

# A MONTHLY **NEWSLETTER**



**Edition  
August  
2021**

## This Edition Includes

**Direct Tax | GST | RERA | Legal  
Legal | RBI | SEBI | MSMEs  
Prevention of Money Laundering  
Corporate Laws**

# Foreword

SRNG Connect is a monthly newsletter by SRNG Advisors LLP covering News, Updates, Notifications, Circulars, Judgments related to various laws like Income Tax, Goods and Services Tax, Real Estate (Regulation and Development) Act, RBI, SEBI, Corporate Laws, Code of Civil Procedure, Code of Criminal Procedure, Prevention of Money Laundering Act etc.

An endeavor has been made to keep the fellow professionals updated on the latest happenings & updates under various commercial laws which have day to day relevance.

The present issue apart from covering updates under various laws highlights certain important judgments under Income Tax, GST, RERA & PMLA and also covers a remarkable order passed by Government of Rajasthan with respect to stamp duty leviable on distribution of assets to partners in case of dissolution of LLP where the assets have been purchased by LLP.

The following team of Chartered Accountants, Company Secretaries and Advocates has contributed to this newsletter:

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# Table of Contents

<b>Direct Taxes .....</b>	<b>1 - 5</b>
<b>GST .....</b>	<b>6 - 11</b>
<b>RERA.....</b>	<b>12 - 19</b>
<b>Prevention of Money Laundering .....</b>	<b>20 - 22</b>
<b>Legal.....</b>	<b>23 - 26</b>
<b>Corporate Laws .....</b>	<b>27 - 30</b>
<b>RBI.....</b>	<b>31 - 32</b>
<b>SEBI.....</b>	<b>33 - 35</b>
<b>MSMEs.....</b>	<b>36 - 37</b>

Income tax

Forms, Return, Withholding, Accounting, Deduction, Audit, Tax day, Salary, Joint, Tips, Wages, Capital loss, Exemption, Capital gain, Penalty, State, Individual, Balance, Investment, Self-employment, Charity, Bracket, Itemized, Refund, Schedule, Finance, Depreciation, Assets, Dividends, Preparation, Liabilities, Interest, Federal, E-file, Estimated, Law, Wages, Capital loss, Deduction, Audit, Tax day, Salary



## Direct Tax



### NOTIFICATIONS

#### Notification No. 76 of 2021, dated 02-07-2021

**Rule 8AA(5)- In case of the amount which is chargeable to income-tax as income of specified entity under section 45(4) under the head –Capital Gains Rule 8AB - Attribution of income taxable under section 45(4) to the capital assets remaining with the specified entity, under section 48.**

Rules have been prescribed for computing income & attribution of such income u/s 45(4) & section 48 of the Act.

#### Notification No. 77 of 2021, dated 07-07-2021

**Rule 8AC- ‘Computation of short term capital gains and written down value under section 50 where depreciation on goodwill has been obtained’.** Rules have been prescribed for computation of short term capital gains and written down value under section 50 where depreciation on goodwill has been obtained.

#### Notification No. 78/2021, dated 09-07-2021

**M/s Haryana Building and Other Construction Workers Welfare Board’ (PAN AAATH6995H), a Board constituted by the State Government of Haryana**

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies ‘**Haryana Building and Other Construction Workers Welfare Board’ (PAN AAATH6995H), a Board constituted by the State Government of Haryana.** This Notification shall be applicable from AY 2021-2022 to 2025-2026.

#### Notification No. 79/2021, dated 12-07-2021

**M/s Patanjali Research Foundation Trust, Haridwar (PAN:- AABTP8183E) under the category “Research Association”.**

In exercise of the powers conferred by by clauses (ii) of sub-section (1) of section 35 of the Income-tax Act,

1961 (43 of 1961) read with rules 5C and 5D of the Income-tax Rules, 1962, the Central Government hereby notifies **M/s Patanjali Research Foundation Trust, Haridwar (PAN:- AABTP8183E) under the category “Research Association” for the purposes of section 35(1)(ii) r.w.r. 5C & 5D.** This Notification shall be applicable from AY 2022-2023 to 2027-2028.

#### Notification No. 80/2021, dated 14-07-2021

**M/s ‘Haryana Labour Welfare Board’ (PAN AAATH2451C), a Board constituted by the State Government of Haryana.**

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies **M/s ‘Haryana Labour Welfare Board’ (PAN AAATH2451C), a Board constituted by the State Government of Haryana.** This Notification shall be applicable from AY 2021-2022 to 2025-2026.

#### Notification No. 81/2021, dated 14-07-2021

**M/s ‘Himachal Pradesh Computerization of Police Society’, (PAN AABAH0360G), a body established by the State Government of Himachal Pradesh.**

In exercise of the powers conferred by clause (46) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies **M/s ‘Himachal Pradesh Computerization of Police Society’, (PAN AABAH0360G), a body established by the State Government of Himachal Pradesh.** This Notification shall be applicable from AY 2019-2020 to 2023-2024.

#### Notification No. 83/2021, dated 29-07-2021

CBDT vide notification dated 29 July 2021 [Notification No. 83/2021/F. No. 370142/ 30/ 2021-TPL] has omitted certain Rules due to provisions becoming redundant owing to omission or applicability of such provisions not relevant now as the same has expired long time ago.

Rules and Forms that are omitted vide said notification are as under:

**Rule No 5A, Rule No 5AB, Rule No 6ABB, Rule No 12B, Form 63A, Rule No 12BA, Rule No 16D, Rule No 16DD, Rule No 16E, Rule No 16F, Rule No 18B, Rule No 18BB, Rule No 18BBA, Rule No 18DD, Rule No 18DDA, Rule No 20AB, Rule No 29AA, Rule No 29D, Rule No 37, Rule No 37E, Rule No 37F, Rule No 44A, Rule No 48, Rule No 123, Rule No 124.**

### CIRCULAR

#### Circular No. 14 of 2021 dated 2<sup>nd</sup> July, 2021

**Guidelines under section 9B and sub-section (4) of section 45 of the Income-tax Act, 1961 - reg.**

This circular explains taxability of specified entity under section 45(4), 9B & cost & sale consideration under section 48(iii) of the Act. For more details please refer the detailed circular.

## **PRESS RELEASE**

### **PRESS RELEASE New Delhi, 9th July, 2021**

#### **Income Tax Department conducts searches in Hyderabad**

Search and seizure operation was conducted on 06.07.2021 on a group based in Hyderabad. The group is engaged in real estate, construction, waste management and infrastructure. The activities of waste management are spread across India while real estate activities are mainly concentrated in Hyderabad. The search operation led to detection of artificial loss of approximately Rs. 1200 crore, which is to be taxed in the hands of the respective assessee. As a result of the search & seizure operation, and on the basis of various incriminating documents found, the entities and associates have admitted to having unaccounted income of Rs. 300 crore and have also agreed to pay due taxes. Further investigations are in progress.

### **PRESS RELEASE New Delhi, 13th July, 2021**

#### **Income Tax Department conducts surveys in Bengaluru**

Income Tax Department carried out a survey operation on 08.07.2021 on two business premises in Bengaluru on one of India's leading manpower services provider. The assessee has been claiming huge deduction u/s 80JJAA of Income-tax Act, 1961 which incentivizes new employment generation, subject to fulfillment of certain conditions. Overall, the survey has resulted in detection of concealment of income to the tune of Rs. 880 crore spread over various assessment years. Further investigations are in progress.

### **PRESS RELEASE New Delhi, 20<sup>th</sup> July, 2021**

#### **CBDT grants further relaxation in electronic filing of Income Tax Forms 15CA/15CB**

It has now been decided to extend the aforesaid date to 15th August, 2021.

### **PRESS RELEASE New Delhi, 24th July, 2021**

**Income Tax Department conducts searches PAN India in a prominent group having diversified businesses** including Media, Power, Textiles and Real Estate, with a group turnover of more than Rs. 6,000 crore per annum. 20 residential and 12 business premises spread over 9 cities including Mumbai, Delhi, Bhopal, Indore, Noida and Ahmedabad have been covered. During the search, it was found that they have been operating several companies in the names of their employees, which

have been used for booking bogus expenses and routing of funds. . The quantum of income escapement using this modus operandi, detected so far, amounts to Rs. 700 crore spread over a period of 6 years. However, the quantum may be more as the group has used multiple layers and investigations are being carried out to unravel the entire money trail. Furthermore, these involve violation of S.2(76)(vi) of Companies Act and Clause 49 of Listing Agreement prescribed by SEBI for listed companies. Application of Benami Transaction Prohibition Act will also be examined. Cyclical trading and transfer of funds among group companies engaged in unrelated businesses to the tune of Rs. 2200 crore has been found. Searches are continuing and further investigations are in progress.

### **PRESS RELEASE New Delhi, 24th July, 2021**

#### **Income Tax Department conducts searches in Uttar Pradesh**

Income Tax Department carried out a search operation on 22.07.2021 on a group in Uttar Pradesh dealing in Mining, Hospitality, News Media, Liquor and Real Estate. The search began in Lucknow, Basti, Varanasi, Jaunpur and Kolkata. Cash of more than Rs. 3 crore has been seized and 16 lockers have been placed under restraint. Documents including incriminating digital evidence indicating nearly Rs. 200 crore of unaccounted transactions have been seized. The total amount of such unaccounted layering through bogus entities exceeds Rs. 170 crore while the total unaccounted transactions exceed Rs. 200 crore. Evidence has also been found to indicate that payments exceeding Rs. 2 crore have been made in cash by one of the businesses in violation of provisions of Income-tax Act, 1961. Huge unaccounted money has also been deposited in a group Trust and routed to the main concerns. Further investigations are in progress.

## **Miscellaneous Communications:**

### **Communication dated 05.07.2021**

**Processing of returns with refund claims under section 143(1) of the Income-tax Act, 1961 beyond the prescribed time limits in non-scrutiny cases**

**CBDT relaxes the time frame prescribed for processing of returns 143(1) & directs** that all validly filed returns up to assessment year 2017-18 with refund claims, which could not be processed under section 143(1) and which have become time-barred, subject to the exceptions mentioned in para below, can be processed now with prior administrative approval of Pr.CCIT/CCIT concerned. The intimation of such processing section 143(1) can be sent to the assessee concerned by 30.09.2021.

Once administrative approval is accorded by the Pr.CCIT/CCIT, the Pr.CIT/CIT concerned would make a reference to the DGIT(Systems) to provide

necessary enablement to the Assessing officer on a case to case basis.

The relaxation accorded above shall not be applicable to the following returns:

- (a) Returns selected in scrutiny;
- (b) Returns remain unprocessed, where either demand is shown as payable in the return or is likely to arise after processing it;
- (c) Returns remain unprocessed for any reason attributable to the assessee.

### **CASE LAWS**



**PCIT V. Gujarat State Financial Corporation [2021] 126 taxmann.com 154 (SC)**

**Remission or cessation of trading liability (Loan waiver) - Not chargeable u/s 41(1)**

Gujarat High Court held that where loan amount was never claimed by assessee as expenditure, waiver of same could not amount to cessation of trading liability and was not chargeable to tax under section 41(1). SLP filed against the ruling was dismissed by Supreme Court. Decided in the favour of the assessee.

**Toplight Corporate Management (P.) Ltd. v. NFAC Delhi [2021] 128 taxman.com 2021 (Delhi)**

**Where assessment order was passed without issuing a show cause notice-cum-draft assessment order to assessee, same being contrary to provisions of section 144B, impugned assessment order issued u/s 144, r.w.s. 144B as well as demand notice issued u/s 156 and notice for initiating penalty proceedings issued u/s 270A & 271AAC(I) were to be set aside**

IT was held that the petitioner is correct in submitting that Section 144B of the Act has been violated and the assessment proceeding has been completed in the present case in violation of the principles of natural justice. However, the respondents/revenue is given liberty to pass a fresh assessment order in accordance with law. The petitioner is also given liberty to challenge any action of the respondents/revenue in accordance with law, in the event it is aggrieved by the same. Accordingly,

the present writ petition along with pending application stands disposed of.

**Central Board of Direct Taxes v. Vasudev Adigas Fast Food (P.) Ltd. (Karnataka High Court) [2021] 128 taxman.com 287 (Kota)**

Where return of income was filed and delayed, the condonation of delay was sought from CBDT, which rejected the same, Honourable Karnataka High Court considered internal dispute as valid reason for delay in filing return.

**Balraj Hire Purchase (P.) Ltd. v. National Faceless Assessment Centre (Delhi HC) [2021] 128 taxman.com 190 (Delhi)**

**Assessee has a statutory right to personal hearing under section 144B(7)(vii); Where there was a substantial variation made by AO in taxable income of assessee, assessee ought to have been granted a personal hearing in matter, failure to grant a personal hearing had vitiated impugned assessment order and thus, impugned assessment order was to be set aside**

It was held that the failure to accord a personal hearing to the petitioner was fatal in this particular case. The petitioner had a statutory right to personal hearing under section 144B(7)(vii) of the Income-tax Act, 1961. This issue was dealt in *Sanjay Aggarwal v. National Faceless Assessment Centre, Delhi*, [2021] 127 taxmann.com 637 (Delhi).

Liberty is, however, given to the AO to pass a fresh assessment order. The AO will grant a personal hearing to the authorised representative of the petitioner before passing the fresh assessment order. If petitioner's authorized representative wish to file written submissions, liberty in that behalf will be granted by the AO. The AO will pass the fresh assessment order after taking into account all the replies filed. The writ petition and pending application are disposed of in the aforesaid terms. The case papers shall stand consigned to the record

**Mudra Finance Limited, Ansal Colours Engineering Sez Limited, Ansal Landmark Townships Private Limited Versus Income Tax Officer Ward 17 (1) , Delhi & Anr., Assistant Commissioner Of Income Tax-1 (1) , Delhi & Anr. 2021 (8) Tmi 197 - Delhi High Court**

Reopening of assessment u/s 147 - Assessment time barred - applicability of the newly inserted provisions of Section 148A and the amendments brought inter alia in Section 149 - HELD THAT:- Notices u/s 148 of the Act stood expired and, therefore, any action u/s 148 would have been time barred by virtue of the proviso to Section 149(1) of the Act - This Court is of the prima facie view that the impugned notification is contrary to settled principle of statutory interpretation, namely, that any action taken post the amendment of a procedural section would have to abide by the new procedures stipulated in the amended Act.

This Court is of the prima facie view that by virtue of a notification, which is a delegated legislation, the date for implementation of statutory provision, as stipulated in the Act, cannot be varied or changed.

Following the interim orders passed by the learned predecessor Division Bench in Mon Mohan Kohli Vs. Assistant Commissioner Of Income Tax & Anr., 2021 (8) TMI 196 - Delhi High Court as well as similar interim order passed by the Bombay High Court, this Court directs that there shall be a stay of the operation of the impugned notices.

**Sahil International v. Assistant Commissioner of Income-tax, Circle-19(3) [2021] 128 taxmann.com 161 (Bombay)**

Section 148, read with section 149 of the Income-tax Act, 1961 and section 3 of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 - Income escaping assessment - Issue of notice for (TLA Act, 2020) - Assessee has challenged validity of CBDT's notification No. 20/2021, dated 31-03-2021, issued in exercise of powers conferred by section 3(1) of TLA Act, 2020 - Assessee contended that despite enforcement of Finance Act, 2021 with effect from 1-04-2021 which substituted section 148, said notification has allowed revenue to issue reassessment notice under old provisions of section 148 and, thus, notice under old provisions of section 148 could not be issued on or after 1-04-2021 - Whether on facts, notice was to be issued to revenue and Attorney General of India - Held, yes [para 2][In favour of assessee]- Proceedings Stayed

**Armada D1 (P.) Ltd. v. Dy. CIT [WP (L) No. 11766 of 2021, dated 3-6-2021 (Bombay High Court) Unreported**

Interim Order: Stay on Notice issued under section 148 of the Act after March 31, 2021 without following the procedure laid down under section 148A of the Act which is effective from April 01, 2021

**Tata Communications Transformation Services Ltd. v. Asstt. CIT [2021] 128 taxmann.com 247 (Bom.)**

Section 148, read with section 149, of the Income-tax Act, 1961 and section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 - Income escaping assessment - Issue of notice for (TLA Act, 2020) - Assessee challenged constitutional validity of section 3 of TLA Act, 2020 and Notification No. 20/2021, dated 31-03-2021 issued thereunder on ground that despite section 148 and various other provisions had been substituted by Finance Act, 2021 with effect from 1-04-2021, TLA Act, 2020 allowed revenue to issue reassessment notice under non-existent old provisions of section 148 on or after 1-4-2021 - Assessee, thus, submitted that impugned notice dated 21-5-2021 which was based on non-existent

earlier provisions of section 148 could not be issued and authority was not empowered to issue same - Whether on facts, notice was to be issued to revenue and Attorney General of India - Held, yes [para 2][In favour of assessee]- Proceedings Stayed





## NOTIFICATIONS



### **CBIC notified section 110 & 111 of the Finance Act, 2021 w.e.f. 01.08.2021**

**Notification No. 29/2021 – Central Tax dated 30th July, 2021.**

Government has notified that w.e.f. 1st August, Section 35(5) of the CGST Act which mandated the certification of GSTR-9C by the Chartered Accountant or a Cost Accountant is substituted by Sec 44 of the CGST Act which requires a self-certified reconciliation statement in place of an audit report

### **CBIC amends Rule 80 of the CGST Rules, 2017 and notify GSTR 9 and 9C for FY 2020-21. Rule 80 provides for exemption from GSTR-9C to taxpayers having AATO up to Rs.5 crores**

**Notification No. 30/2021 – Central Tax dated 30th July, 2021.**

CBIC exempts taxpayers having turnover up to Rs.5 Crores from furnishing GSTR 9C for FY 2020-21 and onwards and taxpayers having turnover above Rs.5 crores can now self-certify GSTR 9C – Reconciliation Statement for FY 2020-21 and onwards

### **CBIC exempts taxpayers having AATO up to Rs.2 crores from the requirement of furnishing annual return for FY 2020-21 Notification No. 31/2021 – Central Tax dated 30th July, 2021.**

CBIC vide this notification give exemption to the taxpayer having turnover up to Rs.2 crores in FY 2020-21 from filing annual return of said Financial Year.

## CIRCULARS



### **CBIC issued clarification regarding extension of limitation under GST Law in terms of Supreme Court's Order dated 27.04.2021. Circular no 157/13/2021- Dated 20th July, 2021**

The Government has issued notifications u/w 168A of CGST Act, 2017, wherein the time limit for completion of various actions, by any authority or by any person, under the CGST Act, which falls during

the specified period, has been extended up to a specific date, subject to some exceptions as specified in the said notifications. In this context, various representations have been received seeking clarification regarding the cognizance for extension of limitation in terms of Supreme Court Order dated 27.04.2021 in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020 under the GST law.

It is clarified that the order is applicable only in respect of any appeal which is required to be filed before Joint/ Additional Commissioner (Appeals), Commissioner (Appeals), Appellate Authority for Advance Ruling, Tribunal and various courts against any quasi-judicial order or where proceeding for revision or rectification of any order is required.

It is also clarified that the order of Supreme Court shall not be applicable to any other proceedings under GST Laws and these actions would continue to be governed only by the statutory mechanism and time limit provided/ extensions granted under the statute itself.

## PRESS RELEASE



### **GST Revenue collection of Rs.1,16,393 crores in July, 2021**

The gross GST revenue collected in the month of July 2021 is Rs.1,16,393 crores. The revenues for the month of July 2021 are 33% higher than the GST revenues in the same month last year. The GST collection, after posting above Rs.1 lakh crore mark for eight months in a row, dropped below Rs.1 lakh crore in June 2021.

Since, the collections during the month of June 2021 predominantly related to the month of May 2021 and during May 2021, most of the States/UTs were under either complete or partial lock down due to COVID. With the easing out of COVID restrictions, GST collection for July 2021 has again crossed Rs.1 lakh crore, which clearly indicates that the economy is recovering at a fast pace.

## UPDATES



### **Important changes related to QRMP Scheme implemented on the GST Portal Dated July 6th, 2021**

GSTN has issued update on important changes related to QRMP Scheme implemented on the GST Portal for the taxpayers. These changes are relating to auto population of GSTR-3B liability from IFF and Form GSTR-1, introduction of facility of nil filing of Form GSTR-1 (Quarterly) through SMS and impact of cancellation of registration on liability to file Form GSTR-1.

In case registration of a taxpayer under QRMP Scheme is cancelled, with effective date of cancellation being any date after 1st day of Month 1 of a quarter, they would be required to file Form GSTR-1 for the complete quarter, as the last applicable return.

#### **CASE LAWS/ ADVANCE RULINGS**



#### **HC rejects bail application of petitioner accused of availing benefit of ITC without supply of goods and services**

***Santosh Kumar Gupta v. Union of India - [2021] 128taxmann.com 77 (Orissa)***

The petitioner was arrested by GST authority on allegations that he had created about ten Firms and was generating fake bills, invoices in name of said Firms and facilitating availment of benefit of Input Tax Credit (ITC) without actually supply/ receipt of goods and services. He filed application under Section 439 of the Cr.P.C. for his release on bail.

The Honourable High Court observed that several documents relating to the business activities of the Firm with other concerned Firms have been collected during investigation and departmental officers strongly sensed something fishy and dubious going on in the matter touching the unwanted entitlement and availment of ITC. Such roles alleged to have been played by the Petitioner due to his sincere involvement in business and carrying out the same. Therefore, the court held that it is not inclined to accept the present move of the Petitioner for grant of bail as such dubious activities in committing offences for making huge unlawful gain by causing huge loss to the State Exchequer is a step towards not only scuttling the process of development in the country but also in standing as developed country in the globe in which our march is on.

#### **Madras HC denies transition of accumulated CENVAT credit from shut down factory in Tamil Nadu to new GSTIN in Andhra Pradesh**

#### ***MMD Heavy Machinery (India) (P.) Ltd. v. Assistant Commissioner, Chennai - [2021] 128 taxmann.com 100 (Madras)***

The petitioner shut down its Tamil Nadu factory and shifted to Andhra Pradesh. It had accumulated Cenvat credit. After introduction of GST regime, it filed Trans -1 and transferred its unutilized credit of Tamil Nadu unit, under CGST Act, 2017. It filed writ petition to allow filing of Form GST ITC-02 to transfer the unutilized input tax credit to GSTIN of Andhra Pradesh.

The Honorable High Court observed that the petitioner chose not to transfer input tax credit when it shifted its factory from Tamil Nadu to Andhra Pradesh. Further, petitioner had exported goods without paying proportionate excise duty. It had option to utilize not only aforesaid input tax credit availed on inputs but also input services utilized in export goods and claim rebate. Therefore, fate of input tax credit lying unutilized is to be examined in light of provisions of Central Excise Act, 1944, Central Excise Rules, 2002, CENVAT Credit Rules, 2004 and relevant notifications.

Moreover, it would be possible that the petitioner while removing capital goods, work-in-progress and inputs had not discharged its liability under rule3(5) of CENVAT Credit Rules, 2004. It would require for detailed examination by concerned jurisdictional officer. Therefore, refund of input tax credit lying unutilized which has been transitioned by filing with Trans-1 after implementation of CGST Act, 2017 cannot be considered. Thus, it was held that the petition for transfer of input tax Credit (CENVAT Credit) which was transitioned by the petitioner by filing Trans-1 would not be allowed.

#### **Authority issuing notice of suspension is bound to pass final order of cancellation of registration**

***Avon Udhyog v. State of Rajasthan - [2021] 128 taxmann.com 122 (Rajasthan)***

A search has been conducted on petitioner's premises and subsequently, the notice of cancellation of registration is issued to the petitioner. The petitioner has furnished his detailed reply beyond the time limit of 7 days prescribed under sub-rule (1) of Rule 22 of the Central Goods and Services Tax Rules, 2017. The authorities have not pass any final order regarding petitioner's registration, due to which petitioner's right to trade has been kept suspended.

The petitioner submitted that either a reasonable opportunity of hearing must be granted to an assessee before suspending the registration or the Assessing Authority is required to take a final decision pursuant to notice of cancellation of registration.

The Hon'ble Rajasthan High Court stated that suspension of registration has its own consequences & it brings the entire business to a standstill. In a way it is worse than cancellation. Against cancellation, an assessee can take legal remedies but

against suspension pending an enquiry, even if the assessee chooses to take remedies, the authorities or the Court(s) would normally show reluctance.

It was held that the proceedings of cancellation of registration cannot be kept hanging fire on any pretext, including where the assessee failed to file reply within the time allowed. The Authority issuing the notice is statutorily bound to pass order in terms of sub-rule (3) of Rule 22 (Supra).

**Services rendered under contract with State Urban Development Authority in relation to functions entrusted to Municipalities and Panchayats are exempt from GST**

**Authority for Advance Rulings, Uttar Pradesh Snow Fountain Consultants, In re - [2021] 128 taxmann.com 65 (AAR- UTTAR PRADESH)**

The applicant submitted application for advance ruling seeking to know taxability of Project Development Service provided by it to recipient under contract with State Urban Development Authority (SUDA) and Project Management Consultancy Services (PMC) under contract for Pradhan Mantri Awas Yojna (PMAY).

The Authority for Advance Ruling Authority observed that as per website of Pradhan Mantri Awas Yojana-Housing for All (Urban), Ministry of Housing and Urban Affairs, the PMAY is a Scheme to provide central assistance to Urban Local Bodies (ULBs) and other implementing agencies through States/UTs for Rehabilitation of existing slum dwellers using their land as a resource through private, participation, and affordable Housing in Partnership.

As per scope of work under different contracts, as provided by the applicant, it showed that the services rendered by the applicant under the contract with State Urban Development Agency, Uttar Pradesh (SUDA), and for PMAY are in relation to functions entrusted to Municipalities under Article 243W and to Panchayats under Article 243G of the Constitution of India.

Moreover, as per serial number 3 of Notification No. 12/2017- Central Tax (Rate), dated 28 June, 2017, services provided by the applicant qualifies as pure services where the Project cost includes the cost of service rendered along with reimbursement of cost of procurement of goods for rendering such services. Thus, it was held that services provided by applicant would be eligible for exemption from levy of CGST and UPGST, respectively.

**Only contributions to RWA in excess of Rs. 7,500 would be taxable under GST Act: Madras HC Greenwood Owners Association v. Union of India - [2021] 128 taxmann.com 182 (Delhi)**

The petitioner was Resident Welfare Associations (RWA) in apartment complexes. It challenged an order of Authority for Advance Ruling (AAR) levying tax on entirety of contribution to a RWA. As per Notification No. 12/2017-CT dated 28-6-2017, an exemption was granted to contributions made to RWA upto an amount of Rs. 7,500/- per month per

member. It submitted that where the contribution exceeded the amount of Rs. 7,500/-, then the exemption to be available upto to a sum of Rs. 7,500/- and only the difference (excess) become exigible to tax.

However, the AAR held that where the contribution exceeded the amount of Rs. 7,500/-, it would lose the entitlement to exemption altogether on ground that grant of exemption was conditional upon contribution being an amount of Rs. 7,500 or less and if contribution exceeded sum of Rs. 7,500, then no exemption would be there.

The Honorable High Court observed that in the early years of GST, the Goods and Services Tax Department issued a clarification in the case of Co-operative Housing Societies, wherein they categorically stated that GST would be applicable only on the amount in excess of Rs. 7,500/-. The fliers cover all Co-operative Housing Societies, in essence, RWAs, Housing Societies or Societies in residential complexes. Moreover, the conclusion of the AAR to the effect that any contribution above Rs. 7,500/- would disentitle the RWA to exemption, is contrary to the express language of the Entry of exemption notification and therefore liable to be set aside. Therefore, it is only contributions to RWA in excess of Rs. 7,500/- that would be taxable under GST Act.

**GST leviable only on difference between selling and purchase price of second hand jewellery: AAR Karnataka**

**Authority for Advance Rulings, Karnataka Aadhya Gold (P.) Ltd., In re - [2021] 128 taxmann.com 254 (AAR - KARNATAKA)**

The applicant was engaged in business of buying and selling of second hand gold jewellery. It filed an application for advance ruling to determine whether GST would be paid only on difference between selling price and purchase price of second hand gold jewellery. It submitted that it would sell the used/second hand gold jewellery which would be purchased from unregistered persons, 'as such', without making any further processing and there would be no input tax credit available.

The Authority for Advance Ruling observed that as per Rule 32(5) of CGST Rules, if a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used good as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored.

In the instant case, the applicant has admitted that it is purchasing used gold jewellery from individuals and selling the same, after cleaning and polishing them. The applicant has also admitted that it is not availing any input tax credit on the purchase of such goods and the goods so purchased are supplied 'as such'. The applicant has also stated that he is not



melting the jewellery to convert it into bullion and then remaking it to new jewellery but only cleaning the old jewelry and polishing it without changing the nature and form of the jewellery so purchased. These goods are then supplied to other persons. Therefore, it was held that GST would be leviable only on difference between selling and purchase price of second hand jewellery.

**Assessment Order passed before 10 months of providing opportunity of heard is without application of mind, to be set aside: Madras HC ARSK Hardwares & Traders v. State Tax Officer, Madurai - [2021] 128 taxmann.com 171 (Madras)**

The petitioner's place of business was inspected by department and certain defects were noticed for the Tax period 2017-18, 2018-19 and 2019-20. The department issued notice pointing out discrepancies between GSTR-3B and GSTR-2A and some other suppression. The petitioners was directed to furnish objections within 15 days to the above proposals. The petitioner filed detailed objections to the pre-assessment notice and given detailed objections to each and every defect pointed out by the department and requested personal hearing before passing any orders.

Without considering the objections filed by the petitioner and without offering opportunity of personal hearing of being heard, the department concluded the impugned ex-parte assessment, for the tax period 2017-18, 2018-19 and 2019-20. However, the notice for personal hearing was issued on 31-12-2020 i.e. 10 months after the date of order. It filed writ petition against the same.

The Honourable High Court observed that order of assessment has been passed on 7-2-2020, whereas personal hearing has been on 3-12-2020, after the order of assessment made, which clearly shows non-application of mind on the part of the departmental officer. The petitioner was entitled to be heard in person, before the order of assessment was made. Therefore, it was held that the order was liable to be set aside and matter was to be remanded back to pass fresh order after affording an opportunity of hearing.

**GST registration required for Charitable Trust running medical store to give medicines without profit: Gujarat HC Nagri Eye Research Foundation v. Union of India - [2021] 128 taxmann.com 310 (Gujarat)**

The petitioner was a registered charitable trust set up with various objectives basically and essentially of undertaking eye and research activities and charitable activities in eye research and prevention of blindness. It had filed an application for advance ruling to determine whether GST Registration would be required for medical store run by it as medical store would be providing medicines at a lower rate.

The Authority for Advance Ruling held that the petitioner Trust was required to obtain GST Registration for the medical store run by the Trust and that the medical store providing medicines at a lower rate amounted to supply of goods. Aggrieved by the order, it filed appeal against the order and the same was dismissed. Thereafter, it filed writ petition against the same. It was submitted that both the authorities have failed to appreciate the fact that the activities carried on by the petitioner Trust by running a medical store could not be said to be a "business" within the meaning of Section 2(17) of the CGST Act, 2017 (the Act).

The Honourable High Court observed that every supplier who falls within ambit of Section 22(1) of the Act has to get himself registered under the Act. As per Section 7(1) of the Act, the expression 'supply' includes all forms of supply of goods and services or both such as sale, transfer, barter etc. made or agreed to be made for consideration by a person in the course or furtherance of business. It was not disputed that the petitioners would be selling the medicines, may be at a cheaper rate but for consideration in the course of their business. For the purpose of "business" under section 2(17) of the Act, it is immaterial whether such a trade or commerce or such activity is for pecuniary benefit or not. Therefore, it was held that the Medical Store run by the Charitable Trust would require GST Registration, and that the Medical Store providing medicines even if supplied at lower rate would amount to supply of goods.

**Search & Seizure carried out by Inspector of CGST dept. without authority of a proper jurisdictional officer is unlawful: Delhi HC R.J. Trading Co. v. Commissioner of CGST, Delhi - [2021] 128 taxmann.com 344 (Delhi)**

The petitioner was engaged in the business of trading in cigarettes which were supplied to it by authorised dealers of well-known manufacturing companies. The officers of CGST Delhi North Commissionerate conducted search and seizure at its premises. It filed writ petition against the same contending that it was without authorisation and unlawful.

The Honourable High Court observed that in this case, the search and seizure was conducted by an Inspector of the CGST Delhi North Commissionerate based on the authorization of the Additional Commissioner of the same department i.e. CGST Delhi North Commissionerate. Admittedly, no investigations were carried out against petitioner by the CGST Delhi North Commissionerate. However, the search and seizure at the premises of petitioner was not conducted pursuant to an inspection carried out under sub-section (1) of Section 67 of GST Act. The conduct of search and seizure, in this case, appears to have been carried out under the cover of the omnibus term 'otherwise' provided in sub-section (2) of Section 67.

It was also observed that authorization of search was given merely on the basis of the communication

addressed by Joint Commissioner (AE), Gautam Budh Nagar to the Additional/Joint Commissioner, CGST Delhi North Commissionerate. A careful perusal of this communication would show that Joint Commissioner (AE), Gautam Budh Nagar merely wanted to know existence of the petitioner in connection with another investigation in respect of other assessee. Therefore, it was held that the very trigger for conducting the search i.e. the authorization issued by the Additional Commissioner, CGST Delhi North Commissionerate was flawed and unsustainable in law.

**Dept. allowed to block credit even if there is no positive credit in the electronic credit ledger when order passed under rule 86A: Allahabad HC *R.M. Dairy Products LLP v. State of Uttar Pradesh* - [2021] 129 taxmann.com 37 (Allahabad)**

The department blocked the credit of the petitioner and the petitioner filed writ petition challenging the blocking of credit. It submitted that had no jurisdiction or authority to block any input tax credit over and above any amount that may have been actually available on the date of the order. It was also submitted that input tax credit in dispute arose on account of the purchases made by the petitioner from one supplier and in respect of that supplier, adjudication proceedings were underway against the petitioner. Till those proceedings were concluded, no amount would become recoverable from the petitioner and, therefore, the order passed under Rule 86A of CGST Rules to block credit was wholly premature.

The Honourable High Court observed that the Rule does not contemplate any recovery of tax due from an assessee. It only provides, in certain situations and upon certain conditions being fulfilled, specified amount may be held back and be not allowed to be utilized by the assessee towards discharge of its liabilities on the outward tax or towards refund. It creates a lien without actual recovery being made or attempted. In the present case, the department alleged the fraudulent utilization of input tax credit since the supplier of petitioner was found to be non-existent at the disclosed place of business and their existed 'reason to believe' with the department that the petitioner had fraudulently availed credit.

Moreover, the rule only enables the authorized officer to not allow debit of an amount equivalent to 'such credit'. To that effect, the legislature has chosen the words 'not allow debit'. Thus, the provision of Rule 86-A is not a recovery provision but only a provision to secure the interest of revenue. Therefore, if there is no positive credit standing in the electronic credit ledger on the date of the order, passed under Rule 86-A, that order would be read to create a lien upto limit specified in the order passed as per Rule 86-A of the Rules. As and when the credit entries arise, the lien would attach to those credit entries up to the limit set by the order passed under Rule 86-A of the Rules. The debit entry recorded in the electronic

credit ledger would be read accordingly and the petition would be dismissed.

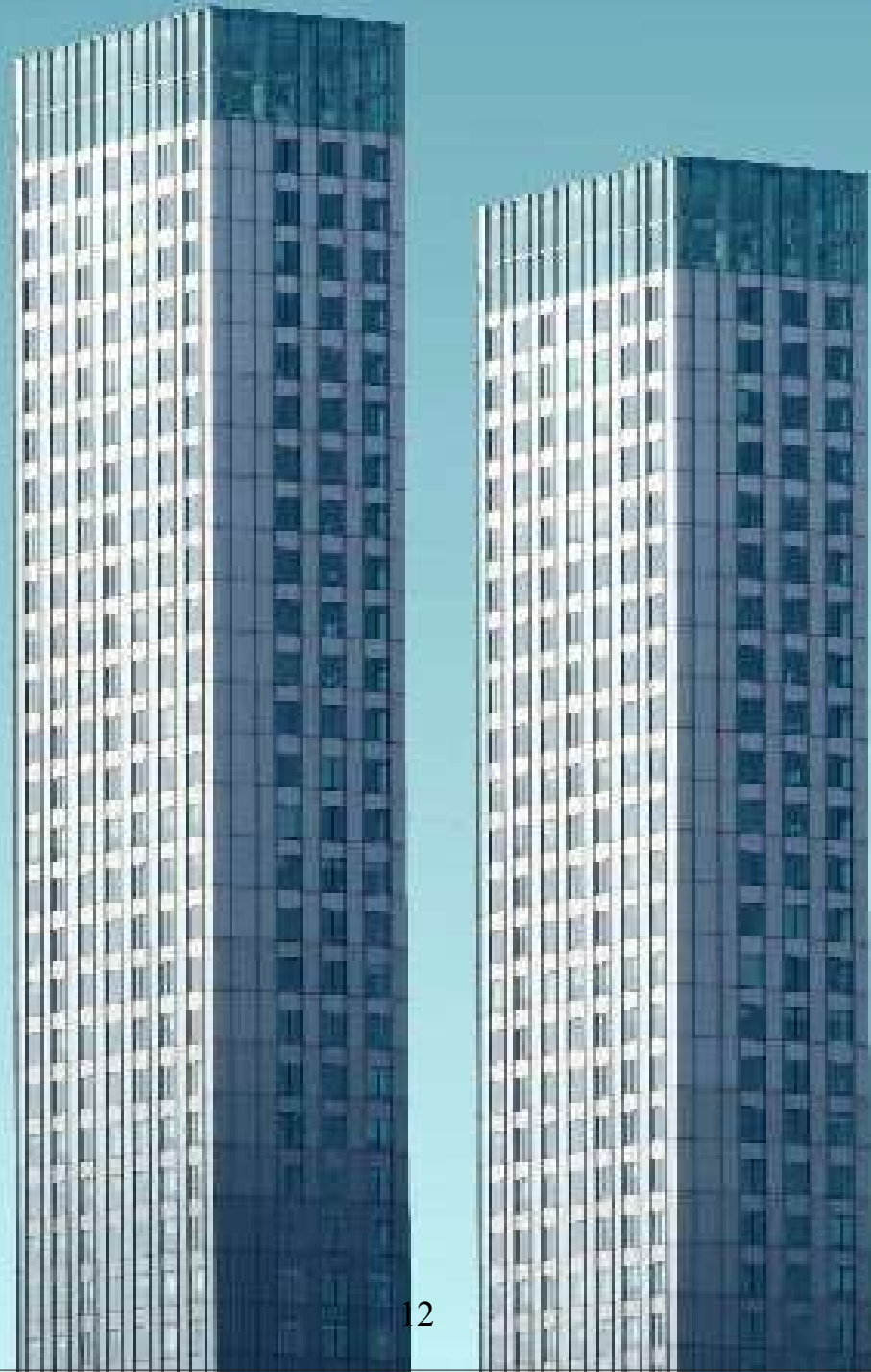
**Dept. allowed assessee to take credit of amount of refund in GSTR-3B which was sanctioned manually**

***Amazon Seller Services (P.) Ltd. v. Union of India* - [2021] 128 taxmann.com 382 (Karnataka)**

The assessee had claimed refund of Input Tax Credit and the department had sanctioned based on PMT-03 that had been issued manually. The assessee claimed the refund by accounting for such refund in GSTR-3B. Later, a show cause notice was issued by Office of The Principal Additional Director, Directorate General Goods and Service Taxes (Intelligence), Bengaluru Zonal Unit alleging the ineligible availing of input tax credit. It filed writ petition to seek relief.

The High Court observed that the department has given undertaking that no further proceedings pursuant to such show cause notice in a manner adverse to the interests of the assessee would be started. Since, the undertaking has been given that the claimant could take credit of refund that was sanctioned based on PMT-03 that had been issued manually by accounting for such refund in the GSTR3B monthly return, therefore, it was held that no further grievance of the assessee would survive for redressal and accordingly further adjudication in the matter would not arise.

# RERA





**RAJ RERA Order dated 06.08.2021 regarding Re-registration of project and Modification of estimated finish date of a registered project**

Rajasthan RERA Authority has issued following directions-

1. Curtailment of size of a registered project-
  - Application through online module of map revision.
  - No booking, allotment, sale or offer for sale should have been made in the part proposed for deletion.
  - The deleted part may be re-registered in future before making any advertisement, marketing, booking, allotment, sale or offer for sale.
  - A new estimated finish date can be proposed for the re registered project.
  - Fee for re registration shall be equal to the fee payable on registration of a new project.
2. Splitting a registered project into two or more phases-
  - Application through online module of map revision for curtailment
  - Simultaneous application for re registration of deleted portion
  - Status of the project (New/Ongoing) and estimated finish date of the re registered project shall remain same as original project
  - Fee for re registration shall be equal to the fee payable on registration of a new project
3. Change of estimated finish date-
  - Application through online module of project modification
  - No booking, allotment, sale or offer for sale should have been made
  - Simultaneous application for updation of Form B and ATS
  - Date may be preponed even if booking, allotment, sale or offer for sale has been made

**Raj RERA organized camp for pending online applications of Extension and Map Revision**

Raj RERA to facilitate the promoters, in better way in respect to modification/ updation/correction in any of the details/ documents of their registered projects, organized camps on 12th - 13th July 2021

Authority observed that some applications of Extension and Map Revision are either submitting incomplete or filling incorrect data. For this, number of times, the Authority has informed the concerned promoters to fulfill the pendencies/deficiencies, but these have not been addressed by them. Therefore, their applications have remained pending for long.

In order to dispose of these pending online applications of Extension and Map Revision, the Authority organized camp on 12th - 13th July 2021, wherein around 36 extension applications and 16 Map revision applications were dealt with and resolved by the Authority.

**Inderjeet Kalra (and others) V/S Terra Realcon Private Limited - Rajasthan Real Estate Regulatory Authority (Complaint Number - RAJ-RERA-C-2018-2501)**

**“The Refund is not to be allowed on the cost of other allottees of the project. If refund is allowed it will adversely affect the interest of other allottees.”**

The Rajasthan Real Estate Regulatory Authority via its order dated 06.08.2021, denied the request of seven complainants/allottees to grant the refund against their bookings on the ground that it will adversely affect the other allottees who wish to continue with the project, the promoter's investments & efforts and ultimate intension of RERA to complete the project.

Complainants argued that the project is not completed with the stipulated time as mentioned in the ATS. Once, the project is got delayed and offer for possession is not made for a longer period, under the provisions of section 18 refund must be allowed. They placed reliance on Neel Kamal Realtors and submitted that there is not any surety for completion of project in near future and keeping in view the uncertainty, rights of the consumer are never to be infringed upon.

The respondent placed reliance on judgment passed by the Haryana RERA Authority in case of Dharampal Singh V/s Ansal Housing and Construction Ltd. (Complaint No. 863/2018) and submitted that all the blocks of the projects are completed more than 78% to 86%. The respondent-promoter is having the intention to complete the project and in this respect promoter has arranged the funds from his own sources and loan under Swamih Fund is being arranged. The delay was unintentional and beyond the control of promoter and if refund would be allowed in this peculiar situations, it may curtail the possibility for availability of loan money through Swamih Fund and non receipt of same will surely shut down the project.

Learned authority after the arguments decided to non to issue refund orders as it adversely affect the intension of promoter to complete the project and will discourage the Allottees who want to continue



with the project. Therefore builder was directed to pay only interest at the prescribed rates from the date of possession as mentioned in the agreement till actual date of possession.



### **UP RERA rejects registration application of two Supertech projects**

The Uttar Pradesh Real Estate Regulatory Authority (UP RERA) has rejected the registration application of two projects of Supertech Ltd. after the company failed to complete its projects already registered in RERA namely - Golf Country Phase-1A and Golf Country Phase-1B using its powers under section-5 of RERA. UP RERA, before arriving at this decision, had given the promoter personal hearing on June 23 and had called for a detailed compliance report of its orders and a convincing action plan to complete its projects from the promoter.

The authority also decided to grant the promoter a second opportunity to re-apply for registration of these two projects after he has been able to substantially comply with the previous orders.

### **UP-RERA carries out digitization of various processes**

The Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) has carried out digitization of various processes as per the guidelines issued by Uttar Pradesh government in order to minimize the regulatory compliance burden.

An action plan for the digitization of 10 forms was issued under the Uttar Pradesh Real Estate (Regulation and Development) Rules, 2016, of which seven forms were already online on the web portal of UP-RERA, the remaining three were made online on July 16. Application for registration of real estate project in Form A, application for extending the registration of real estate project in Form E, obtaining certificate for registration by real estate agent, obtaining registration of real estate project in Form C, renewal of registration certificate of real estate agent in Form K, Promoter to get his accounts audited every year are some of the processes that have been made online.

Apart from this, in order to reduce the problems of homebuyers during the Covid-19 pandemic, e-courts have been set up by the authority at Lucknow and Gautam Buddha Nagar. About 12,918 complaints have been registered through e-courts, and 12,150 complaints have been resolved successfully.

### **UP RERA holds meeting to review progress of 76 realty projects in NCR**

The Uttar Pradesh Real Estate Regulatory Authority (UP RERA) held review meetings of 76 projects from the national capital region (NCR) with their promoters between July 5 and July 9. During the meetings, the promoters presented the project completion plan, current status of the projects, funding availability, map validation, occupancy certificates and completion certificates, and dues pending with the authority. The RERA also took into account the inspection reports of these projects conducted by its inspection teams and confronted the promoters with a ground reality as brought out in these reports.

The Authority had directed these promoters to submit a convincing and concrete plan for completion of the delayed projects within the time fixed by the authority in the review meeting.

### **UP-Rera extends deadline for 100 realty projects in Noida and Greater Noida**

The Uttar Pradesh Real Estate Regulatory Authority (UP-Rera) has decided to extend the deadline for around 100 projects in Noida, Greater Noida and Yamuna Expressway, including Ghaziabad, by two years. The decision followed several representations from developers requesting an extension. However, the authority granted the extension on the condition that the developers get the validity of their projects' maps too extended from their respective authorities.



### **Registration of estate agents up 24% in pandemic times**

Real estate consultancy saw a surge in new entrants even during Covid times. The number of real estate agents registered with the Gujarat Real Estate Regulatory Authority (GujRERA) rose by 24% to 356 in 2020-21 from 286 in 2019-20.

Of the total agents registered in fiscal 2021, 336 were individuals and 20 were companies. Ahmedabad grabbed the lion's share with 279 real estate agents—individuals and companies—getting registered with the regulatory authority, according to data available with GujRERA.

*For details:*

<https://timesofindia.indiatimes.com/city/ahmedabad/registration-of-estate-agents-up-24-in-pandemic-times/articleshow/83935660.cms>

## **About 18% of new projects in major cities are coming up in non-TP areas: Gujarat RERA**

Gujarat's Real Estate Regulatory Authority (GujRERA) office claimed that 18% of all new building projects in Ahmedabad, Surat, Vadodara and Rajkot are forced to come up in areas where there are no town planning schemes (TP).

In tier-2 and tier-3 Gujarat cities like Ankleshwar, Bharuch, Junagadh and Navasari nearly 60% of newer developments are in non-TP areas. The non-TP areas lack planned network or roads, infrastructure and amenities.

"In Ahmedabad, only 5% to 7% new housing and commercial projects are coming up in non-TP areas when compared to other three tier-1 cities," said a senior Ahmedabad Municipal Corporation (AMC) official.

The non-statutory document has suggested reforms in the existing town planning department and further flags that development demand in Gujarat's cities has often outpaced the supply of planned and serviced land provided through TP scheme mechanism serviced land provided through TP scheme mechanism.

*For details:*

<https://realty.economictimes.indiatimes.com/news/industry/about-18-of-new-projects-in-major-cities-are-coming-up-in-non-tp-areas-gujarat-rera/84132445>

## **HARYANA RERA CASE LAWS**

### **HARYANA RERA: The builders are now allowed to forfeit the deposited amount as per the agreement if the buyers withdraw for no reason**

In a case filed against Godrej Premium Builders and Magic Info Solutions for the project named 'Godrej Summit' situated in Sector 109, Gurugram, the possession was to be handed over to the allottees within 48 months of builder-buyer agreement executed in 2013. It was held that the buyers could not prove how the builders were at fault in misrepresenting any facts related to the project. Also, the buyers failed to prove any sufficient reason for wanting to cancel their unit and opt for refund of deposit.

Thus, if the complainant chooses to withdraw from the project, the builders are also entitled to deduct/forfeit the amount as per the agreement.

*For details:*

<https://realty.economictimes.indiatimes.com/news/regulatory/builder-can-deduct-amount-as-per-agreement-if-buyer-opt-out-for-no-reason-haryana-rera/84893022>



### **HARYANA RERA: Nidhi Singh Vs. IREO Victory Valley Private Limited and others**

On 16.07.2021, the Haryana RERA held that the builder is not a license holder and has obtained the occupation certificate fraudulently even without having any requisite infrastructure and services. The authority was informed by the planning branch, Gurgaon, that the project was still not registered.

The authority restrained the builder from advertising, marketing, booking or selling in the project without attaining registration and directed the Executive Engineer to make a record of the number of units sold.

## **WEST BENGAL RERA NEWS**

### **RERA implemented in West Bengal**

Under Section 84 of the Real Estate Regulatory Authority, 2016, the Governor made the West Bengal Real Estate (Regulation and Development) Rules, 2021. They were brought into force on the date of being published in the Official Gazette i.e., 27th July 2021.

West Bengal was the only state until now which had not accepted the RERA and had their own act titled as West Bengal Housing and Industrial Regulation Act 2017(WBHIRA).



## **NEWS**

### **MahaRERA grants six-month extension to builders to deliver projects due to second wave of Covid-19**

The Maharashtra Real Estate Regulatory Authority allowed a six-month relief to builders to deliver projects by accepting their demand for invoking the 'force majeure' clause because of the second wave of Covid-19. This is the second time in the pandemic



that the authority has granted such a relief for the builders in the state.

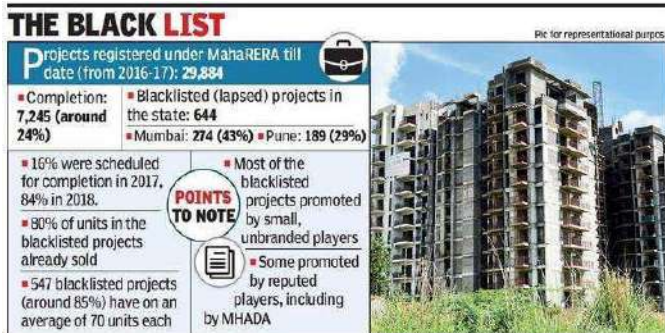
**As per the notification no.** MahaRERA /Secy /File No. 27/157/2021 dated 06.08.2021, Authority stated that **"All Maha RERA registered projects where completion date, revised completion date or extended completion date expires on or after April 15, 2021, the period of validity for registration of such projects shall be extended by six months."**

The Authority added that it will accordingly issue project registration certificates with revised timelines for such projects at the earliest and also made it clear that the extension will not apply to projects that were to be completed before April 15, 2021.

The order has been issued in order to aid government efforts in controlling the damage caused due to second wave of COVID-19 and ensure that completion of projects does not get adversely affected.

<https://realty.economictimes.indiatimes.com/news/industry/maharera-grants-six-month-extension-to-builders-to-deliver-projects/85120943>

**MahaRERA prohibits 644 housing projects across Maharashtra from sales**



MahaRERA Authority has prohibited 644 housing projects across Maharashtra from selling any more units at their projects, due to delayed completion and delivery.

Most developers of the blacklisted projects, according to released data, are smaller players with fewer than 100 units per project, aside from a few projects by reputed players in the region. Around 85% of the blacklisted projects had 70 units in every project on average. A blacklisting of such kind indicates that the project cannot be sold, marketed or advertised in any way.

The list also includes a few projects by the state government-promoted Maharashtra Housing and Area Development Authority (MHADA).

A report by the property market observers Anarock noted that 80% of the units in the 644 projects have already been sold. 16% of the projects were scheduled to be completed in 2017, while the rest

were supposed to be finished in 2018, MahaRERA data showed.

This move by Maha RERA sends out a strong signal to errant developers who have been delaying projects incessantly. Homebuyers have been waiting to get possession since 2017 or 2018.

<https://realty.economictimes.indiatimes.com/news/industry/maharera-prohibits-644-housing-projects-across-maharashtra-from-sales/84913430>

## CASE LAWS

**Marvel Sigma Homes faces Bombay HC action for not toeing MahaRera line**

A Bombay high court judgment has provided relief to flat buyers fighting builders who refuse to comply with orders passed by the Maharashtra Real Estate Regulatory Authority (MahaRera).

Court took suo motu cognizance and directed that a notice be issued under the Contempt of Courts Act against Builder Marvel Sigma Homes and its director Vishwajeet Jhavar for **"obstruction and interference with administration of justice."**

Court pulled up the developer for **"deliberately not complying with various orders and disclosures made by this court... and by filing false and incomplete affidavits."**

The complainant had petitioned the HC after failing to get possession of a flat worth Rs 10.61 crore in 2014 in a project called Marvel Ribera in Pune. He said that the developer failed to deliver the apartment by June 2016 as mandated in their agreement, and demanded his money back with interest.

During proceedings of the case at Authority, the builder claimed he could not complete the project due to **"adverse market conditions and financial issues."**

In 2018, Complainant had won the case in MahaRera, which ordered the builder to pay back the amount with interest. He also went to the RERA appellate tribunal when the builder did not comply.

The high court pulled up the Pune district collector and Pune city tahsildar for **"failure to discharge statutory duties and responsibilities"** when MahaRera issued a recovery warrant against the builder.

The HC said it is within its jurisdiction "to protect the rights of the petitioner by granting interim relief even against a private party respondent that has wrongly benefitted from inaction on the part of the public authorities in discharge of their public duty."

The tahsildar said his office issued two Demand Notices to the developer, who failed to respond. The tahsildar's stand was since "there is no project or property card that bears the name (of the developer), no action for recovery could be taken." The HC noted that an affidavit last year "itself indicates that Marvel Crest is a project of the developer Marvel Sigma Homes Pvt Ltd.

A “solitary measure” in February 2021 to recover Rs 6.25 crore from the builder by the tahsildar “after gross inaction is not enough,” said the HC and restrained the developer from selling or creating further third party rights in unsold units as on the uploading date of its order. The HC also directed the developer to deposit Rs 11 crore in four weeks; on such deposit the interim stay on sale of unsold units will stand vacated.

The HC noted that the Supreme Court had on July 14 dismissed a challenge by the developer to its March 9 judgment which had held that the recovery certificate had rightly been issued under the RERA Act and rules.

<https://realty.economictimes.indiatimes.com/news/regulatory/marvel-sigma-homes-faces-bombay-hc-action-for-not-toeing-maharera-line/84605759>

## CIRCULARS

### **In matter of “Garage, Covered parking space and open parking space”.**

Maha RERA in its circular dated 30.07.2021, clarified as follows w.r.t. Garage, Covered parking space and open parking space:

- Open parking areas are provided free of FSI;
- Promoters are not entitled to sell/allot open parking areas for monetary consideration;
- Open parking areas, garage and covered Parking space should be specifically marked and numbered at the real estate project site in accordance and as per approved / sanctioned plans and tagged to the apartment to which it is allotted;
- Garage and/or covered parking space when sold/allotted form monetary consideration, the type, numbers and size as well as the place where such garage or covered parking space is situated should be mentioned in the Agreement for Sale being entered into and the plan showing the exact location / allotment along with the particulars as aforesaid should be annexed to the Agreement for Sale.

The above directions shall come into effect from 30.07.2021 onwards and all concerns shall adhere and comply with the above directions, failure to comply with the above directions shall be considered as violations of the provisions of the Act, Rules and Regulations made there under and further action in terms of the provisions of the Act, shall be taken.

Execution of registered conveyance deed and its discloser on the website.

Maha RERA in its circular dated 28.07.2021, to check the compliances of section 17 instructed as follows:

Every Promoter henceforth shall: -

- Submit quarterly up-to-date status report regarding steps initiated by the promoter for

execution of the registered conveyance deed. Such up-to-date status firstly shall be submitted along with the quarterly up-to-date status of the project, that the promoter shall be submitting immediately after application for obtaining occupancy certificate is submitted to the Competent Authority.

- Execute the registered conveyance deed as per mandate of Section 17 of the Act, within three months from the date of receipt of the occupancy certificate.
- Failure on the part of the promoter to submit quarterly up-to-date status report as aforesaid as well as non-execution of the registered conveyance deed in terms of mandate contained in Section 17 of the Act shall be considered as violation of provisions of the Act, Rules and Regulations made thereunder and further action in terms of the provisions of the Act shall be taken as against the Promoter.

## **Report from CERSAI**

Maha RERA in its circular dated 28.07.2021, status as follows:

Whereas Ministry of Finance notified the establishment of the Central Registry Securitization Asset Reconstruction and Security Interest of India (CERSAI), a Government Company incorporated for the purpose of operating and maintaining the Central Registry under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The objective of setting up of Central Registry is to prevent frauds in loan cases involving multiple lending from different banks on the same immovable property.

Whereas Government of India has subsequently issued a Gazette Notification dated January 22, 2016 for filing of the following types of security interest on the CERSAI portal:

- Particulars of creation, modification or satisfaction of security interest in immovable property by mortgage other than mortgage by deposit of title deeds.
- Particulars of creation, modification or satisfaction of security interest in hypothecation of plant and machinery, stocks, debts including book debts or receivables, whether existing or future.
- Particulars of creation, modification or satisfaction of security interest in intangible assets, being know how, patent, copyright, trademark, license, franchise or any other business or commercial right of similar nature.
- Particulars of creation, modification or satisfaction of security interest in any 'under construction' residential or commercial or a part thereof by an agreement or instrument other than mortgage.

Whereas, CERSAI had started registration of the data in respect of paragraphs (a) to (c) above, for the



security interests created on or after January 22, 2016, w.e.f. May 25, 2016 for Scheduled Commercial Banks and w.e.f. July 1, 2016 for all other entities registered with them. Further, the registration of data in respect of paragraph (d) above has commenced since June 8, 2017 for all banks and FIs registered with CERSAI. Meanwhile, the banks/ FIs have also started registering the security interests created before January 22, 2016 (subsisting records).

Whereas, Homebuyers / Allottees should be aware of such security interests created on real estate Projects / Apartments, which homebuyer is interested in purchasing.

Therefore, the promoters shall:

- During Project Registration, Submit Report from CERSAI on security interests created in the Real Estate Project (Available on CERSAI website at (www.cersai.org.in) along with the encumbrance's certificate. In case no security interest has been created then the Promoter shall provide an undertaking confirming the same.
- Further, in each Quarterly Update, Promoter shall submit updated CERSAI Reports on Security Interests created on Real Estate Project by the Promoter or any of the allottees on the apartments in the project.
- The CERSAI reports submitted should be generated within 10 days from the date of submission.

#### **Quarterly Progress Report for Registered Projects**

Maha RERA in its circular dated 28.07.2021, instructed promoter to file the Quarterly Progress Report of their registered before 7<sup>th</sup> day of next month at the end of every quarter. The detailed circular is as follows:-

Promoters shall file Quarterly Progress Reports (QPR) as per Financial Quarters within 7 days of the Quarter End (Due Dates will be every 7<sup>th</sup> day of July, October, January and April respectively).

The first financial quarter based QPR will be due to be filled by 15<sup>th</sup> August, 2021 for all registered projects (for April May June Quarter) irrespective of the date of their last QPR filled.

Promoter shall provide Quarterly updates on the following:

- i. Increment Changes in various building plan approvals
- ii. Status of the Project: Physical and Financial Progress of the Project along with Form 1, Form 2, Form 2A and Form 3 for the quarter'
- iii. Form 5 shall be submitted in the concerned quarter i.e. Quarter II.
- iv. Form 4 to be uploaded, if applicable.
- v. Present status of Booking of Plots/Apartments/Units

- vi. Present status of Booking of Garages, Cover Parking.
- vii. Changes in Project Professionals including Architect, Engineer, Chartered Accountant, Real Estate Agents and so on
- viii. Changes in Encumbrances Report
- ix. Status of Association of Allottees, if applicable
- x. Status of Conveyance, if applicable
- xi. Changes in any other detail of the project, as provided during Project Registration / Previous update.

Stringent action will be taken against promoters for not filing the Quarterly Progress Reports as follows:

- i. On missing the Quarterly Progress Report Submission Deadlines, a web generated notice shall be immediately sent to the promoter for compliance within 10 days. Further, on the Maha RERA web portal, it shall be made available for public view, the details of non-compliance by the promoters.
- ii. On failure of compliance by the Promoter within 15 days, Chief Planning Officer, MahaRERA shall call the promoter for hearing, to understand the reason for noncompliance and on basis of merit, put the case lo Authority for determining penal action to be undertaken.
- iii. The promoter shall be restricted from availing any other service from MahaRERA including Project Extension Correction etc. till the quarterly update has been filed.

#### **Clarification on the procedure for transferring or assigning promoter's rights and liabilities to a third Party (Section 15)**

Maha RERA Authority in its Circular No. 24A/2021 No. Maha RERA/ Secy/File No. 27/144/2021 on 23.07.2021 clarified the procedure of transferring or assigning promoter's rights and liabilities to a third Party as per section 15. The detailed circular states as under :-

1. This approval under this section wouldn't be required, if the changes are in (internal) shareholding or constituents of a promoter's organization, that doesn't affect obligations and liabilities with respect to the Allottee(s) and the rights and liabilities of the promoter's organization.
2. If any conversion happens of the promoter entity under any of the following situations then also approval under this section wouldn't be required
  - Partnership Firm into LLP/Private Limited Company or
  - Conversion of Private Limited Company or unlisted Co. to a LLP or otherwise
  - Proprietorship change by succession to legal heirs.
3. **Cases where the transfer is initiated by the promoter:** The promoter shall have to apply to MahaRERA with the consent of two-third allottees as on the date of application in the

project under consideration' to seek permission to transfer its rights and liabilities to a third party. The third Party/the intending purchaser shall also submit certain documents as mentioned in Annexure attached to the circular and Declaration as prescribed. Promoter shall have to write to the Secretary, MahaRERA on [secy@maharera.mahaonline.gov.in](mailto:secy@maharera.mahaonline.gov.in) in the prescribed format.

On receipt of such application, Secretary shall initiate action through the legal wing who would take necessary steps to obtain approval of MahaRERA which may include scheduling a hearing. MahaRERA shall thereafter pass an order within one month of filing of such application, of either granting approval to such application for transfer (with or without such conditions as it may prescribe) or reject such application for transfer.

After receipt of the approval for the transfer from MahaRERA and thereafter within seven day of completion of the transfer, the new Promoter shall then apply for necessary corrections in the existing registration details. He shall also upload required supporting documents in its name like land title, building plan approval, etc., upon obtaining the same from time to time' While making such application for correction, the new promoter shall upload on the website of RERA, a registered undertaking stating that they shall comply with all the obligations under agreement of sale executed by the erstwhile promoter with respect to the Allottee(s) of the project and has assumed all the obligations of the erstwhile Promoter under the Act

Amalgamation or merger of the Companies, in which amalgamating company has one or more of the project registered under RERA, and which is voluntarily initiated by the promoter, after 30th April, 2017, shall be regarded as transfer initiated by the Promoter and the Promoter shall have to follow the procedure prescribed herein above for obtaining the approval of the allottee(s).

However, if the amalgamation or merger or demerger of the companies, which is not regarded as transfer under section 47 of the Income Tax Act, 1961 or where 75% Of the shareholders remain same in the resultant company, the same shall not require the aforesaid approvals of Allottees(s) under Section 15 of the Act.

**4. Cases where the transfer is initiated by a third party like financial institution/creditors, etc by operation of law or by way of enforcing of the security:** Where Secured Loan and/or the charge on the project is disclosed in the registration details of the project on the website of MahaRERA, then in such cases promoter shall write to the Secretary, MahaRERA, on [secy@maharera.mahaonline.gov.in](mailto:secy@maharera.mahaonline.gov.in) in prescribed format, within seven days of being aware of the impending or potential transfer

arising out of enforcement of security or mortgage. The promoter shall also simultaneously inform each and every, allottee of the project of the impending or potential transfer within seven days of the transfer being affected by the Financial Institution or creditors, such Financial institution or creditor shall intimate to each of the Allottee(s) and secretary MahaRERA [secy@maharera.mahaonline.gov.in](mailto:secy@maharera.mahaonline.gov.in) of enforcement of the security which has resulted in the transfer of the ownership of the promoter organization or transfer of the project. The Financial institution or creditors (acting as new promoter) or new promoter (appointed by such financial institution or creditors) shall then apply for necessary corrections in the existing registration details. New, Promoter shall also upload required supporting documents in its name like land title, building plan approval, etc, upon obtaining the same from time to time. While making such application for correction the new promoter shall upload on the website of MahaRERA, an undertaking stating that they shall comply with all the obligations under agreement or sale executed by the erstwhile promoter with respect to Allottee (s) of the project and has assumed all the obligations of the erstwhile promoter under the Act.

Example:

- Invocation of pledge of shares of the Promoter organization by Pledge.
- Takeover of the asset of the project or of the project by Bank/Financial Institution /Asset Reconstruction Company under SARFAESI (or under Insolvency or Bankruptcy Code 2016.
- Takeover of the Project by the Bank/Financial Institution/Asset Reconstruction Company under SARFAES SARFAESI (or under Insolvency or Bankruptcy Code 2016.
- Takeover of the management of the promoter in case of Insolvency or Bankruptcy Code 2016.

5. The new Promoter will adopt following procedure for new updating details of project:

- After receiving the application, Secretary shall initiate action through the legal wing for order of the Authority.
- MahaRERA order shall be mailed to the applicant at their given email address.
- As per the order, new promoter may apply in correction module for change in promoter details and attach the order of the Authority as supporting document.
- The new promoter shall, in update module from time to time, also upload required supporting documents in its name like amended land title, amended building plan approval etc, upon obtaining the same.

# P.M.L.A.



## PMLA CASE LAWS



### **RAMA LUTHRA VERSUS DIRECTORATE OF ENFORCEMENT THROUGH: ITS DIRECTOR & ANR.**

**2021 (2) TMI 620 - DELHI HIGH COURT**

**Validity of provisional attachment order - proceeds of crime - unauthorised payments for obtaining the coal blocks allocation - allegations against her in the PAOs date back to the time when she was a PR professional i.e., sometime between 2007-08 to 2015 when the FIR was lodged**

The manner in which all the liquid savings of the Petitioner have been completely frozen appears completely unjustified, especially when the allegations against the Petitioner are merely in the realm of speculation. Some opportunity ought to have been granted to the Petitioner before passing orders attaching all her accounts and deposits. Attaching all her assets was totally unwarranted.

It is directed that in place of the attachment of the assets of the Petitioner, the Petitioner shall voluntarily keep a fixed deposit of ₹ 3 crores and not dispose of the immovable property, being valued at ₹ 2.24 Crores. The Petitioner would be free to deal with all other assets. Petitioner is now free to approach the Adjudicating Authority in accordance with law, at the appropriate stage.

### **HAMILTON HOUSEWARE PVT. LTD. VERSUS UNION OF INDIA & ANR.**

**2021 (2) TMI 488 - DELHI HIGH COURT**

**Money Laundering - attachment of the bank account of the Petitioner - Section 8 of the Prevention of Money Laundering Act, 2002**

A perusal of the impugned order shows that the application filed by the Petitioner has not been considered by the Adjudicating Authority. According to Id. counsel for the Petitioner, the question as to whether “reasons to believe” have to be supplied or not, has been decided by the Division Bench of this court in [2018 (1) TMI 535 - DELHI HIGH COURT].

The Adjudicating authority ought to have decided the application and thereafter proceeded to finally adjudicate the matter.

However, the submission as to availability of an alternate remedy is not without merit. Under Section 26 of the PML Act, an appeal lies to the Appellate Tribunal against an order of the Adjudicating Authority. Merely because of the fact the application was not decided by the authority would not be sufficient ground to entertain the present writ petition. The same could be a plea that the Petitioner can raise before the PMLA Appellate tribunal as well. This Court directs the Petitioner to approach the Appellate Tribunal under Section 26 of PML Act.

The said Appellate Tribunal would firstly take a view on the Application filed by the Petitioner, and after adjudicating upon the said Application, the Appellate Tribunal shall proceed to hear the appeal on merits, against the order passed by the Adjudicating Authority

### **BLISS ABODE PVT. LTD VERSUS ZONAL OFFICE DIRECTORATE OF ENFORCEMENT & ORS.**

**2021 (1) TMI 630 - DELHI HIGH COURT**

**Money Laundering - seeking a copy of order dated 1st January, 2021 passed under Section 8(3) of the Prevention of Money Laundering Act, 2002 be supplied to the Petitioner - further seeking that the period of at least 45 days in order to enable the Petitioner to approach the Appellate Tribunal under Section 26 of the PMLA, should not be affected.**

HELD THAT: - Considering the facts and circumstances of the present case, 20 days’ time is granted to the Petitioner to avail of its appellate remedies and physical possession of the immovable property shall not be taken for a period of 20 days from today. The question of law raised is left open.

Further, in order to avoid such a dispute in future and to ensure fairness and non-arbitrariness, the Registrar of the Adjudicating Authority under the PMLA shall ensure that in future, all orders passed by the Adjudicating Authority, apart from being served in accordance with the provisions of the Act, Rules and Regulations, would also be uploaded on the website of the Adjudicating Authority within 48 hours from the date of the pronouncement. The Adjudicating Authority shall also fix a specific date for pronouncement of orders in open Court in terms of Regulation 27. Petition disposed off.





**STATE BY DIRECTORATE OF ENFORCEMENT  
VERSUS SMT PARVATHI KOLLUR, SRI AVINASH  
KOLLUR S/O SHANKAR KOLLUR MAJOR  
2021 (1) TMI 569 - KARNATAKA HIGH COURT**

**Money Laundering - proceeds of crime - assets disproportionate to known source of income - existence of predicate offence or not - scheduled offence or not - direct allegations are levelled against the accused attracting the ingredients of the offence under section 3 of the PML Act -**

From the plain reading of section 3 read with section 2(1)(u) of the PML Act, it is clear that what is made punishable under section 3 is the activity connected with the proceeds of crime either by getting oneself involved in the process or activity connected thereto or directly or indirectly attempting to indulge or knowingly assist or knowingly be a party to the alleged activities and projecting it as untainted property. The prosecution under section 3 of the PML Act cannot be equated with the prosecution under section 13 of the PC Act. Both are distinct and separate offences. A reading of section 3 of PML Act would clearly indicate that even without there being any conviction of the accused in a predicate offence and even if the offender under section 3 of the PML Act is not a party to the predicate offence, still the prosecution could be launched against the offender, if he is found involved in any process or activity connected with the 'proceeds of crime'.

Since the allegations made in the complaint and the material produced in support thereof prima facie disclose ingredients of the above offences, the Trial Court was not justified in discharging the accused solely relying on the overruled decisions rendered by the High Court of Jharkhand and Delhi. The material on record clearly makes out sufficient grounds for proceeding against the accused. In that view of the matter, impugned order cannot be sustained. Criminal Revision Petition is allowed.

**PREM KUMAR VERSUS DIRECTORATE OF  
ENFORCEMENT, GOVT. OF INDIA  
2020 (12) TMI 1103 - PATNA HIGH COURT**

**Grant of Anticipatory Bail - Money Laundering - proceeds of crime - complainant/ officials of ED has made specific allegation that petitioner and his family members has acquired movable and immovable properties worth ₹ 80 lacs from the proceeds of crime of his father-in-law.**

The petitioner was married with Pooja Kumari in the month of June, 2014. Prior to the year 2014 the petitioner and his father have not produced any documentary evidence to show the acquisition of movable and immovable properties save and except ancestral property standing in the name of ancestor of the petitioner but after marriage of the petitioner with Pooja Kumari, daughter of Binay Yadav and Srimati Devi, the petitioner and his family acquired many buses, vehicles and immovable property. The petitioner also made attempt to file income tax return of the year 2015-16, 2016-17 and 2017-18 to legalize the proceeds of crime as his income but the facts show that petitioner got money from his mother-in-law either through his wife or through different persons in acquiring movable and immovable properties. The petitioner does not deserve anticipatory bail - Application dismissed.





**LEGAL**



**Mahendra Kumar Jain Versus Appellate Rent Tribunal, Ajmer and Rent Tribunal, Ajmer , D.B civil Reference (larger bench) No.1/2020 – HIGH COURT RAJASTHAN, JAIPUR.**

***“Final order of The Rent Tribunal and The Appellant Tribunal are not amenable to writ jurisdiction under Article 226 of The Constitution.”***

Challenging the judgments of the Rent Tribunal and the Appellate Rent Tribunal, the appellant filed a writ petition under Article 226 & 227 of the Constitution of India before this Court. The writ petition stood dismissed by the learned Single Judge vide judgment dated 10.5.2019. The appellant challenged the legality of the judgment passed by the learned Single Judge of this Court by way of intra-Court appeal under Rule 134 of the Rules of High Court of Rajasthan, 1952.

Court ordered that The Rent Tribunal and The Appellate Rent Tribunal were constituted for resolving dispute arises between landlord and tenant under ACT ,2001. Judicial power offered by state to exercise judicial function ,which are similar to judicial function performed by civil court hence power of tribunal and civil court are considered equal.

Therefore, The Rent Tribunal and The Appellate Rent Tribunal cannot be consider as Quasi-judicial body of constitution.

Hence , final order given by The Rent Tribunal and The Appellate Rent Tribunal cannot be challenged nor amend under Article 226 of the Constitution of India but can be questioned under Article 227 of the Constitution of India before high court by invoking power of supervision of high court.

**Orator Marketing Pvt Ltd vs Samtex Desinz Pvt Ltd(LL2021 SC 333).**

Interest free loans advance to finance the corporate body held to be financial creditor is entitled to initiate CIRP under section 7 of IBC. Hon’ble Apex Court held that under section 5(8)(f), financial debt includes any amount raised under any other transaction having commercial effect of borrowing money, which was ignored by NCLT and NCLAT. Also

while construing statutory provision, court held that one must look into legislative intent and spirit behind it. The interpretative efforts ***“must be illuminated by the goal, though guided by words”*** reiterates apex court.

**Rajpal VS Additional Commissioner and others WP 8306/2021 –PATNA HIGH COURT**

Collector and Additional Commissioner not expected to blindly follow action of junior staff, ruled Allahabad High Court, wherein Naib Tehsildar recalled the order of mutation of land in favour of complainant passed 7 years ago, without giving opportunity of hearing. Petitioner lost all rights on his land, this was considered unjust act of Naib Tehsildar. Collector and Additional Commissioner thereafter upheld the order of Naib Tehsildar. However, HC condemned the orders passed by one stroke of pen without considering the rights of petitioner, thereby quashing the order to be in gross violation of natural justice.

**Taruna Saxena Vs Union of India and Ors.- W.p.(C)4725/2021 and CM APPLs 14574-75/2021 HIGH COURT OF DELHI**

***“Advocates have right to practice before maintenance tribunal”***

Hon’ble Delhi High Court has reiterated that section 17 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 which bars lawyers from representing parties in the matters before Maintenance Tribunals is ultra vires Section 30 of Advocates Act, 1961.

Tribunal allowed parties to submit application regarding evidence they wish to lead. Tribunal have authority to discuss each and every facts and circumstances of each case. In this case tribunal said that attendance of witness and providing every document is required , but tribunal also stated that it is not compulsory in every case to record oral evidence or documentary evidence it is under discretion of court. The nature of proceeding itself being in summary, the discretion vest in court about adopting the procedure but it can not be long- drawn trial at any cost.

**MUHAMED MUSTAQUE & DRKAUSER EDAPPAGATH, JJ.MAT APPEAL NO. 854/2020 ( HIGH COURT OF KERALA AT ERNAKULAM )**

This appeal has been preferred by the husband against the dismissal of his original petition for dissolution of marriage on the ground of desertion. The marriage between the appellant and the respondent was solemnized on 31/8/1991 (According to the respondent, the date of marriage is 29/8/1991) at Balal Sri Bhagava thi Kshethram, Hosdurg. Two children were born in the wedlock. Admittedly, they lived together as husband and wife only till 10/7/1996 and since then, they are living separately. After the marriage, the appellant and the

respondent were residing at the house of the appellant. **The respondent went to her house on 10/7/1996 for the delivery of the second child. Thereafter, she did not return to the house of the appellant. The appellant alleges that the respondent without any reasonable cause did not return to matrimonial home intentionally and thus, deserted him**

The said original petition was resisted and hotly contested by the respondent and ultimately it was dismissed. **When the appellant/husband makes an offer to resume the conjugal relationship and the respondent/wife resists the same without any reasonable cause and fails to resume cohabitation, that itself amounts to constructive desertion.** In the said original petition, the respondent has contended that she was not interested to resume the conjugal relationship. When the respondent was examined in this original petition also, she categorically stated that she has no intention to reside with the appellant. We have already found that the respondent failed to substantiate the two reasons shown by her for her separate living. Admittedly the parties are living separately for the last more than 25 years. **Since the respondent has turned down the offer made by the appellant in the original petition filed by him for restitution of conjugal rights to resume the marital relationship, it has to be held that the respondent has constructively deserted the appellant without any justifiable cause since then.**

For the reasons stated above, we hold that the appellant has made out a case for desertion and is entitled to a decree for dissolution of marriage on that ground. Accordingly, we allow the appeal and set aside the impugned decree and judgment.

#### **Union of India vs Rajendra Shah And Others Civil Appeal No. 9108-9109/2014-High Court Of Gujarat**

The Gujarat High Court which struck down the provisions of the Constitution (97th Amendment) Act to the extent it introduced Part IX B in the Constitution to deal with co-operative societies, upheld by SC.

**A 3-judge bench comprising Justices Rohinton Nariman, KM Joseph and BR Gavai dismissed the appeals filed by the Union of India against the judgment of the Gujarat High Court.** The bench majority held that the 97th Constitutional Amendment required ratification by at least one-half of the state legislatures as per Article 368(2) of the Constitution, since it dealt with a entry which was an exclusive state subject (co-operative societies). Since such ratification was not done in the case of the 97th Constitutional amendment, it was liable to be struck down.

There was a split in the bench on the point whether Part IX B will survive with respect to multi-state co-operative societies.

While the majority comprising Justices Nariman and Gavai upheld those provisions of Part IX B which deal with multi-state co-operative societies by applying the doctrine of severability, Justice Joseph dissented on this count.

Justice Joseph held that the doctrine of severability was not applicable and struck down the entire amendment.

#### **Prakash Gupta vs. Securities and Exchange Board of India [CrA 569 of 2021]**

The power of compounding must be expressly conferred by the statute which creates the offence, the Supreme Court observed.

The bench of Justices DY Chandrachud and MR Shah observed that in respect of offences which lie outside the Indian Penal Code, compounding may be permitted only if the statute which creates the offence contains an express provision for compounding before such an offence can be made compoundable. This is because Section 320 CrPC provides for the compounding of offences only under the IPC.

#### **Lakshman Singh Vs. State of Bihar [ CrA 606 OF 2021**

Any attempt of booth capturing and/or bogus voting should be dealt with iron hands because it ultimately affects the rule of law and democracy, the Supreme Court observed.

The bench comprising Justices DY Chandrachud and MR Shah observed that the freedom of voting is a part of the freedom of expression and secrecy of casting vote is necessary for strengthening democracy. The essence of the electoral system should be to ensure freedom of voters to exercise their free choice, the bench said.

In this case, the accused were convicted for the offences under Section 323 and 147 IPC and are sentenced to undergo six months simple imprisonment. The accused had allegedly formed an unlawful assembly "to snatch the voters list and to cast bogus voting" and attacked some political workers during an election.

#### **The Maharashtra Real Estate Appellate Tribunal in the matter of Renaissance Infrastructure & Ors. Versus Shri Parth Bharat Suchak Appeal no. AT00600000031585**

Hon'ble Tribyanl opined on the issue whether as per section 2(j), (e), (zn) respectively of RERA residential & commercial use is inclusive of 'industrial use' to



bring warehouse building or warehouse unit within the ambit of definition of "Apartment" and "Building" under RERA.

The Hon'ble Court in its order held that, definition of "Apartment" which also includes residential and commercial use of residence, office, shop rooms or go down or for carrying on business occupation, profession or trade or for any other type of use ancillary to the purpose specified, no specific reference or mention is made for their use for 'industrial purpose'.

In the absence of words industrial use expressly provided in the relevant provisions of RERA, prima facie view is that 'industrial unit' is not covered under RERA.

It is thus held that RERA provisions would not apply to the subject industrial unit.

**Forum for People's Collective Efforts and Ors. V/s The State of West Bengal and Ors.; (MANU/SC/0339/2021) - SUPREME COURT OF INDIA**

***"WB-HIRA is repugnant to the RERA and is hence unconstitutional."***

The Hon'ble Supreme Court vide order dated 04.05.2021 held that "West Bengal Housing Industry Regulation Act, 2017 (WB-HIRA)" is repugnant to the central enactment "The Real estate (Regulation and Development) Act 2016", hence declared as unconstitutional. The Hon'ble Judges in the order also mentioned that as a consequence of the declaration by this Court of the invalidity of the provisions of WB-HIRA, there shall be no revival of the provisions of the WB 1993 Act, since it would stand impliedly repealed upon the enactment of the RERA.

Hence, in exercise of the jurisdiction Under Article 142, Hon'ble bench directed striking down of WB-HIRA will not affect the registrations, sanctions and permissions previously granted under the legislation prior to the date of this judgment.

**NEWS**

**False promises of marriage for maintaining sexual relationship can leads to punishment under sec 376 of Indian Penal Code.**

Making a crucial observation on the need for a specific legal framework to deal with cases of sexual exploitation of women, Allahabad High Court exhorted the legislature to bring a law to punish those who obtain consent for establishing sexual relationship with women on false promise of marriage.

In its observation, the bench headed by Justice Pradeep Kumar Srivastava, said that the feudal

mindset and male chauvinism that women were nothing but an object of enjoyment was needed to be addressed and strictly dealt with in order to create a healthier society.

While hearing a criminal appeal filed by the accused, currently in jail, against rejection of his bail plea by the lower court in the case registered against him under Section 376 of IPC and Section 3(2)5 of SC/ST Act, the court observed that the accused actually never wanted to marry the victim who was in love with him.

The court also noted that the accused had malafide intention and had made a false promise to the woman to marry her only to satiate his lust. The court said that the case certainly fell within the ambit of cheating and playing deception to obtain consent for sex.

The case under consideration of the High Court pertained to a woman police constable who belonged to scheduled caste and was called by the appellant accused in a hotel room to finalize their marriage and prepare the relevant documents for the purpose. However, in the hotel room, the accused allegedly raped the woman.

**Stamp duty chargeable on instrument of sale, lease or gift of immovable property in favour of Non Profit Institutions shall be remitted on submission of entitlement certificate.**

In exercise of the powers conferred by sub-section (2) of section 78 of the Registration Act, 1908 (Act No. 16 of 1908), the State Government being of the opinion that it is expedient in the public interest so to do, hereby orders that the registration fees chargeable on the instrument of sale, lease or gift of immovable property executed in favour of a Non-Profit Institution as defined and identified eligible for benefits under the provisions of the Social Security Investment Promotion Scheme, 2021 shall be remitted on submission of Entitlement Certificate issued by a competent authority under the Scheme.



# **CORPORATE LAWS**

## NOTIFICATIONS



### **The MCA notified the commencement date for Section 4 of the Companies (Amendment) Act, 2020**

The MCA has appointed September 01, 2021 as the commencement date of Section 4 of the Companies (Amendment) Act, 2020 for implementation of amendments in the Rectification of Name of Company provisions under Section 16 of the Companies Act, 2013.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/2/28417.pdf>

### **Amendment in Companies (Incorporation) Rules, 2014**

Ministry of Corporate Affairs (MCA) has notified Companies (Incorporation) Fifth Amendment, Rules, 2021 which shall come into force w.e.f. 1st September, 2021. A new rule 33A has been inserted which specifies the allotment of a new name to the existing company under section 16(3) of the Act in case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under sub-section (1) of section 16 of the Act within a period of three months from the date of issue of such direction, the letters "ORDNC" (Order of Regional Director not complied), the year of passing of the direction, the serial number and the existing CIN of the company shall become the new name of the company without any further act or deed by the company and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh Certificate of Incorporation in Form INC-11C.

For details:

<https://mca.gov.in/bin/dms/getdocument?mds=xBASFOoY7R3foZZqFw4y0A%253D%253D&type=open>

### **The Ministry of Corporate Affairs (MCA) vide Notification dated 18 June 2021 has issued new Companies (Indian Accounting Standard) Amendment Rules, 2021 in consultation with the National Financial Reporting Authority (NFRA)**

The notification states that these rules shall be applicable with immediate effect from the date of the notification. This means that the amendments are effective for the financial year ended 31 March 2022 onwards and also for interim financial periods i.e.

quarters ending 30 June 2021, 30 September 2021, 31 December 2021.

1. Ind AS 116 | Leases – The amendments extend the benefits of the COVID 19 related rent concession that were introduced last year (which allowed lessees to recognize COVID 19 related rent concessions as income rather than as lease modification) from 30 June 2021 to 30 June 2022.
2. Ind AS 109 | Financial Instruments – The amendment provides a practical expedient for assessment of contractual cash flow test, which is one of the criteria for being eligible to measure a financial asset at amortized cost, for the changes in the financial assets that may arise as a result of Interest Rate Benchmark Reform along. An additional temporary exception from applying hedge accounting is also added for Interest Rate Benchmark Reform.
3. Ind AS 101 | Presentation of Financial Statements – The amendment substitutes the item (d) mentioned in paragraph BI as 'Classification and measurement of financial instruments'. The term 'financial asset' has been replaced with 'financial instruments'.
4. Ind AS 102 | Share-Based Payment – The amendments to this standard are made in reference to the Conceptual Framework of Financial Reporting under Ind AS in terms of defining the term 'Equity Instrument' which shall be applicable for the annual reporting periods beginning on or after 1 April 2021.
5. Ind AS 103 | Business Combinations – The amendment substitutes the definition of 'assets' and 'liabilities' in accordance with the definition given in the framework for the Preparation and Presentation of Financial Statements in accordance with Ind AS for qualifying the recognition criteria as per acquisition method.
6. Ind AS 104 | Insurance Contracts – The amendment covers the insertion of certain paragraphs in the standard in order to maintain consistency with IFRS 4 and also incorporates the guidance on accounting treatment for amendments due to Interest Rate Benchmark Reform.
7. Ind AS 105 | Non-current assets held for sale and discontinued operations – The amendment substitutes the definition of – "fair value less costs to sell" with "fair value less costs of disposal".
8. Ind AS 106 | Exploration for and evaluation of mineral resources – The amendment has been made in reference to the Conceptual

Framework for Financial Reporting under Indian Accounting Standards in respect of expenditures that shall not be recognized as exploration and evaluation assets.

9. Ind AS 107 | Financial Instruments: Recognition, Presentation and Disclosure – The amendment clarifies the certain additional disclosures to be made on account of Interest Rate Benchmark Reform like -

- (i) the nature and extent of risks to which the entity is exposed arising from financial instruments subject to interest rate benchmark reform;
- (ii) the entity's progress in completing the transition to alternative benchmark rates, and how the entity is managing the transition.

10. Ind AS | 111 Joint Arrangements – In order to maintain consistency with the amendments made in Ind AS 103, respective changes have been made in Ind AS 111.

11. Ind AS 114 | Regulatory Deferral Accounts – The amendment clarifies that an entity may only change its accounting policies for the recognition, measurement, and impairment & derecognition of regulatory deferral account balances if the change makes the financial statements more relevant to the economic decision-making needs of users and no less reliable.

12. Ind AS 115 | Revenue from Contracts with Customers – Certain amendments have been made in order to maintain consistency with number of paragraphs of IFRS 15.

13. Ind AS 8 | Accounting Policies, Changes in Accounting Estimates and Errors – In order to maintain consistency with the amendments made in Ind AS 114 and to substitute the word 'Framework' with the 'Conceptual Framework of Financial Reporting in Ind AS', respective changes have been made in the standard.

14. Ind AS 16 | Property, Plant and Equipment – The amendment has been made by substituting the words "Recoverable amount is the higher of an asset's fair value less costs to sell and its value in use" with "Recoverable amount is the higher of an asset's fair value less costs of disposal and its value in use".

15. Ind AS 34 | Interim Financial Reporting – The amendments to this standard are made in reference to the conceptual framework of Financial Reporting in Ind AS.

16. Ind AS 37 | Provisions, Contingent Liabilities and Contingent Assets – The amendment

substitutes the definition of the term 'Liability' as provided in the Conceptual Framework for Financial Reporting under Indian Accounting Standards.

17. Ind AS 38 | Intangible Assets – The amendment substitutes the definition of the term 'Asset' as provided in the Conceptual Framework for Financial Reporting under Indian Accounting Standards.

## CIRCULAR



## Clarification on spending of CSR Funds for COVID-19 vaccination

Ministry of Corporate Affairs (MCA) vide its General Circular No. 13/2021 dated 30th July, 2021 has clarified that spending of CSR Funds for COVID-19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of healthcare including preventive healthcare and item no. (xii) Relating to disaster management. The companies may undertake the aforesaid activity subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by MCA from time to time.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mids=LYGLqEX5HiF2cj%252FEWlnVfA%253D%253D&type=open>

## LATEST MCA NEWS



## Shri Rao Inderjit Singh takes charge as Union Minister of State in Ministry of Corporate Affairs

Shri Rao Inderjit Singh took charge as Union Minister of State in the Ministry of Corporate Affairs (MCA), on Monday, July 12, 2021. Before taking charge as Union Minister of State for MCA, Shri Singh already holds Union Minister of State (Independent Charges) for Ministry of Statistics and



Programme Implementation as also for the Ministry of Planning.

For details:

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1734749>

**Government identified 2,38,223 companies as shell companies between 2018-2021**

Union Minister of State for Corporate Affairs, Shri Rao Inderjit Singh in a written reply to a question in Rajya Sabha stated that there is no definition of the term “Shell Company” in the Companies Act and it normally refers to a company without active business operation or significant assets, which in some cases are used for illegal purpose such as tax evasion, money laundering, obscuring ownership, benami properties etc. It was stated that the Special Task Force set up by the Government to look into the issue of “Shell Companies” has inter-alia recommended the use of certain red flag indicators as alerts for identification of Shell Companies. Further, the Government has undertaken a Special Drive for identification and striking off Shell Companies during the last three years.

For details:

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1739583>

**Cabinet clears amendments to LLP Act, to decriminalise 12 offences to boost biz**

The union cabinet cleared the amendments to the Limited Liability Partnership (LLP) Act, in order to decriminalize several provisions under the Act and also foster the ease of doing business in India. The changes, which include the removal of criminal action for failing to comply with the provisions of the Act, will help about 2,30,000 firms in the country. Union Finance Minister - Nirmala Sitharaman while addressing a press conference said that “a lot of changes are being made in the Companies Act, decriminalizing many sections and improving ease of doing business for companies. A similar treatment had to be given for LLPs”.

For details:

<https://www.hindustantimes.com/business/cabinet-clears-amendmentsto-llp-act-to-decriminalise-12-offences-to-boost-biz101627479049601.html>

**Rs. 21,231 crore spent by 21,349 companies on CSR funds in 2019-20 (July 19, 2021)**

Corporate houses spend a huge sum on Corporate Social Responsibility (CSR) for the welfare of workers and local people in the country. This was stated by Minister of State for the Ministry of Corporate Affairs

Shri Rao Inderjit Singh in a written reply to a question in the Lok Sabha on July 19, 2021. All data related to CSR filed by companies in the MCA21 registry is available in public domain at [www.csr.gov.in](http://www.csr.gov.in). On the basis of filings made by the companies in MCA21 registry, the CSR amount spent by various companies in the financial years 2017-18, 2018-19 and 2019-20 respectively is tabled below:

Particulars	Financia	Financia	Financia
	1 Year	1 Year	1 Year
	2017-18	2018-19	2019-20
<b>No. of Companies</b>	21,455	24,965	21,349
<b>CSR expenditure (in Rs. Crore)</b>	13,909	18,728	21,231

(Data upto 31.03.2021)

[Source: National CSR Data Portal]

For details:

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1736935>





## LATEST RBI NEWS

### Retail Direct Scheme: Allowing Retail Investors to Open Gilt Accounts with RBI

As part of continuing efforts to increase retail participation in government securities, 'the RBI Retail Direct' facility was announced in the Statement of Developmental and Regulatory Policies dated February 05, 2021 for improving ease of access by retail investors through online access to the government securities market – both primary and secondary - along with the facility to open their gilt securities account ('Retail Direct') with the RBI. In pursuance of this announcement, the 'RBI Retail Direct' scheme, which is a one-stop solution to facilitate investment in Government Securities by individual investors, is being issued.

For details:

[https://www.rbi.org.in/Scripts/BS\\_PressReleaseDisplay.aspx?prid=51883](https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=51883)

### RBI gives IDFC permission to exit IDFC FIRST Bank as lock-in period ends

IDFC had received permission from the Reserve Bank of India (RBI) to exit the IDFC FIRST Bank as promoters. IDFC is the owner of the holding company IDFC Financial Holding Company, which in turn holds 36.56 per cent stake in the bank. IDFC's exit from the bank will indicate that the holding company could reverse merge with the bank, in line with what two small finance banks recently announced.

For details:

[https://www.business-standard.com/article/finance/rbi-gives-idfc-permission-to-exit-idfcfirst-bank-as-lock-in-period-ends-121072101381\\_1.htm](https://www.business-standard.com/article/finance/rbi-gives-idfc-permission-to-exit-idfcfirst-bank-as-lock-in-period-ends-121072101381_1.htm)

### District co-operative banks' bad loan ratio hits 12.6%

Finance minister Nirmala Sitharaman told the Rajya Sabha that gross bad loans of District Central Co-operative Banks (DCCBs) were among the highest in the banking system, at 12.6% (Rs. 35,298 crore) of their advances as of March 2020.

For details:

<https://www.financialexpress.com/industry/banking-finance/district-co-operative-banksbad-loan-ratio-hits-12-6-sitharaman/2294437/>

### Cryptocurrency bank plans India operations, takes cooperative route to get around RBI rules

At a time when the Reserve Bank of India (RBI) frowns on private virtual currencies, the proposal of cryptocurrency bank Cashaa to launch banking operations in India for customers of virtual currencies like Bitcoin from August, through the credit cooperative society route, has raised eyebrows in financial circles. Cashaa says it has launched Unicas, the world's first crypto-friendly financial institution with physical branches in India in association with the United Multistate Credit Co-operative Society.

For details:

<https://indianexpress.com/article/business/banking-and-finance/cryptocurrency-bankplans-india-operations-takes-cooperative-route-to-get-around-rbi-rules-7411089/>







**FBI**



## CIRCULARS



### **Nomination for Eligible Trading and Demat Accounts**

SEBI vide this circular informed that investors who are opening new trading and demat account from October 1 will have the choice of providing nomination or opting out nomination. Also, the SEBI has issued a format for nomination form and opting out of nomination through a 'declaration form' in this regard. Further, all existing eligible trading and demat account holders will have to provide choice of nomination by March 31, 2022, failing which the trading and demat accounts will be frozen.

For details:

[https://www.sebi.gov.in/legal/circulars/jul-2021/nomination-for-eligible-trading-and-demataccounts\\_51313.html](https://www.sebi.gov.in/legal/circulars/jul-2021/nomination-for-eligible-trading-and-demataccounts_51313.html)

### **Holding of Annual General Meeting (AGM) by top 100 listed entities by market capitalization**

On receipt of representations from the Institute of Company Secretaries of India (ICSI) and listed entities, the SEBI has decided to extend the timeline for conduct of AGM by top-100 listed entities by market capitalization. Accordingly, such entities shall hold their AGM within a period of six months from the date of closing of the financial year for 2020-21.

For details:

[https://www.sebi.gov.in/legal/circulars/jul-2021/extensionof-time-for-holding-the-annual-general-meeting-agm-bytop-100-listed-entities-by-market-capitalization\\_51318.html](https://www.sebi.gov.in/legal/circulars/jul-2021/extensionof-time-for-holding-the-annual-general-meeting-agm-bytop-100-listed-entities-by-market-capitalization_51318.html)

### **Standard Operating Procedure for listed subsidiary company desirous of getting delisted through a Scheme of Arrangement wherein the listed parent holding company and the listed subsidiary are in the same line of business**

SEBI has clarified the criteria that need to be fulfilled by the listed holding company and the listed subsidiary company for the purposes of defining 'same line of business' as under:

- i. Principal economic activities of both firms need to be under the same group as per the National Industrial Classification (NIC) Code.
- ii. At least 50% of revenue from the operations of the listed holding and listed subsidiary company must come from the same line of business.
- iii. In addition, at least 50% of the net tangible assets of the listed holding company and the listed subsidiary must be invested in the same line of business.
- iv. In case of change of name of the listed entities within the last one year, at least 50 percent of the revenue, calculated on a restated and consolidated basis, for the preceding one full year has to be earned by it from the activity indicated by its new name.
- v. The listed holding company and the listed subsidiary have to provide self-certification with respect to both the companies being in the same line of business.

For details:

[https://www.sebi.gov.in/legal/circulars/jul-2021/standard-operating-procedure-for-listedsubsidiary-company-desirous-of-getting-delisted-through-a-scheme-of-arrangementwherein-the-listed-parent-holding-company-and-the-listed-subsubsidiary-are-in-the-s\\_50926.html](https://www.sebi.gov.in/legal/circulars/jul-2021/standard-operating-procedure-for-listedsubsidiary-company-desirous-of-getting-delisted-through-a-scheme-of-arrangementwherein-the-listed-parent-holding-company-and-the-listed-subsubsidiary-are-in-the-s_50926.html)

### **Relaxation in timelines for compliance with regulatory requirements by Debenture Trustees due to Covid-19**

SEBI extended the timelines for debenture trustees to comply with certain regulatory requirements in view of the prevailing situation due to Covid-19 pandemic and representations received from the Debenture Trustees. Under the regulatory norms, debenture trustees are required to perform periodical monitoring and disclose various reports, certificates to stock exchanges and on their websites within prescribed timelines. Debenture Trustees were required to make disclosure by July 15, 2021, but now the timeline has been extended till August 31, 2021, for certain submissions and till October 31, 2021, for other disclosures.

For details:

[https://www.sebi.gov.in/legal/circulars/jul-2021/relaxationin-timelines-for-compliance-with-regulatory-requirementsby-debenture-trustees-due-to-covid-19\\_51268.html](https://www.sebi.gov.in/legal/circulars/jul-2021/relaxationin-timelines-for-compliance-with-regulatory-requirementsby-debenture-trustees-due-to-covid-19_51268.html)

## LATEST SEBI NEWS

### **Cabinet clears Life Insurance Corporation IPO, issue by March 2022**

The Cabinet Committee on Economic Affairs (CCEA) has given its in-principle approval for the listing of Life Insurance Corporation of India (LIC)'s shares on stock exchanges.

The Initial Public Offering (IPO) of the state-owned life insurer is part of the government's efforts to raise Rs. 1.75 lakh crore through disinvestment in the current financial year. Sources said all efforts are being made to ensure the LIC IPO is done within the current financial year, which ends in March 2022.

For details:

<https://www.newindianexpress.com/nation/2021/jul/13/cabinet-clears-lic-ipo-issue-by-march-2022-2329346.html>

### **Stock brokers body urges SEBI to reduce peak margin to 50% from 75%**

Stock brokers' association Anmi said it has requested SEBI to reduce peak margin for intraday trades to a maximum of 50 per cent, from the current 75 per cent level.

Reduction in the peak margin will be in the interest of individual investor, trading members and help in the growth of the capital market, Anmi said in a statement. The peak margin concept was introduced from December 2020 onwards, wherein members were required to collect 25 per cent of the applicable margin from the clients which was increased to 50 per cent and at present 75 per cent of the applicable margin is being collected towards peak margin. This will further increase to 100 per cent from September onwards.

For details:

[https://www.business-standard.com/article/markets/stock-brokers-body-urges-sebi-to-reduce-peak-margin-to-50-from-75-121071200802\\_1.html](https://www.business-standard.com/article/markets/stock-brokers-body-urges-sebi-to-reduce-peak-margin-to-50-from-75-121071200802_1.html)

### **Issue of No Objection Certificate for release of 1% of Issue Amount**

SEBI decided to reduce the time period to two months, from four months at present, for companies to submit an application with the SEBI for obtaining a 'No Objection Certificate' for release of 1 per cent of issue amount. In addition to the requirements laid down for processing of NOC applications in the circular issued on November 25, 2009, the merchant banker shall submit a certificate confirming that all the SCsBs involved in ASBA process have unblocked ASBA accounts. SEBI shall consider application as incomplete if the application is not accompanied by a

confirmation by merchant banker that all the accounts in ASBA have been 'unblocked'.

For details:

[https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi\\_data/attachdocs/jul2021/1625479657397.pdf#page=1&zoom=page-width,-15,850](https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jul2021/1625479657397.pdf#page=1&zoom=page-width,-15,850)

### **SEBI has released the Discussion Paper for Review of SEBI (Share Based Employee Benefit) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002.**

Through this discussion paper, SEBI has suggested combining two separate regulations, SEBI (Share Based Employee Benefits) Regulations, 2014, and SEBI (Issue Of Sweat Equity) Regulations, 2002, that deal with employee compensation. It is recommended that the objectives for which issuance of sweat equity shares are permitted and the ceiling on the quantum issued by a company should be included in the sweat equity regulations. It also recommended that the lock-in period for sweat equity shares and its pricing formula should be consistent with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018. The committee recommended that even non-permanent employees be considered to receive share-based employee benefits falling under SEBI Regulations. Further, through these draft Regulations SEBI has recognised the Secretarial Auditor to certify that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting as per Regulation 13 and under Regulation 26(2) to certify compliance with this provision at the time of adoption of such balance sheet by the Company. Public comments are invited on the recommendations made by the Expert Group in its report, in the prescribed format.

For details:

[https://www.sebi.gov.in/reports-and-statistics/reports/jul-2021/consultation-paper-on-review-of-sebi-share-based-employee-benefits-regulations-2014-and-sebi-issue-of-sweat-equity-regulations-2002\\_50960.html](https://www.sebi.gov.in/reports-and-statistics/reports/jul-2021/consultation-paper-on-review-of-sebi-share-based-employee-benefits-regulations-2014-and-sebi-issue-of-sweat-equity-regulations-2002_50960.html)

# NEWS

## updates



**MSME**

**MICRO, SMALL & MEDIUM ENTERPRISES**

## MSME NEWS

### **New Definition of Micro, Small and Medium Enterprises - Addition of Retail and Wholesale Trade**

Ministry of Micro, Small and Medium Enterprises has decided to include Retail and Wholesale trade as MSMEs for the limited purpose of Priority Sector Lending and they would be allowed to be registered on Udyam Registration Portal for the following NIC Codes and activities mentioned against them: 45 - Wholesale and retail trade and repair of motor vehicles and motorcycles 46 - Wholesale trade except of motor vehicles and motorcycles 47 - Retail trade except of motor vehicles and motorcycles The Enterprises having Udyog Aadhaar Memorandum (UAM) under above three NIC Codes are now allowed to migrate to Udyam Registration Portal or file Udyam Registration afresh.

*For details:*

<https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12126&Mode=0>





## ABOUT SRNG ADVISORS LLP

SRNG Advisors is an LLP providing advisory services catering to the needs of its clients across the country. SRNG offers a wide range of specialized, multidisciplinary professional services that meet immediate as well as long term needs of any business. Our multidisciplinary team of dedicated professionals is well equipped with the requisite business and technical skills, experience and knowledge base to deliver customized solution to our clients across industries.

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