



WHITESPAN  
A d v i s o r y

# WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

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Monthly Newsletter  
August, 2023

<b>INDEX</b>		
<b>S.No.</b>	<b>Section</b>	<b>Page No.</b>
<b>1</b>	<b>MAA Foundation Activities</b>	<b>3</b>
<b>2</b>	<b>Message from the Chief Editor</b>	<b>4</b>
<b>3</b>	<b>Editorial Board</b>	<b>5</b>
<b>4</b>	<b>Ministry of Corporate Affairs (MCA)</b>	<b>6-7</b>
<b>5</b>	<b>Securities Exchange Board of India (SEBI)</b>	<b>8-28</b>
<b>6</b>	<b>Central Board of Indirect Taxes and Custom (CBIC)</b>	<b>29-37</b>
<b>7</b>	<b>Article on Identifying the SBO – A Practical Approach</b>	<b>38-41</b>
<b>8</b>	<b>Article on Indirect Tax (IDT) - Credit Note issued by Manufacturer to Dealer for ‘Warranty’ replacement is ‘valuable consideration’ for ‘Sale’, liable to Sales Tax/VAT/GST</b>	<b>42-52</b>
<b>9</b>	<b>Article on Seizure of documents under the Companies Act, 2013</b>	<b>53-60</b>
<b>10</b>	<b>Case Laws</b>	<b>61-63</b>
<b>11</b>	<b>Compliance Checklist for the Month of August, 2023</b>	<b>64-67</b>

## MAA FOUNDATION ACTIVITIES



Maa Foundation is dedicated to advancing women's empowerment. Additionally, as part of the goal, Maa Foundation is offering women vocational training through our initiative "Sui Dhaga" and conducting POSH sessions to make the workplace more welcoming.

## **MESSAGE FROM THE CHIEF EDITOR**

*“When I let go of what I am, I become what I might be.” – Lao Tzu*

It gives us immense satisfaction to share the 76<sup>th</sup> Edition of “WINS – E-Newsletter” for July 2023, covering legal updates released during the month of July 2023, articles shared by respected professionals, Case Laws and compliance calendar for the month of August 2023.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, and CBIC.
2. Articles on:
  - i. Identifying the SBO – A Practical Approach\*
  - ii. Indirect Tax (IDT) - Credit Note issued by Manufacturer to Dealer for ‘Warranty’ replacement is ‘valuable consideration’ for ‘Sale’, liable to Sales Tax/VAT/GST
  - iii. Seizure of documents under the Companies Act, 2013
3. Case Laws
4. Compliance checklist for the month of August 2023.

Trust, WINS not only helps you to keep yourself updated, but also saves your time with crisp summary, in the form of Editor’s Quick Take.

My sincere gratitude to each one of you for sparing your precious time in reading this newsletter and sharing your valuable feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents, every month, in timely manner. We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

You may reach to us at [vinayshukla@whitespan.in](mailto:vinayshukla@whitespan.in) or [+91 9810 624 262](tel:+919810624262)

With warm regards,

**TEAM WINS (Whitespan Information and News Services)**

**July 31, 2023**

## **OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS**

- 1. Mr. Vinay Shukla**, a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
- 2. Ms. Jaya Yadav**, a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
- 3. Ms. Divya Shukla**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Christ University, Bengaluru.
- 4. Mr. Shubham Tyagi**, a practicing advocate enrolled in the Bar Council of Delhi and a graduate in Law and Commerce from Delhi University.
- 5. Ms. Saloni Sharma**, a Qualified Company Secretary, a graduate in Bachelors and Masters of Commerce from Rajasthan University, and pursuing Bachelors of Law.

# Ministry of Corporate Affairs (MCA)

## **1. Merge of Multi User Ids in V-2 Portal with new User Id in V-3 Portal and deactivation of old User Id in V-2 Portal**

**Date of General Circular: July 12, 2023**

**Effective Date: July 12, 2023**

**Link:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=1PgXWqVdrvG%252FOTWP8QcM%252Bw%253D%253D&type=open>

MCA vide its general circular dated July 12, 2023 directed members of the Institute of Company Secretaries of India, the Institute of Chartered Accountants of India and the Institute of Cost Accountants of India to approach their respective institutes with their User IDs Login Credentials for merging the V-2 IDs with V-3 IDs and deactivation of the old V-2 IDs.

The necessary changes in the User ID in V3 portal in such cases shall be done based on recommendations forwarded by the President or Vice-President of the Institute to [ddegov@mca.gov.in](mailto:ddegov@mca.gov.in).

# **Securities Exchange Board of India (SEBI)**



## 1. Amendments to guidelines for preferential issue and institutional placement of units by a listed InvIT

**Date of circular:** July 05, 2023

**Effective Date:** July 05, 2023

**Link:**

[https://www.sebi.gov.in/legal/circulars/jul-2023/amendments-to-guidelines-for-preferential-issue-and-institutional-placement-of-units-by-a-listed-invite\\_73495.html](https://www.sebi.gov.in/legal/circulars/jul-2023/amendments-to-guidelines-for-preferential-issue-and-institutional-placement-of-units-by-a-listed-invite_73495.html)

SEBI vide its circular dated July 05, 2023 amended its guidelines for preferential issue and institutional placement of units by listed InvITs with respect to the pricing of units.

With effect from the date of this circular, the institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date:

Provided that the InvIT may offer a discount of not more than five percent on the price so calculated, subject to approval of unitholders through a resolution as specified in guideline 2.1.

Relevant date for the purpose of clauses related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue.

## 2. Amendments to guidelines for preferential issue and institutional placement of units by a listed REIT

**Date of circular:** July 05, 2023

**Effective Date:** July 05, 2023

**Link:**

[73494https://www.sebi.gov.in/legal/circulars/jul-2023/amendments-to-guidelines-for-preferential-issue-and-institutional-placement-of-units-by-a-listed-reit.html](https://www.sebi.gov.in/legal/circulars/jul-2023/amendments-to-guidelines-for-preferential-issue-and-institutional-placement-of-units-by-a-listed-reit.html)

SEBI vide its circular dated July 05, 2023 amended its guidelines for preferential issue and institutional placement of units by listed REITs with respect to the pricing of units.

With effect from the date of this circular the institutional placement shall be made at a price not less than the average of the weekly high and low of the closing prices of the units of the same class quoted on the stock exchange during the two weeks preceding the relevant date:

Provided that the REIT may offer a discount of not more than five percent on the price so calculated, subject to approval of unitholders through a resolution as specified in guideline 2.1. Relevant date for the purpose of clauses related to institutional placement shall be the date of the meeting in which the board of directors of the manager decides to open the issue.

### **3. The Securities and Exchange Board of India (Ombudsman) (Repeal) Regulations, 2023**

**Date of Notification:** July 03, 2023

**Effective Date:** Date of their publication in the Official Gazette

**Link:**

[https://www.sebi.gov.in/legal/regulations/jul-2023/securities-and-exchange-board-of-india-ombudsman-repeal-regulations-2023\\_73427.html](https://www.sebi.gov.in/legal/regulations/jul-2023/securities-and-exchange-board-of-india-ombudsman-repeal-regulations-2023_73427.html)

SEBI vide its notification dated July 03, 2023, notified the Securities and Exchange Board of India (Ombudsman) (Repeal) Regulations, 2023.

On and from the commencement of these regulations, the Securities and Exchange Board of India (Ombudsman) Regulations, 2003 shall stand repealed.

The repeal of the Securities and Exchange Board of India (Ombudsman) Regulations, 2003 shall not affect—

- (i) the previous operation of the said regulations or anything done or omitted to be done or suffered therein;
- (ii) any right, privilege, obligation or liability acquired or accrued or incurred under the said regulations;
- (iii) any penalty or punishment incurred in respect of any contravention or offence committed under the said regulations;

(iv) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty or punishment as aforesaid.

Any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty or punishment may be imposed as if the Securities and Exchange Board of India (Ombudsman) Regulations, 2003 had not been repealed

#### 4. The Securities and Exchange Board of India (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023

**Date of Notification:** July 03, 2023

**Effective Date:** Date of their publication in the Official Gazette

**Link:**

[https://www.sebi.gov.in/legal/regulations/jul-2023/securities-and-exchange-board-of-india-alternative-dispute-resolution-mechanism-amendment-regulations-2023\\_73454.html](https://www.sebi.gov.in/legal/regulations/jul-2023/securities-and-exchange-board-of-india-alternative-dispute-resolution-mechanism-amendment-regulations-2023_73454.html)

SEBI vide its notification dated July 03, 2023 notified the Securities and Exchange Board of India (Alternative Dispute Resolution Mechanism) (Amendment) Regulations, 2023 by inserting a clause on dispute resolution to the following regulations:

- i. Amendments to the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992
- ii. Amendments to the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993
- iii. Amendments to the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993
- iv. Amendments to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996
- v. Amendments to the Securities and Exchange Board of India (Custodian) Regulations 1996

- vi. Amendments to the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999
- vii. Amendments to the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999
- viii. Amendments to the Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011
- ix. Amendments to the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012
- x. Amendments to the Securities and Exchange Board of India (Investment Advisers) Regulations, 2013
- xi. Amendments to the Securities and Exchange Board of India (Research Analysts) Regulations, 2014
- xii. Amendments to the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014
- xiii. Amendments to the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014
- xiv. Amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
- xv. Amendments to the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019
- xvi. Amendments to the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020
- xvii. Amendments to the Securities and Exchange Board of India (Vault Managers) Regulations, 2021

## **5. Change in Helpline number for XBRL filings**

**Date of notice:** July 06, 2023

**Link:**

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230706-31>

BSE vide its notice dated July 06, 2023 intimated all listed entities of change in Helpline number for XBRL filings as per the details below:

Helpline Number 9316749660

E-mail - [bse.xbrl@bseindia.com](mailto:bse.xbrl@bseindia.com) (E-mail to be sent along with the screen shot of error and excel utility file).

## **6. Online Remittance of Fees Payable to SEBI**

**Date of notice:** July 06, 2023

**Link:**

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230706-52>

BSE vide its notice dated July 06, 2023 in continuation to the press release No. PR No.11/2023 dated June 27, 2023 issued by the Securities Exchange Board of India (SEBI) regarding Online Remittance of Fees Payable to SEBI intimated all listed entities that in order to facilitate securities market participants to remit fees payable to SEBI online, a link has been provided in the Homepage of SEBI Website ([www.sebi.gov.in](http://www.sebi.gov.in)) under the head “**Click here to make payment of SEBI Fees**”.

While making the remittances online, entities shall furnish the requisite information like name, email ID, mobile number, address, PAN, nature of fee, GST details (if applicable), etc.



## **7. BRSR Core – Framework for assurance and ESG disclosures for value chain**

**Date of circular:** July 12, 2023

**Effective Date:** July 15, 2023

**Link:**

[https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain\\_73854.html](https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html)

SEBI vide its circular dated July 12, 2023 released a framework for assurance and ESG disclosures for value chain. Key Highlights of the same are:

### **1. BRSR Core and Updated BRSR**

The BRSR Core is a sub-set of the BRSR, consisting of a set of Key Performance Indicators (KPIs) / metrics under 9 ESG attributes. The framework also provides for the format of BRSR Core for reasonable assurance and updated BRSR format after incorporating new KPIs of BRSR Core.

In order to facilitate the verification process, the BRSR Core specifies the data and approach for reporting and assurance. The approach specified is only a base methodology. Any changes or industry specific adjustments / estimations shall be disclosed.

## Applicability

From FY 2023 – 2024, the top 1000 listed entities (by market capitalization) shall make disclosures as per the updated BRSR format, as part of their Annual Reports.

Listed entities shall mandatorily undertake reasonable assurance of the BRSR Core, as per the glide path specified in the following table:

Financial Year	Applicability of BRSR Core to top listed entities (by market capitalization)
2023 – 24	Top 150 listed entities
2024 – 25	Top 250 listed entities
2025 – 26	Top 500 listed entities
2026 – 27	Top 1000 listed entities

## **2. ESG Disclosures for value chain**

Disclosures for value chain shall be made by the listed company as per BRSR Core, as part of its Annual Report. For this purpose, value chain shall encompass the top upstream and downstream partners of a listed entity, cumulatively comprising 75% of its purchases / sales (by value) respectively. Listed entities shall report the KPIs in the BRSR Core for their value chain to the extent it is attributable to their business with that value chain partner. Such reporting may be segregated for upstream and downstream partners or can be reported on an aggregate basis

Applicability: ESG disclosures for the value chain shall be applicable to the top 250 listed entities (by market capitalization), on a comply-or-explain basis from FY 2024-25. 4.4.2 The limited assurance of the above shall be applicable on a comply-or explain basis from FY 2025 – 26

## 8. Disclosure of material events / information by listed entities under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

**Date of circular:** July 13, 2023

**Effective Date:** July 15, 2023

**Link:**

<https://www.sebi.gov.in/legal/circulars/jul-2023/disclosure-of-material-events-information-by-listed-entities-under-regulations-30-and-30a-of-securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-201-73910.html>

SEBI vide its circular dated July 13, 2023 partially modified its previous circulars with respect to disclosure requirements under regulations 30 and 30A of the LODR Regulations. The above circular provides for the following:

- a. Details that need to be provided while disclosing events given in Part A of Schedule III
- b. Timeline for disclosing events given in Part A of Schedule III.
- c. Guidance on when an event / information can be said to have occurred
- d. Guidance on the criteria for determination of materiality of events / information.

**9. Guidance on filing Announcements on NSE Electronic Application Processing System (NEAPS) platform pursuant to the SEBI (Listing Obligation and Disclosure Requirement) (Second Amendment) Regulations, 2023 (“Amended Regulations”)**

**Date of Circular:** July 14, 2023

**Effective Date:** July 14 2023

**Link:**

<https://static.nseindia.com//s3fs-public/inline-files/Guidance%20on%20filing%20Announcements%20on%20NSE%20Electronic%20Application%20Processing%20System%20%28NEAPS%29%20platform%20pursuant%20to%20the%20SEBI%20%28Listing%20Obligation%20and%20Disclosure%20Requirement%29%20%28Second%20Amendment%29%20Regulati.pdf>

NSE vide its circular dated July 14, 2023 has provided further guidance w.r.t the disclosure requirements under Regulation 30 and 30A of SEBI LODR as stated below:

- i. In case of any event emanating from a decision taken in a meeting of board of directors, the listed entities shall:
  - (a) At first file the disclosure in the PDF form under the subject “Outcome of Board Meeting” and shall select “Others” in the Type field in case the event is not mentioned under the existing drop-down options. (b) Mention the Start & End time of the Meeting of the Board of Directors (c) Modify the Announcement Text accordingly specifying the subject of event.
- ii. The listed entities shall mandatorily mention the Date & Time of occurrence of the event/information in all the PDF disclosures filed with the Exchange under Regulation 30.
- iii. In case of any delayed submission, the listed entity shall ensure that the PDF disclosure filed specifies the reason of delay

Similar guidelines have also been issued by the BSE.

**10. Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”) – Extending framework for restricting trading by Designated Persons (“DPs”) by freezing PAN at security level to all listed companies in a phased manner.**

**Date of Circular:** July 19, 2023

**Link:**

<https://www.sebi.gov.in/legal/circulars/jul-2023/trading-window-closure-period-under-clause-4-of-schedule-b-read-with-regulation-9-of-sebi-prohibition-of-insider-trading-regulations-2015-pit-regulations-extending-framework-for-restricting-t-74120.html>

SEBI vide its circular dated July 19, 2023 in continuation to its Circular SEBI/HO/ISD/ISD-SEC-4/P/CIR/2022/107 dated August 05, 2022, on framework for developing a system to restrict the trading by Designated Persons (DPs) by way of freezing the PAN at security level during Trading Window closure period extended the said framework to all the listed companies as per the following glide path:

S.No	Companies to be covered	PAN freeze start date
1	Listed companies that are part of benchmark indices i.e. NIFTY 50 and SENSEX	Already applicable as on date
2	Top 1,000 companies in terms of BSE Market Capitalization as of June 30, 2023 (excluding companies part of benchmark indices)	October 1, 2023
3	Next 1,000 companies in terms of BSE Market Capitalization as of June 30, 2023	January 01, 2024
4	Remaining companies listed on BSE, NSE & MSEI	April 01, 2024
5	Companies getting listed on Stock Exchanges post issuance of this circular	1st day of the second quarter from the quarter in which the company gets listed

Illustration: For a company getting listed during January 01 to March 31, 2023, PAN of DPs should be frozen at security level as per prescribed framework latest from July 01, 2023.

The above circular also provides for the procedure for implementation of the system



## 11. MASTER CIRCULARS

During the month of July 2023, SEBI released following Master Circulars:

S.No.	Date	Particulars	Link
1	July 03, 2023	Master Circular on Credit Rating Agencies	<a href="https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-credit-rating-agencies_73416.html">https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-credit-rating-agencies_73416.html</a>
2	July 06, 2023	Master Circular for Debenture Trustees	<a href="https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-debenture-trustees_73584.html">https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-debenture-trustees_73584.html</a>
3	July 06, 2023	Master Circular for Real Estate Investment Trusts (REITs)	<a href="https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-real-estate-investment-trusts-reits-_73585.html">https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-real-estate-investment-trusts-reits-_73585.html</a>
4	July 06, 2023	Master Circular for Infrastructure Investment Trusts (InvITs)	<a href="https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-infrastructure-investment-trusts-invits-_73587.html">https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-infrastructure-investment-trusts-invits-_73587.html</a>

5	July 07, 2023	Master Circular for issue and listing of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper	<a href="https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-issue-and-listing-of-non-convertible-securities-securitised-debt-instruments-security-receipts-municipal-debt-securities-and-commercial-paper_73653.html">https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-issue-and-listing-of-non-convertible-securities-securitised-debt-instruments-security-receipts-municipal-debt-securities-and-commercial-paper_73653.html</a>
6	July 11, 2023	Master circular for compliance with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 by listed entities	<a href="https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-compliance-with-the-provisions-of-the-securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-by-listed-entities_73795.html">https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-compliance-with-the-provisions-of-the-securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-by-listed-entities_73795.html</a>
7	July 12, 2023	Master Circular for ESG Rating Providers (ERPs)	<a href="https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-esg-rating-providers-erps_73856.html">https://www.sebi.gov.in/legal/master-circulars/jul-2023/master-circular-for-esg-rating-providers-erps_73856.html</a>

## **12. Mandating Legal Entity Identifier (LEI) for all non – individual Foreign Portfolio Investors (FPIs)**

**Date of Circular:** July 27, 2023

**Effective Date:** July 27, 2023

**Link:**

<https://www.sebi.gov.in/legal/circulars/jul-2023/mandating-legal-entity-identifier-lei-for-all-non-individual-foreign-portfolio-investors-fpis-74420.html>

SEBI vide its circular dated July 27, 2023 mandated the requirement of providing LEI details for all non-individual FPIs. Depositories have been instructed to carry out the necessary modifications to the CAF in their Portals.

All existing FPIs (including those applying for renewal) that have not already provided their LEIs to their DDPs shall do so within 180 days from the date of issuance of this circular, failing which their account shall be blocked for further purchases until LEI is provided to their DDPs

All fresh registration, subsequent to issuance of this circular, shall be carried out upon receipt of the FPIs' respective LEI details.

The Legal Entity Identifier (LEI) code is a unique global 20-character code to identify legally distinct entities that engage in financial transactions. LEI is conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis. RBI directions, inter alia, mandate non-individual borrowers having aggregate exposure of above Rs. 25 crore, to obtain LEI code.

# Central Board of Indirect Taxes & Customs (CBIC)

## **1. Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period**

**Date of Circular:** July 17, 2023

**Effective Date:** July 17, 2023

**Link:**

<https://taxinformation.cbic.gov.in/view-pdf/1003169/ENG/Circulars>

CBIC vide its circular dated July 17, 2023 clarifies that:

1. Trade and business representatives claim that it is standard business practice for original equipment manufacturers and suppliers to provide warranties for the products and services they provide. Replacement goods and services are given to consumers without charge within the warranty term; as a result, no further payment is made or received at the time of replacement. As a result of conflicting interpretations GST liability as well as the liability to reverse ITC against such supplies of replacement parts and repair services during the warranty period are without any consideration from the customers.

2. The Board, acting within the scope of its authority under section 168(1) of the Central Goods and Services Tax Act, 2017, clarifies the following:

<b>S. No.</b>	<b>ISSUE</b>	<b>CLARIFICATION</b>
1	<p>There are situations where the original equipment manufacturer offers a warranty for the products he sells to the customer and offers the customer replacement parts and/or repair services during the warranty period without charging the customer separately for those services. Does GST have to be paid when components are replaced or repair services are provided as part of a warranty without receiving payment from the customer?</p>	<p>The cost of replacing parts and/or getting repairs done during the warranty period, for which tax would have already been paid at the time of the original supply of the goods, is included in the value of the original supply of goods (provided along with warranty) by the manufacturer to the customer.</p> <p>Therefore, no additional GST is assessed on replacement parts and/or repair services by the manufacturer if no separate payment for the replacement or repair services is made at the time of the provision.</p>
2	<p>If a manufacturer replaces a part or provides repair services as part of a warranty, without charging the customer any additional money, is the manufacturer required to reverse the input tax credit in these circumstances?</p>	<p>The manufacturer's value of the original supply of goods includes the expected cost of part replacement and/or repair services to be incurred during the warranty period. These supplies cannot be regarded as exempt supplies, the manufacturer is not required to reverse the input tax credit of the services offered.</p>

- |   |   |
|---|---|
| <p><b>3</b> Whether GST would be due on replacement parts and/or repair services offered by a distributor as part of a manufacturer's warranty but without receiving payment from the customer?</p>   | <p>A distributor of a company might offer the customer replacement parts and/or repair services as part of a warranty on behalf of the manufacturer without seeking a separate payment from the customer for the replacement and/or repair services. The distributor would not be required to pay GST because no consideration is being paid by the distributor from the consumer. However, GST will be due on such a delivery if the distributor charges the consumer any additional money.</p>  |
| <p><b>4</b> In the scenario above, the distributor replaces parts for the customer as part of the manufacturer's warranty on behalf of the latter. Is there a supply between the distributor and the latter, and if so, would the distributor be required to reverse the input tax credit in relation to such replacement of parts?</p> | <p>(a) The distributor replaces the part(s) provided to the customer under warranty using stock he already has or by purchasing from a third party, and then bills the manufacturer for the part(s) so replaced by issuing a tax invoice for the supply he made to the manufacturer. The distributor would be responsible for paying GST on the supply, and the manufacturer would be eligible to claim the GST on that supply as an input tax credit, provided that other CGST Act requirements were met. The distributor is not compelled to reverse the associated input tax credit.</p> |



(b) The distributor may submit a request to the manufacturer for the component(s) to be replaced by him as part of the warranty, and the manufacturer may then supply the part(s) to the distributor for the purpose of such replacement to the customer as part of the guarantee. Where the manufacturer gives the part(s) to the distributor to replace for the customer during the warranty period without separately charging any money at the time of the replacement, there is no GST due. Furthermore, the manufacturer is not compelled to reverse ITC.

(c) Where the manufacturer issues a credit note in respect of the parts that were replaced by the distributor, subject to the provisions of subsection (2) of section 34 of the CGST Act, and the distributor replaces the part(s) to the customer under warranty out of the supply that was already received by him from the manufacturer. As a result, the manufacturer may modify the tax liability provided that the distributor in question has reversed the ITC received for the items that were replaced.

- |          |   |   |
|----------|---|---|
| <b>5</b> | If a distributor works on behalf of a manufacturer to provide repair services to the customer in addition to part replacements or in some other way for no payment as part of a warranty, but bills the manufacturer for those services by issuing a tax invoice or a debit note, is GST due on that activity by the distributor? | According to the terms of subclause (a) of paragraph (93) of section 2 of the CGST Act of 2017, in this situation, the distributor provides repair services, and the manufacturer is the recipient of those services. As a result, subject to other CGST Act requirements, GST would be due on this service provided by the distributor to the manufacturer, and the producer would be eligible to claim the input tax credit for it. |
| <b>6</b> | Customers may be given the option to choose an extended warranty from companies at the time of initial supply or right before the standard warranty period expires. Whether GST would be due in both circumstances?   | (a) If a customer signs an extended warranty contract with the manufacturer at the time of the initial supply, the value of the extended warranty becomes a component of the composite supply, with the supply of goods serving as the principal supply, and GST would be due as a result.  |

(b) However, if a consumer enters into an extended warranty agreement at any point after the initial supply, then the agreement is a separate contract, and depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for a composite supply involving goods and services), GST would be payable by the service provider, whether manufacturer or distributor or any third party.

## **2. Clarification on taxability of shares held in a subsidiary company by the holding company**

**Date of Circular:** July 17, 2023

**Effective Date:** July 17, 2023

**Link:**

<https://taxinformation.cbic.gov.in/view-pdf/1003170/ENG/Circulars>

CBIC vide its circular dated July 17, 2023 clarified the taxability of shares held by a holding company in a subsidiary company under the GST regime in Circular No. 196/08/2023-GST.

The circular makes it clear that shares owned by a holding company in a subsidiary company are outside of the CGST Act's definition of goods and services. Share purchases or sales do not constitute a supply of goods or services in and of themselves. There must be a supply as described in Section 7 of the CGST Act for it to be considered a supply of services. The circular stresses that a holding company's ownership of shares in a subsidiary company does not amount to a delivery of services and is, thus, exempt from GST.

### **3. Clarification on issue pertaining to e-invoice**

**Date of Circular:** July 17, 2023

**Effective Date:** July 17, 2023

**Link:**

<https://taxinformation.cbic.gov.in/view-pdf/1003172/ENG/Circulars>

CBIC's vide its Circular No. 198/10/2023-GST addresses the question of whether rule 48(4) of the CGST Rules, 2017 applies to supplies made to government establishments, agencies, local governments, and PSUs that are registered for tax deduction at source.

The circular makes it clear that entities registered exclusively for the purpose of tax deduction at source under Section 51 of the CGST Act, such as government departments, establishments, agencies, local governments, and PSUs, are regarded as registered people for the purposes of the GST law. Therefore, registered individuals who exceed the required e-invoicing threshold for turnover must issue e-invoices for goods and services provided to these organisations. The purpose of the CBIC circular is to clarify the applicability of the electronic invoice under rule 48(4) of the CGST Rules for supplies made to government enterprises, agencies, local governments, and public utility companies (PSUs) that are registered for tax deduction at source. It affirms that these registered individuals, whose turnover surpasses the imposed threshold, are required to provide electronic invoices for these transactions.

# Article 1

## Identifying the SBO – A Practical Approach\*

### Who is SBO?

SBO is a Person Indirectly holding the [shares / voting rights/ dividend entitlement / control/ Significant Influence] in a Company and which **indirect holding** alone or after clubbing the direct holding amounts to 10% or more of the total [shares / voting rights/ dividend entitlement / control / Significant Influence] of the Company.

### Steps of Identifying the SBO:

1. Gather the information – Shareholding Patterns, Group Holding Structure, Shareholders Agreement, JV Agreement, any written Agreement entitling a person to exercise control of more than 10% on the Business Decisions of an entity.
2. Analyze and Identify:
  - Are there any non-individual shareholder in Reporting Company – If not, there is no SBO
  - Identify the non-individual shareholders – Companies, HUF, Partnership Firm, Trust, Pooled Investment Vehicle.
  - If the reporting entity has corporate shareholders –
    - A. Does any individual has 50% or more [Share/voting rights / dividend entitlement] in the corporate Shareholder?  
If Yes, then entire holding of the corporate shareholder will be attributed to such individual and such individual will be SBO of reporting entity if the total of holding of corporate shareholder and the direct holding of individual in reporting entity exceeds 10%.

B. Does any individual has 50% or more [Share/voting rights / dividend entitlement] in the Holding Company / Ultimate Holding Company of the Corporate Shareholder?

If Yes, then entire holding of the Corporate Shareholder will be attributed to such individual and such individual will be SBO of reporting entity if the total of holding of the Corporate Shareholder and the direct holding of individual in reporting entity exceeds 10%.

If the reporting entity has HUF, Partnership Firm, Charitable Trust as shareholders, then the Karta of HUF, individual partner of partnership firm (including the individual holding 50% or more [Share/voting rights / dividend entitlement] in the Holding Company / Ultimate Holding Company of the Corporate Partner), Trustee of charitable trust respectively will be considered SBO if the total of holding of such

- HUF or Partnership Firm or Charitable Trust and the direct holding of individual in reporting entity exceeds 10%.
- If the reporting entity has a Specific Trust or a Revocable Trust as shareholders, then beneficiary or the settlor will respectively will be considered SBO if the total of holding of such Revocable Trust and the direct holding of individual in reporting entity exceeds 10%.
- If the reporting entity has a Pooled Investment Vehicle as shareholder, then the General Partner or Investment Manager or CEO, as the case may be, will be considered SBO if the total of holding of such Revocable Trust and the direct holding of individual in reporting entity exceeds 10%.



- Also, If the total of indirect holdings through Corporate Shareholder, HUF, Partnership, Trusts (Charitable, Specific and Revocable) and Pooled Investment Vehicle, and such total itself or after adding the direct holding, exceed the 10% threshold, the such individual will be and SBO.
- This is a simplified analyses as per my understanding and it is strictly recommended to refer the Relevant SBO Rules.

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**Harshit Gunani**

**Fellow Company Secretary**



# Article 2

## **Indirect Tax (IDT) - Credit Note issued by Manufacturer to Dealer for ‘Warranty’ replacement is ‘valuable consideration’ for ‘Sale’, liable to Sales Tax/VAT/GST**

### **Historical Background**

- Delhi High Court<sup>1</sup> had earlier observed that in the case of the sale of a car with a warranty to replace defective parts free of cost, the consideration of the defective part that might be replaced was included in the price charged for the sale of a car. Thus, sales tax is not leviable on the free-of-cost replacement of defective parts.
- Madhya Pradesh High Court<sup>2</sup> had held that when a dealer replaces defective parts by either procuring the same from the manufacturer or claims reimbursement on the same, it is neither a sale of those parts by the dealer to the customer nor the manufacturer. Hence, the same will not fall within the definition of the term ‘sale’.
- Kerala High Court had held that the transaction whereby the dealer replaces defective parts during the warranty period which is reimbursed by the manufacturer by issuing Credit Notes (CN) cannot be treated as a sale.

### **However, Supreme Court held as follows:**

- Apex Court distinguished the factual position before it with the facts in Prem Nath Motors (supra).
- The nature of the transaction between the dealer and the manufacturer in Prem Motors (supra) and Geo Motors (supra) was lost sight of. Accordingly, the aforesaid rulings were overruled by the Supreme Court.
- It was held that when the spare parts are replaced under warranty by the dealer for which, consideration is paid by the manufacturer by way of CN, the transaction will be leviable to sales tax.

## **Facts of the case**

- Basis the aforesaid rulings, a series of 34 appeals arising from the orders passed by various High Courts (viz., Karnataka, Rajasthan, Allahabad, Madhya Pradesh, Bombay, Andhra Pradesh, Kerala and Gujarat) were filed before the Supreme Court.
- While the facts in respect of each of the 34 Appeals pending before the Supreme Court is different, for ease of reference, the facts in one of the appeals are reproduced below:
- M/s. Marudhar Motors (Taxpayer or dealer), a dealer of Tata vehicles entered into a dealership agreement with Tata Motors Ltd. (manufacturer), the dealer would replace the spare parts to the customer under the manufacturer's warranty.
- Generally, the manufacturer sells vehicles and spare parts to the dealer by charging CST against 'C' Forms for onward sale to the customers on payment of applicable sales tax.

However, in case of warranty claims on account of defective spare parts, such parts are replaced on a free-of-cost basis as follows:

- The dealer replaces such defective parts with a new part/ vehicle in his stock, purchased from the manufacturer.
- Subsequently, such defective parts are returned to the manufacturer for verification.
- Upon verifying that the spare parts received from the dealer are defective, the manufacturer issues CN, thereby crediting the dealer's running account.

- Pursuant to the decision of the Supreme Court in Mohd. Ekram Khan (supra), the Tax Authorities invoked assessment/ reassessment proceedings under Sections 28 and 30 of the Rajasthan Sales Tax Act, 1994 (RST Act) respectively, for FY 2000-01 to 2005-06.
- Taxpayer filed appeals before the First Appellate Authority which upheld the levy of sales tax. However, the imposition of interest and penalty was set aside.
- Subsequently, the Taxpayer filed 6 appeals before the Second Appellate Authority i.e., Rajasthan Tax Board (RTB) challenging the levy of tax as determined by the aforesaid order. Concurrently, the Tax Authorities filed 6 appeals challenging the order which set aside levy of interest and penalty before the RTB.
- Upon hearing both parties, RTB distinguished the facts from Mohd. Ekram Khan (supra) and consequently, set aside the imposition of tax.
- Against the aforesaid order, the Tax Authorities filed revision petitions before the Rajasthan High Court, which affirmed the order passed by the RTB.
- Aggrieved by the above, the Tax Authorities filed an appeal before the Supreme Court.
- The Division Bench (two judges) of the Supreme Court, vide order dated 5 December 2019, referred the matter to a Bench comprising of three judges to determine whether CN issued by a manufacturer to a dealer as a recompense to replace defective part is liable to sales tax.

## Contentions of the Taxpayer

- All transfers are not sales as the term 'sale' has a definitive connotation in the Sales tax laws and tax is not leviable on all transfers which may happen by means of transactions other than sale such as gift, barter, or exchange.
- The transaction in the present case cannot be treated as a taxable sale on account of the following:
- Spare parts are supplied to the customers by the dealers completely free of charge as replacement of goods already sold.
- A new spare part is installed in the customer's vehicle and the defective part is removed.
- The substance of the transaction is the discharge of a warranty obligation. As the spare parts are deducted from the dealer's stock, credit is rightfully provided by the manufacturer to the dealer.
- Any dealer of the manufacturer can be approached for discharging such warranty obligation.
- The Tax Authorities have wrongly assumed that the supply of such spare parts is a sale made by the dealer to the manufacturer albeit the title is transferred to the customer.
- Replacement of defective parts during the warranty period does not constitute a 'sale'. Instead, a warranty is a stipulation collateral to the main purpose of the contract. Further, the enforcement of a contractual right for getting a free replacement in exchange for a defective part cannot be treated as a purchase-sale transaction.
- A CN is issued by the manufacturer as an acknowledgement of the diminution in the original sale price. CN is not a sale price or valuable consideration as the character of credit is not towards the price of the newly replaced part, but a credit that embodies the diminution of the price already paid for the car.

## **Contentions of the Tax Authorities**

- The presence of a manufacturer's/ dealer's warranty on the car sold by the dealer does not make any difference as to whether the transaction of replacement of defective goods satisfies the element of sale or not.
- The dealership agreement is on a principal-to-principal basis. The ingredients of a sale transaction are completed when the new spare parts are transferred to the customer and payment (by way of CN) is received from the manufacturer.
- The performance of warranty obligation is determined through actual damage to the defective part. Hence, the same cannot be said to be totally accounted for and debited in the manufacturer's taxable turnover of sales and purchases.
- All the elements of the sale are complete because there is a seller (the dealer) and a buyer (the manufacturer), valuable consideration is paid by the manufacturer in the form of CN and the transfer of property in goods is taking place to the nominee of the buyer i.e., the customer.

## **Observations of the Supreme Court: In respect of the replacement of defective spare parts, the following scenarios can emerge:**

- Scenario I: The manufacturer may either manufacture the spare parts or procure the same from the open market and subsequently, supplies them to the dealer for onward installation in the customer's vehicle. Thereafter, the dealer returns the defective spare parts to the manufacturer. In this case, no compensation is paid by the manufacturer to the dealer.

- Scenario II: Here, the dealer either procures the goods from the open market or uses the goods from his existing stock and undertakes the replacement of defective parts. Subsequently, the dealer returns the defective spare parts to the manufacturer. Thereafter, on verifying that the spare part is defective, the manufacturer recompenses the dealer for the spare parts replaced from its inventory

In both the scenarios above, it is observed that –

- The dealer acts pursuant to a warranty which he is bound to honour along with the manufacturer vis-à-vis the customer.
- The dealer is acting as an intermediary/ agent of the manufacturer as the warranty emanates from the manufacturer to the customer through the dealer.
- Thus, as an intermediary, the dealer has to act on behalf of the manufacturer.

The issue in the present case is whether the second scenario will amount to a sale in the sense that the dealer is liable to pay sales tax on the CN received from the manufacturer.

In order to constitute a ‘sale’, all the following elements must be present:

- There must be an agreement between the parties for transferring the title to the goods.
- The parties are competent to enter into the agreement.
- The agreement is for valuable consideration.
- The property in goods passes on to the buyer.



To examine whether the transaction at Scenario II is covered under the ambit of the term 'sale', it is important to examine whether any consideration is received by the dealer and whether any transfer of property in goods exists, which is as under:

Existence of consideration:

- The manufacturer is liable to replace the defective parts to the customer in terms of the warranty obligations.
- Generally, when the dealer invests in spare parts, he is entitled to sell the same and earn profit/ return on his investment. However, by using such spare parts for discharging the manufacturer's warranty obligations, the dealer neither 'sells' such parts to the customer nor receives any consideration from the customer.

However, to recompense the dealer for the above, the manufacturer (after receiving and verifying the defective spare parts) issues a CN for the spare parts which are not sold to the customer and provided to the customer free of cost in terms of the manufacturer's warranty obligations.

- Thus, the reason for the issuance of CN by the manufacturer is to reimburse the dealer for the costs which cannot be recovered from the customer while discharging the manufacturer's warranty obligations.
- The amount shown in the account of the dealer as CN is nothing but the price received by the dealer for the sale of spare parts. Merely because the dealer is acting as an intermediary or on behalf of the manufacturer for discharging warranty obligations and is recompensed by way of CN, the same cannot escape sales tax liability.

- A CN issued by a manufacturer in favour of a dealer is a valuable consideration within the meaning of the definition of 'sale' under the Central Sales Tax Act, 1956 (CST Act) and the respective State enactments.

#### Transfer of property in goods:

- There does not exist any transfer of property between the manufacturer and the dealer when spare parts are used from the stock of the dealer for replacing the defective parts.
- However, there is a transfer of property in goods between the dealer and the customer on behalf of the manufacturer under a warranty, for which, the consideration is paid by the manufacturer by way of CN (as highlighted above).

Thus, there is a transfer of property in spare parts from the dealer to the customer for which, the manufacturer pays consideration by way of CN. The consideration received from the manufacturer is leviable to sales tax and the person who pays the valuable consideration in a sale transaction is irrelevant as long as it is paid.

- All CN received by the dealer are not indicative of the value of the spare parts supplied to the customer under warranty, and in some cases (such as under the agency contract), it may pertain to a rendition of services which can attract Service tax liability, depending on the terms and conditions of the agency.
- However, as long as the CN is issued for the spare parts used by a dealer, it becomes a 'sale' transaction under the CST Act or respective State enactments.

## **Ruling of the Supreme Court**

The decision in *Mohd. Ekram Khan (supra)* applies to a situation where a manufacturer issues a CN to a dealer acting under a warranty given by the manufacturer in the following circumstances:

- The dealer replaces a defective part of the automobile with a spare part maintained in the stock of the dealer.
- The dealer purchases the spare part from the open market.

The value of CN issued in the aforesaid circumstances is treated as 'consideration' for the sale of spare parts, and hence, is liable to sales tax.

- However, the decision in ***Mohd. Ekram Khan (supra)*** will not apply in the case wherein the dealer receives spare parts from the manufacturer for replacing the defective part.

## **Comments:**

The aforesaid ruling distinguishes the different methods of replacements by a dealer under warranty provided by the manufacturer and thereby providing for divergent treatment with respect to each method. The ruling also upholds the settled principle that consideration for the sale of goods may flow from a third party (in this case, the manufacturer).

The aforesaid ruling is likely to have substantial implications for the ongoing sales tax/ VAT assessments especially for the automobile industry, electronics industry, etc. However, the aforesaid ruling will not apply to cases where the dealer is engaged in providing services to the manufacturer and not engaged in supplying goods wherein the dealer could be liable to discharge applicable Service tax.

[M/s. Tata Motors Ltd. and Ors. Vs Deputy Commissioner of Commercial Taxes (SPL) and Anr. [TS-227-SC-2023-VAT], dated 15 May 2023]

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# Article 3

## **Seizure of documents under the Companies Act, 2013**

### **1.Introduction**

If during an investigation, the inspector has reasonable grounds to believe that the books and papers of the company under investigation or its relating company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector after following the due law, procedure may enter into the place where the books and papers of the company are kept and seize the books and papers after allowing the company to take copies of, or extracts from, such books and papers under Section 220 of Companies Act, 2013. The inspector shall keep in his custody the books and papers seized. The object of the provision is to avoid destroying the books and papers of the company so that the truth could be detected. The provision is corresponding to Section 234A of the Companies Act, 1956. . *In Sahu Jain Ltd vs. Deputy Secretary, Ministry of Finance, Department of Revenue & Company Law. Calcutta High Court Date of Judgement: 6.08.1965. Equivalent citations:1966 36 CompCas 543 Cal, 70 CWN 399.* The inspector obtained the order of search and seizure of the books and documents of the company. *In the matter of Sunair Hotels Ltd vs. Union of India And Ar., LPA 390/2017, C.M. Appl.19101/2017 & 32231/2017, Delhi High Court Date of Decision 7<sup>th</sup> January, 2019.* After the report of investigation, in pursuance of the direction, the SFIO conducted a search at the office of Sunair Hotel.

## **2. Keeping the searched and seized books and papers in safe custody**

The seized books and papers will be kept in safe custody. *In Hale v. Henke(1)*, Justice Kekenna made the observation: “Search implied a quest by an officer of law; a seizure contemplates a forcible dispossession of the owner. *In Dwijendra Lal Brahmachari And.. vs. New Central Jute Mills Co. Ltd And, Calcutta High Court Date of Judgement: 28 July, 1977. Equivalent citations: 1978 112 ITR 568 Cal.* The inspector obtained order for search and seizure of documents of the company from the Chief Presidency Magistrate Calcutta and District Magistrate, Howrah under Section 240A of Act, 1956. In pursuance of the Article 226 of the Constitution of India, the Hon’ble Court directed that all the books, paper and documents seized by the Inspectors in terms of the order passed in terms of Section 240A of the Act, 1956 would be kept in sealed boxes, sealed by the company and the said Inspectors and the said boxes would be kept in the office of the Registrar of Companies, West Bengal.

## **3. Whether search and seizure are violation of Article 19(1)(f) and Article 20(3) of the Constitution of India**

Search and seizure is not violative of Article of 19(1)(f) of Constitution of India. The earliest case in India to deal with ‘privacy’ and ‘search & seizure’ was *M.P. Sharma vs. Satish Chandra (1954 SCR 1077)* in the context of Article 19(1)(f) and Article 20(3) of the Constitution of India. The contention that search and seizure violated Article 19(1)(f) was rejected. The Court held that a mere search by itself did not affect any right to property, and though seizure affected it, such effect was only temporary and was a reasonable restriction on the right. The question whether search warrants for the seizure of documents from the accused were unconstitutional was not going into.

The court opined that a search warrant was addressed to an officer and not the accused and did not violate Article 20(3). The decision has been amended. The Hon'ble Court held that it is necessary and reasonable restriction cannot per se be considered to be unconstitutional. The damage, if any caused by such temporary interference, if found to be in excess of legal authority is a matter for redress in other proceedings. As to the high-handedness and illegality of the searches open to be raised and canvassed before the High Court on appropriate application. *In Kharak Singh vs. State of U.P. 1964(1) SCR 332*, The court held though our Constitution did not refer to the rights to privacy expressly, still it can be traced from the right to life in Article 21. It offended Article inasmuch as there was no law permitting interference by such visits. The Court held that the Regulations permitting surveillance violated the fundamental right of privacy. The 'Right to privacy' was part of the right to life in Article 21. *In Govind vs. State of M.P.[1975]2 SCC, 148*. Right to privacy has been implied in Article 19(1)(a) and (d) and Article 21 is not absolute and that any State intrusion can be a reasonable restriction only if it has reasonable basis or reasonable materials to support it. Reliance was placed *in Griswold v. Connecticut (1965) 381 US 479, Jane Roe vs. Henry Wade (1973) 410 US 113; Olmstead v. United States (1927)277 US 438(471)*. *In R. Rajagopal vs. State of Tamil Nadu (1994) 6 SCC 632 (DB)* held that right of privacy implicit in the right to life and liberty guaranteed to the citizens of India by Article 21. Every citizen has a right to safeguard the privacy of his own. However, in the case of a matter being part of public records, including court records, the right of privacy cannot be claimed. *Followed in PUCL vs. Union of India (1997) 1 SCC 301; Mr. X vs. Hospital 'Z',(1988) 8 SCC 296; People's Union for Civil Liberties vs. Union of India (2003) 4 SCC 399; Sharda vs. Dharampal (2003) 4 SCC 4931*



*In District Registrar & Collector, Hyderabad & Anr.v. Canara Bank etc., Appeal (Civil) No.6350-6374 of 1997, Supreme Court of India Date of Decision 1/11/2004.* The Court held that right of privacy implicit in the right to life and liberty guaranteed to the citizens of India by Article 21. Every citizen has a right to safeguard the privacy of his own. However, in the case of a matter being part of public records, including court records, the right of privacy cannot be claimed. *In investigating Directorate, Serious Offence vs. Hyundai Motor Distribution Ltd 276(2001).* Search and seizure provisions, in the context of a preparatory investigation, serve an important purpose in the fight against crime. The court was concerned with the constitutionality of the provisions of National Prosecuting Authority Act that authorised the issuing of warrants of search and seizure. A balance must therefore be struck between the interests of the individuals and that of the State. *In Sh. Udey vs. Sh. Jitender Kumar Gupta & Anr., Suit No.284/2016, Delhi District Court Date of Decision 19 April, 2016.* The Hon'ble High Court of Delhi in C.P. No.200/2007 regarding M/s Devered India Pvt. Ltd, appointed a team comprising two directors from the Serious Fraud Investigation Office. The officers searched the records and took possession of records consisting of several files for investigation purposes. *In Justice K.S.Puttaswamy (Retd) vs. Union of India And Ors, Writ Petition (Civil) No.494 of 2012, Supreme Court of India Date of Decision 24<sup>th</sup> August, 2017.* Hon'ble Supreme Court held that right of privacy, an inherent right, unequivocally is a fundamental right embedded in Part-III of the Constitution of India, but subject to the restrictions specified, relatable to that part.

### **3. Judicial Review of the search and seizure order**

The order of search and seizure is under judicial review alike any other administrative order. *In Senairam Doongarmal Agency (P) Ltd vs. K.E.Johnson And Ors, Equivalent citations:1964 52 ITR 637 Gauhati, Gauhati High Court Date of Decision: 15<sup>th</sup> March, 1963.* The court observed that search of various premises and the indiscriminate seizure of the documents, books valuable securities, papers, correspondence etc. that was done are in the nature of things extremely high-handed. Conducting a search from 10 A.M. to 11 P.M. is itself a most unreasonable act and the search of a large number of premises and of the various rooms contained therein and the seizure of as many as 683 items in all, leaves the matter in no doubt that power under section 37(2) of Income Tax Act has been grossly abused, contrary to both the language and spirit of the section and that the exercise of the power obviously amounted to an infringement of the fundamental rights of the petitioners. The court have therefore, no hesitation in striking down to executives' action as grossly excessive of the powers given under section 37(2) of the Act and it is ultra vires of these powers and therefore, clearly illegal requiring interference by this Court. Section 37(2) of the Income Tax Act was enacted in view of large-scale evasion of income-tax and if, under those circumstances, restriction is placed on the right of the petitioner, it cannot be said that the restriction is in its rights. However, the Court agree that search and seizure of the accounts books made by the Income Tax Authorities were illegal. The opposite parties are directed not to in any way give effect to the seizure to the said books and documents and directed to return forthwith books and documents

Reliance was placed in the case of *Suraj Mall Mohta & Co. vs. A.V. Visvanatha Shastri, Shree Meenakshi Mills Ltd., vs. A.V.Visvanatha Shastri* and in *M.Ct. Muthiah vs. Commissioner of Income -tax; S.N.Nawab Ariff v. Corporation of Calcutta; Purshottam Govindji Halai v. B.M.Desai, Additional Collector of Bombay, Kashiram Agarwalla vs. Collector of 24 Parganas and Murlidhar Jalan vs. Income Tax Officer, Dibrugarh; Ramkrishna Dalmia vs. Justice Tendolkar*. As against, In *Hindustan Metal Works And Others vs. Commissioner of Income Tax, U.P., Equivalent citations:1968 68 ITR 798 All, Allahabad High Court Date of Decision 20<sup>th</sup> February, 1967*. The Hon'ble Court observed that few documents which do not apparently seem to be relevant to any pending proceedings were seized. Even so, the Court is unable to hold that search was malafide for that reason. It is not a statutory requirement to record at the time of search proceeding. As regards association of other persons with search team, three inspectors were taken for doing clerical and ministerial work during the search and policemen were taken for maintaining peace and order and for preventing obstruction and illicit removal documents. As regards placing the identification marks on the seized documents, the documents were seized in the course of search were later kept in a sealed cover by a commissioner appointed by the Court. The Hon'ble Court observed that search and seizure was ordered by competent officer and proper procedure has been followed, therefore, the Court held that search and seizure is not malice and dismissed petition.

#### **4. Return the books and papers**

The inspector shall keep in his custody the seized books and papers up to period of conclusion of investigation. Thereafter, he shall return the books and papers to the company or the other body corporate, or to the managing director or the manager or any other person from whose custody or power they were seized.

The inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary. The provisions of the Cr.P.C. shall be applicable on the search and seizure with necessary changes.

In case of further query, clarification, you may direct contact to the Author.

Various books of the author have published, i.e.

(1) [SERIOUS FRAUD UNDER THE COMPANIES ACT & THE LLP ACT](#) -

[https://www.amazon.in/Serious-fraud-under-companiesact/dp/9358113553/ref=sr\\_1\\_1?keywords=SERIOUS+FRAUD+UNDER+THE+COMPANIES+ACT+%26+THE+LLP+ACT&sr=8-1](https://www.amazon.in/Serious-fraud-under-companiesact/dp/9358113553/ref=sr_1_1?keywords=SERIOUS+FRAUD+UNDER+THE+COMPANIES+ACT+%26+THE+LLP+ACT&sr=8-1)

(2) [LAW ON INSOLVENCY AND BANKRUPTCY](#) -

[https://www.amazon.in/dp/9356596808?ref=myi\\_title\\_dp](https://www.amazon.in/dp/9356596808?ref=myi_title_dp)

(3) [ADJUDICATION OF COMPANIES ACT, MATTERS UNDER NCLT \(Third Edition-2023\)](#)

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# Case Laws

## CASE LAWS

1. In **Gostho Behari Das V. Dipak Kumar Sanyal & Ors, Civil Appeal No.4725 Of 2023**, the Supreme Court held that a medical practitioner's license cannot be suspended as a penalty in contempt proceedings. The Court further observed that "A medical practitioner guilty of contempt of Court may also be so for professional misconduct but the same would depend on the gravity/nature of the contemptuous conduct of the person in question. They are, however, offences separate and distinct from each other. The former is regulated by the Contempt of Court Act, 1971 and the latter is under the jurisdiction of the National Medical Commission Act, 2019."
2. In **M/S Universal Sompo General Insurance Co. Ltd. V. Suresh Chand Jain**, Special Leave Petition (Civil) No. 5263 Of 2023. The Supreme Court held that an aggrieved party can approach the Supreme Court under Article 136 of the Constitution for grant of special leave to appeal against an order of the National Consumer Disputes Redressal Commission (NCDRC) only if it is passed by the Commission in its original jurisdiction. No further appeal will lie against the orders passed by the NCDRC in the exercise of its appellate or revisional jurisdiction,
3. In **Vinod Kumar vs District Magistrate Mau**, the Supreme Court observed that only the Principal Civil Court of original jurisdiction can determine the dispute arising as to the apportionment of the amount of compensation under National Highways Authority Act, 1956.
4. In **Gurbachan Singh (D) vs Gurcharan Singh (D)**, The Supreme Court observed, that in second appeals arising out of the state of Punjab or the State of Haryana, courts are not required to frame substantial questions of law as per section 100 of the Code of Civil Procedure.

5. In **Bhim Rao Baswanth Rao Patil V. K. Madan Mohan Rao & Ors, Special Leave Petition (C) No. 6614 Of 2023**, the Supreme Court observed that democracy has been held to be a part of one of the essential features of the Constitution. Yet, somewhat paradoxically, the right to vote has not been recognized as a Fundamental Right yet; it was termed as a “mere” statutory right".
6. In **Paschimanchal Vidyut Vitran Nigam Ltd vs Raman Ispat Private Limited**, the Supreme Court observed that Section 238 of the Insolvency and Bankruptcy Code overrides the provisions of the Electricity Act, 2003. The provisions of the IBC treat the dues payable to secured creditors at a higher footing than dues payable to the Central or State Government.
7. In **Delhi Development Authority v. Jagan Singh**, the Supreme Court has held that if the state has either paid compensation or taken possession then proceedings under 1894 would continue to be valid. Once it is found that the land acquisition proceedings under the Land Acquisition Act 1894 are valid, then the claimant is not entitled to seek compensation under the Right to Fair Compensation Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.
8. In **Indira Devi vs Veena Gupta**, the Supreme Court held that the condition of right to repurchase in a sale deed will not be personal to the vendor unless the terms in the documents specifically state so.

# Compliance Checklist



## COMPLIANCE CALENDAR FOR AUGUST 2023

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

### Tax Related Compliance

Due date for deposit of TDS deducted for the month of July 2023

GSTR-1 (Monthly) for the month of July 2023

Invoice Furnishing Facility (“IFF”) for the month of July 2023 – in case if there are B2B supplies – Applicable for QRMP holders (Optional)

TDS Certificates in Form 16A for the 1<sup>st</sup> QTR FY 2023-24

GSTR-3B for the month of July 2023 (Monthly)

GST Challan Payment - if tax liability exists - post utilization of ITC - Applicable for QRMP holders

### FEMA Related Compliance

Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA

### Economic, Industrial & Labour Law Related Compliance

Provident Fund (PF) & ESI Returns Payment for June -2023

## Securities and Exchange Board of India

Regulation 32 (1) - Statement of deviation(s) or variation(s).

Regulation 33 (3) (a) - Financial Results along with Limited review report/Auditor's report

## **FOR FURTHER INFORMATION PLEASE CONTACT:**

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