ricago

GRC Bulletin

April 2022

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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

RBI INTRODUCED REGULATORY FRAMEWORK FOR MICROFINANCE LOANS DIRECTIONS, 2022

The Reserve Bank of India (RBI) introduced Regulatory Framework for Microfinance Loans Directions on March 14, 2022. Allowing Microfinance Institutions (MFI) to fix interests rates on loans with riders that should not be usurious for the borrowers. These directions shall be called the Reserve Bank of India (Regulatory Framework for Microfinance Loans) Directions, 2022. It shall come into force from April 01 2022.

"Interest rates and other charges/ fees on microfinance loans should not be usurious. These shall be subjected to supervisory scrutiny by the Reserve bank"- RBI

This is Master Directions is circulated to All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks) excluding Payments Banks. All Primary (Urban) Co-operative Banks/ State Co-operative Banks/ District Central Co-operative Banks. All Non-Banking Financial Companies (including Microfinance Institutions and Housing Finance Companies).

Highlights of the Regulation

- Definition of Microfinance Loan:

  A microfinance loan is defined as a collateral-free loan given to a household having an annual household income of up to ₹3,00,000. For this purpose, the household shall mean an individual family unit, i.e., husband, wife and their unmarried children
  (Earlier, the upper limits were Rs.1.2 lakh for rural borrowers and Rs.2 lakh for urban borrowers)

- For Regulated Entities (REs):
  The REs should have a board-approval policy for the following:
  - For providing the flexibility of repayment periodicity on microfinance loans as per borrowers' requirements.
  - For assessment of household income as provided in Annex I of the regulation.
  - REs should mandatorily submit information regarding household income to the Credit Information Companies (CICs)
  - REs should provide timely and accurate data to the CICs and use the data available with them to ensure compliance with the level of indebtedness.

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- For setting the limit on the outflows on account of repayment of monthly loan obligations of a household
- Regarding pricing of microfinance loans, a ceiling on the interest rate and all other charges applicable to microfinance loans
- Regarding the conduct of employees and system for their recruitment, training and monitoring.

- Limit on Loan Repayment Obligations of a Household:
  - REs should have a board-approved policy regarding the limit on the outflows on account of repayment of monthly loan obligations of a household as a percentage of the monthly household income.
  - This shall be subject to a limit of a maximum of 50% of the monthly household income.
  - The computation of loan repayment obligations should take into account all outstanding loans (collateral-free microfinance loans as well as any other type of collateralized loans) of the household.
  - The outflows capped at 50% of the monthly household income shall include repayments (including both principal as well as interest component) towards all existing loans as well as the loan under consideration.

- Pricing of Loans:
  - REs has to disclose pricing-related information to a prospective borrower in a standardised simplified factsheet.
  - Any fees to be charged to the microfinance borrower by the RE and/ or its partner/agent should be explicitly disclosed in the factsheet.
  - The borrower should not be charged any amount which is not explicitly mentioned in the factsheet.

- Conduct towards Microfinance Borrowers:
  - A fair practices code (FPC) based on these directions should be put in place by all REs with the approval of their boards. The FPC should be displayed by the REs in all its offices and on its website. The FPC should be issued in a language understood by the borrower.
  - There should also be a standard form of the loan agreement for microfinance loans in a language understood by the borrower.
  - REs should provide a loan card, which should be in the language understood by the borrower.

- Penalty on Microfinance Loans:

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- There should be no prepayment penalty on microfinance loans.
- Penalty, if any, for delayed payment should be applied on the overdue amount and not on the entire loan amount.
- Any change in the interest rate or any other charge should be informed to the borrower well in advance and these changes should be effective only prospectively.

- Recovery of Loans:
  - REs should put in place a mechanism for identification of the borrowers facing repayment related difficulties, engagement with such borrowers and providing them necessary guidance about the recourse available.
  - REs should have a dedicated mechanism for redressal of recovery-related grievances. The details of this mechanism should be provided to the borrower at the time of loan disbursal.

- Qualifying Assets Criteria:
  - RBI revised the minimum requirement of microfinance loans for Non-banking Financial Company - Microfinance Institution (NBFC-MFI) is also stands revised to 75% of the total assets.
  - An NBFC that does not qualify as an NBFC-MFI, cannot extend microfinance loans exceeding 10% of its total assets.
  - RBI also revised the maximum limit on microfinance loans for such NBFCs (NBFCs other than NBFC-MFIs) at 25% of the total assets.

#Source: Click here for more details

CORPORATE LAWS

SEBI ISSUES CLARIFICATION REGARDING ON DISCONTINUATION OF USAGE OF POOL ACCOUNTS FOR TRANSACTIONS IN THE UNITS OF MFS

The Securities and Exchange Board of India (SEBI) on March 15, 2022, has issued a notification regarding the Discontinuation of usage of pool accounts for transactions in the units of Mutual Funds. Clarifications with respect to Circulars no SEBI/HO/IMD/IMD-I DOF5/P/CIR/2021/634 dated October 4, 2021. (hereinafter referred to as Circular Dated October 4, 2021) This shall come into force on April 1, 2022.

Transactions in units of Mutual Funds on Stock Exchange Platforms:

One-time mandates:

- Existing mandates being used for Mutual Fund transactions can continue to remain in the name of the stockbrokers/clearing members, subject to Stock Exchanges/Clearing Corporations ensuring that Payment Aggregators ("PA") has to put in place mechanisms wherein beneficiary of the mandate can only be an Approved Account (which shall only be the bank account of the Clearing Corporation) such that
    - PA shall directly credit the monies collected from the bank account of the investor only into an Approved Account; and
    - PA shall not act on instructions of the stockbrokers/clearing members to alter or modify the list of Approved Accounts and in no case, the monies shall be credited to the bank account of the stockbrokers/clearing members.

Processing mutual fund transactions under mandates mentioned above:

- ensure that PA has put in place adequate checks and balances, inter alia, to ensure such Approved Account is that of a Clearing Corporation;
- enter into an agreement with the concerned PA to ensure that only those mutual fund transactions are processed through them which are in compliance with this Circular dated October 4, 2021.
- have adequate checks and balances to monitor and govern the receipt of payments through the PA, including by way of third party audits (at least on an annual basis), to verify the compliance with these provisions which shall form part of the agreement with the PA.

Investor grievance redressal:

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- Stock Exchanges/ Clearing Corporations shall provide investor grievance redressal/arbitration mechanism to clients against stock brokers/ clearing members, in case of breach of these conditions or misuse of funds by the PA appointed by the stock brokers/clearing members or by the stock brokers/clearing members with respect to mandates accepted in respect of Mutual Fund transactions.

Transactions in units of Mutual Funds facilitated by entities including online platforms other than stock exchanges:

One-time mandates:

- Existing mandates being used for Mutual Fund transactions can continue to remain in the name of such OTM holders (MFDs / IAs, MFU, channel partners and other entities including online platforms), subject to AMCs ensuring that the PA puts in place mechanisms wherein beneficiary of the mandate can only be an Approved Account (which shall only be the bank account of a mutual fund pool account or mutual fund scheme account) such that:
  - PA shall directly credit the monies collected from the bank account of the investor only into an Approved Account, with the credit being made as per the mandate/ instruction given to the OTM holder by the client; and
  - PA shall not act on instructions of the OTM holder to alter or modify the list of Approved Accounts and in no case, the monies shall be credited to the bank account of the OTM Holder.

Processing mutual fund transactions under mandates mentioned above, AMCs shall:

- Ensure that PA has put in place adequate checks and balances, inter alia, such that Approved Account is that of a mutual fund scheme or mutual fund registered with SEBI;
- Enter into an agreement with the concerned PA to ensure that only those mutual fund transactions are processed through them which are in compliance with this Circular dated October 4, 2021.
- Have adequate checks and balances to monitor and govern the receipt of payments through the PA, including by way of third party audits (at least on an annual basis), to verify the compliance with these provisions which shall form part of the agreement with the PA.

AMCs shall be liable to the unit holders for breach of these conditions or misuse

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of funds by PA or OTM holders with respect to mandates covering Mutual Fund transactions.

Clause 4.4 of the SEBI Circular dated October 4, 2021, stands modified as under:

"4.4. In case of redemption of units, Two-Factor Authentication (for online transactions) and signature method (for offline transactions) shall be used for authentication. *One of the Factors for such Two-Factor Authentication for non Demat redemption shall be a One-Time Password sent to the unit holder at his/her email/ phone number registered with the AMC. In case of demat redemption, the process of authentication as laid down by the Depositories shall be followed."*
This Clause 4.4 shall be applicable with effect from April 15, 2022.

Key takeaway:

On or after April 01, 2022, new mandates shall be accepted only in favour of SEBI recognized Clearing Corporations and in the name of the OTM holders, subject to compliance with conditions mentioned in Para 2.2.2 of notification and those mandates shall exclusively be for subscriptions to units of Mutual Fund schemes and not for any other purpose.

#Source: Click here for more details

TAX LAWS

CBDT ISSUES CIRCULAR ON DELAY IN FILING OF FORM 10-IB U/S 115BAA OF THE ACT READ WITH RULE 21AE OF THE INCOME TAX RULE

The Central Board of Direct Taxes vide its Circular No. 6/2022 F.No.173/32/2022-lTA-J on 17th March 2022, published a circular on Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form 10-IC for Assessment Year 2020-21.

Section 115BAA of the Income Tax Act, 1961 inserted by the taxation laws (amendment) act, 2019 provides a lower tax rate from 30% to 22% in respect to certain Domestic companies with effect from AY 2020-21.

- Section 115 BAA (5) of the Act read with Rule 21 AE, of the Income-tax Rules, 1962 the assessee company is required to submit Form 10-IC electronically on or before the due date of filing of return of income u/s 139(1) of the Act and such option once exercised shall apply to subsequent assessment years.

- Failure to furnish such option in the prescribed form on or before the due date specified u/s 139(1) of the Act results in denial of concessional rate of tax of 22% to such person.

In the view to avoid genuine Hardship to domestic Companies in exercising the option u/s 115BAA of the Act, the Central Board of Direct Taxes, in the exercise of the powers conferred under section 119(2)(b) of the Act, hereby directs that:-

The delay in filing of Form 10-IC as per Rule 21AE of the Rules for the previous year relevant to AY 2020-21 is condoned in cases where the following conditions are satisfied:

I. The return of income for A Y 2020-21 has been filed on or before the due date specified under section 139(I) of the Act;
II. The assessee company has opted for taxation u/s 115BAA of the Act in (e) of "Filing Status" in "Part A-GEN" of the Form of Return of Income ITR-6 and
III. Form 10-IC is filed electronically on or before 30.06.2022 or 3 months from the end of the month in which this Circular is issued, whichever is later.

#Source: Click here for more details

OTHER LAWS

MINISTRY OF COMMERCE AND INDUSTRY REVIEWED FDI POLICY FOR PERMITTING FOREIGN INVESTMENT IN LIC OF INDIA

The Department of Promotion of Industry and Internal Trade released Press Note No.1 DPIIT File No. 5(3)/2021-FDI Policy dated 14.03.2022 in the FDI Policy Section. The Government of India in the review to allow Foreign Direct Investment (FDI) in Life Insurance Corporation of India (LIC). While the government had last year raised the FDI limit in the insurance sector to 74% from 49%, it did not cover LIC. Previously, FDI policy does not prescribe any specific provision for foreign investment in LIC which is a statutory corporation established under LIC Act, 1956. Therefore the following amendments have been made under the consolidated FDI Policy Circular of 2020 (FDI Policy).

The FDI Policy is amended to be read as under:

Para	Details
Para 2.1.5	Capital: Note- the equity shares issued by an Indian Company in accordance with the provisions of the companies act, 2013 or any other applicable law, shall include equity shares that have been partly paid.
Para 2.1.9	Convertible Note- Start-up Company can issue the convertible note maximum for a period of 10 years in place of 5 years. This will help the start-up companies to raise money by way of convertible note without diluting their equity for a longer period.
Para 2.1.27	Indian Company- means a company as defined in the companies act, 2013 which is incorporated in India, or a body corporate established or constituted by or under ant central or state act
Para 2.1.47A New Inserted	Share Based Employee benefits means any issues of capital instruments to employees, pursuant to share based employee benefits schemes formulated by a body corporate established or constituted by or under any central or state Act

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Para 2.1.48A New Inserted	Subsidiary means subsidiary shall have the same meaning as is assigned to it under the Companies Act, 2013 as amended from time to time.
Para 5.1 (f) Re-define	'Real estate business' means dealing in land and immovable property with a view to earning profit therefrom and does not include development of townships, construction of residential/commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships and Real Estate Investment Trusts (REITS) registered and regulated under the SEBI (REITs) Regulations 2014. Further, earning of rent/income on lease of the property, not amounting to transfer, will not amount to real estate business.
Para 5 of Annexure 3	A return as per the Form-ESOP within 30 days from the date of issue of employees' stock option or sweat equity shares shall be filed with the Foreign Exchange Department now in place of filing of form ESOP at the concerned Regional office

Key Points of the Press Note

The government has decided to allow foreign investment up to 20% for LIC and other corporate bodies. Para 5.2.22.1A is inserted in the FDI Policy as follows:

Sector/Activity	% of equity/FDI Cap	Entry Route
5.2.22.1A Life Insurance Corporation of India	20%	Automatic

In **Para 5.2.22.3.1** other conditions applicable to Indian insurance companies and intermediaries or insurance intermediaries:

a. No Indian Insurance company shall allow the aggregate holdings by way of total foreign investment in its equity shares by foreign investors, including

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portfolio investors, to exceed 74% of the paid-up equity capital of such Indian Insurance company.

b. The foreign investment up to 74% of the total paid-up equity of the Indian Insurance Company shall be allowed on the automatic route subject to approval/verification by the Insurance Regulatory and Development Authority of India.
c. In an Indian Insurance Company having foreign investment,
    i. majority of its directors;
    ii. majority of its Key Management Persons; and
    iii. at least one among the Chairperson of its Board, its Managing Director and its Chief Executive Officer
    Shall be Resident Indian Citizens.

In **Para 5.2.22.3.2** other conditions applicable to LIC:

a. Foreign investment in LIC shall be subject to compliance with the provisions of the Life Insurance Corporation Act, 1956, as amended from time to time (LIC Act) and such provisions of the Insurance Act, 1938, as amended from time to time, as are applicable to LIC as per the provisions of Section 43 of the LIC Act.
b. Clauses (e) and (f) of Paragraph 5.2.22.3.1 above, shall also apply to LIC as if reference therein to an Indian Insurance Company is a reference to LIC.
c. The terms referred to in clause (k) of Paragraph 5.2.22.3.1 above, shall have the meaning as referred to therein.

The objective of the Press Note (FDI Policy) is to permit foreign investment and other corporate bodies in LIC and other modifications for further clarity of the existing FDI Policy. The inclusion of the LIC in the FDI policy will ensure that investors have no difficulty subscribing to the public offer. This is an excellent strategy for attracting foreign investment in LIC's forthcoming IPO.

#Source: Click here for more details

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BUREAU OF INDIAN STANDARDS (CONFORMITY ASSESSMENT) REGULATIONS, 2022

On March 16, 2022, the Bureau of Indian Standards (BIS) has issued the Bureau of Indian Standards (conformity Assessment) Amendment Regulation, 2022 to further amend the Bureau of Indian Standards (Conformity Assessment) Regulations, 2018.

A new Scheme-X has been inserted in Schedule-II which deals with the Conformity assessment scheme for grant of licence to use or apply Standard Mark for goods and articles as per the specified requirements.

The Scope of this scheme is based on granting manufacturers licence for demonstration of conformity of goods or articles to the specified requirements or by the relevant standard. The manufacturer may opt for demonstration of conformity of management system to the specified requirements given in standard as per the provisions mentioned in the scheme. If applicable bureau may grant a certificate of conformity instead of a licence in case the product is not desired to be manufactured on a continuous basis and in such a case, the manufacturer shall not be authorised to use the Standard Mark.

- ***Process of Scheme:*** The manufacturer shall identify:
    - The product and the applicable specified requirements against which it intends to obtain the licence or certificate of conformity
    - The application shall be submitted in Form – I annexed to this Scheme
    - Required details pertaining to the product shall be submitted in a technical file for the product along with the application as mentioned in the scheme
    - In case of foreign manufacturers, an authorised Indian representative based in India shall be nominated by the manufacturer in Form-II annexed to this Scheme.

- ***Determination:*** The Bureau shall, on receipt of the application will examine within **fifteen days** that the applicant has submitted all required documents along with the application, and if the application is completed, the bureau shall examine the conformity of the product to the specified requirement by evaluating the technical file. The evaluation will be completed within forty-five working days with other evaluation methods as mentioned in the Scheme.

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- ***Review:*** The report of evaluation shall be reviewed on the basis of the activities specified for their correctness and conformance to the specified requirements.
- ***Decision:*** The decision on grant of licence or certificate of conformity shall be taken when the Bureau is satisfied based on the findings of the review and conformity of the product to the specified requirement.
- ***Attestation***: The Bureau shall grant the licence or certificate of conformity in Form – III and Form – IV respectively annexed to this scheme, in case of a foreign manufacturer, the authorised Indian representative of the firm shall duly execute the following on a non-judicial stamp paper of rupees one hundred to be submitted to the Bureau:
  - an agreement for grant of licence as per Form – V annexed to this scheme;
  - an indemnity bond for grant of licence or certificate of conformity as per Form – VI annexed to this scheme:
- ***Surveillance***: The Bureau may carry out surveillance assessment of the certified body holding the licence either with or without prior intimation.
- ***Complaints***: Whenever any complaint regarding non-compliance of requirements or non-conformity of the product to the specified requirement is received by the Bureau, the same shall be investigated and investigation at complainant end may generally precede the investigation at the certified body.
- ***Fee:*** The fee for each product or group of products shall be notified by the Bureau.
- ***Labelling and marking requirements:*** Each product or the package or both under the license shall be marked with the licence as specified in annexure-I
- ***Validity and Renewal of Licence:*** The licence shall be granted initially for not less than **three years** and up to **six years** and an application for renewal of the licence shall be made before **two months** of its expiration to the Bureau in Form – VII annexed to this Scheme.
- ***Annexure-I*** deals with the guidelines for use of the standard mark.
  The licensee shall display the 'Standard Mark' on the article or the packaging or both, as the case may be, in a manner so as to be easily visible.
  The display of words shall not be less than Arial font size 6.
  Any device with an integrated display screen may present the Standard Mark electronically (e-labelling) in lieu of a physical presentation on the product.

#Source: Click here for more details

JUDICIAL INSIGHT

SWIGGY CASE: GST RECOVERY AT THE TIME OF SEARCH/ INSPECTION NOT VOLUNTARY

Brief Facts and Procedural History:

1. Respondent No. 1 namely M/s Bundl Technologies Pvt Ltd (hereinafter referred to as the "the company") operates an e-commerce platform under the brand name of "swiggy". On the aforesaid platform, the consumer can place orders for delivery of food from nearby restaurants, which is made through the delivery of food from nearby restaurants, which is made through delivery partners which includes pick up and delivery partner (PDP) who are directly engaged by the Company as well as temporary delivery executives (Temp DES) whose services are procured by the Company through third-party service providers.
2. During normal operations, the deliveries are carried out by the PDPs which accounts for 90% of the total food deliveries. However, on account of a sudden spike in food orders during holidays, festive seasons and weekends, the company engages Temp DEs from third-party service providers to cater to a sudden spike in food orders.
3. In the case of PDPs who are directly engaged by the Company, no goods and services tax (hereinafter referred to as 'the GST) is charged as they are below the threshold limit for registration. However, third-party service providers charge the Company the consideration paid to Temp. DEs along with mark up f.5-10% along with GST on the entire consideration.
4. The Company entered into an agreement dated 20.05.2017 and 14.11.2017 with a third-party service provider namely Green Finch Team Management (P) Ltd. (Green Finch). Under the aforesaid agreement, Green Finch provided temporary DES to the Company on a cost-plus mark-up basis and also charged GST on the entire sale consideration. Green Finch is a Company incorporated under the provisions of the Companies Act on 08.02.2016 and its Annual General Meeting was held on 31.03.2021 as per the official website of the Ministry of Corporate Affairs portal. For the period under the investigation i.e. 2017-20, Green Finch provided 10,31,464 Temp DES to the Company which 2,91,75,667 food deliveries through them.
5. For providing aforesaid services, Green Finch raised valid tax invoices on the Company and charged applicable GST which was paid to Green Finch which deposited the same with the Department by filing GSTR-38 return. The Company availed input tax credit in terms of Section 16 of Central Goods and Services Tax, 2017 (hereinafter referred to as 'the CGST for short).

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6. An investigation was initiated by the Department with regard to services provided to the Company by third party service providers namely Green Finch by Director General of Goods and Services Tax Intelligence, Hyderabad Zonal Unit (hereinafter referred to as 'the DGGI' for short) on the ground that Green Finch was a non-existent entity and accordingly, the input tax credit availed by the Company and the GST component paid by it to Green Finch against the invoices raised by Green Finch were fraudulent.
7. The Officers of the Department entered the premises of the Company on 28.11.2019 at 10.30 a.m. During the course of the investigation from 28.11.2019 till 30.11.2019. DGGI Officers issued spot summons to the Directors and employees of the Company and their statements were recorded by the DGGI Officers. On 30.11.2019 at about 4:00 a.m., a sum of Rs.15 Crores was deposited by the Company under the GST cash ledger. On 30.11.2019 itself the Officers of the Company handed over the documents to DGGI officers between 6.45 a.m. to 8 a.m.
8. Thereafter, the Directors of the Company received summon to appear before the DGGI office at Hyderabad on 26.12.2019. It is averred that the Directors were present till late hours on 26.12.2019 in the DGGI office and about 8 p.m. were locked in the DGGI office. It is also averred that threats of arrest were held out to them during the investigation and they were not allowed to leave till the early hours of 27.12.2019. The Officers of the Company, therefore, made a further sum of Rs.12,51,44,157/- at about 1 a.m. in order to secure the release of three directors of the company. Thus, in all, a sum of Rs.27,51,44,157/- was illegally collected from the Company during the course of an investigation under the threat and coercion without following the procedure prescribed under the CGST Act.
9. Despite a lapse of about 10 months of initiation of an investigation, no show cause notice was issued to the Company. The Company, therefore, submitted a letter dated 29.09.2020 seeking a refund of the amount of Rs.27 51.44,157/-. Thereafter, the Company also filed an application on 16.12.2020 before the jurisdictional GST office. However, the application submitted by the petitioner failed to evoke any response.
10. The Company thereupon filed the petition seeking a writ of mandamus directing the Department to forthwith refund the amount of Rs.27,51,44,157/- along with interest at the rate of 12% from the date of deposit till its refund. The petitioner also assailed the validity of Section 16(2)(e) of the CGST Act as well as Karnataka Goods and Services Tax Act, 2017 as unconstitutional on the ground that it is violative of Article 14, 19(1)(g) and 300A of the Constitution.

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11. The appellants filed a detailed statement of objections in which inter alia it was pleaded that investigation was initiated in exercise of powers conferred under the Act relating to wrongful availing of input tax credit during which it was noticed that Green Finch, so also its suppliers. were non-existent entities and in the course of such investigation, the summons was issued to the Directors and Officers of the Company. It is also asserted that during the course of the investigation, the deposit of the amount was voluntarily made by the Company.
12. The learned Single Judge, by an order dated 14.09.2021 inter alia held that payment of the amount made by the Company during the course of the investigation was involuntary. It was further held that Court does not desire to place any sort of fetter on the power of investigation of the officers of the Department.
13. Accordingly, the writ petition was disposed of with the direction to consider and pass suitable orders on the applications for refund filed by the Company within a period of four weeks from the date of release of the order. The Department was directed to consider the applications for refund in light of the observations made in the order. In the aforesaid factual background, this appeal has been filed.

The issue before the court:

1. Whether the amount was voluntarily paid during the investigation by the company under section 74(5) of the CGST Act?
2. Whether the amount was recovered from the company during an investigation under coercion and threat of arrest?
3. Whether the DGGI officer conducted in a High handled and arbitrary manner during the course of an investigation?
4. Whether writ petition filed by company suffers from delay or laches?

Observations of the court:

A. The Honorable Court in the first issue noted of a case of Gujarat high Court in M/s Bhumi Associate v. Union of India, an interim order directed the Central Board of Indirect Taxes and Customs was directed to enforce the guidelines. In this case, there is no material on record to indicate the amount of Rs.15 Crores and an amount of Rs.12,51,44,157/- which were paid at about 4 AM and 1 PM on 30.11.2019 and 27.12.2019 respectively were paid on admission by the Company about its liability. There is no communication in writing from the company to the proper officer about either self ascertainment or admission of liability by the company to infer that such a

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payment was made under section 74(5) of the Act. The Company also reiterated its stand in GST DRC-03 generated in 2.12.2019. The company reserved its rights to seek a refund and made it expressly clear that payments of the amount should not be treated as an admission of its liability. Thus this Court observed that the amount was not paid voluntarily under section 74(5) of CGST Act

B. In the second issue, the investigation was initiated by the DGGI officers and exercised their power u/s 67(1) of CGST Act, On 30.11.2019 at about 4.00 a.m., a sum of Rs.15 Crores was deposited by the Company under the GST cash ledger. Thereafter summons was issued to officers of the company under section 70 of the Act. The officers of the company made a further deposit of Rs.12,51,44,157/ at about 1.00 a.m. The aforesaid amounts were not deposited under section 74(5) of the Act. The amounts were deposited by the company at odd hours, without admitting its liability. The company has been regularly filing service tax returns. There is no iota of material on record to indicate that on the day that the company made payment of the amount, any amount was due to the department. There is also no material on record to hold that any threat of arrest was extended to officers of the company. Thus the second issue is observed that the amount was paid by the company involuntarily

C. The DGGI officers have invoked the provisions under section 67(1) of the CGST Act relating to inspection, search and seizure and have issued summons under section 70 of the CGST act to offices of the company to give evidence. It is pertinent to note that the company in the writ petition has neither attributed any specific role to officers of DGGI by name nor has impleaded them in the writ petition. Therefore, the same being a question of fact cannot be adjudicated in a summary proceeding under Article 226 of the constitution of India. The facts and circumstances of the case the third issue is kept open to be agitated in an appropriate proceeding.

D. In the final issue the Honorable High court, referred to the case of Dehri rohtas light rly co.Ltd v. District Board Bhojpur (1992 2 SCC 589) to decide the question of delay. *Section 54(1) of CGST Act deals with refund of tax paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed*
The Company deposited a sum of Rs.15 Crores at about 4.00 a.m. on 30.11.2019 and a sum of Rs.12,51,440157/ 157/- on 27.12.2019. The company filed an application seeking refund on 29.09.2020. Thereafter the

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company filed an application seeking refund on 16.12.2020 on 16.12.2020 before jurisdictional GST authority.

The company not only filed the claim for refund within two years but the writ petition as well. No rights have accrued to the department, as the claim for refund made by the company is well within time. Thus there is no delay or laches in filing the writ petition.

Decision held:

1. The submission by the company that Green Finch is neither a non-existent entity nor that the company has rightly availed input tax credit is concerned need not be adverted to in this proceeding, as the same is pending investigation.
2. The amount has been collected from Company in violation of Articles 265 and 300-A of the Constitution.
3. The amount under deposit be made subject to the outcome of the pending investigation can not be accepted. The Department, therefore, is liable to refund the amount to the Company.

#Source: Union of India v. Bundl Technologies Pvt Ltd, W.A. No. 1274 of 2021, Karnataka High Court dated 03/03/2022

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NCLAT: NO CONFICTS BETWEEN SECTION 17B OF EPF AND IBC, 2016

Facts of the Case:

- The Company/Corporate Debtor (CD) in CIRP is engaged in designing and manufacturing customized solutions in the field of electronic/IT applications including digital solutions. The Appellant is an 'ex-employee of the Respondent No.3' who worked as 'Supervisor' (R&D) It is the grievance of the employee that the employee and workman are the backbones of the Respondent No.3 CD in CIRP who stood by Respondent No.3 by not resigning even when their rightful dues and salaries were not being paid / irregularly paid from the year 2012 which is much prior to CIRP.
- It is also their grievance that the 'Resolution Plan' has not considered the full Provident Fund (PF) dues 1,35,06,391 full dues –(minus) considered in the Resolution Plan Rs.78,00,000 PF dues of the employees which R3 /CD in CIRP was supposed to remit to the PF Authority under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 for the default period from 1st October 2012 to 31st March 2018 as assessed and communicated by the *Assistant Provident Fund Commissioner regional officer Noida, Ministry of Labour and Employment, Govt. of India vide its order no.15521/Noida/48763/Comp.-III dated 19th March 2019*.
- Pursuant to the issue of demand notice issued to Respondent No.3 by one of the employees of the Company i.e. Nitin Gupta and subsequently on his filing petition, the Adjudicating Authority vide its order dated 26th October 2017 initiated the CIRP of the CD/Respondent No.3 under Section 9 of the Code. Mr Naveen Kumar Jain was appointed as the Interim Resolution Professional by the Adjudicating Authority who took charge on 18th November 2017.
- The IRP was changed in the 1st 'Committee of Creditors (CoC) meeting held on 22nd December 2017 and Mr Vinay Talwar, the Resolution Professional (RP) was confirmed by the Adjudicating Authority on 29th January 2018
- The liabilities of the CD as verified by the RP is Rs.68.50 Crore. The Resolution Applicant has provided an amount of Rs.12.99 Crore towards the settlement of all past dues and liabilities of the CD which includes an amount of Rs.9 crore towards 'Secured Financial Creditors' and Rs. 50 lac towards 'Unsecured Financial Creditors'. The employees and workmen are getting Rs.1.03 crore against the claim of Rs.8.17 crore. What is stated in the impugned order on page 45 para 5 (a) is that the Resolution Application will infuse Rs.5 crore as the working capital requirement of the Company out of the sale proceeds of the assets of the CD.

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- <u>The Ld counsel for the Appellant stated below:</u>
  - The Resolution Plan is discriminatory insofar as it relates to the employees. It has also been submitted that the 'Financial Creditors' (21.6%) have been paid much more than the 'Operational Creditors' (12.67%). It is also their grievance that they have not been paid the gratuity amount as required under the 'Payment of the Gratuity Act, 1952'.
  - The Resolution Applicant / R2 is in the business of manufacturing Ghee and schemed milk powder. It is one of the numerous groups of companies headed by 'Director' Sharad Maheshwari. It is also revealed that Sharad Maheshwari has been supporting the CD for 4-5 years by providing financial facilities.
  - Under Section 7A of the EPF and MP Act, 1952 has determined an amount of Rs.1,35,06,391/- as the dues from the CD for the period up to March 2018 against which only Rs.78 lacs has been provisioned for in the Resolution Plan submitted by the Resolution Applicant. this is a misconduct on the part of R1/RP in calculating the provident fund amount

- After the 5th CoC on 18th April 2018, representative of the Operational Creditor expressed their displeasure due to non-payment of gratuity and PF. Their rightful dues were not being paid. However, the revised Resolution Plan was submitted by the R2 to the RP. The revised plan was subsequently approved in the 9th meeting of the CoC of the CD held on 21st July 2018.
- <u>The Ld counsel for the Respondent No.1, 2 & 3 stated below:</u>
  - There is no infirmity in the impugned order. He has also submitted that against the verified claims of the workmen/employees of Rs.8.17 Crore. The RP has proposed an amount of Rs.1.03 Crore. He has also submitted that the Appeal itself is not maintainable.
  - It is the ultimate decision of the CoC to decide what to pay and how much to pay each class or sub-class of creditors. The payments approved by the CoC are a commercial decision of the CoC and the Appellant has no locus standi to challenge the commercial decision of the CoC.
  - The Appellant is the employee/Operational creditor. The Resolution Amount of Rs.12.99 Crore is more than the fair value and the liquidation value.
  - The non-priority due of workman and employees were proposed at 7.5% but, however, on the request of the representative of the

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operational creditor was enhanced to 10% & finally to 12.67% and the Resolution Plan has been unanimously approved in the 9th meeting of the CoC where the representative of the Operational creditor was present.

- They have also stated that since the company has no separate gratuity fund so the employees are not eligible to get the gratuity however the Resolution Applicant has committed to making a payment of 20% of the gratuity claim. They have also stated that the commercial decision of the CoC is non-justiciable. Hence, the appeal needs to be dismissed.

Courts Observation:

- This Honorable Court considered the provisions of Section 31 (1), Section 30(2), Section 36(4)(a) (iii) & Section 238 of the I& B Code, 2016. The court made it clear vide Section 30(2) (e) that the Resolution Plan does not contravene any of the provisions of the law for the time being in force. The Resolution Professional/Adjudicating Authority is to look at the compliance of the provisions of law
- NCLAT has to refer to Section 17-B of the Employees Provident Funds and Miscellaneous Act, 1952. It is made amply clear that the Resolution Applicant is required to pay the contribution and other sums due from the employer as per the provisions of the PF Act
- It stated that its the duty of the Resolution Professional/AA to see that the law is being complied with, and it is not a question of the commercial wisdom of the Committee of Creditors.
- NCLAT referred to Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. 2019. It was also held that provident fund dues are not considered to be assets of the Corporate Debtor, as has been clarified by the provisions of Section 36(4)(a)(iii) of the IBC.

Judgment:

- The principal bench of NCLAT held that there is no conflict between the provisions of Section 17B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the Insolvency and Bankruptcy Code, 2016 and directed the Resolution Applicant to pay PF dues to the employees.
- The Tribunal analysed Section 31(1), Section 30(2), Section 36(4)(a)(iii) and Section 238 of the IBC and held that the resolution plan does not contravene any provisions of the existing law and the Resolution

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Professional/ Adjudicating Authority is required to look at the compliance of law for the time being force.

#Source: Sikander Sigh Jamuwal v. Vinay Talwar, Company Appeal (AT) (Ins) No. 483 of 2019, Dated 11 March, 2022

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