



WHITESPAN
A d v i s o r y

WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

Monthly Newsletter
September, 2023



INDEX		
S.No.	Section	Page No.
1	MAA Foundation Activities	3
2	Message from the Chief Editor	4
3	Editorial Board	5
4	Ministry of Corporate Affairs (MCA)	6-9
5	Securities Exchange Board of India (SEBI)	10-22
6	Central Board of Direct Taxes (CBDT)	23-25
7	Central Board of Indirect Taxes and Custom (CBIC)	26-29
8	Miscellaneous Laws	30-35
9	Case study on delayed deposit of Employees Contribution to PF and ESI (Article-1)	36-41
10	Article on Understanding of Subordinate Debts (Article-2)	42-50
11	Article on Investigation under Companies Act, 2013 (Article-3)	51-60
12	Case Laws	61-63
13	Compliance Checklist for the Month of September 2023	64-68

MAA FOUNDATION ACTIVITIES



Vocational education -our organisation believes in educating the people in a way that they can get employed or self-employed, and it can only be done through vocational education, thus, we aim to impart practical education and experience to our young minds so that they can March Ahead Always

Environment conservation- our environment is degrading and its no new to us thus, we as an organisation are a believer of doing our bit.

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 77th Edition of “WINS – E-Newsletter” for August 2023, covering legal updates released during the month of August 2023, articles shared by respected professionals, Case Laws and compliance calendar for the month of September 2023.

In this issue, we have covered the following:

1. Corporate Updates from, MCA, SEBI, CBDT, CBIC, and Miscellaneous Laws.
2. Articles on:
 - i. A. Case study on delayed deposit of Employees Contribution to PF and ESI;
B. Interest subsidy received under technology upgradation fund is a capital receipt;
 - ii. Understanding of Subordinate Debts
 - iii. Investigation under the Companies Act, 2013
3. Case Laws
4. Compliance checklist for the month of September 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)
August 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. 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. THE COMPANIES (INCORPORATION) SECOND AMENDMENT, 2023

Date of General Circular: August 02, 2023

Effective Date: Date of publication in the official gazette

Link:

<https://www.mca.gov.in/bin/dms/getdocument?mds=jYQ0wTBvMQwmTluXHncG0A%253D%253D&type=open>

MCA vide its notification dated August 02,2023 amended the annexure of Companies (Incorporation) Rules, 2014 by substituting e-form RD-1 [Form for filling application to Central Government (Regional Director)].

2. CONDONATION OF DELAY IN FILLING OF FORM 3, FORM 4 AND FORM 11 UNDER SECTION 67 OF LIMITED LIABILITY PARTNERSHIP ACT, 2008 READ WITH SECTION 460 OF THE COMPANIES ACT, 2013

Date of General Circular: August 23, 2023

Effective Date: August 23, 2023

Link:

<https://www.mca.gov.in/content/dam/mca/documents/FAQs-on-condonation-of-delay-in-LLP-20230823.pdf>

MCA vide its general circular no. 08/ 2023 has granted one time relaxation towards payment of additional fee to LLP's which could not file form 3, 4 and 11 within due date. Salient features of the circular are:

1. Form 3 and form 4 would be processed under STP Mode for all purposes except for change in business activities.
2. Facility to edit the pre-filled data in the forms will be provided
3. Filing of form 3 and 4 without any additional fee shall be applicable for the event dates 01.01.2021 onwards. For events prior to this date, forms can be filed with 02 and 04 times of the normal fees.
4. For form 11 filing without any additional fee shall be applicable from 2021-22 onwards. Form 11 prior to this period can be filed with 02 and 04 times of the normal fees.

Period of above scheme – 01.09.2023 to 30.11.2023

3. CONDONATION OF DELAY IN FILING OF FORM-3, FORM-4 AND FORM-11 – FAQs

MCA in continuation to its general circular no. 08/ 2023 have released a set of FAQ(s) on condonation of delay in filing of Form-3, Form-4, and Form-11.

The said FAQ(s) are available at the link below:

[FAQs-on-condonation-of-delay-in-LLP-20230823.pdf \(mca.gov.in\)](https://mca.gov.in/FAQs-on-condonation-of-delay-in-LLP-20230823.pdf)

Securities Exchange Board of India (SEBI)

1. CORRIGENDUM CUM AMENDMENT TO CIRCULAR DATED JULY 31, 2023, ON ONLINE RESOLUTION OF DISPUTES IN THE INDIAN SECURITIES MARKET

Date of Circular: August 04, 2023

Effective Date: August 04, 2023

Link:

https://www.sebi.gov.in/legal/circulars/aug-2023/corrigendum-cum-amendment-to-circular-dated-july-31-2023-on-online-resolution-of-disputes-in-the-indian-securities-market_74976.html

SEBI vide its circular dated August 04, 2023, modified its circular no. SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/131 dated July 31, 2023. Key highlights of the same are:

All listed companies / specified intermediaries / regulated entities in the securities market (collectively referred to as “Market Participant/s”) shall enroll on the ODR Portal within the timelines as specified at paragraphs 46 and 47 of this circular and shall be deemed to have been enrolled on the ODR Portal at the end such specified timeline. The enrolment process shall also include executing electronic terms/agreements with MIIs and the ODR Institutions, which shall be deemed to be of 4 executed at the end such specified timeline.

Facility to enroll Market Participants into the ODR Portal by utilizing the credentials used for SEBI SCORES portal / SEBI Intermediary portal may be also provided in the ODR Portal.

An investor/client shall first take up his/her/their grievance with the Market Participant by lodging a complaint directly with the concerned Market Participant. If the grievance is not redressed satisfactorily, the investor/client may, in accordance with the SCORES guidelines, escalate the same through the SCORES Portal in accordance with the process laid out therein. After exhausting these options for resolution of the grievance, if the investor/client is still not satisfied with the outcome, he/she/they can initiate dispute resolution through the ODR Portal.

The dispute resolution through the ODR Portal can be initiated when the complaint/dispute is not under consideration in terms of the paragraph 11 above or SCORES guidelines as applicable or not pending before any arbitral process, court, tribunal or consumer forum or are non-arbitrable in terms of Indian law (including when moratorium under the Insolvency and Bankruptcy Code is in operation due to the insolvency process or if liquidation or winding up process has been commenced against the Market Participant).

2. MASTER CIRCULAR FOR COMMODITY DERIVATIVES SEGMENT

Date of Circular: August 04, 2023

Effective Date: August 04, 2023

Link:

https://www.sebi.gov.in/legal/master-circulars/aug-2023/master-circular-for-commodity-derivatives-segment_74974.html

SEBI vide its circular dated August 04, 2023, released a Master Circular for Commodity Derivatives Segment. The Circulars mentioned in Annexure–ZG of this Master Circular shall stand rescinded with the issuance of this Master Circular, including Master Circular SEBI/HO/CDMRD/DMP/P/CIR/2022/64 dated May 17, 2022. With respect to the directions or other guidance issued by SEBI, as specifically applicable to National Commodity Derivative Exchanges, the same shall continue to remain in force in addition to the provisions of any other law for the time being in force.

3. REDUCTION OF TIMELINE FOR LISTING OF SHARES IN PUBLIC ISSUE FROM EXISTING T+6 DAYS TO T+3 DAYS

Date of circular: August 09, 2023

Effective Date: On voluntary basis for public issues opening on or after September 1, 2023, and - Mandatory for public issues opening on or after December 1, 2023

Link:

https://www.sebi.gov.in/legal/circulars/aug-2023/reduction-of-timeline-for-listing-of-shares-in-public-issue-from-existing-t-6-days-to-t-3-days_75122.html

SEBI vide its circular dated August 09, 2023, reduced the time taken for listing of specified securities after the closure of public issue to 3 working days (T+3 days) as against the present requirement of 6 working days (T+6 days); 'T' being issue closing date.

Accordingly, the revised timelines for listing of specified securities and various activities involved in the public issue process will be as per the Annexure to this circular. The T+3 timeline for listing shall be appropriately disclosed in the Offer Documents of public issues. The timelines for submission of application, allotment of securities, unblocking of application monies and listing shall prominently be made a part of pre-issue, issue opening and issue closing advertisements issued by the Issuer for public issues in terms of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations").

4. THE SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT PROCEEDINGS) (SECOND AMENDMENT) REGULATIONS, 2023

Date of notification: August 09, 2023

Effective Date: January 17, 2023

Link:

https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-settlement-proceedings-second-amendment-regulations-2023_75199.html

MCA vide its notification dated August 09, 2023, amended the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 by inserting the following in regulation 23 (Settlement of proceedings before the Adjudicating Officer and the Board):

In case of specified proceedings which may be initiated or are proposed to be initiated, the Panel of Whole Time Members shall dispose of such proceedings on the basis of the approved settlement terms.

5. PROCEDURE FOR SEEKING PRIOR APPROVAL FOR CHANGE IN CONTROL

Date of circular: August 10, 2023

Effective Date: September 01, 2023

Link:

https://www.sebi.gov.in/legal/circulars/aug-2023/procedure-for-seeking-prior-approval-for-change-in-control-with-respect-to-merchant-bankers-and-bankers-to-an-issue_75174.html

SEBI vide its circular dated August 10, 2023, issued specified procedure for the following:

1. Process of obtaining approval for the proposed change in control of Merchant Bankers and Bankers
2. Process of providing approval to the proposed change in control of an intermediary in matters which involve scheme(s) of arrangement which needs sanction of the National Company Law Tribunal (“NCLT”) in terms of the provisions of the Companies Act, 2013.

This Circular shall supersede the circular no. CIR/MIRSD/14/2011 dated August 02, 2011, with effect from the date of applicability of this circular, to the extent they relate to Merchant Bankers and Bankers to an Issue.

6. THE SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN PORTFOLIO INVESTORS) (SECOND AMENDMENT) REGULATIONS, 2023

Date of notification: August 10, 2023

Effective Date: Date of publication in the Official Gazette

Link:

https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-foreign-portfolio-investors-second-amendment-regulations-2023_75198.html

MCA vide its notification dated August 10, 2023, amended the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019. Key highlights of the same are:

Regulation 4- Eligibility criteria of foreign portfolio investor.

Designated depository participant shall consider an application for grant of certificate of registration as a foreign portfolio investor if the applicant satisfies the following conditions namely:

To be continued ...

The applicant or its underlying investors contributing more than the threshold prescribed under sub-rule (3) of rule 9 of the Prevention of Money -laundering (Maintenance of Records) Rules, 2005 in the corpus of the applicant or identified on the basis of control, shall not be the person (s) mentioned in the Sanctions List notified from time to time by the United Nations Security Council and is not a resident in the country identified in the public statement of Financial Action Task Force as

- (i) a jurisdiction having a strategic Anti- Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
- (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;

Regulation 22- General obligations and responsibilities of foreign portfolio investors

After sub-regulation (5), the following sub-regulations shall be inserted, namely, - “(6) A foreign portfolio investor that fulfils the criteria specified by the Board from time to time, shall provide information or documents in relation to the persons with any ownership, economic interest or control, in the foreign portfolio investor. (7) The information or documents specified in sub-regulation (6) shall be provided in the manner as may be specified by the Board from time to time.

7. SIMPLIFICATION OF KYC PROCESS AND RATIONALISATION OF RISK MANAGEMENT FRAMEWORK AT KYC (KNOW YOUR CLIENT) REGISTRATION AGENCIES (KRAS)

Date of Circular: August 11, 2023

Effective Date: September 01, 2023

Link:

https://www.sebi.gov.in/legal/circulars/aug-2023/simplification-of-kyc-process-and-rationalisation-of-risk-management-framework-at-kras_75250.html

SEBI vide its circular dated August 11, 2023, in supersession to its circular SEBI/HO/MIRSD/DoP/P/CIR/2022/46 dated April 06, 2022, on the framework for validation of records by KRAs in securities market has allowed to open an account with intermediaries and transact in securities market as soon as the KYC process is completed. Thereafter, as a part of risk management framework, the KRAs shall verify the following attributes of records of all clients within 2 days of receipt of KYC records:

To be continued

- a. PAN (including PAN Aadhaar linkage, as referred to in rule 114 AAA of the Income-tax Rules, 1962)
- b. Name
- c. Address

Additionally, the KRAs shall verify the client's mobile number and email id. In case of PAN exempt records, the other attributes i.e., name, address, mobile number and email id shall be verified by the KRAs. Clients in whose case, attributes of records as mentioned above cannot be verified, shall not be allowed to transact further in securities market until the attributes are verified.

8. MANDATING ADDITIONAL DISCLOSURES BY FOREIGN PORTFOLIO INVESTORS (FPIS) THAT FULFIL CERTAIN OBJECTIVE CRITERIA

Date of circular: August 24, 2023

Effective date: November 01, 2023

Link: https://www.sebi.gov.in/legal/circulars/aug-2023/mandating-additional-disclosures-by-foreign-portfolio-investors-fpis-that-fulfil-certain-objective-criteria_75886.html

SEBI vide its circular dated August 24, 2023, notified the criteria for rendering FPIs liable to provide information or documents in relation to the persons with any ownership, economic interest, or control, in the FPI In terms of Regulations 22 (6) and 22 (7) of the SEBI (FPI) Regulations, 2019 ('FPI Regulations').

Key highlights of the same are:

constituents of FPI investor group which collectively hold more than INR 25,000 crore of equity AUM in the Indian markets, shall be exempted from making the additional disclosures if the investor group consists of FPIs that qualify for exemption in terms of any of the criteria in Para 8 above and the net equity AUM of the investor group, after deducting the AUM of such exempted FPIs, falls below INR 25,000 crore

To be continued ...

Disclosures specified in the circular shall not be required to be made by FPIs in case their investments are realigned with the prescribed thresholds, within the timelines/ conditions mentioned in the circular

Depositories shall introduce new freeze reason codes and Stock Exchanges shall put in place appropriate mechanism / systems to ensure compliance of the above and to facilitate blocking of the accounts of the FPIs.

During the aforementioned 180 calendar days, the investee companies shall restrict the FPI's voting rights to its actual shareholding or its shareholding corresponding to 50% of its equity AUM on the date its FPI registration is rendered invalid, whichever is lower. The mechanism for implementing the same shall be spelt out in the SOP.

Central Board of Direct Taxes (CBDT)

1. DIRECT TAX COLLECTIONS FOR F.Y. 2023-24 UP TO 10.08.2023

Date of press release: August 11, 2023

Link: <https://incometaxindia.gov.in/Lists/Press%20Releases/Attachments/1145/PressRelease-Direct-Tax-Collections-for-FY2023-24-up-to-10-08-2023.pdf>

Central Board of Direct Taxes vide its press release dated August 11, 2023, announced that Direct Tax collections up to 10th August 2023 show that gross collections are at Rs. 6.53 lakh crore which is 15.73% higher than the gross collections for the corresponding period of last year. Direct Tax collection, net of refunds, stands at Rs. 5.84 lakh crore which is 17.33% higher than the net collections for the corresponding period of last year. This collection is 32.03% of the total Budget Estimates of Direct Taxes for F.Y. 2023-24. Refunds amounting to Rs. 0.69 lakh crore have been issued during 1st April 2023 to 10th August 2023, which are 3.73% higher than refunds issued during the same period in the preceding year.

2. GUIDELINES UNDER CLAUSE (10D) OF SECTION 10 OF THE INCOME-TAX ACT, 1961

Date of circular: August 16, 2023

Link:

<https://incometaxindia.gov.in/news/circular-15-2023.pdf>

Central Board of Direct Taxes vide its circular no. 15 of 2023 laid down guidelines under clause (10D) of section 10 of the Income-tax Act, 1961. Clause (10D) of section 10 of the Income-tax Act, 1961 (the Act) provides for income-tax exemption on any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy subject to certain exclusions.

**CENTRAL BOARD OF
INDIRECT TAXES
& CUSTOMS
(CBIC)**

3. GST UPDATES

1. Advisory services supplied to overseas group companies on one's own account qualify as export of Services

A working professional involves a case where a petitioner is providing advisory services to a company in Singapore and claims that these services should be treated as the export of services because the service recipient is located overseas. However, the respondent authorities have held that the services do not qualify as export of services as the place of supply is in India. The petitioner filed for a refund of unutilized Input Tax Credit, which was rejected. The Hon'ble High Court observed that the petitioner is not an 'Intermediary' and that the provisions of S. 13(2), S. 13(8)(b), S. 13(3)(b), and S. 13(4) of the IGST Act do not apply in this case. *The court allowed the petitioner's claim for a refund and directed the Adjudicating Authority to process the claim expeditiously.*

2. Refund matter: Assistant Commissioner cannot go against the findings of the higher authority

The WP involves a case where a company, Jacobs Solutions India Pvt. Ltd., filed a refund application for availed input tax credit on services exported without payment of GST. The Revenue Department rejected the refund claim, but the Appellate Authority allowed the refund based on sufficient proof provided by the company. The Assistant Commissioner, however, issued an order rejecting the refund claim again, going against the decision of the Appellate Authority. *The company filed a writ petition in the Bombay High Court, arguing that the Assistant Commissioner cannot go against the findings of the higher authority. The court held that the Assistant Commissioner is bound to comply with the orders of the higher authority and set aside the Assistant Commissioner's order, directing the Revenue Department to sanction the refund amount to the company.*

3. Where customers bear the costs of material and execution work, and the applicant only charges for supervision, GST should be charged solely on the supervision fees.

The ruling pertains to Purvanchal Vidyut Vitran Nigam Limited, an electricity distribution company. The AAR deliberated on whether the value of material and execution work for the installation of power transmission lines should be included in the taxable value under GST. The ruling distinguishes between scenarios a) where the applicant incurs costs and charges for supervision fees and scenarios b) where customers bear the costs of material and execution work, and the applicant charges only for supervision. *The AAR ruled that in the former scenario, GST should be applicable only on the supervision charges, considering the applicant as a pure agent, while in the latter scenario, GST should be charged solely on the supervision fees, with the cost of materials excluded to prevent double taxation.*

4. ITC is only granted when tax has been effectively paid to the government by the supplier

The case before the Patna High Court is regarding the eligibility and conditions for claiming Input Tax Credit (ITC) under the CGST Act. The court addressed the situation where a purchasing dealer sought ITC for tax paid to a selling dealer who had not remitted the collected tax to the government. The court examined Sections 16(1) and 16(2)(c) of the CGST Act and emphasized that the conditions for availing ITC must be satisfied together, *and ITC is only granted when tax has been effectively paid to the government by the supplier. The onus of proof lies with the purchasing dealer to prove that the tax collected has been paid to the government.*

5. 28% GST on online real money games: 3 layoffs, 3 shutdowns, what's next?

The government's decision of imposing 28% GST on online real money games has already started impacting companies in the gaming industry. Weeks after the GST council refused to reconsider their decision, three Indian startups in the space have laid off staff while three other startups have shut down altogether.

Mobile Premier League (MPL) was the first to announce the impact as the Peak XV Partners funded company let go of 350 employees. The company attributed the massive rise in tax burden due to GST to the layoffs.

6. Leasing Of Capital Goods Between Two GSTINs

Under GST Laws, the registration being State specific, a single entity may obtain multiple GST registrations in various States using, the same Permanent Account Number (PAN). Therefore, a deeming fiction has been created under Section 25(4) of the Central Goods and Services Tax Act, 2017, ('CGST Act, 2017') *as per which, two registrations (GSTIN's) of the single entity shall be treated as 'distinct persons'. Consequently, supplies between such distinct persons would be taxable, even if made without any consideration.*

In this context, the article seeks to analyse the GST implications on leasing of capital goods between such distinct persons, in light of the ruling of the Appellate Authority of Advance Ruling ('AAAR') in Re: Chep India Private Limited [2023-VIL-25-AAAR Maharashtra].

Miscellaneous Laws

1. SUGGESTIONS/COMMENTS REGARDING REVISION OF EXISTING MANUALS AND GUIDELINES

Date of Public Notice: August 30, 2023

Link:

<https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Public Notice Manual-Guidelines.pdf>

Controller General of Patents, Designs & Trade Marks vide its public notice dated August 30, 2023 invited suggestions/comments regarding revision of existing manuals and guidelines or for issuance of fresh manuals and guidelines in respect of Patents, Designs, Trade Marks, Geographical Indications and Copyrights by 15.10.2023 to cgooffice-mh@nic.in.

2. GUIDELINES ON FILLING OF COMPLIANTS WITH EPFO VIGILANCE

Date of Issue: July 27, 2023

Link :

https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y20232024/Vig_Guidelines_filingofcomplaints_01082023.pdf

Ministry of Labour and Employment issued guidelines on filling of complaints with the EPFO Vigilance including action on anonymous/ pseudonymous complaints. The said guidelines are available at the link mentioned above.

3. The Draft Patents (Amendment), Rules, 2023 following amendments will come in force from 22 August 2023:

Date of Issue: August 22, 2023

Link : <http://ipindia.gov.in/writereaddata/Portal/Images/pdf/248296.pdf>

- a. In rule 12
 - In clause (2) ‘two months from the date of issuance of first statement of objections’
 - In clause (3) The Controller shall take into account information relating to the application's processing in a country other than India that is accessible through public databases. Under sub-section (2) of section 8, the Controller may, for reasons to be recorded in writing, direct the applicant to submit a new statement and undertaking in Form 3 within two months of the date of such communication by the Controller. Controller may, upon request in Form 4, excuse a delay in filing Form 3.
- b. Rule 13 (2A) A patent applicant may file a divisional application under section 16 if he so desires, including for an invention disclosed in the provisional specification.

- c. In rule 24B of the principal rules,-
 - Sub-rule (1), for the words ‘forty-eight’, the words ‘thirty-one’ substituted.
 - In sub-rule (1) (vi) In the case of an application filed prior to the effective date of the Patents (Amendment) Rules, 2023, the request for examination under sub-section (1) of section 11B must be filed within the time prescribed in the Patents (Amendment) Rules, 2006.
- d. In rule 29A.
 - Grace period.- An application to avail the grace period under section 31 shall be filed in Form 31.
- e. In rule 55
 - Sub-rule (3) representation, the Controller shall first decide the maintainability of the representation and thereafter
- f. Rule 55 (4) and Rule 56, for the word ‘three’, the word ‘two’ substituted.
 - Sub-rule (6) After considering the representation and submissions made during the hearing, if requested, the Controller shall proceed to either reject the representation and grant the patent or accept the representation and refuse the grant of patent on that application, normally within three months of the completion of the preceding proceedings. The procedure outlined in sub-rules (2) to (4) of rules 62 and 63 applies here. A patent application in which a representation for opposition has been filed and found maintainable is subject to examination in accordance with rule 24C.

- g. Rule 80 Annual renewal fees payable in respect of two or more years may be paid in advance: Provided, where renewal fees are paid in advance via e-filing in respect of at least four years, a 10% fee reduction shall be applicable upon such payment.
- h. Rule 131(2) The statements referred to in sub-rule (1) shall be furnished once every three financial years, beginning with the financial year immediately following the financial year in which the patent was granted, and shall be furnished within six months of the expiry of each such period: Provided that the Controller may excuse a delay in filing such a statement upon a request made in Form 4.
- i. Rule 138 The Controller may extend the time prescribed by these Rules for doing any act or taking any proceeding thereunder for a period of up to six months if he thinks it fit and on such terms as he may direct. Any request for an extension of time under this rule must be made in Form 4 before the period of up to six months specified in sub-rule (1) expires.

Article 1

As per recent order concerning PF and ESI of the Del. Tribunal dated 21.06.2023 in the case of " Sanjay Kumar " and the summary of the Order is as under:

1. After pronouncement of SC order in the case of " CHECKMATE SERVICES, DATED 12.10.2022 , delayed deposit of Employees Contribution to PF and ESI, Tribunals are dismissing the appeal of the Assessee relying upon the SC order in the case of " Checkmate' because SC order is applicable retrospectively from the Date when the Section was enacted in the I. Tax Act.
2. In this case Intimation was issued accepting returned income (without making any adjustment towards delayed PF & ESI contribution)
3. Subsequently rectification order under section 154 was passed by the Dept. and Delayed employees contribution to PF and ESI was added and demand was raised against the Assessee.
4. CIT(A) dismissed the appeal relying SC order in the case of CHECKMATE.
5. Before the Tribunal it was argued that when the Rectification order was passed, SC order in the case of " Checkmate" was not pronounced which was not referred by the AO while passing rectification order , accordingly Subsequent SC order can not dilute the Debatable nature regarding allowability of delayed deposit of Employees Contribution to PF and ESI at the point of time when the rectification order was passed.
6. Reliance was placed upon the MP HC order in the case of " Mahair Drilling" and the Tribunal allowed the appeal in favour of the Assessee.

Interest subsidy received under technology upgradation fund is a capital receipt: ITAT Mumbai

M/s Grasim Industries Ltd; AY.2009-10

ITA Nos. 84 & 351/Mum/2023

Facts:

1. The subject matter of the appeal was whether the subsidy received by the assessee for technology upgradation fund amounting to ₹ 83,426,992/- is capital receipt not chargeable to tax or revenue receipt chargeable to tax.
2. The AO considered it as a revenue receipt. On appeal before the learned CIT – A, after considering the submission of the assessee found that coordinate bench in ITA number 4220 and 4704/M/2015 dated 24/2/2020 in assessee's own case has held that subsidy received by the appellant company under technology upgradation fund scheme is a capital receipt.
3. The contention of the AO was that the main intention of the technology upgradation fund scheme was to actually set off and is out the interest burden of the assessee company. The assessee has reduced the interest subsidy from the interest paid on various loans and therefore the interest income and interest expenditure both were treated as revenue expenditure and therefore the interest subsidy on technology upgradation fund is a revenue expenditure.

Expenses incurred for purchase of Diwali gifts by the assessee for the customers is an allowable expenditure U/S 37: ITAT

ITAs No.2849 & 2850/Del/2016 IREO Waterfront Pvt. Ltd.

Facts:

1. The AO had disallowed expenses towards purchase of Diwali gifts as not meant for business purposes of the assessee by stating that the assessee failed to produce the details of persons along with reasons and confirmations to whom the expensive gifts were distributed.
2. The aforesaid gifts were given by the assessee to its land aggregators who were identifying and brokering the land deals on behalf of the assessee company and to brokers who were effecting bulk sales for the assessee company, on the occasion of Diwali.
3. The assessee had stated before the Id. CIT(A) that no details were ever called for by the Id. AO regarding this expenditure and the assessee came to know of this only from the assessment order.

ITAT Delhi held as below:

1. The assessee is in the real estate business wherein purchase of land and sale of projects is the most critical and commercially important activity and hence it was very important for the assessee to keep land aggregators and brokers in good humor.
2. It is a fact that by incurrance of these expenditure at the proper time like Diwali occasion would certainly strengthen the relationship of the assessee with the persons who work for the assessee company, customers and suppliers which in turn would enable the company to have continued relationship with the parties.
3. Hence we hold that the said expenditure is held for the purpose of business as per the principle of commercial expediency.
4. So the appeal of the revenue is dismissed.

CBDT has today vide Circular No. 9/2023 (copy attached) extended the time limits for submission of TDS/TCS statements for Q1 of FY 2023-24 to Sep 30, 2023.

In terms of the said Circular, relaxation has been provided in relation to the following compliances detailed as under:

- (a) TDS Statement for Q1 of the Financial Year 2023-24, which was required to be furnished in Form No. 26Q or Form No. 27Q, on or before 31-07-23 can now be furnished on or before 30-09-23.
- (b) TCS Statement for Q1 of the Financial Year 2023-24, which was required to be furnished in Form No. 27EQ, on or before 15-07-23 can now be furnished on or before 30-09-23.

In Direct Tax:

Advisory: Online Compliance Pertaining to Liability / Difference Appearing in R1 – R3B (DRC-01B)
29/06/2023

1. It is informed that GSTN has developed a functionality to enable the taxpayer to explain the difference in GSTR-1 & 3B return online as directed by the GST Council. This feature is now live on the GST portal.
2. The functionality compares the liability declared in GSTR-1/IFF with the liability paid in GSTR-3B/3BQ for each return period. If the declared liability exceeds the paid liability by a predefined limit or the percentage difference exceeds the configurable threshold, taxpayer will receive an intimation in the form of DRC-01B.

3. Upon receiving an intimation, taxpayer must file a reply in Form DRC-01B Part B, providing clarification through reason in automated dropdown and details regarding the discrepancy, if not included in the dropdown.
4. To further help taxpayer with the functionality, a detailed manual containing the navigation details is available on the GST portal. It offers step-by-step instructions and addresses various scenarios related to the functionality.

Author:

CA Mrattunjay

Finance Controller –OKAYA Battery Business



Article 2

UNDERSTANDING SUBORDINATE DEBTS

Meaning of Subordinate Debt

Subordinate debt refers to a type of debt that has a lower priority for repayment than other debts or obligations in the event of a default or bankruptcy. It is an unsecured loan or bond that ranks below other, more senior loans or securities with respect to claims on assets or earnings. As per the definition provided under Non-Banking Financial Company–Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016, a subordinate debt has following characteristics:

- a. It is an instrument;
- b. Unsecured;
- c. Subordinate to the claims of other creditors;
- d. Free from restrictive clauses;
- e. Not redeemable at the instance of the holder or without the consent of the supervisory authority of the non-banking financial company; and
- f. The book value of such instrument shall be subjected to discounting as provided.

To be continued ...

Meaning of debenture

A debenture is a type of debt security that represents a loan made by an investor to another person, company or entity.

Pursuant to the definition of Debentures, as provided under the Companies Act, 2013 a debenture is essentially an instrument evidencing a debt which may or may not whether constituting a charge on the assets of the company.

As per the definition instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture.

Instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934 are derivatives and money market instruments. Further, pursuant to Section 469 of the Companies Act, 2013, the Central Government has not prescribed any other instrument to be excluded from the definition of debentures, in consultation with the Reserve Bank of India.

To be continued ...

The Reserve Bank of India, with a view to regulate the privately placed issues of debentures by Non Banking Financial Companies (NBFCs) and to promote discipline in resource planning and raising of funds by NBFC's, vide Notification No. RBI/2012-13/560 DNBD (PD) CC No. 330/03.10.001/2012-13 dated 27th June, 2013 issued Guidelines on Private Placement of securities by NBFCs. The Guidelines came into existence with immediate effect from the date of the Notification. Further, RBI vide Notification No. RBI/2013-14/115 DNBS(PD) CC No.349/03.10.001/2013-14[2] dated 2nd July, 2013 issued Clarification in this regard.

The above circular provided for Guidelines on Private Placement by NBFCs and defined private placement meaning an issue of capital made by an NBFC in pursuance of a resolution passed under sub-section (1A) of section 81 of the Companies Act, 1956.

However, subsequently RBI vide its clarification dated July 02, 2013, modified the definition of the term private placement and restricted the same to non-public offering of NCDs by NBFCs.

To be continued ...

Subsequently on February 20, 2015, RBI in supersession of its previous circulars released Guidelines on Private Placement of NCDs (maturity more than 1 year) by NBFCs.

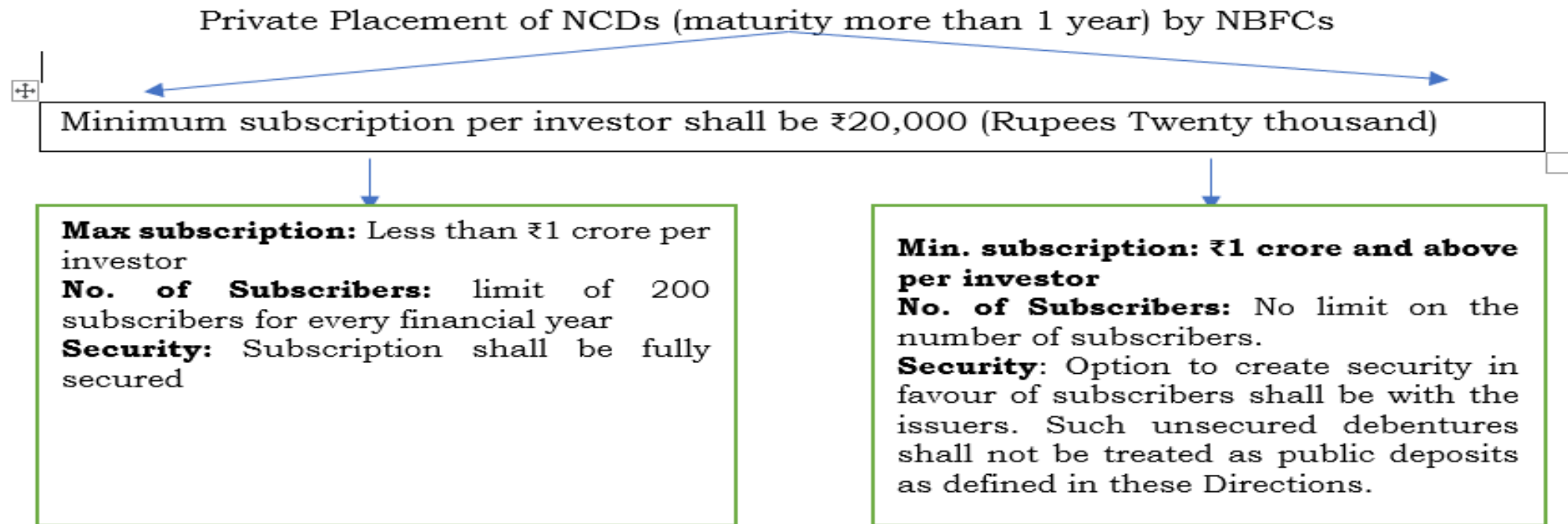
It is important to note that basis the initial guidelines released by the RBI in the year 2013, private placement meant an issue of capital made by an NBFC in pursuance of a resolution passed under sub-section (1A) of section 81 of the Companies Act, 1956. However, the said definition was revised to included only non-public offering of NCDs by NBFCs to such number of select subscribers and such subscription amounts, as may be specified by the Reserve Bank from time to time under the head private placement.

Accordingly, one may imply that the initial set of guidelines issued by the RBI were applicable to all kinds of capital (Tier I and Tier II Capital) issued by a NBFC. Subsequently the definition of private placement was revised to limit the applicability of said guidelines to non-convertible debentures and excluding the Tier II Capital.

Before evaluating the provisions with respect to subordinate debts, it is necessary to understand the provisions applicable to NCD's. This will not only give clarity on the subject but will also dispel the confusion which usually arises with respect to Tier II Capital.

To be continued ...

Guidelines on Private Placement of NCDs (maturity more than 1 year) by NBFCs



For NCDs of maturity upto one year, guidelines on Issuance of Non-Convertible Debentures (Reserve Bank) Directions, 2010, dated June 23, 2010, by Internal Debt Management Department, RBI shall be applicable.

To be continued ...

EXEMPTION UNDER THE COMPANIES ACT, 2013

Pursuant to Rule 14(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year.

As per Rule 14(7) the above limit of two hundred shall not apply to non-banking financial companies which are registered with the Reserve Bank of India under the Reserve Bank of India Act, 1934 (2 of 1934). Also, basis the definition of subordinate debts as provided in the RBI Directions, RBI does not place any restriction on the terms of issuance of subordinate debts.

EXCLUSION OF SUBORDINATE DEBTS FROM THE DEFINITION OF DEPOSITS

As per the RBI Directions

“Public deposit” for the purpose of the Directions shall have the same meaning as defined in the **Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions 2016**.

To be continued ...

(i) any amount received as hybrid debt or subordinated debt the minimum maturity period of which is not less than sixty months provided there is no option for recall by the issuer within the period;

The term subordinate debt is only defined in the RBI Directions and not in the Companies Act, 2013. However, basis the various circulars and guidelines issued by the RBI, we understand that subordinate debt is neither a capital instrument i.e. equity or preference and nor is a debt instrument in the nature of a debenture. Guidelines issued by the RBI for issuance of NCD's does not cover subordinate debts and also, same is treated as a separate instrument basis the exclusions to the term public deposits. Accordingly, a subordinate debt is the third category of instrument that may be issued NBFC's to raise funds.

In view of the above stated exceptions to the definition of Public Deposits, both non-convertible debentures and subordinated debts have been considered to be separate category of instruments.

Let's further analyze if Subordinate Debt is a type of Security?

Basis the terms of issuance of subordinate debts, in case such instruments are transferable in nature, same will qualify to be a security as defined under clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) since such subordinate debts will be marketable. However, in case the terms of issuance of subordinate debts specify that such instruments are non-transferable in nature, they will be outside the purview of the definition of Securities.

To be continued ...



Can Subordinated Debts be issued to more than 200 persons during one financial year?

Subordinated debt is subordinated to the claims of other creditors and qualifies as Tier II Capital subject to discounting as may be applicable under the Systemically Important NBFC (Non-deposit Accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2015. Subordinated debts may be issued to more than 200 persons during one financial year as:

- a. Subordinate debt by nature is neither a capital instrument i.e. equity or preference and nor is a debenture and is accordingly outside the purview of guidelines issued by the RBI for issuance of NCD's on Private Placement of NCDs (maturity more than 1 year) by NBFCs.
- b. NBFC's are exempt from Rule 14(2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014. Rule 14(2) restricts an offer or invitation to subscribe securities under private placement to more than two hundred persons in the aggregate in a financial year.

Article 3

INVESTIGATION UNDER THE COMPANIES ACT, 2013

1. Introduction

“Investigation” means to carry out a systematic or formal inquiry to discover and examine facts of an incident to establish the truth. Investigation is the organized process of inquiring about a problem through inspection and assessment. As regards Companies Act, an investigation refers to an exploration into the affairs of a company. The main aim of such an investigation is to obtain any evidence or facts regarding any malpractice in the course of business, to identify the profits and losses of a business etc. The Companies Act, 2013 confers powers on the Central Government to issue order for investigation under Section 210 to the inspectors of the Central Government as well under Section 212 to Serious Fraud Investigation Office. Section 210 and 212 of Companies Act, 2013 are corresponding to section 235 and 237 of Companies Act, 1956. The provisions apply to all companies, i.e., public, private, one-person company. The provisions are also applicable to Govt. companies. As well, the provisions shall be mutatis mutandis applicable to foreign companies regarding the business carried out in India by virtue of section 228 of the Companies Act, 2013. The Central Government may appoint any officer of Govt., any private professional or group/ firm of professionals as inspectors for investigation. It should however be ensured that there is no conflict of interest of the private professionals and the company under investigation. The inspector/investigator or partners should not have any material relationship with corporate entity or its holding or subsidiary entities. Where an order is passed by the Court or Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the Central Government shall order an investigation into the affairs of that company. The Central Government shall appoint one or more inspectors.

2. Whether investigation amounts to violation of Article 20 of the Constitution

The disputes have to be examined before an order of investigation is passed. Article 20 of the Constitution of India provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence. The penalty greater than that which might have been inflicted under the law in force at that time of the commission of the offence. *In Narayanlal Bansilal v. Maneck Phiroz Mistry, AIR, 1961 SC29*. The Supreme Court confirmed the decision of the Court of Appeal of the High Court of Bombay and it was held that where a person is called upon under Section 240 of the Companies Act to give evidence and to produce documents, he cannot be said to be a person who is accused of any offence as required by Article 20(3). Therefore the provisions of Section 240 do not offend against the fundamental rights guaranteed by Article 20(3) of Constitution.

3. Order for investigation is Administrative

Order for investigation is an administrative action. *In the matter of Sunair Hotels Ltd vs. Union of India And Anr., LPA 390/2017, C.M. Appl.19101/2017 & 32231/2017, Delhi High Court Date of Decision 7th January, 2019*. The Hon'ble Court noted that being an administrative order, it is essential that the Government must form an opinion under the section and it has been repeatedly affirmed by the jurisprudence of our courts that certain defects in the formation of opinion are justiciable.

4. Judicial Review of order for investigation by way of Writ

The order of investigation being administrative is challengeable by way of Writ. *In New Central Jute Mills Co. Ltd vs. Deputy Secretary, Ministry of Corporate Affairs, Calcutta High Court Date of Judgement: 4 August, 1965. Equivalent citations: 1966 36 CompCas 512 Cal, 70 CWN 280.* The company against which an adverse opinion is formed, may always condemn the opinion as a made opinion, if further steps be sought to be taken

by the Central Government against the company on the basis of such opinion. *In Reena Nath vs. The Union of India, W.P.Nos. 19388 and 19389 of 2018, Telangana High Court Date of order 15.06.2018.* M/s Cascade Energy Pvt Ltd (Singapore based co. is shareholder) seeking for a direction to SFIO to investigate under Section 210(2) of the Companies Act, 2013 on the petitioners' complaint. The application was disposed of by the Hon'ble Court with the direction to Union of India (Ministry of Corporate Affairs) to examine the complaint and take action.

5. Difference between inspection, investigation u/s 210, 213 and investigation by SFIO u/s 212

The provision of section 217(4) makes a distinction between the ordinary inspector of Companies, investigation as the mandate of section 210 and 213; on the one hand; and the officer of SFIO investigating the serious fraud as per the mandate of Section 212 of the Act, 2013. *In Jainam Rathod vs. State of Haryana vs State of Haryana, CRM-M-36693- 2019 In the High Court of Punjab & Haryana Date of Decision 13.11.2019.* The Hon'ble

Court observed, there are lot of provisions in the Companies Act, which make various Act, omissions, non-filing, non-disclosure etc., although the smaller quantum of punishments of imprisonment and/or fine. To inspect the records of Companies and to investigate these minor offences, the Central Government is to appoint 'Inspectors' of companies, who shall work as the ordinary inspectors to investigate the said firms. If during the routine inspection, something criminal comes to the knowledge of Inspector, on that, the investigation can be stated under section 208 of the Companies Act. . If certain other misconduct or fraud in the affairs of a company comes to the knowledge of the Central Government, and for the reasons mentioned therein. The Central Government can order investigation under Section 210 of the Companies Act. Still further, if during some proceedings some default or even fraudulent affairs in relation to the conduct of affairs of the company comes to the knowledge of the

Company Tribunal then under Section 213, the Tribunal can require the investigation. However, all these investigations, ordered by the Government under section 208 or 210 or ordered by the Tribunal under Section 213, are to be conducted by ordinary Inspector of the Companies. But “Serious Fraud” in relation to affairs of companies have been carved out as separate and distinct category for their investigation and punishment. For investigating serious frauds, a separate investigating agency, called “Serious Fraud Investigating Office’ has been provided under Section 211 of the Companies Act, 2013. The investigation in serious fraud is to be ordered by Central Government under Section 212 of the Act and is to be carried out by SFIO. This investigation is not to be carried out by ordinary inspectors of Companies, but is to be carried out by the Director, Additional Director or other officers of SFIO authorised by the Director SFIO. However, the person carrying out the investigation under SFIO is also given a deeming fiction of being an Inspector for the purpose of powers of investigating Officer, defined under Section 217 of the Companies Act. Hence, all investigating officer, whether investigating at the instance of Central Government under Section 208 or Section 210 or acting at the instance of Tribunal under Section 213 or acting at the instance of SFIO under Section 212 are to be known as Inspector and are to conduct investigation as per procedure prescribed under Section 217. But the officer of SFIO authorised to conduct investigating under Section 212; has further restrictions and prohibition as prescribed under Section 212 of the Companies Act.

One more fact which comes out is that if an investigation is ordered by the Central Government, whether under Section 208, 210, 213 or 212, and in the process, the affairs of some other subsidiary or controlled company of the company under investigation are also found worth investigation, then even for the investigation of the affairs of subsidiary or controlled company; a separate approval from the Central Government is required and the same is to be granted by the Government, as required under section 219 of the Companies. Again, whether it is the investigation originally initiated under Section 208, 210, 212 or 213 or approved additional under 219, all have to be conducted under the procedure given under Section 217 of the Companies Act; additionally controlled by restrictive provisions of Section 212 for officer of SFIO. Under section 217, when an investigating officer feels the need to join any person or other body corporate in investigation qua the affairs of the company which is already authorised to investigate, then under Section 217(2), he can seek record from such any other person or body corporate, as he considers relevant for the purpose of his investigation. Under Section 217(4) he can also record the statement on Oath, of the officers and employees etc. of the company under investigation. Additionally, he can also record statement on oath of any person or body corporate, which is not directly connected with or controlled by the Company under investigation. At this stage of investigation, the provision of section 217(4) makes a distinction between the ordinary inspector of Companies, investigation as the mandate of section 208, 210 and 213. On the one hand, and the officer of SFIO investigating the serious fraud as per the mandate of Section 212 on the other hand. *In the case of Sanjay Chandra v/s Central Bureau of Investigation (2012) 1 SCC 40*

wherein Supreme Court granted bail even by observing that was conscious of the fact that the offences involved were that the economic offences of huge magnitude, and if proved, may even jeopardize the economy of the country; *in D.K. Sethi V/s Central Bureau of Investigation, CRM-M 46946 of 2017 Punjab & Haryana High Court Date of Decision 24.09.2018 (regarding granting bail under para 212(6); In Vivek Harivyasi v. Serious Fraud Investigation Office, CRM 35664/2019, CRM-M-34442/2019 ; Punjab & Haryana High Court Date of Decision 13.11.2019. In Siddhartha Chauhan v. Serious Fraud Investigation Office, CRM-M-38926-2019, Punjab & Haryana High Court at Chandigarh Date of Decision 13.11.2019.* The Hon'ble Court observed that the investigation under the Companies Act can be initiated in three different manners and for different reasons, which might come to the knowledge of the Central Government. If during routine inspection something criminal comes to the knowledge of the Inspectors, on that the investigation can be started under Section 208 of the Companies

Act. If certain other misconduct or fraud in the affairs of a company comes to the knowledge of the Central Government, and for the reasons mentioned therein, the Central Government can order investigation under Section 210 of the Companies Act. Still further, if during some proceedings some default or even fraudulent affairs in relation to the conduct of affairs of the company comes to the knowledge of the Company, Tribunal then under Section 213, can require the investigation. However, all these investigations ordered by the Government under Sections 208 or 210 or ordered by the Tribunal under Section 213 are to be conducted by ordinary inspector of Companies. But 'serious fraud' in relation to the affairs of companies have been carved out as separate and distinct category for their investigation and punishment. For investigating serious frauds, a separate investigating agency, called 'Serious Fraud Investigating Office' has been provided under section 211 of the Companies Act.

The investigation in serious frauds is to be ordered by the Central Government under Section 212 of Companies Act and is to be carried out by SFIO. However, the person carrying out the investigation under SFIO is also given a deeming fiction of being an 'Inspection' for the purpose of powers of Investigating Officer, defined under Section 217 of the Companies Act. However, all the Investigating Officer are to be known as 'Inspector' and are to conduct investigation as per procedure prescribed under Section 217. But officer of SFIO, authorised to conduct investigation under Section 212 as per procedure prescribed under Section 212 of Companies Act, 2013.

In Maneklal Marsukhbai Private Limited vs. Ajay Harinath Singh [2015 SCC online Bin 5571] Bombay High Court. Fraud vitiates everything. Surely temporary injunction can be denied, if it is apparently possible to make out fraud from the materials placed before the court. *Similarly* in two judgement of the Supreme Court in *State of Orissa and Another vs Faklur Charanseth (2015)1 SCC*. In *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education and Ors., reported in (2003) 7 SCC 311*, it has been held that once fraud is proved, it will deprive the person of all the advantages or benefits obtained thereby. In *S.P. Chengalvaraya Naidu (dead)by LRS V. Jagannath (dead) by LRS and others, reported in (1994)*. It is settled proposition of law that a judgement or decree obtained by playing fraud on the court is nullity and non-est in the eyes of law. *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 7th January, 2019.* The Hon'ble Court noted that SFIO derives its powers of investigation under Section 212 and has been given far greater powers to investigate the affairs of the company, rather than what would be available to investigations conducted under Section 210.

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.

Author:

RAJENDER KUMAR

(ICLS),

CMA, CS, LLB

Dy. Registrar of Companies,

o/o Deputy Official Liquidator, Bombay, Ministry of Corporate Affairs,

(M) 8920359188

Rajender.kumar20865@gmail.com



Case Laws

CASE LAWS

1. In **M Sivadasan (Dead) through LRs v. A.Soudamini (Dead) through LRs and others.**, The Supreme Court has reiterated that for a Hindu female to claim rights under Section 14 of the Hindu Succession Act 1956, she has to be in possession of the property.
2. In **Rajo @Rajwa@Rajendra Mandal v. State of Bihar**, the Supreme Court recently pronounced a notable judgment explaining the factors which a Government should take into account while deciding to grant remission of sentence to convicts as per Section 432 of the Code of Criminal Procedure.
3. In **State Bank of India v. A.G.D. Reddy**, the Supreme Court recently held that the burden of proof in disciplinary proceedings depends on the specific nature of the charge leveled against the respondent and the explanation they provide. The court further observed *“It is well settled that, in a disciplinary proceeding, the question of burden of proof would depend upon the nature of the charge and the nature of the explanation put forward by the respondent. In a given case, the burden may be shifted to the respondent depending upon the explanation”*.

4. In **Thangjam Arunkumar vs Yumkham Erabot Singh**, the Supreme Court held that the requirement to file an affidavit under the proviso to Section 83(1)(c) of Representation of People Act is not mandatory. The court further observed that "It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit".
5. **Bawri vs Mark Alexander Davidson**, the Supreme Court observed that a cheque case against a partn. In **Riya** er of the firm cannot be quashed under Section 482 CrPC unless there is unimpeachable and incontrovertible evidence that he/she did not have any concern with the issuance of cheques.
6. In **Konkan Railway Corporation Limited vs Chenab Bridge Project Undertaking**, the Supreme Court observed that Arbitration awards cannot be set aside on mere possibility of an alternative view on facts or interpretation of the contract.
7. In **Isnar Aqua Farms vs United India Insurance Co. Ltd**, The Supreme Court observed that an insurance is expected to deal with the insured in a bonafide and fair manner and should not just care for and cater to its own profits. It is the duty of the insurance company to disclose all material facts within their knowledge since the obligation of good faith applies to both equally

Compliance Checklist

COMPLIANCE CALENDAR FOR SEPTEMBER 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 Tax deducted/collected for the month of August, 2023. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
- Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of July, 2023
- Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of July, 2023
- Due date for issue of TDS Certificate for tax deducted under section 194M in the month of July, 2023
- Due date for issue of TDS Certificate for tax deducted under section 194S in the month of July, 2023
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of August, 2023 has been paid without the production of a challan
- Second instalment of advance tax for the assessment year 2024-25
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of August, 2023
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA in the month of August, 2023
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB in the month of August, 2023 Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M in the month of August, 2023
- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194S in the

- Due date for filing of audit report under section 44AB for the assessment year 2023-24 in the case of a corporate- assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2023)
- Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on November 30, 2023). Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit return of income on November 30, 2023).
- Quarterly statement of TCS deposited for the quarter ending June 30, 2023
- Quarterly statement of TDS deposited for the quarter ending June 30, 2023

Companies Act Related Compliance

- Due Date for DIR-3 KYC

FEMA Related Compliance

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

GST Related Compliance

- GSTR 1(Monthly) for August 2023

- GSTR 3B for August 2023

- GSTR 5A for August 2023

- GSTR 5 for August 2023

	<ul style="list-style-type: none"> • GSTR 6 for August 2023
	<ul style="list-style-type: none"> • GSTR 7 for August 2023
	<ul style="list-style-type: none"> • GSTR 8 for August 2023
RBI Related Compliance	
	<ul style="list-style-type: none"> • Monthly return (NBS-6) on exposure to capital market
	<ul style="list-style-type: none"> • Monthly Return on Important Financial Parameters
	<ul style="list-style-type: none"> • Monthly Return on Important Financial Parameters
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



FOR FURTHER INFORMATION PLEASE CONTACT:

vinayshukla@whitespan.in

NCR OF DELHI

**416, 4th Floor, Tower –A,
SpazEdge Commercial Tower,
Sector-47, Sohna Road Gurgaon 122-018
Telephone – 0124-2204242, 63**

MUMBAI

**506, Arcadia, 195, Nariman
Mumbai – 400 023**

Disclaimer:

The material and contents of this Newsletter including the Editor's quick takes, have been compiled with due care and caution before their publication and are provided only for information of clients, associates and friends without any express or implied warranty of any kind. The Newsletter does not constitute professional guidance or legal opinion. No claim is made as to the accuracy or authenticity of the contents of this Newsletter.

Readers are advised to make appropriate enquiries and seek appropriate professional advice and not take any decision based solely on the contents of this Newsletter.

In no event shall this Newsletter or Chief Editor or members of Editorial Team or Whitespan Advisory including its officers and associates, be liable for any damages whatsoever arising out of the use of or inability to use the material or contents of this newsletter or the accuracy or otherwise of such material or contents.

This newsletter is not an advertisement or any form of inducement or invitation for solicitation of any kind of work whatsoever.

This newsletter is being circulated to you as client, friend or associate of Whitespan Advisory or its officials or on your request. If at any time you wish to unsubscribe receiving this newsletter, please e-mail us at vinayshukla@whitespan.in