

**ricago**  
**GRC Bulletin**  
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# About

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## About

**ricago** is a dynamic next generation company focusing on Enterprise Governance, Risk Management and Compliance Management (GRC) solutions.

In a globalized business environment, organizations need to comply with complex and dynamic regulatory requirements as they grow and expand into different geographies and industry verticals. With the right mix of rich domain & technology expertise, and insights from both CFO & CIO worlds, Clonect helps organizations to leverage technology optimally and innovatively, addressing GRC and GST needs.



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# CORPORATE LAWS



## SEBI ISSUED CIRCULAR ON COMMON AND SIMPLIFIED NORMS FOR PROCESSING INVESTOR'S SERVICE REQUEST BY RTAS AND NORMS FOR FURNISHING PAN, KYC DETAILS AND NOMINATION

SEBI issued a circular dated November 03, 2021 addressing all registered Registrars to an Issue and Share Transfer Agents (RTA), All Listed Companies through Recognized Stock Exchanges, Recognized Stock Exchanges, All Recognized Depositories and Depository Participants through Depositories regarding Common and Simplified Norms for processing investor's service request by RTAs and norms For furnishing PAN, KYC details and Nomination

### KEY POINTS

**Standardized, simplified and common norms for processing investor service request**

**Minor mismatch in signature:** In the event of a minor mismatch between the securities holder's signature as recorded in the RTA's folio and the current signature, the RTA will notify the holder by Speed post of the minor mismatch in signature while processing the service request, giving the holder 15 days to raise any objections. The service request will be processed if there are no objections. If the mail is returned undelivered or there is an objection, the RTA must acquire signature verification from the banker before proceeding with the service request.

**Major mismatch in signature or Signature Card is not available:** In case of major mismatch in the signature of the holder as available in the folio of the RTA and the present signature or if the same is not available with the RTA, then the holder / claimant shall furnish original cancelled cheque and banker's attestation of the signature as per Form ISR- 2

**Mismatch in name:** For minor mismatch in name between any two set of documents presented by holder / claimant for any service request. The Depositories' existing norms for processing demat requests where there is a minor mismatch due to initials not being spelled out completely, or being placed after or before the surname, will remain in effect as long as the signature on the Demat Request Form (DRF) matches the signature card on the RTA.

**Furnishing of PAN:** PAN is required for all securities market transactions, according to a circular issued April 27, 2007, and it is also one of the documents required for confirmation of identification. As a result, it is underlined that all holders and claimants of physical securities must submit a PAN, and RTAs must

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check PAN data using the facility given by the Income Tax Department (ITD). In this context, the ITD has designated SEBI registered RTAs as suitable entities for verifying PANs using its 'Online PAN Bulk Verification' (PBV) tool.

**Proof of Address Documents:** If the address is not accessible in the folio or for processing the request for its modification, the RTAs must receive any one of the following papers from the holder / claimant:

- a) A valid passport, a registered lease or sale agreement for a residence, a valid driver's licence, and a bill for flat maintenance.
- b) Utility bills that are less than 3 months old, such as a telephone bill (only land line), an electric bill, or a gas bill.
- c) Identity card / document with address, issued by any of the following: Central/State Government and its Departments, Statutory / Regulatory Authorities, Public Sector Undertakings, Scheduled Commercial Banks, Public Financial Institutions
- d) For FII / sub account, Power of Attorney given by FII / sub -account to the Custodians (which are duly notarized and / or Apostilled or consularised) that gives the registered address should be taken.
- e) The proof of address in the name of the spouse.
- f) Client Master List (CML) of the Demat Account of the holder / Claimant, provided by the Depository Participant.

**Self-attestation shall replace Affidavits, Attestation / Notarization**

**Indemnity:** RTA will not demand indemnification for any service request unless it is expressly provided for in the Companies Act, 2013, or the Rules promulgated thereunder, or in SEBI Regulations or circulars promulgated thereunder.

**Form for availing investor services-** Form ISR-1

**Electronic interface for processing queries, complaints and service request**

Through the RTA's service portal, the RTA offers on-line processing of service requests through its portal, the holder may submit his or her requestor complaint through this portal, using the required login and password credentials. E-signatures must be included in the scanned versions of the papers provided.

**Mandatory furnishing of PAN, KYC details and Nomination by holders of physical securities:**

It shall be mandatory for all holders of physical securities in listed company to furnish the following documents / details to the RTA;

- a) PAN

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- b) Nomination (for all eligible folios)
- c) Contact details
- d) Bank account details
- e) Specimen signature

**Freezing of Folios without PAN, KYC details and No:** The RTA will freeze the folios if any of the stated documents or facts are not available on or after April 1, 2023. Upon receipt of all of the aforementioned papers / information at paragraph 4 above or dematerialization of all securities in such folios, the RTA will return the frozen folios.

### **Compulsory linking of PAN and Aadhaar by all holders of physical securities in listed companies**

from March 31, 2022 or any other date as may be specified by the CBDT, RTAs shall c)accept only valid PANs and d)also verify that the PAN in the existing folios are valid; i.e. whether it is linked to the Aadhaar Number Of the holder. In this regard, the RTAs may use of the PBV facility from the service providers of ITD

### **Intimation to securities holders**

Listed businesses, RTAs, and stock exchanges must post on their respective websites the necessity for holders of physical securities of all listed firms to provide valid PAN, KYC data, and Nomination. Listed businesses must additionally notify their shares holders immediately about incomplete folios, as per the aforementioned obligation.

This circular shall come into effect from January 01, 2022 and its provisions shall supersede provisions of previous circulars of SEBI in this regard

#Source: [Click here to read more](#)

# CORPORATE LAWS



## APPOINTMENT OF INTERNAL OMBUDSMAN BY NON-BANKING FINANCIAL COMPANIES

On 15th November the RBI issued a notified addressed to the Chairman/Managing Director & CEO of NBFCs-D with 10 or more branches, and NBFCs-ND with asset size of Rs 5,000 crore and above regarding the appointment of Internal Ombudsman by Non-Banking Financial Companies.

### Key points of the notification:

Deposit-taking NBFCs (NBFCs-D) with 10 or more branches and Non-Deposit taking NBFCs (NBFCs-ND) with asset size of Rs.5,000 crore and above and having public customer interface would be required to appoint the IO within six months

The following types of NBFCs will be excluded from the applicability of this direction:

1. Stand-alone Primary Dealer;
2. Non-Banking Financial Company - Infrastructure Finance Company (NBFC-IFC);
3. Core Investment Company (CIC);
4. Infrastructure Debt Fund - Non-Banking Financial Company (IDF-NBFC);
5. Non-Banking Financial Company – Account Aggregator (NBFC-AA);
6. NBFC under Corporate Insolvency Resolution Process;
7. NBFC in liquidation;
8. NBFC having only captive customers.

NBFC fulfilling the criteria post issue of this direction and NBFC commencing operations after the issue of this direction shall comply with it within six months of attaining the specified criteria, as may be applicable.

**Appointment of the IO:** The person to be appointed as IO shall be either a retired or a serving officer, not below the rank of Deputy General Manager or equivalent in any financial sector regulatory body/any other NBFC/bank. The NBFC may appoint more than one IO depending on the number of complaints received/branch network. In such a case, the NBFC shall define the jurisdiction of each IO. The Principal Nodal Officer/Nodal Officer, liaising with the offices of RBI Ombudsman, or any other official of the NBFC, shall not act as the IO or vice versa.

**Tenure of the IO:** The tenure of the IO shall be for a fixed term of not less than three years, but not exceeding five years.

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**Role and responsibilities of the IO:** The IO shall deal only with the complaints that have already been examined by the NBFC but have been partly or wholly rejected by the NBFC. In other words, the IO shall not handle complaints received directly from the customers or members of the public.

The complaints that are outside the purview of this direction shall be immediately referred back to the NBFC by the IO.

The IO shall examine the complaints based on records available with the NBFC and may seek additional information from the complainant through the NBFC. The NBFC shall furnish all records/documents sought by the IO to enable expeditious redress/resolution of customer grievances.

The IO may hold meetings with the concerned functionaries/departments of the NBFC and seek any record/document available with the NBFC that is necessary for examining the complaint/decision.

The IO shall periodically analyse the pattern of all complaints received against the NBFC, such as product-wise, category-wise, consumer group-wise, geographical location-wise, etc. and provide inputs to the NBFC for policy intervention, if any.

The IO shall not represent the NBFC in legal cases before any court or fora or authority.

The IO shall report to the Managing Director/Chief Executive Officer of the NBFC administratively, and to the Board functionally.

**Procedural guidelines for NBFCs regarding complaints referred to the IO by the NBFC:** The NBFC shall formulate a Standard Operating Procedure approved by its Board and establish a system of auto-escalation of all complaints that are partly or wholly rejected by the NBFC's internal grievance redress mechanism to the IO for a final decision.

The NBFC shall internally escalate complaints to the IO within a period of three weeks from the date of receipt of the complaint. The IO and the NBFC shall ensure that the final decision is communicated to the complainant within 30 days from the date of receipt of the complaint by the NBFC.

In case the NBFC has a complaint management software, it shall provide to the IO *read-only* access to the system and enable uploading of the decision of the IO.

The decision of the IO shall be binding on the NBFC, except in cases where the NBFC has obtained approval for disagreeing with the IO's decision. If the IO upholds the NBFC's decision to reject/partially reject the complaint, the IO's response to the customer shall specifically say that the complaint has been



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considered by the IO and that the NBFC's decision has been sustained for the reasons given in the reply.

The NBFC can dispute with the IO's judgment if the IO overrules the NBFC's decision to reject/partially reject the complaint. In such cases, the NBFC's response to the complainant must explicitly state that the complaint was investigated by the IO, and that the IO overruled the NBFC's decision in favour of the complainant; however, the NBFC may, with the approval of the Managing Director/Chief Executive Officer, reverse the IO's decision.

The NBFC will use the IO's analysis of complaints in their training programs/conferences to enhance awareness among frontline employees regarding, among other things, the pattern of complaints received by the NBFC, their fundamental causes, corrective actions, and expected frontline staff action. Where appropriate, the IO can be linked to such trainings.

The NBFC should evaluate the number of cases where substantive discrepancies were noticed between the IO's rulings and those issued by the RBI Ombudsman later when evaluating the IO's performance, in addition to the amount of pendency and other factors.

While notifying the IO's appointment in the organisation, the NBFC should communicate the guidelines/instructions regarding the duty of the IO to its employees (all branches and administrative offices).

The NBFC shall not make the IO's contact information public since the IO is not responsible for complaints received directly from consumers.

The IO's decision must be mentioned in the information provided by the NBFC to the RBI Ombudsman's office when responding to/furnishing papers to the RBI Ombudsman's office.

Reporting to RBI: The NBFC shall put in place a system of periodic reporting of information to Reserve Bank

**#Source:** [Click here to read more](#)

# TAX LAWS



## CBDT ISSUES GUIDELINES UNDER SUB-SECTION (4) OF SECTION 194-O, SUB-SECTION (3) OF SECTION 194Q AND SUBSECTION (I-I) OF SECTION 206C OF TILE INCOME-TAX ACT, 1961

The Department of Revenue Central Board of Direct Taxes through its circular dated 25th November, 2021 issued Guidelines under sub-section (4) of section 194-O, sub-section (3) of section 194Q and subsection (I-I) of section 206C of tile Income-tax Act, 1961.

Key takeaways from the circular:

### **E-auction services carried out through electronic portal:**

The provisions of section 194-O of the Act shall not apply if the following is satisfied:

- a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the price discovery only which is reported to the client.
- b) The price discovered through the e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counterparty.
- c) The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the auctioneer and price discovery only acts as the starting point for negotiation and conclusion of purchase/sale.
- d) The e-auctioneer is not responsible for facilitating the purchase and sale of goods for which e-auction was conducted on its electronic portal except to the extent of price discovery.
- e) Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the e-auctioneer does not have any information about the quantum and the schedule of payment which is decided mutually by the client and the counterparty.
- f) For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than section 194-O of the Act.

### **Adjustment of various state levies and taxes other than GST**

When tax is deducted at the time of crediting an amount to a seller's account and the component of VAT/Sales tax/Excise duty/CST, as the case may be, has been

# TAX LAWS



indicated separately in the invoice under the terms of the agreement or contract between the buyer and the seller, then the tax is to be deducted under section 194Q of the Act on the amount credited without including such VAT/Excise duty/Sal VAT/Excise duty/Sal VAT. If the tax is deducted on a payment basis, and the payment is made before the credit, the tax must be charged on the entire amount since it will be unable to link the payment to the VAT/Excise duty/Sales tax/CST component that will be invoiced later.

## **Applicability of section 194Q of the Act in cases where exemption has been provided under section 206C (1 A) of the Act**

Section 194Q of the Act's provisions do not apply to transactions for which a tax is receivable under section 206C. The tax is not necessary because of sub-section (IA) of section 206C of the Act [except sub-section ( I H) thereof.. Since by virtue of sub-section ( IA) of section 206C of the Act, the tax is not required to be collected for goods covered under sub-section ( I) of the said section, it is hereby clarified that in such cases, the provisions of section 194Q of the Act will apply and the buyer shall be liable to deduct tax under the said section if the conditions specified therein are fulfilled.

## **Applicability of the provisions of section 194Q in case of the department of Government not being a public sector undertaking or corporation.**

The question has been raised as to whether any government agency will be regarded a "seller" for the purposes of tax deduction under section 194Q of the Act. In this respect, it is expressly clarified that any department of the Central or State Government shall not be deemed a "seller" for the purposes of section 194Q, and no tax is to be paid by the buyer in circumstances where any department of the Central or State Government sells goods. Any other person, such as a Public sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity, shall be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.

**#Source:** [Click here to read more](#)

# TAX LAWS



## CBIC CLARIFIED ON CERTAIN REFUND RELATED ISSUES

Central Board of Indirect Taxes and Customs, GST Policy Wing has issued a circular dated 17th Nov, 2021 for Clarification on certain refund related issues.

Issues and clarification are as follows:

1. **Whether the provisions of sub- section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger?**

No, the provisions of sub-section (1) of section 54 of the CGST Act regarding time period, within which an application for refund can be filed, would not be applicable in cases of refund of excess balance in electronic cash ledger.

2. **Whether certification/ declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?**

No, furnishing of certification/ declaration under Rule 89(2)(l) or 89(2)(m) of the CGST Rules, 2017 for not passing the incidence of tax to any other person is not required in cases of refund of excess balance in electronic cash ledger as unjust enrichment clause is not applicable in such cases.

3. **Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51 /52 of the CGST Act can be refunded as excess balance in cash ledger?**

The amount deducted/collected as TDS/TCS by TDS/ TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to the electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. It is not mandatory for the registered person to utilise the TDS/TCS amount credited to his electronic cash ledger only for the purpose for discharging tax liability. The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers. Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as

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excess balance in electronic cash ledger in accordance with the proviso to sub-section (1) of section 54, read with sub-section (6) of section 49 of CGST Act.

4. **Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?**

Clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the Recipient. Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

#Source: [Click here for more details](#)

## OTHER LAWS



### TRAI NOTIFIED THE IMPLEMENTATION PLAN OF THE NEW REGULATORY FRAMEWORK 2020

The Telecom Regulatory of India has through its notification dated 10th November 2021 notified the Implementation plan of the New Regulatory Framework 2020.

The New Regulatory Framework 2020 was upheld by the high court in the matter of Film and television guild of India Ltd v. The Union of India & Another and accordingly broadcasters and Distribution platform owners are required to comply with the New Regulatory Framework 2020 and shall report to the authority as under:

- a. all the broadcasters shall report to the Authority, any change in name, nature, language, Maximum Retail Price (MRP) per month of channels, composition of bouquets and MRP of bouquets of channels as per the New Regulatory Framework 2020, by 31st December 2021 and simultaneously publish such information on their websites. The broadcasters who have already submitted their RIOs in compliance with the New Regulatory Framework may also revise their RIOs by 31 December 2021.
- b. all the Distribution Platform Operators (DPOs) shall report to the Authority, Distributor Retail Price (DRP) of pay channels, composition of bouquet of pay channels /free-to-air channels and DRP of bouquets of pay channels, as per the New Regulatory Framework 2020 by 31 January 2022, and simultaneously publish such information on their websites.

By 1 February 2022 to 31 March 2022, all television channel distributors must offer and obtain the option for subscribers to subscribe to new bouquets or channels in accordance with the provisions of the New Regulatory Framework 2020, and must ensure that services to subscribers are provided as per the bouquet or channels chosen by subscribers with effect from 1 April 2022.

#Source: [Click here for more details](#)

## OTHER LAWS



### MOEF NOTIFIES THE HAZARDOUS AND OTHER WASTES (MANAGEMENT AND TRANSBOUNDARY MOVEMENT) SECOND AMENDMENT RULES, 2021

The Ministry of Environment, Forest and Climate Change through its notification dated 12th November, 2021 introduced the Hazardous and Other Wastes (Management and Trans boundary Movement) Second Amendment Rules, 2021.

Key takeaways from the notification are

- In clause (3), for the words —“hazardous wastes”, the words —“hazardous and other wastes” shall be substituted.
- For clause (23), the following clause shall be substituted, namely: - 23. “other wastes” means wastes specified in Part B and Part D of SCHEDULE III for the purpose of import and export and include such indigenously produced wastes as may be notified from time to time“.
- In rule 9, for sub-rule (1), the following sub-rule shall be substituted, namely:-“The utilisation of Hazardous waste must only be used as a resource or after pre-processing for co processing or any other purpose, including within the generator's premises after obtaining authorization from the State Pollution Control Board in respect of wastes based on standard operating procedures. Earlier such permission was required in the matter of other wastes too.
- In rule 13, in sub-rule (2), for clause (c), the following clause shall be substituted, namely: “The importer who is a trader, importing waste on behalf of actual users or for use of the actual users authorised by State Pollution Control Board, shall apply in Form 7 for onetime authorisation and obtain one-time authorisation in Form 7A and copy of such authorisation shall be appended to Form 6”.
- Schedule III, VI and VIII has been amended

#Source: [Click here to read more](#)

# JUDICIAL INSIGHT



## JUDICIAL INSIGHT

### GOODS SUPPLIED AND STILL RETAINED BY THE 'OPERATIONAL CREDITOR' AMOUNTS TO NO DUES

This present Appeal has been filed against the judgment dated 24.02.2020 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, by which the Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) has been rejected. The Appellant is the 'Operational Creditor' who had given advance of Rs. 10 lakhs in two tranches had filed the Application. Demand Notice under Section 8 was given on 09.01.2019 which was not replied and subsequently, when petition was filed under Section 9, reply was filed on 30.07.2019. The Adjudicating Authority after considering the material on record came to the conclusion that no amount is due since certain payments were made and the amount of Rs. 4.19 lakhs which was for supplied goods was retained by the 'Operational Creditor' and has been adjusted. The Appellant contented that the Appellant had no right and title over the goods worth Rs. 4.19 lakhs.

The Respondent has not disputed that the advance amount of Rs.10 lakhs was received and certain amount was repaid. Admittedly, goods worth Rs. 4.19 lakhs were supplied and kept in the warehouse of the Appellant.

#### Held

The Appellate Adjudicating Authority held up the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench's judgment and said goods worth Rs. 4.19 lakhs were supplied and still retained by the 'Operational Creditor', hence, there are no dues that Adjudicating Authority has rightly come to the conclusion that the goods worth Rs. 4.19 lakhs were supplied and still retained by the 'Operational Creditor', hence, there are no dues.

***#Source: Comp. App. (AT) (Ins.) No. 941 of 2021, Adishakti Technology Pvt. Ltd. VS Amazon Info solution Pvt. Ltd., Dated 24/11/2021***



## JUDICIAL INSIGHT



### WAGES AS DEFINED IN SECTION 2(22) OF THE ESI ACT, WOULD INCLUDE CONVEYANCE ALLOWANCE

The present Special Leave Petition was filed against a judgment and order dated 8th October 2020 passed by the High Court of Judicature at Madras, dismissing the appeal filed by the Employees State Insurance Corporation, and affirming the order dated 31<sup>st</sup> July 2020 passed by the Employees State Insurance Court, Coimbatore allowing E.S.I.O.P filed by the Respondent Company under Section 5 of the Employee State Insurance Act, 1948. ESI Act is applicable to the factories and establishments of the Respondent Company, and the employees of the Respondent Company are required to be insured in the manner provided by the ESI Act.

#### Brief Background

The Respondent Company is liable to pay Employees' State Insurance Contribution in respect of its employees. Section 39 of the ESI Act. provided in Section 44 of the ESI Act requires the Respondent Company to maintain a register, containing particulars of its employees, and to submit Returns to the Petitioner Corporation, in the manner prescribed by the Regulations framed under the ESI Act. On or about January 23, 2015, officials of the Petitioner Corporation inspected the Respondent Company's records for the period December 2010 to December 2014 and discovered discrepancies in the wages, as well as the Respondent Company's subsequent short payment of Employees State Insurance contributions totaling Rs.21,52,829/-, of which Rs.9,48,517/- was for Conveyance Allowance paid to its employees. The Corporation issued an order on March 19, 2015, requiring the Respondent Company to pay its overdue contributions of Rs.21,52,829/-, plus interest, within 15 days of the date of the order, or the amount would be reclaimed.

The Respondent Company filed a counterclaim, claiming that the Corporation had incorrectly estimated the pay by include Conveyance Allowance, leave salary, and other items that did not qualify as wages under Section 2(22) of the ESI Act. Following that, on July 6, 2016, the Petitioner Corporation issued an amended order under Section 45A of the ESI Act, determining the differential contribution payable by the Respondent Company at Rs.19,38,300/-, as per the breakdown given in the said amended order, that is, Rs.9.89,783 for wage difference and Rs.9,48,517 for conveyance allowance. The Respondent Company paid the discrepancy in salaries in the amount of Rs.9,89,783/-. The Respondent Company filed E.S.L.O.P No.1 of 2016 in the Workers State Insurance Court in response to the Corporation's claim of Rs.9,48,517/- for the Conveyance Allowance provided

## JUDICIAL INSIGHT



by the Respondent Company to its employees. By a judgment and order dated 31<sup>st</sup> July, 2020, the Employees' State Insurance Court allowed the E.S.I.O.P No.1 of 2016, and set aside the claim of Rs.9,48,517/- in respect of Conveyance Allowance, paid by the Respondent Company to its employees.

Being aggrieved by the Judgment and order the Employees State Insurance Court, the Corporation filed an appeal therefrom in the High Court. The said. appeal has been dismissed by the judgment and order impugned in this Special Leave Petition,

The short question involved in this Special Leave Petition is whether 'wages, as defined in Section 2(22) of the ESI Act, would include Conveyance Allowance paid by the Respondent Company to its employees. A reading of Section 2(22) of the ESI Act, makes it amply clear that 'wages' means all remuneration paid or payable in cash to an employee, under a contract of employment, express or implied, as consideration for discharging his duties and obligations under such contract of employment, including any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months. The definition of 'wages', however, expressly excludes any contribution paid by the employer to any pension fund or provident fund or under the ESI Act, any travelling allowance or the value of any travelling concession, any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment or any gratuity payable on employee were not required to go to any other place in connection with his duties under his contract of employment, the employee may not have to incur any expenditure in connection with his employment. In such a case, Conveyance Allowance would be redundant and might be construed as part of allowance consisting wages. In this case, it is not the case of the Corporation that the employees concerned did not need to avail any conveyance expenditure to report for duty to their place of work, or otherwise in connection with their duties under their contracts of employment. Nor is there any such finding. We see no reason why Conveyance Allowance should not be excluded from the definition of wages.

The expression "Travelling Allowance" has not been defined in the ESI Act Under Section 2(24) of the ESI Act all words and expressions used, but not defined in the ESI Act shall have the meaning assigned to them under the Industrial Disputes Act, 1947. Travelling Allowance is also not defined in the ID Act. There is no provision in the ESI Act or in the ID Act, which restricts the scope and ambit of Travelling Allowance. In the absence of any definition or explanation of the expression

# JUDICIAL INSIGHT



"Travelling Allowance" In either of those Acts, the expression has to be construed as per its ordinary meaning in common parlance.

As per the Oxford Learner's Dictionary, 8th Edition, conveyance means the process of taking somebody from one place to another. Vehicle or other mode of transport is also formally referred to as conveyance. As per the same dictionary, the word "travel" means "to go from one place to another especially a long distance". That distance could also be a few kilometers. One might travel 10 kms to one's place of work. In many cities people may have to travel for hours to reach their place of work. Travel is an expression with a wide meaning to include long distance. It also covers short distances. If Section 2(22) was intended to exclude merely occasional long distance travel from one city to another from the concept of pay, the Act would have said so explicitly. The phrase "travel" is also often used. 'Commute' is a term that may be used interchangeably with the term 'commute.' "According to the dictionary, to travel frequently between one's place of work and one's home by bus, train, vehicle, or other means. "She commutes from Oxford to London every day," according to the dictionary. Another case in point is "If individuals are desperate for employment, they are willing to travel large distances. The Workers State Insurance Corporation Court was correct in ruling that Conveyance Allowance and Travelling Allowance were the same thing.

From the definition of wages in Section 2(22) of the ESI Act, it is amply clear that wages includes remunerative payments, but does not include compensatory payments. Travelling allowance including the value of travelling concession has expressly been excluded from the definition of wages, as also any payment made to an employee to reimburse or compensate for special expenses that an employee might incur by reason of the nature of his employment.

## **Held**

The court re enforced the judgment made in Whirlpool of India Limited v, ESI wherein it was held that production incentive falls within the definition of wages. In this case, there is no ambiguity. There is no such difference between Conveyance Allowance and Travelling Allowance to justify the stand of the Petitioner Corporation that Conveyance Allowance would not fall within the ambit of Travelling Allowance. Travelling Allowance includes Conveyance Allowance. The use of the expression "any travelling allowance in Section 2(22)(b) makes it clear that all kinds of travelling allowance are excluded from the definition of wages. The concurrent findings of the high court and the Employees state insurance court was right.

**#Source: Special Leave(C) No. 811/2021 Petition Employee state Insurance Corporation vs. M/s Texmo Industries, dated March 08,2021**

## Contact Us

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Head Quarters:

#75, 3rd Cross, 17th Main,  
2nd Block, Koramangala,  
Bengaluru - 560034

Ph: +91 8040912427

Email: [info@ricago.com](mailto:info@ricago.com)

Website: [www.ricago.com](http://www.ricago.com)

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