in this case the units which were let out to the bank were not constructed as residential units. The assessee was, therefore, not entitled to the benefit"

So let the professionals learn how to interpret law bearing in mind the principles laid down in these decisions. Chartered Accountants have a crucial role to play as they have to coordinate between the Tax Department and their taxpaying assessee clients.

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KSCAA Welcomes New Members January 2022

Sl. No.	Name	Place
1	Abhishek S Kotian	Bengaluru
2	Veeresh Kumar B P	Bengaluru
3	Prabhat Kumar	Bengaluru
4	Bharamappa Bennur	Bengaluru
5	Ramanathan	Bengaluru
6	Arun Dongre	Bengaluru
7	Reniguntla Badarinath Nischal	Bengaluru
8	Chandra Shekar M N	Mysuru
9	Sujan J	Tumkur



CA. Raghavendra C R
CA. Bhanu Murthy J S

INDIRECT TAX UPDATES

Indirect Tax

Important decisions

1. Assistant Commissioner (ST) v. Satyam Shivam Papers (P.) Ltd. 2022 134 Taxmann.com 241 (SC)

Vehicle carrying goods started for delivery of the paper at 4:33 p.m. on 4-1-2020 to the consignee, but on its way, on account of a political rally being conducted traffic was blocked and the goods could not be delivered on the said day. The next two days being a holiday, the vehicle driver took the vehicle on next working day for delivery of goods. During the movement, the vehicle along with goods were seized on the ground that the e-way bill was expired.

The High Court taking note of the facts held that seizure of goods and collection of tax, interest, and penalty without considering the explanations of the assessee is a blatant abuse of power, and the respondent was directed to release the goods and also refund the amounts collected. A further cost of Rs. 10,000/- was imposed on the respondent officer.

The department preferred an SLP before the Supreme Court against the said order, wherein the dismissing the SLP the Supreme Court imposed an additional cost of Rs. 59000 on the officer.

2. State of Gujarat Vs. Arcelor Mittal Nippon Steel India Limited, 2022 SCC OnLine SC 76=2022-TIOL-06-SC-VAT

The issue before the Supreme Court was whether the respondent-assessee was eligible for exemption from payment of purchase tax on the purchase of Naphtha and Natural Gas in terms of the Notifications issued by the State of Gujarat. The notifications provided for exemption with actual user condition. However, the assessee after procuring transferred Naphtha and Natural Gas to another unit for the purpose of

generation of electricity, and the said electricity was used by the assessee.

In this background, denying the benefit of exemption the Supreme Court observed as below:

- a) The exemption is with actual user condition and said the condition was not complied with as the inputs were transferred to power generating unit.
- b) In terms of the exemption notification, power generating units were directly not eligible for exemption as they were covered under the ineligible list.
- c) Eligibility clause in relation to exemption notification must be given effect to as per the language and not expand the scope deviating from the language. There is a vast difference and distinction between a charging provision in a fiscal statute and an exemption notification.
- d) The doctrine of promissory estoppel is not applicable to the present case, wordings and the language used in the exemption notification are very clear, simple, and unambiguous. Therefore, when there was no such promise and/or representation, the demand cannot be said to be hit by the principle of promissory estoppel.
- e) The doctrine of promissory estoppel is an equitable remedy and has to be molded depending on the facts of each case and not straitjacketed into pigeonholes. In other words, there cannot be any hard and fast rule for applying the doctrine of promissory estoppel but the doctrine has to evolve and expand itself so as to do justice between the parties and ensure equity between the parties
- f) In taxing matters, the doctrine of promissory estoppel as such is not applicable and the Revenue

can take a position different from its earlier stand in a case with established distinguishing features.

3. **V. S. Products v. Union of India, [2022] 134 taxmann.com 126 (Karnataka)**

The issue before the High Court was whether simultaneous levy of GST, basic excise duty, and National Calamity Contingent Duty (NCCD) on tobacco and tobacco products is legally permissible.

The Court observed that taxable event under GST would be supply while it is manufacture under excise and both are two different legally recognized aspects and would not lead to an overlapping and would result in treating the levy on different aspects. The Court further observed that the sources of power under Article 246A and Article 246 are mutually exclusive and could be simultaneously exercised. Though Article 246A contains a non-obstante clause, power under Article 246 stands protected. Levy under the said Article is still permissible even after the introduction of Article 246A.

4. **Barmecha Texfab Pvt Ltd Vs Commissioner Govt. of Gujarat, 2022-TIOL-136-HC-AHM-GST**

Assessee's Electronic Credit Ledger was blocked in terms of rule 86A of the CGST Rules, 2017 and hence approached the High Court for release of the same.

In this background, the Court directing the department to lift the blockage observed that the rule itself provides that the Electronic Credit Ledger can be blocked for a period of one year and on expiry of a period of one year, it would automatically get unblocked. It was the duty of the authority concerned to permit the assessee, to avail the input credit available in his ledger unless a fresh order is passed.

However, in the present case despite the fact that the period of one year elapsed, the authority did not permit the assessee to avail the credit available in his ledger, even representation was filed in this regard, but the authority thought it fit not to pay heed to such representation.

The Court also cautioned the respondent GST department that next time the Court comes across such a case, then the authority concerned would be held personally liable for the loss which the assessee might have suffered during the interregnum period.

5. **GNC Infra LLP Vs Asstt. Commissioner 2022-TIOL-55-HC-MAD-GST:**

Refund application dated 19.04.2021 made under Section 54 of CGST Act and covering the period June 2018 and August 2018 were rejected on the grounds of limitation (2 years period for filing refund claim).

In this regard, the High Court relying on the order of the Supreme Court dated 27.04.2021 [2021-TIOL-222-SC-MISC-LB] extending the limitation period, remitted back the matter to the original authority to consider the same and pass the order on the refund.

6. **Jenefa India v. Union of India, [2021] 132 taxmann.com 55 (Madras)**

Assessee engaged in the manufacture of fishmeal would procure fresh fish and after processing, it would be converted in powder form of fishmeal which would be packed in sacks for sale. The assessee claimed exemption from payment of GST in terms of Sl. No. 102 of Notification No. 2/2017, dated 28-6-2017. However, circular No. 80/54/2018-GST, dated 31-12-2018 was issued, wherein it was clarified that exemption was for finished products and not for raw material - On basis of this circular, it was alleged that product fishmeal was also used as raw material for purpose of marketing cattle/poultry/aquatic feed and, hence, the exemption would not be available.

As the products of the assessee are also to be used as a raw material for the purpose of making cattle/poultry/aquatic feed, based on the above circular the revenue initiated investigations to demand the tax.

The High Court taking note of the notification as well as the circular issued subsequently observed as below:

- A. Fish meal whether falling under the heading 2301 or 2309 would be eligible for exemption.
- B. Merely because such a finished product of fishmeal produced by the petitioners' industries are being utilised also for the purpose of further manufacturing of further animal feed or poultry feed, by that reason itself, it cannot be stated that it is only raw material and not a finished product.
- C. The clarificatory Circular cannot override the exemption provided under the notifications granting the exemption.

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CA S. Badri Narayanan

INDIVIDUAL INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS

IRP

I. Background

Insolvency and Bankruptcy Code, 2016¹ (“the Code”) was enacted to consolidate and re-align existing insolvency resolution frameworks into a comprehensive overarching legal framework that caters to the changing dynamics of our nation. The essence of the Code, amongst other things, is a time-bound resolution for value maximization to stakeholders and to promote entrepreneurship and availability of credit.

The constitutional validity of the Code was upheld in *Swiss Ribbons vs Union of India*² and the Code has been rapidly evolving and fine-tuned with requisite Amendments and legal precedents.

The concept of guarantee has been existing since times immemorial. It is a very common business practise wherein one party guarantees to pay the debt obligations of the other in case of default. The concept of the contract of guarantee is better understood from the Indian Contract Act, 1872³ (“Contract Act”).

The insolvency resolution framework for Personal Guarantors to Corporate Debtor was confronted with severe headwinds since its very inception. However, legal precedents have set the path clear and laid down the framework.

This article attempts to provide a broad understanding of the insolvency resolution process relating to Personal Guarantors to Corporate Debtor, the judicial precedents available to aid the interpretation and the probable challenges which might need weeding out in the course of the evolution of the framework.

II. Indian Contract Act and Judicial Precedents

¹ Act No. 31 of 2016

² 2019 SCC OnLine SC 73

³ Act No. 9 of 1872

As per Section 5(22) of the Code, “personal guarantor” **means an individual who is the surety in a contract of guarantee to a corporate debtor;**

According to Section 126 of the Contract Act, “contract of guarantee” is a contract to perform the promise, or discharge the liability, **of a third person in case of his default.** The person who gives the guarantee is called the “**surety**”; the person in respect of whose default the guarantee is given is called the “**principal debtor**”, and the person to whom the guarantee is given is called the “**creditor**”. A guarantee may be either oral or written.”

Further, according to Section 128, “the liability of the surety **is co-extensive** with that of the principal debtor unless it is otherwise provided by the contract.” According to Section 134, “The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the **legal consequence of which is the discharge of the principal debtor.**”

It is critical to know that Section 14(3) of the Code specifically **excludes** surety in a contract of guarantee to the Corporate Debtor from the tenets of the moratorium.

In the matter of *State Bank of India Vs. V. Ramakrishnan and another*⁴, the Hon’ble Apex Court clarified that the moratorium under section 14 of the Code is meant to apply only to the corporate debtor and personal guarantors are not in the purview of the same. Further, the Apex Court went on to say that, a creditor has a dual remedy of seeking its claim either from the principal debtor or the surety or both. Hence, the Hon’ble Apex Court held that **it can never be the intent of the legislature to provide the personal guarantor an escape from the**

⁴ (2018) 17 SCC 394

coextensive liability to pay off the entire outstanding debt.

In *Dr. Vishnu Agarwal Vs. Piramal Enterprises Ltd*⁵, the Hon'ble National Company Law Appellate Tribunal ("NCLAT") stated that once the application has been admitted for one of the two proceedings for the same set of debt and default thereafter, another application will not be entertained.

In *Edelweiss Asset Reconstruction Company Ltd. v. Sachet Infrastructure Ltd.*,⁶ NCLAT permitted simultaneous initiation of Corporate Insolvency Resolution Process ("CIRP") against Principal Borrower and its Corporate Guarantors.

In *State Bank of India v. Athena Energy*⁷, NCLAT observed that "If two applications can be filed, for the same amount against Principal Borrower and Guarantor keeping in view the above provisions, the Applications can also be maintained." NCLAT further held that it is clear "in the matter of guarantee, CIRP can proceed against the Principal Borrower as well as Guarantor."

The legality of selective enactment of provisions in Part III of the Code relating to insolvency resolution and bankruptcy process for Personal Guarantors to Corporate Debtor was upheld by the Apex Court in *Lalit Kumar Jain vs Union of India & Ors.*⁸ The Court also held that personal guarantors are "a separate species of individuals, for whom the Adjudicating Authority was common with the corporate debtor to whom they had stood guarantee" This finally cleared the long-pending uncertainties in the subject domain.

With respect to jurisdiction, in *PNB Housing Finance Ltd. v. Mr. Mohit Arora and Ors.*⁹, the NCLT, Delhi Bench held that the moment an insolvency/liquidation application in relation to the corporate debtor is pending before the NCLT, the provisions of Section 60 get attracted and the jurisdiction to entertain insolvency/liquidation process against the personal guarantor would also lie with the NCLT and not with the DRT.

Recently, in *State Bank of India vs Mahendra Kumar*

*Jajodia*¹⁰, NCLAT held that "The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was **fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor is pending before the NCLT.**"

III. Brief Snapshot of Provisions in the Code

The provisions in relation to insolvency resolution and bankruptcy of individuals and partnership firms are contained in Part III of the Code. To enable phased implementation of the resolution framework, individuals are classified into three categories, (i) personal guarantors ("PGs") to corporate debtors ("CDs"), (ii) partnership firms and proprietorship firms, and (iii) other individuals.

Vide Notification dated 15th November, 2019, Government has notified the commencement of provisions relating to insolvency and bankruptcy processes for PGs of CDs, with effect from 1st December, 2019. Further, it had notified the following:

- Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("IIRP Rules")
- Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("Bankruptcy Rules").

Further, the Insolvency and Bankruptcy Board of India ("IBBI") has notified Regulations being:

- Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to the Corporate Debtors) Regulations, 2019 ("IIRP Regulations"); and
- Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to the Corporate Debtors) Regulations, 2019 ("Bankruptcy Regulations").

The notified provisions of the Code read with aforesaid the Rules and Regulations provide the complete framework with regards to the insolvency resolution and

⁵ 2019 SCC OnLine NCLAT 81

⁶ 2019 SCC OnLine NCLAT 592

⁷ 2020 SCC OnLine NCLAT 774

⁸ 2021 SCC OnLine SC 396

⁹ Company Petition No. (IB)-395(ND)2021

¹⁰ Company Appeal (AT) Insolvency No. 60 of 2022 dated 27.01.2022

bankruptcy process for PGs to CDs.

Some Definitions:

(a) Adjudicating Authority:

- For insolvency resolution and bankruptcy process of individuals, the Debt Recovery Tribunal (“DRT”) has been designated as the Adjudicating Authority (“AA”) (S. 179 (1)) and Debt Recovery Appellate Tribunal (“DRAT”) is the Appellate Authority (S. 181 (1)).
- Where an application for CIRP or liquidation proceeding of a CD is pending before an NCLT, the application relating to insolvency resolution or bankruptcy process of a PG shall be filed before the same NCLT. (S. 60(2))
- The Code provides for the transfer of any insolvency resolution or bankruptcy process of a PG of the CD pending in any court or tribunal to the relevant NCLT where the application for insolvency or liquidation of the CD is being processed (S. 60(3)).

(b) Bankruptcy Debt (S. 79(5)): is any debt owed by the PG as on the bankruptcy commencement date (“BCD”). It also includes the debt for which he may become liable after BCD but before his discharge by reason of any transaction entered before the BCD.

(c) Bankruptcy Commencement Date (S. 79(6)): The date on which a bankruptcy order is passed by the AA.

(d) Excluded Debt (S. 79(15)): Excluded debts include court or tribunal fines, child support payments, student loans, money owed under a criminal charge. An application cannot be made for these kinds of debts.

(e) Excluded Assets (S. 79(14)): The Code specifies the following assets to be excluded from the bankruptcy estate to provide the necessity for the livelihood of the PG after his discharge from the bankruptcy:

- unencumbered tools, books, vehicles and other equipment as are necessary to the debtor or bankrupt for his personal use or for the purpose of his employment, business or vocation;
- unencumbered furniture, household equipment and

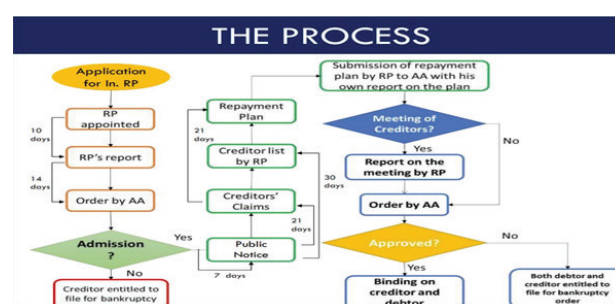
provisions as are necessary for satisfying the basic domestic needs of the bankrupt and his immediate family;

- any unencumbered personal ornaments of up to one lakh rupees, of the debtor or his immediate family which cannot be parted with, in accordance with religious usage;
- any unencumbered life insurance policy or pension plan taken in the name of the debtor or his immediate family; and
- an unencumbered single dwelling unit owned by the debtor of value ten lakh rupees in case the dwelling unit is in a rural area and twenty lakh rupees in case the dwelling unit is in an urban area.

(f) Personal Guarantor (Rule 3 (e) of IIRP Rules): A PG is a debtor who is a PG to a CD and in respect of whom the guarantee has been invoked by the creditor and remains unpaid in full or part.

(g) Qualifying debt (S. 79(19)) The qualifying debt means the amount due, which includes interest or any other sum due in respect of the amounts owed under any contract, by the debtor for a liquidated sum either immediately or at a certain future time. However, this shall not include any excluded debt and debt to the extent it is secured.

Process Flow of Individual Insolvency Resolution Process is as under:



The individual insolvency resolution framework for PGs can be segregated and explained in the following stage-wise categorization¹¹:

A. Filing of Application:

- An application for the insolvency resolution process may be filed before the AA on default of INR 1000.

¹¹ <https://www.ibbi.gov.in/uploads/publication/89416f3c54d87f83a-328be864e852671.pdf>

- A PG may file an application himself or through a Resolution Professional (“RP”) (in Form A of IIRP Rules) in respect of default of debt, other than excluded debt. (S.94)
- Where a creditor wishes to file an application, it shall issue a notice (in Form B of IIRP Rules) calling upon the PG to make the payment. Only if the PG fails to make the payment within 14 days of receipt of such notice, the creditor may initiate an insolvency proceeding against him.
- A creditor may file an application either himself or jointly with other creditors or through an RP (in Form C of the IIRP Rules), in respect of default of debt, other than excluded debt. (S.95)
- The application shall be accompanied by a fee of Rs.2000. (Rule 6(1) or 7(2) of IIRP Rules)

B. Interim Moratorium (S.96):

- Interim moratorium commences on the date of filing of an application for insolvency resolution, in relation to all the debts and ceases to have an effect on the date of admission of the application.
- During this period, every legal action or proceeding pending in respect of any debt owed by the PG is deemed to have been stayed and the creditors of the PG shall not initiate any legal action or proceedings in respect of any such debt.

C. Appointment of Resolution Professional (S. 97):

- If the application is filed through an RP, the AA checks the database of IBBI for any disciplinary proceedings against the RP. If there are no disciplinary proceedings, the AA appoints the RP.
- If the application is filed by the applicant himself, or the AA finds disciplinary proceedings against the RP proposed by the applicant, the AA appoints an RP from the panel of IPs shared by the IBBI.
- Both PG and creditor can apply to AA for the replacement of RP. AA may refer to the panel of IPs shared by IBBI and appoint a new RP accordingly. (S.98)

D. Report by the Resolution Professional (S.99):

On his appointment, the RP examines the application with respect to the eligibility of the PG or creditor, as the

case may be, for initiation of the insolvency resolution process, qualifying debt and other requirements as specified in section 94 or 95 of the Code and **submits a report recommending acceptance or rejection of the application, within ten days of his appointment.**

E. Admission or Rejection of Application (S.100):

The AA passes an order either admitting or rejecting the application, within fourteen days of the receipt of the report of the RP.

Where the AA rejects the application on the basis of the report submitted by the RP or that the application was made with the intention to defraud the creditors or the RP, **the creditors shall be entitled to file an application for bankruptcy.**

F. Moratorium (S.101)

- On admission of the application, a moratorium commences **in relation to all the debts.**
- During this period, **every legal action or proceeding pending in respect of any debt owed by the PG is deemed to have been stayed.** Further, **the creditors of the PG are barred from initiating any legal action or proceedings** in respect of any such debt and the PG is barred from transferring, alienating, encumbering, or disposing of any of his assets or legal rights or beneficial interests therein.
- The moratorium lasts till the date the AA passes an order approving or rejecting the repayment plan, and in any case before the expiry of 180 days from the date of admission.

G. Issuance of Public Notice and Claim of Creditors (S.102):

The AA issues a public notice, within seven days of the date of admission of the application, inviting claims from the creditors of the PG, within twenty-one days of the notice.

H. Registration of Claims by the Creditors (S.103):

- The creditors register their claims with the RP along with proof, on or before the last date mentioned in the public notice. (Reg. 7(1) of IIRP Regulations)
- The creditors may send details by way of

electronic communication or through courier, speed post or registered letter. The cost relating to the submission of the claim, including proof, shall be borne by the creditors. (Reg. 7(2) of IIRP Regulation)

I. Preparation of List of Creditors (S.104):

- The RP verifies each claim as soon as it is received and prepares a list of creditors, on the basis of the information provided in the application filed by the debtor/creditor, and the claims received, within thirty days from the date of public notice. (Reg. 7(5) of IIRP Regulations)
- The list of creditors contains the names of creditors, amount claimed, amount admitted and security interest, if any, in respect of such claims. (Reg. 9(1) of IIRP Regulations)

J. Repayment Plan (S.105):

- The PG prepares a Repayment Plan, in consultation with the RP, containing a proposal to the creditors for restructuring of his debts or affairs and its implementation schedule as well as the source of funds. (Reg. 17 of IIRP Regulations)
- The plan may provide for transfer or sale of all or part of the assets of the PG along with the mode and manner of such sale, satisfaction or modification of any security interest, reduction in the amount payable to creditors and modification as to the terms of repayment, etc.
- The plan provides for a minimum budget required for the PG to cover his reasonable expenses and also of his immediate family members to the extent they are dependent on him, provided that at the very least, 10 percent of the realizable income of the PG is used for repayment of his debts.
- The RP submits the repayment plan along with his report on such a plan to the AA within twenty-one days from the last date of submission of claims. (S.106)
- The report may provide for the necessity of summoning a meeting of creditors to consider repayment plan, and if necessary, the date, place, and time of the meeting.

K. Meeting of Creditors:

It is worthwhile to note that there is no concept of Committee of Creditors unlike CIRP of Corporate Person.

- Where a meeting is necessary, as per the report of the RP, he summons the first meeting of the creditors to approve the repayment plan by issuing a notice calling the meeting of creditors at least fourteen days before the date fixed for such meeting (S.107 (1)). He shall convene any other meeting of creditors, by giving such notice to the other participants as decided by the creditors, which shall not less than forty-eight hours. Further, the RP shall convene a meeting of creditors on a request by creditors having thirty-three percent of the voting share of creditors. (Reg. 11(4) of the IIRP Regulations)
- In the meeting of creditors, creditors may decide to approve, modify or reject the repayment plan. (S.108)
- The voting share of each creditor is in proportion to the debt owed to such creditor.
- The repayment plan shall be approved by a majority of more than three-fourths in value of the creditors present in person or by proxy and voting on the resolution in the meeting. (S.111)
- Any decision taken by the creditors requires approval of more than 50 percent of the voting share of the creditors who vote unless otherwise specified in the Code. (Reg. 11(6) of IIRP Regulations)

L. Approval or Rejection of Repayment Plan:

- The RP prepares a report of the meeting of creditors on the repayment plan. (S.112(1))
- He provides a copy of the report of the meeting of the creditors to the PG, creditors, and the AA. (S.113)
- The AA, by an order, approves or rejects the repayment plan based on the report submitted by the RP.
- The order of the AA may provide directions for the implementation of the repayment plan.

- Where the AA is of the opinion that the repayment plan requires modification, it may **direct the RP to re-convene a meeting of the creditors for reconsidering** the same. (S.114)

M. Effect of Approval/Non-Approval of the Repayment Plan:

- The repayment plan after its approval shall be binding on the creditors mentioned in the plan and the PG. (S.115 (1))
- Where the AA rejects the repayment plan, the debtor and the creditors shall be entitled to file an application for bankruptcy. (S.115 (2))
- The RP supervises its implementation of the repayment plan. (S.116 (1))
- He may approach AA for any directions, if necessary, in relation to any matter arising under the plan. (S.116 (2))

N. Completion of Repayment Plan (S.117): Within 14 days of completion of the repayment plan, the RP shall inform the AA and the persons who are bound by the repayment plan that it has been fully implemented. The RP shall also share the report **summarising all receipts and payments** made in pursuance of the plan.

O. Premature End to the Repayment Plan (S.118):

- The repayment plan shall be deemed to have come to an end prematurely ***if it has not been fully implemented*** in respect of all persons bound by it, within the period mentioned in it. (S.118 (1))
- In such cases, the RP is required to submit a report stating the receipts and repayments made, reasons for premature end and details of creditors whose claims have not been fully satisfied. (S.118 (2))
- Based on such a report, the AA shall pass an order that the repayment plan has not been completely implemented. (S.118 (3))
- The debtor or the creditor, whose claims under repayment plan have not been fully satisfied, shall be entitled to ***apply for bankruptcy***. (S.118 (4))

P. Discharge Order (S.119):

- The RP shall **apply to the AA for a discharge order** in relation to the debts mentioned in

the repayment plan and the AA may pass such discharge order.

- The repayment plan may provide for an **early discharge or discharge on complete implementation** of the repayment plan. (S.119(2))
- The discharge order shall be forwarded to the IBBI, for the purpose of recording entries in the register.

Failure of resolution or failure to implement repayment plan may lead to triggering of bankruptcy process of the Personal Guarantor.

IV. Conclusion

The Code has evolved and come out a long way since its introduction and the insolvency resolution and bankruptcy process for PGs is another major achievement in our resolution framework.

Recently, many cases of PG insolvency resolution process have been admitted by AA and the ground rules for conducting the resolution process are achieving clarity. With time, practical complexities may arise which will require suitable policy intervention from the Government to ensure an effective resolution framework.

The framework is yet to incorporate provisions to face practical complexities such as personal guarantors ring-fencing their asset base through the creation of Trust, cross border insolvency intricacies on account of assets of PG being outside our country, preferential and undervalued transactions identification and so on. Further, in line with the recommendations of IMF and World Bank, it might make sense to allow discharge of promoter debt or debt of PG to CD which is MSMEs to support the small businesses

An effective individual insolvency resolution framework is an integral pre-requisite of an effective insolvency resolution regime as it seeks to build on the recovery base for the stakeholders, which ultimately results in achieving of value maximization object of the Code.

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LATEST MAJOR AMENDMENTS TO CGST ACT AS AMENDED BY FINANCE BILL, 2022

The Finance Bill, 2022 has made several changes to the GST laws based upon the recommendations made by the GST Council. The changes broadly include the amendments made to the provisions regarding filing of the returns, availing of the input tax credit, refund claims, registration of suppliers, payment of tax and levy of interest.

The article highlights only the major changes proposed by the Finance Bill, 2022 with respect to the amendments carried out in the CGST Act, 2017.

1. The amendments introduced to the provisions relating to Input Tax Credit

1.1 Introduction of a new provision to avail Input Tax Credit (ITC).

The amendment has proposed to introduce a new provision i.e. section 16(2)(ba) of CGST Act, 2017 which provides that “the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted”. The newly inserted provision must be read with section 38 of the CGST Act, 2017 which is substituted with a new provision with respect to the communication of details of inward supplies and ITC.

The substituted section 38 of the CGST Act, 2017 reads as follows:

“Section 38. Communication of details of inward supplies and input tax credit

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of the input tax credit shall be made available electronically to the recipients of such supplies in such form and manner,

within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

- (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and*
- (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—*
 - (i) by any registered person within such period of taking registration as may be prescribed; or (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or (vi) by such other class of persons as may be prescribed”*

Comment : The proposed insertion of section 16(2)(ba) provides that the communication in respect of supply with a registered person under section 38 is not restricted. However, the said amendment to section 38 of

CGST Act, 2017 is again restricting the Input Tax Credit on account of the default made by the supplier. In a catena of decisions, the courts have held that the Input Tax credit cannot be restricted to the bona fide dealer if the supplier has defaulted in the payment of tax.

Extension of Time Limit to avail Input Tax Credit.

The time limit to avail Input Tax Credit under section 16(4) of the Central Goods & Service Tax Act, 2017 has been extended to the thirtieth day of November following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

In Focus

Existing Law	Proposed Amendment
Section 16(4) "A registered person shall not be entitled to take the input tax credit in respect of any invoice or debit note for the supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."	"A registered person shall not be entitled to take the input tax credit in respect of any invoice or debit note for the supply of goods or services or both after the thirtieth day of November following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier."

Comment : The proposed change is a welcome move as the registered suppliers can now avail the benefit of claiming the Input Tax Credit of the previous Financial Year till the 30th of November following the end of the financial year. i.e. now supplier can avail ITC by filing any return pertaining to the previous tax period in respect of GSTR-3B within 30th of November instead of the earlier due date which was the due date of furnishing the return u/s 39 for the month of September.

1.2 The provisional claim of ITC is proposed to be abolished.

It is important to note that section 41 of CGST Act, 2017 which earlier provided for the eligibility to claim Input Tax Credit on a "provisional" basis is proposed to be abolished and is substituted with an amended provision:

Existing Law	Proposed Amendment
Section 41- Claim of input tax credit and provisional acceptance thereof (1) Every registered person shall subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, his return and such amount shall be credited on a provisional basis to his electronic credit ledger. (2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.	"Section 41- Availment of Input Tax Credit (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger. (2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed: Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed"

Comment : The proposed amendment replaces the Input Tax Credit claims from 'provisional' claims to actual claims. Further, the proposed amendment provides for reversal of such ITC availed along with interest if the outward tax liability has not been discharged and such ITC can be re-claimed when such outward tax liability is discharged by the supplier.

2. The amendments introduced to the provisions relating to GST Returns

2.1 Ceasing with the two-way communication process in filing return

The Budget proposes drastic changes to section 37 of the Act which provided for the two way communication process in filing and is now introducing conditions and restrictions for furnishing the details of outward supply and for communication of details of such outward supplies to the concerned recipients, provide for an extended time up to the thirtieth day of the November of the following financial year for rectification of errors in the GSTR-3B return and provide for the furnishing of details of outward supplies of a tax period u/s 37(1) for furnishing GSTR-3B return. The changes to the two-communication system have led to the omission of sections 42, 43 and 43A of the CGST Act, 2017. The amended provision reads as follows:

Section 37- Furnishing details of outward supplies

- (1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically **subject to such conditions and restrictions** and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall, **subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies:**

- (2) Omitted vide Finance Bill, 2022

- (3) Any registered person, who has furnished the details under sub-section (1) for any tax period shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

*Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after **the thirtieth day of November***

following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier:

- (4) **A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period if the details of outward supplies for any of the previous tax periods has not been furnished by him:**

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.

Explanation - For the purposes of this Chapter, the expression “details of outward supplies” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period.

Comment : The amendment introduces a stricter policy measure for the registered suppliers to file the returns on time by **disallowing a supplier from furnishing the details of outward supplies for a tax period if the returns for the previous tax period is not furnished** and it has also scrapped the two-way communication system and further allowed the suppliers to carry out necessary rectifications/corrections to the returns by 30th November as opposed to the earlier deadline of return for the month of September.

2.2 Amendment to GSTR-3B filing- First proviso to section 39 (7)

The amendments introduced with respect to the filing of GSTR-3B u/s 39 of the CGST Act, 2017 includes filing of the returns by the end of the 13th day after the calendar month as opposed to the 20th day deadline in the case of non-residents and also provide an option for the taxpayers opting for quarterly filing to pay an amount equal to the tax due taking into account the inward & outward supplies, or both, input tax credit availed, tax payable and such other particulars during a month.

Existing Law	Proposed Amendment
<p><i>Proviso to Section 39(7)- Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed</i></p>	<p><i>Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed, --</i></p> <p><i>(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or</i></p> <p><i>(b) in lieu of the <u>amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.</u></i></p>

Comment : The newly inserted proviso states that the supplier after taking into account the inward & outward supplies shall pay the tax or furnish the return by taking into account the inward and outward supplies determined by the appropriate concerned authority in such manner as notified by the Government.

2.3 Extension of Time Limit for filing GSTR-8

The sub-section (6) of section 52 of the CGST Act, 2017 is amended to extend the due date for rectification/ amendments of errors from earlier prescribed due date of September to 30th of November of the following financial year furnished by the Electronic Commerce Operator with respect to the Tax Collected at Source and also proposes to levy late fee u/s 47 of the CGST Act, 2017 for the delay in filing **GSTR-8**.

3. GST Refund

The amendment to section 54 of the CGST Act, 2017 proposes to provide a refund claim of any balance in the electronic cash ledger in such form which shall be prescribed which earlier could be claimed by filing GSTR 3B return u/s 39.

The time limit to claim refund u/s 54(2) (Claiming refund for specialised agency of the United Nations Organisation) has been increased from **6 months to 2 years** from the last day of the quarter in which the supply was received.

Further, there has been clarity with respect to the claim of

refund in respect of supplies made to Special Economic Zones (SEZ) by way of insertion of new sub-clause (ba) in clause (2) of Explanation thereto which reads as follows:

“in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies”

4. Cancellation of GST Registration

The amendment to section 29 of the CGST Act, 2017 proposes to cancel the registration of Composition taxpayer who has not furnished the return u/s 10 of the Act for a financial year beyond three months from the due date of furnishing the said return as opposed to the earlier law which cancelled registration for non-filing of return for 3 consecutive tax period. Further, in the case of a registered person other than those paying tax u/s 10, the earlier provision provided for cancellation of registration for non-filing of return for a continuous period of 6 months which is now substituted with the words “such continuous tax period as may be prescribed”.

5. Extension of time limit to issue Credit & Debit Note

The time limit u/s 34(2) of the CGST Act, 2017 has been extended from earliest of September return or annual return to earliest of 30th of November or Annual return.

6. Payment of Tax

The amendment to section 49 of the CGST Act, 2017 proposes to impose restrictions for utilizing the amount available in the electronic credit ledger, allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person and provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger.

7 Levy of Interest

The amendment to section 50(3) of the CGST Act, 2017 proposes to levy interest at the rate of 24% per annum with retrospective effect from 01.07.2017 for the input tax credit which has been wrongly availed and utilized and also provides for prescribing the manner in which the interest shall be calculated.

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TAXABILITY OF VIRTUAL DIGITAL ASSET (VDA)

Background

In the recent budget, the Finance Minister has introduced a new set of provisions that deals with the taxation of VDAs. These provisions include a new definition, taxability on sale, tax deduction at source and gifts of VDAs.

So, what are these VDAs? The Finance Bill, 2022 has proposed an exhaustive definition which covers all kinds of information, code, number or token which has digital representation as VDAs. Hence, this includes cryptocurrencies like Bitcoins, Ethereum etc., non-fungible tokens (NFTs) or any other virtual assets. Out of these, cryptocurrencies have gained tremendous popularity and has attracted many Indian investors as well.

There is also a lot of anomaly with respect to the legality of investments in cryptocurrencies in India. In 2018, RBI issued a circular banning the dealings in virtual currencies (VC) in view of the risks associated with the same. The circular stated that entities regulated by RBI like banks, NBFCs, payment gateways etc. should not deal with VCs or facilitate the trading of such VCs. This circular was challenged by the Internet and Mobile Association of India¹ (an industry body that represents the online and digital services industry) before Supreme Court. After considering due representations from both the parties, the Apex Court held that the circular is ultra vires of the constitution which provides a fundamental right to practice any profession or to carry on any occupation, trade or business². The Court concluded that the circular was liable to be set aside thereby permitting the exchanges to facilitate the trading in VCs. The court further held that persons who are engaged in buying and selling of VCs just as a hobby could not take shelter under the above article of the constitution since it covers only business/profession. Hence, one cannot conclude that the investment in VCs is completely legal in India.

¹ Internet and Mobile Association of India vs. Reserve Bank of India, WP(C)No. 528/2018, order dated 4th March, 2020 (SC)

² Article 19(1)(g) of the Constitution

With the proposal to introduce the above provisions in the Income Tax Act, can one say that the government has made these investments legal?

The Income Tax Act is not concerned with the legality of a trade or business. The Supreme Court in one of its decisions³ held that '...If the business is illegal, neither the profits earned nor the losses incurred would be enforceable in law. But that does not take the profits out of the taxing statute.' Hence, it is immaterial whether the business or the profession is legal or not. Even in the case of illegal business, the taxes are leviable.

Further, there was a lot of ambiguity with respect to the taxation of crypto income. It was unclear whether to treat the same as business income, capital gains or income from other sources. Through the proposed amendment, the government has tried to provide some clarity by taxing these digital assets specifically. However, there are several aspects where further clarity is required.

Budget Proposals

Taxation

A new Section 115BBH has been proposed which deals with the taxation of income arising from the transfer of a VDA. Accordingly, such income would be taxable at a flat rate of 30%. Basic exemption as provided in the tax slabs is not applicable to such gains. In order to arrive at the gain, only the cost of acquisition would be deductible. Other expenses such as commission, fees, business taxes (if any) etc. would not be allowed as deduction.

Set-off of losses

The losses arising from the sale of VDA cannot be offset with any other income. Further, any other losses would not be allowed to set off with gains arising from the sale of VDAs. Apart from this, VDA losses are not allowed to be carried forward.

It is not clear, whether the loss arising from the sale of one VDA can be offset with the gain from the sale of another

³ CIT vs. S.C. Kothari [1972] 4 SCC 402

VDA within the same financial year. The proposed section or the memorandum has not provided any clarity on this. So, it would be good to have some clarity on this before the Bill is passed.

Tax Deduction at Source (TDS)

In order to have the transparency of the transactions and accountability from the taxpayer, the Bill proposes to introduce TDS @ 1% on the sale proceeds of VDA. Any person responsible for paying the consideration would be liable to withhold the taxes. Generally, these provisions will not be applicable in cases where the aggregate value of sale consideration does not exceed Rs.10,000 during the financial year.

Gifting of VDA

It is proposed to include VDA under the definition of 'property' for the purposes of Section 56(2)(x). Therefore, when VDA is received by a person as gift, the same would be taxable in the hands of recipient provided the value of such asset is more than Rs.50,000. However, if the same is received from a relative it will not be taxable.

The definition of the term 'relative', for this purpose, in the case of an individual, is -

- (i) Spouse of the individual
- (ii) Brother or sister of the individual
- (iii) Brother or sister of the spouse of the individual
- (iv) Brother or sister of either of the parents of the individual
- (v) Any lineal ascendant or descendant of the individual
- (vi) Any lineal ascendant or descendant of the spouse of the individual
- (vii) Spouse of the person referred to in items (ii) to (vi) above

Therefore, any VDA received from a person other than a relative would be taxable in the hands of the recipient.

Challenges

Though a separate definition has been proposed to be introduced and the tax implications have been defined, budget 2022 has not addressed many other facets of VCs. Some of the areas where clarity is required are as follows:

Mining

When it comes to VCs, mining is another important source of revenue. Though the budget proposes taxability of income arising from the transfer of VDA, it does not

address the tax implications of income generated through mining.

Valuation of VDAs in the case of gifts

As discussed above, the gift of VDAs would be taxable under Section 56(2)(x) in the hands of the recipient if it is received from a person who is not a relative. However, there is no clarity on the valuation of VDA for this purpose. Clear valuation guidelines are to be provided in order to arrive at the taxable income in case of such transactions.

Cost of acquisition in case of gifted or inherited VDAs

Under the existing provisions, Section 49 provides that the cost of acquisition of a capital asset in case of gifts or inheritance is the cost incurred by the previous owner to acquire such property. In the case of VDAs, no such clarification has been provided.

TDS in case of transfer of VDA from one wallet to another wallet

Another scenario would be a case where a person has transferred the VC from one wallet to another wallet of his own. Whether this amounts to transfer? There is no clarity at this point. However, the view is that such transfer should not attract TDS provisions since the transferor has not received any consideration.

Implications on non-residents and NRIs

Non-residents are taxable on India source income which includes income received in India and income accrued in India. Income arising from the transfer of a capital asset situated in India is deemed to accrue in India. In the case of VDAs it may not be feasible to define the location of the asset precisely given the virtual exchange environment. A suitable guideline on the same would be a welcome move.

In a nutshell, an attempt has been made to provide some clarity on the taxability of income arising from the transfer of VDAs. However, there are several other aspects where more clarity is required when it comes to the tax implications of VDAs. It would be good to consider these challenges and suitable guidelines are to be issued to remove the anomalies and controversies.

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CA. Vinayak Pai V

FINANCIAL REPORTING AND ASSURANCE

1. UPDATES¹- Monthly Roundup

AS Ind AS	<ul style="list-style-type: none"> ICAI Exposure Drafts of Accounting Standards (AS): <ul style="list-style-type: none"> AS 103, Accounting for Amalgamations. AS 110, Consolidated and Separate Financial Statements. AS 111, Financial Reporting of Interest in Joint Ventures. AS 28, Accounting for Associates and Jointly Controlled Entities. ICAI Guidance Notes (GN): <ul style="list-style-type: none"> GN on Division I – Non-Ind AS Schedule III to the Companies Act, 2013. GN on Division II – Ind AS Schedule III to the Companies Act, 2013. GN on Division III to Schedule III of the Companies Act, 2013 for NBFC that is required to comply with Ind AS.
Assurance	<ul style="list-style-type: none"> ICAI Implementation Guides: <ul style="list-style-type: none"> Implementation Guide to Standard on Auditing (SA) 560, Subsequent Events. Implementation Guide to Standard on Auditing (SA) 210, Agreeing the Terms of Audit Engagements. ICAI Announcement <ul style="list-style-type: none"> Firm Registration Number (FRN) will be a compulsory field for generating UDIN from 1st February, 2022. This mandate would enable firms to prospectively consolidate the total UDINs generated by their partners on the firms' behalf. IAASB's Amendments <ul style="list-style-type: none"> Conforming and Consequential Amendments to the IAASBs Other Standards as a result of the <i>New and Revised Quality Management Standards</i> [Issued 19th January, 2022.] - The amendments address inconsistencies between the Quality Management Standards and the full suite of IAASB standards to ensure that all the standards operate in conjunction with each other without conflict. IESBA Staff Q&A <ul style="list-style-type: none"> Revised Fee-related Provisions of the Code – Guidance for Professional Accountants in Public Practice.
RBI	<ul style="list-style-type: none"> Notifications: <ul style="list-style-type: none"> Master Circular – Bank Finance to Non-Banking Financial Companies. Basel III Framework on Liquidity Standards - Liquidity Coverage Ratio (LCR), Liquidity Risk Monitoring Tools and LCR Disclosure Standards and Net Stable Funding ratio - Small Business Customers. Registration of Factors (Reserve Bank) Regulations, 2022. Registration of Assignment of Receivables (Reserve Bank) Regulations, 2022.

¹ For January, 2022

2. CASE STUDY - Accounting for Dismantling Costs/ Asset Retirement Obligations under Ind AS

This section discusses an illustrative example to provide a high-level overview of the accounting for dismantling costs/asset retirement obligations (AROs) under Indian Accounting Standards.

AROs are obligations that an entity incurs either when an asset is acquired- such as restoring the site on which an item of Property, plant and equipment (PPE) is located at the end of its useful life, or as a consequence of using it during a period (other than producing inventories). Such obligations have resulting cash outflows; typically, towards the fag end of the asset life cycle; nevertheless, accounting standards require the associated cost to be recognized as an element of the related asset at its capitalization date. The ARO cost layer added to the capitalized cost of PPE is its present value. The accounting consequence of the capitalization is a resultant additional depreciation charge on account of the added ARO cost layer. The present value of the obligation requires the unwinding of the discount to take it to its estimated nominal value. This process results in a periodic charge to the Statement of Profit and Loss as finance costs.

The related Indian Accounting Standards that come into play are:

- 1) Ind AS 16, Property, plant and equipment, and
- 2) Ind AS 37, Provisions, Contingent Liabilities and Contingent Assets.

Additionally, Appendix A to Ind AS 16, Changes in Existing Decommissioning, Restoration and Similar Liabilities, applies. Our illustrative example does not cover this.

Illustrative Example

Facts of the case: The cost of an item of PPE is Rs. 50 Cr, which has an estimated useful life of 10 years. The initial estimate of dismantling costs obligation (associated with the PPE) and to be incurred at the end of the 10th year is Rs. 5 Cr. The appropriate discount rate is assumed at 6% for the illustration. The facts are summarized in the table hereinbelow.

Cost of Asset (Rs.cr)	50.0
Useful life (Yrs)	10
Initial Estimate of ARO (Rs.cr)	5.0
Appropriate Discount rate	6.0%

Next, the relevant applicable provisions of Ind AS are

extracted herein below.

Ind AS 16, para16:

‘Elements of Cost

The cost of an item of property, plant and equipment comprises:

a)...

b)...

C) the initial estimate of the costs of dismantling and removing the item and restoring the site on which it is located, the obligation for which an entity incurs either when the item is acquired or as a consequence of having used the item during a particular period for purposes other than to produce inventories during that period.’

Ind AS 37:

Para 10: ‘An obligating event is an event that creates a legal or constructive obligation that results in an entity having no realistic alternative to settling that obligation.’

Para 36: ‘The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the reporting period.’

Paras 45 to 47:

‘Where the effect of the time value of money is material, the amount of a provision shall be the present value of the expenditures expected to be required to settle the obligation.

Because of the time value of money, provisions relating to cash outflows that arise soon after the reporting period are more onerous than those where cash outflows of the same amount arise later. Provisions are therefore discounted, where the effect is material.

The discount rate (or rates) shall be a pre-tax rate (or rates) that reflect(s) current market assessments of the time value of money and the risks specific to the liability. The discount rate(s) shall not reflect risks for which future cash flow estimates have been adjusted.’

Appendix A to Ind AS 16 provides accounting guidance related to changes in the measurement of an existing decommissioning/ restoration liability that arise due to changes in the estimated timing or outflow of resources required to settle the obligation or a change in the discount rate. This accounting guidance covers PPE measured using both the cost and the revaluation model.

Coming back to the illustrative example, the initial

estimate of the ARO cost capitalized works out to Rs. 2.79 Cr (Rs. 5 Cr/ (1.06)¹⁰). Therefore, the PPE stands capitalized at Rs. 52.79 Cr (50+2.79). Depreciation is calculated by allocating the capitalized cost over the estimated useful life resulting in a depreciation charge of Rs. 5.28 Cr per annum (52.79/10 years). The Day 1 ARO provision of Rs. 2.79 Cr gets accreted by Rs. 0.17 Cr to Rs. 2.96 Cr at the end of the first year due to unwinding of discount at the end of each reporting period (in this example, Rs. 2.79 Cr opening balance multiplied by 6% = Rs. 0.17 Cr).

The flow-through accounting and relevant extracts of the balance sheet and the Statement of Profit and Loss for the 10-year period are provided below.

52.79 (5.28)	52.79 (10.56)	52.79 (15.84)	52.79 (21.12)	52.79 (26.40)	52.79 (31.68)	52.79 (36.95)	52.79 (42.23)
47.51	42.23	36.95	31.68	26.40	21.12	15.84	10.56
2.79 0.17	2.96 0.18	3.14 0.19	3.33 0.20	3.52 0.21	3.74 0.22	3.96 0.24	4.20 0.25
2.96	3.14	3.33	3.52	3.74	3.96	4.20	4.45
2.96	3.14	3.33	3.52	3.74	3.96	4.20	4.45
5.28 0.17	5.28 0.18	5.28 0.19	5.28 0.20	5.28 0.21	5.28 0.22	5.28 0.24	5.28 0.25

As regards disclosures, Ind AS 37 requires an entity to disclose the following for each class of provision, namely: the carrying amount at the beginning and end of the period; additional provisions made in the period, including increases to existing provisions; amounts used during the period; unused amounts reversed during the period; and the increase during the period in the discounted amount arising from the passage of time and the effect of any change in the discount rate.

3. FINANCIAL STATEMENT EXTRACTS – Revenue Recognition Policy

Financial statement extracts from IFRS financial statements of an airline company whose revenue arises from ticket sales, package holidays, passenger aircraft operations, charter aircraft operations and non-ticket retail activities:

- Revenue from ticket sales for scheduled passenger flights is recognised at the date of departure. Charter aircraft income is recognised in the period in which the service is provided. A proportion of flight delay compensation payments are offset against revenue up to the full value of the ticket price. Non-ticket revenues such as hold baggage

charges, extra legroom charges and in-flight retail sales are also recognised once the associated flight has departed, or holiday started. Revenue from package holidays is apportioned over the duration of the holiday.

- Commission earned from car hire bookings is recognised on departure, reflecting the point when services are performed. Commission earned from travel insurance is recognised at the time of booking, as the Group acts solely as an agent of the insurance company.
- Cancellation income, in respect of non-refundable amounts paid on bookings cancelled by the customer prior to the date of departure, is recognised at the time of cancellation.
- Cash amounts received from customers for whom revenue has not yet been recognised are recorded in the Statement of Financial Position as deferred revenue within current liabilities, or within non-current liabilities if the Group's services are expected to be performed more than 12 months from the reporting date.

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Solution to Sudoku -17 December 2021

2	3	9	1	7	4	8	5	6
8	6	1	9	3	5	2	7	4
7	5	4	8	2	6	3	1	9
5	4	8	3	6	1	7	9	2
6	9	7	5	8	2	4	3	1
3	1	2	7	4	9	5	6	8
4	2	5	6	9	7	1	8	3
9	7	3	4	1	8	6	2	5
1	8	6	2	5	3	9	4	7



CA. Vinay Thyagaraj

APARTMENT OWNERS ASSOCIATION AND POST RERA PRACTICES

(PART - IX OF RERA SERIES)

Adequate housing is not merely a desired goal; it is a basic human right of all human beings. This has been affirmed by the Universal Declaration of Human Rights in 1948, which recognizes the right to adequate housing as an integral component of the human right to an adequate standard of living.

- o However, will it be a reality for everyone, whose responsibility is to provide housing for all? Is it Government? If so, how effective is delivering these responsibilities?
- o It is not only the housing, but it also comes with various factors of infrastructure development to make it habitable. Is it possible to achieve by the Government alone?
- o Hence the government thought to include and invite the private players to deliver the Housing, So the concept of Real Estate.
- o Globalisation, technology made humans flexible, mobile. Esp., migration of people for the purpose of employment made it mandatory to deliver more houses in urban areas/cities.
- o However, Land is limited and scarce as the city grows. To effectively use the limited land, the concept of community living gained importance, wherein common facilities, amenities be shared, maintained by the group of owners/residents in a housing project.
- o In legal, it is called a group housing project. The Group housing may be horizontal (Rowhouses) or Vertical (Apartment) development of a Real Estate Project. Owners in the group housing project have common ownership, common interest in entire project land and common areas, common assets in a project.
- o Community living has its own pros and cons. There are many communities which are large and like a

town itself. In order to maintain these larger areas in a community living, require an agency to monitor, maintain, supervise and service the communities.

- o In traditional living (independent houses) in a government-formed/developed layout, all the facilities or amenities are maintained by the local municipality or corporation. Viz., roads, parks, water supply, waste segregation, sewer lines, electricity, upkeep of roads, parks, maintenance of electricity, water lines, etc
- o However, in privately developed projects Eg., In an Apartment Project, Villa Projects, Row Housing projects, there would be common amenities, facilities, common areas, common equipment's, common assets for the use of the residents of the project, these shall be maintained by the respective project residents.
- o Generally, the promoter of the projects maintains these common assets, areas, facilities, amenities, etc till the completion of the entire development of the project and the sale of all units in the project. Once all units are disposed of, there exists no interest for the promoter to associate with the project/owners.
- o While the promoter of the project moves out and he shall enable the formation of the association of owners and handover the entire common areas, common assets apart from property documents, various approvals, NOC's, drawings, copies of the invoices of the assets, etc.,
- o The association is responsible for managing the day-to-day affairs of the residents, organizing events, managing facilities in the apartments and complexes, and safeguarding the rights of the owners or residents in a project.
- o If so, let us understand the prevailing legislation that enables the formation of the Association, govern,

regulate and the functioning of the Apartment owners Association.

- o Land-related laws are state subject, hence respective states have adopted statutes respectively. In the state of Karnataka, the following are the specific statutes that were notified way back in 1970's –

1. THE KARNATAKA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTION, SALE, MANAGEMENT AND TRANSFER) ACT, 1972.

- a. The Objective of this Act was – Separate law is being made to declare that flats or apartments in multi-storeyed buildings may, for all purposes, be heritable and transferable immovable property. Owners of such flats or apartments enjoy exclusive ownership of their flats or apartments while retaining an undivided interest in the common areas and facilities which are to be used and owned by all such owners jointly. An enterprising individual or group of individuals may either construct out of his or their own funds multi-storeyed buildings consisting of a number of self-contained flats or apartments and sell them to individuals on an ownership basis, or construct such buildings after collecting contributions from intending purchasers of such flats or apartments. In the interest of the intending purchasers who advance funds, it is necessary to regulate the construction, sale, management and transfer of flats or apartments by individuals or groups of individuals who construct such multi-storeyed buildings.
- b. Section 10 of this Act states that the Promoter to take steps for formation of a co-operative society or company as soon as a minimum number of persons required to form a cooperative society or a company has taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organization of persons who take the flats as a co-operative society, or as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company.

2. THE KARNATAKA APARTMENT OWNERSHIP ACT, 1972 –

- a. Consequent upon the shortage of lands in urban areas, the majority of the citizens of urban areas of the State cannot think in terms of owning houses on an individual basis. Though there is a tendency to construct multi-storeyed flats, apartments and the like on an ownership basis, intending persons cannot purchase flats, tenements, or apartments in multistoried buildings as they will not have a marketable title thereto and cannot obtain any loan by mortgaging such flats, tenements, etc. Consequently, tenements constructed by the Housing Board for example cannot be sold to the tenants who cannot raise any loan on the security of 2 such tenements with the result that an enormous amount of capital will be locked up, which can be utilized for new constructions to meet the increasing demands for housing. It is, therefore, considered expedient that each apartment should for all purposes constitute a heritable and transferable immovable property, and that suitable legislation should provide for all matters connected therewith. It is felt that such a measure will not only enable many a person to own his apartment but it will at the same time enable institutions like Housing Boards to utilize their locked up capital in the construction of new buildings. The following notes on causes explain the important provisions in the Bill.
 - i. Clause 2 - By this clause, the provisions of the Act are made applicable only to property, the sole owner or all of the owners of which submit the same to the provisions of the Act by duly executing a Declaration as provided in the Act.
 - ii. Clause 4 - Under this clause, each apartment together with its undivided interest in the common areas and facilities appurtenant to such apartment is constituted for all purposes a heritable and transferable immovable property.
 - iii. Clause 5 - By this clause, the owner of each apartment is given exclusive ownership and possession of his apartment and he is required to execute a Declaration that he submits his apartment to the provisions of the Act and a Deed of Apartment in relation to his apartment;
 - iv. Clause 6 - This clause specifies the common

areas and facilities to which each apartment owner shall be entitled, and prohibits an apartment owner from bringing any action for partition or division of any part of such common areas unless the property has been removed from the provisions of the Act. The clause further provides for carrying out the work of maintenance, repair, and replacement of the common areas and facilities as provided in the bye-laws. Clause

- v. Clause 7- This clause puts an obligation on each apartment owner to comply strictly with the bye-laws and with the administrative rules and regulations adopted pursuant thereto and with the covenants, conditions, and restrictions set forth in the Declaration or in the Deed to his apartment:
- vi. Clause 8 - This clause prohibits the apartment owner from doing any work which would jeopardize the soundness or safety of the property or reduce the values thereof, or from adding any material structure or excavating any additional basement or cellar without the unanimous consent of all the other apartment owners being first obtained.
- vii. Clause 9 - This clause indicates to what extent encumbrances against apartments and property can arise or be created.
- viii. Clause 10 - This clause provides for the sharing of the common expenses by the apartment owners.
- ix. Clause 11 - This clause mentions the particulars to be included in a Declaration.
- x. Clause 12 - This clause mentions the particulars to be included in a Deed of Apartment.
- xi. Clause 13 - This clause provides for the registration of Declarations, Deeds of Apartments and copies of floor plans.
- xii. Clause 14 - This clause provides for the removal of property from the provisions of the Act. Clause 15 - This clause provides that removal is no bar to subsequent resubmission of property to Act.
- xiii. Clause 16 - This clause provides for bye- laws and their contents.

- xiv. Clause 17 - This clause prohibits waiver of the use or enjoyment of any common areas and facilities by apartment owners to avoid liability to contribute towards the common expenses. 3
- xv. Clause 18 - This clause provides for a separate assessment of each apartment.
- xvi. Clause 19 - This clause constitutes all sums assessed by the Association of Apartment Owners in respect of any apartment but unpaid, a charge on such apartment.
- xvii. Clause 20 - This clause provides for insuring the property against loss or damage by fire and such other hazards in certain circumstances.
- xviii. Clause 22 - This clause provides for the disposition of property in certain circumstances.
- xix. Clause 24 - Under this clause, the Act is made binding on apartment owners, tenants of such owners, employees of owners and tenants or any other person who may in any manner use property or any part thereof submitted to the provisions of the Act.
- xx. Clause 25 - This clause confers rule - making power on the State Government.
- xxi. Clause 26- This clause provides that the Transfer of Property Act shall apply to every apartment as they apply to any immovable property and contracts to the contrary are over-ridden.

- 3. As such there is no competent agency to administer KOFA or KAOA in the state of Karnataka.

When the owners in a project for any reason cannot be registered under the above forms of entities, the housing projects also be managed by forming the following legal bodies -

- 1. Partnership firm under Indian Partnership Act, 1932
- 2. Limited Liability Partnership
- 3. Private Limited Company
- 4. Association of persons

Post RERA requirements and practices -

Section 11(4) the RERA Act 2016, states that the promoter of the project shall enable the formation of an association

or society or co-operative society, as the case may be, of the allottees, or a federation of the association of allottees in accordance with the applicable laws shall be formed within a period of three months of the majority of allottees having booked their apartment or building or plot, as the case may be, in the project.

- A. Formation of association of allottees is mandatory
- B. Such association of allottees shall be formed within 3 months of the majority of bookings in the project (i.e., 51%). Please note it is on booking and need not wait till registration of sale deeds to the allottees.
- C. Such association formation shall be in accordance with the applicable local laws.
- D. Act recognizes the concept of a federation of the association. This means multiple associations come together and form the federation to maintain the larger projects.

Promoter or allottees shall consider the following important aspects while deciding the form of association –

- a. Shall be separate legal entity
- b. Charter for the entity – Byelaws
- c. Registration of the association -simple, easy, recognised
- d. Involvement / Participation of all owners of the project
- e. Existence of regulator or mechanism to regulate the functioning of the association
- f. Enable the Management to maintain the Association
- g. Dispute resolution mechanism
- h. Accountability and responsibility of the management committees
- i. Income Tax, GST, etc optimization
- j. Equal rights, the equal obligation of the owners/ members.
- k. Large projects, having development in phase wise
- l. Individual association of phases and Federation/ Apex Association to maintain the larger projects.

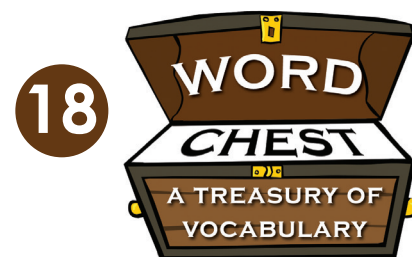
Presently there are no directions from the Government / RERA for type or form of association to be formed for the purpose of Maintenance of common areas, common assets in the group housing projects.

Based on the Survey by an independent agency the majority of the Associations were formed under KAOA 1972 Act (Bangalore city). This means the promoter has drafted and registered the Deed of Declaration and a Bye-Laws of the Association.

In our opinion based on experience over the years, we recommend the promoter to register the Deed of Declaration with Sub-registrar and comply with the provisions of KAOA Act 1972 and the bylaws in accordance with the Co-operative Society Act. Register the Association under the Co-operative Society Act.

We wish and hope the appropriate government or the government agency notify or issue guidance or directions or instructions to the promoter to follow the uniform practices to achieve the objectives of the Act and to protect all the stakeholders.

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Finance Tech Term of the Month:

Insurtech

What is this?

Insurtech refers to the use of technology innovations designed to squeeze out savings and efficiency from the current insurance industry model. Insurtech is a combination of the words “insurance” and “technology,” inspired by the term fintech. Insurtech is a term, similar to fintech, for a company using technology to disrupt the insurance industry.

Insurtech is exploring avenues that large insurance firms have less incentive to exploit, such as offering ultra-customized policies, social insurance, and using new streams of data from Internet-enabled devices to dynamically price premiums according to observed behaviour.



Adv. M. G. Kodandaram, IRS
Assistant Director (Retd.)

INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA 'STRATEGIES FOR ENTERING THE EXPORT MARKET'

(PART - XVIII OF IPR SERIES)

In the previous part of this series, the fundamental preparations required to be made by an entity for exporting the products in the international market have been deliberated. In continuation of the same, further steps desirable to be taken by such organizations for an effective entry and continued performance in the export markets are being deliberated. The information about the selection of a market and the product for the export market, the policy and financial management, the supply-chain issues, the use of IPRs to enhance the value, processing of the export order, procedures to be observed for export, the mandated Customs formalities and the export promotion benefits available to the exporters are narrated in further parts of this writeup.

Selection of market and product

To make a Trade profitable, the study of the Demand-Supply paradigm of goods in a specific market plays an important role. Before planning the export, the demand existing for the product in the market of the destination country (target market) needs to be examined. Only after due study of the trends in the profit margin of the proposed product for the export, one should lead to form a decision in the selection of such product(s). An overseas market should be chosen only after in-depth research by covering issues like the size of the market, competition existing in that business environment, quality requirements of the consumers in that country, payment terms with the buyer, etc. In this regard more

knowledge could be gathered by participating in trade fairs, buyer-seller meets, exhibitions, etc., being organised by various trade bodies and governments.

Nowadays the digital means available have made this task much easier than the earlier times. Focussed web browsing is an efficient method for obtaining details in respect of a particular market and the demand for the product. Further, the National Foreign trade policy in place is an important component to be considered. Browsing is also an effective tool to find credible buyers. In certain cases, one can set up digital communication with the proposed buyer (B2B communications) to understand the business conditions in that country. Exporters can also evaluate the markets based on the export benefits available for a few countries under the Foreign Trade policy (FTP). Communications with the Export promotion agencies, Indian Missions abroad, colleagues, friends, and relatives are helpful in gathering proper information required for exporting the products.

Product pricing for the export market

Added to this, Product pricing is another crucial factor to be determined in getting buyers' attention and promoting sales. The price should be worked out taking into consideration all the expenses, starting from the sampling of the product up to the point of realization of export proceeds, based on terms of sale. Such costs could be worked out for various stages of the supply, like Ex-factory price, Free on Board (FOB) price, Cost, Insurance

& Freight (CIF) price, etc. for effective negotiation with the buyers. The goal of establishing export costing should be to sell maximum quantity at a competitive price with maximum profit margin in focus. It is also advisable to prepare export costing sheets for every product and market planned for the exports. The measures to be taken to protect the IP rights in the destination country should also be considered. Even this cost should be factored into the price of the proposed export product to determine the price that could be negotiated with the targeted buyer.

Importance of Protecting IP in International Markets

Intellectual Property (IP) is an essential and valuable resource for successful product and service launching. As narrated in the earlier parts of this series, owning/possessing IPRs and protecting the same in the marketplace are essential elements in marketing and commercialising, as it provides the required monopoly as well as the protection from counterfeiting and piracy by the fraudsters in the markets. The IPRs offer the entities the much-desired competitive edge, provide a potential revenue stream and assist with the marketing strategy. However, the IP rights granted under National laws are "territorial" in nature i.e., such rights have legal force only in the country or region in which they are granted. Therefore, before proposing the exports, the ways and means to be followed for seeking similar rights in the destination country should be examined. If one does not obtain protection in a foreign market, competitors will be free to use the entity's IPRs which could be misused by them by passing off their counterfeited goods as original products. Obtaining the IP rights in the target markets will alone ensure that the third parties in those markets are prevented from exploiting the owned/licensed IP rights of the exporters. This activity involves expenditure, and this should be factored into the price to be agreed upon for the proposed product/ services while deciding the price of the product.

For the rights to be made applicable across the destination markets in the other countries, the exporters may need to register the specific IPRs in the target market(s). Every target market will have its own law, rules, and processes. Therefore, for this purpose, it is better to engage an IP agent in the target market. Once a market has been

chosen, the timing of these IP applications is critical, so that such rights are obtained in the target nations, before taking up the exporting activity.

Finding credible buyers who can purchase your product is another important aspect to be examined. After determining the buyer's interest in the product, prospects, and continuity in business, demand for giving reasonable allowance/discount in price may be considered. The active participation and discussions with the related Export Promotion Councils (EPCs) will help a great deal in knowing the exporting country's requirements for the product and existing price and modes of export conveyances available in the global transport network. Inputs from EPC's, Indian Missions abroad, overseas chambers of commerce can also be helpful in this regard.

FIEO information services

The Federation of Indian Export Organisations (FIEO) represents the Indian entrepreneur's spirit of ventures in the global market. The FIEO maintains a portal: www.indiantradeportal.in, in which it provides the product-specific and country-specific tariff/ duty concessions, in line with existing Foreign Trade Agreements (FTAs) and Preferential Trade Agreements (PTAs) between India and other trade partner countries. Information about the Export Policy mandated for each product is also available. It has an easy-to-use interface, and this service is provided totally free to all.

The FIEO has hosted volumes of credible and current information relating to the export activity which is helpful to all the exporters in making the decision about the selection of market and the product. Some of the information available online are : How to Export; Ease of Logistics Portal; Trade/Tender Queries; List of Indian Suppliers; Trade Statistics; Foreign Trade policy/Export Promotion Schemes; Banking Regulation Governing Exports; Most Favoured Nation(MFN) /Preferential tariff (PT) of 90 Countries; Rules of Origin to get preferential access to targeted markets under Trade Agreements concluded by India; Global trade and tender queries; 20000+ Sanitary and Phyto-Sanitary (SPS) measures and Technical Barriers to Trade (TBT) of 87 markets categorised under - Labelling & packaging requirements,

Regulatory standards, Pesticide Maximum Residue Levels(MRLs), Food Additive, Specific, etc. for every product; Alerts on SPS-TBT Measures with option for trade and industry to submit their representation; Search & identify International Tariff Codes (HS) code of a product; Identify corresponding ITC (HS) code of products in other countries; Item-wise Goods & Services Tax (GST) rates of India; Item-wise rates of Remission of Duties and Taxes on Exported Products (RoDTEP), Duty Drawback & Interest Equalization Scheme, Transport and Marketing Assistance (TMA), Scheme for Rebate of State and Central taxes and Levies (RoSCTL) Rates; Item-wise Export and Import Policy conditions of India; Import statistics of 92 countries and India's contribution in their imports; Free Business tool to Search, Select and Send business queries to Indian suppliers (data of around 80,000 companies from various industry sectors); India's Export related Acts & Export procedure know how; Region/Country-wise break up of data availability; Trade Agreements Covered.

In addition to the above as a prolonged measure, creating a multilingual Website with a product catalogue, price, payment terms, and other related information by the exporter would also help for an effective decision in the quest of a buyer in the international market.

Use of INCOTERMS in commercial contracts

Both the Exporters and the Buyers need to understand and define the responsibilities and risks involved in the actual transport of the goods, before agreeing on the actual costs involved. To overcome the language barriers in forming contracts/agreements, and to clearly demarcate responsibilities, the International Chamber of Commerce (ICC) has defined a set of terms, which are binding on all trade contracts across the globe. These terms are called the International Commercial Terms, popularly referred to as the **INCOTERMS**. These INCOTERMS clearly communicate the tasks, costs, and risks associated with the actual export of goods from one country to the other. Important INCOTERMS are: (i) **EXW (Ex Works)** - The seller ensures that the goods are at the seller's premises, or another named location where the buyer loads and clears the goods for export. Ex Works places most of the responsibility onto the buyer. (ii) **Free Carrier alongside**

(FCA) - This is like Ex Works. The seller delivers goods either to the carrier, a nominated person at the seller's premises, or another named location. The point at which the risk is passed onto the buyer must be clearly stated. (iii) **Free on Board (FOB)**: This term is used when the seller delivers the goods on-board a vessel nominated by the buyer. The responsibility lies with the buyer once the goods are on-board the vessel. (iv) **Cost, Insurance, and Freight (CIF)**: The seller clears the goods for export and delivers them when they are on board at the port of shipment. The seller bears the cost of freight and insurance to the designated port of destination. Also, the exporter is responsible for any damage to the goods on board the ship. These terms should be used while making a contract for the supply of products for exports out of India as well as during imports.

FIEO maintains an aggregator website <https://www.easeoflogistics.com/> which provides exporters with all information on Customs brokers, Freight Forward Agents, Shipping Lines, etc. the exporters only need to enter loading port and unloading port, and all details of Customs Brokers (earlier known as CHAs), Freight Forward Agents(FFA) and Shipping Lines are provided online. This also depends on the terms of the contract and INCOTERMS decided. They are an integral part of the export supply chain and are involved in all modes of export (sea, road, rail, and air). They can arrange storage for the goods and are also equipped to negotiate freight rates with the Shipping Lines. The Customs Broker can also act as the Freight Forwarder if the exporter desire. More information about the role of customs brokers will be introduced in the coming part.

Importance of Foreign Trade Policy in Global trade

Before finalising the selection of the product, it is important to find out the policy stipulated for the stated product both in India and in the destination country. Whether the proposed product is in the restricted or prohibited list of the foreign trade policy document of India and the exporting country should be examined minutely. Generally, all the commodities /products/ goods /services are freely exportable except the items appearing in the prohibited or restricted list. If the goods are prohibited by law either in the origin country or in the

destination country, no exports of such product could be undertaken as it will be treated as illegal trade. If it is in the restricted list, then the concerned country could be approached for licence through the EPC. India's Foreign Trade i.e., Exports and Imports are regulated by Foreign Trade Policy notified by Central Government in the exercise of powers conferred under Section 5 of foreign trade (Development and Regulation) Act 1992 (FTDR Act). This document is defined by an HSN-based Import-Export Policy, notified by the DGFT.

Normally the Products are classified under three categories viz., **Free**: Free to export without any permission from DGFT, unless a specific event-based ban is placed by the government. **Restricted**: Authorisation shall need to be obtained from DGFT, on their online portal.

Prohibited: the goods that are not allowed to be exported. The list of prohibited/restricted/free products could be accessed by visiting <https://www.dgft.gov.in/CP/?opt=itchs-import-export>. Presently in India, the Foreign Trade Policy 2015-20 effective from 1st April 2015 is in force. The FTP 2015-20 has been extended **up to March 31, 2022**.

Similarly, the destination country's trade policy needs to be verified to find out the treatment in the other country, which is accessible in the digital network. Therefore, one should ensure that the product is exportable from India and importable at the destination country before finalizing the selection of the product and the market.

In certain circumstances, the buyers may ask for product samples before placing a confirmed order. Hence, it is essential that the samples are made from good-quality raw materials. Extra care should be taken when sending a costly product for exports as these are normally sent free of cost. Secrecy is also an important factor when sending a sample, especially if there is a risk of copying the IPRs of the original product. Samples can be sent through courier/speed post (or) through the normal shipping process for exports. On the package/ box, the Invoice and Packing List shall be marked "Sample, Not for Sale" in indelible ink. It is important to note that providing customized samples as per the demands of foreign buyers may help in getting export orders. As per **FTP 2015-2020**, exports of

bonafide trade and technical samples of freely exportable items shall be allowed without any limit.

Role of Export Credit Guarantee Corporation Ltd (ECGC)

Finance and profit are important factors to be considered for a successful venture. The export trade involves payment risks due to buyer or Country insolvency of the destination market. These risks in India can be covered by seeking an appropriate Policy from the Export Credit Guarantee Corporation Ltd (ECGC). ECGC Ltd. is the organisation of GOI set up with the objective of promoting exports from the country by providing Credit Risk Insurance and related services for exports. ECGC is essentially an export promotion organization, seeking to improve the competitiveness of the Indian exporters by providing them with credit insurance covers. It functions under the administrative control of the Ministry of Commerce & Industry and is managed by a Board of Directors comprising representatives of the Government, Reserve Bank of India, banking, and insurance and exporting community.

In instances where the buyer is placing an order without making the advance payment or opening a Letter of Credit, it is advisable to procure a credit limit on the foreign buyer from ECGC to protect against the risk of non-payment. Being the government organisation ECGC keeps its premium rates at the optimal level and is not burdensome for MSME entities. Some of the facilities available through the ECGC are - (i) Providing a range of credit risk insurance covers to exporters against loss in export of goods and services; (ii) Offering Export Credit Insurance covers to banks and financial institutions to enable exporters to obtain better facilities from them; (iii) Providing Overseas Investment Insurance to Indian companies investing in joint ventures abroad in the form of equity or loan; (iv) Offering insurance protection to exporters against payment risks. In addition to the above, the ECGC guides export-related activities. It provides information on different countries with their credit ratings. It helps to obtain export finance from banks/ financial institutions and for recovery of bad debts.

The Payments for exports are open to risks even at the

best of times. The risks have assumed large proportions in the current times due to the political and economic changes that are sweeping across the world due to the pandemic conditions around the globe. Economic difficulties or balance of payment problems may lead a country to impose restrictions on either import of certain goods or on the transfer of payments for goods imported. In addition, the exporters may have to face commercial risks of insolvency or protracted default of buyers. The commercial risks of a foreign buyer going bankrupt or losing his capacity to pay are aggravated due to political and economic uncertainties. Export credit insurance is designed to protect exporters from the consequences of the payment risks, both political and commercial, and to enable them to expand their overseas business without fear of loss. For more details visit @ <https://www.ecgc.in/english/>

Processing an Export Order

After receiving an export order from the foreign buyer, it should be examined carefully in respect of goods, specification, payment conditions, packaging, delivery schedule, etc. Only after finding out the availability of the goods in the domestic market or in cases of the goods to be grown or manufactured, the time frame available to produce the ordered product, the order should be confirmed with detailed timelines duly inserted in the contract finalised. Here it is important to note that any violation of the agreed time frame may result in cancellation of the order or litigation in receiving payment from the buyer.

Later the exporter may make a formal contract with the overseas buyer. After confirmation of the export order, immediate steps may be taken for procurement/manufacture of the goods meant for export. The order obtained must be attended to adhering to the assured time frame and should be executed strictly as per the buyer's quality and quantity requirements. In the present-day competitive era, it is important to be strict quality conscious about the export goods. Some products like food and agriculture, fishery, certain chemicals, etc. are subject to compulsory pre-shipment inspection. Foreign buyers may also lay down their own standards/specifications and insist upon inspection by their own nominated agencies.

The export goods should be labelled, packaged, and packed strictly as per the buyer's instructions. Good packaging presents the goods in very good condition and in an attractive way in the international market. Good packing also helps in easy handling, maximum loading, reducing shipping costs, and to ensure the safety and standard of the cargo. Marking such as an address, package number, port and place of destination, weight, handling instructions, etc. provides identification and information of cargo packed.

Exporters are eligible to obtain pre-shipment and post-shipment finance from Commercial Banks at concessional interest rates to complete the export transaction. Packing Credit advance in the pre-shipment stage is granted to new exporters against lodgements of L/C or confirmed order for 180 days to meet working capital requirements for purchase of raw material/finished goods, labour expenses, packing, transporting, etc. Normally Banks give 75% to 90% advances of the value of the order keeping the balance as margin. Banks adjust the packing credit advance from the proceeds of export bills negotiated, purchased, or discounted.

The marine insurance policy covers risks of loss or damage to the goods while the goods are in transit. Generally, in a CIF contract the exporters arrange the insurance whereas for C&F and FOB contracts the buyers obtain an insurance policy. It is an important feature of export, and the exporter must adhere to the delivery schedule. Planning should be there to let nothing stand in the way of fast and efficient delivery.

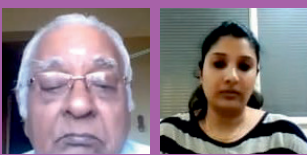
The information relating to the export documentation, Customs exports procedure to be observed, Role of customs broker, and export promotion incentives and supports offered by the government to the MSMEs and all exporters will be deliberated in the coming part.

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Photo Gallery



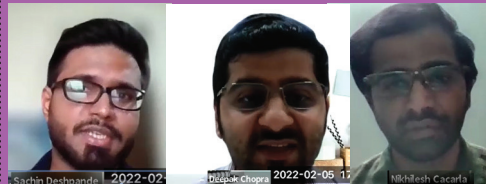
Webinar on "Make in India heralds a new economy of Trademarks" by speaker Adv. Akshatha M Patel, Advocate held on 27th January, 2022



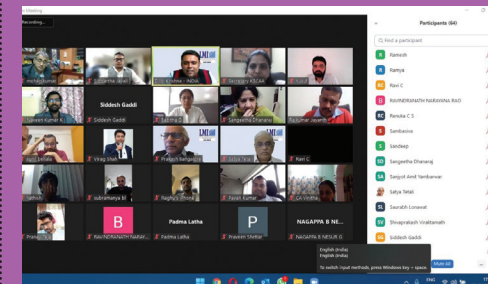
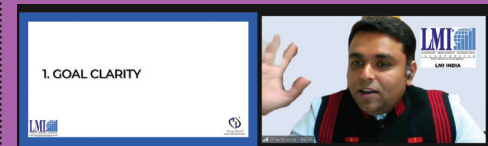
Budget Roundup by CA. V Pattabhi Ram



Webinar on 'Opportunities in Customs and Foreign Trade Policy' held on 7th January, 2022 by Customs and FTP Expert N N Menon



Direct tax updates by moderator CA. Sachin Deshpande and panelists CA. Deepak Chopra and CA. Nikhilesh Cacarla



82nd meeting of the Eloquent Professionals held on 29th January, 2022 which hosted a special program - 'Recipe for Success' by speaker Dilip Krishna, CEO of Carpe Diem and Regional Master - Licensee LMI South India

Congratulations



We congratulate and extend our heartfelt wishes to CA. D Muralidhar who was awarded the "CA. Business Leader - For Emerging Corporates - Manufacturing & Infrastructure" during the 15th Award Ceremony of the Institute of Chartered Accountants of India at New Delhi on 2nd February, 2022.

KEYWORD

6

Instructions

- From the given clues, find the words in connection with it.
- In each word so derived, the letter highlighted in colored box should be noted.
- Such letters derived from each word helps in forming the final Key-Word

- Process where one company makes a successful bid to assume control of or acquire another. It is also commonly done through the merger and acquisition process (8)

□ □ □ □ □ □ E □

- The act of obtaining goods or services, typically for business purposes (11)

□ □ □ C □ □ □ □ □ □ □

- A formal document that is required by and filed with the stock exchange that provides details about an investment offering to the public (10)

□ □ □ S □ □ □ □ □ □

- Claims that establish whether or not financial statements are true and fairly represented in the process of auditing (9)

□ S □ □ □ □ □ □ □

- The concept that the combined value and performance of two companies will be greater than the sum of the separate individual parts (7)

□ □ □ □ □ □ Y

- A potentially negative event that may occur in the future, such as an economic recession, natural disaster etc (11)

□ O □ □ □ □ □ □ □ □ □

sudoku-18

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GUESS THE KEY WORD

A way for companies to expand their reach, expand into new segments, or gain market share.

□ □ □ □ □ □

Answers will be published in next month's News Bulletin.

Answers to "Key Word 5" (January 2022)

- Assurance, 2. Securitization, 3. Sustainability, 4. Blockchain, 5. Futures, 6. Supply Chain

Key Word : Parity

Credits: CA. Archana Sridhar



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