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GRC Bulletin

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Compliance Management

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About

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CORPORATE LAWS

SEBI ISSUED A FRAMEWORK FOR AUTOMATED DEACTIVATION OF TRADING AND DEMAT ACCOUNTS IN CASES OF INADEQUATE KYC

Securities and Exchange Board of India ("SEBI") has, vide various Circulars issued from time to time, mandated that addresses form a critical part of the Know Your Client ("KYC") procedures. It has been observed that in some cases accurate/updated addresses of clients are not maintained. This is borne out of the fact that when SEBI issues any notices, etc. during the course of any enforcement proceedings on such addresses, the same remains unserved. As a result, SEBI on July 29th, 2022 issued a framework for automated deactivation of trading and demat accounts in cases of inadequate KYC.

To ensure that the client furnishes accurate/updated details of address and to ensure that KYC details are correct, the following framework involving stock exchanges (except Commodity Derivatives Exchanges) and depositories (hereinafter collectively referred to as "the MIIs") is proposed :-

1. The MIIs must make arrangements to physically deliver any Show Cause Notice ("SCN") or order that SEBI directs them to serve on the firm. Within 30 working days of receiving such instructions from SEBI, the MIIs are required to send SEBI the signed receipt acknowledgement from the affected addressee or its authorised agent.
2. While enforcing the deactivation of these entities' trading/demat accounts, open positions, pay-in and pay-out obligations, and other obligations may be allowed to be resolved, squared off, or closed off, as appropriate.
3. The MIIs must make sure that they inform the relevant registered intermediary of the deactivation's specifics and the reasons behind them. Additionally, they must make sure that when the entity tries to conduct business using his trading or demo account, the grounds for the deactivation are stated in a plain and straightforward manner.
4. Subject to the above, the MIIs shall ensure that the deactivated accounts are not used for dealing in the securities market in any manner whatsoever.
5. The concerned entity may place a request to the registered intermediaries with which the entity holds a trading/demat account, seeking re-activation of trading/demat accounts by providing proof of address and signed acknowledgement of receipt of the SCN or order issued by SEB(referred to point 1).

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6. The registered intermediary shall update the KYC records as per the extant norms and forward the copy of the signed acknowledgement of receipt of the SCN or order, to the concerned MII for re-activation of the trading/demat account.
7. The concerned MII shall re-activate all trading accounts/demat accounts of the entity after ensuring that the entity has provided a signed acknowledgement of receipt and confirmation which is received from the registered intermediary that the KYC records are compliant with the extant norms.
8. The process of reactivating the accounts by the MIIs shall not exceed more than 5 working days after receipt of the request from the entity.
9. This framework applies to Joint accounts also. Prior to deactivating the joint accounts, MIIs must make an effort to get in touch with the entity via the co-holders for simultaneous delivery of SCN and orders by using the same procedure as described above.
10. When compliance with the framework is affected by reasons outside of the entity's control, the MIIs may, in suitable cases, depart from the terms of this Circular. When this occurs, the MIIs must document the reasons for departing from the framework's mission and notify SEBI of those reasons within two working days of the deviation.
11. MIIs shall submit a consolidated report indicating the status of requests forwarded by SEBI, on a monthly basis.
12. MIIs shall advise their registered intermediaries to ensure the updation of KYC records at regular intervals as per the extant norms.

An illustration is provided in the circular coving different scenarios in annexure-A of the framework.

The framework described in this Circular shall come into effect from August 31, 2022.

#Source: Click here for more details

TAX

LAWS

CBIC ISSUES CIRCULAR FOR MANNER OF FILING REFUND OF UNUTILIZED ITC ON ACCOUNT OF EXPORT OF ELECTRICITY

The Central Board of Indirect Taxes and Customs (CBIC) on 6th July, 2022 notified the manner of filing refunds of unutilized ITC on account of the export of electricity.

The Board has received a reference from the Ministry of Power regarding the problem being faced by power generating units in the filing of refund of unutilised Input Tax Credit (ITC) on account of the export of electricity. It has been represented that though electricity is classified as "goods" in GST, there is no requirement for the filing of the Shipping Bill/ Bill of Export in respect of the export of electricity.

However, the extant provisions under Rule 89 of CGST Rules, 2017 provided for the requirement of furnishing the details of shipping bill/ bill of export in respect of such refund of unutilised ITC in respect of export of goods. Accordingly, a clause (ba) has been inserted in sub-rule (2) of rule 89 and Statement 3B has been inserted in FORM GST RFD-01 of the CGST Rules, 2017 vide notification No. 14/2022-CT dated 5th July, 2022.

In order to clarify various issues and the procedure for filing refund claims pertaining to the export of electricity, the Board prescribed the procedure under section 168(1) for filing and processing of refund of unutilised ITC on account of the export of electricity.

- **Filing of refund claim**-

  Until the time necessary changes are carried out on the portal, the applicant would be required to file the application for a refund under the "Any Other" category electronically on **FORM GST RFD-01**. In the remark column of the application, the taxpayer would enter "Export of electricity-without payment of tax (accumulated ITC)". At this stage, the applicant is not required to make any debits from the electronic credit ledger.

  The applicant would be required to furnish/upload the details contained in Statement 3B of FORM GST RFD-01 (in pdf format), containing the number and date of the export invoices, details of energy exported, and tariff per unit for export of electricity as per agreement.

  The applicant will also be required to upload a copy of the statement of scheduled energy for electricity exported by generation plants issued by the

Regional Power Committee Secretariat (RPC) as part of the Regional Energy Account under regulation 2 (1) (nnn) of the CERC (Indian Electricity Grid Code) Regulations, 2010. It will be for the period for which a refund has been requested, and it will be accompanied by a copy of the relevant agreement(s) outlining the tariff per unit for the exported electricity. The applicant will also give details of the calculation of the refund amount in Statement-3A of FORM GST RFD-01 by uploading it in pdf format along with the refund application in FORM GST RFD-01.

- **The relevant date for filing of refund**-

The period of two years from the relevant date has been specified for filing an application for a refund under section 54 (1) of the Act, 2017. For the export of electricity, the relevant date shall be the last date of the month, in which the electricity has been exported as per the monthly Regional Energy Account (REA) issued by the Regional Power Committee Secretariat under Regulation 2(1)(nnn) of the CERC(Indian Electricity Grid Code) Regulations, 2010.

- **Processing of refund claim by the proper officer**-

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover

The formula for calculation of refund of unutilised ITC on account of zero-rated supplies is reproduced under Rule 89(4)

1. It is clarified that the quantum of Scheduled Energy exported, as reflected in the Regional Energy Account (REA) issued by Regional Power Committee (RPC) Secretariat for a particular month, will be deemed to be the quantity of electricity exported during the said month and will be used for calculating the value of zero-rated supply in case of export of electricity.
2. The calculation of the value of the exports of electricity during the month can be done based on the quantity of scheduled electricity exported during the month by the exporter and the tariff rate per unit.
3. In certain cases, the quantum of electricity exported as mentioned on the invoice is different from the quantum of electricity exported mentioned on the statement of scheduled energy uploaded with the REA on the Regional Power Committee website. In such cases, turnover of export of electricity shall be calculated using the lower of the quantum

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of electricity exported mentioned on the statement of scheduled energy exported and in the invoice issued on account of export of electricity.

4. Under Rule 89 (4) clause E, the turnover of electricity supplied domestically would be excluded while calculating the adjusted total turnover. The proper officer shall invariably verify that no ITC has been availed on the inputs and inputs services utilised in making the domestic supply of electricity
5. The proper officer shall calculate the admissible refund amount as per the formula provided under rule 89(4) and as per the clarification furnished above. After close perusal, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as a refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03.

#Source: **Click here for more details**

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CBIC ISSUES CIRCULAR FOR PRESCRIBING MANNER OF RE-CREDIT IN ELECTRONIC CREDIT LEDGER USING FORM GST PMT-03A

Taxpayers are facing difficulties in taking re-credit of the amount in the electronic credit ledger in cases where any excess or erroneous refund sanctioned to them had been paid back by them either on their own or on being pointed by the tax officer. In order to resolve this issue, GSTN has recently developed a new functionality of FORM GST PMT-03A which allows the proper officers to re-credit the amount in the electronic credit ledger of the taxpayer.

1. **Categories of refunds where re-credit can be done using FORM GST PMT - 03 A**

   On close perusal, sub-rule (4B) of rule 86 of the CGST Rules, is reproduced as under:

   (4B)Where a registered person deposits the amount of erroneous refund sanctioned to him-

   a. under sub-section (3) of section 54 of the Act, or
   b. under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96 along with interest and penalty, wherever applicable, through FORM GST DRC-03, in cash, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.

   These are the following categories of refund sanctioned

   a. Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
   b. Refund of unutilised ITC on the export of goods/services without tax payment.
   c. Refund of unutilised ITC on account of zero-rated supply of goods/services to SEZ developer/Unit without tax payment.
   d. Refund of unutilised ITC due to inverted tax structure

2. **Procedure for re-credit of the amount in the electronic credit ledger**:

   2.1. The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 by debit of amount from electronic cash ledger.

   2.2. While making the payment through FORM GST DRC-03, the taxpayer shall clearly mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous

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refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules.

2.3. Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in the format enclosed as Annexure-A, to the proper jurisdictional officer

2.4. The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in FORM GST DRC-03.

2.5. The proper officer, shall re-credit an amount in the electronic credit ledger by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of the request for re-credit of the erroneous refund amount

3. **It is requested that suitable trade notices may be issued to publicize the content of this Circular.**

The difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. The Hindi version will follow. Circular No. 174/06/2022-GST

#Source: **Click here for more details**

OTHER

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MINISTRY OF COMMERCE AND INDUSTRY NOTIFIES SPECIAL ECONOMIC ZONES (THIRD AMENDMENT) RULES, 2022

Work From Home Provision Included Vide SEZ (Third Amendment) Rules, 2022

The Ministry of Commerce and Industry issued the Special Economic Zones (Third Amendment) Rules, 2022 on 13th July, 2022 to further amend the Special Economic Zones Rules, 2006.

A new **Rule 43A** has been introduced which provides that a Unit may permit its employees, including contractual employees, to work from home or from any place outside the Special Economic Zone.

Rule 43A Work from Home. –

(1) An Unit may permit its employees, including contractual employees, specified in sub-rule(2), to work from home or from any place outside the Special Economic Zone in accordance with this rule

(2) The following employees of a Unit are covered under sub-rule (1),-

  (i) Employees of the Information Technology and Information Technology enabled Services Special Economic Zone units;

  (ii) Employees, who are temporarily incapacitated;

  (iii) Employees, who are travelling; and

  (iv) Employees, who are working offsite.

(3) The Unit shall submit its proposal for work from home to the Development Commissioner through email or physical application, which shall contain the terms and conditions of work from home, including the date from which the permission for work from home shall be utilised and the details of the employees to be covered by such permission for work from home.

(4) The Development Commissioner, on receipt of the proposal under sub-rule (3), if satisfied that the proposal complies with this rule, may grant (and extend) permission to the proposal of the Unit which shall be valid for a period of one year from the date of such permission.

(5) Every proposal for permission to work from home or an application for extension of the permission shall be submitted, at least fifteen days in advance, to the Development Commissioner, except in the case of the employees who are temporarily incapacitated or travelling.

(6) The proposal for work from home shall cover a maximum of 50% of the total employees, including contractual employees, of the Unit and the Unit shall maintain an accurate attendance record for the entire period

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of permission for work from home and shall submit to the Development Commissioner, from time to time.

(7) The Development Commissioner may approve a higher number of employees to work from home for any bona fide reason to be recorded in writing.

(8) From the date of commencement of this rule, the Unit having employees working from home or from any place outside the SEZ, shall submit its proposal for permission to the Development Commissioner within ninety days from the date of such commencement.

(9) The work to be performed by the employee permitted to work from home under this rule shall be as per the services approved for the Unit, and the work is related to a project of the Unit.

(10) The Unit may provide to an employee such goods, including laptop, computer, video projection system, other electronic0 equipment and secured connectivity (for virtual private network, virtual desktop infrastructure) to establish a connection between the employee and work related to the project of the unit with the prior permission of the Specified Officer to temporarily remove such goods to the Domestic Tariff Area without payment of duty or integrated goods and services tax, subject to the procedure. Given in the rule.

In **Rule 43**, in clause (d), in the proviso,-

(a) clause (i) shall be omitted;
(b) in clause (ii), for the words "by following the procedure as laid down in (i) above", the words "subject to the condition that the Special Economic Zone unit shall ensure that the export revenue of the resultant products or services shall be accounted for by the Special Economic Zone unit" shall be substituted.

#Source: Click here for more details

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MOEFCC NOTIFIES PLASTIC WASTE MANAGEMENT (SECOND AMENDMENT) RULES, 2022

Ministry of Environment, Forest and Climate Change on 6th July 2022 amended Plastics Waste Management Rules 2016. This shall be referred to as **Plastic Waste Management (Second Amendment) Rules, 2022**.

1. **Inclusion** of new definitions of "Biodegradable plastics" in Rule 3.

   Biodegradable plastics means plastics, other than compostable plastics, which undergo degradation by biological processes under ambient environment (terrestrial or in water) conditions, without leaving any microplastics, or visible, distinguishable or toxic residue, which has adverse environmental impacts, adhering to laid down standards of Bureau of Indian Standards and certified by the Central Pollution Control Board.

2. **Inclusion** of new definitions of "End of Life disposal", "Plastic Packaging", "Plastic Waste Processors", "Post-consumer plastic packaging waste", "Pre-consumer plastic packaging waste", "Recyclers", "Reuse", "Use of recycled plastic", "Waste to Energy".
   - End of Life disposal means using plastic waste for the generation of energy subject to relevant guidelines in force, which includes co-processing
   - Plastic Packaging means packaging material made by using plastics for protecting, preserving, storing, and transporting products in a variety of ways
   - Plastic Waste Processors means recyclers of plastic waste as well as entities engaged in using plastic waste for energy (waste to energy) including in coprocessing or
   - Post-consumer plastic packaging waste means plastic packaging waste generated by the end-user consumer after the intended use of packaging is completed and is no longer being used for its intended purpose
   - Pre-consumer plastic packaging waste means plastic packaging waste generated in the form of rejection or discard at the stage of manufacturing of plastic packaging and plastic packaging waste generated during the packaging of the product including rejection, and discard, before the plastic packaging reaches the end-use consumer of the product
   - Recyclers are entities who are engaged in the process of recycling plastic waste;
   - Reuse means using an object or resource material again for either the same purpose or another purpose without changing the object's structure

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- Use of recycled plastic means recycled plastic is used as raw material, instead of virgin plastic, in the manufacturing process
- Waste to Energy means using plastic waste for the generation of energy and includes coprocessing (e.g. in cement, steel or any other such industry).

3. **Substitution** of Rule 4 (1)(h)(B) of the Amendment

   (B) for the letters and figures —IS 17088:2008, the letters and figures —IS / ISO 17088:2021 shall be substituted.

4. **Substitution** of Rule 9(1) of the Amendment

   (1) The Producers, Importers and Brand Owners shall fulfil Extended Producers Responsibility for Plastic Packaging as per guidelines specified in Schedule -II.

5. **Substitution** of Rule 10 of the Amendment

   10. Protocols for compostable and biodegradable plastic materials.-

   (1) Determination of the degree of degradability and degree of disintegration of plastic material shall be as per the protocols of the Indian Standards listed in Schedule I.

   (2) The compostable plastic materials shall conform to the IS / ISO 17088:2021, as amended from time to time.

   (3) The biodegradable plastics shall conform to the standard notified by the Bureau of Indian Standards and certified by the Central Pollution Control Board.

   (4) Until a standard referred to in sub-rule (3) is notified by the Bureau of Indian Standards, biodegradable plastics shall conform to tentative Indian Standard IS 17899 T:2022 as notified by the Bureau of Indian Standards.

   (5) As a transitory measure, a provisional certificate for biodegradable plastics, shall be issued by the Central Pollution Control Board, in cases, where an interim test report is submitted, for an ongoing test, which covers the first component of the IS 17899 T:2022 relating to biodegradability given at Sl. No. (i) or Sl. No. (ii) of Table 1 or Sl. No. (i) of Table 2 of the IS 17899 T:2022:

   Provided that the provisional certificate shall be valid till 30th June 2023 with the condition that production or import of biodegradable plastics shall cease after the 31st day of March 2023.

   (6) The interim test report shall be obtained from the Central Institute of Petrochemical Engineering and Technology or a laboratory recognised

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under Laboratory Recognition Scheme, 2020, of the Bureau of Indian Standards or laboratories accredited for this purpose by the National Accreditation Board for Testing and Calibration Laboratories, and shall certify the bio-degradation of plastic is in line with IS 17899 T:2022.

6. **Substitution** of Rule 11 sub-rule (1) is widened w.r.t carry bag and plastic packaging.
   (a) name, registration number of the producer or brand owner and thickness in case of carry bag and plastic packaging: Provided that this provision shall not be applicable,-
      (i) for plastic packaging used for imported goods:
      (ii) for cases falling under rule 26 of the Legal Metrology Packaged Commodities Rules, 2011, after the approval of the Central Pollution Control Board:
      (iii) for cases where it is technically not feasible to print the requisite information mandated under this Rule, as per specifications given in the —Guidelines for use of Standard Mark and labelling requirements under BIS Compulsory Registration Scheme for Electronic and IT Products‖ after the approval of the Central Pollution Control Board.

7. **Substitution** of Rule 13 sub-rule (1) as follows:
   (i) for sub-rule (1), the following sub-rule shall be substituted, namely:
   (1) No person shall manufacture carry bags or recycle plastic bags or multi layered packaging unless the person has obtained registration from,-
      (i) the concerned State Pollution Control Board or Pollution Control Committee of the Union territory, if operating in one or two states or Union territories; or
      (ii) the Central Pollution Control Board, if operating in more than two States or Union territories.

8. **Inclusion** of rule 17 in the amendment
   18. Imposition of Environmental Compensation- The Environmental Compensation shall be levied based upon the polluter pays principle, on persons who are not complying with the provisions of these rules, as per guidelines notified by the Central Pollution Control Board.
   Amendment to SCHEDULE-I Rule 10 and others

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MOEFCC ISSUED A NOTIFICATION REGARDING ENVIRONMENTAL CLEARANCE IN RE-ROLLING UNITS AND COLD ROLLING UNITS

The Ministry of Environment, Forest and Climate Change (MoEFCC) issued a notification on 20th July vide Hon'ble Green Tribunal regarding Gajubha Jesar Jadeja vs Union of India &Ors. OA No. 55/2019 WZ. The Hon'ble Tribunal observed that Cold Rolled Stainless Steel Manufacturing Industries require prior environment clearance but, having regard to the fact that there were a large number of such mills operating on the strength of Consent to Establish (CTE) and Consent to Operate (CTO), the Hon'ble Tribunal has held that opportunity should be provided to such units to fall within the Environment Clearance regime by granting a period of at least one year to operate for the purpose.

Due to the impact of Covid-19 Central Government considered the decision in line with the above-said order of the Hon'ble National Green Tribunal, so as to provide a window period for such re-rolling or cold rolling units to obtain prior Environmental Clearance.

Central Government is of the opinion that steel re-rolling operations fall under the purview of the secondary metallurgical processing industry and require Environment Clearance as per item 3(a), relating to Metallurgical Industries (Ferrous and Non-ferrous), of the Schedule of the previously issued notification.

The above mentioned notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide notification number **S.O. 1533 (E), dated the 14th September, 2006**, mandating the requirement of prior environmental clearance for the projects covered in its Schedule (hereinafter referred to as the said notification), wherein all non–toxic secondary metallurgical processing units with capacities greater than 5000 tonnes/annum (TPA) fall under category B.

The Central Government hereby orders that all standalone re-rolling units and cold rolling units that are currently operational and in existence with valid **Consent to Establish (CTE)** and **Consent to Operate (CTO)** from the relevant State Pollution Control Board or Union territory Pollution Control Committee, as applicable, shall submit an online application for grant of **Terms of Reference (ToR)**, followed by Environment Clearance, and the said units shall be granted Standard Terms of Reference as per item 3(a) of the said notification and shall be exempted from the requirement of public consultation.

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It provided that the application for the grant of ToR shall be made within a period of one year from the date of this notification.

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JUDICIAL

INSIGHT

JUDICIAL INSIGHT

GUARANTOR CANNOT ENJOY 'RIGHT OF SUBROGATION' EVEN AFTER CIRP AGAINST PRINCIPAL DEBTOR GETS CONCLUDED: NCLT HYDERABAD

Facts of case:

- The State Bank of India ("Financial Creditor") had granted various credit facilities to Apex Drugs Limited ("Corporate Debtor") amounting to Rs. 208,21,65,555.24 Crores. The Corporate Debtor was the Principal Borrower and Shri. Ghanshyam Surajbali Kurmi ("Personal Guarantor") stood as personal guarantor in order to secure the repayment of the financial assistance so availed.
- The Corporate Debtor failed to adhere to sanction terms and neglected to operate loan accounts as per the terms and conditions of the restructuring package sanction. As a result, the accounts of the Corporate Debtor were classified as Non-Performing Asset (NPA) on 30.06.2013. Consequently, the Corporate Debtor was admitted into the Corporate Insolvency Resolution Process ("CIRP") by the NCLT Hyderabad Bench ("Adjudicating Authority") vide an order dated 06.09.2018.
- The Financial Creditor had also issued a demand notice dated 16.08.2021 to the Personal Guarantor, demanding payment of the amount in default and had subsequently filed a petition under Section 95(1) of the IBC, seeking initiation of the Insolvency Resolution Process against the Personal Guarantor. The Adjudicating Authority vide an order dated 29.11.2021 had granted interim-moratorium and had appointed Shri Kanchinadham Ravi Kumar as Resolution Professional, directing him to file his report under Section 99 of the IBC.
- Accordingly, Resolution Professional filed his report stating that the amount of Debt as on 31.07.2021 was Rs. 208,21,65,555.24/- and the Personal Guarantor had confirmed that no payment had been made to the Financial Creditor and lack of resources to pay the amount. Hence, the Resolution Professional recommended the admission of the petition filed under Section 95 of the IBC.

Contentions raised by the Personal Guarantor:

The Personal Guarantor submitted that the Financial Creditor was part of the Committee of Creditors (CoC) and had a voting share of 70.10%. The CoC had approved the resolution plan of Successful Resolution Applicant with 100% voting,

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which was further approved by this Adjudicating Authority. The Clause F of the approved Resolution Plan states that,
"Once the consideration as envisaged in the resolution plan is paid, all rights, security and interest including but not limited to mortgage, pledge, guarantee and hypothecation created shall stand satisfied in lieu of the said payment."

Thus the liability of the Personal Guarantor was discharged upon approval of the Resolution Plan and any rights of the Financial Creditor against the Personal Guarantor were forfeited after the latter gave its approval to the said resolution plan.

Contentions raised by the Financial Creditor:

The Financial Creditor submitted that the Resolution Plan approved by Adjudicating Authority becomes a statutory scheme and is, therefore, an act of operation of law. With the approval of the Resolution Plan under the IBC, the Corporate Debtor is discharged by the operation of law and not at the instance of the creditor even if one or any of the creditors may or may not be in favour of the resolution plan.

Reliance was placed on the Supreme Court judgment in Lalit Kumar Jain vs Union of India, Transferred Case (Civil) No. 245/2020), where it held that:
"111. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this Court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e., by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract."

It was further argued any relief sought by the Resolution Applicant for the ex-management would eventually cast doubt upon the independence of the Resolution Applicant vis-à-vis Suspended Management. The Clause-F of Resolution Plan clearly depicts the intention of the Resolution Applicant of seeking reliefs and concessions as far as the Corporate Debtor only. Interpreting the said clause to extinguish the Personal Guarantee of Personal Guarantor is not in tune with the objectives of the IBC and would create a scenario which would have adverse cascading effects.

Further, the liability of the Personal Guarantor is co-extensive with that of the Principal Borrower and as per Section 134 of the Indian Contract Act, 1872 a guarantor is discharged of its liability towards the creditor only if the creditor on

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its own instance discharges the Principal Debtor. The main ingredient of this section is the discharge of the debtor through a voluntary act of the creditor and not due to the operation of law.

Decision of the Tribunal

The Tribunal affirmed the view that as per Section 134 of the Indian Contract Act, 1872, a guarantor is discharged of its liability towards the creditor only if the creditor in its own instance discharges the principal debtor through the voluntary act of the creditor and not due to operation of law. The Bench also affirmed that the decision in *Lalit Kumar Jain vs Union of India,* Transferred Case (Civil) No. 245/2020) was squarely applicable and held that a guarantor cannot enjoy a right of subrogation after the conclusion of CIRP, when the payment is made by the guarantor with respect to the debt for which the guarantee is provided.

It was observed that "therefore, we are also of the view that conclusion of Corporate Insolvency Resolution Plan does not bar Financial Creditor against Guarantor, and Financial Creditor can always approach this Adjudicating Authority as envisaged under the Code." Further, the relief under Clause-F is applicable to Corporate Debtor alone, which is in line with the aims and objectives of the IBC. If Clause F is interpreted as the extinguishment of the Guarantee of the personal guarantor, that will create a scenario which would have adverse effects. Clause F does not discharge the guarantors of the Corporate Debtor from any future liabilities.

It was held that the Financial Creditor is also at liberty to initiate Interim Resolution Process against the Personal Guarantor as the resolution plan approved by Adjudicating Authority is not for recovery but revival.
The Bench held that there was no merit in submissions made by Personal Guarantor and accordingly initiated Insolvency Resolution Process against Shri. Ghanshyam Surajbali Kurmi.

Case Title: State Bank of India v Shri. Ghanshyam Surajbali Kurmi, CP (IB) No. 297/95 of IBC/HDB/2021

JUDICIAL INSIGHT

MUMBAI HC: MANDATORY PRE-DEPOSIT U/S 129E OF THE CUSTOMS ACT IS CONSTITUTIONAL

Facts of the case:

The petitioners/assessee filed the first quarterly returns for the period 2013-2014 under the Maharashtra Value Added Tax Act, 2002. The assessment proceedings were initiated by the Deputy Commissioner of Sales Tax, Issue-Based Audit, Mumbai. The assessing officer passed an assessment order.

The petitioner filed a stay application on Form No. 311 of the MVAT Act, 2002 before the Joint Commissioner of State Tax (Appeals), Mumbai. It is the First Appellate Authority. The petitioners also filed an appeal on Form No. 301 before the State First Appellate Authority.

The Joint Commissioner of State Tax (Appeals) II addressed a letter to the petitioners inviting attention to Section 26 (6A) of the MVAT Act, 2002.

The Joint Commissioner stated that until a part payment towards the tax liability is made, the document submitted by the petitioners cannot be called an appeal.

The Central Government by the Constitution (One Hundred and First Amendment) Act, 2016 introduced Goods and Services Tax (GST) w.e.f. 1 July 2017. Various central indirect taxes and levies as they relate to the supply of goods and services have been subsumed under GST. Article 246 (A) regarding GST came to be inserted in the Constitution of India, which enables the Union and States to legislate in respect of the GST. Article 269-A deals with the levy and collection of GST in the course of inter-state trade or commerce.

The tax collected is to be apportioned between the Union and States in the manner as provided by Parliament by law on the recommendation of the Goods and Services Tax Council.

On April 15th, 2017, the State Government published the Maharashtra Tax Laws (Levy, Amendment, and Validation) Act 2017 in the Government Gazette, thereby amending various provisions of various Acts. In paragraph No. 26 of the MVAT Act, 2002, Sections 6 (A), 6 (B), and 6 (C) were inserted.

The state government amended section 26(6B)(c) of the MVAT Act which required the assessee to deposit 10% of the disputed tax which is a mandatory condition for an appeal.

Issue of the case:

JUDICIAL INSIGHT

Whether the State of Maharashtra has legislative competence to enact the Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 2017 and the Maharashtra Tax Laws (Amendment and Validation) Act, 2019.
Whether the provisions of the Maharashtra Value Added Tax Act, 2002 can be amended to incorporate mandatory pre-deposit for filing appeals against the assessment orders pertaining to all goods after September 16, 2016 (i.e., post 101 Constitutional Amendment Act, 2016).

Court's Observation:

This Honorable Court noted that there is no substance in the submission made by the petitioner that the state government had no power to legislate, including the power to amend the legislation, or that such power to legislate has been taken away in view of the introduction of Article 246A in the Constitution of India.

"In our view, the decision of the Nagpur Bench of this Court in the case of M/s. Anshul Impex Private Ltd. (supra) holding that the 'right of filing appeal accrues on the date of order of assessment and the requirement of mandatory pre-deposit introduced by way of amendment does not apply to the orders passed in the assessment years prior to 15th April, 2017' is not a correct proposition since the right of appeal can be made conditional by the Legislature with express indication," the court said.

Decision Held:

The explanation inserted in the 2019 amendment w.e.f. 15th April 2017 would apply to those orders which are passed after 15th April, 2017and not to the prior orders. All earlier orders are governed by the original provisions of Section 26(6) and not by the amendment. Both the provisions i.e. old Section 26(6) and the amendment introduced by Sub Section 6A, 6B and 6C to Section 26 and the explanation thereto will apply and co-exist.

The fiscal legislation can very well stipulate as a requirement of law a mandatory pre-deposit as a condition precedent for an appeal to be entertained by the appellate authority. Thus, section 129E of the Customs Act cannot be held to be unconstitutional.

Case Name: United Projects v. The State of Maharashtra WP No. 2883 Of 2018

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