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the Hyderabad Chapter of
The Institute of Cost Accountants of India



GST Returns & Filings

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The Chairman writes to you

Dear Professional Colleagues,

Greetings from Hyderabad Chapter

Friends, Shrimad Bhagwat Gita motivates all of us to stay at the path of Karma without being attached to the fruits of action. Fruits of action are the natural result of the Karma in the due course.



About a month ago, a new committee assumed office to fulfill the collective dreams of around 1500 members. Prime Minister Shri Narendra Modi's vision to shape a new destiny with the promise of "Sabke Saath, Sabka Vikas" kindled new hopes and aspirations. In this month, a series of reforms and initiatives were announced. Admittedly, it will be a while before the desired results are achieved. Yet, it is apparent that a journey of a thousand miles has indeed begun with determined steps.

In the last one month the Hyderabad Chapter conducted various activities for both Members and Students. It has been our endeavor to live up to the expectations of our members, students and other stakeholders. With the plethora of opportunities being opened up under various legislations like GST, Cost Audit etc., and with equal number of challenges, we need to strengthen our abilities by upgrading our skills to tap the opportunities lying ahead and also to mitigate the risks by staying on rightful path of karma.

The Hyderabad Chapter will be organizing a series of programs of professional interest for Capacity Building and Skill Development of Cost Accountants, particularly on GST in time to come.

Friends, success demands vigorous and determined efforts. Today's corporate world is full of challenges for the professionals. Cost Accountants should not be confined to mere Cost Audit but also engage in other related fields which will provide plenty of opportunities where our presence is required. We have to play the role of Corporate Advisors/ Management Consultants/ Internal Auditors to support the business process. For acting as Corporate Advisors/ Strategists there is a need to realize the importance of continuous learning and to make continuous efforts for updating our knowledge base. Otherwise it will be too late and there is always the risk of becoming obsolete which any professional cannot afford.

Friends from this platform I request each and every member to take initiative in participating in various seminars/study circle meetings/interactive meetings in large numbers in order to show our internal strength to outsiders. Where there is no vision people perish. I shall always strive to translate your visions into reality.

Progress occurs when courageous, skillful people like you seize the opportunity to change things for the better. I am always open, and will be happy to receive valuable suggestions from you. I request every member to come together to join hands for conducting various Career Awareness Programs for students in various colleges located in Hyderabad and other districts of Telangana State to increase our student registrations.

"Live as if you were to die tomorrow. Learn as if you were to live forever."

Mahatma Gandhi

With regards,

CMA Dr Chandra Sekhar Rajanala
Chairman

From the Edit Room...

In most of the countries external agencies oversee the work of Accountants –like The Public Company Accounting Oversight Board (PCAOB) in the US and the Financial Reporting Council (FRC) in the UK. Our Government by announcing the draft rules of National Financial Reporting Authority(NFRA) relating to Section 132 of the Companies Act 2013 has decided to have an external control agency over Accounting Professional Institutes which have come by separate Acts of the Parliament. With the NFRA coming into existence the NACAS will cease existence. Further, the powers of NFRA as per the draft Rules notified indicate that it will set accounting and auditing standards, monitor and enforce compliance with the standards, and oversee the accounting profession's record of ensuring compliance to ensure the quality of service of the professionals. When there is greater assurance that improper conduct will be punished, the auditors can apply stricter accounting and auditing requirements and be more forthright in expressing disagreement wherever needed without fear or favour otherwise they may be punished under the new NFRA and loose Practicing rights for the periods indicated in the draft provisions. Thus, all our professional friends should take the positive side of it and discharge our duties in whatever sphere we are involved for keeping the professional ethics above anything.

CMA Rajapeta Satyanarayana

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Managing Committee - 2017-18

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ACTIVITIES SCORE BOARD



Professional Development Sub-Committee

| Month (2017-18) | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | Year-to-date |
|-----------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------------|
| No. of Programs | 2 | 2 | 6 | 4 | 3 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 20 |
| CEP Hours | 4 | 12 | 6 | 5 | 7 | 0 | 1 | 4 | 0 | 0 | 0 | 0 | 39 |

Practitioners' Forum Sub-Committee

| Month (2017-18) | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | Year-to-date |
|-----------------|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|--------------|
| No. of Programs | 3 | 0 | 1 | 1 | 2 | 1 | 0 | 3 | 0 | 0 | 0 | 0 | 11 |
| CEP Hours | 5 | 0 | 2 | 0 | 1 | 1 | 0 | 5 | 0 | 0 | 0 | 0 | 14 |





Performance Track

PRCTITIONERS' FORUM SUB-COMMITTEE

- 4th November, 2017 Programme on "Goods & Service Tax Filing of Returns" at FTAPCCI, Federation House, Red Hills, Hyderabad.
Guest of Honour : CMA R.S. Raju, Associate Director (F&A), Nagarjuna Construction Co. Ltd.
Moderator: AVNS. Nageswara Rao, Practicing Cost Accountant
Panel Members:
 Sri P. Damoder, Authorized Officer, SEZ
 CMA K. Raghavender Reddy, MD, Daksha EBIZ, Consulting Pvt Ltd.
 CMA B. Mallikarjuna Gupta, Founder: India-gst.in, Director-Business Advisory Services, PROCODE SOFTECH PVT LTD.
Speaker: CMA D.V. Ram Babu, Practicing Cost Accountant
- 11th November, 2017 A Programme on "Cost Audit Observations" at CMA Bhavan, Himayatnagar, Hyderabad.
Special Invitee : CMA KC. Sarma, Practicing Cost Accountant
Moderator: AVNS. Nageswara Rao, Practicing Cost Accountant
- 11th November, 2017 Programme on "Goods & Service Tax Filing of Returns" at CMA Bhavan, Himayatnagar, Hyderabad.
Speaker: CMA D.V. Rambabu, Practicing Cost Accountant
- 25th November, 2017 A Program on "Empowering CMA's through Business Analytics" at CMA Bhavan, Himayatnagar, Hyderabad.
Speaker: CMA T. Mohan Rao, CTO Analytics Accuracy Singapore

PROFESSIONAL DEVELOPMENT SUB- COMMITTEE

- 28th November, 2017 A Programme on "GST Impact on Electricity Sector, Implementation and Filings" at FTAPCCI, Federation House, Red Hills, Hyderabad.
Chief Guest : Sri Chidambaram Iyer, CFO, Telangana Power Corporation India Ltd.
Speakers : CA S. Tirumalai and CA Mohammed Irshad

OTHER PROGRAMMES

- 10th November, 2017 Courtesy Visit with Sri D. Prabhakar Rao, CMD TS GENCO & TS TRANSCO and Ex-Officio and Special Chief Secretary.
- 14th November, 2017 Courtesy Visit with Sri G. Raghuma Reddy, CMD TSSPDCL
- 15th November, 2017 Career Counseling at Keyes Junior College for Girls at Secunderabad by CMA Dr. Chandra Sekhar Rajanala, Chairman and CMA P. Chandra Sekhara Reddy, Treasurer
- 24th November, 2017 Career Counseling at Telangana State Tribal Welfare Residential Junior College at Damarcherla, Nalgonda by CMA Dr. Chandra Sekhar Rajanala, Chairman and CMA K. Raghavender Reddy, MD, Daksha EBIZ, Consulting Pvt Ltd.
- 27th November, 2017 Career Counseling at Badruka Junior College, Kachiguda, Hyderabad by CMA N.S.V. Krishna Rao, Practicing Cost Accountant

FINANCE CLIPS

CMA R. SATYANARAYANA

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- **NFRA to be setup to take action on erring CAs/CMAs & CS:** Steps are underway for setting-up National Financial Reporting Authority (NFRA), an independent body, to test check Financial Statements, prescribe Accounting Standards and take disciplinary action against errant accountant, A separate initiative is underway to develop a State-of-the-Art software application to put in place an "Early Warning System" (EWS) to strengthen the Regulatory Mechanism.
- **Some part of ICDs ultravires:** Delhi HC held some ICDs & part of ICDs ultravires vide decision given in the case of Chamber of Tax Consultants & Anr Vs. Union Of India & Ors W.P.(C) 5595/2017 & CM APL 23467/2017.
- **Misconduct by CAs:** Gujarath HC held that Courts have a limited role in Professional Misconduct matters of CAs vide decision given in the case of Council Of ICAI Vs. Manubhai A Panchal & Co vide Appeal Number No. Chartered Accountant Reference No. 2 of 2006 decided on 3rd Nov, 2017.
- **GST Accounts Assistants:** ICSI and National Skill Development Council entered into a MOU to Develop GST Accounts Assistants and for details refer to www.icsi.in
- **Opportunities for Cost Accountants:** Cost Accountants in practice are included under Pricing Guidelines (Regulation 11) for valuation of capital instruments of an Indian company. To download the Notification, please visit <http://icmai.in/upload/pd/FEMA-2017.pdf>. The regulation states that the price of capital instruments of an Indian company, whether issued by such company to a person resident outside India or transferred from a person resident in India to a person resident outside India or transferred by a person resident outside India to a person resident in India, shall be done as per pricing methodology for valuation on an arm's length basis that shall be duly certified by a practicing Cost Accountants, in case of an unlisted Indian Company. This is as per the circular to members by the ICAI (CMA).
- **Secretarial Standard SS-3:** Secretarial Standard-3 (SS-3) on "Dividend" is issued by the Council of the Institute of Company Secretaries of India. Adherence to this Secretarial Standard is recommendatory and for details refer to www.icsi.in
- **Increase in Audit fees of RRBs:** NABARD & Govt. have approved the increase in the Audit fees being paid to Auditors for HO/Branch offices of RRBs for their various business levels by 25% to 40% and for details refer to www.icai.in
- **Draft AS 116:** ICAI has released Draft IND AS 116, Leases, corresponding to the IFRS 16, which would be made effective from 1st April 2019 and early application will be permitted, subject to the approval of NACAS (National Advisory Committee on Accounting Standards) and Ministry of Corporate Affairs.

MARGIN SCHEME UNDER GST

CMA.Sudha Rani V.

B.Com.,LL.B., FCMA



The industry of second hands goods is growing faster day-by-day. E-commerce operators who deals in second hand goods are also contributing to the growth of this industry. It benefits both the buyers and sellers. For buyer, price of the second hand goods could be at affordable price and for seller it is beneficial when he sells instead of discarding it.

In case of second hand goods, goods already borne the incidence of tax. To avoid the double tax on such used goods, Margin scheme is introduced by Rule 32(5) of CGST Rules, so that goods can re-enter the supply chain. This scheme is optional scheme. A registered person can opt for regular scheme by availing the ITC.

In this article, GST impact on sale of second hand goods by a person dealing in trade of such goods is discussed.

Rule 32(5) of CGST Rules,2017 provides valuation for taxable supply by a person dealing in buying and selling of second hand goods. Value of such supply shall be difference between selling price minus purchase price. To opt for the said valuation, conditions required to be met are (i) used goods are sold as such; or after minor processing which does not change the nature of the goods; and (ii) where no Input Tax Credit has been availed on the purchase of such goods.

If difference between selling price minus purchase price is negative then GST is not applicable on such transaction.

Notification No.10/2017-Central Tax (Rate) dated 28.06.2017 exempts intra-state supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the CGST Rules, 2017, from any unregistered supplier, from the whole of the central tax levied under the CGST Act, 2017.

In case of supplier who deals in second hand goods undertakes any minor process viz: repair, refurbishing, or reconditioning etc., it shall be added to the value of the goods. Following is the illustration for the same.

Illustration-1: Mr. Uday(unregistered person) sells his used laptop to M/s. XYZ Ltd(registered person), who is engaged in supply of second hand goods, for a



consideration of ₹.20,000/-. M/s. XYZ Ltd sells the used laptop at the price of ₹.25,000/- to another Individual. When M/s. XYZ Ltd opts to pay GST on margin amount then the supply made by Mr. Uday is exempted supply.

Calculation for output tax under Margin scheme for M/s.XYZ Ltd:

| Particulars | Scenario -1 | Scenario-2 |
|--|---------------------|---------------------|
| Seller | Unregistered person | Unregistered person |
| Selling Price | 25,000/- | 25,000/- |
| Minor process undertaken | - | 2,000/- |
| Purchase price | 20,000/- | 20,000/- |
| Gross Margin | 5,000/- | 3,000/- |
| GST (18/118* ₹.5,000/-); (18/118*3,000/-) (cum-tax basis) | 763/- | 458/- |
| Taxable amount is | 4,237/- | 2,542/- |
| Input Tax Credit | 0/- | 0/- |
| Output tax | 763/- | 458/- |

In the above illustration, supply of laptop by Mr. Uday is exempted by Notification No.10/2017-Central Tax (Rate) dated 28.06.2017 on intra-state supplies.

Illustration- 2 : Mr. Uday (Unregistered Person) sells his used laptop to M/s. XYZ Ltd(registered person), who is engaged in supply of second hand goods, for a consideration of ₹.25,000/-. M/s. XYZ Ltd sells the used laptop at the price of ₹.20,000/- to another Individual. M/s. XYZ Ltd. opted to pay GST on Margin amount.

Calculation for output tax under Margin scheme for M/s.XYZ Ltd:

| Particulars | |
|-------------------|---------------------|
| Seller | Unregistered Person |
| Selling Price | 20,000/- |
| Purchase price | 25,000/- |
| Gross Margin | -5,000/- |
| GST | 0/- |
| Taxable amount is | 0/- |
| Output tax | 0/- |
| Input tax Credit | 0/- |

In the above illustration also, supply of laptop by Mr.Uday is exempted by Notification No.10/2017-Central Tax (Rate) dated 28.06.2017 on intra-state supplies.

It is to be noted that supplies from unregistered persons to the registered persons are exempted from 13.10.2017 to 31.03.2017 vide notification no.38/2017- Central Tax (rate) dated 13.10.2017 for intra-state supplies and vide notification no. 32/2017- Integrated Tax (rate) for inter-state supplies.

When a person dealing in second hand goods purchases goods from supplier who is registered person, then in such case, he has to pay the GST to the supplier. If such person has opted to pay GST under margin scheme then in such case, he cannot avail the ITC and the GST paid to the supplier would be the cost to him. The following illustration describes this scenario.

Illustration- 2 : Mr. Ajay (registered Person) sells his used laptop to M/s. XYZ Ltd(registered person), who is engaged in supply of second hand goods, for a consideration of ₹.20,000/-. M/s. XYZ Ltd sells the used laptop at the price of ₹.25,000/- to another Individual. M/s. XYZ Ltd. opted to pay GST on Margin amount.

| | |
|--------------------------|------------|
| Selling price by Mr.Ajay | ₹.20,000/- |
| GST @ 18% | ₹. 3,600/- |
| Total Invoice Value | ₹.23,600/- |

| Particulars | |
|--|----------|
| Purchase price by Mr.XYZ Ltd | 23,600/- |
| Selling Price by Mr.XYZ Ltd | 25,000/- |
| Gross Margin | 1,400/- |
| GST (18/118* ₹.1,400/-) (cum-tax basis) | 214/- |
| Taxable amount is | 1,186/- |
| Input tax Credit | 0/- |
| Output tax | 214/- |

Specific exemption for the supply of second hand goods from one state to another state by unregistered person to the person dealing in supplies of second hand goods is not provided under IGST Act. However, such supply gets exempted w.e.f. 13.10.2017 to 31.03.2017 by virtue of notification no.32/2017-Integrated Tax(rate) dated 13.10.2017.

Re-possession of goods by a default borrower: Borrower of the amount, who is unregistered person, defaulted the amount and the lender repossessed the goods from defaulting borrower, in such case, purchase value of goods for the purpose of recovery of loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by 5% points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

Margin scheme is optional scheme to the person dealing in second hand goods. Person, opting to pay the Goods and Services tax under margin scheme, can pay the tax on cum-tax basis if he does not wish to disclose his margin amount.

LEGAL UPDATES

By K P C Rao,
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“The best way to predict the future is to create it.”

- Peter Drucker

1 ORDINANCE PROMULGATED TO AMEND THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The President promulgated the Insolvency and Bankruptcy (Amendment) Ordinance, 2017 on November 23, 2017. It amends the Insolvency and Bankruptcy Code, 2016. The Code provides a time-bound process for resolving insolvency in companies and among individuals. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt. The Key features of the Ordinance include:

- a) **Resolution applicant:** The Code defines a resolution applicant as a person who submits a resolution plan to an insolvency professional. (A resolution plan specifies the details of how the debt of a defaulting debtor can be restructured.) The Ordinance amends this provision to define a resolution applicant as a person who submits a resolution plan after receiving an invite by the professional to do so.
- b) **Ineligibility to be a resolution applicant:** The Ordinance inserts a provision prohibiting certain persons from being a resolution applicant and submitting a resolution plan. These include: (i) undischarged insolvents (individuals unable to repay their debt), (ii) willful defaulters, (iii) a person whose account has been identified as a non-performing asset for more than a year, (iv) a person convicted of an offence punishable with two or more years of imprisonment, (v) a person disqualified as a director under the Companies Act, 2013, or (vi) anyone connected to a person mentioned above (including promoters or people in control of the defaulting firm during the implementation of the resolution plan).
- c) **Liquidation:** The Ordinance prohibits the insolvency professional from selling the property of the defaulter to any such persons during liquidation. Note that on November 7, 2017, the Insolvency and Bankruptcy Board of India amended its regulations to specify that a resolution plan will include certain details of the resolution applicant similar to those specified in the Ordinance. These are related to: (i) conviction of any offence, (ii) disqualification as director, and (iii)

identification as a willful defaulter, among others.

2 PROPOSAL TO ESTABLISH THE NATIONAL ANTI-PROFITEERING AUTHORITY

The Government has approved the constitution of a National Anti-Profiteering Authority (NAA) – the institutional mechanism under the GST law to check the unfair profit-making activities by the trading community.

- a) **Functions of the Authority:** The relevance of the National Anti-Profiteering Authority (NAA) is simply out of the launch of the GST. The Authority's core function is to ensure that the benefits of the reduction in GST rates on goods or services made by the GST Council is passed on to the ultimate consumers by way of a reduction in prices by traders.

Decision about the formation the NAA comes in the background of rate reduction of large number of items by the GST Council in its 22nd meeting at Guwahati. At the meeting, the Council reduced rates of more than 200 items including goods and services. (Discussed below - See point No.3) This has made tremendous price reduction effect and the consumers will be benefited only if the traders are making quick reduction of the prices of respective items. There is a concern that traders are reluctant to make price cut so that they can make profit.

- b) **Utility of the authority:** The Authority's main function is to ensure that traders are not realizing unfair profit by charging high price from the consumers in the name of GST. Traders may charge high price from the consumers by naming the GST factor. Similarly, they may not make quick and corresponding price reduction when the GST Council makes tax cut. All these constitute profiteering. The responsibility of the NAA is to examine and check such profiteering activities and recommend punitive actions including cancellation of licenses.

The Union Cabinet approved the creation of the posts of Chairman and Technical Members of the National Anti-Profiteering Authority (NAPA). The creation of these posts will allow for the immediate establishment of the NAPA under the Goods and Services Tax (GST) framework.





The NAPA will ensure that any reduction in GST rates is passed on to the consumers by a commensurate reduction in the price of goods and services. It will identify GST taxpayers who have not passed on such benefits by reducing prices. In the event of a taxpayer not reducing prices, the NAPA may order a reduction in prices, impose penalties or cancel the registration of a person.

Government appoints Shri B.N. Sharma as Chairman of the National Anti-profiteering Authority under GST.

3 GST COUNCIL REDUCES TAX RATES AND INCREASES ELIGIBILITY UNDER COMPOSITION SCHEME

The GST Council recommended certain changes related to tax rates, dates for filling tax returns, and eligibility under the composition scheme. The Key recommendations of the Council include:

- a) **Reduction in GST rates:** The Council recommended reducing the number of items under the 28% tax rate from 224 to 50. Some of the items on which tax rates were reduced include furniture, detergents, fans, marble and granite, and bulldozers. Tax rates were also reduced on certain items falling under other tax brackets (18%, 12%, and 5%). These items include refined sugar, puffed rice, and idli and dosa batter. Tax rates on restaurants was reduced to 5% (from the current rate of 18% on AC restaurants and 12% on non- AC restaurants).
- b) **Eligibility under the composition scheme:** The central and state GST laws allow certain taxpayers with annual turnover less than one crore rupees to pay GST on turnover, instead of the value of supply of goods and services. The Council recommended increasing this limit to two crore rupees. This change will be implemented after the central and state GST laws are amended.

4 THE FINANCIAL RESOLUTION AND DEPOSIT INSURANCE BILL, 2017, (FRDI BILL)

The Financial Resolution and Deposit Insurance Bill, 2017, or FRDI Bill, is expected to be tabled in the upcoming Winter Session of Parliament. Together with the Bankruptcy and Insolvency Code, re-capitalisation of PSU banks, and FDI in insurance, this Bill is touted to be a landmark reform in the financial sector. But, it is facing strong opposition from the bank employees union. In August, banking employees went on a strike against the proposed legislation. The Bill has also raised concerns among depositors.

The FRDI Bill seeks to create a framework for resolving bankruptcy in banks, insurance companies and other financial establishments. The Bill was first introduced in the Monsoon Session but was referred to a joint parliamentary committee for review. The committee will submit the report during the Winter Session, after which

an amended Bill is expected to be tabled.

(i) Highlights of the Bill

- a) The Bill establishes a Resolution Corporation to monitor financial firms, anticipate risk of failure, take corrective action, and resolve them in case of such failure. The Corporation will also provide deposit insurance up to a certain limit, in case of bank failure.
- b) The Resolution Corporation or the appropriate financial sector regulator may classify financial firms under five categories, based on their risk of failure. These categories in the order of increasing risk are: (i) low, (ii) moderate, (iii) material, (iv) imminent, and (v) critical.
- c) The Resolution Corporation will take over the management of a financial firm once it is classified as 'critical'. It will resolve the firm within one year (may be extended by another year).
- d) Resolution may be undertaken using methods including: (i) merger or acquisition, (ii) transferring the assets, liabilities and management to a temporary firm, or (iii) liquidation. If resolution is not completed within a maximum period of two years, the firm will be liquidated. The Bill also specifies the order of distributing liquidation proceeds.

(ii) Key Issues

- a) The Resolution Corporation will exercise certain powers including: (i) classification of firms based on risk, and (ii) directing the management of a firm to return their performance based incentive. However, the Bill does not specify a review or appeal mechanism for aggrieved persons to challenge the decision of the Resolution Corporation.
- b) A financial firm will have to be resolved within two years of being classified as 'critical'. However, the point at which the resolution process ends is not specified in the Bill.
- c) Under the Bill, the Resolution Corporation will take over a firm classified as 'critical'. However, it may choose to resolve the firm. It is unclear why the Corporation is given a choice to undertake resolution.
- d) The Bill specifies that the Corporation will take over the administration of a firm, and exercise the powers of the board of directors, as soon as the firm is classified as 'critical'. However, it also allows the Corporation to supersede the board of a firm if it is classified as 'critical'. The provision allowing the Corporation to supersede the board of a firm classified as 'critical' may be redundant.
- e) The Bill requires financial firms to pay fees to the Resolution Corporation, including those specified in Clause 33. However, Clause 33 does not specify fees that these firms will be required to pay.



5 CONSTITUTION OF 15th FINANCE COMMISSION NOTIFIED

The Government of India, with the approval President of India, has constituted Fifteenth Finance Commission in pursuance of clause (1) of article 280 of the Constitution, read with the provisions of the Finance Commission (Miscellaneous Provisions) Act, 1951 w.e.f. 27th November, 2017. The Commission will be chaired by Mr. N. K. Singh (former MP and Secretary, Government of India), and have four members: (i) Mr. Shaktikanta Das (former Secretary, Government of India), (ii) Dr. Anoop Singh (Adjunct Professor, Georgetown University), (iii) Dr. Ashok Lahiri (Chairman, Bandhan Bank), and (iv) Dr. Ramesh Chand (Member, NITI Aayog).

The Constitution requires the Finance Commission to be set up every five years. The Commission will make recommendations for the five year period from 2020 to 2025 on subjects including: (i) sharing of central taxes with the states, (ii) principles which govern the distribution of central grants to states, and (iii) measures to improve the financial position of states in order to supplement the resources of panchayats and municipalities.

The Commission will also study the impact of the Goods and Services Tax on the finances of the central and state governments, among others. The Commission will submit its report by October 30, 2019.

The 14th Finance Commission submitted its report in February 2015 with recommendations for the five-year period between the April 2015 to March 2020. recommendations for the five-year period between the April 2015 to March 2020.

6 MCA CONSTITUTED A COMMITTEE TO REVIEW THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The Ministry of Corporate Affairs (MCA) constituted an Insolvency Law Committee to examine suggestions for improving the Insolvency and Bankruptcy Code, 2016. The Committee will be chaired by the Secretary, Ministry of Corporate Affairs. Its members will include representatives from: (i) RBI, (ii) Ministry of Finance, (iii) law firms, (iv) chartered accountants, and (v) company secretaries.

The Committee will: (i) examine the implementation of the Insolvency and Bankruptcy Code, 2016, and (ii) identify issues and make recommendations on issues that impact the efficiency of the corporate resolution and liquidation framework. The Committee will submit its recommendations within two months from its first meeting.

7 MCA NOTIFIED THE COMPANIES (ACCOUNTS)

AMENDMENT RULES, 2017.

In exercise of the powers conferred by sub-sections (1) and (3) of section 128, sub section (3) of section 129, section 133, section 134 and section 138 read with section 469 of the Companies Act, 2013, MCA has notified the Companies (Accounts) Amendment Rules, 2017, applicable w.e.f. 7 Nov. 2017, i.e. amended e-form AOC-4 for ROC filing of financial statements/ other documents by certain companies u/s 137 of the Companies Act, 2013 read with the Companies (Accounts) Rules, 2014.

8 MEDICAL COLLEGE BRIBERY CASE: SC ORDER IS BLOW AGAINST THE CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS

The Campaign for Judicial Accountability and Reforms (CJAR) on 04/12/2017 said the Supreme Court verdict dismissing its writ petition for SIT probe into the medical college bribery case is only going to strengthen the Campaign and energise them to carry their efforts and campaigns. While disagreeing with the SC decision, the CJAR said it is gearing up for review of the same and actions of the Supreme Court would now be judged by the “people’s court which is the ultimate court in the country”.

a) Made no allegations, sought a mere independent probe

The CJAR said, in a statement, it was set up more than a decade ago and has representatives of many national campaigns and social movements and citizens from all walks of life who have come together to campaign for the accountability of the higher judiciary and reforms in the judiciary.

Junking the charge of trying to defame judiciary, it said, “Contrary to the charge against the campaign that this was a mala fide petition intended to defame the judiciary, CJAR had approached the court with the intention to protect the independence, integrity and reputation of the Supreme Court and the judiciary in general. CJAR was not making any allegations. It was only seeking a court monitored independent investigation into the issues recorded in the FIR filed by the CBI”.

“Unfortunately, the Supreme Court has held that approaching the court to seek a court monitored investigation into serious charges of conspiracy, preparation and planning to bribe the Judges of the Supreme Court in a case before the court, is an attempt to defame the court. The court has also said that this FIR does not involve any judges. We believe that such a statement cannot be made when the FIR clearly states that there was a conspiracy to procure a favourable



judgment from the Supreme Court by paying large bribes. Only an independent investigation could have cleared this allegation," it said.

b) Justice Shall Not Only Be Done But Seen To Be Done

The CJAR said the conduct of CJI Dipak Misra in this case clearly violated the code of conduct formulated by Conference of all the Chief Justices in the Country in 1997 which has been laid down in the 'Restatement of Values of Judicial Life', as the very first code states that Justice must not merely be done but it must also be seen to be done. "It has also come to light that the Hon'ble Chief Justice of India has reportedly denied permission to CBI to register an FIR against a sitting judge of the Allahabad High Court allegedly involved in this matter. This would result in stalling any further investigation and further by its judgment of the Supreme Court has in effect ensured that there will be no investigation of sitting judges in this matter," [Source: Live Law News Network 4th December 2017]

9 JUDICIAL PROCEEDINGS & RECORDS CAN BE ACCESSED THROUGH RTI: CIC

The Central Information Commission (CIC), in a brief order, has held that judicial proceedings and records thereof are public records, and a person, even if he is not party to the said proceedings, has a right to secure desired information.

YN Prasad had filed an RTI before PIO Ahlmad Evening Court, seeking copy of response filed in a complaint against the management of Redeemed Christian Church of God, Janakpuri, before the MM, Karkardooma court. Upon denial of the information sought, he had approached the state commission, but in vain.

On appeal before the Central Information Commission, Information Commissioner Yashovardhan Azad directed the PIO to offer inspection of the judicial file to the appellant on a mutual convenient day and time. The court also observed that the applicant shall be entitled to avail copies from the record upon payment of usual charges.

It is pertinent to note a decision in Iqbal Kaur vs NCDRC by the Central Information Commission in 2011, wherein it denied information sought by third-party relating to court proceedings which involved other individuals or persons who has personal interest in the said case. In that case, the commission had observed: "Section 8 (1) (j) of the RTI Act exempts the disclosure of such information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual."

It is also relevant to mention that Delhi High Court has reserved its judgment in the case titled Registrar, Supreme Court of India vs RS Mishra & others, wherein the issue is

whether an application seeking information relating to court proceedings can be processed under the Right to Information Act, 2005, notwithstanding that there exist rules of procedure of the court concerning the disclosure of such information to the applicant.

10 INDIA'S SOVEREIGN RATING BY CREDIT RATING AGENCIES

a) Moody's Upgrades India Rating: Credit rating company Moody's Investors Service on 17/11/2017 has upgraded India's sovereign rating by a notch in a ringing endorsement of the Narendra Modi government's reforms policy. Moody's raised the rating from the lowest investment grade of Baa3 to Baa2, and changed the outlook from stable to positive. It's the first upgrade of India's rating in 14 years. Backing the reforms initiated by the government in the last three years, Moody's said in a statement, "The decision to upgrade the ratings is underpinned by Moody's expectation that continued progress on economic and institutional reforms will, over time, enhance India's high growth potential."

b) Fitch slashes India's GDP outlook to 6.7%: Unlike its earlier projection of 6.9 per cent growth, credit rating agency Fitch on 04/12/2017 cut India's GDP forecast for the current fiscal to 6.7 per cent. The agency cited weaker rebound as a reason behind the growth rate cut. India has been on a rollercoaster ride in terms of credit ratings and GDP numbers, with credit rating agencies assessing India based on the recent economic decisions taken up by the Narendra Modi government.

Days after Moody's upgraded India's credit rating to Baa2 from Baa3, another US-based credit rating agency, S&P, left it unchanged.

11 JUDGE'S CONSENT NOT NECESSARY FOR TRANSFER - LAW MINISTRY

In a response to a representation by Mr. Sapreet Singh Ajmani, National President of the Youth Bar Association of India (YBAI), the Law Ministry has made it clear (vide its letter dated 15/11/2017) that it is not necessary to obtain consent from a Judge before transferring him.

The response, issued under the letterhead of the Ministry of Law & Justice, states, "The initiation of the proposal for the transfer of a Judge should be made by the Chief Justice of India whose opinion in this regard is determinative. Consent of a Judge for his first or subsequent transfer would not be required. All transfers are to be made in public interest i.e. for promoting better administration of justice throughout the country." Mr. Ajmani had made a representation to the Union Minister of Law & Justice regarding transfer of Judges from their parent High Courts. He had also sought framing of guidelines for transfer of High Court Judges, similar to the ones in existence for transfer of subordinate Judicial Officers.

CMA UPDATE

CMA R. SATYANARAYANA,
M.Com, FCMA
Email: yadav.satyanarayana@gmail.com



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GENERAL

- **Son is Legal heir:** Son is legal representative of father, even though he had severed relationship long ago vide decision of Calcutta HC.
- **200 reforms:** Government to implement 200 reforms to push India into top 50 in World Bank rating vide The Deccan Herald dated 1st Nov, 2017.
- **Linking Aadhar:** Linking of Aadhar Number to Insurance Policy is mandatory under Prevention of Money-Laundering (Maintenance of Records) Second Amendment Rules 2017.
- **Banking facilities for Sr.Citizens:** RBI has issued a circular indicating the various facilities to be extended by banks to Sr.Citizens by 31st Dec, 2017 and they are-Dedicated counters, ease of submitting life certificate, cheque book facility, automatic conversion of status of accounts, additional facilities to visually disabled customers, ease of filing From 15G/H, doorstep banking etc., and for details refer to RBI/2017-18/89 BR.No.Leg.BC.96/09.07.005 /2017-18 dated November 9, 2017.
- **Insolvency Ordinance:** The Ordinance bars wilful defaulters and unscrupulous entities from bidding for stressed assets. It was approved by President Ram Nath Kovind on November 23. Finance Minister Arun Jaitley came out in defence of the Ordinance for the Insolvency and Bankruptcy Code and said it aims to put in place a clean and effective system through which wilful defaulters of bank loans may be kept away from the management of their business and time-bound recovery affected from them vide The Hindu Business Line dated 28th Nov, 2017.
- **Deemed Exports:** CBEC has prescribed the procedure for supplies to EOU/ EHTP/ STP/ BTP units under deemed export benefits. The recipient unit shall give prior intimation in Form-A about the goods to be procured and the details of the supplier. The said intimation shall be given to the registered supplier, the jurisdictional GST officer in charge of such registered supplier and the jurisdictional GST officer. The recipient unit shall maintain records of such deemed export supplies in digital form, based on data contained in "Form- B". A digital copy of Form- B containing transactions for the month shall be provided to the jurisdictional GST officer by the 10th of each month in a CD or Pen drive and for details refer to Circular No.14/14/2017-GST dated 6th Nov, 2017.
- **Handbook on GST for service providers:** ICAI has come up with a "Handbook on GST for service providers which has been specifically developed to provide indepth knowledge of provisions pertaining to services and for download refer to www.icai.org
- **OIDAR in GST:** Online Information Database Access and Retrieval services introduced in GST and for details refer to www.gst.gov.in
- **Deemed export benefits:** CBEC has issued Circular No. 14/14 /2017 – GST F. No. 349/21/2016 prescribing the procedure of procurement of supplies of goods from DTA by EOU/EHTP/STP/BTP units under deemed export benefits.
- **Revision of GST TRAN-1:** GSTN enables onetime revision of GST TRAN-1 and for details refer to www.gst.gov.in
- **GST Council 23rd meeting:** The important decisions taken in the GST Council's 23rd meeting held on 10th Nov, 2017 are – Increase in the limit of aggregate turnover for composition scheme from Rs 1 to 2 crore, exemption from compulsory registration of service providers extending services through e-commerce, filing of quarterly instead of monthly Return who have annual aggregate turnover upto Rs 1.5 Crore, reduction in GST rate for large number of items, exemption from tax on advances for supply of goods, reduction in late fee for delay in filing the Returns, reduction to GST on standalone Restaurants to 5% without ITC etc., are important decisions taken and for details refer to www.gst.gov.in

GST



LABOUR

- **Maximum age of joining NPS increased to 65 years:** Any Indian Citizen, resident or nonresident, between the age of 60- 65 years, can also join NPS and continue up to the age of 70 years in NPS. With this increase of joining age, the subscribers who are willing to join NPS at the later stage of life will be able to avail the benefits of NPS vide PIB of Ministry of Finance dated 1st Nov, 2017.
- **EPF coverage for Indians working abroad too:** Indians working abroad can now exempt themselves from their host country's social security scheme and get covered by retirement fund body EPFO, Central Provident Fund Commissioner (CPFC) V P Joy said. This is possible by submitting Certificate of Coverage (CoC) to the host country where such arrangements have been made by Govt. of India vide ET dated 3rd Nov, 2017.

INCOMETAX

- **Clarification on cash sale of agricultural products by Cultivators/Agriculturalist:** CBDT clarified that the cash sale of Agricultural produce by its Cultivator to the trader for an amount of less than Rs 2 lakhs is exempted under section 40A(3) of the IT Act 1961 and for details refer to Circular No.27/2017 dated 3rd Nov, 2017.
- **Fixed place of business-PE etc:** Supreme Court has explained the concept of Fixed place of business, service PE & Agency PE etc., while giving the judgment in the case of ADIT Vs E-Funds IT Solution Inc in Appeal Number : Civil Appeal No. 6082 of 2015

RESERVE BANK OF INDIA

- **Legal Entity Identifier:** The Legal Entity Identifier (LEI) code is conceived as a Key measure to improve the quality and accuracy of financial data system for better risk management and it is a unique code of 20 digits to identify the financial transactions of world.
- **Due Diligence Certificate:** Insolvency and Bankruptcy Board of India (IBBI) strengthens its Due Diligence Framework under the Insolvency and Bankruptcy Code, 2016 Now prior to approval of a Resolution Plan, the Resolution Applicants, including promoters, will be put to a stringent test with respect to their credit worthiness and credibility; Amendments to the IBBI (Insolvency Resolution Process for Corporate Persons) Resolution

Process, 2016 impose a greater responsibility on the Resolution Professionals and the Committee of Creditors in discharging their duties and for details refer to www.mca.gov.in

CENTRAL EXCISE RULES & ACT

- Budgetary support to units enjoying Excise exemption prior to 1st July, 2017 : Procedure for manual disbursal of budgetary support under Goods and Service Tax Regime to the units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North East including Sikkim has been announced and for details refer to CBEC Circular No.1060/9/2017-CX dated 27th Nov, 2017.

FEMA/DGFT

- **Issue of Securities and Transfer:** RBI has issued Notification on FEMA (Transfer of issue of Security by a Person Resident outside India) Regulations 2017 vide FEMA20(R)/2017-RB dated 7th Nov, 2017.
- **Revalidation of Licences:** Govt. has announced Revised Procedure for Revalidation of Import/Export Licence Certificate / Authorisation / Permission for Non SCOMET Items and for details refer to Public Notice No.38(2015-2020) dated 9th Nov, 2017 issued by the DGFT

COMPANIES ACT

- **SPICe eForms:** As part of its continuous efforts for simplifying Incorporation related process for providing Ease of Doing Business to stakeholders, MCA will be dispensing with the requirement of separately uploading Forms 49 A& 49B after filing SPICe e-forms. Accordingly, with effect from 6PM of 4th November 2017, stakeholders will NOT be required to upload signed 49A/49B using "Submit application for PAN/TAN" service, in respect of any fresh SPICe submission or Resubmission cases. PAN and TAN will continue to be issued as before based on the details submitted in the SPICe Form itself.
- **Early warning system:** MCA is going to introduce soon "Early Warning system" to strengthen the Regulatory Mechanism and for details refer to www.mca.gov.in
- **Revision in AoC-4:** MCA has revised AoC-4 Non-XBRL & also AoC-4 XBRL (Non Ind AS) Forms and for details refer to www.mca.gov.in

continuation of last month edition

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 9405 OF 2017**



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Once the adjudicating authority/Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application. It is important that parties are not allowed to abuse the legal process by using delaying tactics at the admissions stage.

Clause 8 lays down the procedure for the initiation of the corporate insolvency resolution process by an operational creditor. This procedure differs from the procedure applicable to financial creditors as operational debts (such as trade debts, salary or wage claims) tend to be small amounts (in comparison to financial debts) or are recurring in nature and may not be accurately reflected on the records of information utilities at all times. The possibility of disputed debts in relation to operational creditors is also higher in comparison to financial creditors such as banks and financial institutions. Accordingly, the process for initiation of the insolvency resolution process differs for an operational creditor.

Once a default has occurred, the operational creditor has to deliver a demand notice or a copy of an invoice demanding payment of the debt in default to the corporate debtor. The corporate debtor has a period of ten days from the receipt of the demand notice or invoice to inform the operational creditor of the existence of a dispute regarding the debt claim or of the repayment of the debt. This ensures that operational creditors, whose debt claims are usually smaller, are not able to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It may also facilitate informal negotiations between such creditors and the corporate debtor, which may result in a restructuring of the debt outside the formal proceedings.

Clause 9 On the expiry of the period of ten days from the date of receipt of the invoice or demand notice under Clause 8, if the operational creditor does not receive either the payment of the debt or a notice of existence of dispute in relation to the debt claim from the corporate debtor, he can file an application with the adjudicating authority for initiating the insolvency resolution process in respect of such debtor. He also has to furnish proof of

default and proof of non-payment of the debt along with an affidavit verifying that there has been no notice regarding the existence of a dispute in relation to the debt claim. Within fourteen days from the receipt of the application, if the adjudicating authority/Tribunal is satisfied as to (a) the existence of a default, and (b) the other criteria laid down in clause 9(5) being met, it shall admit the application. The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application. It is important that parties are not allowed to abuse the legal process by using delaying tactics at the admissions stage.”

(Emphasis supplied)

20. The Joint Committee in April, 2016 made certain small changes in the said Bill, by which the Committee stated:

“17. Mode of delivery of demand notice of unpaid operational debt – Clause 8

The Committee find that clause 8(1) of the Code provides that an operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form as may be prescribed, through an information utility, wherever applicable, or by registered post or courier or by such electronic mode of communication, as may be specified.

The Committee are of the view that the details of the mode of delivery of demand notice can be provided in the rules. The Committee, therefore, decide to substitute words “in such form as may be prescribed, through an information utility, wherever applicable, or by registered post or courier or by such electronic mode of communication, as may be specified” as appearing in clause 8(1) with the words “in such form and manner, as may be prescribed”. Besides as a consequential amendment words “through an information utility or by registered post or courier or by such electronic mode of communication as may be specified” as appearing in clause 8(2) may also be omitted.”

The Committee also revised the time limits set out in various sections of the Code from 2, 3 and 5 days to a longer uniform period of 7 days.

21. The stage is now set for setting out the relevant provisions of the Code insofar as operational creditors and their corporate debtors are concerned.

“3. Definitions.

In this Code, unless the context otherwise requires,—

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

5. Definitions.

In this Part, unless the context otherwise requires,— (6) “dispute” includes a suit or arbitration proceedings relating to—

- (a) the existence of the amount of debt;
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty;

xxx xxx xxx

(20) “operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

8. Insolvency resolution by operational creditor.

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the

operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

9. Application for initiation of corporate insolvency resolution process by operational creditor.

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

(d) such other information as may be specified.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section

(4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional: Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.”

22. Together with Section 8(1), the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, speak of demand notices by the operational creditor and applications by the operational creditor in the following terms:

“5. Demand notice by operational creditor.

(1) An operational creditor shall deliver to the corporate

debtor, the following documents, namely.-

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgement due; or

(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.

6. Application by operational creditor.

(1) An operational creditor, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 9 of the Code in Form 5, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(2) The applicant under sub-rule (1) shall dispatch forthwith, a copy of the application filed with the Adjudicating Authority, by registered post or speed post to the registered office of the corporate debtor.

FORM 3

(See clause (a) of sub-rule (1) of rule 5)
FORM OF DEMAND NOTICE / INVOICE
DEMANDING PAYMENT UNDER THE
INSOLVENCY AND BANKRUPTCY CODE, 2016
(Under rule 5 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016)

[Date]

To,

[Name and address of the registered office of the corporate debtor] From, [Name and address of the registered office of the operational creditor]

Subject: Demand notice/invoice demanding payment in respect of unpaid operational debt due from [corporate debtor] under the Code.

Madam/Sir,

1. This letter is a demand notice/invoice demanding payment of an unpaid operational debt due from [name of corporate debtor].

2. Please find particulars of the unpaid operational debt below:

PARTICULARS OF OPERATIONAL DEBT

1. TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE

2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF DEFAULT IN TABULAR FORM)

3. PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)

4. DETAILS OF RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT OF

3. If you dispute the existence or amount of unpaid operational debt (in default) please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/notice.

4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following:

(a) an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(b) an attested copy of any record that [name of the operational creditor] has received the payment.

5. The undersigned, hereby, attaches a certificate from an information utility confirming that no record of a dispute raised in relation to the relevant operational

debt has been filed by any person at any information utility, (if applicable)

6. The undersigned request you to unconditionally repay the unpaid operational debt (in default) in full within ten days from the receipt of this letter failing which we shall initiate a corporate insolvency resolution process in respect of [c].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor

Name in block letters

Position with or in relation to the operational creditor

Address of person signing

Instructions:

1. Please serve a copy of this form on the corporate debtor, ten days in advance of filing an application under section 9 of the Code.

2. Please append a copy of such served notice to the application made by the operational creditor to the Adjudicating Authority.

Form 4

(See clause (b) of sub-rule (1) of rule 5)

FORM OF NOTICE WITH WHICH INVOICE DEMANDING PAYMENT IS TO BE ATTACHED

(Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

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To,

[Name and address of registered office of the corporate debtor]

From,

[Name and address of the operational creditor]

Subject: Notice attached to invoice demanding payment

Madam/Sir,

[Name of operational creditor], hereby provides notice for repayment of the unpaid amount of INR [insert amount] that is in default as reflected in the invoice attached to this notice.

In the event you do not repay the debt due to us within ten days of receipt of this notice, we may file an

application before the Adjudicating Authority for initiating a corporate insolvency resolution process under section 9 of the Code.

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor

Name in block letters

Position with or in relation to the operational creditor

Address of person signing

Form 5

(See sub-rule (1) of rule 6)

APPLICATION BY OPERATIONAL CREDITOR TO INITIATE CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER THE CODE.

(Under rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

[Date]

To,
The National Company Law Tribunal
[Address]

From,
[Name and address for correspondence of the operational creditor]

In the matter of [name of the corporate debtor]

Subject: Application to initiate corporate insolvency resolution process in respect of [name of the corporate debtor] under the Insolvency and Bankruptcy Code, 2016.

Madam/Sir,
[Name of the operational creditor], hereby submits this application to initiate a corporate insolvency resolution process in the case of [name of corporate debtor]. The details for the purpose of this application are set out below:

Part – I PARTICULARS OF APPLICANT

1. NAME OF OPERATIONAL CREDITOR
2. IDENTIFICATION NUMBER OF OPERATIONAL CREDITOR (IF ANY)
3. ADDRESS FOR CORRESPONDENCE OF THE OPERATIONAL CREDITOR

Part - II PARTICULARS OF CORPORATE DEBTOR

1. NAME OF THE CORPORATE DEBTOR
2. IDENTIFICATION NUMBER OF CORPORATE DEBTOR
3. DATE OF INCORPORATION OF CORPORATE DEBTOR
4. NOMINAL SHARE CAPITAL AND THE PAID-UP SHARE CAPITAL OF THE CORPORATE DEBTOR AND/OR DETAILS OF GUARANTEE CLAUSE AS PER MEMORANDUM OF ASSOCIATION (AS APPLICABLE)
5. ADDRESS OF THE REGISTERED OFFICE OF THE CORPORATE DEBTOR
6. NAME, ADDRESS AND AUTHORITY OF PERSON SUBMITTING APPLICATION ON BEHALF OF OPERATIONAL CREDITOR (ENCLOSE AUTHORISATION)
7. NAME AND ADDRESS OF PERSON RESIDENT IN INDIA AUTHORISED TO ACCEPT THE SERVICE OF PROCESS ON ITS BEHALF (ENCLOSE AUTHORISATION)

Part-III

PARTICULARS OF THE PROPOSED INTERIM RESOLUTION PROFESSIONAL [IF PROPOSED]

1. NAME, ADDRESS, EMAIL ADDRESS AND THE REGISTRATION NUMBER OF THE PROPOSED INSOLVENCY PROFESSIONAL

Part-IV

PARTICULARS OF OPERATIONAL DEBT

1. TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE
2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)

Part-V

PARTICULARS OF OPERATIONAL DEBT [DOCUMENTS, RECORDS AND EVIDENCE OF DEFAULT]

1. PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ITS ESTIMATED VALUE AS PER THE CREDITOR. ATTACH A COPY OF A CERTIFICATE OF REGISTRATION OF CHARGE ISSUED BY THE REGISTRAR OF COMPANIES (IF THE CORPORATE DEBTOR IS A COMPANY)
2. DETAILS OF RESERVATION/RETENTION OF TITLE ARRANGEMENTS (IF ANY) IN RESPECT

OF GOODS TO WHICH THE OPERATIONAL DEBT REFERS

3. PARTICULARS OF AN ORDER OF A COURT, TRIBUNAL OR ARBITRAL PANEL ADJUDICATING ON THE DEFAULT, IF ANY (ATTACH A COPY OF THE ORDER)

4. RECORD OF DEFAULT WITH THE INFORMATION UTILITY, IF ANY (ATTACH A COPY OF SUCH RECORD)

5. DETAILS OF SUCCESSION CERTIFICATE, OR PROBATE OF A WILL, OR LETTER OF ADMINISTRATION, OR COURT DECREE (AS MAY BE APPLICABLE), UNDER THE INDIAN SUCCESSION ACT, 1925 (10 OF 1925) (ATTACH A COPY)

6. PROVISION OF LAW, CONTRACT OR OTHER DOCUMENT UNDER WHICH OPERATIONAL DEBT HAS BECOME DUE

7. A STATEMENT OF BANK ACCOUNT WHERE DEPOSITS ARE MADE OR CREDITS RECEIVED NORMALLY BY THE OPERATIONAL CREDITOR IN RESPECT OF THE DEBT OF THE CORPORATE

DEBTOR (ATTACH A COPY)

8. LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE AMOUNT IN DEFAULT

I, [Name of the operational creditor / person authorised to act on behalf of the operational creditor] hereby certify that, to the best of my knowledge, [name of proposed insolvency professional], is fully qualified and permitted to act as an insolvency professional in accordance with the Code and the rules and regulations made thereunder. [WHERE APPLICABLE]

[Name of the operational creditor] has paid the requisite fee for this application through [state means of payment] on [date].

Yours sincerely,

Signature of person authorised to act on behalf of the operational creditor

Name in block letters

Position with or in relation to the operational creditor

Address of person signing

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VAT & CST

J.V. RAO

High Court Advocate & Tax Consultant

Email: jvrao@yahoo.co.in



1. Disallowance of ITC for non-payment of tax by selling dealer:

The provision of Section 9 (2) (g) of the Delhi Value Added Tax Act was read down by the Delhi High Court holding that in case selling dealer does not pay tax, ITC cannot be disallowed in the hands of purchasing dealer unless there is a collusion. If the provisions of Section 9 (2) (g) of the Act is not read down then it would be violative of Article 14 of the Constitution. Suvashini Charitable Trust and others vs. Government of NCT of Delhi & Anr. W.P. No. (c) 2016/2015, dt. 26.10.2017.

2. Natural Justice: Value Added Tax-Writs under Constitution-Assessment-Opportunity to be heard-Time granted as sought for production of documents and orders passed thereafter-Not a case of lack of opportunity to be heard- Sales return-Credit notes along with cancelled invoices in respect of some years filed-Levy of tax-Failure to apply mind-Liberty to dealer to file application for rectification-Tamil Nadu Value Added Tax Act (32 of 2006), s. 84 – KLN Motors Agencies Pvt Ltd vs. Assistant Commissioner (CT) (2017) 105 VST 123 (Mad)

3. Compounding of Tax: Value Added Tax-application of dealer opting for payment on compounded basis neither accepted nor rejected –Dealer cannot assume application allowed-Bound to pay tax on regular basis-Dealer paying tax on regular basis-Demand for differential tax on basis of compounded rate-Not sustainable –Kerala Value Added Tax Act 2003 (30 of 2004), ss. 6 (1), 8 (b) – Shajan (V.K) vs. Commercial Tax Officer. (2017) 105 VST 185 (Ker)

4. Input Tax Credit: Value Added Tax- Capital goods-Definition-Plant, Machine, Machinery, equipment, apparatus – No distinction between movable and immovable property intended –Input tax credit allowable on purchase of mild steel sheets used in construction of silos – Uttar Pradesh Value Added Tax Act (5 of 2008), s. 2 (f), (m) – Commissioner, Commercial Tax vs. Ambuja Cement Ltd. (2017) 105 VST 395 (All)



Sri D. Prabhakar Rao, CMD TS GENCO & TS TRANSCO & Ex-Officio and Special Chief Secretary.



Cost Audit Observatons



Honouring CMA K C Sharma, Senior Member and Special Invitee with a memento during the seminar on 'Cost Audit Observatons'.



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