



Hyderabad

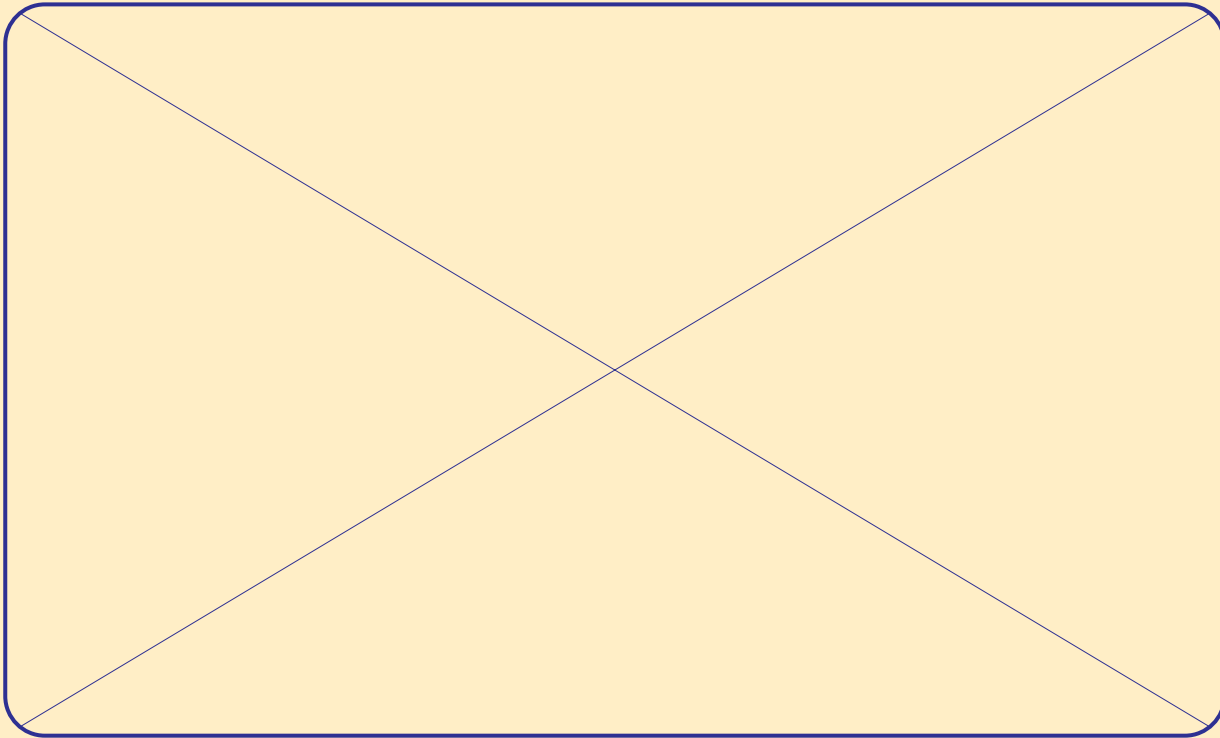
# CIRCUIT

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 *The Chairman  
writes to you*

.xxx



*From the Edit Room...*

.xxx

*With regards,*

***CMA Dr Chandra Sekhar Rajanala***  
*Chairman*

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| 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   | 1   | 0   | 0   | 21           |
| CEP Hours       | 4   | 12  | 6   | 5   | 7   | 0   | 1   | 4   | 0   | 1   | 0   | 0   | 40           |

### 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   | 3   | 0   | 0   | 14           |
| CEP Hours       | 5   | 0   | 2   | 0   | 1   | 1   | 0   | 5   | 0   | 8   | 0   | 0   | 22           |





# Performance Track

## PRCTITIONERS' FORUM SUB-COMMITTEE

- 9th December, 2017 A Programme on "Cloud Computing for Professionals" Special Invite CH.Sreeman Narayan, Vice President, Sew Constructions. CMA Bhavan, Himayatnagar, Hyderabad.

**Speaker :** CMA T.C.A.Srinivas Prasad, Advisor (ERP), NMDC Ltd, Former Executive Director (F&A-ERPI), SAIL-

- 12TH December, 2017 Programme on "Companies (Cost Records & Audit) Amendment, Rules 2017, CMA Bhavan, Himayatnagar, Hyderabad.

**Speakers :** CMA A.V.N.S Nageswara Rao, Practicing Cost Accountant & CMA M.Kameswara Rao, Practicing Cost Accountant and CMA D.Dantu Mitra Senior Member

- 30th December, 2017 A Programme on "Revival of Companies under Section 252 of the Companies Act, 2013 & Disqualification of Directors under Section 164 & Registrar Valuer New Opportunities for CMA" National Institute for Micro, Small and Medium Enterprises, Yousufguda, Hyderabad,

**Chief Guest :** Sri M.R. Bhat, Regional Director, South East Region, Hyderabad.

**Speakers :** CMA K.K. Rao, Practicing Cost Accountant and CS P.S. Rao, Practicing Company Secretary and Sri Y.Surya Narayana, Senior Advocate.

## PROFESSIONAL DEVELOPMENT SUB-COMMITTEE

- 24th December, 2017 A Programme on "Transfer Pricing Documentation" CMA Bhavan, Himayatnagar, Hyderabad

**Speaker :** CA Pavan Kumar Gorti, B.Com, FCA

## OTHER PROGRAMMES

- 6th December, 2017 Career Counseling at Prathibha Degree College at Kukatpally, Hyd by CMA Dr. Chandra Sekhar Rajanala, Chairman
- 8th December, 2017 Career Counseling at Bharath Degree & PG College for Women at Narayanguda, Hyd by CMA Dr. Chandra Sekhar Rajanala, Chairman
- 11th December, 2017 Career Counseling at Aurora PG College at Moosarbagh, Hyd by CMA Dr. Chandra Sekhar Rajanala, Chairman and CMA T.C.A.Srinivas Prasad, Advisor (ERP), NMDC Ltd, Former Executive Director (F&A-ERPI), SAIL and CMA K. Raghavender Reddy, MD, Daksha EBIZ, Consulting Pvt Ltd.
- 13th December, 2017 Courtesy Visit with Sri M.R. Bhat, Regional Director South East Region and Sri R.C.Mishra, ROC Hyderabad and Sri Dr. N.Yadaiah Registrar JNTU, Hyderabad.
- 14th December, 2017 Career Counseling at Narayana Junior College, Kukatpally, Hyderabad by CMA N.S.V. Krishna Rao, Practicing Cost Accountant
- 14th December, 2017 Career Counseling at Chaitanya Junior College, Kukatpally, Hyderabad by CMA N.S.V. Krishna Rao, Practicing Cost Accountant
- 28th December, 2017 Career Counseling at CMS Junior College, Nizampet, Hyderabad by CMA N.S.V. Krishna Rao, Practicing Cost Accountant

## FINANCE CLIPS

### CMA R. SATYANARAYANA

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- Cost records & audit: MCA has notified the Companies (Cost Records & Audit) Amendment Rules 2017 on 8th Dec 2017 and these amended rules are applicable to the Companies covered under Companies (Cost Records & Audit) Rules whether the INDAs are applicable to them or not.
- Quick Insights of 2017: The Committee for Capacity Building of Members in Practice (CCBMP), ICAI has taken an initiative to bring out a publication namely Quick Insight- 2017 for the CA fraternity, highlighting latest developments in the profession. The Quick Insight contains important information on tax, accounting & auditing standards, limited liability partnership, Companies Act, statements and standards and standards on audit as well as important information for Members.
- Draft of CAS-4: ICAI (Cost) has put on its website draft of CAS-4 on cost of production or cost of acquisition of goods or cost of provision of services (replacing the existing CAS-4) and requested all stakeholders to submit their views/comments/suggestions by 16th Jan 2018 to casb@icmai.in and the exposure draft can be assessed on www.icmai.in
- ICAI releases Digital Competency Maturity Model: Digital Competency Maturity Model (DCMM) for Professional Accounting Firms – Version 1.0” has to be used ONLY for self-evaluation by accounting firms of their digital competency maturity level and taking steps to move up the maturity model. The results of the self-evaluation conducted should NOT be published/ displayed in any form/ manner, which may be deemed to be violation of Code of Ethics of the Institute of Chartered Accountants of India and for details refer to www.icai.org
- ICAI (COS) Digital help desk: The Institute of Cost Accountants of India has launched the ‘GST Helpdesk’ in a new digitized environment as a complimentary facility for all the stakeholders, to achieve a seamless transition in GST. The GST Helpdesk is driven by a large pool of Experts in Indirect Taxation. The Helpdesk is fully digitized and the raised queries would be resolved at the earliest and for details refer to www.icmai.in
- Cost (Records & Audit) Second Amendment Rules 2017: With effect from 1st July 2017 Product classification Heading has to be referred from Customs Tariff Act (CTA) instead of Central Excise Tariff Act (CETA) Heading that was being followed earlier.
- Secretarial Standard-3: The Institute of the Company Secretaries of India has issued Secretarial Standard - 3 (SS-3) on Dividend and the same can be downloaded from www.icsi.org

## MARGIN SCHEME UNDER GST

### CMA.Sudha Rani V.

B.Com.,LL.B., FCMA



#### Classification of Goods and Services under GST:

Under GST law goods are classified under Chapters 1 to 98 wherein for services separate scheme of classification is provided in the annexure to the notification no.11/2017-central tax(rate) dated 28.06.2017. **Services classification under GST is provided in Chapter 99.**

Correct classification of goods and services are important because tax liability depends on effective rate of Goods and Services Tax. Improper classification could lead to (i) additional liability after correct classification, which also attracts interest on short payment of duty (ii) missing out exemptions and (iii) litigation cost. **In this article classification of goods and classification of services are discussed separately.**

#### Classification of Goods:

**Under GST law,** goods of goods are provided under notification no. 1/2017 – Central Tax(rate) dated 28.06.2017 and Notification no.1/2017 – integrated tax (rate) dated 28.06.2017

As per explanation (iii) of the above mentioned notifications, “Tariff item”, “sub-heading”, “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975. Classification of goods involves determination of the Chapter, heading, sub-headings and Tariff item of First Schedule to the Customs Tariff Act, 1975.

As per the explanation (iv) to the said notifications, the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, as far as may be, apply to the interpretation of the said notification.

Therefore, before we classify any goods under the GST law, reference to the Customs Tariff Act, 1975 shall be made.

In case of supply of single **good** it would be easier to classify such goods under GST law. However, when there is composite or mixed supply, in such case, tax liability on such supplies shall be determined as follows:

- Composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of **such principal supply**;
- Mixed supply comprising of two or more supplies

shall be treated as supply of that particular supply which attracts the highest rate of tax;

To understand the above concept, we need to know what is composite supply, principal supply and mixed supply.

Composite supply is defined under section 2(30) of CGST Act which means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply; Following is the illustration provided in the Act for the above mentioned definition.

**Illustration.**— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

The term principal supply is defined under section 2(90) of CGST Act which means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

The term mixed supply is defined under section 2(74) of CGST Act which means two or more supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for single price where such supply does not constitute a composite supply.

**Illustration.**— A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

As discussed in above paragraphs, for classification of goods under GST, First schedule to the customs Tariff Act and rules of interpretation provided in the said Act are need to be referred. Code under Customs Tariff Act is 8 digit code. Out of eight digit code, which digit represents what is described hereunder:

**Chapter:** Customs Tariff Act, 1975 is divided into 21 sections which are further divided into 98 chapters. First two digits of the code denotes the Chapter under which the goods fall.

**Heading:** It denotes first four digits of the code. It (in respect of goods) means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number.

**Sub-heading:** It denotes first six digits of the code. Each heading is further divided into sub-headings. Sub-heading, in respect of goods, means a description in the list of tariff provisions accompanied by six –digit number and includes all tariff items the first six-digits of which correspond to that number.

**Tariff Item:** It is a eight digit code number. Tariff item means a description of goods in the list of tariff provisions accompanying eight digit number and the rate of customs

duty.

Notification no. 1/2017 – Central Tax(rate) dated 28.06.2017 and Notification no.1/2017 – integrated tax (rate) dated 28.06.2017 divides all the goods in six schedules with different tax rates at 5%, 12%, 18%, 28%, 3% and 0.25%. Entry no. 453 of Schedule –III is residual entry which provides the rate at 18% for the goods falling under any chapter which are not specified in Schedule I, II, IV, V or VI. Therefore, any goods which are classifiable under any chapter of Customs Tariff Act 1975 but does not fall under any entry of Schedule III or any entry of the other five schedules would be taxable at the rate of 18%.

References which are to be used for classification purpose are (1) write-up on the product/service from technical team; (2) entity's website, google search, product description on the invoice/PO; (3) determination of the Chapter, heading, sub-headings and Tariff item as per First Schedule to the Customs Tariff Act, 1975; (4) Section notes, chapter notes, chapter –heading notes etc. are required to be referred before coming to the conclusion for the classification of the goods. (5) Lastly, General rules for interpretation can be referred.

#### **Classification of Services:**

Under GST law, rates for services are provided under Notification no.11/2017 – Central tax (rate) dated 28.06.17 and 8/2017- integrated tax (rate) dated 28.06.17 and the classification of the services are provided under the annexure to the Notification no.11/2017- Central tax (rate).

Before classifying any service it is important to know what is nature of service in terms of agreement, what description is written/ would be written on the invoice are required to be considered.

**Single Service:** There could be provision of single service or bundles services by the supplier. When there is provision of single service then such case, it needs to classified under specific category.

**Bundled Service:** When there is bundled service, then it needs to be examined whether it can be bifurcated in terms of agreement/ work order/ contract of service. Whenever, there is bifurcation in-terms of taxable services then in such case separate rates could be adopted for each of such service. If the bundled service consists of exempted and taxable service and there is bifurcation of the same in terms of agreement then exemption could be claimed for value of exempted service.

When bundled service cannot be bifurcated then in such case, rate of the principal supply is applicable to the bundled service.

**Conclusion:** Classification of goods or services is very crucial and needs to be done carefully. Wrong classification could lead to short payment of taxes and at later point of time, subjected to litigation. There is chance of missing exemptions also due to wrong classification of goods or services.

## LEGAL UPDATES

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"If you have ten thousand regulations you destroy all respect for the law."

-Winston Churchill

### 1. WINTER SESSION OF PARLIAMENT - BUSINESS TO BE TRANSACTED

The Winter Session 2017 of Parliament which began on December 15, 2017, will have 14 sittings until January 5, 2018. In this session, 25 Bills have been listed for consideration and passing. These included the Financial Resolution and Deposit Insurance Bill, 2017, the Right of Children to Free and Compulsory Education (Second Amendment) Bill, 2017, the Prevention of Corruption (Amendment) Bill, 2013 and the Motor Vehicles (Amendment) Bill, 2016. Further, 12 Bills have been introduced in the Lok Sabha so far.

### 2. CONDONATION OF DELAY SCHEME 2018

The Central Government has introduced a Scheme namely "Condonation of Delay Scheme 2018" (CODS-2018), which has come into force with effect from 01.01.2018 and shall remain in force up to 31.03.2018.

The Scheme is applicable to all defaulting companies (other than the companies which have been stuck off/ whose names have been removed from the register of companies. A defaulting company is permitted to file its overdue documents which were due for filing till 30.06.2017.

As per the Scheme a "Defaulting company" means a company which has not filed its financial statements or annual returns as required under the Companies Act, 1956 or Companies Act, 2013, as the case may be, and the Rules made there under for a continuous period of three years.

Procedure to be followed for the purposes of the CODS 2018

In the case of defaulting companies whose names have not been removed from register of companies,-

- (1) The DINs of the concerned disqualified directors deactivated at present, shall be temporarily activated during the validity of the scheme to enable them to file the overdue documents.
- (2) The defaulting company shall file the overdue documents in the respective prescribed e-Forms paying the statutory filing fee and additional fee (Rs. 30000) payable as per section 403 of the Act read with

Companies (Registration Offices and fee) Rules, 2014 for filing these overdue documents.

- (3) The defaulting company after filing documents under this scheme, shall seek condonation of delay by filing form e-CODS attached to the scheme online on the MCA21 portal. The fee for filing application e-form CODS is Rs. 30000/- (Rs. Thirty Thousand only).
- (4) The DINs of the Directors associated with the defaulting companies that have not filed their overdue documents and the e-form CODS, and these are not taken on record in the MCA21 registry and are still found to be disqualified on the conclusion of the scheme shall be liable to be deactivated on expiry of the scheme period.
- (5) In the event of defaulting companies whose names have been removed from the register of companies under section 248 of the Act and which have filed applications for revival under section 252 of the Act up to the date of this scheme, the Director's DIN shall be re-activated only NCLT order of revival subject to the company having filing of all overdue documents.

### CODS 2018 not to apply for certain documents

This scheme shall not apply to the filing of documents other than the following overdue documents:

- (1) Form Number 208/MGT-7- Form for filing company having share capital.
  - (2) Form 21A/MGT-7- Particulars of Annual return Annual return for the company not having share capital.
  - (3) Form 23AC, 23ACA, 23AC-XBRL, 23ACA-XBRL, AOC-4, AOC-4(CFS), AOC (XBRL) and AOC-4(non-XBRL) - Forms for filing Balance Sheet/Financial Statement and profit and loss account.
  - (4) Form 66 – Form for submission of Compliance Certificate with the registrar.
  - (5) Form 238/ADT-1- Form for intimation for Appointment of Auditors.
- ### 3. THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) BILL, 2017

The Insolvency and Bankruptcy Code (Amendment) Bill, 2017 was passed by Lok Sabha. It amends the Insolvency and Bankruptcy Code, 2016 and replaces an Ordinance promulgated in November 2017. The Code provides a time-bound process for resolving insolvency



of companies and individuals. Insolvency is a situation where a company is unable to repay its outstanding debt.

The key features of the Bill 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 Bill amends this provision to define an applicant as a person who submits a resolution plan after receiving an invitation by the insolvency professional to do so.
- (b) Ineligibility to be a resolution applicant: The Bill inserts a provision prohibiting certain persons from submitting a resolution plan. These include:
  - (i) undischarged insolvents (individuals unable to repay their debt),
  - (ii) wilful defaulters,
  - (iii) a person whose account has been identified as a non-performing asset for more than a year and he has not repaid the amount before submitting a plan,
  - (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, management, or any related person).
- (c) Liquidation: The Bill prohibits the sale of the property of the defaulter to any such ineligible persons during liquidation.

#### 4. COMPANIES (AMENDMENT) ACT, 2017

The Companies (Amendment) Bill, 2017 was passed by Lok Sabha on Jul 27, 2017 and Rajya Sabha on Dec 19, 2017 and awaiting President's assent. The Bill amends the Companies Act, 2013 to change provisions related to structuring, disclosure and compliance requirements for companies.

"Companies (Amendment) Act, 2017 has received assent of the President and the same has been published in the Official Gazette on 3rd January, 2018."

The key features of the Bill as passed by Parliament include:

- (a) Independent Directors: Under the Act, independent directors of a company should not have monetary (pecuniary) relationship with the company. The Bill allows independent directors to have pecuniary interest up to 10% of their income.
- (b) Managerial remuneration: Under the Act, if managerial remuneration exceeds prescribed limits, approval of the central government and shareholders must be obtained. The Bill omits the requirement to obtain approval from the central government.

#### 5. GOODS AND SERVICES TAX (COMPENSATION TO STATES) AMENDMENT BILL, 2017

The Goods and Services Tax (Compensation to States) Amendment Bill, 2017 was passed by Lok Sabha. The Bill amends the Goods and Services Tax (Compensation to States) Act, 2017 and replaces an Ordinance promulgated in September 2017.

The 2017 Act allows the central government to notify the rate of the Goods and Services Tax (GST) Compensation Cess on items such as pan masala, coal, aerated drinks, and tobacco, subject to certain caps. The amount received by levying the GST Compensation Cess is used to compensate states for any loss in revenue following the implementation of GST.

#### 6. THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) BILL, 2017 - TO MAKE INSTANT TRIPLE TALAQ PUNISHABLE

The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was passed by Lok Sabha on Dec 28, 2017 and pending.

The Bill makes all declaration of talaq-e-biddat (talaq), including in written or electronic form, to be void (i.e. not enforceable in law) and illegal. Talaq-e-biddat refers to the practice where pronouncement of the word 'talaq' thrice in one sitting by a Muslim man to his wife results in an instant and irrevocable divorce.

On August 22, 2017, the Supreme Court had set aside the practice of talaq-e-biddat by declaring it invalid. The Bill seeks to give effect to the judgment of the Supreme Court.

The key features of the Bill are as follows:

- (a) Offence and penalty: The Bill makes declaration of talaq a cognizable and non-bailable offence. (A cognizable offence is one for which a police officer may arrest an accused person without warrant.) A husband declaring talaq can be imprisoned for up to three years along with a fine.
- (b) Allowance: A Muslim woman against whom talaq has been declared, is entitled to seek subsistence allowance from her husband for herself and for her dependent children. The amount of the allowance will be decided by a First Class Magistrate.
- (c) Custody of minor children: A Muslim woman against whom such talaq has been declared, is entitled to seek custody of her minor children. The determination of custody will be made by the Magistrate.

#### 7. THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 2017

The Representation of the People (Amendment) Bill, 2017 was introduced in Lok Sabha on Dec 18, 2017. The Bill amends the Representation of People Act, 1950 and the Representation of People Act, 1951 to allow NRIs to vote during elections through a proxy.

The key features of the Bill include:

- (a) Voting by proxy: The 1950 Act permits the registration of persons in electoral rolls who are considered ordinarily resident in a constituency. These persons include:





- (i) persons holding a service qualification (such as members of armed forces or central government employees posted outside India); and
- (ii) persons holding certain offices in India declared by the President in consultation with Election Commission. Under the Act, the wives of such persons are also deemed to be ordinarily residing in the constituency. The Bill replaces the term 'wife' with 'spouse'.

- (b) Gender-neutral provision: The 1951 Act permits an overseas voter to vote only in person. An overseas voter is a citizen of India who is absent from his place of ordinary residence in India. The Bill amends the 1951 Act to permit an overseas voter to cast their vote in person or by proxy, in the constituency where the poll is taken. The 1951 Act also provides for the wife of a person holding a service qualification to vote. The Bill replaces the term 'wife' with 'spouse'.

#### 8. THE SPECIFIC RELIEF (AMENDMENT) BILL, 2017

The Specific Relief (Amendment) Bill, 2017 was introduced in Lok Sabha on Dec 22, 2017. The Bill amends the Specific Relief Act, 1963.

The Specific Relief Act, 1963 provides for remedies to a party whose contract has not been performed:

- (i) the party may ask the court to require performance of the contract (known as specific performance); or
- (ii) it may seek monetary compensation.

The key features of the Bill include:

- (a) Specific performance: Under the Act, specific performance may be granted by the court at its discretion, in the following circumstances: (i) when monetary compensation is inadequate; or (ii) when monetary compensation cannot be easily ascertained. The Bill seeks to remove these conditions and permit specific performance by courts as a general rule.
- (b) Substituted performance: The Bill allows an aggrieved party (i.e. a party whose contract has not been performed by the other party) the option to arrange for performance of the contract by a third party or his own agency. The aggrieved party has to give a written notice to the non-performing party of at least 30 days before obtaining substituted performance.
- (c) Injunctions: Under the Act, courts can grant injunctions to aggrieved parties. The Act provides circumstances in which the injunction cannot be given, for example, to stop a party from filing a complaint in a criminal matter. The Bill seeks to prohibit courts from granting injunctions in certain infrastructure project contracts, if such an injunction would hinder or delay the completion of the project. The Bill provides a list of project categories under certain infrastructure sectors and their sub-sectors.
- (d) Special Courts: The Bill provides that certain civil courts

may be designated as Special Courts by the state government, in consultation with the Chief Justice of the respective High Court. These special courts will deal with cases related to infrastructure projects. Such cases must be disposed off within 12 months.

#### 9. THE REPEALING AND AMENDING BILLS PASSED IN PARLIAMENT

The two Bills viz., (i) Repealing and Amending Bill, 2017 and (ii) Repealing and Amending (Second) Bill, 2017 seeks to:

- (i) Repeal a total of 236 Acts. Of these, 101 are amendment Acts, where the changes made by these laws have already been incorporated into the relevant principal Acts. Further, 50 of the repealed laws were passed prior to 1947.
- (ii) Amend certain Acts to rectify drafting errors.

#### 10. THE INDIAN FOREST (AMENDMENT) BILL, 2017

The Indian Forest (Amendment) Bill, 2017 which was passed in Lok Sabha on December 20, 2017, seeks to replace the Indian Forest (Amendment) Ordinance, 2017 and Amends the Indian Forest Act, 1927. The Act consolidates laws relating to forests, transit of forest-produce, and the duty to be levied on them.

Key features of the Bill include:

- (a) Under the Act, the definition of tree includes palms, bamboos, stumps, brush-wood, and canes. The Bill amends this definition of tree to remove the word bamboos.
  - (b) Since bamboo is defined as a tree under the Act, its inter-state movement requires permit when in transit in other states. Consequent to the amendment, felling or transportation of bamboos grown in non-forest areas will not require such permits.
- #### 11. THE NATIONAL MEDICAL COMMISSION BILL, 2017
- The National Medical Commission Bill, 2017 was introduced in Lok Sabha on December 29, 2017. The Bill seeks to repeal the Indian Medical Council Act, 1956 and provide for a medical education system which ensures:
- (i) Availability of adequate and high quality medical professionals,
  - (ii) Adoption of the latest medical research by medical professionals,
  - (iii) Periodic assessment of medical institutions, and
  - (iv) An effective grievance redressal mechanism.

#### 12. THE DENTISTS (AMENDMENT) BILL, 2017

The Dentists (Amendment) Bill, 2017 was introduced in Lok Sabha on

Dec 18, 2017. The Bill amends the Dentists Act, 1948. The Act regulates the profession of dentistry and constitutes:



- (i) The Dental Council of India,
- (ii) State Dental Councils, and
- (iii) Joint State Dental Councils.

### 13. PERFORMANCE AUDIT REPORT - THE IMPLEMENTATION OF THE FOOD SAFETY AND STANDARDS ACT, 2006

The Comptroller and Auditor General of India (CAG) released an audit report on the 'Implementation of Food Safety and Standards Act, 2006'.

The audit on food safety was undertaken to assess the performance of the Ministry of Health and Family Welfare, FSSAI, and the food authorities (responsible for the enforcement of the rules and regulations notified by FSSAI) in ten states.

The key findings and recommendations of the CAG are as follows:

- (a) Regulatory and administrative framework: The CAG noted that even after more than a decade of the enactment of the Act, the Ministry and FSSAI are yet to frame regulations governing various procedures and mechanisms as stated in the Act. Further, the FSSAI has been unable to identify areas for which standards are yet to be formulated or revised. In light of this, the CAG recommended that the FSSAI must expedite the notification of regulations on all the areas that have been specified in the Act. Further, it must frame standard operating procedures on the formulation of standards.
- (b) Licensing and enforcement: Under the Act, no person can commence or carry on any food business without obtaining a license. The CAG noted that licenses were issued on the basis of incomplete documents in more than 50% of cases checked during the audit. It recommended that FSSAI ensure all licenses issued under the earlier system of product approvals are reviewed, and licenses cancelled and reissued as required under the present procedure of product approvals.
- (c) Status of food laboratories: The CAG observed low quality of the food laboratories. It found that 65 out of the 72 state food laboratories do not possess National Accreditation Board for Testing and Calibration Laboratories accreditation. Further, the FSSAI does not maintain data on whether all the notified food laboratories have qualified food analysts. Food analysts are required to undertake analysis of food samples. Further, the shortage of functional food testing equipment in state food laboratories resulted in deficient testing of food samples.

### 14. INDIAN INSTITUTES OF MANAGEMENT BILL, 2017

The Indian Institutes of Management (IIM) Bill, 2017 was passed by Parliament on

Dec 19, 2017. The Bill seeks to declare the IIMs as institutions of national importance. IIMs provide post-graduate, doctoral, postdoctoral and research education in the field of management and allied areas of knowledge.

The key features of the Bill include:

- (a) Power to grant degrees: Under the Bill, IIMs will have the power to grant degrees, diplomas and other academic distinctions or titles. Currently, IIMs can only grant diplomas and fellowships.
- (b) Board of Governors: The Board of Governors will be the principal executive body of each institute. The Board will appoint its own Chairman. Other than a nominee each from the central and state governments, the 17 other board members will also be nominated by the Board.
- (c) Appointment of the Director: The Director of each IIM will be recommended by the search-cum-selection Committee to be constituted by the Board of Governors. If the Board is not satisfied with the recommendation of this Committee, it may ask for fresh recommendations for the post of the Director.
- (d) Academic Council: The Academic Council will be the principal academic body of each institute. Its functions will include: (i) specification of the content of the academic programmes and the criteria for admission to courses, (ii) specification of the academic calendar, and (iii) recommendations for the grant of degrees, diplomas and other academic distinctions.

### 15. THE NATIONAL COUNCIL FOR TEACHER EDUCATION (AMENDMENT) BILL, 2017

The National Council for Teacher Education (Amendment) Bill, 2017 was introduced in Lok Sabha on Dec 18, 2017. The Bill amends the National Council for Teacher Education Act, 1993. The Act establishes the National Council for Teacher Education (NCTE). The NCTE plans and co-ordinates the development of the teacher education system throughout the country. It also ensures the maintenance of norms and standards in the teacher education system.

... to be continued in next edition

# CMA UPDATE

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## GENERAL

- Linking AADHAR with PAN: As per a Press release dated 8thDec 2017 of the Ministry of Finance the due date for linking AADHAAR with PAN has been extended to 31stMarch 2018.

## GST

- E-way bill: The 24th GST Council Meeting held today through video conferencing decides that Inter-State e-way Bill to be made compulsory from 1st of February 2018; The System to be ready by 16th of January 2018; The Uniform System of e-way Bill for Inter-State as well as Intra-State movement will be implemented across the country by 1st June 2018.

## LABOUR

- Online filing of monthly Return under EPF: EPFO has clarified of the monthly Returns by Exempted establishments and specified time line and indicated that the Part E of the Return should contain details of contribution, payment details and investment details of the relevant month only and for details refer to Circular dated 19thDec 2017 issued by the EPFO in [www.epfindia.gov.in](http://www.epfindia.gov.in)

## INCOMETAX

- Government Subsidy: Subsidy given by the government to accelerate industrial development and generation of employment is capital in nature as decided by SC in the case of Commissioner of Income Tax Vs M/s. Chaphalkar Brothers Pune (Supreme Court of India) Appeal Number: Civil Appeal Nos. 6513-6514 of 2012.
- Depreciation: Depreciation on assets allowable to trust despite treatment of same as income application vide decision of the Supreme Court in the case of Commissioner of Income Tax Vs Rajasthan and Gujarat Charitable Foundation Poona (Supreme

Court of India) Appeal Number: Civil Appeal No. 7186 of 2014

## RESERVE BANK OF INDIA

- MDR charges: The Union Cabinet chaired by Prime Minister Shri Narendra Modi has approved that the Merchant Discount Rate (MDR) applicable on all debit card/BHIM UPI/ Aadhaar enabled Payment System (AePS) transactions up to and including a value of Rs. 2000 will be borne by the Government for a period of two years with effect from 1st January 2018 by reimbursing the same to the banks vide PIB dated 15th Dec,2017.

## CENTRAL EXCISE RULES & ACT

- Excise Duty paid in advance: Supreme Court held that Excise Duty paid as Advance and shown in PLA is an allowable deduction vide decision given in the case of CIT Vs M/s Modipon Ltd. (Supreme Court of India) Appeal Number: Civil Appeal No. 19763 of 2017.

## FEMA/DGFT

- Foreign Trade: DGFT has notified revised handbook of procedures of Foreign Trade Policy for the years 2015-2020 and the same are effective from 5thDec, 2017 and for details refer to [www.dgft.gov.in](http://www.dgft.gov.in)

## CUSTOMS RULES & ACT

- Sale of goods at Duty Free shops: Sale of goods and display of prices at Duty free shops to be in Indian Rupee vide CBEC Circular No.50/2017-Customs dated 18thDec 2017.

## COMPANIES ACT

- Companies Amendment Bill passed by the Rajya Sabha: Companies Amendment Bill 2017 was passed by Rajya Sabha on 19.12.2017 in its winter session while the bill was passed by Lok Sabha on 27.07.2017 in its monsoon session. This Bill aims to provide for more than 92 amendments in the Companies Act, 2013 which includes Amendment of Existing Sections, Insertion of New Sections etc., and for details refer to [www.mca.gov.in](http://www.mca.gov.in) One time opportunity to disqualified Director: Considering the various request and representation made by the various stakeholders, MCA has issued General Circular No.16/2017, Condonation of Delay Scheme, 2018 (COD Scheme), with a view to giving an opportunity for the non-compliant, defaulting companies to rectify the default, in exercise of its powers conferred under sections 403, 459 and 460 of the Companies Act, 2013.

*continuation of last month edition*

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



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1. The present appeal raises questions as to the triggering of the Insolvency and Bankruptcy Code, 2016 when it comes to operational debts owed to operational creditors. The appellant was engaged by Star TV for conducting tele-voting for the “Nach Baliye” program on Star TV. The appellant in turn subcontracted the work to the respondent and issued purchase orders between October and December, 2013 in favour of the respondent. In the “Nach Baliye” program, the successful dancer was to be selected on various bases, including viewers’ votes. For this purpose, the respondent was to provide toll free telephone numbers across India, through which the viewers of the program could cast their votes in favour of one or more participants. For this purpose, a software was customized by the respondent, who then coordinated the results and provided them to the appellant. Since the respondent obtained toll free numbers from telephone operators in terms of the purchase orders, the appellant was liable to make payment of rentals for the toll free numbers, as well as primary rate interface rental to the telecom operators. The respondent provided the requisite services and raised monthly invoices between December, 2013 and November, 2014 – the invoices were payable within 30 days from the date on which they were received. The respondent followed up with the appellant for payment of pending invoices through e-mails sent between April and October, 2014. It is also important to note that a non-disclosure agreement (hereinafter referred to as the NDA) was executed between the parties on 26th December, 2014 with effect from 1st November, 2013.

2. More than a month after execution of the aforesaid agreement, the appellant, on 30th January, 2015, wrote to the respondent that they were withholding payments against invoices raised by the respondent, as the respondent had disclosed on their webpage that they had worked for the “Nach Baliye” program run by Star TV, and had thus breached the NDA. The correspondence between the parties finally culminated in a notice dated 12th December, 2016 sent under Section 271 of the Companies Act, 2013. Presumably because winding up on the ground of being unable to pay one’s debts was no longer a

ground to wind up a company under the said Act, a demand notice dated 23rd December, 2016 was sent for a total of Rs.20,08,202.55 under Section 8 of the new Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code). By an e-mail dated 27th December, 2016, the appellant responded to the aforesaid notice stating that there exists serious and bona fide disputes between the parties, that the notice issued was a pressure tactic, and that nothing was payable inasmuch as the respondent had been told way back on 30th January, 2015 that no amount will be paid to the respondent since it had breached the NDA.

3. An application was then filed on 30th December, 2016 before the National Company Law Tribunal under Sections 8 and 9 of the new Code stating that an operational debt of Rs.20,08,202.55 was owed to the respondent.

4. On 19th January, 2017, the respondent was orally intimated to remove a defect in the application, in that it did not contain the appellant’s notice of dispute. This was rectified by an affidavit in compliance dated 24th January, 2017, by which various other documents were also supplied by the respondent to the Tribunal. On 27th January, 2017, the Tribunal dismissed the aforesaid application in the following terms: “On perusal of this notice dated 27.12.2016 disputing the debt allegedly owed to the petitioner, this Bench, looking at the Corporate Debtor disputing the claim raised by the Petitioner in this CP, hereby holds that the default payment being disputed by the Corporate Debtor, for the petitioner has admitted that the notice of dispute dated 27th December 2016 has been received by the operational creditor, the claim made by the Petitioner is hit by Section (9)(5)(ii)(d) of The Insolvency and Bankruptcy Code, hence this Petition is hereby rejected.”

5. An appeal was then filed before the National Company Law Appellate Tribunal which was decided on 24th May, 2017. This appeal was allowed in the following terms: “39. In the present case the adjudicating authority has acted mechanically and rejected the application under sub-section (5)(ii)(d) of Section 9 without examining and discussing the aforesaid issue. If the adjudicating authority would have noticed the provisions as discussed above and what constitutes ‘dispute’ in relation to services provided by operational creditors then it would have come to a conclusion that condition of demand notice under sub-section (2) of Section 8 has not been

fulfilled by the corporate debtor and the defence claiming dispute was not only vague, got up and motivated to evade the liability. 40. For the reasons aforesaid we set aside the impugned order dated 27.1.2017 passed by adjudicating authority in CP No.01/I &BP/NCLT/MAH/2017 and remit the case to adjudicating authority for consideration of the application of the appellant for admission if the application is otherwise complete. 41. The appeal is allowed with the aforesaid observations. However, in the facts and circumstances there shall be no order as to cost.”

6. Shri Mohta, learned counsel on behalf of the appellant, raised various contentions before us. According to learned counsel, the application should have been dismissed on the ground that the operational creditor did not furnish a copy of the certificate from a financial institution, viz. IDBI in the present case, that maintained accounts of the operational creditor, which confirmed that there is no payment of any unpaid operational debt by the corporate debtor under Section 9(3)(c) of the Code. This being so, the application ought to have been dismissed at the very threshold. Apart from this, the learned counsel took us through various committee reports and the provisions of the Code and argued that under Section 8 of the Code, the moment a corporate debtor, within 10 days of the receipt of a demand notice or copy of invoice, brings to the notice of the operational creditor the existence of a dispute between the parties, the Tribunal is obliged to dismiss the application. According to him, under Section (8)(2)(a), the expression “existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed ...” must be read as existence of a dispute “or” record of the pendency of the suit or arbitration proceedings filed, i.e. disjunctively. According to the learned counsel, the definition of “dispute” under Section 5(6) of the Code is an inclusive one and the original draft bill not only had the word “means” instead of the word “includes”, but also the word “bona fide” before the words “suit or arbitral proceedings”, which is missing in the present Code. Therefore, learned counsel argued that the moment there is existence of a dispute, meaning thereby that there is a real dispute to be tried, and not a sham, frivolous or vexatious dispute, the Tribunal is bound to dismiss the application. Learned counsel went on to argue that there is a fundamental difference between applications filed by financial creditors and operational creditors. A financial creditor’s application is dealt with under Section 7 of

the Code, in which the adjudicating authority has to ascertain the existence of a default on the basis of the records of an information utility or other evidence furnished by the financial creditor. In contrast to this scheme, all that a corporate debtor needs to do is to file a reply within a period of 10 days of the receipt of demand notice or copy of invoice from an operational creditor, showing the existence of a dispute, which then does not need to be “ascertained” by the adjudicating authority. He was at pains to point out that the application itself must contain all the documents that are required by the statute and that the timelines indicated in the statute are mandatory. For this purpose, he referred us to Sections 61, 62 and 64 in addition to Sections 7 to 9 of the Code. Finally, on facts, according to learned counsel, the Tribunal was wholly incorrect in remanding the matter on both counts – first, to find out whether the application is otherwise complete and, second, because the Tribunal found that the dispute in the present case was vague, got up and motivated to evade the liability, which, according to learned counsel, was a perverse conclusion reached on the facts of this case.

7. Shri Jawaharlal, learned counsel appearing on behalf of the respondent, has argued in reply that the only notice given to rectify the defects by the Tribunal was an oral notice of 19th January, 2017 and that too only to supply the notice of dispute by the appellant. This was done within time and the Tribunal, therefore, dismissed the application only on non-fulfillment of the conditions laid down in Section 9. No plea was ever taken before the Tribunal that the IDBI certificate was not furnished. This plea was taken for the first time only in appeal, and since the Tribunal did not think it fit to dismiss the application on a technical ground, this ground does not avail the appellants. The counsel then submitted that the expression “dispute” under Section 5(6) covers only three things, namely, existence of the amount of debt, quality of goods or services or breach of a representation or warranty and since what was sought to be brought as a defense was that the NDA was breached, it would not come within the definition of “dispute” under Section 5(6). He further went on to state that, at best, the breach of the NDA is a claim for unliquidated damages which does not become crystallized until legal proceedings are filed, and none have been filed so far. Therefore, there is no real dispute on the facts of the present case and the Tribunal was correct in its finding that the dispute was a sham one.

8. Before going into the contentions of fact and law argued by both counsel, it is a little important to trace the background of this path-breaking legislation viz. the Insolvency and Bankruptcy Code, 2016. The starting point is a Resolution of the UN General Assembly, Resolution No.59/40, passed on 2nd December, 2004, by which it was stated: "Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law The General Assembly, Recognizing the importance to all countries of strong, effective and efficient insolvency regimes as a means of encouraging economic development and investment, Noting the growing realization that reorganization regimes are critical to corporate and economic recovery, the development of entrepreneurial activity, the preservation of employment and the availability of finance in the capital market, Noting also the importance of social policy issues to the design of an insolvency regime, Noting with satisfaction the completion and adoption of the Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law by the Commission at its thirty-seventh session, on 25 June 2004, Believing that the Legislative Guide, which includes the text of the Model Law on Cross-Border Insolvency and Guide to Enactment recommended by the General Assembly in its resolution 52/158 of 15 December 1997, contributes significantly to the establishment of a harmonized legal framework for insolvency and will be useful both to States that do not have an effective and efficient insolvency regime and to States that are undertaking a process of review and modernization of their insolvency regimes, Recognizing the need for cooperation and coordination between international organizations active in the field of insolvency law reform to ensure consistency and alignment of that work and to facilitate the development of international standards, Noting that the preparation of the Legislative Guide was the subject of due deliberations and extensive consultations with Governments and international intergovernmental and nongovernmental organizations active in the field of insolvency law reform,

1. Expresses its appreciation to the United Nations Commission on International Trade Law for the completion and adoption of its Legislative Guide on Insolvency Law;

2. Requests the Secretary-General to publish the Legislative Guide and to make all efforts to ensure that it becomes generally known and available;

3. Recommends that all States give due consideration to the Legislative Guide when assessing the economic efficiency of their insolvency regimes and when revising or adopting legislation relevant to insolvency;

4. Recommends also that all States continue to consider implementation of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law."

9. The purpose of the Legislative Guide for various nations was stated as follows: "The purpose of the Legislative Guide on Insolvency Law is to assist the establishment of an efficient and effective legal framework to address the financial difficulty of debtors. It is intended to be used as a reference by national authorities and legislative bodies when preparing new laws and regulations or reviewing the adequacy of existing laws and regulations. The advice provided in the Guide aims at achieving a balance between the need to address the debtor's financial difficulty as quickly and efficiently as possible and the interests of the various parties directly concerned with that financial difficulty, principally creditors and other parties with a stake in the debtor's business, as well as with public policy concerns. The Guide discusses issues central to the design of an effective and efficient insolvency law, which, despite numerous differences in policy and legislative treatment, are recognized in many legal systems. It focuses on insolvency proceedings commenced under the insolvency law and conducted in accordance with that law, with an emphasis on reorganization, against a debtor, whether a legal or natural person, that is engaged in economic activity. Issues specific to the insolvency of individuals not so engaged, such as consumers, are not addressed." In stating some of the key objectives of effective and efficient insolvency law, the Legislative Guide goes on to state: "When a debtor is unable to pay its debts and other liabilities as they become due, most legal systems provide a legal mechanism to address the collective satisfaction of the outstanding claims from assets (whether tangible or intangible) of the debtor. A range of interests needs to be accommodated by that legal mechanism: those of the parties affected by the proceedings including the debtor, the owners and management of the debtor, the creditors who may be secured to varying degrees (including tax agencies and other government creditors), employees, guarantors of debt and suppliers of goods and services, as well as the legal,

commercial and social institutions and practices that are relevant to the design of the insolvency law and required for its operation. Generally, the mechanism must strike a balance not only between the different interests of these stakeholders, but also between these interests and the relevant social, political and other policy considerations that have an impact on the economic and legal goals of insolvency proceedings.

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An insolvency law should be transparent and predictable. This will enable potential lenders and creditors to understand how insolvency proceedings operate and to assess the risk associated with their position as a creditor in the event of insolvency. This will promote stability in commercial relations and foster lending and investment at lower risk premiums. Transparency and predictability will also enable creditors to clarify priorities, prevent disputes by providing a backdrop against which relative rights and risks can be assessed and help define the limits of any discretion. Unpredictable application of the insolvency law has the potential to undermine not only the confidence of all participants in insolvency proceedings, but also their willingness to make credit and other investment decisions prior to insolvency. As far as possible, an insolvency law should clearly indicate all provisions of other laws that may affect the conduct of the insolvency proceedings (e.g. labour law; commercial and contract law; tax law; laws affecting foreign exchange, netting and set-off and debt for equity swaps; and even family and matrimonial law). An insolvency law should ensure that adequate information is available in respect of the debtor's situation, providing incentives to encourage the debtor to reveal its positions and, where appropriate, sanctions for failure to do so. The availability of this information will enable those responsible for administering and supervising insolvency proceedings (courts or administrative agencies, the insolvency representative) and creditors to assess the financial situation of the debtor and determine the most appropriate solution." While referring to the commencement of insolvency proceedings, the Legislative Guide states: "The standard to be met for commencement of insolvency proceedings is central to the design of an insolvency law. As the basis upon which insolvency proceedings can be commenced, this standard is instrumental to identifying the debtors that can be brought within the protective and disciplinary mechanisms of the insolvency law and

determining who may make an application for commencement, whether the debtor, creditors or other parties. As a general principle it is desirable that the commencement standard be transparent and certain, facilitating access to insolvency proceedings conveniently, cost-effectively and quickly to encourage financially distressed or insolvent businesses to voluntarily commence proceedings. It is also desirable that access be flexible in terms of the types of insolvency proceedings available (reorganization and liquidation), and the ease with which the proceedings most relevant to a particular debtor can be accessed, and that conversion between the different types of proceeding can be achieved. Restrictive access can deter both debtors and creditors from commencing proceedings, while the effects of delay can be harmful to the value of assets and the successful completion of insolvency proceedings, in particular in cases of reorganization. Ease of access needs to be balanced with proper and adequate safeguards to prevent improper use of proceedings. Examples of improper use may include application by a debtor that is not in financial difficulty in order to take advantage of the protections provided by the insolvency law, such as the automatic stay, or to avoid or delay payment to creditors and application by creditors who are competitors of the debtor, where the purpose of the application is to take advantage of insolvency proceedings to disrupt the debtor's business and thus gain a competitive edge."

10. On the fixation of time limits and denial of an application to commence proceedings, the Legislative Guide states: "Where a court is required to make a decision as to commencement, it is desirable that that decision be made in a timely manner to ensure both certainty and predictability of the decision-making and the efficient conduct of the proceedings without delay. This will be particularly important in the case of reorganization to avoid further diminution of the value of assets and to improve the chances of a successful reorganization. Some insolvency laws prescribe set time periods after the application within which the decision to commence must be made. These laws often distinguish between applications by debtors and by creditors, with applications by debtors tending to be determined more quickly. Any additional period for creditor applications is designed to allow prompt notice to be given to the debtor and provide the debtor with an opportunity to respond to the application. Although the approach of fixing time limits may serve the objectives of providing certainty and transparency for both the debtor and creditors, the achievement of

those objectives may need to be balanced against possible disadvantages. For example, a fixed time period may be insufficiently flexible to take account of the circumstances of the particular case. More generally, such time periods may be set without regard to the resources available to the body responsible for supervising insolvency proceedings or of the local priorities of that body (especially where insolvency is only one of the matters for which it has responsibility). It may also prove difficult to ensure that the decisionmaking body adheres to the established limit and to provide appropriate consequences where there is no compliance. The time period between application and the decision to commence proceedings should also reflect the type of proceeding applied for, the application procedure and the consequences of commencement in any particular regime. For example, the extent to which notification of parties in interest and information gathering must be completed prior to commencement will vary between regimes, requiring different periods of time. For these reasons, it is desirable that an insolvency law adopt a flexible approach that emphasizes the advantages of quick decision-making and provides guidance as to what is reasonable, but at the same time also recognizes local constraints and priorities.

(d) Denial of an application to commence proceedings

The preceding paragraphs refer to a number of instances where it will be desirable, in those cases where the court is required to make the commencement decision, for the court to have the power to deny the application for commencement, either because of questions of improper use of the insolvency law or for technical reasons relating to satisfaction of the commencement standard. The cases referred to include examples of both debtor and creditor applications. Principal among the grounds for denial of the application for technical reasons might be those cases where the debtor is found not to satisfy the commencement standard; where the debt is subject to a legitimate dispute or off-set in an amount equal to or greater than the amount of the debt; where the proceedings will serve no purpose because, for example, secured debt exceeds the value of assets; and where the debtor has insufficient assets to pay for the insolvency administration and the law makes no other provision for funding the administration of such estates. Examples of improper use might include those cases where the debtor uses an application for insolvency as a means of prevaricating and unjustifiably depriving creditors of prompt payment of debts or of obtaining relief from onerous obligations, such as labour contracts. In the case of a creditor application, it might include those cases where a creditor uses insolvency as an inappropriate

substitute for debt enforcement procedures (which may not be well developed); to attempt to force a viable business out of the market place; or to attempt to obtain preferential payments by coercing the debtor (where such preferential payments have been made and the debtor is insolvent, investigation would be a key function of insolvency proceedings). As noted above, where there is evidence of improper use of the insolvency proceedings by either the debtor or creditors, the insolvency law may provide, in addition to denial of the application, that sanctions can be imposed on the party improperly using the proceedings or that that party should pay costs and possibly damages to the other party for any harm caused. Remedies may also be available under non-insolvency law. Where an application is denied, any provisional measures of relief ordered by the court after the time of the application for commencement should terminate (see chap. II, para. 53).” (Emphasis supplied) Ultimately, recommendation 19 of the Legislative Guide reads as under: “Commencement on creditor application (paras.57 and 67) 19. The law generally should specify that, where a creditor makes the application for commencement: (a) Notice of the application promptly is given to the debtor;(b) The debtor be given the opportunity to respond to the application, by contesting the application, consenting to the application or, where the application seeks liquidation, requesting the commencement of reorganization proceedings; and (c) The court will promptly determine its jurisdiction and whether the debtor is eligible and the commencement standard has been met and, if so, commence insolvency proceedings.<sup>1</sup>”

11. The legislative history of legislation relating to indebtedness goes back to the year 1964 when the 24th Law Commission recommended amendments to the Provincial Insolvency Act of 1920. This was followed by the Tiwari Committee of 1981, which introduced the Sick Industrial Companies Act, 1985. Following economic liberalization in the 1990s, two Narsimham Committee reports led to the Recovery of Debts and Bankruptcy Act, 1993 and the SARFAESI Act, 2002. Meanwhile, the Goswami Committee Report, submitted in 1993, condemned the liquidation procedure prescribed by the Companies Act, 1956 as unworkable and being beset with delays at all levels – delaying tactics employed by the management, delays at the level of the Courts, delays in 1 A determination that the commencement standard has been met may involve consideration of whether the debt is subject to a legitimate dispute or offset in an amount equal to or greater than the amount of the debt. The existence of such a set-off may be a ground for dismissal of the application (see above, paras. 61-



63). making auction sales etc. This then led to the Eradi Committee Report of 1999, which proposed amendments to the Companies Act and proposed the repeal of SICA. This Committee echoed the findings of the Goswami Committee and recommended an overhaul of the liquidation procedure under the Companies Act.

12. It was for the first time, in 2001, that the L.N. Mitra Committee of the RBI proposed a comprehensive Bankruptcy Code. This was followed by the Irani Committee Report, also of the RBI in 2005, which noted that the liquidation procedure in India is costly, inordinately lengthy and results in almost complete erosion of asset value. The Committee also noted that the insolvency framework did not balance stakeholders' interests adequately. It proposed a number of changes including changes for increased protection of creditors' rights, maximization of asset value and better management of the company in liquidation. In 2008, the Raghuram Rajan Committee of the Planning Commission proposed improvement to the credit infrastructure in the country, and finally a Committee of Financial Sector Legislative Reforms in 2013 submitted a draft Indian Financial Code, which included a "resolution corporation" for resolving distressed financial firms.

13. All this then led to the Bankruptcy Law Reforms Committee, set up by the Department of Economic Affairs, Ministry of Finance, under the Chairmanship of Shri T.K. Viswanathan. This Committee submitted an interim report in February 2015 and a final report in November of the same year. It was, as a result of the deliberations of this Committee, that the present Insolvency and Bankruptcy Code of 2016 was finally born.

14. The interim report went into the existing law on indebtedness in some detail and discussed the tests laid down in *Madhusudan Gordhandas v. Madhu Woollen Industries Pvt. Ltd* (1972) 2 SCR 201, by which a petition presented under the Companies Act on the ground that the company is "unable to pay its debts" can only be dismissed if the debt is bona fide disputed, i.e. that the defense of the debtor is genuine, substantial and is likely to succeed on a point of law. The interim report also adverted to an amendment made in the Companies Act, 2003, by which the threshold requirement of Rs.500 was replaced by Rs.1 lakh.

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## VAT & CST

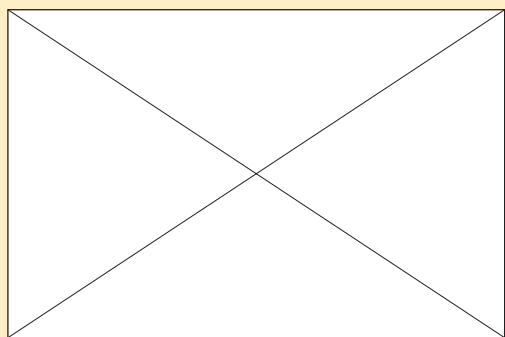
**J.V. RAO**

High Court Advocate &  
Tax Consultant

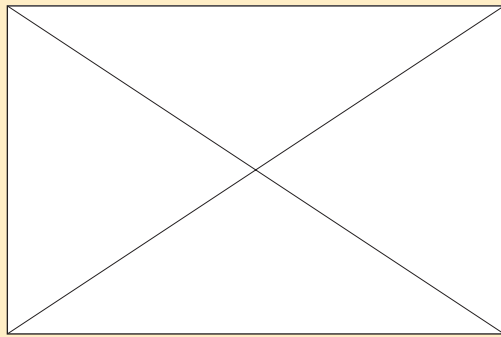
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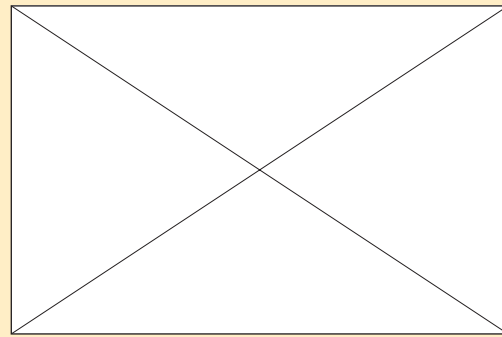
1. **Declared goods:-** Sales tax- Central sales tax- Groundnuts-Whether roasted groundnuts included-Circular of Commissioner in 1979 to effect that roasted groundnuts included holding field and dealer availing of exemption-Question referred to Law Department and circular issued in 2004 annulling, 1979 circular-effect 1979 circular operative and binding on Department till issue of 2004 circular -2004 circular not explanatory or declaratory of authoritative pronouncement of Law -Does not have retrospective effect-Central Sales Tax Act (74 of 1956), s. 14 (vi) (i) – **D.C. Food Products vs. Commissioner of Trade Tax.**  
**(2017) 106VST 420**
2. **Declaration forms: -** Central sales tax- Refusal to issue C and F forms on ground of outstanding arrears of value added tax -Whether power to refuse declaration forms under value added tax law applies to forms under Central sales tax law -Directions to authority to treat writ petition as representation and pass speaking orders after hearing dealer-Puducherry Value Added Tax Act (9 of 2007), s. 43- **Lakshmi Saw Mill vs. Commercial Tax Officer.**  
**(2017) 106VST 334**
3. **Reassessment: -** Value Added Tax-Notice based on inspection report-  
Submission of objections by dealer seeking time to reconcile old accounts – Order passed without granting time or giving opportunity of hearing-Not sustainable –Tamil Nadu Value Added Tax Act (32 of 2006), s. 27 – **Jeyaraj Automobile Agency vs. Commercial Tax Officer.**  
**(2017) 106VST 259**
4. **Exemption:-** Central sales tax-Sale in the course of export-Assessee submitting all documents except bills of lading and assessing authority rejecting assessee's claim of exemption-Assessee obtaining copies of bills of lading subsequently and filing application for rectification of earlier assessment order -Writ Petition-Assessment order set aside -Direction to assessee to produce copies of bills of lading within specified period and assessing authority to pass fresh assessment order-Central sales Tax Act (74 of 1956), s. 5(1) –Andhra Pradesh Value Added Tax Rules 2005, r.60 – **S.A. Rawther Spices Pvt. Ltd, vs. Assistant Commissioner (CT) LTU**  
**(2017) 106VST**



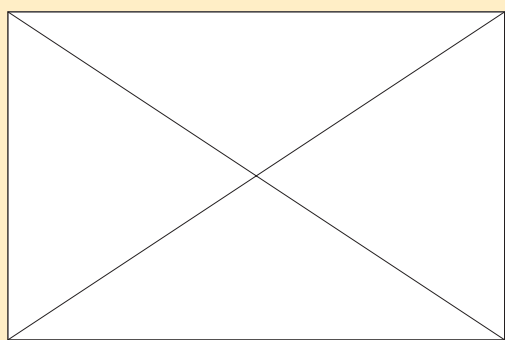
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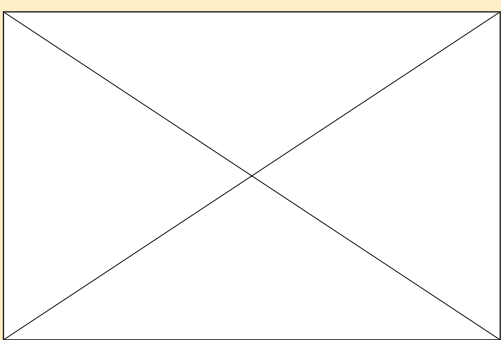
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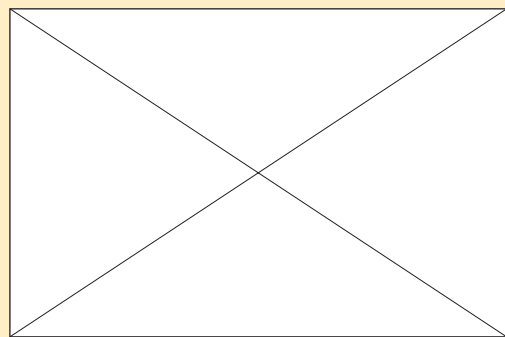
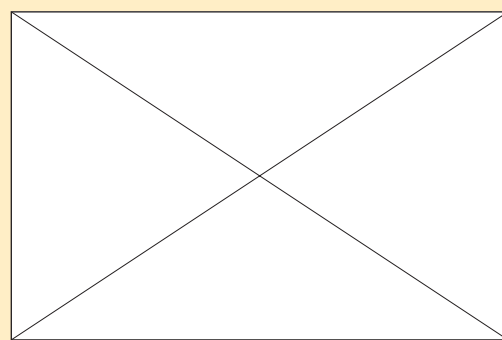
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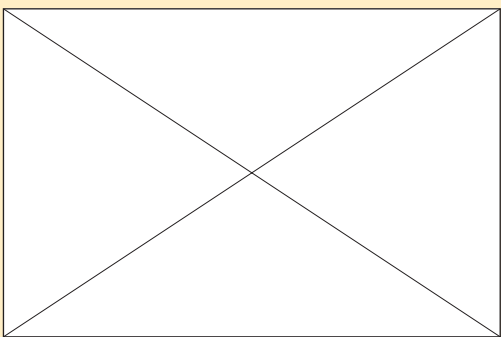
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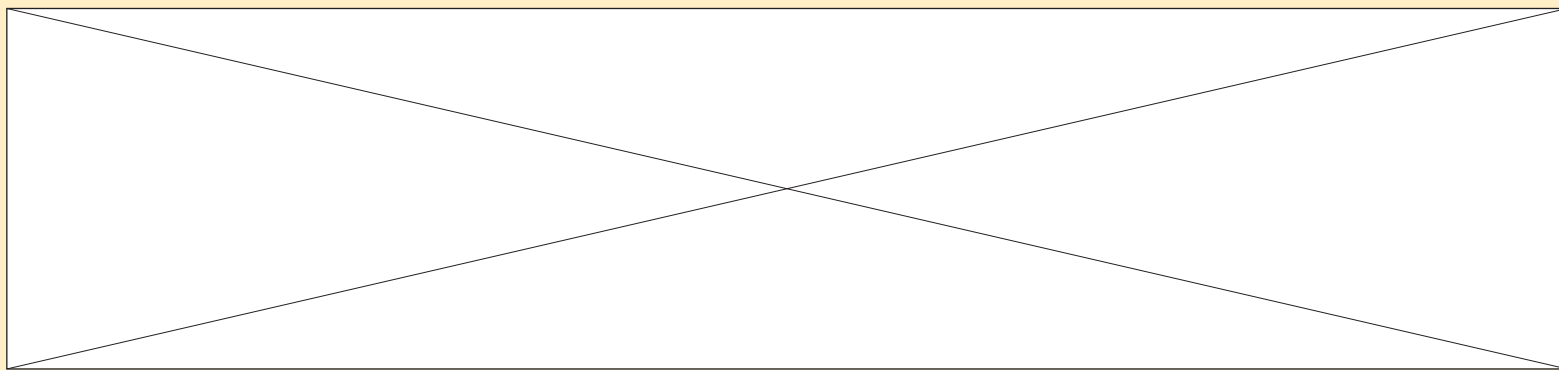
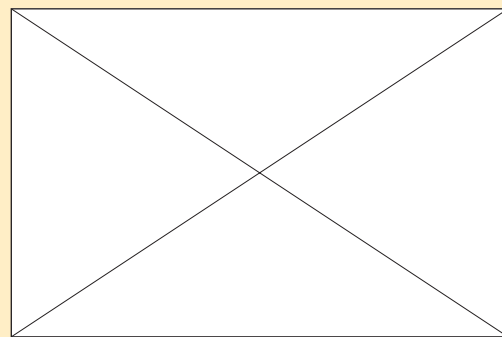
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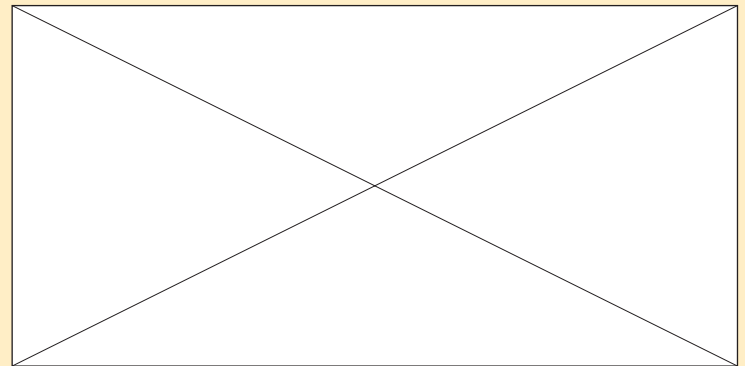
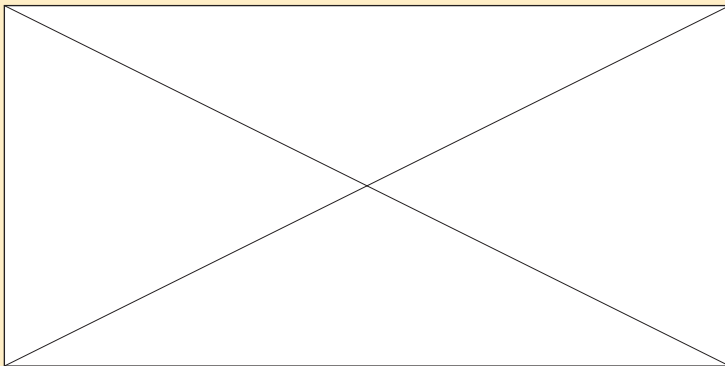
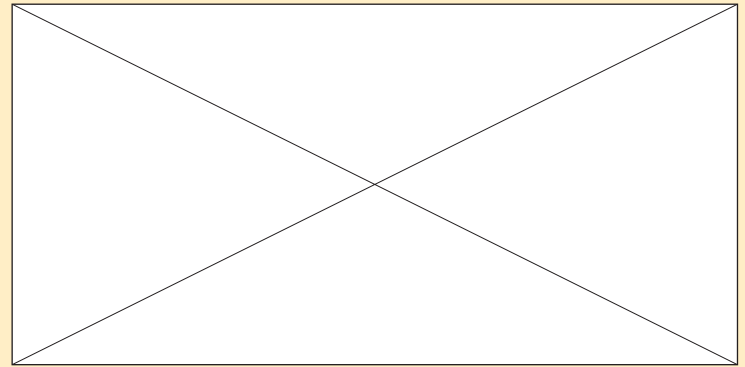
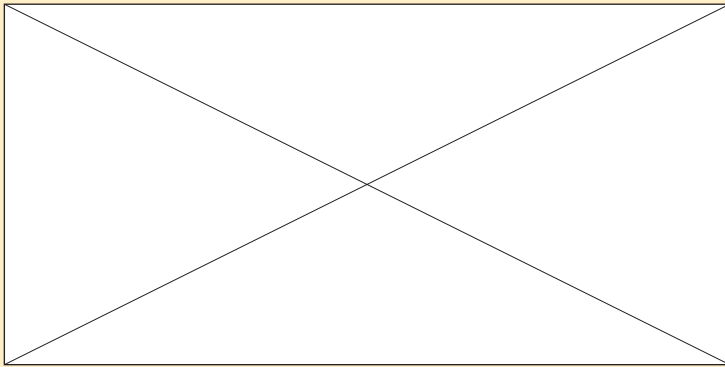
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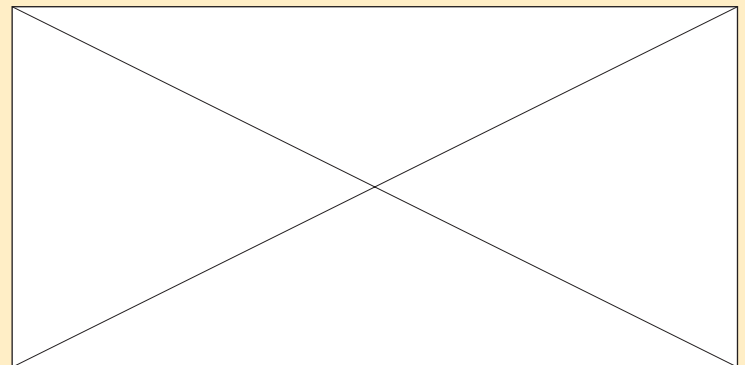
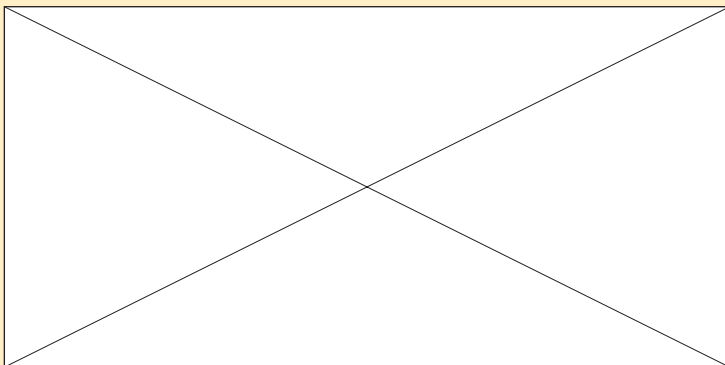
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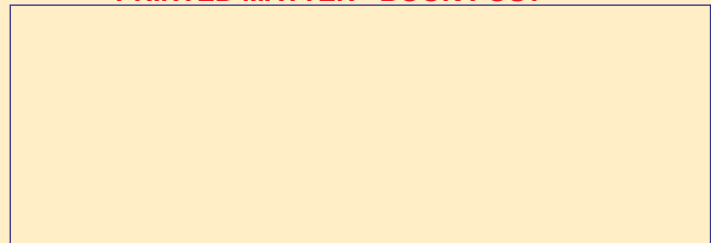
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