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GRC Bulletin

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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.

ricago focuses on niche products in the area of Enterprise Governance, Risk Management and Compliance Management (GRC). The solution suite is a mix of products and services. Compliance Management System (CMS), Audit Management System (AMS), Labour Law Services, Compliance Enablement Services that helps firms to efficiently manage end-to-end compliance requirements and address the risk of non-compliance.

ricago CLASS (Comprehensive Labour Advisory & Special Services), New age platform for end-to-end labour law related information. Our expert team constantly monitors updates & amendments and advises clients accordingly

CORPORATE LAWS

SEBI ISSUED A CIRCULAR FOR PORTFOLIO MANAGERS

The SEBI amended (Portfolio Managers) Regulations, 2020 (PMS Regulations) on August 22, 2022, inter-alia mandates prudential limits on investments in associates/related parties of Portfolio Manager, the requirement of taking prior consent of client for such investments and restrictions based on the credit rating of securities.

In pursuant to the PMS Regulations, the Portfolio Managers shall ensure compliance with the following:

A. <u>Limits on investment in securities of associates / related parties of Portfolio Managers</u>

In **Regulation 24 (3A)** Portfolio Manager shall ensure compliance with the prudential limits on investment as may be specified by the Board. Portfolio Managers shall invest up to a maximum of 30 per cent of their client's portfolio in the securities of their own associates/related parties.

B. <u>Prior consent of the client regarding investments in the securities of associates/related parties.</u>

In **Regulation 22(1A)** Portfolio Manager may make investments in the securities of its related parties or its associates only after obtaining the prior consent of the client in such manner as may be specified by the Board from time to time.

- Portfolio Managers shall obtain a one-time prior positive consent of client in the format specified in Annexure A (consent form), as a part of the agreement mandated under Regulation 22(1) of the PMS Regulations
- The consent form shall have an option to indicate dissent, in case the client does not want to undertake any investment in the securities of associates/related parties of the respective Portfolio Manager.
- The Portfolio Manager shall not make any investments in the securities of associates/ related parties without the prior consent of the client at the time of onboarding new clients. For existing clients, fresh investments in the securities of associates/related parties of Portfolio Managers can be made only after obtaining consent from the client.

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- In the event of a passive breach of the specified investment limits, a rebalancing of the portfolio shall be completed by Portfolio Managers within a period of 90 days from the date of such breach.

C. <u>Minimum credit rating of securities for investments by Portfolio Managers.</u>

In **Regulation 24 (3C)** Portfolio Managers shall not be allowed to invest clients' funds in unrated securities of their related parties or their associates. The Portfolio Manager shall ensure the investment of its client's funds on the basis of the credit rating of securities as may be specified by the Board.

- Portfolio Managers offering discretionary portfolio management services shall not make any investment in below investment grade securities.
- Portfolio Managers offering non-discretionary portfolio management services shall not make any investment in below investment grade listed securities. However, the Portfolio Manager may invest up to 10% of the assets under management of such clients in unlisted unrated securities of issuers other than associates/related parties of the Portfolio Manager. The said investment in unlisted unrated debt and hybrid securities shall be within the maximum specified limit of 25% for investment in unlisted securities under Regulation 24(4) of the PMS Regulations.

D. <u>Disclosure of details of investments by Portfolio Managers.</u>

1. Periodic Reports to the clients

- Portfolio Managers shall disclose the following in the periodical report required to be furnished to clients in terms of para 12 of the SEBI Circular EBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020.
- the format for client reporting as provided in Annexure B of the aforesaid Circular dated February 13, 2020, has been revised to include the following tables as a separate head under clause E.

2. Disclosure Document

In **Regulations 22 (4) (da) & (db)** Portfolio Manager shall disclose in the Disclosure Document the details of its diversification policy and

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the details of investment of clients' funds by the Portfolio Manager in the securities of its related parties or associates.

- Disclosure of the details of investment of clients' funds in the securities of associate/related parties in the Disclosure Document under the head "Details of investments in the securities of related parties of the Portfolio Manager".
- Portfolio Managers shall ensure that any material changes in the above information is updated in the Disclosure Document and uploaded on their respective websites within 7 days.

3. Applicability

In **Regulations 22 (1A), 22(4) (da) & (db), 24 (3A) to 3(E)** of PMS Regulations shall not be applicable for advisory portfolio management services, co-investment portfolio management services and for client categories who in turn manage funds under government mandates and/or are governed under specific Acts of State and/or Parliament.

- Portfolio Managers shall make suitable disclosure to the client regarding conflict of interest with respect to investments in the securities of the associates/related parties while giving advice.

Annexure: A Format of obtaining consent from the client:
This document is for obtaining the consent/dissent for investment by Portfolio Manager in its associates/related parties.

#Source: Click here for more details

CORPORATE LAWS

MINISTRY OF FINANCE NOTIFIES THE FOREIGN EXCHANGE MANAGEMENT(OVERSEAS INVESTMENT) RULES, 2022

On 22nd August 2022, the Ministry of Finance notified the Foreign Exchange Management (Overseas Investment) Rules, 2022 ("FEM Overseas Investment Rules"). The FEM Overseas Investment Rules supersede the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015.

The FEM Overseas Investment Rules shall be administered by Reserve Bank. The Reserve Bank may issue such directions, circulars, instructions and clarifications as it may deem necessary for the effective implementation of the provisions of these rules

Key Features of FEM Overseas Investment Rules are as follows:

1. Definitions:

- "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999)
- "Authorised Dealer Category-I bank or "AD bank" means a person authorised as such under subsection (1) of section 10 of the Act and for the purposes of these rules, shall mean only the domestic branches of the such AD bank
- financial commitment" means the aggregate amount of investment made by a person resident in India by way of Overseas Direct Investment, debt other than Overseas Portfolio Investment in a foreign entity or entities in which the Overseas Direct Investment is made and shall include the nonfund-based facilities extended by such person to or on behalf of such foreign entity or entities
- "foreign entity" means an entity formed or registered or incorporated outside India, including International Financial Services Centre that has limited liability
- "host country" or "host jurisdiction" means the country or jurisdiction, including the International Financial Services Centre, in which the foreign entity is formed, registered or incorporated, as the case may be
- "Overseas Direct Investment" or "ODI" means investment by way of acquisition of unlisted equity capital of a foreign entity, or subscription as a part of the memorandum of association of a foreign entity, or investment in ten per cent, or more of the paid-up equity capital of a

listed foreign entity or investment with control where investment is less than ten per cent. of the paid-up equity capital of a listed foreign entity

- "sweat equity shares" means such equity shares as are issued by an overseas entity to its directors or employees at a discount or for consideration other than cash, for providing their know-how or making available rights like intellectual property rights or value additions, by whatever name called.

2. Non-applicability of rules and regulations relating thereto in certain cases.–

These rules shall be applied to

- Any investment made outside India by a financial institution in an IFSC;
- Acquisition or transfer of any investment outside India made,–
  - out of Resident Foreign Currency Account; or
  - out of foreign currency resources held outside India by a person who is employed in India for a specific duration irrespective of length thereof or for a specific job or assignment, duration of which does not exceed three years; or
  - in accordance with sub-section (4) of section 6 of the Act.

3. Rights issue and bonus shares.–

Any person resident in India who has acquired and continues to hold equity capital of any foreign entity in accordance with the provisions of the Act or the rules or regulations made thereunder–

- may invest in the equity capital issued by a such entity as a rights issue; or
- may be granted bonus shares subject to the terms and conditions under these rules

4. Overseas Investment.–

Under these rules, any investment made outside India by a person resident in India shall be made in a foreign entity engaged in a bona fide business activity, directly or through a step down subsidiary or the special-purpose vehicle, subject to the limits and the conditions laid down in these rules and the said regulations:

Provided that the structure of such subsidiary or step-down subsidiary of the foreign entity shall comply with the structural requirements of a foreign entity.

Provided further that Overseas Investment or transfer of such investment including swap of securities in a foreign entity formed, registered or incorporated in Pakistan or in any other jurisdiction as may be advised by the Central Government from time to time shall require prior approval of the Central Government.

5. No Objection Certificate.–

Any person resident in India who,–

- has an account appearing as a non-performing asset; or
- is classified as a wilful defaulter by any bank; or
- is under investigation by a financial service regulator or by investigative agencies in India, namely, the Central Bureau of Investigation or Directorate of Enforcement or Serious Frauds Investigation Office.

6. Pricing guidelines.–

- Unless otherwise provided in these rules, the issue or transfer of equity capital of a foreign entity from a person resident outside India or a person resident in India to a person resident in India who is eligible to make such investment or from a person resident in India to a person resident outside India shall be subject to a price arrived on an arm's length basis.
- The AD bank, before facilitating a transaction under sub-rule (1), shall ensure compliance with arm's length pricing taking into consideration the valuation as per any internationally accepted pricing methodology for valuation.

7. Restructuring.–

A person resident in India who has made ODI in a foreign entity may permit restructuring of the balance sheet. This is subject to ensuring compliance with reporting, and documentation requirements and subject to the diminution in the total value of the outstanding dues towards such person.

8. Restrictions and prohibitions.–

Unless otherwise provided in the Act or these rules, no person resident in India shall make ODI in a foreign entity engaged in

- real estate activity
- gambling in any form; and

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- dealing with financial products linked to the Indian rupee without specific approval of the Reserve Bank.

9. Restriction on acquisition or transfer of immovable property outside India.–

In this rule, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank: Provided that nothing contained in this rule shall apply to a property–

- held by a person resident in India who is a national of a foreign State;
- acquired by a person resident in India on or before the 8th day of July 1947 and continued to be held by such person with the permission of the Reserve Bank;
- acquired by a person resident in India on a lease not exceeding five years.

Schedule I: Manner of making Overseas Direct Investment by an Indian entity.
Schedule II: Manner of making Overseas Portfolio Investment by an Indian entity.
Schedule III: Manner of making Overseas Investment by a resident individual.
Schedule IV: Overseas Investment by a person resident in India other than Indian entity and resident Individual.
Schedule V: Overseas Investment in IFSC by a person resident in India.

#Source: Click here for more details

TAX LAWS

CBDT: CLARIFICATIONS FOR REMOVAL OF DIFFICULTIES UNDER SECTION 194R(2) OF THE INCOME-TAX ACT, 1961

CBDT notified Additional Guidelines for removal of difficulties under sub-section (2) of section 194R of the Income-tax Act, 1961 on 13th September 2022

On 1st July Finance Act 2022 inserted a new section 194R in the Income-tax Act, 1961. The new section mandates a person, who is responsible for providing any benefit or perquisite to a resident, to deduct tax at source @ 10% of the value or aggregate of the value of such benefit or perquisite, before providing such benefit or perquisite. The benefit or perquisite may or may not be convertible into money but should arise either from carrying out of business or from exercising a profession, by such resident.

Sub-section (2) of section 194R of the Act authorities the board to issue guidelines for the removal of difficulties with the approval of the central government. Accordingly, CBDT had issued guidelines in the form of Circular no 12 of 2022 dated 16th June 2022. Subsequently, some more clarifications are requested by stakeholders on various issues.

Question 1: Refer to question No 3 of the Circular No 12 of 2022: If loan settlement/waiver by a bank is to be treated as benefit/perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R of the Act apply in such a situation?

The taxability of such settlement/waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act. Subjecting such a transaction to tax deduction under section 194R would put an extra cost on such bank, as this would require payment of tax by the deductor in addition to him taking a haircut already.

Question 2: Refer to question No 7 of the Circular No 12 of 2022- If under the terms of the agreement, the expense incurred by the service provider is the cost of the service recipient and such cost is reimbursed by the service recipient to the service provider, how is it benefit/prerequisite if the bill is not in the name of service recipient?

The GST valuation rules provide that expenditure incurred as a pure agent, will be excluded from the value of supply, and thus also from aggregate turnover. However, such exclusion of expenditure incurred as a pure agent

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is possible only and only if all the conditions required to be considered as a pure agent and further conditions stipulated in the rules are satisfied by the supplier in each case.

In the case of a "pure agent", if all the conditions are satisfied, the GST input credit is allowed to the recipient and it is not considered as a supply of the pure agent. In case these conditions are not satisfied, such expenditure incurred is included in the value of supply under GST.

Question 3: Refer to question No 7 of the Circular No 12 of 2022- Question No 30 of CBDT Circular No 715 dated 8th August 1995 clarifies that tax deduction under sections 194C and 194J is required to be made from the gross amount of the bill including the reimbursement. A person has provided service to a Company and out-of-pocket expenses are charged by him to the Company along with the service fee in the same bill. The company deducts tax under section 194J of the Act on both service fee components as well as on out-of-pocket expenses in accordance with this circular. Is there noncompliance with the provision of section 194R of the Act?

If out-of-pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R, in accordance with Circular No 715 dated 8th August 1995, it is clarified that there will not be a further liability for tax deduction under section 194R of the Act. In such a case, the out-of-pocket expense is already included as part of the professional fee. Hence, there IS no further benefit/prerequisite which requires tax deduction under section 194R of the Act

Question 4: Refer to question No 8 of the Circular No 12 of 2022- If there is a dealer conference to educate the dealers about the products of the company - (i) is there a requirement that all dealers must be invited to the conference, (ii) what if dealers arrive one day before and leave one day after and (iii) how to identify benefit against individual dealers in a group activity?

The benefit/perquisite provider may, at his discretion, choose not to deduct the expense that represents the benefit/prerequisite from his total income if it is difficult to match the benefit/prerequisite to each participant using a reasonable allocation key when it is provided as part of a group activity. He won't be obligated to deduct tax under section 194R on the benefit or perk, and as a result, he won't be considered an assessee in default under section 201 of the Act if he chooses to do so. As a result, if the expense is debited

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from the account, he must add back the expenditure that represents the benefit or perk in order to determine his total income.

Question 5: Refer to question No 9 of the Circular No 12 of 2022- Company "A" gifts a car to its dealer "B" and deducted tax on this benefit under section 194R of the Act. Dealer "B" uses this car in his business. Will he get a deduction for depreciation in calculating his income under the head "profits and gains of business or profession"?

Once Company "A" has deducted tax on the gifting of the car in accordance with section 194 R of the Act (or released the car after dealer "8" showed him a payment of tax on such benefit) and dealer "8" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for section 32 of the Act shall be the amount of benefit included by dealer "8" as income in his income-tax return. Hence, dealer "8" can get depreciation on fulfilment of other conditions for claiming depreciation.

Question 6: Whether Embassy/High Commissions are required to deduct tax under section 194R of the Act?

Section 194R does not apply to benefit/perquisite provided by, an organization in the scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under a specific Act of Parliament (such as the Asian Development Bank Act 1966) or a diplomatic mission.

Question 7: Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public is substantially interested as defined in clause (18) of section 2 of the Act and whether tax is required to be deducted under section 194R of the Act?

It is stated clearly that, in cases where bonus shares are issued to all shareholders or right shares are made available to all shareholders by a company in which the public is substantially interested, as defined in clause (18) of section 2 of the Act, the tax under section 194R of the Act is not required to be deducted.

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

TAX LAWS

MINISTRY OF FINANCE NOTIFIES THE CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY OR FOR SPECIFIED END USE) RULES, 2022

Ministry of Finance on 9th September 2022 published Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022 ("Customs (IGCR) Rule, 2022") by supersession of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

Key Features:

1. The importer shall provide one-time prior information on the common portal, in Form IGCR-1.
2. On acceptance of the information, an Import of Goods at Concessional Rate of Duty (IGCR) Identification Number (IIN) shall be generated against such information. Provided that such information may be updated on the common portal in case of a change in the details furnished in Form IGCR-1.
3. The importer who intends to avail the benefit of notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the goods imported shall be put to use for the manufacture of goods or for rendering output service or being put to use for specified end use, with an undertaking to pay
4. The importer who intends to avail of the benefit of notification shall be required to mention the IIN (referred to in sub-rule (2) of Rule 4) and continuity bond number and details while filing the Bill of Entry.
5. Procedure for allowing imported goods for job work. – (1) The importer shall maintain a record of the goods sent for job work during the month and mention the same in the monthly statement referred to in sub-rule (2) of Rule 6.
6. Procedure for allowing imported goods for unit transfer. – (1) The importer shall maintain a record of the goods sent for unit transfer during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.
7. Procedure for supplying imported goods to the end-use recipient. – (1) The importer shall maintain a record of the goods supplied to the end-use recipient during the month and mention the same in the monthly statement referred to in sub-rule (2) of rule 6.

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8. In case of supply for replenishment or Export against supply, the end use recipient shall-
    a. Maintain an account of receipt of goods, manufacturing process undertaken thereon and the waste generated, if any, during the such process;
    b. Produce the account details before the jurisdictional Customs Officer as and when required by the said officer;
    c. Produce the relevant details to the importer for the fulfilment of the benefit under the notification.
9. Re-export or clearance of unutilised or defective goods. -The importer who has benefited from a notification must use the imported goods in accordance with the requirements stated in the notification in question within the allotted time, and with regard to any unutilized or defective goods, the importer has the choice of either re-exporting them or clearing them for home consumption.
10. Recovery of duty in certain circumstances. -If the importer fails to meet the requirements outlined in sub-rule (1) of rule 10 or if the payment referred to in sub-rule (3) and (4) of rule 10 is not made in full or on time, the Deputy Commissioner of Customs or, as the case may be, the Customs Inspector will determine whether to recover the duty.
11. Penalty. -Any importer or job worker who violates any of these regulations or aids in the violation is subject to a fine up to the amount stipulated in clause (ii) of sub-section (2) of section 158.

In this notification forms related to IGCR are given:
Form IGCR- 1: Prior information to be provided by the importer.
Form IGCR- 2 Intimation regarding non-receipt of goods imported to be provided by the Importer.
Form IGCR -3 Monthly Statement.

#Source: Click here for more details

GENERAL LAWS

MINISTRY OF COMMUNICATION NOTIFIES THE INDIAN TELEGRAPH RIGHT OF WAY AMENDMENT RULES, 2022

The Ministry of Communication made amendment in Indian Telegraph Right of Way Rules, 2016, and notifies the Indian Telegraph Right of Way (Amendment) Rules, 2022.

Sr. No.	Amendment
1.	**Omitted: Opening Paragraph** the words — "optical fibre" and "mobile towers and telegraph line" shall be omitted.
2.	**Inserted: Rule 2(1)(h)** "Schedule" means a Schedule appended to these rules
3.	**Substituted: Rule 4(2)** (2) Every application for permission under these rules shall be made by the licensee on an electronic portal developed by the Central Government.
4.	**Substituted: Rule 5(3)** the words "one thousand rupees per kilometre", the words —the amount specified in Part-I of the Schedule‖ shall be substituted.
5.	**Inserted: Rule 6(1)** (1A) The area of the underground telegraph infrastructure proposed to be established shall be the length of the duct multiplied by the diameter of the duct multiplied by the number of the ducts. (1B) The appropriate authority shall be entitled to receive such compensation from the licensee, not exceeding the amount specified in Part-III of the Schedule, for the use of the property under which the underground telegraph infrastructure is proposed to be established, as may be determined by the appropriate

	authority.
6.	**Inserted: Rule 10A** 10A. Usage of street furniture for installation of small cells and telegraph lines.-(1) A licensee shall for the purpose of installation of a small cell and telegraph line submit an application, along with details of street furniture and a copy of certification by a structural engineer authorised by an appropriate authority, attesting to the structural safety of the street furniture where installation of small cells and telegraph line is proposed to be deployed, to the appropriate authority for permission to use street furniture for installation of small cells and telegraph line.
7.	**Inserted: Rule 10B** 10B. Establishment of telegraph infrastructure over private property. Where the licensee proposes the establishment of over ground telegraph infrastructure over any private property, the licensee shall not require any permission from the appropriate authority.
8.	**Inserted: THE SCHEDULE** After rule 14 the schedule be inserted.

#Source: Click here for more details

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MOEFCC NOTIFIES THE BATTERY WASTE MANAGEMENT RULES, 2022

On 24th August 2022, the Ministry of Environment, Forest and Climate Change notified the Battery Waste Management Rules, 2022 ("BWM Rules"). The BWM Rules supersede the Batteries (Management and Handling) Rules, 2001 that dealt with the management of lead-acid batteries.

The BWM Rules apply to Producer, dealers, consumers of "all types of batteries regardless of chemistry, shape, volume, weight, material composition and use" and "entities involved in the collection, segregation, transportation, refurbishment and recycling of Waste Battery"

Key Features of BWM Rules

1. **Definitions:**

- '**Automotive battery**' means any Battery used only for automotive starter, lighting or ignition power.
- '**Battery**' means new or refurbished cell and/or Battery and/or their component, including accumulator, which is any source of electrical energy generated by direct conversion of chemical energy and includes disposable primary and/or secondary battery.
- '**Electric vehicle battery**' means any Battery specifically designed to provide traction to hybrid and electric vehicles for road transport.
- '**Industrial battery**' means any Battery designed for industrial uses, excluding Portable battery, Electric vehicle battery and Automotive battery. These may include sealed Battery (excluding potable battery); unsealed Battery (excluding automotive Battery) and energy storage system Battery
- '**Recycler**' means an entity engaged in recycling Waste Battery
- '**Facility**' means any location wherein the process incidental to the collection, storage, segregation, refurbishing, and recycling disposal of Waste Battery is carried out
- '**Producer**' means an entity who engages in:
    - manufacture and sale of Battery including refurbished Battery, including in equipment, under its own brand; or
    - sale of Battery including refurbished Battery, including in equipment, under its own brand produced by other manufacturers or suppliers; or
    - import of Battery as well as equipment containing Battery;

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- '**Waste Battery**' includes:
  - Used and/or End of Life Battery and/or its components or spares or parts or consumables which may or may not be hazardous in nature
  - Pre-consumer Off-Spec Battery and its components or spares or parts or consumables;
  - Battery whose date for appropriate use has expired;
  - Battery which have been discarded by the user.

2. **Functions of Producer** - Producers shall
   - have the obligation of Extended Producer Responsibility for the Battery that they introduce in the market to ensure the attainment of the recycling or refurbishing obligations.
   - meet the collection and recycling and/or refurbishment targets as mentioned in Schedule II for Battery made available in the market.
   - Waste Battery collected by the Producer shall be sent for recycling or refurbishing and shall not be sent for landfilling or incineration.
   - The person or an entity involved in the manufacturing of Battery shall have to register through the online centralised portal as a Producer in Form 1(A). The certificate of registration shall be issued in Form 1(B).

3. **Registration Requirements**
   - The BWM Rules stipulate that a Producer needs to register with the Central Pollution Control Board ("CPCB") by filing a form (also provided in the BWM Rules) through an online portal that the CPCB will be setting up.
   - Similarly, Refurbishers, as well as Recyclers, are required to register themselves with the State Pollution Control Board ("SPCB").
   - As for Producers, registration will be valid for a period of five years and can be renewed by making a submission through a prescribed form before completion of sixty days of the expiry of the registration.

4. **Functions of Consumer** – It will be the responsibility of the consumer, -
   - to discard Waste Battery separately from other waste streams, especially from mixed waste, and domestic waste streams;
   - to ensure that Waste Battery are disposed of in an environment-friendly manner by giving them to an entity engaged in collection or refurbishment or recycling;

5. **Functions of Refurbisher** – All refurbishers shall register with State Pollution Control Board on the centralised portal. The certificate of registration shall be issued using the portal in Form 2(B).

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- ensure that other waste generated during handling and refurbishing activities is managed as per the extant regulations such as Solid Waste Management Rules, 2016 and Plastic Waste Management Rules, 2016;
- ensure that refurbishment processes and facilities comply with the standards or guidelines prescribed by the Central Pollution Control Board;
- ensure that the Waste Battery is removed from the collected appliance if Battery is incorporated into an equipment

6. **Functions of Recycler** – All recyclers shall register with the State Pollution Control Board through the online portal. The certificate of registration shall be issued in Form 2(B).

   It shall be the responsibility of the recycler to, –

- make an application in Form 2(A) to the State Pollution Control Board for a grant of one-time registration;
- ensure that it carries out any activity in accordance with the guidelines prescribed by Central Pollution Control Board;
- ensure that hazardous waste generated from any activity of the entity is managed as per the provisions under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016;
- ensure that other waste generated during handling and recycling activities be managed as per the extant regulations such as Solid Waste Management Rules, 2016, Plastic Waste Management Rules, 2016 and Ewaste (Management) Rules, 2016;
- ensure that recycling processes and facilities for Waste Battery comply with the standards or guidelines prescribed by Central Pollution Control Board;
- ensure that the Waste Battery is removed from the collected appliance if Battery is incorporated into equipment.

7. **Action on violations and imposition of Environmental Compensation** – Environmental Compensation shall also be levied for the following activities based on the polluter pays principle, –

- entities carrying out activities without registration as mandated under these rules;
- providing false information / wilful concealment of material facts by the entities registered under these rules;
- submission of forged/manipulated documents by the entities registered under these rules;

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- entities engaged in the collection, segregation, and treatment in respect to not following sound handling of Waste Battery

8. **Centralised Online Portal and Committee for Implementation**
   - The CPCB has been entrusted with the task of establishing an online portal for registration and filing returns, in order to reflect the material balance of waste batteries as well as the details regarding audit of the Producers and other entities involved in the process.
   - This web portal will act as a single-point data repository for orders and guidelines pertaining to the implementation of the BWM Rules.
   - A Committee, comprising of representatives from various ministries, organisations such as the CPCB as well as stakeholders.
   - CPCB will be constituted to recommend measures to MoEFCC for effective implementation of the BWM Rules and to guide and supervise the development and operation of the online portal as well as undertaking any modifications in the forms attached to the BWM Rules.

#Source: Click here for more details

JUDICIAL INSIGHT

PUBLIC SECTOR BANKS CAN ONLY USE LOOKOUT CIRCULAR AGAINST DEFAULTERS ONLY IF DETRIMENTAL TO ECONOMIC INTEREST OF INDIA

Facts of the Case:

- The petitioner was one of the guarantors for the credit facility availed by an establishment engaged in processing and sale of raw cashew, and it had availed a credit facility to the tune of Rs.14,50,00,000/- from the Bank of Baroda.
- Repayment of the loan was, however, defaulted, which the petitioner submitted was due to the setback suffered by the cashew industry during the floods in 2018 and 2019 and was not wilful default.
- Subsequently, the Bank declared the loan account as a Non-Performing Asset (NPA) and initiated recovery proceedings under the SARFAESI Act, 2002.
- The Bank also declared the petitioner and other guarantors as wilful defaulters, which was challenged before the High Court of Kerala in another writ petition, and in which the Court had declared that the communications and proceedings declaring the petitioners as wilful defaulters were to be quashed and the Bank was directed to consider the case afresh.
- During this time, when the petitioner sought to travel to Dubai for business purposes, he was prevented from doing so by the third respondent Emigration Officer on the ground that Looks Out Circular (LOC) was pending against him.
- In the other writ petition, W.P. (C) No. 15649 of 2022, the petitioner is the proprietor of a cashew processing and exporting unit, Asian Firdous Cashews, and had availed credit facilities from the UCO Bank.
- Due to non-payment, the loan fell into arrears, and the Bank declared the account as an NPA on 31st May 2019. The Bank initiated various recovery measures, including the initiation of revenue recovery proceedings against the petitioner's father.
- The revenue recovery proceeding was challenged in another writ, subsequent to which an interim stay order was issued. During this time, the petitioner had to travel to Dubai in connection with a criminal case instituted by him against a purchaser in Dubai, and he was also prevented from doing so by the third respondent Emigration Officer on the same grounds as in the other writ petition before the Court.

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Issue of the Case:

1. whether LOCs could be opened against defaulting borrowers/guarantors at the instance of lending institutions/Public Sector Banks.

Petitioner's arguments:

There cannot be any restrictions on a citizen's freedom to go abroad in the absence of any legislation giving the banks the authority to request the issuing of Look Out Circulars. Further, it was argued that the petitioners had a right to know the reasons behind any restrictions placed on their freedom of movement and that in this particular instance, no such reasons had been given.

Respondent's arguments:

The issuance of the Look Out Circular against the borrower and the designation of him as a wilful defaulter are two distinct and independent steps. It was argued that the bank's right to request the issuing of a LOC against the petitioner is unaffected by the Court's interference with the declaration of him as a wilful defaulter and that the respondents were qualified to do so due to the Office Memorandum that gave them that authority. It was emphasised that even though the petitioner in the first petition offered to settle the account for Rs. 10.60 Crores as opposed to the contractual dues of more than Rs. 23 Crores, he failed to keep his word, suggesting that he was not sincere in his desire to settle the loan account and may have been trying to avoid the responsibility.

Court's Observation:

In W.P(C). No.18186 of 2022, the petitioner had been named a wilful defaulter, the communications and proceedings issued by the Bank in that regard had been quashed, and the Bank had no other case that the petitioner had been declared a wilful defaulter after that. With respect to W.P(C). No.15649 of 2022, the request for issuance of LOC was made on the premise that the 'the account holder is in the process of being declared as wilful defaulter', and even after 2 years, the status quo continued. In this regard, the Court concluded that both the petitioners were mere defaulters of loans availed from the respondent banks.

"It is not as if the OMs authorize the banks to seek issuance of look out circulars against every defaulting account holder. Even if for the sake of argument it is accepted that the Banks can request for opening of LOC against

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wilful defaulters, that can only to be against a person declared as wilful defaulter, after following the procedure prescribed in the Master Circular issued by the Reserve Bank of India".

Decision Held:

The issuance of the LOCs against the petitioners was bad, and the Banks could not prevent the petitioners from travelling abroad based on the pending Look Out Circulars. It was added that the judgment does not interdict the banks from seeking issuance of fresh Look Out Circulars in strict compliance with the Office Memorandums issued by the Ministry of Home Affairs.

Case Name: *Shinas A. Firdaus v. Union of India & Ors and D. Pradeep Kumar v. Union of Indian & Ors. 2022*

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APPLICANT ALLEGED OF CREATING FICTITIOUS ENTITY TO PASS INELIGIBLE ITC IS GRANTED BAIL

Facts of the case:

- The applicant engaged in activities of creating fictitious entities to pass ineligible input tax credit. The search proceedings against HK Metal and Blue Star Trading Company were conducted at their registered places of business. Both firms are sole proprietorships engaged in scrap business in Bhavnagar and are registered in the names of the applicant's father and mother, Kalawala Haji and Mrs. Sabana Aslam.
- According to the record, the applicant was the authorised representative of both firms and was managing their bank transactions. During the search proceedings, both the firms were not operative and not in existence at the business place, and a new firm, M/s. Ashiya Enterprise was founded.
- The findings of the investigation revealed that these firms were engaged in the wrongful activity of issuing fake invoices to pass ineligible input tax credits to beneficiaries without any actual movement of goods.
- The department alleged that the applicant caused a revenue loss to the government exchequer to the tune of Rs.21.59 crores, as bypassing the illegal ITC, the beneficiary firms had claimed an unlawful input tax credit. The applicant has violated the provisions of GST, GGST, and IGST and the rules and evaded tax of Rs.21.59 crores.
- The proprietors of the firms were served a summons and they were arrested after due process of law. The applicant has evaded the investigating proceedings since, and lastly, he was apprehended on 17.04.2022.
- He was produced before the Metropolitan Magistrate Court, Ahmedabad, and was granted custodial interrogation for 4 days. During the pendency of the petition, the complaint, as contemplated under the CGST Act, was filed before the court.

Applicant's arguments:

Both the firms had filed regular returns for their business transactions and, to date, had not received any show cause notice, raising any dispute with respect to fake invoices etc. It was argued that both firms had filed their returns in GSTR-1 disclosing the sale of goods, which was reflected in GSTR 2A, and thus the question of wrongfully claiming ITC did not arise.

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Department's arguments:

- The applicant defrauded the State Exchequer to the tune of Rs.21.59 crores. The investigation is still going on and the quantum of tax evasion involved is also likely to increase. Considering the conduct of the applicant, if bail is granted, the applicant may manipulate or attempt to destroy the evidence, which will adversely affect the investigation.
- The offence committed was a grave economic offence and detrimental to the nation's economy, as economic offences constitute a class apart and need to be viewed with a different approach in the matter of bail. Therefore, the applicant should not be enlarged so as to ensure proper investigation.

Decision of the court:

The court ordered the applicant to be released on regular bail on executing a personal bond of Rs.10,000 with one surety to the satisfaction of the Trial Court and subjected to various conditions.

1. The court ordered that the applicant should not take undue advantage of liberty or misuse liberty.
2. The applicant shall not act in a manner injurious to the interests of the prosecution and surrender the passport, if any, to the lower court within a week.
3. The court ordered that the applicant should not leave India without the prior permission of the Sessions Judge concerned.
4. The court directed the furnishing of the latest address of residence to the investigating officer and also to the court at the time of execution of the bond and shall not change the residence without prior permission of the trial court.
5. The court ordered him to deposit Rs. 2 crores within 2 months of his release before the office. The applicant shall deposit the amount in two instalments, i.e., Rs. 1 crore within one month of his release, and the remaining amount shall be paid in the second month. If the applicant fails to deposit the amount within the stipulated time period, the bail shall be automatically cancelled.

Case Name: *Mohmed Hasan Aslam Kaliwala Versus State Of Gujarat R/CRIMINAL MISC. APPLICATION NO. 9674 of 2022*

Contact Us

Head Quarters:

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

Ph: +91 8040912427

Email: info@ricago.com

Website: www.ricago.com

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