

# NEWS BULLETIN

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# KSCAA<sup>®</sup>

Karnataka State Chartered Accountants Association (R)



## From the President

My Dear Readers,



As I sit down to pen this message, I am filled with a deep sense of pride and gratitude for being part of an organization that has grown leaps and bounds over the years. KSCAA, with its humble beginnings, has now become a vibrant body, and we are now on the verge of crossing the 4000 member mark. This remarkable milestone reflects not only the trust and confidence our members have placed in us but also the relentless efforts of everyone involved over the years. Truly, numbers speak louder than words, and this achievement symbolizes our legacy and our continued commitment to serving the community of Chartered Accountants in Karnataka.

As Chartered Accountants, our profession is at an exciting juncture. Technology, automation and artificial intelligence are revolutionizing industries across the globe, and our profession is no exception. While the traditional core of our work remains intact, providing reliable, high quality financial services the way we deliver these services is transforming rapidly. The integration of technology is no longer a distant future-it is today's reality, and it's critical that we embrace it fully.

Our AI & Technology Initiative Committee has been redefined with a renewed focus on the practical implementation of technology in our daily work. This committee aims to help each of our members understand and adopt AI-driven tools and automation techniques in their practices. The goal is to make the lives of Chartered Accountants easier, more efficient, and more productive. Whether it's automating repetitive tasks, using AI for data analysis, or embracing digital platforms for enhanced client communication, the future is here, and it's full of opportunities for those willing to take the leap.

However, this transition isn't just about adopting new tools, it's about adopting a new mindset. We must shift our focus from merely performing tasks to providing value. Automation can handle the number crunching, but it's up to us to interpret those numbers, provide insights, and guide our clients through complex financial landscapes. To remain relevant, we must evolve into strategic advisors, leveraging technology to enhance the quality of our work, rather than fearing it will replace us.

Our members must ask themselves a simple question: Are we spending our time on tasks that add the most value to our clients? If the answer is no, then it's time to rethink how we allocate our efforts. Automation can free

us from time consuming manual tasks, allowing us to focus on what truly matters, providing strategic advice, solving complex problems, and delivering services that go beyond basic compliance. As professionals, we need to position ourselves as trusted advisors, providing insights that no machine can replicate. This shift will ensure that we continue to serve the community in a way that not only meets but exceeds expectations.

As we enter the traditionally busy September-October season, with audits and year-end financial closings upon us, let us be mindful of the immense support that technology can offer. Whether it's finalizing books of accounts, filing returns, or preparing audit reports, digital tools and processes can save precious time. This is the time to focus your energy on expertise driven, value added activities that make a real difference, rather than spending endless hours on repetitive, manual tasks. KSCAA will continue to provide the support and guidance necessary to ensure that all our members are ready to face these challenges head on.

Remember the wise words of Bill Gates: "We always overestimate the change that will occur in the next two years and underestimate the change that will occur in the next ten. Don't let yourself be lulled into inaction." I urge each one of you to not only embrace technology but to actively seek ways to integrate it into your daily work. Automation is not a threat but is an enabler, giving us the freedom to focus on the aspects of our work that truly add value. Let us seize this moment to redefine our roles, not just as accountants, but as trusted advisors and leaders in our field.

KSCAA is not just an organization, it is a community. It is an association of the members, by the members, and for the members. Together, we have the strength to navigate these times of rapid change and emerge stronger, more skilled, and more relevant than ever before thereby being the architects of change & architects of progress.

As we step into the festive season, with Navaratri and more just around the corner, I wish each of you a time filled with joy, prosperity, and moments of reflection. May these festivals bring renewed energy to your personal and professional lives.

Wishing you and your loved ones all the best for the season and continued success in your professional endeavors.

**Happy Reading!**

**Regards,**

**CA. Vijaykumar M Patel**  
**President**



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### VISION

- KSCAA shall be the trusted and value based knowledge organisation providing leadership and timely influence to support the functional breadth and technical depth of every member of CA profession;
- KSCAA shall be the nucleus of activity, amity and unity among members aimed at enhancing the CA profession's social relevance, attractiveness and pre-eminence;
- KSCAA shall in the public interest, be a proactive catalyst, offering a reliable and respected source of public statement and comments to induce effective laws and good governance;
- KSCAA shall be the source of empowerment for leadership and excellence; disseminating knowledge to members, public and students; building a framework for new opportunities and partnerships that enhance life in the community and beyond; encouraging highest ethical standards and professional integrity, in realization of India global leadership vision.

### MISSION

- The KSCAA serves the interests of the members of CA profession by providing new generation skills, amity, unity, networking and leadership to strengthen the professional capabilities, integrity, objectivity, social relevance, standards and pre-eminence of India's Chartered Accountants nationally and internationally through; becoming gateway of knowledge for Chartered Accountants, students and public; helping members add value to their customers/employers by enhancing their professional excellence and services; offering a reliable and respected source of public policy advice and comments to bring about more effective laws and policies and transparent administration and governance.

### MOTTO: KNOWLEDGE IS STRENGTH

**KSCAA welcomes articles & views from members for publication in the news bulletin / website.**

**Email: [journal@kscaa.com](mailto:journal@kscaa.com) | Website: [www.kscaa.com](http://www.kscaa.com)**

### Disclaimer

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# INCOME TAX UPDATES

## A. CBDT UPDATES

### • SECTION 144B OF THE INCOME-TAX ACT, 1961 - SPECIFYING CIRCUMSTANCES FOR PURPOSES OF ENQUIRIES OR VERIFICATION FUNCTIONS BY VERIFICATION UNIT

Pursuant to sub-section (5) of Section 144B of the Act, the CBDT has specified the following circumstances for the purpose of enquiry or verification functions referred to in Section 144B(3)(iii) of the Act by the Verification Unit:

- i. Non-availability of digital footprint in respect of the assessee or any other person.
- ii. Electronic or Online verification is not possible on account of no response to notice issued to the assessee or any other person.
- iii. Physical verification of assets or premises or persons is required, regardless of the presence of digital footprint

### ORDER F. NO. 187/7/2024-ITA-I, DATED 1-8-2024

### • SECTION 206AA read with SECTION 206CCNON-APPLICABILITY OF HIGHER RATE OF TDS/TCS AS PER PROVISIONS OF SECTION 206AA/206CC IN THE EVENT OF DEATH OF DEDUCTEE/COLLECTEE BEFORE LINKAGE OF PAN AND AADHAAR

The CBDT had provided a window of opportunity to the taxpayers upto 31-5-2024 for linkage of PAN and Aadhaar for the transactions entered into upto 31-3-2024 so as to avoid higher deduction/collection of tax under section 206AA/206CC of the Income-tax Act, as the case maybe.

Several instances were brought before the Board where linking of PAN and Aadhaar was not been done due to the death of deductee/ collectee

To redress this, specifies that in respect of cases where higher rate of TDS/TCS was attracted under section 206AA/206CC of the Act pertaining to the transactions entered into upto 31-3-2024 and in case of demise of the deductee/collectee on or before 31-5-2024 i.e. before the linkage of PAN and Aadhaar could have been done,

there shall be no liability on the deductor/collector to deduct/collect the tax under section 206AA/206CC, as the case maybe. The deduction/collection as mandated in other provisions of Chapter XVII-B or Chapter XVII-BB of the Act, shall be applicable.

### CIRCULAR NO. 8/2024 [F. NO. 275/4/2024-IT(B)], DATED 5-8-2024

### CBDT ISSUES CLARIFICATION IN RESPECT OF INCOME-TAX CLEARANCE CERTIFICATE (ITCC)

It was being erroneously reported that all Indian citizens must obtain income-tax clearance certificate (ITCC) before leaving the country - a position that is factually incorrect.

Section 230(1A) of the Income-tax Act, 1961 (the 'Act') relates to obtaining of a tax clearance certificate, in certain circumstances, by persons domiciled in India.

It may be demanded only in the following circumstances:

- i. where the person is involved in serious financial irregularities and his presence is necessary in investigation of cases under the Income-tax Act or the Wealth-tax Act and it is likely that a tax demand will be raised against him, or
- ii. where the person has direct tax arrears exceeding Rs. 10 lakh outstanding against him which have not been stayed by any authority.

### PRESS RELEASE, DATED 20-8-2024

### CBDT ROLLS OUT DISPUTE RESOLUTION SCHEME (EDRS), 2022

In pursuance of section 245MA of the Act, CBDT had notified the e-Dispute Resolution Scheme, 2022 (e-DRS) with the aim to reduce litigation and provide relief to eligible taxpayers. Section 245MA of the Act also provides for the constitution of Dispute Resolution Committees (DRC).

As per e-DRS, a taxpayer can opt for e-Dispute Resolution against the 'specified order' as defined in clause (b) of the Explanation to section 245MA of the Act, which includes an order in which the aggregate sum of variations proposed or made does not exceed Rs.10

lakh and returned income for the relevant assessment year does not exceed Rs. 50 lakh. Further, such order should not be based on search/surveys or information received under an agreement referred to under section 90 or 90A of the Act.

The application for e-DRS is to be filed in Form No. 34BC referred in rule 44DAB of the Rules, on the e-filing portal of the Income Tax Department, within one month from the date of receipt of specified order

In cases where appeal has already been filed and is pending before the Commissioner of Income-tax (Appeals), the application for e-DRS, is to be filed on or before 30-09-2024

## B. RECENT JUDICIAL PRONOUNCEMENTS

### I. High Courts

- If the Tribunal instructs the Assessing Officer to verify and refund TDS to the assessee based on the information shown in Form 26AS, the Assessing Officer must refund the amount to the assessee without requiring a separate claim to be made in the income tax return. **ESS Singapore Branch v. Deputy Commissioner of Income-tax [2024] 165 taxmann.com 645 (Delhi)**
- If shares allotted to the assessee under an Employee Stock Purchase Scheme (ESPS) were subject to a lock-in period and could not be sold in the open market due to a complete sale embargo, then the quoted price or the valuation report from an expert valuing the shares at a higher amount would be irrelevant. Consequently, the addition made based on the difference between the market value as per the report and the concessional rate at which the shares were allotted to the assessee cannot be upheld. **[2024] 165 taxmann.com 472 (Delhi) Ravi Kumar Sinha v. Commissioner of Income-tax**
- If the Assessing Officer sought to reopen the assessment on the grounds that the assessee had not electronically uploaded Form 10CCB along with their income tax return within the prescribed timeframe under section 139, it should be noted that a failure to digitally upload Form 10CCB does not imply that the assessee failed to make a full and true disclosure. Therefore, the reassessment proceedings in question should be invalidated. **Shree Bhavani Power Projects (P.) Ltd. v. Income-tax Officer 165 taxmann.com 733 (Delhi) (2024)**
- If the Jurisdictional Assessing Officer (JAO) issued a reopening notice and started reassessment proceedings

without following the faceless assessment procedure outlined in section 144B, these actions would be in violation of legal requirements and should be annulled. **Sandeep Kumar Gupta v. Union of India [2024] 165 taxmann.com 438 (Punjab & Haryana)**

- If the Jurisdictional Assessing Officer (JAO) issued a notice under section 148A(b), followed by an order under section 148A(d), and subsequently issued a notice under section 148, while the provisions of section 151A required that these actions be carried out by a Faceless Assessing Officer (FAO), then the JAO had no authority to issue these notices and orders. Consequently, the notice under section 148A(b), the order under section 148A(d), and the subsequent notice under section 148 should be invalidated. **Tilak Ventures Ltd. v. Union of India [2024] 166 taxmann.com 68 (Bombay)**
- An assessment order passed without allowing the assessee a seven-day period to file objections in response to the Show Cause Notice issued before the order was in violation of the principles of natural justice. Consequently, the assessment order should be quashed and set aside, and the matter should be remanded for a fresh assessment. **Cheftalk Food and Hospitality Services (P.) Ltd. v. Income-tax Officer [2024] 165 taxmann.com 415 (Bombay)**
- If the assessee submitted an affidavit explaining the receipt of gifts from friends and relatives, and the revenue did not counter this explanation with any additional facts, then the Settlement Commission's conclusion-accepting the explanation "in the spirit of settlement"-cannot be faulted. There is no basis for interference in this matter given the limited scope of jurisdiction. **Principal Commissioner of Income-tax v. Smt. Umah Agarwal [2024] 166 taxmann.com 17 (Karnataka)**
- Investment by a foreign company in shares is considered a capital account transaction and does not generate income. Therefore, if the assessee's investment in shares did not produce any income during the assessment year, it cannot be classified as income that has escaped assessment. Consequently, the notice issued under section 148A should be quashed. **Tosca Master v. Deputy Commissioner Of Income Tax [2024] 165 taxmann.com 804 (Delhi)**

## II. Tribunals

- If the Assessing Officer granted a deduction under section 80G for donations that were part of the expenditure incurred for corporate social responsibility (CSR) and this approach was supported by various Tribunal decisions, then the order passed by the Principal Commissioner invoking revisional jurisdiction under section 263-on the grounds that the deduction under section 80G was not allowable because it was claimed for CSR expenditure-should be quashed.

**American Express (India) P. Ltd. [2024] 166 taxmann.com 91 (Delhi - Trib.) v. Principal Commissioner of Income-tax**

- Where application seeking final registration under section 80G(5)(iii) had been moved well within prescribed time period i.e., before expiry of six months of provisional registration, same was not barred by limitation.

**FI Foundation v. Commissioner of Income-tax (Exemptions) [2024] 166 taxmann.com 124 (Chandigarh - Trib.)**

- If the Assessing Officer made an addition under section 41(1) due to the cessation of liability, but failed to provide sufficient evidence that the liabilities had ceased during the relevant year and the liabilities were correctly reflected in the assessee's audited balance sheet, then the Commissioner (Appeals) was justified in deleting the impugned addition
- If the Assessing Officer did not provide substantial evidence to justify the disallowance under section 37(1) regarding trade payables, and the assessee's documentation, including audited financial statements and ledger accounts, adequately demonstrated the genuineness of the expenses, then the Commissioner (Appeals) was justified in deleting the impugned addition
- If the assessee demonstrated that the expenses claimed under 'Gift Articles' and 'Entertainment Expenses' were incurred for business purposes, and this claim was further supported by the tax auditor's acceptance, then the Commissioner (Appeals) was justified in deleting the disallowance made by the Assessing Officer under section 37(1)
- If the assessee successfully demonstrated that it had sufficient interest-free funds to cover the loan to a subsidiary and that the loan was advanced for commercial expediency, no disallowance of interest was warranted. Therefore, the disallowance made under section 36(1)(iii) should be deleted.

Disallowance under section 14A read with rule 8D is not applicable in the absence of any exempt income

**Oriental Enterprise (P.) Ltd. v. ACIT [2024] 166 taxmann.com 65 (Ahmedabad - Trib.)**

- If the Assessing Officer disallowed the exemption under section 11 claimed by the assessee-trust on the grounds that Form 10B was not submitted by the due date under section 139(1), but the audit was completed well before the due date for filing Form 10B and the assessee provided a reasonable explanation for the lapse on the part of the auditors, the Commissioner (Appeals) should consider that the non-filing of the audit report along with the return of income was a procedural omission. Accordingly, the Commissioner (Appeals) should take Form 10B into account and pass a fresh order on the merits of the case as per the law

**Shakuntalam Bal Vikas Society v. Income-tax Officer [2024] 166 taxmann.com 132 (Delhi - Trib.)**

- Loan scholarships provided to Indian students in India for education or higher education abroad would be considered as an application of income for charitable purposes in India. As such, they would qualify for exemption under section 11.

**ITO (Exemptions) v. JN Tata Endowment for the Higher Education of Indians [2024] 165 taxmann.com 758 (Mumbai - Trib.)**

- If the assessee agreed to purchase a flat in 2012 based on an allotment letter and made payments through banking channels before the sale was registered in the financial year 2019-20, the value as of the date of allotment should be treated as the stamp duty value for the purposes of section 56(2)(x). Since the payment made at that time was higher than the stamp duty value, no addition could be made

**Income-tax Officer v. Narendra Kumar Jain [2024] 165 taxmann.com 797 (Mumbai - Trib.)**

- The assessee-hospital claimed advertisement expenditure but violated the provisions of the Indian Medical Council Act, 1956, specifically the Professional Conduct, Etiquette, and Ethics Regulations, 2002, then the impugned advertisement expenditure could not be allowed as a business expense.

**Chalasan Hospitals (P.) Ltd. v. Asst. Commissioner of Income-tax [2024] 165 taxmann.com 753 (Visakhapatnam - Trib.)**

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# INDIRECT TAX UPDATES

## GSTN Advisories

### Gist of Important GSTN Advisories

- RCM liability/ ITC statement (dt. 23<sup>rd</sup> August 2024)
  - Report opening balance on or before 31<sup>st</sup> October 2024 & amendment can be made upto 30<sup>th</sup> November 2024  
Navigation path: Login >> Report RCM ITC Opening Balance or Services >> Ledger >> RCM Liability/ITC Statement >> Report RCM ITC Opening Balance
  - Navigation path to access ledger: Services >> Ledger >> RCM Liability/ITC Statement.
  - Mapping of transactions reported in Table 3.1(d) of GSTR-3B with corresponding ITC claimed in Table 4A(2) and 4A(3) of GSTR-3B for a return period
- Rule 10A requiring to furnish bank details within 20 days of registration or before furnishing outward supplies return whichever is earlier is effective from 1<sup>st</sup> Sept 2024. Non Compliance would lead to blocking of GSTR 1 filing. (dt. 23<sup>rd</sup> August 2024)
  - Navigation path to update: Login >> services >> Registration >> Amendment of Registration Non - Core Fields tabs on GST Portal.
- Ensure that tax is computed as per reduced new TCS rate of 0.5% w.e.f 10<sup>th</sup> July 2024 while furnishing Form GSTR 8 (dt. 2<sup>nd</sup> August 2024)
- Detailed Manual and FAQs on filing of GSTR-1A have been released which can be accessed on the below path (dt. 1<sup>st</sup> August 2024)

Manual:[https://tutorial.gst.gov.in/userguide/returns/index.htm#t=Creation\\_of\\_Outward\\_Supplies\\_Return\\_in\\_GSTR-1.htm](https://tutorial.gst.gov.in/userguide/returns/index.htm#t=Creation_of_Outward_Supplies_Return_in_GSTR-1.htm)

FAQ:[https://tutorial.gst.gov.in/downloads/news/creative\\_faqs\\_on\\_gstr1a\\_fo\\_cr25785.pdf](https://tutorial.gst.gov.in/downloads/news/creative_faqs_on_gstr1a_fo_cr25785.pdf)

- Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration for Applicants of

- Jammu & Kashmir and West Bengal (dt. 2<sup>nd</sup> August 2024)
- Dadra & Nagar Haveli, Daman & Diu and Chandigarh (dt. 24<sup>th</sup> August 2024)

## Instructions

### Instruction No. 02/2024

GST Policy is back with yet another (second) all-India special drive against fake registrations, after an effective Special All India Drive during 2023 (16<sup>th</sup> May 2023 till 15<sup>th</sup> July 2023) in weeding out fake registrations. The first special drive in 2023 detected about 21,791 fake GST registrations and over Rs. 24,000 Crore suspected tax evasions<sup>1</sup>.

Now, let us breakdown Instruction No.02/2024 and discuss in detail below:

**WHEN?** - From 16th August to 15th October 2024

**WHY?** - For Verification, Detection of Suspicious/Fake Registrations and for taking timely remedial action to safeguard Government Revenue.

**BY WHOM?** - Concerned Jurisdictional Tax Officer(s) (i.e., Proper Officer)

**DOES THIS DRIVE GIVE SPECIAL POWERS TO OFFICERS?** - No. This drive does not grant special powers to officers. It merely provides instructions. The Revenue authorities will exercise the same powers as outlined in the provisions of the Act. The primary focus of this drive is to target fake taxpayers and take appropriate action.

## POWERS GIVEN IN THE ACT

### Ref to Section 67(1)(a)

67 (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that-

- (a) taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act.

he (Proper Officer - mentioned above) may authorise in writing any other officer of central tax to **inspect** any places of business of the taxable person or any other place.

**AUTHORIZATION FORM** - The officer conducting inspection, must carry **INS-01** issued by proper officer, not below the rank of Joint Commissioner.

**IMPLICATION** - If the taxpayer is found to be non-existent or fictitious, then the officer might initiate action for suspension and cancellation of the registration of the said taxpayer in accordance with the provisions of Section 29 of CGST Act, 2017 read with Rule 21 and Rule 22 of CGST Rules, 2017.

Apart from cancellation/suspension of GST registration, recovery of tax, interest and penalty (if any) shall be made.

### BE READY

As per Rule 18 of CGST Rules, 2017, every registered person shall display

- GSTIN on the name board
- GST Certificate at principal place of business and at every additional place of business.

### Instruction No. 03/2024 read with Instruction No. 01/2023-24- GST (Inv)

Introduction:

The instruction No 01/2023-24 provides guidelines for CGST field formations to maintain ease of doing business while conducting investigations with regular taxpayers, so that uniformity is ensured during all investigations. The instruction provides the following guidelines -

#### ➤ Approval and Jurisdiction:

- Investigations must be initiated only after **approval** by the **Principal Commissioner**. Specific cases (e.g., first-time tax levies, large corporations, sensitive matters) require approval from the Zonal Principal Chief Commissioner.
- Information or intelligence relevant to another jurisdiction must be forwarded appropriately.

#### ➤ Investigation Coordination:

- Before starting an investigation, **check if other departments** or jurisdictions are already investigating the same taxpayer. If so, coordinate to **avoid duplicative efforts**.
- If the issue involves **multiple GSTINs** or spans different jurisdictions, the matter should be

referred to the Principal DG, DGGI, or shared with **relevant zones**.

#### ➤ Handling Investigations:

- For listed companies, PSUs, or government bodies, initial inquiries should be made through official letters rather than summons.
- Summons should only request information directly related to the investigation and must be approved by a higher officer.

#### ➤ Information Gathering:

- Information available online (e.g., on the GST portal) should not be requested from taxpayers.
- The investigation should be **completed within one year**, with no unnecessary delays in issuing show cause notices or closure reports.

#### ➤ Grievance Redressal:

- The Principal Commissioner is responsible for preventing and addressing grievances related to investigations. Taxpayers can approach the Additional/Joint Commissioner for grievance redressal.

Now to emphasize on the point of 2(g) of the earlier instruction, **Instruction No. 03/2024 dated 14.08.2024** directs CGST audit teams to apply the guidelines from para 2(g) of Instruction No. 01/2023-24-GST. This involves **referring any issues** based on differing interpretations of CGST laws, which might lead to litigation, **to the relevant policy wing** (GST Policy or TRU) before concluding the audit or issuing a show cause notice. This approach is meant to ensure consistency and avoid unnecessary legal disputes, applying to both ongoing and future audits.

#### Portal Updates

From 1st September, many changes in the GST Act will take place that will impact your GST Returns filing!

From September 2024, if a supply's value is above Rs. 1 lakh, it must be reported in GSTR-1's Table B2CL. However, since such functionality is not yet live, taxpayers are advised to disclose such values as per old threshold i.e., 2.5 Lakh vide latest advisory (dt. 3<sup>rd</sup> September 2024)

➤ Taxpayers can now report negative liability in GSTR-3B's Table No. 3. The negative liability will be automatically adjusted in the next month's return, making the reconciliation process smoother.

➤ Notification No. 12/2024 (10 July 2024)



- Blocking of GSTR-1 for Non-Furnishing of Bank Account Details: From 1st September 2024: If you haven't added and validated your bank account details in your GST registration, your GSTR-1 /IFF will be blocked.
- GSTR-9 and GSTR-9C: Forms GSTR-9 (Annual Return) and GSTR-9C (Reconciliation Statement) will be active on the GST portal.

### Notifications

Appointment of effective date for the applicability of the amendments made vide the Finance Act, 2024

The Finance Bill, 2024 which was presented in the Parliament on 1<sup>st</sup> February, 2024 and got enacted on 15<sup>th</sup> February, 2024 had made certain amendments in the CGST Act, 2017. Notification No. 16/2024-CT dated 06.08.2024 has been issued to appoint the effective date for the said amendments as under:

1. Substitution of Section 2(61) – Definition of input service distributor: Effective date – 1<sup>st</sup> April, 2025

Section 2(61) which defines **input service distributor** had been substituted vide the Finance Act, 2024 to **include reverse charge invoices** in the scope of credit distribution by an input service distributor.

As per the substituted definition, *an input service distributor means an office of the supplier of goods*

*or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20.*

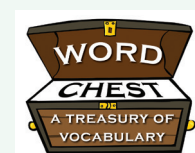
2. Substitution of Section 20 - Manner of distribution of credit by an Input Service Distributor: Effective date - 1<sup>st</sup> April, 2025

Section 20 which prescribes the manner of distribution of credit by an input service distributor had been substituted vide the Finance Act, 2024 to make the input service distributor mechanism as provided thereunder mandatory. The amendment was made pursuant to the recommendations made in the 50<sup>th</sup> GST Council meeting held on 11.07.2023.

3. Insertion of new section 122A – Penalty for failure to register certain machines used in manufacture of goods as per special procedure: Effective date 1<sup>st</sup> October, 2024

New section 122A had been inserted vide the Finance Act, 2024 to levy penalty on failure to register certain machines used in manufacture of goods (tobacco, pan-masala and similar items) as per special procedure notified u/s 148 of CGST Act.

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### MUTATIS MUTANDIS

*" Mutatis mutandis " is a Latin phrase that translates to "things being changed that have to be changed" or "with the appropriate adjustments". In legal contexts, it refers to applying a legal principle or rule from one case or statute to another, with necessary adjustments to account for differences in facts or circumstances. The phrase signals that while some modifications are required, the core legal principle remains applicable. It is often used in contracts, legal precedents, or statutory interpretations to adapt provisions or arguments from one context to another, ensuring consistency in legal reasoning. For example, a court may apply past rulings to a new case mutatis mutandis, adjusting for the specific details of the new case while preserving the foundational logic..*



CA. Akshay Hiregange  
CA. Mahadev R

# LIMITATION PERIOD UNDER GST

## Introduction

The ability to prefer an appeal in the litigation process is a given. Although there have been many instances where, due to the timing of presenting the appeal, it has been rejected due to time limitations. There have been few for and few against decisions by various high courts in GST. In this article, we deliberate on the applicability of time limitations under the GST law and take the readers through various judgements to arrive at a reasonable conclusion in this regard.

## Relevant Provisions:

### Section 107 of CGST Act : Appeals to Appellate Authority

- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
- (2) .....
- (3) .....
- (4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow *it to be presented within a further period of one month.*

**Section 5 of the Limitation Act 1963 - Extension of prescribed period in certain cases:** Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation - The fact that the appellant or the applicant was missed by any order, practice or judgment of the

High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”

**Section 29 (2) of Limitation Act 1963: Savings.** - (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

**Section 14 of Limitation Act 1963:** The time spent in prosecuting remedy before a wrong forum/Court under bona fide belief would be excluded for computing the time limit for filing the Appeal before right forum. Following are some of the important conditions required to be satisfied to get exclusion of time spent for computing the period of limitation:

- The appeal has been filed in wrong Court not having the jurisdiction.
- The prior appeal has been filed & prosecuting with due diligence & in good faith.
- The subject matter in issue involved in both the appeals is very much same.
- Appeal has been dismissed by the earlier Court for want of jurisdiction or other cause of like nature.

*Note: Section 14 is not reproduced as it is but brief explanation provided for easy understanding.*

### Applicability of Limitation Act in GST

From Section 107 of CGST Act 2017, we have understood that there is a time limit of appeals to appellate authority. Section 109 also provides for time limit of three months for filing appeals with tribunal. There have been genuine cases wherein the taxpayers could adhere to these timelines and requesting authorities for accepting

delayed filing of appeals. Since, the GST law provides for timelines, such extension would not be possible. Few of the taxpayers have approached the high courts wherein relief has been provided to few and few have not got any relief from high courts based on the Limitation Act 1963. An attempt is made to understand various decisions of the court to understand if the Limitation Act has an overriding effect over GST provisions.

### ***Decisions wherein benefit was provided***

#### **Mukul Islam Vs Assistant Commissioner of Revenue (Calcutta High Court) – Writ petition no.917 of 2024 (May 2024)**

**Summary analysis** - The court set aside the order rejecting the appeal and directed the appellate authority to hear and dispose of the appeal on its merits, condoning the delay basing on the fact that GST Law does not specifically exclude Limitation Act. The judgment emphasized the need for expeditious resolution of tax-related matters while upholding principles of natural justice.

The petitioner, aggrieved by a determination under Section 73 of the said Act dated 26th June, 2023, had filed an appeal under Section 107. However, since the appeal was filed beyond the limitation period, it was accompanied by an application under Section 5 of the Limitation Act, 1963. The appellate authority rejected the application for condonation of delay by its order dated 27th March, 2024, consequently disposing of the appeal.

He cited a judgment by a Division Bench of the court in *K. Chakraborty & Sons v. Union of India*, emphasizing the applicability of Section 5 of the Limitation Act, 1963.

Section 29(2) of the Limitation Act, 1963 has held that since, there is no expressed or implied exclusion of Section 5 of the Limitation Act, by virtue of Section 29(2) of the Limitation Act, Section 5 of the Limitation Act 1963 stands attracted.

Ms. Sarkar, representing the State respondents, contended that Section 107(4) of the said Act does not empower the appellate authority to condone delay beyond one month from the prescribed period, thereby excluding the applicability of Section 5 of the Limitation Act, 1963.

### ***Decisions wherein benefit was denied***

#### **Yadav Steels Having Office Vs Additional Commissioner And Another (Allahabad High Court) – WP 975 of 2023**

**Summary Analysis** - The court rejected the appeal, did not condone the delay. CGST Act is a self-contained code and Limitation Act would not be applicable here.

M/s. Yadav Steels has filed a writ petition against the order dated January 23, 2023, passed under Section 107 of the UPGST Act wherein the appeal filed by the Petitioner was dismissed on the ground of limitation as the said appeal was filed approximately 66 days beyond the date of limitation.

The High Court observed that, Section 107(4) of the UPGST Act, allows extension for a period of one month. Also, Section 107 aims to prevent undue delay in the adjudication process and promote effective administration of the GST regime.

Relying upon the judgment of Hon'ble Allahabad High Court in the case of M/S Abhishek Trading Corp. - 2024 (2) TMI 1214 – Allahabad High Court and noted that, **CGST Act 2017** is a special statute and a self-contained code in itself and Section 5 of the Limitation Act, 1963 would not be applicable.

The court also opined that, the judgement Hon'ble Calcutta High Court in the case of S.K. Chakraborty & Sons – Calcutta High Court - 2023 (12) TMI 290, wherein it was held that Section 5 of the Limitation Act, would be applicable as Section 107 of the CGST Act does not expressly or impliedly exclude the attraction of Section 5 of the Limitation Act, would not be applicable in the present case.

#### **Garg Enterprises Vs State of U.P. And 2 Others (Allahabad High Court) – WP 291 of 2022**

**Summary Analysis** - The court rejected the appeal, did not condone the delay. CGST Act is a self-contained code and Limitation Act would not be applicable here. Relied on two Supreme Court verdicts.

**Exclusion of Limitation Act:** The court referenced the Supreme Court's decision in *Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur (2008) 3 SCC 70*. The apex court held that the Commissioner of Central Excise (Appeals) and similar authorities cannot condone delays beyond the statutorily provided period, explicitly excluding the application of Section 5 of the Limitation Act.

**CGST Act as a Special Statute:** The court emphasized that the CGST Act is a special and self-contained code. Section 107 of the Act explicitly outlines limitations, implying the exclusion of Section 5 of the Limitation Act. The court cited Commissioner of Customs and Central Excise vs. Hongo India Private Limited (2009)

5 SCC 791 to reinforce the view that the absence of a provision to condone delays after the prescribed period indicates a complete exclusion of Section 5.

Decision: The court highlighted that the CGST Act, being a special statute, provides its own mechanism for limitations, leaving no room for the application of general provisions from the Limitation Act.

### Supreme court decisions

Many of the high court decisions wherein benefit of extension of time limit was not provided had relied on supreme court decisions in case of *Hongo India Private Limited* and *Singh Enterprises* wherein the supreme court denied the benefit of time limit extension. However, it is possible for taxpayers to rely on the other decision of supreme court *MP Steel Corporation v. CCE [(2015) 7 SCC 58]* wherein it was held that on the principles contained in Section 14 of the Limitation Act the time taken in prosecuting an abortive proceeding would have to be excluded as the appellant was prosecuting bona fide with due diligence the appeal before CEGAT. Therefore, in GST also one could argue that when Section 14 of the Limitation Act is made applicable, then Section 5 also should be considered for extension of time limit.

The supreme court in case of *Superintending Engineer/ Dehar Power House Circle Bhakra Beas Management Board (pw) Slapper & Another Vs. Excise & Taxation Officer, Sunder Nagar/Assessing authority 2019 LawSuit(SC) 1799* has held that there is no express exclusion of Limitation Act 1963 in HP VAT Act 2005 and delay in filing appeal was condoned. The court also held that the decision of *Hongo India Private Limited* is not relevant as the scheme of the Excise Act is materially different than that of the Himachal Pradesh VAT Act.

### Conclusion

While we await the Apex Court to consider varied judgements, as the GST law does not specifically exclude the Limitation Act, on a case-to-case basis, where the situation warrants such condonation, writ applications may be made as there are few supreme court decisions as well which may come in aid. Taking the assistance of professionals/advocates is recommended in this regard.

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## KSCAA REPRESENTATIONS

1. Representation to Director of Co - operative Audit for extension of due date for audit
2. Representation regarding incorrect processing of Income Tax Returns u/s 143(1) for the AY 2024-25 (by unjustly denying proper TDS credit)

For full text of the above representation, please visit : [www.kscAA.com](http://www.kscAA.com)

## Congratulations



We Congratulate CA. Kumar Ravi Past President (1999-2000) of KSCAA on Being elected as Vice-President of Bangalore Chamber of Industry & Commerce (BCIC) for the year 2024-2025



CA. Sowmya CA

## DUAL ADMINISTRATION IN GST LAWS

The Spirit of federalism is one of the basic and fundamental features of our Constitution and the division of power is established in the constitution itself. In line with this legacy, when Goods and Services Tax (GST) law was envisioned, it adopted a ‘**Concurrent & Dual GST Model**’. Two taxes are collected together under two Statutes and the assesseees are distributed between the Centre and the States for tax administration in normal course such as scrutiny, audit and for other regular proceedings.

Now what do we mean by ‘**Concurrent Jurisdiction**’? - Under the GST regime, both the Central Government and State Governments have the authority to levy and collect taxes on goods and services. This dual structure allows for a cooperative federalism approach where both Central and State Governments can work together.

The importance of jurisdictional clarity in tax administration and the necessity for legislative backing for cross-empowerment among tax authorities cannot be overemphasized. It has become of paramount importance as we see more and more taxpayers receiving notices and summons from multiple jurisdictions and being made answerable to all of them. It is therefore necessary to understand the cross-empowerment powers prescribed in the law, so that any proceedings initiated outside jurisdiction and not prescribed in the GST Act can be objected upon by the taxpayer at the earliest opportunity in the absence of a lawful authority.

Section 6(1) of the Central GST Act deals with cross empowerment of officers of the GST Act. It empowers officers appointed under the State/Union Territory GST Act to be the proper officers for the purposes of the Central GST Act. Similarly, Section 6(1) of the State GST Act, empowers officers appointed under the Central GST Act to be the proper officers for the purposes of the State GST Act subject to such conditions as may be notified. Thus, the Central/State Tax officers are mutually empowered by virtue to the abovesaid provision. This is necessary as dual tax is collected under GST viz.

Central and State Tax but are administered either by Central or State Tax Authorities. Without such powers, Central tax officer will not be authorised to administer State tax and vice versa. *However, Can these powers be assumed as absolute without interfering in the powers administratively assigned?*

Pursuant to discussions held in the 9th GST Council meeting held on 16 Jan 2017, a Circular No. 1/2017-GST Council dated 20 Sep 2017 was issued providing for division of taxpayer base between the Centre and the States to ensure a **single interface and avoid overlap in the administration** under the GST enactments.

Accordingly, it provided for assignment of registered persons between Central and State administrations based on such thresholds and following such methods as the council may decide from time to time for exercising all administrative controls regarding enforcement of the provisions of the GST Act and further stated that suitable notifications regarding cross-empowerment of State and Central Tax officers will be issued. However, in exercise of the powers conferred by section 6(1), with respect to cross-empowerment, Notfn. No. 39/2017 dated 13 Oct 2017 was alone issued by cross empowering the State and Central Tax Officers for the purpose of issuance of refund under section 54 or section 55 of the Central GST Act. In the absence of clearly defined jurisdictions for the officers, the goal of achieving a single interface will remains remote, and the likelihood of multiple proceedings will increase the burden on taxpayers.

This opens up another question “*Whether it is open to the proper officer of the State tax Authority to enforce GST law relating to a taxpayer registered under Central administration and vice versa*”?.?

Though there is no specific provision/ notification under the Central Act dealing with cross empowerment, the Board through a circular issued *vide* No. CBEC/20/43/01/2017-GST (Pt.), dated 5-10-2018 has provided for cross empowerment of officers **for initiation of intelligence-based enforcement**. The





circular has stated that that the officers of both Central tax and State tax are authorized to initiate intelligence-based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to Central/State Authority. Further, it provided that the authority which initiates such action is empowered to complete the entire process of investigation, including issuance of SCN, adjudication, recovery, etc. Initiation of intelligence-based action can be through invoking sections 62, 64, 67, 68, 70, 71, 122, 125, 127, 129, 130, 138, 154 and 174 of Central GST Act and Show Cause Notice under section 73(1)/74(1) or Statement of demand u/s. 73(2)/74(2) for demand tax along with interest and penalty.

Further, pursuant to discussions held in the 47<sup>th</sup> GST Council meeting, the council issued an Office Memorandum to clarify that where pursuant to intelligence based investigation is initiated either by the State/Central Authorities, all the consequential action relating to the case but not limited to adjudication, appeal, revision, rectification will lie with such authority who had initiated the enforcement action and cannot be passed on to the jurisdictional tax authority.

Numerous writ petitions have been filed by taxpayers challenging the jurisdiction of tax authorities under Section 6(1). Multiplicity of proceedings have been initiated against taxpayers by different departments within the Central /State Tax administrations. The absence of proper legal framework governing tax dual tax administration have prompted the court to examine the validity of the proceedings undertaken. However, there have been conflicting judgements from various high courts and any resolution seems distant.

The matter has been reviewed in great detail in a recent case of Tvl. Vardhan Infrastructure and other petitions by the Madras High Court. It was held that "The manner in which the provisions have been designed are to ensure that there is no cross interference by the counterparts. Only exception provided is u/s 6 of the respective GST enactment. Therefore, in absence of a notification for cross-empowerment, the action taken by the respondents are without jurisdiction. Officers under the State or Central Tax Administration as the case may be cannot usurp the power of investigation or adjudication of an assessee who is not assigned to them." Further, the Court hereofore, while quashing the impugned proceedings, stated that there shall be a direction to the

Central Authority/State Authority as the case may be to whom the respective petitioners have been assigned for administrative purpose to initiate appropriate proceedings afresh against them strictly in accordance with law. [Tvl. Vardhan Infrastructre & Others - 2024 (3) TMI 1216 - MADRAS HIGH COURT]

### **Restriction on Parallel Proceedings:**

Another important aspect to be considered is with respect to initiation of proceedings on the same subject matter by two different Authorities. Section 6(2)(b) of the Central GST Act provides that where any proceedings are initiated by the State / Central tax Authorities, no other proceedings can be initiated against the same taxpayer on the same subject matter to avoid duplication in tax administration. That said, the expression 'same subject matter' seems so wide but to determine relief it is necessary for the 'cause of action' to be the same in the first and second proceedings.

The proper officer who initiated the proceedings would be empowered to call for documents, summon persons to give evidence, issue show cause notice and take such proceedings to a logical conclusion. Such proceedings once initiated cannot be transferred to another authority midway due to commonality of issues as there are no such enabling provisions under the GST Act or the rules. Further there cannot be any joint proceedings by both the State/Central tax authorities together as such proceedings are not envisaged under the GST Act/ Rules. Thus, only one of the proceedings can be allowed to continue and other may be withdrawn while any information gathered during the proceedings may be intimated to the authority .

In the case of Vivek Narsaria vs. State of Jharkhand (W.P. (T) No. 4491 of 2023), the Jharkhand High Court addressed the issue of jurisdictional conflicts between State and Central GST authorities. The petitioner challenged the simultaneous proceedings initiated by both the State GST department and the Central GST authorities (CGST and DGGI). The court emphasized that investigations conducted by different authorities (State GST, CGST Preventive Wing, and DGGI) are inter-related, as outlined in Section 6(2)(b) of the Central GST Tax Act that once an inquiry is initiated by one authority, other authorities must defer to the initiating authority for that particular subject matter. It held that in carrying out the investigation concerning inadmissible availment of Input Tax Credit, inasmuch



as, the officers of the DGGI does not enjoy any special power or privilege in comparison with the officers of the State GST Authorities. Consequently, the Court directed that all investigations by the Central authorities be handed over to the State GST, which would continue the proceedings from the current stage.

These rulings also underscore the importance of jurisdictional clarity in tax administration and the necessity for legislative backing for cross-empowerment among tax authorities. The matter is now before the Apex body wherein it has noted that Cross-empowerment involves a question of law inter-se jurisdiction between

the Central and State authorities to carry out parallel investigation against a particular Assessee and also existence of conflicting judgements of different HCs on issue of cross-empowerment u/s 6 of CGST Act;

A conclusive resolution will arrive only when the matter is heard by the Supreme Court which is anticipated to provide much-needed clarity and uniformity in the application of the this law.

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## KSCAA Welcomes New Members In The Month of August and September 2024

Sl.No	Name	Place
1	Alagappan K	Tamilnadu
2	Veerasha Kalakerimatha	Kanakagiri
3	Sridhar Nataraj	Bengaluru
4	Siva Shankar Ginkala	Bengaluru
5	Shivaramaiah	Bengaluru
6	Sanke Girish Kumar	Bengaluru
7	Ramesh Babu Lankipalli	Bengaluru
8	Bhaskar Kakarla	Bengaluru
9	Pallavi S	Bengaluru
10	Kruthika K N	Bengaluru
11	Ashwin Patel	Bengaluru
12	Shridhar Bhat	Bengaluru
13	Siddalingeswar B A llayyanavarmath	Bengaluru
14	Rajendra Prabhu S P	Tumkur
15	Gadamsetty Bhanu Kumar	Bengaluru
16	Chikkaveerasha D J	Bengaluru
17	Chetana V Kathari	Bengaluru
18	Bharti Ranade	Kothanur
19	Vimal Chhajer	Bengaluru
20	Chethan Badu H N	Bengaluru
21	Vamshi A	Bengaluru
22	Sangeeta Shankara Rajan	Bengaluru
23	Bharathkumar K V	Bengaluru
24	R R Chethan	Bengaluru
25	Neha Devendra Shah	Bengaluru
26	Ca Kaushal Tulsyan	Bengaluru
27	Prashanth	Bengaluru



CA. Narasimhan Elangovan

# SEBI'S CYBERSECURITY AND CYBER RESILIENCE FRAMEWORK (CSCRF)

## Introduction

The Securities and Exchange Board of India (SEBI), on August 20, 2024, introduced a new **Cybersecurity and Cyber Resilience Framework (CSCRF)** to enhance the cybersecurity infrastructure of all regulated entities. The framework, developed after consultations with industry stakeholders, mandates the implementation of robust security monitoring mechanisms, with compliance being enforced in a phased manner starting from January 2025. A vital feature of the framework is the Cyber Capability Index (CCI), designed to regularly assess the cybersecurity maturity and resilience of Market Infrastructure Institutions (MIIs) and other qualified regulated entities. SEBI's new framework also provides specific support for smaller entities, requiring stock exchanges NSE and BSE to establish Market Security Operation Centres (SOCs), offering tailored cybersecurity solutions to ensure that even smaller players achieve cyber resiliency despite limited resources. This initiative replaces previous SEBI cybersecurity guidelines, reflecting the regulator's commitment to addressing the growing threat of cyberattacks in the financial sector.

This article gives you an overview of the framework and its applicability.

## What is CSCRF?

The **Cybersecurity and Cyber Resilience Framework (CSCRF)** is SEBI's comprehensive approach to enhancing the cybersecurity posture of **SEBI-regulated entities (REs)**. Introduced as an update to earlier cybersecurity guidelines, CSCRF aims to strengthen the ability of regulated entities to withstand, recover from, and evolve in response to cyberattacks.

This framework aligns with global cybersecurity standards, such as the ISO 27001 and NIST frameworks, to ensure a robust defence against growing cyber threats in the financial and securities markets.

## Who Must Comply with CSCRF?

CSCRF applies to a broad range of **SEBI-regulated entities (REs)** participating in India's financial and

securities markets. These apply to :

1. Alternative Investment Funds (AIFs)
  2. Bankers to an Issue (BTI) and Self-Certified Syndicate Banks (SCSBs)
  3. Clearing Corporations
  4. Collective Investment Schemes (CIS)
  5. Credit Rating Agencies (CRAs)
  6. Custodians
  7. Debenture Trustees (DTs)
  8. Depositories
  9. Designated Depository Participants (DDPs)
  10. Depository Participants through Depositories
  11. Investment Advisors (IAs)/ Research Analysts (RAs)
  12. KYC Registration Agencies (KRAs)
  13. Merchant Bankers (MBs)
  14. Mutual Funds (MFs)/ Asset Management Companies (AMCs)
  15. Portfolio Managers
  16. Registrar to an Issue and Share Transfer Agents (RTAs)
  17. Stock Brokers through Exchanges
  18. Stock Exchanges
- Venture Capital Funds (VCFs)

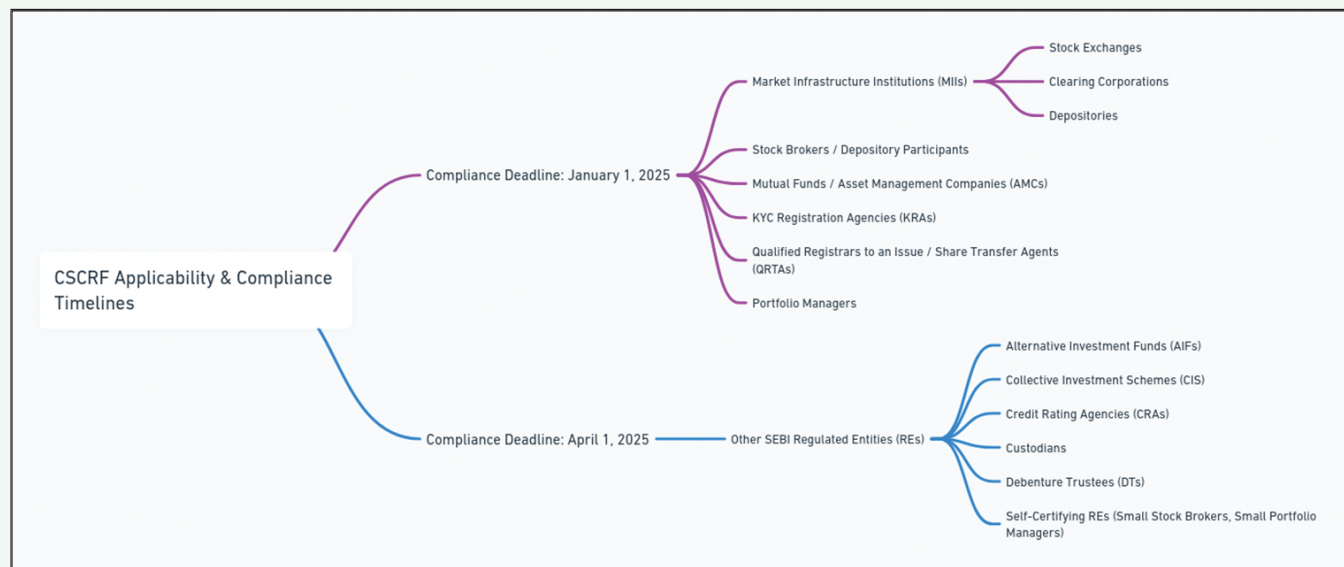
## Applicability Dates

CSCRF has set a phased implementation timeline to allow organisations to align their cybersecurity measures with the framework:

- **By January 1, 2025**, six categories of REs (where cybersecurity circulars already exist) must fully adopt CSCRF.
- **By April 1, 2025**, REs with no prior cybersecurity framework (newly covered entities) must comply.



This staggered approach ensures that all entities, large and small, have sufficient time to prepare for compliance, considering their unique operational capacities.



## Graded Approach

The **Cybersecurity and Cyber Resilience Framework (CSCRF)** introduced by SEBI adopts a **graded approach** to cybersecurity requirements tailored to the size, complexity, and risk exposure of regulated entities (REs). This approach ensures that entities with different operational scopes and resource capacities are subject to cybersecurity obligations that match their scale and risk profiles.

### Classification of Entities into 5 Levels

#### 1. Market Infrastructure Institutions (MIIs)

- Includes stock exchanges, depositories, and clearing corporations.
- MIIs handle many transactions and critical market infrastructure, making them the most regulated under CSCRF.
- Subject to stringent requirements, including **ISO 27001 certification**, regular **Cyber Capability Index (CCI) assessments**, **red teaming exercises**, and advanced threat monitoring.

#### 2. Qualified Regulated Entities (Qualified REs)

- Entities such as large brokers, mutual funds, and asset management companies.
- These entities must also implement **ISO 27001 certification**, conduct regular **CCI self-assessments**, and comply with extensive security measures, including **vulnerability assessments** and **penetration testing (VAPT)**.

#### 3. Mid-size Regulated Entities (Mid-size REs)

- Includes mid-level brokerage firms, portfolio managers, and custodians.
- Required to implement standard cybersecurity controls but are not subject to the highest-level obligations like MIIs. However, they must still comply with **SOC monitoring** and **VAPT**.

#### 4. Small Regulated Entities (Small-size REs)

- Smaller brokers, portfolio managers, and credit rating agencies fall into this category.
- They face lighter requirements, with the option to rely on **Market Security Operation Centres (M-SOCs)** set up by NSE and BSE for cybersecurity monitoring and threat detection, alleviating the burden of setting up their systems.

#### 5. Self-Certifying Regulated Entities (Self-certifying REs)

- The smallest regulated entities with fewer clients or lower operational risks.
- They must **self-certify** their compliance with the cybersecurity framework and leverage the support of M-SOCs to ensure security at a lower cost.

The graded approach ensures that while **Market Infrastructure Institutions (MIIs)** and **Qualified REs** are subject to more comprehensive cybersecurity standards, **smaller REs** are given the flexibility to comply in a more resource-efficient way through the use of shared cybersecurity infrastructure such as **Market**

**SOCs.** This classification helps balance regulatory compliance with practical feasibility for smaller entities, ensuring broad cybersecurity coverage without overwhelming smaller players.

### Why is CSCRf Critical Now?

With rapid digitisation in financial markets, entities are exposed to increasing cyber risks, including ransomware, phishing, and data breaches. The CSCRf aims to provide a standardised cybersecurity framework that:

- **Mitigates risks** arising from sophisticated cyberattacks.
- Ensures **resiliency** by preparing REs to **anticipate, withstand, contain, recover,** and **evolve** from cyber incidents.
- Focuses on **continuous improvement**, ensuring that entities regularly update their defences to address emerging threats.

### Some New Obligations for Compliance

CSCRf introduces several **new provisions** and controls for different REs:

- **Vulnerability Assessment and Penetration Testing (VAPT):** All REs must conduct regular

VAPT, especially after major IT changes, to detect vulnerabilities.

- **Data Classification and Localization:** REs must classify their data based on sensitivity and ensure critical data is stored within India's legal boundaries.
- **Third-Party Risk Management:** REs are responsible for the cybersecurity practices of their third-party vendors and must ensure compliance across their entire supply chain.

### Final Thoughts

CSCRf is a focal framework that ensures all SEBI-regulated entities, regardless of size, are equipped to handle evolving cyber threats. By adopting these robust cybersecurity measures, REs can safeguard their systems, ensure operational resilience, and protect the interests of investors. The phased implementation gives organisations the necessary time to comply, but it is essential to start preparing now to meet SEBI's deadlines.

Stay tuned for my next article, where I'll discuss some of them in greater detail.

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## SUDOKU - 49

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

## Solution to Sudoku - 48 August - 2024

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



CA. Pattabhiram V

# WHY GOOD PROMPTS MATTER AND HOW TO WRITE THEM

The arrival of ChatGPT in Nov 2022 was a game changer. Suddenly, writing, speaking, teaching, and consulting were within everyone's grasp. No one had bargained for a machine to do that kind of work. It was by far the most cost-effective executive assistant that one could hire. Let me tell you how and why.

Ask the application any question, and it will throw out a plausible answer. Ask it for the origin of the phrase Chicken-65 and it will have a response. If you don't know, stop now, and try it out. Incidentally, the answer I get to a query differs from the answer you will get. Yes, different people get different answers – some brilliant, some asinine – based on how you ask ChatGPT. This has to do with 'prompting', and many believe prompting or prompt engineering would be the future.

I intend to discuss why prompt writing is important. How you prompt directly determines what you get.

## 1. Focused Responses

*Why it matters:* A clear prompt focused on what is being asked hugely reduces the risk of vague, off-topic, or incomplete answers.

*Example:* Ask "Describe the key components of a statutory audit report and their significance" provides a detailed answer, whereas a prompt like "Tell me about audit reports" will fetch meandering information. By saying '... of statutory audit,' you ensure it does not throw out responses relating to every other audit.

## 2. Improves Efficiency

*Why it matters:* Well-written prompts save a lot of time. When questions are specific, ChatGPT doesn't have to second guess what you asked it. Specific questions elicit accurate answers.

*Example:* A specific prompt like "Explain how inventory valuation methods under AS 2 impact a company's financial statements" narrows the scope and elicits a focused response. Contrast that with a vague prompt like "Tell me about inventory in accounting." In the latter prompt, it would be

perfectly fine for ChatGPT to just give you the how inventory is valued without touching on the various valuation methods.

*Example:* "Analyse how changes in tax regulations could affect small businesses in the manufacturing sector." This helps ChatGPT give you something meaningful to think about. "What's new in tax laws?" might lead to a meandering answer.

We realised why good prompts are essential. Let's now look at FIVE useful tips about writing great prompts. To remember them, we can use the acronym SLICE.

### 1. SPECIFIC

*Meaning:* When you write the prompt, clearly state the type of answer you are looking for in your prompt.

*Poor Prompt:* Tell me about revenue recognition.

*Improved Prompt:* Please explain the IFRS 15 revenue recognition standard and its specific implications for revenue recognition in the telecommunications sector.

*Why is it good?* The improved prompt asks specifically about IFRS 15, the relevant standard for revenue recognition. This helps focus the response on the right regulatory framework.

### 2. LIST ROLE

*Meaning:* Give ChatGPT a role. Tell it how it should act. Should it wear the hat of a doctor, a lawyer, or a CA. This elicits a sharper response.

*Poor:* Discuss tax planning strategies for a medium-sized technology company.

*Improved:* As a tax expert, explain how you would devise tax planning strategies for a medium-sized technology company aiming to minimise tax liabilities while ensuring compliance with the tax laws.

*Why is it good:*

By addressing the prompt to a tax expert, it assumes a certain level of knowledge and encourages a professional, expert-level response. This helps focus the answer on advanced tax planning techniques rather than basic concepts. Also, by discussing ensuring compliance, you suggest that you are not okay with dubious ideas.

### 3. INSTRUCT

**Meaning:** Provide enough background information to help the model understand the context of your prompt. Just as you would instruct a colleague to perform a specific task, you must instruct ChatGPT as well.

**Poor:** Talk about the importance of audits in business.  
**Improved:** Act as an experienced CA. Explain the role and significance of internal audit in ensuring financial transparency and integrity within the pharmaceutical industry. Include examples of how effective audits can contribute to risk mitigation. Highlight critical considerations and best practices in the audit process.

**Why is it good:**

The prompt highlights that the audit process should include critical considerations and best practices. This instructions ensures that the response will cover theory and offer practical guidance and insights into conducting internal audits effectively.

### 4. CONSTRAINTS

**Meaning:** You can add constraints to guide the response, such as "Write a story in 100 words" or "List three reasons why."  
**Poor:** Explain the process of budgeting and forecasting.  
**Improved:** As a financial expert, describe the budgeting and forecasting methods commonly used in the technology sector. Also provide insights into how these methods can be used to address cost control and efficiency challenges, considering the constraints of a start-up with limited initial capital. Write in 100 words.

**Why is this good?** Naming constraints push ChatGPT to think critically about how budgeting and forecasting methods can be adapted to a unique situation. The request to write in 100 words limits the response, ensuring the answer will be concise and to the point.

### 5. EXAMPLES

**Meaning:** Provide it with an example so that it understands what you see. Ask it to give examples so that you can understand better.

**Poor:** Discuss risk management in financial contexts.  
**Improved:** As a CA, elaborate on the strategies involved in effective financial risk management. Give examples of how companies have identified, assessed, and mitigated financial risks, particularly in volatile market conditions.

**Why is it good?** This is especially good because it provides clear meaning and examples, helping ChatGPT understand exactly what is being asked. Here are a couple of bonus points.

### 1. REVISE AND ITERATE

You don't have to squeeze all five rules into one prompt. You can put out one at a time, receive the response and then put an improved prompt. If you dislike a response, revise your prompt and tell it what you mean. This is an iterative process, like a conversation that you would have with a colleague.


### 2. ASK IT TO GIVE YOU A PROMPT

After you write a prompt, you can ask whether it has understood it and whether it could improve the prompt to meet the SLICE model. Better or worse still (depending on your perception, you can prompt it to write the prompt!!  
**Prompt:** "I want you to tell me how to write a prompt where I want you to write a good movie review."

**ChatGPT (gives the prompt):** "Please write a good movie review for the film [Movie Title]. Include your thoughts on the storyline, performances, and other aspects. Feel free to mention specific scenes that you found impressive. Your review give readers an idea of what makes it worth watching. Please aim for a review length of around 200-300 words."


Clearly, we are in an evolutionary phase. Good things about AI have begun, but the best is yet to come.

Author can be reached at :  
[patbram@gmail.com](mailto:patbram@gmail.com)



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## Form No. 3CEB - clause by clause analysis

Zoom webinar by  
**CA Smita Patni**  
New Delhi

 **Date**  
October 4, 2024


 **Time**  
5pm to 6.30








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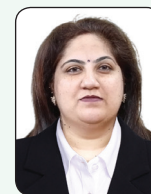
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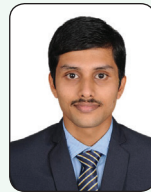
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# FINANCIAL REPORTING AND ASSURANCE

## KEY UPDATES A.AS | Ind AS

### 1. EAC Opinion – Accounting for subsidy receivable under the IndAS framework

The September 2024 edition of the ICAI Journal has carried an Expert Advisory Committee (EAC) Opinion – *Accounting for subsidy receivable under IndAS framework*.

**Background:** The Querist is a state government company having 5 subsidiaries (DISCOMs) and engaged in the bulk purchase of power from inter-state and intra-state generators and in bulk sale/supply of power to the DISCOMs. The Opinion of the EAC was sought concerning accounting for government grants, namely tariff subsidy and subsidy under a scheme (*Uday* scheme) which can be utilized only for the discharge of specified outstanding debt.

**Key takeaways** from the opinion based on the facts applicable to the Querist:

- **Tariff subsidy is not in relation to any specific expense incurred** by the DISCOM but rather to compensate for loss of tariff due to subsidised/concessional tariff fixed by the SERC/government to be charged to the consumer. Therefore, **the subsidy is received in return for compliance with certain conditions** including supply of power at subsidized or concessional rates. Accordingly, the EAC is of the view that the tariff subsidy **should be recognised in the P&L in the period in which the related power is supplied** provided there is reasonable assurance of receipt of grant and compliance of other attached conditions.
- If at the time of receipt of funds, there are pending substantive conditions related to tariff subsidy and the reasonable assurance criteria are not met, the grant should not be recognized and the funds received towards the grant should be recognised as

liability (deferred income).

- As regards the subsidy under UDAY Scheme, the EAC noted that while it is stated that there is a reasonable assurance that grant shall be received from the State Government in the next 10 years, it is also stated that the Company shall comply with the conditions after receipts of fund/amount from the State Government. Thus, it appears that the entitlement of grant under this scheme is subject to various substantive conditions. **If there are pending substantive conditions related to the subsidy and the reasonable assurance criteria are not met, the grant/subsidy should not be recognised even if the funds have been received;** the subsidy should be recognised only and when there is reasonable assurance that the required criteria as per Ind AS 20 are met.
- Since the DISCOMs did not follow the requirements of Ind AS 20, the same should be rectified in the current reporting period, considering it as an accounting error, as per Ind AS 8.

**Link to the Opinion:**

<https://resource.cdn.icaai.org/81901cajournal-septem2024-26.pdf>

### 2. Ind AS 117, Insurance Contracts notified by MCA

On 12<sup>th</sup> August, 2024, the Ministry of Corporate Affairs (MCA) notified the **Companies (Indian Accounting Standards) Amendment Rules, 2024** vide notification G.S.R. 492 (E). Ind AS 117, *Insurance Contracts* has been notified which comes into force on the date of publication in the Official Gazette.

Ind AS 117 establishes principles for the recognition, measurement, presentation and disclosure of *insurance contracts*. The objective of Ind AS 117 is to ensure that an entity provides relevant information that faithfully represents those contracts. This information gives a basis for users of financial statements to assess the effect



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that insurance contracts have on the entity's financial position, financial performance and cash flows. An insurance contract is defined as "a contract under which one party (the issuer) accepts significant **insurance risk** from another party (**policyholder**) by agreeing to compensate the **policyholder** if a specified uncertain future event (**insured event**) adversely affects the **policyholder**. Insurance contracts are initially measured at the total of the fulfilment cash flows and the contractual service margin. As regards subsequent measurement, the carrying amount of insurance contracts at the end of each reporting period shall be the sum of the **liability for remaining coverage** and the **liability for incurred claims**.

**Ind AS 104, Insurance contracts** has been omitted from the list of notified Ind AS.

**Link to the Notification:**

<https://www.mca.gov.in/bin/dms/getdocument? mds=4iwngdxt9oFj%252Bpp05r1EZA%253D%253D&type=open>

## B. ASSURANCE

### 3. ICAI - Audit Quality Maturity Model version 2.0 approved

On 22<sup>nd</sup> August, 2024, the Institute of Chartered Accountants of India (ICAI) **approved the Audit Quality Maturity Model version 2.0 (AQMM v 2.0)**. There is no change in the applicability and it is mandatory for firms auditing a listed entity, or banks other than co-operative banks or Insurance Companies.

AQMM v 2.0 comprises the following sections: **Practice Management – Assurance, Human Resource Management and Digital Competency** and applies to firms (Practice Units) which submit Form 1 – Application cum Questionnaire on or after 1<sup>st</sup> April, 2025. This will cover firms for which the review period is from 1<sup>st</sup> April, 2022 till 31<sup>st</sup> March, 2025. Practice Units are permitted to early adopt AQMM v 2.0.

**Link to the Announcement:**

<https://resource.cdn.icai.org/81661caq65837.pdf>

### 4. IAASB – New Guidance on using the ISA for Less Complex Entities (LCE)

On 27<sup>th</sup> August, 2024, the International Auditing and Assurance Standards Board (IAASB) issued an



### Authority Supplemental Guidance, *The International Standard on Auditing for Audits of Financial Statements of Less Complex Entities (ISA for LCE)*.

The publication provides additional information that may be of assistance when adopting and implementing the ISA for LCE. The guidance has been developed to further explain matters and circumstances that may be relevant in determining the appropriate use of the ISA for LCE.

**Link to the Guidance:**

<https://www.iaasb.org/news-events/2024-08/new-guidance-available-iaasb-using-isa-lce>

## C. NFRA

### 5. Order u/s 132(4) – Statutory audit of Coffee Day Enterprises Ltd.

On 19<sup>th</sup> August, 2024, the NFRA issued an order (No.020/2024) u/s 132(4) of the Companies Act related to the statutory audit of Coffee Day Enterprises Ltd. for F.Y.2019 finding the Audit Firm, the Engagement Partner (EP) and Engagement Quality Control Reviewer (EQCR) guilty of professional misconduct. The NFRA imposed a **monetary penalty of ₹10 crore on the Audit Firm**. The EP and EQCR were imposed penalties of **₹ 50 lakhs and ₹ 25 lakhs respectively apart from being debarred (10 years and 5 years, respectively)**.

As per the Order, since a substantial portion of the financial information (Consolidated Financial Statements) was audited by other auditors, the Principal Auditors did not ensure compliance with the requirements of SA 600 in letter and spirit. The Principal Auditors did not properly evaluate whether their own participation was sufficient to be able to act as the Principal Auditor. The additional procedures, wherever performed by the Principal Auditors, were also inadequate and deficient.

**Link to the Order:**

<https://cdn.bbsr.s3waas.gov.in/s3e2ad76f2326fbc6b56a45a56c59fafdb/uploads/2024/08/202408191036463933.pdf>

## D. RBI

### 6. Prudential Treatment of Bad and Doubtful Debt Reserve (BDDR) by Co-operative Banks

The extant practice by co-operative banks w.r.t. BDDR creation is that some banks recognise an expense in



the P&L, while in other cases it is created through appropriations from net profits. As per Accounting Standard (AS) 5, all expenses which are recognised in a period should be included in the determination of net profit or loss for the period.

On 2<sup>nd</sup> August, 2024, the Reserve Bank of India (RBI) vide a Circular (RBI/2024-25/58 DOR.CAP.REC.No.27/09.18.201/2024-25) has revised the instructions on Bad and Doubtful Debt Reserve as follows:

- With effect from F.Y.2024-25, all provisions as per Income Recognition, Asset Classification and Provisioning (IRACP) norms, whether accounted for under the head ‘BDDR’ or any other head of account, **shall be charged as an expense to the P&L account** in the accounting period in which they are recognised. The eligibility of such provisions for regulatory capital purposes shall continue to be as defined in the extant guidelines on capital adequacy.
- After charging all applicable provisions as per IRACP norms and other extant regulations to the P&L, banks may make any appropriations of net profits below the line to BDDR, if required as per the applicable statutes or otherwise.
- A specified one-time measure to facilitate rectification and a smoother transition to an AS-compliant approach has also been prescribed in the Circular.

The circular applies to **all Primary (Urban) Co-operative Banks, State Co-operative Banks and Central Co-operative Banks**. The instructions are **applicable with immediate effect**.

**Link to the Circular:**  
<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12716&Mode=0>

#### E. USGAAP|ASSURANCE

### 7. SEC – New and updated PCAOB Standards: General responsibilities of the auditor and use of technology-assisted analysis in audits

On 20<sup>th</sup> August, 2024, the US Securities and Exchange Commission (SEC) approved two audit standards regarding the general responsibilities of the auditor and the use of technology-assisted analysis in conducting an

audit. It also approved a proposal amending a PCAOB ethics rule governing the liability of an associated person when they directly and substantially contribute to audit firm violations.

The approved standards are PCAOB’s new **AS 1000**, *General Responsibilities of the Auditor in Conducting an Audit* and amendments to **AS 1105**, *Audit Evidence*, and **AS 2301**, *The Auditor’s Response to the Risks of Material Misstatement*, and conforming amendments, to address the use of technology-assisted data analysis in audit procedures. These amendments modernize the general principles and responsibilities of the auditor when conducting an audit and specify/clarify the auditors’ responsibilities when analytical tools are used in conducting audits.

The SEC also approved the PCAOB’s amendment to **Rule 3502**, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*, governing the liability of an associated person of a registered public accounting firm who directly and substantially contributes to that firm’s violations of the laws, rules and standards that the PCAOB enforces.

**Link to the Announcement:**  
<https://www.sec.gov/newsroom/press-releases/2024-100>

#### F. SELECT GLOBAL ENFORCEMENT ACTIONS/INSPECTION REPORTS

### Enforcement Actions

### 8. UK FRC sanctions audit firm for exceeding fee cap on non-audit services

On 7<sup>th</sup> August, 2024, the UK Financial Reporting Council (FRC) issued a Final Settlement Decision Notice against an Audit Firm under the Audit Enforcement Procedure and imposed sanctions in respect of a breach of the FRC’s *Revised Ethical Standard 2019*, namely exceeding the 70% fee-cap on non-audit services (for 2021). The sanctions comprised both financial (£251,305 penalty) and non-financial. The Audit Firm’s non-audit work for a client related to the provision of working capital reporting, assistance with correspondence with the Financial Conduct Authority (FCA), and a comfort letter in connection with the information in the circular that was prepared to support a demerger. The average of the



fees paid to the Audit Firm for its audits by the client in the three consecutive financial years prior to it carrying out the non-audit work was \$400,462. 70% of this figure is \$280,323. The total fees for non-audit services that were subject to the 70% cap amounted to \$535,000 and therefore exceeded \$280,000 by a significant margin.

**9. SEC charges listed company and three senior executives with accounting and disclosure fraud**

On 9<sup>th</sup> August, 2024, the US Securities and Exchange Commission (SEC) announced settled charges against a NASDAQ-listed company and its former Chairman & CEO, current CEO and former CFO for misleading the public about the company’s financial performance between 2017 and 2019. The order allege that, in mid-November 2017, the company and its former Chairman & CEO reported 2017 revenue guidance of \$300 million, despite numerous known issues indicating that the company would miss this guidance by a wide margin. The company later reported only \$144 million in revenues. The company and Chairman & CEO also misled the company’s auditor with a fraudulent letter of intent from a purportedly interested buyer of certain assets to avoid writing down those assets by \$17 million in 2017. The former Chairman also improperly hid his personal interest in two companies that received millions in cash and stock from deals with the Company. [Release No. 2024-94]

**G. SELECT PUBLICATIONS**

10. UK Financial Reporting Council (FRC): Exposure Draft of ‘*Guidance on the Going Concern Basis of Accounting and Related Reporting (including Solvency and Liquidity Risks)*’ [5<sup>th</sup> August, 2024] [[https://media.frc.org.uk/documents/Guidance\\_on\\_the\\_Going\\_Concern\\_Basis\\_of\\_Accounting\\_and\\_Related\\_Reporting\\_Exposure\\_Draft.pdf](https://media.frc.org.uk/documents/Guidance_on_the_Going_Concern_Basis_of_Accounting_and_Related_Reporting_Exposure_Draft.pdf)]

11. Financial Accounting Standards Board (FASB): *FASB Investor Outreach Report, 2024*. [6<sup>th</sup> August, 2024] [[https://www.fasb.org/page/ShowPdf?path=FASB\\_Investor\\_Outreach\\_Report\\_2024.pdf&title=2024%20FASB%20Investor%20Outreach%20Report](https://www.fasb.org/page/ShowPdf?path=FASB_Investor_Outreach_Report_2024.pdf&title=2024%20FASB%20Investor%20Outreach%20Report)]

12. UK Financial Reporting Council (FRC): Discussion Paper on ‘*Opportunities for future UK Digital Reporting*’. [13<sup>th</sup> August, 2024] [[https://media.frc.org.uk/documents/Opportunities\\_for\\_future\\_UK\\_digital\\_reporting\\_nmCcPVR.pdf](https://media.frc.org.uk/documents/Opportunities_for_future_UK_digital_reporting_nmCcPVR.pdf)]

13. US Public Company Accounting Oversight Board (PCAOB): *Spotlight: Staff Update on 2023 Inspection Activities*. [15<sup>th</sup> August, 2024] [[https://assets.pcaobus.org/pcaob-dev/docs/default-source/documents/staff-update-2023-inspection-activities-spotlight.pdf?sfvrsn=2afb0f25\\_2](https://assets.pcaobus.org/pcaob-dev/docs/default-source/documents/staff-update-2023-inspection-activities-spotlight.pdf?sfvrsn=2afb0f25_2)]

**E. WHAT THEY SAID**

Regulation plays a role in encouraging ethical professional behaviour. However, regulation can only go so far. Just because something is allowed by regulation does not make it a good idea. Just because a regulator has not sanctioned something does not mean that it is not wrong. As but one example, think about a regulator’s enforcement power. Enforcement actions offer consequences for ethical lapses that occur, and are designed to deter others. But misconduct continues. Maybe, it is because individuals are convinced their behaviour is “not that bad” and simply the cost of doing business. Maybe, it is because they think they will not get caught. Maybe, they have decided that the incentives to the misconduct are strong enough to be worth the risk. The conclusion is the same; the audit profession cannot rely on regulators to develop their professionalism for them. “Rules cannot take the place of character.”

- **George R. Botic, Board Member, PCAOB** | 11<sup>th</sup> August, 2024

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[vinayakpaiv@hotmail.com](mailto:vinayakpaiv@hotmail.com)

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CA. Vinay Thyagaraj

# KARNATAKA RERA – ANNUAL AUDIT OF ACCOUNTS AND LATEST UPDATES

Just as a conclusion can pave the way for a fresh start, the implementation of the RERA Act 2016 represents a significant transformation in how real estate transactions are conducted in India. It concludes the period of unregulated real estate development and begins a new chapter of accountability, fairness, trust, timelines and protection to all stakeholders. This new beginning benefits all stakeholders by fostering trust,

transparency, and a more balanced playing field in the real estate market.

Last month KSCAA journal / edition, I explained the Audit of Accounts for Real Estate Projects under RERA – 2024. In continuation of that, I have now framed a Q&A section related to the Audit of Accounts of the promoter under the RERA Act, 2016, to provide readers with greater clarity and a better understanding -

Sl No	Question	Answers
1	What is the objective of conducting an audit of accounts of the promoter under the RERA Act 2016?	The primary objective of conducting an audit of accounts of the promoter under the RERA Act 2016 is to ensure transparency, accountability, and proper utilisation of funds by the promoter realised from the allottees in a real estate project.
2	Reference of legal provision under the Act, rules or Regulations	a. 3 <sup>rd</sup> proviso to sec 4(2)(1)(D) RERA Act 2016 b. Regulation 3(1)(iii) of Karnataka RERA (General) Regulations, 2022
3	Details of the provision with respect to the Annual Audit under RERA Act 2016	Refer August 2024 month KSCAA Journal – <a href="https://kscaa.com/wp-content/uploads/2024/09/KSCAA-August-2024-Magazine-Colour.pdf">https://kscaa.com/wp-content/uploads/2024/09/KSCAA-August-2024-Magazine-Colour.pdf</a>
4	Due Date for submission of RERA Audit Report for the financial year ended 31 <sup>st</sup> March 2024	30 <sup>th</sup> September 2024 (With in six months from the end of the financial year (i.e., 30 <sup>th</sup> Sep, 2024 for the year ending 31 <sup>st</sup> March 2024)
5	Format of Audit Report notified by Karnataka RERA	Form 7 - Form-7 Annual Audit Report on Statement of Accounts (same is available at <a href="https://rera.karnataka.gov.in/resources/downloads/Form-7.pdf">https://rera.karnataka.gov.in/resources/downloads/Form-7.pdf</a> )
6	Any exemption for non-filing is applicable to any project?	Yes, in case of Affordable Housing in Partnership (AHP) under Pradhan Mantri Awas Yojana (Urban), the implementing agency is <b>exempted</b> from submitting of annual audit report on statement of accounts in Form 7.  <i>Vide Notification No DOH 48 RERA 2023 dated 19<sup>th</sup> Aug 2024. Proviso to 3(1) (iii) of Karnataka RERA (General) Regulations, 2022 is inserted.</i>
7	Who should certify and issue the audit report	Shall be certified and signed by the statutory auditor of the promoter's enterprise (refer 3(1) (iii) of Karnataka RERA (General) Regulations, 2022)

RERA

Sl No	Question	Answers
8	Promoter maintains the books of accounts of the entity, further promoter is having multiple business and multiple projects. How to carry out the audit and issue the audit report?	<p>The RERA Act, 2016 mandates that promoters must audit their <b>accounts project-wise</b>. The audit report must be verified and submitted to the Real Estate Regulatory Authority accordingly. Specifically, the promoter is required to ensure the following:</p> <ol style="list-style-type: none"> <li>The audit must be conducted and reported on a project-by-project basis, and the report must be submitted to the Authority as per the regulations.</li> <li>Promoters must maintain separate records of the funds collected from allottees for each project. Additionally, expenses related to land acquisition and construction must be categorized project-wise.</li> <li>For promoters engaged in multiple businesses or projects, there must be a clear accounting system to bifurcate finances/expenses by project. This can be achieved through methods like Cost Centre or Profit Centre accounting.</li> <li>In practice, many promoters adopt Cost Centre or Profit Centre accounting systems to comply with these requirements, enabling them to efficiently segregate and report financials for each individual project.</li> </ol>
9	Promoter has not received any funds from the allottees and invested own funds, is Audit required under RERA	<p>Yes,</p> <p>Audit is required for all RERA registered project irrespective of size, location, progress, sales, collections (unless specifically exempted by the RERA Authorities – refer clause 6 above)</p>
10	Please clarify whether Audit is required for the project completed in between of the year?	<p>Yes, if the project progresses or work is carried out during the financial year 2023-24 and is completed before 31.03.2024, an audit is still required.</p> <p>For example, if the project development work is completed on 30.06.2023, the audit report for the financial year 2023-24 should be prepared for the project and must be submitted accordingly</p>
11	Any Extension of due date is issued by Karnataka RERA for the submission of Audit Report?	<p>No, as on 14<sup>th</sup> September 2024, no such extension notification is issued by the RERA Authority.</p> <p>Actually, Karnataka RERA Authority sent a mail to all the promoters on 29<sup>th</sup> August 2024, as follows –</p> <p>Dear Promoter,</p> <p><i>As per section 4(2)(1)(D) of the RERA Act 2016 the promoters shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice and shall produce statements of accounts certified by the chartered accountant. The Authority has facilitated the Annual Audit Module to upload the Annual Audit Report (Form-7) for the financial year 2023-24.</i></p> <p><i>In case of failure to upload the Annual Audit Report within 30-09-2024, penalty under Section 60 shall be leviable.</i></p>







CA. Aditya Kumar S

## CORRUPTION RISK ASSESSMENT

**Background:** Corruption remains one of the most pressing issues facing governments, organizations, and societies across the globe. The investor’s confidence in an entity is shaken when they get to know that their corruption at different levels to do business legitimately. Businesses face not only compliance risk but also financial and reputation risks where the news of corruption becomes known to stakeholders. To mitigate these risks, conducting a robust corruption risk assessment (CRA) has become increasingly essential for both public and private entities. India ranked 93 in Transparency International Corruption Perceptions Index 2024 out of out of 180 countries. <sup>1</sup>The ‘G’ element i.e., Governance element in Environmental Social and Governance framework focuses on quality and transparency of operations. The Sustainable Development Goals (SDGs) adopted by the United Nations (UN) includes “Peace, Justice and Strong Institutions” as one of the key goals towards sustainable development. One such goal includes “*Strengthening the rule of law and promoting human rights, for reducing the flow of illicit arms, combating corruption, and ensuring inclusive participation at all times*”.

Under Principle 1 of Business Responsibility and Sustainability Reporting (‘BRSR’): Business should conduct and govern themselves with integrity, and in a manner that is Ethical, Transparent and Accountable:

- Percentage coverage by training and awareness programmes on BRSR related principles to the Board of Directors, Key Managerial Personnel (KMP), Employees and Workers;
- Details of fines, penalties, etc., paid in proceedings by the entity, Directors and KMP and whether any appeal has been preferred;

- Existence of anti-corruption or anti-bribery policy and web-link of the policy;
- Details of disciplinary action taken by law enforcement agencies
- Details of any corrective action taken or underway on cases of corruption and conflicts of interest;
- Awareness programmes conducted for value chain partners;
- Mechanism to avoid / manage conflict of interests involving members of Board.

Similarly, Global Reporting Initiative (‘GRI’) 205 requires focuses specifically on anti-corruption. The standard is designed to help organizations report on their policies, practices, and performance in combating corruption and advancing ethical business conduct. GRI 205 aims to provide a framework for organizations to disclose their efforts to prevent corruption, which includes both bribery and extortion. By reporting on these issues, organizations can demonstrate their commitment to ethical practices and promote trust among stakeholders. Disclosures include::

- The organization's policies and practices to prevent corruption, such as codes of conduct, training programs, and whistleblower protections.
- The assessment of risks related to corruption within the organization, including specific measures taken to address these risks.
- Information on incidents of corruption, including any confirmed cases of corruption and the outcomes of these incidents, such as penalties or disciplinary actions taken.
- The standard encourages organizations to examine and disclose corruption risks across all operations

<sup>1</sup><https://www.transparency.org/en/countries/india>

- and within their supply chain, ensuring that anti-corruption measures are consistently applied.
- This includes designating responsible parties or departments to oversee anti-corruption efforts and ensuring that these efforts are integrated into broader business strategies.
  - GRI 205 provides performance indicators for organizations to measure and disclose their performance regarding anti-corruption. These metrics assist in tracking the effectiveness of anti-corruption programs and identify areas for improvement.

**Need for Corruption Risk Assessment (‘CRA’) in Business:**

Corruption risk assessment refers to the systematic process of identifying, analyzing, and evaluating potential corruption risks within an organization or system. The objective of CRA is to discern vulnerabilities to corrupt practices—such as bribery, fraud, and embezzlement—that may exist in various operations or sectors. The significance of corruption risk assessment can be understood through several key perspectives:

*Risk Mitigation:* Corruption can lead to significant financial losses. A CRA allows organizations to prioritize resources effectively, focusing on areas with the highest exposure to corruption risks. This approach ensures that preventive steps are taken to avoid such financial losses. Further, corruption also brings in reputation loss and loss of business. Taking preventive measures would help in mitigating the risks.

*Compliance and Legal Safeguards:* Countries like Australia have Bribery of Foreign Public Officials Act 1999, United Kingdom has UK Bribery Act 2010, the US has Foreign Corrupt Practices Act 1977 and in India we have Prevention of Corruption Act 1988 and host of other regulatory agencies having their respective rules and regulations.

*Enhancing Accountability:* By assessing risks, organizations create a framework that promotes accountability among employees and stakeholders. It sets clear expectations regarding ethical conduct and the consequences of engaging in corrupt practices. Typically, companies have policies like Anti-Corruption and Anti-

Bribery Policy to ensure that there are governed by the Board and the delegated powers ensure its compliance.

*Building Trust:* Stakeholders are more likely to engage with organizations that demonstrate a commitment to fighting corruption. Conducting a corruption risk assessment signal to employees, customers, and the public that the organization is serious about ethical practices, thereby fostering trust and cooperation.

**Key Activities which are vulnerable for Corruption:**

*Licensing and approvals:* Businesses need licenses, depending on the nature of business and geography in which they operate; to ensure that the businesses are registered or authorized by the government. There is a risk of corruption in this activity to secure the requisite approvals from the Government / regulators. Further, areas like maintenance of factory, trade laws, taxation related areas etc., are also subject to high risk of corruption to get favorable decisions.

*Supply Chain:* Companies enter contracts with Vendors, Contractors and other third-party agencies for various services. The risk may be that these parties may indulge in corruption which could in-turn impact the business. The supply chain partners may indulge in corruption either on their own or could be a conduit to the business to cover their activities.

*Joint Ventures:* Company enters into joint venture agreements or even having collaboration with various agencies for research and development or promoting their business or as a business strategy to grow. Joint Venture partners normally have sharing of responsibilities and resources as well in a pre-defined manner. These partners could get involved in corruption which exposes the business to risks.

*Customer Relationship:* Corruption also includes how the marketing or sales team sources orders from both existing customers and potential customers. The corruption could be disguised in the manner of giving additional discounts to especially government agencies or contracts or the terms of sales seems to be ‘outlier’ when compared to other customer contracts. Companies may also indulge in practices to ensure that customers who would want to complaint against bad service or non-compliance with the regulations by bribing them or



through other means rather than dealing with the same as permitted by law.

*Financing Arrangements:* Corruption with banks and financial institutions to dilute or modify the rules in the favor of the business or bribe paid to ensure that the non-compliances are not considered at the time of review of performance or manipulation of records and similar activities.

*Regulatory Communication:* Corruption with regulators to ensure fines imposed for non-compliances are not paid or are diluted.

*Others:* Pay to evade traffic fine or get a preferential treatment or acceptance in any public office or circumstances are such that it is a medical issue and unless there is a payment not as per the regulations the life of the person is in danger are some of the examples of corruption wherein an individual or representative of a company would normally indulge or is forced to indulge in.

**ISO 37001: 2016:** ISO 37001:2016 is an international standard that provides a framework for organizations to establish, implement, maintain, and continually improve an anti-bribery management system (ABMS)<sup>2</sup>. It was published by the International Organization for Standardization (ISO) to help organizations prevent, detect, and address bribery in their operations. Adoption of ISO 37001 requires:

- *Leadership and Commitment:* Top management must demonstrate leadership and commitment to establishing an effective anti-bribery management system.
- *Risk Assessment:* Organizations are required to conduct a risk assessment to identify potential bribery risks and implement appropriate measures to mitigate them.
- *Anti-Bribery Policies:* Establishing clear anti-bribery policies is essential, including a code of conduct that outlines acceptable behaviors.
- *Due Diligence:* Organizations should perform due diligence on their employees, business partners, and third-party entities to assess potential bribery risks.

- *Monitoring and Review:* Regular monitoring and reviewing of the ABMS is necessary to ensure its effectiveness and compliance with legal requirements.
- *Training and Communication:* Providing training for employees and communication regarding the ABMS can foster a culture of compliance and integrity within the organization.
- *Investigation and Actions:* The standard encourages organizations to establish procedures for investigating and responding to bribery incidents.
- *Continuous Improvement:* The ABMS should be continuously improved based on monitoring results, audits, and other feedback mechanisms.

### Methods of Conducting a Corruption Risk Assessment

*Identification of Risks:* This initial step requires gathering information on potential corruption vulnerabilities. Techniques such as interviews, surveys, and stakeholder consultations can help identify high-risk areas within an organization. Review the current risk universe and update the risk register to identify all the potential risks.

*Risk Analysis:* Once the risks are identified, the next stage involves assessing the likelihood and potential impact of each risk. This evaluation may employ qualitative methods (such as expert judgment) and quantitative approaches (like statistical models) to understand the severity of each risk. Leverage the current knowledge of business environment, results of internal control testing / internal audit in risk analysis.

*Risk Evaluation:* After analyzing the risks, organizations must prioritize them based on their analysis results. This step helps in determining which risks require immediate attention and resources.

*Mitigation Strategies:* Developing appropriate strategies to mitigate identified risks is critical. These strategies may include implementing stricter internal controls, promoting a culture of transparency, conducting employee training on ethical behavior, and establishing whistleblower protection mechanisms.

<sup>2</sup><https://www.iso.org/iso-37001-anti-bribery-management.html>



**Monitoring and Review:** A corruption risk assessment is not a one-time process. It requires continuous monitoring and periodic reviews to adapt to changing risk landscapes and ensure that mitigation measures are effective.

### Mitigating Corruption Risks

To effectively mitigate corruption risks identified through a CRA, organizations can adopt various strategies:

**Establishing a Robust Ethical Framework:** Creating a strong organizational Code of Conduct that promotes integrity and outlines clear expectations for behavior can help create a culture of honesty and transparency. Business to adopt ‘zero tolerance’ towards any type of corruption.

**Training and Awareness Programs:** Regular training sessions for employees to recognize and report corrupt activities can significantly reduce the likelihood of corruption, fostering an environment where ethical behavior is valued.

**Whistleblower Mechanisms:** Providing secure channels for reporting suspicious activities encourages employees to come forward without fear of retribution. This not only helps in uncovering corrupt practices but also enhances organizational transparency.

**Internal Controls and Audits:** Implementing stringent internal controls and conducting regular audits are essential practices in detecting and preventing corruption. These mechanisms can help identify discrepancies and enforce accountability among employees. Where there is a strong indication of corruption, forensic audit may also have to be done to get to know the facts and report accordingly.

**Engaging External Oversight:** Involving third-party organizations or independent auditors can provide an objective assessment of corruption risks and enhance credibility in the organization’s anti-corruption efforts.

**Establishing reporting framework:** As indicated above if there are instances where the employee of an entity must pay the money, in circumstances beyond their control or they have done it without their knowledge on company’s policies; it must be reported to a senior personnel who can in turn take it up with law enforcement authorities.

### Professional Opportunities:

Corruption Risk Assessment would be required either by a specific business partner to review the control of governance of the other party or can be voluntarily adopted. Chartered Accountants are approached by companies who typically have business relationship with customers / vendors etc., including the MSME, in other geographies and they are looking out to validate the quality of governance amongst other aspects including ESG baseline assessment. It would be worthwhile to evaluate whether Corruption Risk Assessment could be integrated in Internal Audit to enhance its effectiveness including risk management practices.

### Conclusion

Corruption poses significant risks to organizations and societies, but through diligent corruption risk assessments, stakeholders can identify vulnerabilities and implement effective mitigation strategies. By enhancing accountability, building trust, and fostering compliance, organizations can create environments resistant to corruption. The ongoing commitment to transparency and ethical conduct not only strengthens institutional integrity but also contributes to sustainable development and societal progress. In a world striving for fairness and equity, the role of a robust corruption risk assessment becomes ever more critical in protecting the values that underpin democracy and effective governance. One does acknowledge that we have a long way to go to fight corruption and steps are taken in that direction, more needs to be done. It all begins with oneself.

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Audit





CA. Pramod Srihari

## SETTLEMENT UNDER IBC: BYJUS CASE STUDY

The National Company Law Tribunal (NCLT) in Bengaluru has admitted Think & Learn Private Limited (better known as Byju's) into insolvency proceedings after the company failed to fulfill its sponsorship commitments to the Board of Control for Cricket in India (BCCI). Byju's, a high-profile ed-tech unicorn once valued at \$22 billion, now faces an existential crisis.

A few years ago, Byju's raised concerns around corporate governance, particularly highlighted by the frequent changes in its auditors and discussions around its revenue recognition practices. This served as a pivotal moment for many start-ups on aggressive growth paths to reflect on their governance and accounting frameworks. However, despite these governance challenges, Byju's now faces more pressing existential issues under the Insolvency and Bankruptcy Code (IBC), which could determine its very survival.

BCCI filed an insolvency plea against by us under Section 9 under IBC for defaulting a payment of ₹158 crore, which was due from Byju's under a sponsorship agreement. The company signed a sponsorship agreement with BCCI in 2019 to sponsor the Indian cricket team. The agreement lasted until March 2022 but was extended till March 2023. The company made full payment for only one invoice for the financial year 2022-23 and failed to clear the remaining dues. After multiple requests for extensions, Byju's agreed to let BCCI encash a bank guarantee, but it was insufficient to cover the entire debt. The company and BCCI negotiated on multiple occasions, but the company postponed making the payment to BCCI, it was waiting to raise the capital to make the payment to BCCI. "The debtor failed to clear the outstanding amount by 30/06/2023; which was committed by its Emails dated 06/01/2023 and 17/04/2023, that the Operational Creditor issued a Demand Notice as envisaged under Section 8(1) of the Code, Read with Rule 5(1) Of IBBI(Application to the Adjudication Authority) Rules, 2016 on 29/07/2023. (clause (f) of para 7.4 of the NCLT order of Think and Learn Private Limited)". The Case shows the

excess reliance of funding of start up even after rising to the status of Unicorn, for expenses as mundane as operational expenses.

### Concept of settlement and Omnibus settlement

The Finance Minister in her Budget speech highlighted the IBC's success that It has resolved over 1,000 cases, resulting in the realisation of ₹3.3 lakh crore to creditors. And 28,000 cases involving over ₹10 lakh crore have been settled even before admission. However settlement is not a plain Vanilla withdrawal in IBC.

The case of Byjus got interesting when the company wanted to settle the matter with BCCI by paying the default dues. It's a common understating that the case has to be withdrawn/closed when the leading cause while accepting the petition itself is cured. Unfortunately, IBC is not a recovery suit; there is no objective to settle the matter in IBC just by making the payment once the petition is admitted. While the principle in IBC is well settled and is 'in-rem', the corporate debtors frequently knock on the door of the tribunal to close the insolvency petition by making the payment.

These matters have reached the courts in various instances, and there are merits on both sides of withdrawal. A prominent and the earliest one was of Swiss Ribbons Private Limited and Anr. V. Union of India and Others – (2019) 4 SCC 17 that guides the concept of 'in-rem' and withdrawal of cases. "82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that

at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, **in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016**, allow or disallow an application for withdrawal or settlement. This Comp App (AT) (CH) (Ins) No.262/2024 be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case.” A similar view was taken in Kamal K. Singh Vs. Dinesh Gupta, (2022) 8 SCC 330 “relying upon paragraph 82 of the report in the case of Swiss Ribbons), the Supreme Court, which was dealing with a similar situation where the settlement had been arrived before the constitution of CoC allowed the proceedings to be withdrawn and held that the applications filed under Rule 11 of the NCLT Rules would be maintainable and the Ocs therein was justified in moving such application”.

In Bhaskar Biswas Vs. M/s Devi Trading and Holding Pvt. Ltd. CA (AT) (Ins) No. 823 of 2019 decided on 03.01.2019 and Sintex Plastics Vs. Mahatva Plastic Products and Building Material Pvt. Ltd., CA (AT) (Ins) No. 729 of 2022 to contend that this Court had declined to exercise jurisdiction under Rule 11 of the Rules and rather allowed the Appellant to move an application under Section 12A for settling the claim of all the creditors particularly the allottees.

The case withdrawal under IBC Is allowed under section 12A with 90% voting in favours in the committee of creditors. The apparent deviation from majority i.e. 51% or 2/3<sup>rd</sup> to 90% is ensure that all the parties are taken care before the withdrawal of application is accepted. “*This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into.*”

The law has a dual role, one of ensuring that existing businesses are not hampered by not allowing disputes to be settled, which would jeopardise employees, vendors, and other small creditors. Second, to ensure that all the stakeholder’s interest is protected while withdrawing and no one person who prefers a case is paid in priority.

### Time and IBC

Time is a critical factor in the IBC process. Navigating the resolution phase under the IBC requires a carefully planned strategy within the prescribed timeframe. The law mandates a 270-day period to conclude the process

from initiating insolvency, regardless of the complexity involved. The relevance of time is repatriated in many cases, as it hampers the valuation and goodwill of the company. A company undergoing concern would lose substantially the ability to negotiate, talent pool, vendors, credit worthiness etc for every day of delay. The Hon’ble Supreme Court in the case of Swiss Ribbons Pvt.Ltd. &Ors. Vs. Union of India & Ors., (2019) 4 SCC 17 also highlights this issue of time in para 27 “*As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code. The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in management of the corporate debtor are removed and replaced by entrepreneurs.*”

The time provided in the code is exact and does not make any distinction based on the case's complexity or the type of business. However, asset value depreciation is not uniform across all companies. A B2C ed-tech company, time is especially vital, as delays in resolution can lead to a swift loss of its customer base, exacerbated by 'negative brand perception,' ultimately resulting in a decline in asset value. IBC may have resolved thousands of crore well within time, but this case is uniquely relevant in terms of time.

To conclude, taking a leaf out of this case reveals many lessons to the world of Insolvency. The world of start-up and funding winter would require robust insolvency law for them to revive and become more competitive. The challenges posed by start-ups is very different from those of traditional companies; these pose professionals to tune themselves to liberate the stress and allow them to proceed with their economic activity. Byju's insolvency case is a cautionary tale for companies relying heavily on external funding. The case also demonstrates the complexities of the Insolvency and Bankruptcy Code (IBC), where settlements are not straightforward, and time is crucial for preserving value, especially for consumer-facing businesses like Byju’s.

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Adv. M G Kodandaram

# INTELLECTUAL PROPERTY RIGHTS AND PROTECTION IN INDIA

## E-COMMERCE EXPORTS THROUGH POSTS

(PART - XLIX OF IPR SERIES)

### E-Commerce Exports through posts

The Foreign Trade Policy (FTP) 2023 has introduced a dedicated policy vide Chapter 9, titled “Promoting Cross Border Trade in Digital Economy,” marking a significant milestone in India’s journey to becoming a global e-commerce export hub. One of the policy’s most innovative features is the introduction of “Dak Ghar Niryat Kendras” (DNKs) under Para 9.12 of FTP. This initiative aims to establish these centers nationwide, particularly in hinterlands and landlocked regions, using a hub-and-spoke model with Foreign Post Offices (FPOs). The primary goal is to facilitate the export of smaller consignments directly to consumers through cross-border e-commerce, enabling artisans, weavers, craftsmen, and Micro, Small, and Medium Enterprises (MSMEs) to access international markets.

The evolution of global trade has seen e-commerce emerge as a dominant force, offering unprecedented opportunities for small and medium enterprises to expand their reach beyond local markets. However, for many artisans and small businesses, especially those located in remote areas, accessing international markets remains a challenge. The lack of infrastructure, logistical support, and awareness has traditionally limited their ability to tap into global demand. Recognizing these barriers, the Indian government, through FTP 2023, has taken a proactive step to bridge the gap and empower these smaller players to compete on the world stage.

DNKs, envisioned as nodal points for e-commerce export facilitation, represent a transformative approach to addressing the logistical challenges faced by small businesses. These centers will be strategically located to serve as links between the domestic sellers and the global market, channelling goods through FPOs that are equipped to handle international shipments. For MSMEs, which form the backbone of India’s economy, the ability to participate in cross-border e-commerce can be a game-changer. The initiative not only democratizes

access to global markets but also aligns with the government’s broader vision of making India a major player in the global e-commerce ecosystem.

### Postal Export Procedure

The postal channel has historically been underutilized in international trade. For exporting items through Postal route, a new procedure has been mandated by Customs. The exporters can use this new procedure, which is gradually implemented across various FPOs in India. Initially launched in five key locations, the coverage as on date has been expanded to 28 locations nationwide, with over 600 DNKs now in operation.

For this purpose, the Central Board of Indirect Taxes and Customs (CBIC) with the collaboration of postal department has developed a dedicated ‘Postal Bill of Exports Automated System’ for postal exports. To export goods via the postal channel, an exporter must hold a valid Import-Export Code (IEC). The export process is initiated by filing a Postal Bill of Export (PBE), which is prescribed under the “Export by Post Regulations 2018.” The Customs Department has detailed the procedure for filling and filing the PBE forms digitally through customs common portal namely ICEGATE. All goods which are not “Restricted” or “Prohibited” under Foreign Trade (Development and Regulation) Act, 1992 or any other law for the time being in force can be exported through post [Reference - CBIC Circular No. 14/2018-Customs dated 04.06.2018].

An exporter who wishes to export goods through post or his authorized agent shall register himself on the PBE Automated System. The registration procedure is OTP based authentication and involves capturing certain mandatory identifiers corresponding to exporter’s personal and business profile and uploading of KYC documents.

There are two distinct PBE forms: PBE-I and PBE-II. PBE-I is designated for e-commerce exports, while





PBE-II is used for non-e-commerce exports. Exporters are required to submit the appropriate PBE form, along with the goods, to the Customs office at the FPO. The Exporters may make use of Licensed Customs Brokers for this purpose. The Customs Broker of the exporter may file electronic declaration on his behalf and assist the exporter in performing the functions related to clearance of export goods through post. He shall be fully responsible for all the operations and transactions performed by such agent on his behalf.

The exporter, while making the said entry shall make and subscribe to a declaration as to the truth of its contents and ensure the accuracy and completeness of the information given therein; authenticity and validity of any document supporting it; and compliance with restriction or prohibition, if any, relating to the goods under the Act or under any other law for the time being in force.

The required fees shall also be collected by the booking post office. The postal authorities shall provide for secure transfer or movement of the export goods from the booking post office to the corresponding foreign post office, where customs clearance shall take place. The proper officer will access the customs portal as per the role allocation i.e., assessment, inspection, examination or escalation as assigned by the System Administrator appointed for this purpose. If there is any doubt, the proper officer may call for further clarification or documents by raising a query on the portal which will be notified to the exporter electronically and will reflect under the bail icon of exporter's web page. Upon receiving the PBE, Customs processes the documentation and hands over the goods to the Postal Department.

The Postal Department then affixes a tracking number on the PBE. This tracking number is crucial for monitoring the consignment's journey to its international destination. After the tracking number is affixed, the goods are presented again to Customs for the issuance of a "Let Export Order." The original PBE is retained by Customs, while the duplicate is provided to the exporter or their customs broker.

The recent surge in e-commerce exports from India has further highlighted the importance of the postal route, including EMS-Speed Post -up to 35 kg. These options provide exporters with flexibility in terms of weight

and speed, catering to the diverse needs of the global market. The postal channel, with its extensive reach and cost-effectiveness, is particularly advantageous for SMEs and artisans looking to expand their business internationally. For more details visit

<https://www.indiapost.gov.in/MBE/Pages/Content/ExportofCommercialItems.aspx>

### **IGST Refunds for Exports through Post**

To support Exporters who are using postal route and courier route, the Indian government has facilitated Integrated Goods and Services Tax (IGST) refunds on e-commerce exports. Exporters who pay IGST on their e-commerce exports are eligible for refunds, provided they follow the necessary steps to file their claims. The process involves the accurate filing of shipping bills, completing relevant forms on the GST portal, and adhering to specific procedures based on the mode of shipment - whether through India Post or courier services.

For exports through the postal route, the IGST refund request must be uploaded by the Customs officer using the ICANN (Indian Customs Automation of Network) software. This ensures that the refund claim is correctly linked to the export consignment, allowing for accurate processing and timely disbursement of refunds to the exporter.

### **Enhancing the Export Ecosystem**

The Department of Posts, in partnership Shiprocket, has taken a significant step towards strengthening India's e-commerce export ecosystem. This strategic initiative aims to harness India Post's extensive network and dependable shipping services to bolster e-commerce exports, particularly benefiting SMEs and individual sellers nationwide.

The collaboration involves the technical integration of DNKs with the Shiprocket platform. This enables sellers using Shiprocket to directly generate electronic Postal Bills of Export (e-PBEs) and shipping labels from within the platform. By streamlining export processes, it simplifies online order management, export documentation, and customs clearance, making it easier for sellers to handle their exports.

A key advantage of this partnership is the increased accessibility it provides to sellers, even in the most remote areas of India. With over 600 DNKs already





operational, sellers can now access packaging, label printing, and pickup services, and send their shipments to the nearest DNK, regardless of their location. This integration with the DNK portal, which is connected to various agencies and e-marketplaces, ensures that artisans, craftsmen, and SMEs can effortlessly engage in global trade.

By leveraging India Post's extensive infrastructure and Shiprocket's advanced technological capabilities, this collaboration aims to deliver faster, more secure, and efficient global parcel services to over 200 destinations worldwide. This initiative is particularly advantageous for MSMEs, which often struggle with high first-mile costs and long delivery times. By integrating advanced logistics technology with a vast postal network, this partnership not only streamlines export processes but also democratizes access to global markets, particularly for MSMEs, artisans, and individual sellers. By addressing these challenges, the partnership is expected to lower entry barriers, enabling small businesses to better compete in the global marketplace.



Moreover, this collaboration aligns with India Post's broader strategy to promote e-commerce exports in the digital era. It follows the recent Memorandum of Understanding (MoU) signed with Amazon, highlighting India Post's commitment to expanding its role within the e-commerce ecosystem. By partnering with logistics aggregators and leading e-marketplaces, India Post is positioning itself as a pivotal player in facilitating cross-border trade, further strengthening India's presence in the global e-commerce arena.

Indian Post's evolving role as a key facilitator in global trade, adapting to the needs of the digital age while fostering economic inclusivity. As more businesses tap into these enhanced postal services, India's presence in the global e-commerce market is set to grow, creating new opportunities for trade and economic development across the country.

In the coming article, the topic of exporting via courier services will be deliberated.

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We extend our heartfelt thanks to Smt. K Sheela for her generous contribution to the Scholarship Corpus of KSCAA in memory of Late. CA. K Sachitanand who was well-wisher and mentor of the association.

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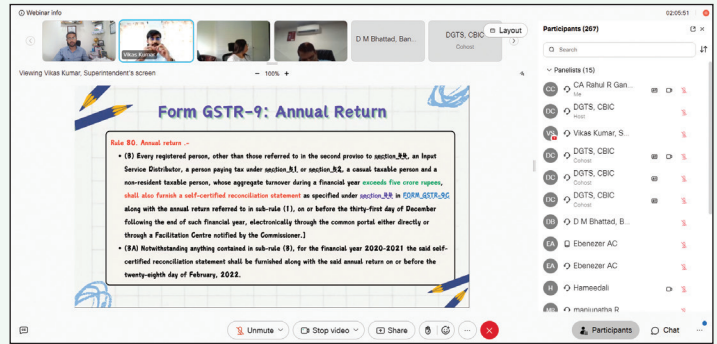


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