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WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

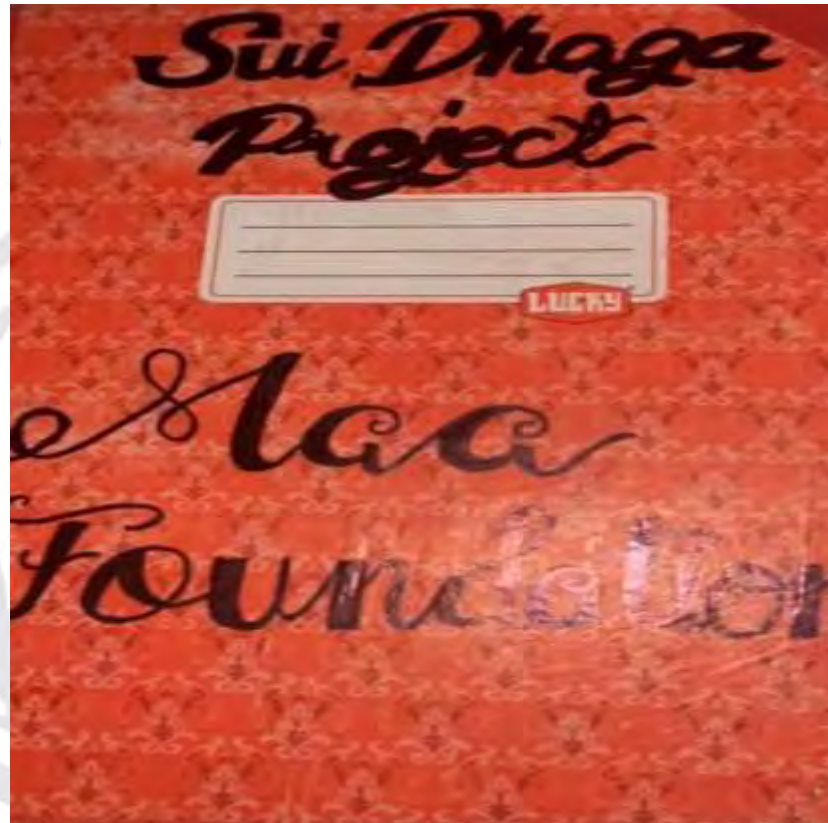
A GATEWAY TO KNOWLEDGE

Monthly Newsletter
October, 2023



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MAA FOUNDATION ACTIVITIES



Women Empowerment – In today's world, where everyone is taking about women empowerment, we as an organisation wish to lit it up by not only helping women across state to get experience and opportunities to work but also making them realise their self-worth and boosting their confidence to establish themselves. Maa Foundation organises various drives like Sui Dhaga to make underprivileged women self-sufficient and financially independent by enhancing up skills in art and culture.

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 78th Edition of “WINS – E-Newsletter” for October 2023, covering legal updates released during the month of September 2023, articles shared by respected professionals, Case Laws and compliance calendar for the month of October 2023.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, and CBDT, RBI and miscellaneous Law
2. Articles
 - The Digital Personal Data Protection Act, 2023
 - GST and tax related updates
 - Launching Civil And Criminal Nature Of Prosecution After Completion Of Investigation
3. Case Laws
4. Compliance checklist for the month of October 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 or [+91 9810 624 262](tel:+919810624262)

With warm regards,

TEAM WINS (Whitespan Information and News Services)
September 30, 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. Mr. Pushkar Garg**, Senior Associate at Whitespan Law Offices and member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from MJP Rohilkhand University.
- 6. Ms. Tanya Shukla**, CS Trainee at Whitespan Law offices, and a graduate in Commerce from Kanpur University.

Ministry of Corporate Affairs (MCA)

1. Limited Liability Partnership(Second Amendment)Rules,2023

Date of Notification: September 01, 2023

Effective Date: Date of publication in the official gazette

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=ywlii5hvZvLABylQ7KmtNA%253D%253D&type=open>

MCA vide its notification dated September 01, 2023 notified the Limited Liability Partnership (Second Amendment) Rules, 2023. The said amendment rules substitute form 3 and 4 in the Limited Liability Partnership Rules, 2009.

Form 3 is for Information regarding LLP Agreement or subsequent change in LLP Agreement

Form 4 is for Notice of appointment, cessation, change in details of Designated Partner and consent to be Designated Partner.

2. Constitution Of The Company Law Committee

Date of Order: September 13, 2023

Effective Date: September 13, 2023

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=I2oC5xLsIDDPE8khrXjIig%253D%253D&type=open>

MCA vide its order dated September 13, 2023, in continuation of its order number F.No. 2/1/2018-CL-V dated September 05, 2022, F.No. 2/1/2018-CL-V dated September 23, 2021, F.No. 2/1/2018-CL-V dated September 17, 2020, F.No. 2/1/2018-CL-V dated September 18, 2019, further extended the tenure of the Company Law Committee for a period of one year i.e. till September 16, 2024.

3. Clarification on holding of Annual General Meeting (AGM) and EGM through video Conference (VC) or other Audio visual means(OAVM) passing of Ordinary and Special resolutions

Date of Order: September 25, 2023

Effective Date: September 25, 2023

Link

<chromeextension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mca.gov.in/bin/dms/getdocument?mds=HaKq8Y72SkO5wIQe05fjLQ%253D%253D&type=open>

MCA vide its Circular dated September 25, 2023, clarified that companies whose AGMs are due in the Year 2023 or 2024, are allowed to conduct their AGMs through VC or OAVM on or before 30th September, 2024 in accordance with the requirements laid down in Para 3 and Para 4 of the General Circular No. 20/2020 dated May 05, 2020.

MCA further clarified that this circular shall not be construed as conferring any extension of statutory time for holding of AGMs by the companies under the Companies Act, 2013 (the Act) and the companies which have not adhered to the relevant statutory timelines shall be liable to legal action under the appropriate provisions of the Act.

4. Name reservation application process

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=oU9sC5%252B1H5Z5uPkEDZC3QA%253D%253D&type=open>

MCA vide its update dated September 29, 2023 informed the stakeholders that the processing of application forms for the purpose of name reservation and incorporation at the Central Reservation Centre (CRC) is faceless and randomised. The applications if sent for resubmissions are normally not processed by the same official who has processed the application at the first instance.

The stakeholders requested to inform the Ministry in case of any malpractice or irregularity on the part of any official/officer at CRC or any professional with supporting evidences at CVO-MCA@GOV.IN for taking action in accordance with the extent CVC guidelines.

Securities Exchange Board of India (SEBI)

1. New format of Abridged Prospectus for public issues of Non-Convertible Debt Securities and/or Non-convertible Redeemable Preference Shares

Date of circular: September 04, 2023

Effective Date: October 01, 2023

Link:

https://www.sebi.gov.in/legal/circulars/sep-2023/new-format-of-abridged-prospectus-for-public-issues-of-non-convertible-debt-securities-and-or-non-convertible-redeemable-preference-shares_76430.html

SEBI vide its circular dated September 04, 2023, in order to simplify, provide greater clarity and consistency in the disclosures across various documents and to provide additional but critical information in the abridged Prospectus revised the format for disclosures in the abridged Prospectus. The revised format have been provided in the circular. With effect from October 1, 2023, the format of an Abridged Prospectus shall be as per the annexure provided in the Circular instead of Part B of Schedule I of the NCS Regulations. A copy of the Abridged Prospectus shall be made available on the website of issuer, merchant bankers, registrar to an issuer and a link for downloading Abridged Prospectus shall be provided in issue advertisement for the public issue.

The issuer/Merchandise Bankers must include a Quick Response (QR) code on the final page of the Abridged Prospectus. Scanning such a QR code on the Abridged prospectus would take you to the Prospectus. Furthermore, the issuer entity/merchant bankers must include a QR code on the front page of the documents, such as the front outside cover page, advertisement, and so on, as they see fit. Scan the QR code to access the prospectus or abridged prospectus, as applicable. The Issuer/Merchant Bankers must ensure that the disclosures in the Abridged Prospectus are adequate, accurate, and free of any misleading or false statements.

The Issuer/Merchant Bankers must ensure that the qualitative statements in the Abridged Prospectus are supported by quantitative factors. Furthermore, no qualitative statement shall be made that cannot be supported by quantitative factors.

2. Change in mode of payment SEBI Investor Protection and Education Fund Bank A/c

Date of circular: September 04, 2023

Effective Date: September 04, 2023

Link:

https://www.sebi.gov.in/legal/circulars/sep-2023/change-in-mode-of-payment-w-r-t-sebi-investor-protection-and-education-fund-bank-a-c_76474.html

SEBI vide its circular dated September 04, 2023 in continuation to its Circular No. SEBI/HO/ISD/ISD/CIR/P/2020/135 dated July 23, 2020 wherein SEBI had prescribed that the amounts shall be credited to the SEBI Investor Protection and Education Fund through online mode or by way of a demand draft (DD) in favour of the Board (i.e. SEBI IPEF) has opened a new bank account to facilitate market participants to make payment to SEBI Investor Protection and Education Fund (SEBI IPEF).

In this regard, a link has been provided in the Homepage of SEBI website (www.sebi.gov.in) under the head “Click here to make payment to SEBI IPEF”. The link enables the remitter to make payment in any of the following manner:

1. NEFT/RTGS
2. Net banking
3. UPI
4. Debit Cards

Remitters must provide the required information such as the payer's name, PAN, mobile number, email ID, the purpose for which payment is made, the amount to be paid, and so on when making remittances online via the above link.

3. Mandating additional disclosures by Foreign Portfolio Investors (FPIs) that fulfill certain objective criteria

Date of circular: September 01, 2023

Effective Date: September 01, 2023

Link:

https://static.nseindia.com/s3fs-public/inline-files/NSE_Circular_01092023.pdf

NSE issued a circular on September 1, 2023, in accordance with SEBI Circular No. SEBI/ HO/ AFD/ AFD - PoD - 2/ CIR/ P/ 2023/ 148, dated August 24, 2023, whereby SEBI mandated additional disclosures by Foreign Portfolio Investors (FPIs) who meet certain objective criteria.

4. Redressal of investor grievances through the SEBI Complaint Redressal (SCORES) Platform and linking it to the Online Dispute Resolution platform

Date of circular: September 20, 2023

Effective Date: December 04, 2023

Link:

https://www.sebi.gov.in/legal/circulars/sep-2023/redressal-of-investor-grievances-through-the-sebi-complaint-redressal-scores-platform-and-linking-it-to-online-dispute-resolution-platform_77159.html

SEBI vide its circular dated September 20, 2023, revised the framework for handling complaints received through the SCORES platform for Entities and for monitoring the complaints by designated bodies. The circular introduces auto-routing and auto-escalation of complaints, making the grievance redressal process more productive.

Designated Bodies must apply for SCORES Authentication/Application Programming Interface (API) by December 04, 2023. Entities must submit the Action Taken Report to SEBI within 21 calendar days from the date of receiving a complaint.

Further circular rescinds the Master Circular SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022, effective from December 04, 2023.

5. Extension of timelines for nomination in eligible Demat accounts and for submission of PAN, Nomination and KYC details by physical securityholders; and voluntary nomination for trading account

Date of circular: September 26, 2023

Effective Date: September 26, 2023

Link:

<https://www.sebi.gov.in/legal/circulars/sep-2023/extension-of-timelines-i-for-nomination-in-eligible-demat-accounts-and-ii-for-submission-of-pan-nomination-and-kyc-details-by-physical-security-holders-and-voluntary-nomination-for-trading-accou-77320.html>

SEBI vide its circular dated September 26, 2023, with reference to circular no. SEBI/HO/MIRSD/RTAMB/CIR/P/2021/601 dated July 23, 2021, submission of 'choice of nomination' for trading accounts has been made voluntary as a step towards ease of doing business. Further with respect to Demat accounts, it has been decided to extend the last date for submission of 'choice of nomination' to December 31, 2023.

It has been decided to extend the last date for submission of PAN, Nomination, Contact details, Bank A/c details and Specimen signature for their corresponding folio numbers to December 31, 2023. Stock Exchanges, Depositories, RTAs and Listed Companies are advised to take necessary steps to implement the provisions of this circular.

6. Extension of timelines for Nomination for Mutual Fund Unit Holders

Date of circular: September 27, 2023

Effective Date: September 27, 2023

Link:

https://www.sebi.gov.in/legal/circulars/sep-2023/nomination-for-mutual-fund-unit-holders-extension-of-timelines_77453.html

SEBI vide its circular dated September 27, 2023, notified that the provision mentioned at para 4 of SEBI Circular No. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2022/82 dated June 15, 2022 with regard to freezing of folios, shall come into force with effect from January 01, 2024 instead of September 30, 2023.

AMCs and RTAs shall encourage the unit holder(s) to fulfil the requirement for nomination/opting out of nomination by sending a communication on fortnightly basis by way of emails and SMS to all such unit holder(s) who are not in compliance with the requirement of nomination. The communication shall provide guidance by which the unit holder(s) can provide nomination or opt out of nomination.

7. SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (FOURTH AMENDMENT) REGULATIONS, 2023

Date of circular: September 19, 2023

Effective Date: September 21, 2023

Link:

https://www.sebi.gov.in/legal/regulations/sep-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fourth-amendment-regulations-2023_77193.html

SEBI vide its circular dated September 19, 2023, amended Regulation 6A of SEBI (LODR) wherein listed entity, whose non-convertible debt securities are listed shall list all non-convertible debt securities, proposed to be issued on or after January 1, 2024, on the stock exchange(s).

A listed entity, whose subsequent issues of unlisted non-convertible debt securities made on or before December 31, 2023 are outstanding on the said date, may list such securities, on the stock exchange(s).

A listed entity that proposes to list the non-convertible debt securities on the stock exchange(s) on or after January 1, 2024, shall list all outstanding unlisted non-convertible debt securities previously issued on or after January 1, 2024, on the stock exchange(s) within three months from the date of the listing of the non-convertible debt securities proposed to be listed.

Further no listed entity shall be required to list the following securities:

- (i) Bonds issued under section 54EC of the Income Tax Act, 1961 (43 of 1961);
- (ii) Non-convertible debt securities issued pursuant to an agreement entered into between the listed entity of such securities and multilateral institutions;
- (iii) Non-convertible debt securities issued pursuant to an order of any court or Tribunal or regulatory requirement as stipulated by a financial sector regulator namely, the Board, Reserve Bank of India, Insurance Regulatory and Development Authority of India or the Pension Fund and Regulatory Development Authority.

The securities issued by the listed entity under clauses (ii) and (iii) of sub-regulation (4) shall be locked in and held till maturity by the investors and shall be unencumbered.

A listed entity proposing to issue securities under sub-regulation (4) shall disclose to the stock exchanges on which its non-convertible debt securities are listed, all the key terms of such securities, including embedded options, security offered, interest rates, charges, commissions, premium (by any name called), period of maturity and such other details as may be required to be disclosed by the Board from time to time.

8. Extension of timeline for verification of market rumours by listed entities

Date of circular: September 30, 2023

Effective Date: September 30, 2023

Link:

[SEBI | Extension of timeline for verification of market rumours by listed entities](#)

SEBI vide its circular dated September 30, 2023, extended the effective date of implementation of the proviso to regulation 30(11) of the LODR Regulations for top 100 listed entities by market capitalization, to February 1, 2024 and for top 250 listed entities by market capitalization, to August 1, 2024.

The proviso to Regulation 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”) inter-alia requires top 100 listed entities by market capitalization with effect from October 1, 2023 and top 250 listed entities by market capitalization with effect from April 1, 2024 to mandatorily verify and confirm, deny or clarify market rumours.



**RESERVE BANK
OF INDIA
(RBI)**

1. PM Vishwakarma Scheme

Date of Notification: September 13, 2023

Effective Date: September 13, 2023

Link:

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12536&Mode=0>

RBI vide its notification dated September 13, 2023, announced the newly introduced scheme by the Government of India (GoI) 'PM Vishwakarma Scheme' which aims to provide support to artisans and craftspeople to enable them to move up the value chain in their respective trades. The Scheme envisages, among other measures, credit support to the beneficiaries at concessional interest rate, with interest subvention support by GoI. The notification also includes the guidelines issued by the Ministry of Micro, Small and Medium Enterprises, for appropriate action for eligible lending institutions.

2. ₹2000 Denomination Banknotes – Withdrawal from Circulation – Review

Date of Notification: September 30, 2023

Effective Date: September 30, 2023

Link:

[Reserve Bank of India - Notifications \(rbi.org.in\)](https://www.rbi.org.in)

RBI vide its notification dated September 30, 2023, extended the current arrangement for deposit / exchange of ₹2000 banknotes until October 07, 2023. With effect from **October 8, 2023**, banks shall stop accepting ₹2000 banknotes for credit to accounts or exchange to other denomination banknotes.



Central Board of Direct Taxes (CBDT)

1. Income Tax Department committed to speedy processing of Income Tax Return

Date of notification: September 05, 2023

Effective Date: September 05, 2023

Link:

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1150/PressRelease-CBDT-committed-to-speedy-processing-of-ITR-5-9-23.pdf>

CBDT vide its notification dated September 05, 2023 notified the average processing time of ITRs (after verification) has been reduced to 10 days for Returns filed in AY 2023-24, compared to 82 days in AY 2019-20 and 16 days in AY 2022-23.

Due to a lack of specific information or action on the part of taxpayers, the Department is unable to process the following categories of ITRs:

1. About 14 lakh ITRs for AY 2023-24 which have been filed but are yet to be verified by the taxpayers as on 04.09.2023..

Failure to verify the Returns causes delays in processing as the Return can only be taken up for processing once the verification has been completed by the taxpayer. Taxpayers are urged to complete the verification process immediately.

2. About 12 lakh verified ITRs in which further information has been sought by the Department, for which requisite communication has been sent to the taxpayers through their registered e-filing accounts. Taxpayers are requested to respond to such communication expeditiously.

In certain instances ITRs have been processed and refunds have been calculated, but the Department is unable to issue them because taxpayers have not yet validated the bank account to which the refund is to be credited. Taxpayers are required to validate their bank accounts via the e-filing portal.

2. Advance Pricing Agreement Report for FY 2022-23

Date of notification: September 01, 2023

Effective Date: September 01, 2023

Link: <https://incometaxindia.gov.in/news/apa-report-final-2023.pdf>

CBDT vide its notification dated September 01, 2023 published Indian APA Report for FY 2022-23. The APA program was adopted in July 2012.

The Indian APA program has resulted in taxpayers having had certainty on transfer pricing issues for five to nine years (depending on whether rollback provisions apply to an Agreement), the government has been able to focus limited resources on more productive audits and other procedures.

The report estimated that the 516 signed APAs have resulted in the finalisation of taxation on income worth approximately Rs. 19,000 crore. This equates to a tax payment of approximately Rs. 7,000 Crore that is non-litigation situation with no appeal. CBDT also signed the maximum number of BAPAs in any financial year till date, with the signing on 32 BAPAs. The BAPAs were signed as a consequence of entering into Mutual Agreements with India's treaty partners namely Finland, the UK, the US, Denmark, Singapore, and Japan. The APA programme has been successful in creating a favourable economic environment for multinational corporations doing business in India.

3. CBDT to undertake Special Campaign 3.0 for Swachhata and disposal of pending matters

Date of circular: September 11, 2023

Effective Date: September 11, 2023

Link:

<https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1151/Press-Release-CBDT-to-undertake-Special-Campaign-3.0-for-Swachhata-and-disposal-of-pending-matters-dated-11-09-2023.pdf>

CBDT vide its circular dated September 11, 2023 announced the commencement of the Special Campaign 3.0 for Swachhata and disposal of pending matters w.e.f October 02, 2023.

The Government of India undertook Special Campaign 2.0 for Swachhata in Government offices and disposal of pending matters from October 02, 2022 to October 31, 2022. Central Board of Direct Taxes (CBDT) along with subordinate offices of Income Tax Department enthusiastically participated in the Special Campaign 2.0. In the Special Campaign 2.0, the Department resolved more than 46,000 public grievances on CPGRAMS portal and disposed of around 7,000 grievance appeals from December, 2022 till July, 2023.

Miscellaneous Laws

1. PUBLIC NOTICE FOR TRADEMARK APPLICATION

Date of Pubic Notice: September 14, 2023

Effective Date: September 14, 2023

Link:

https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Public_Noteice_For_TMR_13092023.pdf

Trade Mark Registry vide its public notice dated September 14, 2023 issued a notice that due to heavy Traffic on the Trade Mark application and database servers, the core functioning are getting affected. Accordingly, till upgradation of hardware and software are completed, the Trade Mark public search and E-register will not be available from 10:00 AM to 4:30 PM w.e.f. 14.09.2023 on all working days.

2. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2023

Date of Notification: September 18, 2023

Effective Date: September 18, 2023

Link:

<https://ibbi.gov.in/uploads/legalframework/f76838225028debe733984fb02cd2ec3.pdf>

IBBI vide its notification dated September 18, 2023, introduced Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2023.

In regulation 5(b), pre-registration educational course to be done within twelve months from the date of payment of non-refundable application fee under regulation 6.

In regulation 6(1)(i), An individual enrolled with an insolvency professional agency as a professional member may make an application to the Board through the insolvency professional agency of which he is a member, along with a nonrefundable application fee of twenty thousand rupees to the Board. Secondly for sub-regulation (1A), An insolvency professional entity eligible for registration as an insolvency professional under sub-regulation (2) of regulation 4 may make an application to the Board through the insolvency professional agency of which it is a member, along with a non-refundable application fee of two lakh rupees to the Board.

Thirdly in sub-regulation (2), for the word “Board,” the words “insolvency professional agency” shall be substituted and the insolvency professional agency shall verify and forward the application to the Board within thirty days from the date of payment of fee under sub-regulations (1) or (1A), as the case may be, excluding the time given by the insolvency professional agency to the professional member for submitting additional documents, information, or clarification, as the case may be.

In Regulation 7 and 8 timeline has been reduced to 30 days. Regulation 10 has been expanded to include clauses (e), (f), and (g) empowering the insolvency professional agency to accept the surrender of membership, expel professional members, or strike the name of a professional member in the event of the demise or dissolution of a company, limited liability partnership, or registered partnership firm. Further in Regulation 10 addition made under sub-clause A regarding the Surrender of the certificate of registration and sub-clause B regarding special procedures for action on surrender, expulsion, etc.

3. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2023

Date of Notification: September 18, 2023

Effective Date: September 18, 2023

Link:

<https://ibbi.gov.in/uploads/legalframework/82a0d8c13a4ad67aac73623ca3b22c2f.pdf>

MSIC-IBBI vide its notification dated September 18, 2023, published Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023.

In regulation 2D, while filing an application under section 7 or 9, the financial creditor or the operational creditor, as the case may be, shall also submit along with evidence, chronology of the debt and default including the date when the debt became due, date of default, dates of part payments, if any, date of last acknowledgment of debt and the limitation applicable.

In regulation 3A the interim resolution professional or resolution professional, as the case may be, shall take custody and control as specified under this regulation from the personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor.

The resolution professional shall himself prepare a list of assets and records while taking custody and control of assets and records and shall be signed by the parties present and by at least two individuals who have witnessed the act of taking control and custody of such assets and records.

In regulation 12, a creditor shall submit claim with proof on or before the last date mentioned in the public announcement provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, up to the date of issue of request for resolution plans under regulation 36B or ninety days from the insolvency commencement date, whichever is later.

In regulation 13 where the interim resolution professional or the resolution professional, as the case may be, does not collate the claim after verification, he shall provide reasons for the same.

In regulation 16A The financial creditors in the class, representing not less than ten percent. voting share may seek replacement of the authorized representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional who shall circulate such request to the creditors in that class and announce a voting window open for at least twenty-four hours. Further, the duties of an Authorised representative include reviewing the contents of minutes prepared to ensure correctness and completeness, providing assistance to the creditors in evaluating the resolution plan, regularly updating the creditors in a class on the progress of the CIRP, assisting in modifications of the resolution plan on behalf of a class of creditors represented by him, etc. Fees of the Authorised Representative have also been enhanced in line with the increased responsibility.

Under regulation 28, in the event a creditor assigns or transfers the debt due to such creditor to any other person during the insolvency resolution process period, both parties shall, within seven days of such assignment or transfer, provide the interim resolution professional or the resolution professional the terms of such assignment or transfer and the identity of the assignee or transferee.

Under regulation 30B, any member(s) of the committee may propose an audit of the corporate debtor along with the objectives, scope, estimate of the costs, timeframe and name(s) of the proposed auditor(s).

4. Extension of RoDTEP scheme for exports made from 01.10.2023

Date of notification: September 26, 2023

Effective Date: September 26, 2023

Link:

[Directorate General of Foreign Trade | Ministry of Commerce and Industry | Government of India
\(\[dgft.gov.in\]\(https://www.dgft.gov.in\)\)](https://www.dgft.gov.in)

DGFT vide its notification dated September 26, 2023, the RoDTEP scheme is extended for exports made from 01.10.2023 and shall be applicable till 30.06.2024.

The existing rates for all the items covered under RoDTEP will be applicable for exports made from 01.10.2023 to 30.06.2024. However, it would be subject to the budgetary framework as provided under Para 4.54 of FTP 2023 so that the remissions for current financial year are managed within the approved Budget of the Scheme.

Article 1

THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023

The Digital Personal Data Protection Act, 2023 aims to establish a framework for handling digital data that acknowledges:

- the rights of the individuals to protect their personal data
- the necessity of processing such personal data for lawful purposes

In a world where protecting individual rights is increasingly crucial, the Act addresses the substantial demands placed on businesses, including fintech firms and startups, as well as governments due to the escalating digitalization of data as part of the Digital India Initiative. The objective is to strike a balance between these two imperatives.

In 2018, the General Data Protection Regulation (GDPR) emerged as an International Privacy Law and with its most forward looking and extensive legal provisions revolutionised the realm of personal data protection in the European Union (EU). Whereas USA itself does not have a federal legislation in place but the States particularly California has in place the California Consumer Privacy Act (CCPA) and the Data Privacy Laws are in pipeline in many other States. As per the UNCTAD Website, 137 out of 194 countries had put in place legislation to secure the protection of data and privacy. Data protection ultimately focuses on protecting data and information from both internal and external threats. It mitigates the risks of fraud, compromise and corruption, and protects the individual.



As India did not have a standalone law on data protection. Use of personal data was till now regulated under the Information Technology (IT) Act, 2000. The First Draft i.e. the Personal Data Protection Bill, 2019 was introduced in Lok Sabha in December 2019 but the same was later withdrawn. Again, In November 2022, a Draft Bill was released for public consultation. In August 2023, the Digital Personal Data Protection Bill, 2023 was introduced in Parliament and after being passed by both the Houses of Parliament, the same finally received the president's assent on August 11, 2023.

Framework of the Act:

THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 ('The Act') contains the framework for establishing the following Pillars of Data Protection i.e. Notice to the User, Consent of the User, Limitation of Access and Regulated Use of Data, Integrity and Security of Data and Setting up of a 3 Level Grievance Redressal Mechanism.

The central government will establish the Data Protection Board of India. Key functions of the Board include: (i) monitoring compliance and imposing penalties, (ii) directing data fiduciaries to take necessary measures in the event of a data breach, and (iii) hearing grievances made by affected persons. Appeals against the decisions of the Board will lie with TDSAT.

This act seeks to protect the individual in relation to the personal data shared by her (or him) in digital form or physical form, which may have been digitized later of herself and including the data of a child i.e. an individual under 18 years while procuring any goods or services, irrespective of whether that data is processed in India or Abroad. Such individual is termed in the Act as 'Data Principal'. However, the Act does not applies to data made publicly available either by the Data Principal herself or in compliance of any Legal Obligation.

The Data provided by the Data Principal flows to the 'Data Fiduciary' and as the name itself suggest is a person who is entrusted with the Data and is in position of a Trust. Data Fiduciary is the Person who processes the Data provided by the Data Principal and determines the purpose and means of personal data processing.

Working of Data Fiduciary:

A Data Fiduciary can process personal data until the Data Principal withdraws consent. The Data Fiduciary must promptly cease processing, and instruct Data Processors to do the same, upon withdrawal. Subsequently, the Data Fiduciary or Data Processor must erase the relevant data. Consent withdrawal is only prospective and not retrospective. During legal proceedings, the Data Fiduciary bears the burden of proving that consent was obtained in accordance with the Act/Rules. In the event of a breach involving personal data, the Data Fiduciary must notify both the Data Protection Board and the affected Data Principals.

A Data Fiduciary shall not undertake:

- Such processing of personal data as is likely to have detrimental effect on child's well being.
- Shall not undertake tracking or behavioural monitoring for targeted advertising at children.

The Data Principal is obligated to grant, manage, review, or revoke consent to the Data Fiduciary through an accessible, transparent, and interoperable platform provided by a Consent Manager, registered with the Data Protection Board of India.

Consent must be freely given, specific, informed, unconditional, and unambiguous, requiring clear affirmative action to indicate agreement for necessary personal data processing and restricted to specific purposes. Any aspect of consent that violates Act/Rules provisions is nullified. Every Consent Request to the Data Principal must be accompanied or preceded by a notice from the Data Fiduciary (in English or the Data Principal's preferred language) detailing:

- The personal data slated for processing.
- The intended purpose.
- The right to withdraw consent.
- The availability of a Grievance Redressal Mechanism (established by the Data Fiduciary).
- The procedure for lodging complaints with the Data Protection Board of India.

Data Processing: Personal data of Data Principals may only be processed when:

- It adheres to the Act's stipulations.
- It serves a lawful purpose.
- It is contingent on prior consent.
- It fulfils 'certain legitimate use' criteria.

Certain legitimate uses include Data Fiduciaries processing personal data of Data Principals for:

- ❖ Specified purposes for which voluntary consent is obtained, not expressly denied/restricted. The purpose is deemed obsolete if the Data Principal remains inactive for a specified duration.
- ❖ State-related matters (including instrumentalities) such as subsidies, benefits, services, certificates, licenses, permits, or legal functions thereof.
- ❖ Safeguarding India's sovereignty, integrity, or state security.
- ❖ Meeting legal obligations by disclosing information to the State or its instrumentalities.
- ❖ Complying with Court Orders/Decrees/Judgments.
- ❖ Addressing medical emergencies posing threats to life/health of the Data Principal or other individuals.
- ❖ Providing medical treatment or health services during epidemics, outbreaks, or other public health crises.
- ❖ Ensuring safety or offering assistance during disasters or breakdowns in public order.
- ❖ Employment purposes or protecting the employer from losses or liabilities.

The Act envisages that Central Government shall notify certain category of “Data Fiduciary” as “Significant Data Fiduciary”, who will appoint a Data Protection Officer, who shall be point of contact for grievance redressal mechanism and whose contact details will be shared with the Data Principal at the time of obtaining consent. Alternatively, the Data Fiduciary may provide contact details of any other officer instead of the Data Protection Officer. The Significant Data Fiduciary shall also appoint independent data auditor for data audit and arrange periodic Data Protection Impact Assessment.

Penalty: The Act seeks to protect the privacy of Indian Citizens while proposing a penalty of upto Rs. 250/- Crores on Entities for Breach of provisions of the Act or Rules made thereunder.

Conclusion and Compliance Role: Given the Heavy Penalty Involved, it is in the interest of all the existing business entities in India and particularly, the Company Secretaries to check if and to what extent the Act becomes applicable to it. In this regard, it may be noted that while it may appear that this law is applicable on e-commerce, B2C or digital companies only, it would be better to take a cautious approach as regards the applicability of this Act in relation to any personal data collected by the Corporates in the course of its activities like collection of participation form in any contest, promotional activities, free trials, membership plans, procurement of business by DSA of Banks and NBFCs, Online Insurance Marketing Firms, Stock Broking Firms, Financial Markets and Securities Market Intermediaries soliciting business directly/indirectly from customers through channels, which were till now unregulated and any other form of data solicitation from customers or other individual stakeholders via digital forms or physical forms which are digitized later.

Cs Harish Gurnami

Article 2

Global Minimum Corporate Tax (GMCT): Balancing Tax Fairness

1. GMCT was agreed upon by 136 countries as part of the OECD plan to implement a 15% global minimum tax rate starting in 2023.
2. The GMCT aims to prevent multinational enterprises from shifting profits and tax revenues to low-tax jurisdictions (tax havens) and create a more balanced global tax framework.
3. Large international corporations would be subject to a minimum 15% tax.
4. The need for GMCT arose due to the increasing trend of multinational corporations shifting profits to tax havens to minimize their tax liabilities.
5. The proposed two-pillar solution includes addressing the allocation of taxing rights between countries (Pillar One) and setting a global minimum tax rate (Pillar Two).
6. Pillar One ensures MNEs pay taxes in jurisdictions where they generate profits, even without a physical presence, based on where consumers are located.
7. Pillar Two sets a global minimum tax rate, allowing countries to apply a “top-up tax” if a company’s effective tax rate is below the agreed minimum.
8. Challenges include potential impact on sovereign tax policies, opposition from smaller countries with lower tax brackets, and potential economic stalemate in developing nations.

9. The GMCT could increase India's tax base, leading to economic growth and a level playing field for Indian companies competing with MNCs.

Income Tax deduction for scientific research

1. Where any assessee carries out any research of scientific nature related to the business carried on by him, 100% expenses are deductible in the following manner (Sec 35(1)(I) and Sec 35(1)(iv):

. Expenditure incurred BEFORE the commencement of business:

- **Capital Expenditure:**

- Capital expenditure (other than expenditure on acquisition of land) incurred during three years immediately preceding the date of commencement of business shall be allowed as an expense in the year in which the business commences.
- Such capital expenditure can be incurred on acquisition of P&M, construction of building, acquisition of vehicles, etc for the purpose of scientific research.
- Where any assessee has purchased any land & building, expenditure is allowed only for the building portion and not for the land portion.

Revenue Expenditure:

Following revenue expenditure incurred during three years immediately preceding the date of commencement of business shall be allowed as an expense in the year in which the business commences:

- Salary paid to employees engaged in scientific research (excluding perquisites)
- Purchase of materials used in scientific research

b. Expenditure incurred AFTER the commencement of business:

• Capital Expenditure:

- 100% of the capital expenditure incurred by an assessee on scientific research in relation to his business is allowed as an expense in the year in which the capital expenditure is incurred by the assessee.
- Capital expenditure incurred on acquisition of land is not allowable as deduction. Where any assessee has purchased any land & building, expenditure is allowed only for the building portion and not for the land portion.

• Revenue Expenditure:

- Entire revenue expenditure incurred by an assessee on scientific research in relation to his business is allowed as an expense in the year in which such expenditure is incurred.
- No depreciation can be claimed u/s 32 in respect of those assets for which deduction has been claimed u/s 35.

2. Any expenditure incurred by a company, on scientific research (not being in nature of cost of land and building) on in-house scientific research and development facilities as approved by the prescribed authorities is allowed as 100% deduction as under:
 - a. Company, engaged in any business biotechnology or of manufacture or production of any article or thing, other than those specified in the list of Eleventh Schedule.
 - b. Company should enter into an agreement with the prescribed authority for cooperation in such research and development and audit of accounts maintained for such facilities.^[L]_[SEP]
 - c. Expenditure on scientific research in relation to Drug and Pharmaceuticals shall include expenses incurred on clinical trials, obtaining approvals from authorities and for filing an application for patent.
 - d. Only companies having in-house R&D centre(s) recognised by DSIR are eligible to make application for approval under section 35 (2AB) of the Income Tax Act.
 - e. For approval, companies having DSIR recognised in-house R&D centres are required to submit application in Form 3CK.

CBDT notifies Rule for determination of value of perquisite in respect of residential accommodation provided by employer

1. The Finance Act, 2023 brought in an amendment for the purposes of calculation of “perquisite” with regard to the value of rent-free or concessional accommodation provided to an employee, by his employer.
2. Accordingly, CBDT has modified Rule 3 of the Income-tax Rules, 1961 to provide for the same, effective from 1 September 2023.

3. The categorisation and the limits of cities and population have now been based on the 2011 census as against the 2001 census earlier. The revised limits of population are 40 Lakh in place of 25 lakh and 15 lakh in place of 10 lakh.
4. The earlier perquisite rates of 15%, 10% and 7.5% of the salary have now been reduced to 10%, 7.5% and 5% of the salary respectively.
5. In case the accommodation is continued to be provided to the same employee for more than one previous year, the amount calculated shall not exceed the amount so calculated for the first previous year, as multiplied by the ratio of the Cost Inflation Index (CII) for the previous year for which the amount is calculated and the CII for the previous year in which the accommodation was initially provided to the employee.

(Notification No. 65/2023 dated August 18, 2023)

GST Update

Order passed without providing personal hearing before passing adverse order to be set aside

The Hon'ble MP High Court in the case of AGARWAL WHEELS PVT. LTD. V/s STATE OF MADHYA PRADESH decided on 25-4-2023

Issue:

- Opportunity of personal hearing not given before passing final order. Would the Natural justice have denied ?

Hon'ble High Court Judgement

Where in Show cause notice issued under Section 74 of MPGST, Date, Time and Venue of personal hearing had not been mentioned, it was sufficient to infer that no personal hearing was given to assessee before passing final order and impugned order was to be set aside.

Issuance of Notice for recovery of the input tax credit availed by the recipient is not justified without conducting any enquiry on the supplier

1- Calcutta HC in the case of Suncreft Energy Pvt Ltd.

2- It's a Favourable Judgement on Sec 16(2)(C) of the CGST Act.

3- Held that issuance of demand notice on recipient of service on account of mismatch in GSTR 2A and GSTR 3B ITC cannot be sustained without any investigation being done at the end of the supplier whose Invoices are not reflecting in GSTR 2A and that allegation of non-payment of tax by supplier and denial of ITC u/s 16(2)(c) of the Act cannot be made without any investigation of the supplier in question.

4- Cases Cited Reference:

UOI vs Bharti Airtel Ltd (SC)

Commissioner of Trade and Taxes, Delhi vs Arise India Ltd (SC)

Special procedure for E-commerce operators (ECO) in respect of supply of goods by unregistered person

Notification No. 37/2023 – CT effective from 1 October 2023

The unregistered person shall be allowed to supply goods only after allotment of enrolment number by common portal:

- ECO shall not allow inter-state supply of goods to unregistered person
- ECO shall not collect any Tax at source (TCS) under Section 52 of CGST Act in relation to the supply of goods made through the unregistered person; and
- ECO shall furnish all the details of supplies made through unregistered person in the statement in FORM GSTR-8 electronically on common portal.

Grievance portal for GST issues

1. GST Complaint Portal helps taxpayers and customers to file a complaint or raise their grievances regarding any issues that they have encountered.
2. As per GST Helpline India, some of the most common types of GST fraud include collecting taxes on GST-free products/services, overcharging the duty, and fraudsters posing as GST officers to dupe businessmen and small traders.
3. In light of such incidents, the GST Council has set up its grievance redressal portal through which customers and taxpayers can lodge their complaints or seek answers to GST-related issues.

4. For those who wish to file a GST-related complaint about any illegal charges or fraud, there are a number of ways through which one can raise their grievances.

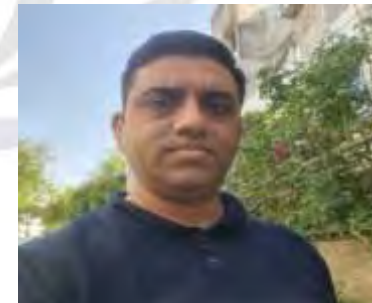
- Visit the GST portal at gst.gov.in.
- Scroll down to find the 'Grievance Redressal Portal for GST' link and click on it.
- You will be redirected to a new page by the portal.
- Click on 'Report Issue' and lodge your 'Type of Issue/Concern'.

5. Taxpayers can also share their concerns by calling the toll-free number 1800-103-4786.

6. After registering the complaint, they will be given an acknowledgment with a ticket reference number (TRN) which can be used for tracking the complaint status.

CA Mrattunjay

Finance Controller –OKAYA Battery Business



Article 3

Launching Civil and Criminal nature of prosecution after completion of investigation

On receipt of the investigation report, the Central Government after examination of the report and after taking such legal advice, as it may think fit, direct to initiate prosecution proceedings against the company and its officers or employees, who are or have been officers-in-default. After granting sanction by the Central Government, prosecution is launched. *In M.Vaidyanathan v. The Sub Divisional Magistrate Erode, AIR 1957 Mad 65:(1957 CrI.205). Madras High Court Date of order: 3ed, August, 1956.* Section 242 of Act, 1956 is an enabling provision as the use of the word ‘may’ in the passage “the Central Government ‘may’ after taking such legal advice as it thinks fit prosecute such a person for the offence. *In Registrar of Companies NCT Delhi and Haryana vs. Apoorva Leasing Finance, Co. Appeal (AT)No.88/2019, NCLAT Date of Decision 4th, December, 2019.* The Appellate Authority observed that the sanction order does not contain what are the allegations against the company and to substantiate the allegations what documents were placed before him. It is not mentioned that before according sanction, the company has been given reasonable opportunity of making representations. It is also not mentioned that the sanctioning authority prima facie satisfied with the allegations against the company. The reliance is placed upon the judgement of *Punjab & Haryana High Court in RoC vs. Suraj Bachat Yojna Pvt. Ltd and Others 1973(43) Comp cas 143* wherein the Hon’ble Court held that Central Govt. not to accord its sanction to the Registrar u/s 439(5) of the Act, 1956 unless an opportunity is afforded to company of making representations, if any.

The delegate of the Central Govt., while according sanction has a solemn duty to perform of informing himself about the true position of the company in the light of the explanation made by it. The explanation has to be considered with a judicial mind. It is not a mere formality to receive the explanations from the company and dismiss them as unsatisfactory without getting the doubts cleared. It is apparent that sanction has been granted that too without applying the mind thus the Appellate Authority confirmed the order of the Tribunal regarding rejecting the petition filed by ROC to wind up the company on the basis of report of investigator and appeal is dismissed. Prosecution is launched of civil and criminal nature.

In Civil Law

Civil Law is a general law which solves disputes between two organizations or individuals. It deals with property, money, housing divorce etc. Civil Law is initiated by the aggrieved individual or organization, known as 'plaintiff'. The objective of Civil Law is to protect the rights of an individual or organization and make sure that the aggrieved party receives compensation for the wrongs that they have suffered. The powers of the court are to pass judgement or injunction to compensate for damage caused to the aggrieved party. In the Tort Law or Civil Law, there should be some or other relationship between the wrong doer and the person who gave the order and there should be ratification.

In Criminal Law

Criminal Law deals with offences that are committed against the society. It deals with serious crimes such as murder, rapes, arson, robbery, assault etc. As per the Criminal Law, the complaint should be registered with the police and the crime needs to be investigated by the police. The Government generally files the petition. The purpose of law is to punish the wrongdoers and protect society, maintain law and order. The punishment is meted out as per seriousness of the criminal offence committed. The powers of the Court are charging a fine, imprisonment to the guilty of a crime, or discharge of the defendant. A person can be criminally liable for the acts of another, if they are a party to offence. The powers of court are charging a fine, imprisonment to the guilty of a crime, or discharge the defendant. The responsibility or the liability of the directors of the company for the offence committed by the company will arise not by their position or status as directors, but by their participation in the conduct of the business of the company or participating in the day-to-day affairs of the company. The provision of vicarious liability is not applicable in criminal matters. *In Ramakrishna Raja v. Registrar of Companies, Equivalent citations:2005123 Comp Cas319 Mad, Madras High Court Date of Decision: 29th March, 2004.* Registrar of Companies filed complaint against the petitioner and four others under sections 62, 63, 68 and 628 of the Companies Act, 1956 before ACMM, Chennai. The court held that the offence, if any committed by the agent cannot be passed on to the principal because such vicarious liability under criminal law does not arise between the agent and principal.

Further, the petitioner had resigned from directorship. Therefore, complaint filed against the petitioner cannot be sustainable and thereby quashed. The reliance was placed in *Standard Chartered Bank Vs. Directorate of Enforcement (2009) 1 SCC 516 (2009) 6 SCC 475(2005) 4 SCC 530*; in *S.M.S. Pharmaceuticals Limited V. Neeta Bhalla*; in *National Small Industries Corporation Vs. Harmeet Singh, in Iridium India. In the case of Pooja Ravinder Devidasini vs. State of Maharashtra & Anr. S.L.P.No.9133-39 of 2010*. Hon'ble Supreme Court held, "simply, because a person is a Director of a Company, does not make him liable. Every person connected with the Company will not fall into the ambit of the provision. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence.

In the matter of Madhur Mittal vs. State through Prosecuting Agency, Saket, Delhi District Court, CNR No. DLSE010030132017, CR No.193/2017, (Revision Petition) Date of Decision 10th April, 2018. The Court observed that is settled law that in absence of any provision laid down under the statute, ex-director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company for non-refund of the amounts and non-delivery of the flats. Reliance is placed in the case of *Keki Hormusji Gharda and Ors. vs. Mehervan Rustom Irani and Anr.(2009)5CC475, wherein the Hon'ble Court held,*" Indian Penal Code, save and except some matters does not contemplate any vicarious liability on the part of a person. Commission of an offence by raising a legal fiction or by creating a vicarious liability in terms of the provisions of a statute must be expressly stated. The Managing Director of the company, thus, cannot be said to have committed an offence only because they are holders of the office

In Thermax Ltd and Ors. K.M.Johny and Ors. (2011)11 SCC 412, the Hon'ble Supreme Court of India held, "Apart from the fact that the complaint lacks necessary ingredients of section 405, 406, 420 read with Section 34 IPC, it is to be noted that concept of 'vicarious liability' is unknown to criminal law. Similarly held in B.N.Gupta vs. State, CNR No.DLSE010016172017, CR No.101/2017, Delhi District Court Date of Decision 10th April, 2008. In National Small Industries Corporation Limited Vs. Armeet Singh Paintal and Another): 2 (2010) 3 SCC 330. The court held that the appellant complainant has to establish that when the alleged transactions took place, the accused-respondents were participating in the day-to-day affairs of the company. The responsibility or the liability of the directors of the company for the offence committed by the company will arise not by their position or status as directors, but by their participation in the conduct of the business of the company or participating in the day today affairs of the company. Similarly held In National Small Industries Corporation Limited Vs. Harpreet Singh Paintal and Another, reported in (2010) 3 Supreme Court Cases 330, on a thorough examination of Section 5 and 291 of the Act 1956 wherein the person sought to be made liable should be in-charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases. In Maksud Saiyed Vs. State of Gujrat and Others, reported in (2008) 5 SCC 668, when an offence is committed by a Company, the Court taking cognizance has to examine, whether the directors are personally liable for the offence. Even of the statute provides for vicarious liability of an offence, it is obligatory on the part of complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

In Madan Singh And Anr. vs. UT of Chandigarh, CRM-M-1720 of 2013, Punjab & Haryana High Court Date of Decision 16th September 2015. Application was filed for quashing of FIR under Sections 420, 465, 467, 468, 471, 120-B IPC registered with Police Station. The Ld. Court is of the opinion that FIR does not assign any role or allegations in what respect these petitioners have committed any criminal offence mere fact that they were appointed as the directors ipso facto do not mean or can be construed that they have connived or were part of conspiracy with the co-accused. Reliance has been placed in the matter of *State of Haryana and others vs. Ch. Bhajan Lal and others 1991(1) RCR (Criminal) 383. In Gagan Aero Space Ltd v/s State of Telangana Rep by P.P., Criminal Petition Nos.24634 and 24655 of 2017, Hon'ble High Court Telangana Date of Decision 3/4/2019.* The Court observed that as regards vicarious liability, *in R.Kalyani v. Janak C. Mehta 25*, it was held that vicarious liability can be fastened only by reason of a conferment by a statute and not otherwise, and for the said purpose a legal fiction has to be created. Reliance is placed *in Keki Hormusji Gharda V. Mehervan Rustom Irani*, wherein the managing director or the directors of the company, thus cannot be said to have committed an offence only because they are holders of offices.

Corporate Criminal Liability

Corporate Criminal Liability is governed by the norms of vicarious liability, as distinct from the scenarios in which the statutory offence specifically makes the company liable for that particular offence. Whether a corporate being an artificial person is capable of committing a crime and whether a corporation is criminally liable for the said offence (criminal act). Traditionally, it was held that corporation cannot do a crime as the main test of a criminal activities lies in the intent. As against, Supreme Court, first time in the case of *Irdium India Telecom Limited vs. Motorola incorporated & ors* held that that corporate criminal liability has been recognized as one of the corporate liabilities in India under Companies Act as well as

The court is inclined to fasten more liability on the person who controls the company, organisation. *In Sunil Bharti Mittal vs. Central Bureau of Investigation, Criminal Appeal No.34/2015 (Criminal Appellate Jurisdiction) [arising out of SLP (Crl.) No.2961 of 2013], Supreme Court of India Date of Decision 9th January 2015.* As per the FIR, the accused public servants entered into a criminal conspiracy with the accused beneficiary companies in taking the decision regarding allocation of 2G licenses, which caused undue cumulative pecuniary advantage to the beneficiary companies. The Hon'ble Court observed that (i) managing director/ director/persons were prima facie in control of affairs of the companies, (ii) Because of their controlling position, they represent the directing mind and will of each company; (iii) state of mind of these persons is the state of mind of the companies. Thus, they are/were described as alter ego of their respective companies. In this situation, the acts of the companies are to be attributed and imputed to them, there are enough material on record to proceed against them and directed to issue summons. The Court held it is satisfied that the allegations levelled by the complainant, fully incorporate all the basic facts which are necessary to make out the offences. Similarly held *In Shiv Kumar Jatia vs. State of NCT of Delhi, Crl. A.@SLP(Crl.) No.8008/ 18 etc and Crl Appeal No. 1265-1267 of 2019., Supreme Court of India Date of Decision 23rd August 2019; Bindu vijay Nambiar vs. The State of Maharashtra (1907) Appl. No.11342016, Bombay High Court date of decision 15th January 2020.*

Corporate Criminal liability is recognized under various sections inter-alia section 447 of the Companies Act, 2013.

Models of Corporate Criminal Liability

A) Derivative Model: - The liability of an organization is a derived liability. The liability of a corporation is derived from the actions on an individual who has been employed or connected with the organization and commits a wrongful act. The derivative model of the corporate criminal liability is further sub-divided into two categories, i.e.,

1. Vicarious Liability- The vicarious liability is the concept which is generally applicable in the case of civil liability, but the Courts have said that because a corporation is an artificial person and a separate legal entity thus it is necessary to bring the applicability of vicarious liability in the case of corporate criminal liability. *In the matter of Maksud Saiyed vs. State of Gujarat & Ors., Case No. Appeal (Crl.)1248 of 2007[Arising out of SLP (Crl.) No.923 of 2006, Supreme Court of India Date of Decision 18.09.2007.* The bank floated a public issue. Prospectus was published for the purpose of public issue and therein some false and misleading information had been given with regard to sanction limits, the dues and export bills of the company. It was alleged that the company had committed an offence punishable under Section 120B, 425, 191, 192, 177, 181 and 500 of the Indian Penal Code and criminal complaint was filed. The Id. Chief judicial Magistrate directed the police authorities to investigate the complaint. The order was quashed under section 482 Cr.P.C. Thereafter, appeal was filed in the Hon'ble Supreme Court. It was pleaded on the part of Respondent that Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company, even if a complaint given face value and taken to be correct its entirety, it would lead to the conclusion that the respondents herein were personally liable for any offence.

The Bank is body corporate. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. The Hon'ble Supreme Court observed that the complainant failed to bring charges home to the accused and held that there is no merit in this appeal and dismissed accordingly.

In Sunil Bharti Mittal vs. Central Bureau of Investigation, Criminal Appeal No.34/2015, Criminal Appellate Jurisdiction [rising out of SLP (Crl.) No.2961 of 2013], Date of Decision 9th January, 2015 . The acts of the companies are to be attributed and imputed to them, there are enough material on record to proceed against them and directed to issue summons. The Court held it is satisfied that the allegations levelled by the complainant, fully incorporate all the basic facts which are necessary to make out the offences. In Shiv Kumar Jatia vs. State of NCT of Delhi, No.8008/18 etc and Crl Appeal No. 1265-1267 of 2019., Supreme Court of India Date of Decision 23 August, 2019; Bindu Vijay Nambiar vs. The State of Maharashtra (1907) Apl. No.11342016, Bombay High Court date of decision 15th January, 2020.

2. Identification Doctrine: It is an English Law Doctrine which tries to identify certain key persons of a corporation who acts in its behalf, and whose conduct and state of mind can be attributed to that of the corporation. It was held in *Moore vs. Brisler* that the persons who are identified with the corporations must be acting within the scope of the employment of authority. The conduct must occur within an assigned area of operation even though particulars may be unauthorized.

B) Organizational Model: The model of corporate criminal liability focuses on the model of the organization while defining the corporate liability of an organization in criminal cases. A crime is said to be committed when there is a presence of men's rea (intent to commit a crime) and actus reus (commission of criminal act). The culture of the corporate may help for commission of an offence requiring mental state by, first providing the environment or necessary encouragement. Secondly, it is quite possible that the corporation created an environment which led to commission of crime. Thus, it was the corporation and its working culture that left the offence committed.

Factors required to considered a Corporate Criminal Liability

The following factors are required to consider Corporate Criminal Liability, viz.

1) **Act in the scope of employment:** The employee has committed the criminal act and such action has to be committed in the scope of his employment. Thus, act been done during performing his official duties which has been authorized by the company. Thus, by invoking the agent-principal relationship, the corporate criminal liability is established.

2) **The benefit to corporation:** It is not necessary that complete benefit should have enjoyed to the company, but some benefit of the criminal act must have been given to the company. It means that the illegal or unlawful act of the employee is not contrary to the organization.

For instance, when a case has been assigned to SFIO, no other agency may investigate the affairs of the company and all files concerning the affairs of the company should be transferred to the SFIO. Further, certain offences, if discovered in the course of an SFIO investigation, bail would only be made available at a much higher threshold under Section 437 of the Cr. P.C. The SFIO is also bestowed with greater powers of arrest etc.

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

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

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

1. In **Rahimal Bathu V. Ashiyal Beevi**, the Supreme Court recently held that a revision petition under Section 115 of the Code of Civil Procedure, 1908 against rejection of a review application of an appealable decree by a subordinate court on merits cannot be entertained.
2. In **CPL Ashish Kumar Chauhan (Retd.) Vs. Commanding Officer & Ors.** While reaffirming the principles of upholding the dignity, rights, and well-being of armed forces personnel, the Supreme Court has ruled in favor of a retired Air Veteran, holding the Indian Air Force (IAF) and the Indian Army jointly and vicariously liable for medical negligence. The appellant, who contracted HIV during a blood transfusion at a military hospital while falling sick on duty during Operation Parakram, has been awarded compensation amounting to 1 crore 54 lakhs 73,000.
3. In **Kotak Mahindra Bank Limited Vs Commissioner of Income Tax Bangalore and Anr**, The Supreme Court has ruled that Section 245H of the Income Tax Act, 1961, which empowers the Settlement Commission to grant immunity from prosecution and penalty to the assessee if he has co-operated with the Settlement Commission and has made “full and true disclosure of his income”, cannot be saddled with an artificial requirement that the material “disclosed” by the assessee before the Commission must be something apart from what was “discovered” by the Assessing Officer.
4. In **M/S Paul Rubber Industries Private Limited v Amit Chand Mitra & Anr.**, the Supreme Court held that in order to attract the application of Section 106 of the Transfer of Property Act, 1882, which requires 6 months’ notice for termination of lease, the burden is on the Tenant to prove that manufacturing activity was being carried on in the leased Premises. A mere statement that manufacturing activity was being done would not suffice, the Tenant must explain the nature of work being done in factory shed.

5. In **Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd. And Ors**, Apex Court underlined that all litigants, including banks, were duty bound to follow provisions of law and that banks would not be treated on a different footing than other litigants. The Court said that the the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) does not give any "license to the Bank officers to act de hors the scheme of the law or the binding verdicts"..
6. In **Batliboi Environmental Engineers Limited V Hindustan Petroleum Corporation Limited And Another**, the Supreme Court has held that while setting aside an arbitral award for being violative of Section 28(3) of the Arbitration and Conciliation Act, 1996, it must be considered that the Arbitrator is empowered to interpret the contract terms reasonably. Arbitrator's interpretation cannot be a ground for setting aside of award, since the construction of contract's terms is finally for the arbitrator to decide. Under Section 28(3), award can only be set aside if the arbitrator interprets it in manner as no fair-minded reasonable person would do.
7. In **MEENA PRADHAN & ORS. V. KAMLA PRADHAN & ANR**, Apex Court laid down certain principles required for proving the validity and execution of the Will. In substance, these principles enunciated that apart from statutory compliance under Section 63 of the Succession Act, broadly, it has to be proved that (a) the testator signed the Will out of his own free Will, (b) at the time of execution, he had a sound state of mind, (c) he was aware of the nature and effect thereof and (d) the Will was not executed under any suspicious circumstances.

8. In **Brihan Karan Sugar Syndicate Private Limited vs Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana**, the Supreme Court has reiterated that in a suit for passing off, for establishing goodwill of the product, it is necessary for the plaintiff to prove not only the figures of sale of the product but also the expenditure incurred on promotion and advertisement of the product.
9. In **Kumbam Ramana Prathap Reddy vs. Kumbam Jaihind Reddy**, Apex Court has held that children born out of void/voidable marriages are entitled to inherit a share in the property of their deceased parents which would have been allotted to them on a notional partition of the Hindu coparcenary property. However, such children are not entitled to the properties of any coparcener other than their parents.

Compliance Checklist

COMPLIANCE CALENDAR FOR OCTOBER 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	
	• TDS Payment for Sep 2023
	• Professional Tax (PT) on Salaries for Sep 2023 & Professional Tax Due Date Varies from State to State
	• TCS Return in Form 27EQ for Jul-Sep 2023
	• Provident Fund (PF) & ESI Returns and Payment for Sep 2023
	• Issue of TCS Certificates in Form 27D for July to Sep 2023
	• Income Tax Returns for Non-Corporates who needs Audit and Corporates for FY 2022-23
	• TDS Returns in Form 24Q, 26Q, 27Q for July to Sep 2023
	• TDS Payment in Form 26QB (Property), 26QC (Rent), 26QD (Contractor Payments) for Sep 2023

Companies Act Related Compliance	
	<ul style="list-style-type: none"> • ADT-1 filing (Appointment of an Auditor for Companies)
	<ul style="list-style-type: none"> • AOC 4 Filing for Companies for FY 2022-23
	<ul style="list-style-type: none"> • MGT-14 Board Report and Annual Accounts
	<ul style="list-style-type: none"> • MSME-1 outstanding Payments to MSME
	<ul style="list-style-type: none"> • LLP Form-8
FEMA Related Compliance	
	<ul style="list-style-type: none"> • Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA
GST Related Compliance	
	<ul style="list-style-type: none"> • GSTR 1(Monthly) for August 2023
	<ul style="list-style-type: none"> • GSTR 3B for October 2023 • GSTR 5A for October 2023
	<ul style="list-style-type: none"> • GSTR 5 for October 2023
	<ul style="list-style-type: none"> • GSTR 6 for October 2023
	<ul style="list-style-type: none"> • GSTR 7 for October 2023 • GSTR 8 for October 2023

	PMT-06 for second quarter in case of QRMP Scheme ITC-04
	GSTR-11 for person having UIN number
	CMP-08 for Second Quarter
Economic, Industrial & Dynamic Labour Law Related Compliance	
	<ul style="list-style-type: none"> ● Monthly payment of PF (Non-Corporate) ● File monthly return (Form No.5) for employees leaving /joining during the previous month ● Payment of ESI Contribution for the month of August
	<ul style="list-style-type: none"> ● Monthly return of PF for the previous month
RBI Related Compliance	
	<ul style="list-style-type: none"> ● Monthly return (NBS-6) on exposure to capital market ● Monthly Return on Important Financial Parameters
	<ul style="list-style-type: none"> ● Monthly Return on Important Financial Parameters

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