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APK FORUM
FOSTERING KNOWLEDGE

Revised Threshold under IBC: Prospective or Retrospective

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BY THE **PROFESSIONALS** FOR THE **PROFESSIONALS**

From

FOUNDER'S DESK

Dear Readers,

It is my great pleasure to extend heartfelt greetings to the readers of June issue of Achromic Point Knowledge Forum E-Magazine.

We at Achromic Point are committed to conduct our business as usual while nurturing innovation, creativity and excellence in our events experience. We aim to provide our participants with the strong foundation of practical knowledge in their sectors and prepare them and their businesses to cope with potentially irreversible damages. Our virtual sessions lay emphasis on providing opportunity to all our attendees to be equipped with all the recent trends, key issues and their solutions, compliance requirements and much more.

During the last few months after the Covid-19 led lockdown, we all lost our connectivity to the world outside. This E- magazine is not only our step forward in going green and contributing our bit to the society but also to stay connected because we value maintaining liaison and disseminating valuable insights, Information, news to our readers timelier and safely than ever before.

I believe that the platform of our magazine is creating an interface among like-minded professionals that can enhance one's knowledge, skills and capabilities by the free flow and dissemination of knowledge and information.

Lastly, I would like to thank everyone for their contribution through membership, through participation at events and through active involvement in contributing in magazine. We appreciate the confidence that all of you have placed in us and in our work. We will strive to be better each day.

Thank you for taking the time to read. We welcome your feedback on this new communication piece **(send to feedback@achromicpoint.com)** and provide us your thoughts!

Certificate Course on
DRAFTING AND NEGOTIATION OF COMMERCIAL CONTRACTS
2020

Our Virtual Training on Drafting and Negotiating Commercial Contracts along with our knowledge partner "Vaish Associates Advocates" conducted on May 7th ,14th ,19th 2020 provided the participants with strategies, tactics, and a deeper understanding of contracts to improve their contract negotiating skills and be fully prepared to engage in contract negotiations

In this highly interactive webinar, participants learned the tactics and tricks of negotiating terms, conditions, extensions etc from our experts Arti Narasana, Shrinivas Sankaran & Yatin Narang from Vaish Associates Advocates.

An 8hr+ certificate course on Detecting & Preventing Internal & External Fraud was conducted over the span of entire week starting from May 11th till May 15th 2020 where auditors, fraud examiners and other financial professionals got provided with a strong foundation of practical knowledge about how common frauds are committed and why it is vital to any organization, large or small to have a fraud prevention plan in place, by the set of seasoned professionals including Mr. Harish Dua, Mr. Sundar Narayanan (Nexdigm), Mr. Ashish Malhotra (Riskpsy), Mr. Varun Wadhwa (CBRE), Mr. Anup Vijay Kulkarni (JSA), Mr. Pranav Gopalakrishnan (Aarna Law)

Certificate Course on
DETECTING AND PREVENTING INTERNAL AND EXTERNAL FRAUD

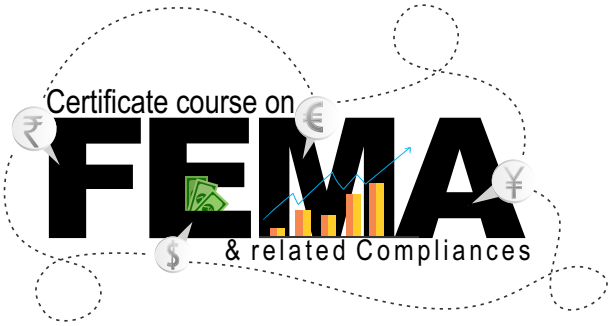
Impact of Covid 19
HOW FORCE MAJEURE MAY AFFECT THE PERFORMANCE OF CONTRACTUAL OBLIGATIONS

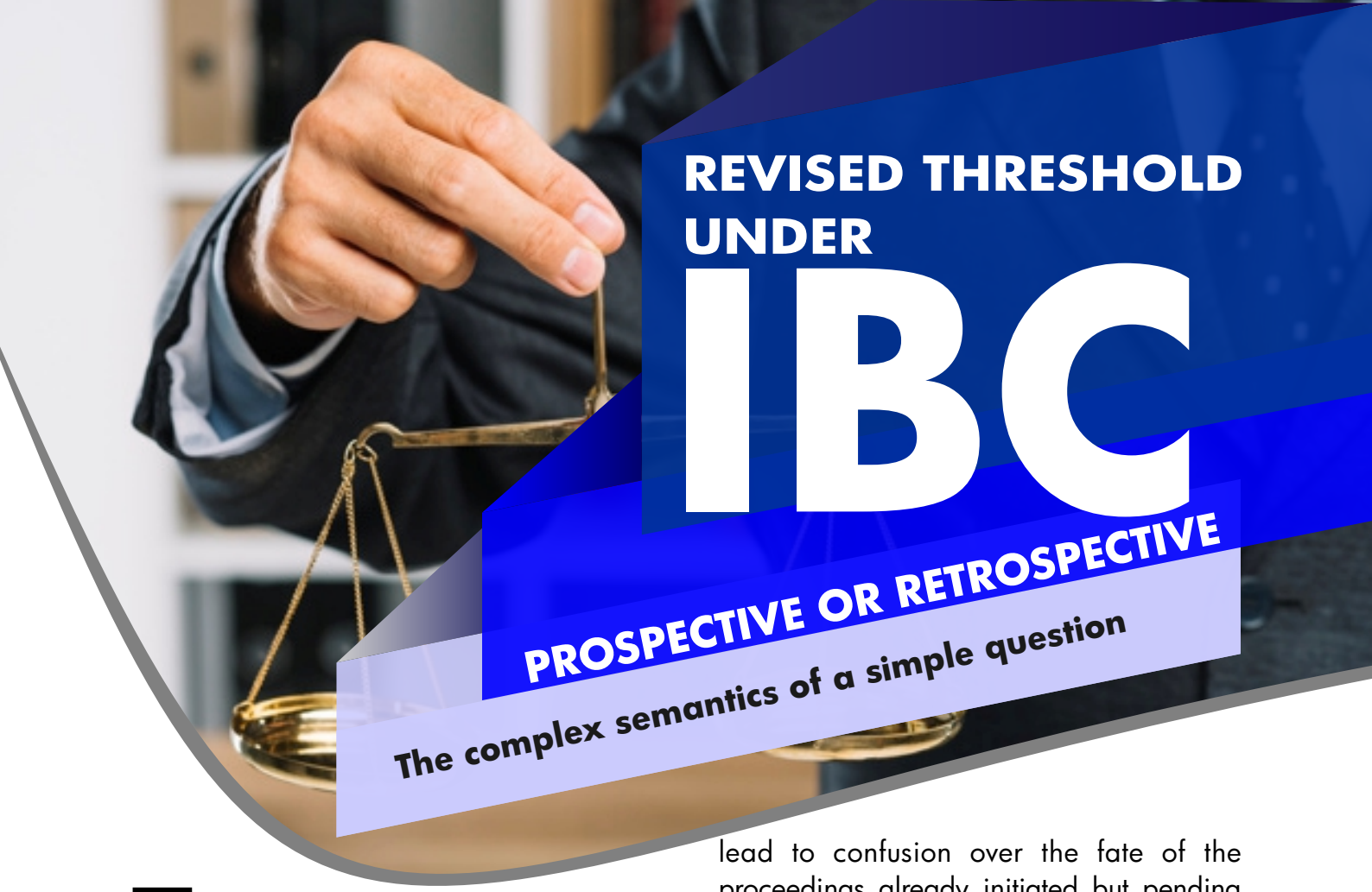
In virtual session focused for Middle east professionals conducted in association with Seyfarth Shaw LLP as our knowledge partner on May 11th 2020 , Sai Pidatala – Senior Counsel of the firm assessed the impact of Covid-19 and had an in-depth discussion on the Impossibility of Performance after execution of Contract with the participants and the possibility of interpreting Force Majeure clause to cover a 'Pandemic'.

Virtual Session
on
LABOUR LAWS
Key issues & recent amendments

In this webinar conducted with Kochhar & Co. as our knowledge partner on May 19th -20th 2020, key consideration, issues, and legislations related to labor legislations being issued by government of late & requirements of the employers were scrutinized by Ms. Savitha Kesav Jagadeesan & Gaurav Chatterjee from Kochhar & Co. Sessions were divided to have a detailed discussion on the four labour codes including wages, industrial relations, social security and safety, health and working conditions that are expected to improve ease of doing business.

Achromic Point Academy brought a highly Interactive Certificate course on FEMA & related Compliances along with Vaish Associates Advocates, MHA Legal, Avinav Consulting as Knowledge Partners where key experts – Mr. PVR Rajendra Prasad from PnP Consulting , Arti Narsana & Alok Sharma from Vaish Associates Advocates, Manish Tyagi from MHA Legal, Nidhi Goyal from Avinav Consulting & Vijay Pal Dalmia from Vaish Associates Advocates discussed the recent amendments of foreign direct investment policy along with external commercial borrowings regime, investigations and much more during the course of 3 days. It assisted the participants in setting up comprehensive policy to meticulously follow the law and be equipped with the tricks to fight financial crimes and protect their organization.





REVISED THRESHOLD UNDER IBC

PROSPECTIVE OR RETROSPECTIVE

The complex semantics of a simple question

The country witnessed an unprecedented nationwide locked down from March 24, '20 due to the spread of Covid-19 virus. Movement of people and economic activities were restricted which spawned to severely effect the business activities, leading to a liquidity crisis.

Considering the disruption in the economic activities, which may prompt the default in payment of debts, Hon'ble Minister of Finance in foresight on March 24, '20 inter alia announced to increase the minimum threshold of default for initiating the corporate insolvency resolution process under section 4 of the Insolvency and **Bankruptcy Code, 2016** to Rs. 1 crore from the existing threshold of Rs. 1 lakh, to give some respite to the businesses.

The announcement was immediately followed up by a notification issued by the Ministry of Corporate Affairs dated March 24, '20. The notification notified the enhanced limit of Rs. 1 Crores for the purpose of Section 4 of IBC, however, did not shed light on the date of its applicability, which lead to confusion over the fate of the proceedings already initiated but pending adjudication, fuelling the debate of prospective or retrospective application of such notification.

The Ministry of Corporate Affairs in terms of the Proviso to Section 4 of the IBC has the delegated power to enhance the minimum amount of default from Rs. 1 Lakh to Rs. 1 Crore. It is key to note that the said notification has been issued in terms of the said delegatory power coming from the Proviso to Section 4 of the IBC and is not an amendment to the Code through legislature.

Hon'ble Supreme Court in **MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and Others (2006) 8 SCC 702**, has held that the Government acting under the powers conferred on it by the enactment concerned, can exercise only those powers which are specifically conferred. In the absence of such conferment of power the Government, the delegated authority, has no power to issue a notification with retrospective effect.

Similar position was also taken by the

Hon'ble Supreme Court in the case of **Dr. Indramaniyarelal Gupta v. W.R. Nath AIR 1963 SC 274**. Further, Hon'ble Madras High Court in **M/s Ruby Overseas v. Union of India [W.P.No.2274 of 2018]** has also held that *"The provisions of the Act or notification are always prospective in operation unless the express language renders it otherwise, making it effective with retrospective effect."*

Recently, this issue came before the Hon'ble Kolkata Bench of National Company Law Tribunal in the case of **Foseco India Limited v. Om Boseco Rail Products Limited [CP(IB)No.1735/KB/2019]**, wherein, the Corporate Debtor just before pronouncement of the order, raised an argument that in view of the recent notification enhancing the limit of default to Rs. 1 crore, the application is not maintainable for want of pecuniary jurisdiction. Hon'ble Bench dismissed the arguments of the Corporate Debtor and held that "it is a well settled law that a statute is presumed to be prospective unless it is held to be retrospective, either expressly or by necessary implication. When the amendment to Section 4 of IBC was inserted, a proviso enhancing the pecuniary jurisdiction for filing applications as against small and medium scale industries nowhere in the notification mentioned that its application will be retrospective. Therefore, it appears to me that the amendment shall be considered as prospective and not retrospective."

Further, the said issue, is also dealt by the Hon'ble Chennai Bench of National Company Law Tribunal in the case of **M/s Arrowline Organic Products Private Limited v. M/s Rockwell Industries Limited [IA/341/2020 in IBA/1031/2019],** wherein, the Corporate Debtor filed an application before the Hon'ble NCLT recalling its order admitting the petition of the creditor on account of the fact that it lacked pecuniary jurisdiction. The Corporate Debtor submitted that the material date to reckon the pecuniary jurisdiction to entertain the petition is not the date of filing of the petition and is only the date when the petition was admitted in view of the provisions of Section 9(6) of the I&B Code, 2016 specifying the date of commencement of CIRP as the date of admission. Petitioner/Operational Creditor on the other hand argued and submitted that the notification has to be given a prospective effect and at the time when the petition was filed, and the 'default' occurred the pecuniary limit was of Rs. 1 Lakh. Hon'ble Bench after considering plethora of judgments held that the notification issued under a delegated power is always prospective until and unless specified

otherwise. Hon'ble Bench further held that the law which was prevalent on the date of filing of the petition, proceeded with, and when the matter was finally heard and reserved, is to be considered. Since the matter was finally heard and reserved thereafter on March 4,'20, i.e. much before the date of notification of March 24, '20, the earlier pecuniary limit of Rs. 1 lakh would only be applicable.

Albeit, the above view of the Hon'ble Bench and the Courts and the first-hand view of many of us on the first principles of law is that an amendment made to a substantive law, either through a delegated legislation or a notification like such, is always prospective and not retrospective until and unless clearly specified. However, the answer to this question is not as simple as it sounds. Owing to the multiple factors that influence this scenario, a rather convoluted understanding is required to address this question. Hence, it cannot be simply concluded that the cut-off date for the application of the revised threshold would be the same as the date of the notification.

The author has tried to consider few situations and different views pertaining to the applicability of such notification on those scenarios, in view of the principles of interpretation and the IBC.

Situation 1

Facts:

An application/petition has been filed before Hon'ble NCLT initiating corporate insolvency resolution process ('CIRP') against a corporate debtor before the date of notification i.e. March 24, '20, wherein the amount of default is less than Rs. 1 crore.

Arguments by Creditor Petitioner:

As already held by the Hon'ble Kolkata Bench and Hon'ble Chennai Bench of NCLT (supra), the said notification and the enhanced amount of default would apply prospectively.

The petitioner may also argue that the trigger point for initiation of insolvency proceeding is the '**date of default**'. Since the '**date of default**' is prior to the date of notification, the earlier limit of default of Rs. 1 lakh would be applicable and hence the application is maintainable.

Arguments by Corporate Debtor:

Another view could be that the petition would not survive as the notification would apply retrospectively in view of the principles of purposive interpretation.

Hon'ble Supreme Court of India in the case of **Girdhari Lal vs Balbir Nath Mathur reported in AIR 1986 SC 1499**, discussed the applicability of purposes interpretation of law and held that *"Even where the words of statutes appear to be prima facie clear and unambiguous it may sometimes be possible that the plain meaning of the words does not convey and may even defeat the intention of the legislature; in such cases there is no reason why the true intention of the legislature, if it can be determined, clearly by other means, should not be given effect. Words are meant to serve and not to govern and we are not to add the tyranny of words to the other tyrannies of the world. The draftsman may have designed his words to meet what Lord Simon of Glaisdale calls the 'primary situation'. It will then become necessary for the court to impute an intention to Parliament in regard to 'secondary situations'. Such 'secondary intention' may be imputed in relation to a secondary situation so as to best serve the same purpose as the primary statutory intention does in relation to a primary situation."*

Further reference is also drawn to the Maxwell on Interpretation of Statutes, Tenth Edition. to quote: *"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent*

purpose of the" enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words. and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used."

It may be argued that the purpose and intent behind enhancement of the limit of default was to provide a breather to the businesses to avoid CIRP on account of economic crisis because of the spread of COVID-19 virus and thus the notification should be applied retrospectively to all the corporate debtors where the application has already been filed but pending adjudication, as they would be also be facing the head of economic disruption and may not be able to discharge the debt or settle with the creditors, even if they could have in normal scenarios.

Although, this argument was taken in brief by the Corporate Debtor in the case of **M/s Arrowline Organic Products Private Limited** (supra), however, the Hon'ble Bench did not discuss and render any decision on this aspect.

Situation 2

Facts:

A default has occurred by the Corporate Debtor on March 10, '20 amounting to Rs. 50 Lakhs. No application/petition has been filed yet with the Hon'ble NCLT initiating the CIRP. Can the creditor file an application with Hon'ble NCLT after the notification dated March 24, 2020 wherein the amount of minimum default is enhanced to Rs. 1 crore.

Arguments by Creditor:

As already stated supra, the '**date of default**' is the trigger point and the law applicable on the '**date of default**' is to be considered, irrespective of the time of filing of the application/petition initiating the CIRP. The '**date of default**' in such situation is March 10, '20, when the minimum pecuniary limit for default was Rs. 1 lakh. Thus, one may argue, that the application for initiating CIRP can be filed before the Hon'ble NCLT even after the date of notification i.e. 24 March, 20 in a case where the 'date of default' is prior to March 24, 2020 and the pecuniary limit of default is below Rs. 1 crore, as at the time of default the pecuniary limit to file the petition was a minimum default of Rs. 1 lakh.

The creditor may also argue that, the differential treatment between a creditor who has filed an application/petition prior to the date of notification and the one who has not, albeit the amount of default in both the cases is below the revised threshold and the date of default is also prior to the date of the notification, is violative of the principles of equality enshrined Article 14 of the Constitution of India.

Arguments by Corporate Debtor:

Corporate debtor in this case may rely on the decision of the Hon'ble Kolkata Bench of NCLT (supra) and decision of the Hon'ble Chennai Bench of NCLT (supra) and press that notification is prospective and the date of filing of

application, date of hearing and the date when the matter is finally heard and reserved is the trigger point which is to be considered qua the date of notification. Therefore, since the application is filed after the date of notification having an amount of default below Rs. 1 crore, the same is not maintainable.

Apart from the above situations, there could be multiple other factors, situations, permutations, and combinations, one of which could be an act of part payment of debt by the corporate debtor pursuant to a default leading to the amount of default fall below Rs. 1 crore, to avoid the CIRP. There is no one size fit all and the Hon'ble Tribunal and Hon'ble Court must test facts and circumstances peculiar to a case before concluding as to whether the notification is applicable or not. In the absence of any guidance or clarification forthcoming from the government, one can only wait and watch how the Hon'ble Tribunal and Court would further interpret the same under different factual matrix.

STOP PRESS:

1) At the time of printing this article, The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 was promulgated and published on June 5, 2020.

2) As per the said ordinance a new Section 10A is inserted in the Insolvency and Bankruptcy Code, 2016, which provides that no application under Section 7, 9 and 10 of the Insolvency and Bankruptcy Code could be filed against a corporate debtor for default arising on or after March 25, 20 for a period of six months or such further period, not exceeding one year, as may be notified.

3) The Ordinance also provides for a proviso to Section 10A, which provides that no application would ever be made in terms of Section 7,9 and 10 of the IBC, 2016 for the default arising on during the said period (i.e. from March 25, 2020 till the date that would be notified)

4) One can note that that said ordinance also gives credence to the '**date of default**', as no application/ petition for initiating CIRP would be entertained in cases where the '**date of default**' is on or after March 25, 2020.

Thus, from the said ordinance, one can draw a corollary that even for adjudicating the cut-off date of the notification enhancing the pecuniary limit to Rs. 1 crore from Rs. 1 lakh, one must consider '**date of default**'. In summary, one may argue that, if the date of default is prior to the date of notification dated March 24, 20, the pecuniary limit of default of Rs. 1 lakh would be applicable, irrespective of the fact when the application/ petition initiating the CIRP is filed, i.e. before or after March 24, 2020.

Pranshu Goel
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All You Need To Know About

TAX TECHNOLOGY

The global tax scenario has witnessed some drastic tax reforms in the last few years and rightly so. With the decade old tax laws becoming obsolete, it is only fair to bring them up speed with the evolving and dynamic business environment. The tax function is quickly becoming one of the most vital functions in an organisation. Gone are the days when tax was a back office function; the tax function is certainly being elevated within the organisations and has moved to the boardroom especially in an era of greater public disclosure, more widespread interest in the tax affairs of corporations and reputational risk mitigation.

With Russia, Spain and Italy launching digitised VAT reporting system, UK along with many European nations dramatically modifying their tax systems, VAT being introduced in the Gulf countries and GST rolled out in India, it is evident that the Governments globally are taking measurable steps in closing the gap between estimated tax revenues and actual tax revenues.

Stakeholders of the change

The primary stakeholder or rather the drivers of this change are the tax authorities whose problems are majorly tax evasion, fraud, non-collection of taxes etc. However, globally the tax authorities have realised that the key to future is digitisation, data analytics and data integration. The tax technology related spent now forms a significant part of the overall budget of major revenue bodies across the globe. This will ensure higher tax collections and better compliances. The bridge to an automated future has already started building with the extensive investment being made in the technology for data processing by the Governments globally.

The corporations on the other hand are also vigilant about the turning tide. More and more organisations are taking cognizance of the transformation and are implementing steps to be two steps ahead from the Governmental agencies. Tax technology helps the trade in maintaining robust and historical data with extreme accuracy. Such data assists the corporations in improving their decision making, results in lesser tax dispute, accurate compliances and availability of data with electronic audit trail.

The C-suite may have to decide between in-sourcing or outsourcing the tax technology platform. Globally, both the options are being adopted depending on the strengths of each organisation and after weighing in the pros and cons.

However, the loop is incomplete without the intermediaries between the Government and Industry i.e. tax consultants coming on board. It is clear that the traditional role of a tax consultant in managing local compliance-related matters, submitting data in a tax audit, etc., has changed substantially in the evolving business scenario. Now, the tax consultants are participating in the tax strategies and also opine on streamlining the tax ecosystem. The tax consultants are an

important and irreplaceable link between the government and industry; the tech transformation will be hence incomplete if the tax consultants do not join this bandwagon.

Global perspective

Going back to the global footprint of tax technology, e-filing and reconciliation of data has become the new norm all across the globe. The tax departments are all geared up for effective data mining and identifying risks basis the electronic analysis of the submitted date. Further, sharing of tax related information amongst tax departments of different countries has also become a trend. An example of this is the number of Tax Information Exchange Agreements signed by India in the last couple of years. Further, the plan for BEPS and the agenda of Organisation for Economic Co-operation and Development (OECD), the G20, the European Union and the United Nations is nothing but another indication of the transparency that will be required in the tax data globally.

Indian perspective

With the advent of GST in India, came a flurry of changes which were ground moving and marked the beginning of a new tech era in the Indian tax jurisdiction. It was the first time in Indian history that a new tax reform was launched completely based on a tech portal – GSTN. The portal was built with the intent to digitise the entire schema of GST and has been partially successful in doing so. With the ambition of making indirect tax completely faceless between the assesse and the revenue, the portal has been built in a manner where a taxpayer may furnish his returns, replies, audit reports without any physical interaction with his assessing officer, who may approve, reject or provide comments as the case maybe. Three years back, what looked impossible has been accomplished by the GST council and the day is near when e-invoicing would prove to be another feat for the department.

Even on the direct tax front, CBDT has been an early adopter of technology. The Data Warehousing and Business Intelligence projects run by both CBDT and CBIC are evidence of this. With the set-up of Centralised Processing centre (CPC) for filing and processing of e-returns to submission of responses to Income tax related letters, filing of rectification requests, automatic processing of refunds, the CBDT indeed has come a long way on this tech road.

While the tax authorities are all set to make technology a way of their life, the question is whether India inc. is ready for this disruption? While some may term this as disruption, we rather call it an opportunity. The key factors being:

1. Change is the only constant: While a lot of us think that India is far away from adoption of tax technology and the global trend will hit us in a long time, the question that needs to be answered is how long is 'long time'? In this era of Amazon, Zomato, PayTm, Uber, do we really want to see if we are too far from the tech driven lives. Bill Gates once said "Information Technology and business are becoming inextricably interwoven. I don't think anybody can talk meaningfully about one without talking about another." Covid-19

has certainly proved how quickly the 'normal' can change. Historically, before the internet revolution drowned us, the time span of 10 years was considered as long term, but today, with the pace that things are transforming, it is a safe bet to assume that the term of 10 years has shortened to 2.5 – 3 years. Every three years the technology gets reinvented and pushes its way in our lives and we are left with the only option of adapting to it. Believe it or not, this is a race and the one who adapts quickly strive and the others get lost in the wind. The examples of Kodak, Nokia, Blackberry, Polaroid, Yahoo! are enough to prove that the ones who fail to innovate and adapt at the right time just disappear.

2. Higher stakes call for best measures: The way that new tax legislations are formulated, the corporations need to accept that the complexities, costs and compliances have increased multi-fold. The stakes and risks are higher as the penalty clauses of tax legislations are stringent and pose a threat to the reputation of the organisation as well. The operational issues like missing out on input tax credit, timely and accurate compliances, risk of human errors are some factors that need consideration. Therefore, the information and data that is being used for compliances and decision making needs to be transparent, reliable, consistent and timely which can only be ensured by a robust tech system in place.

3. Decision making and streamlining day to day activities: Technology is not only beneficial for interacting with the tax department but is also a blessing for streamlining and planning the mundane activities of the tax function employees. With more reliance on technology, the companies can focus more on operational and strategy related activities. The error free and transparent data also leads to better and rational decision making.

There are broadly three areas where technology can prove its worth under the GST legislation: Compliances, Advisory and Litigation. A lot of companies have moved or are in the process of moving their compliances on a technology platform. With e-invoicing on the charts, even the companies who have not initiated this process will be forced to switch to technology. The key aspect to this is that once the e-invoicing becomes mandatory, the real-time data will reach the authorities immediately. There will be absolutely no human intervention and the only choice which one would have will be of post-mortem analysis.

Further, a lot of us have question as to how will the technology handle the advisory function. On a daily basis, most of us are unaware that we already are using artificial intelligence for various consultations. From buying insurance, SIP's, mutual funds, using online software, visual doctor consultation we are fully reliant on artificial intelligence. We have all used the chat boxes on websites where the consultant provides his consultation online for various products or services. If not anything else, Covid-19 has made us all tech-abled attempting to mitigate disruption to the maximum. Same principle will be followed while pursuing a tax advisory.

Furthermore, litigation management system has been in the system for a while now. The tax litigation management tool offered in the market generally prepares case itinerary of all events and alerts users on steps to be taken. The key idea behind the tool is to manage all litigations of a large conglomerate at one place with a single repository and efficient strategy. Even during these lockdown times, the judiciary system is functioning normally; lawyers are litigating and judges are passing judgments irrespective of the virtual presence. This only proves, that litigation which is thought to be one of the most conventional professions, can be automated too.

Categories of Tech Products

With the above backdrop, it is imperative to understand in brief about the various types of tax tech products being used in India.

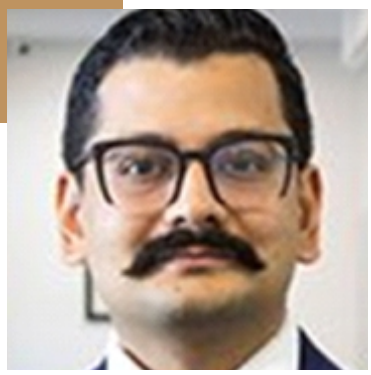
Categories	Activities			
Data Management	Data ingestion	Database/ cloud hand	Data cleansing and enrichment	
Automation	Activity automation	Process automation	Decision automation	
Productivity	Collaboration	Workflow		
Analytics	Dashboard	Analysis	Predictive modelling	
Consumer Interface	Client portal	Chat box	Application	App

The above technologies are already being used in our day to day activities like online shopping, smartphone dashboards, applications, workflow in ERP's etc. The novelty in using the same in tax function will not be to a large extent. However, the procedure and methodology may change.

Conclusion

There is no running away from the fact that soon we shall all be engulfed by the storm of technology. It depends on us whether we get prepared to fight the storm or just get immersed in it. India inc. may no longer have the luxury to not automate or embrace the technology. The famous author Stewart Brand once said "Once a new technology rolls over you, if you are not a part of the steamroller you're a part of the road." One of the studies says that 57% of the tax functions are capable of being automated. Each organisation should evaluate 'where we are' and 'where we want to be'; small steps towards the goal will get each one of us there. An organisation should start with having minimum defined limit in adding incremental automation in routine processes and take it further steadily to a stage where the all that can be automated has been done so to be in line with global practices.

It is important to employ technology into routine work for the employees to gear up to higher business potential and growth. It is time to think on digital advisory, automated compliances and litigation management.



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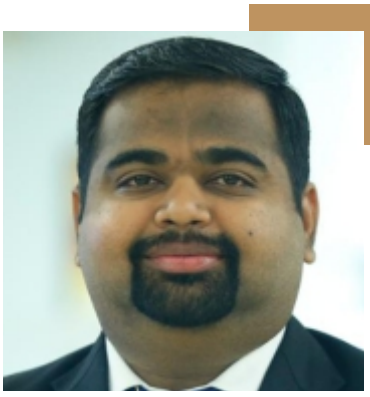

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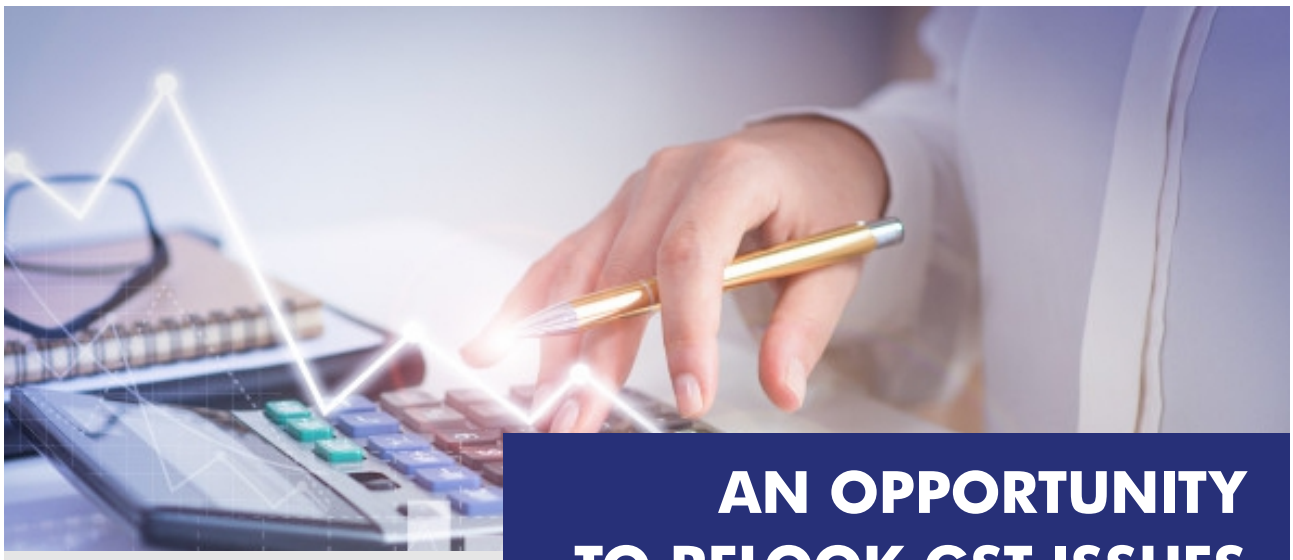

AN OPPORTUNITY TO RELOOK GST ISSUES

The world is reeling under severe pandemic, COVID-19 and India too has been badly affected, causing social disruption, economic shut down and health concerns. The economy is at a virtual standstill and entire nation is under lockdown since 23rd March 2020 resulting in shutdown of all offices, shops, showrooms, factories and public places.

Due to this halt, the industries are facing cash flow challenge, which has resulted into their inability to fulfill statutory obligations of payment of taxes and thereby tax filings, besides other corporate responsibilities.

Seeing this challenge of the industry, the Ministry of Finance, Government of India has decided to provide extension for payment of Goods and services tax (GST) and in filing of GST returns which, inter-alia include, allow delayed payment of taxes, lower or nil rate of interest, extension of due dates for payment of taxes and filing of returns etc. Some of these extensions are mentioned below:

- Due date of filing GSTR-1 and GSTR-3B for February, March and April 2020 is extended to the last week of June 2020.
- Due date of GSTR-3B for the month of May 2020 is extended from 20th June, 22nd June and 24th June 2020 till 27th June, 12th July, and 14th July 2020, respectively An extension has been granted for filing annual return (GSTR-9) and reconciliation statement (GSTR-9C) for FY 2018-19 until 30th September 2020;
- Companies can file GSTR-3B using EVC option until 30th June 2020;
- Nil GSTR-3B is allowed to be filed by an SMS;
- Time limit for completion or to act under the GST law for adjudication and appeals, by any authority or by any taxpayer falls between 20th March 2020 to 29th of June 2020, shall stand extended until 30th June 2020;
- The validity of all the E-way bills expiring between 20th March 2020 and 15th April 2020 stands extended up to 30th April 2020;
- Due dates for CMP-08, CMP-02, GSTR-4, ITC-04, GSTR-5, GSTR-5A, GSTR-6, GSTR-7 and GSTR-8 for specific tax periods have been extended due to COVID-19 induced lockdown. The late fee has been waived off for delayed filing of GSTR-3B for specific months. Interest charges reduced to 9% p.a. for taxpayers with an annual aggregate turnover more than Rs 5 crore

in the previous financial year, if the filing is beyond 15 days from the original due dates but within specific dates in June-July 2020. For the rest of the taxpayers, interest will not be levied;

- The last date to avail the Sabka Vishwas Scheme is extended up to 30th June 2020;
- Special GST compliance procedure is notified for the companies during the period of Corporate Insolvency Resolution Process (CIRP);
- FORM GSTR-1 is waived off for the FY 2019-20 for taxpayers who could not opt for availing the option of special composition scheme under notification No. 2/2019-Central Tax (Rate).
- Pending GST and Custom refunds are to be released on an immediate basis which is about Rs. 18,000 crores. This decision is likely to lead to the betterment of around 14 lakhs taxpayers and around 1 lakh business entities (including MSMEs).

In addition, GST regime is currently facing some burning and solution-seeking problems, some of these issues are highlighted below:

- Input tax credit claimed on the purchases against which payment has not been made to the suppliers within 180 days must be reversed. To keep a note of this reversal is giving extra burden on the tax payers.
- Annual GSTR 2A cannot be downloaded and has to be viewed monthly, which is finding has created difficulties to match the returns with the books of accounts with 2A returns. Comply of Rule 36(4) on a mandatory basis also creates now a problem.
- GST implies additional operational costs for Small businesses. In a developing country like ours, not all SMEs will be able to afford the cost of computers and accountants required to implement GST (make bills and file tax returns). 28% GST rate on some products like plywood, automobile parts, and electronic items forces potential buyers to opt for unregistered dealers
- Indian economy is majorly driven by small business units i.e. SMEs. It will be unfair to expect small-scale business firms to make the transition to an online IT platform and expect no errors in return filing. It is an uphill task for the majority of our working population which has little hands-on experience with IT solutions
- It is too difficult to assign MRP to handmade products like local shoes, Banarasi Sarees, etc. Most small artisans are illiterate and therefore unable to write

MRP on their products and/or do any paperwork. Dealers are confused about how to rates such products.

- E-commerce giants like Flipkart, Amazon also have not escaped the after-effects of GST rollout. TCS has to be collected by the e-commerce companies from the sellers at the time of payment. The capital blockage hampers day to day operational costs due to TCS provisions. The GST council has fixed the 1% TCS over the deduction made while payment to the sellers.
- GST E-way bill is a major concern for most of the companies which are regularly into the business of transporting goods and sending material over the locations, the transport company is also trying to figure out how it would deal with the GST E-way bill provisions.

- Agricultural Commission Agent and Joint Development Agreement Issues.
- The tax liability has to be paid on the commission according to the taxable goods but when the goods are rated NIL and the commission is not taxable therefore making it an issue for builders and landlord taxation liability.

GST regime has long way to go and to cover up significant ground before it can live up to its promise and potential for the benefit of industry as a whole. The success of any tax regime is possible only when the industry of any country adopts it with ease.
The challenges faced by the Industry in COVID-19 situation can be a good opportunity for the Government to relook some of the pending issues being faced by the Industry and especially by Indian MSME sector which forms major part of the Indian Industry and its success.

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ADDING EXEMPTIONS INTO

GST

BOON OR BANE?

"You may not control all the events that happen to you, but you can decide not to be reduced by them."

– Maya Angelou

Guided by above principle, we living creatures constantly explore all potential alternatives to reach the desirable goal and in turn emerge as winner overcoming the obstacles in our path. Every other day we wake up to a news of a peculiar sector approaching government to exempt their outward supplies from levy of GST liability. However, it may be seen that not all exemptions would aid in attaining the intended results.

Let us decode what exemptions in GST Law signifies and what all it can entail.

Exemptions – A Brief Background

The word 'exempt' means putting a person beyond the application of law. In taxation parlance, the word 'exempt' or 'exemption' means being precluded from chargeability.

Normally, goods and/or services relating to traditional, social, cultural and economic importance, daily needs, necessities and Government policies are brought under exemption umbrella in the taxation laws. In addition to that, geographical or industry-wise exemptions also exist based on Government's growth and development targets.

Numerous exemptions prevailed under the erstwhile indirect taxation laws, yet, trade and industry were cautious while availing them. This is because availing the exemption would take away, among other things, the right to avail input tax credit and, thus, many of the business would not find this option suitable in their scenario. Further, exemptions being subject to interpretation, were prone to litigation. Nonetheless, it cannot be denied that exemptions boosted the growth in several specific industries.

Addressing the above issue in GST regime, minimal exemptions were provided for, to ensure proper monitoring and control without unnecessarily disturbing the regular flow of taxes. It can be rightly said that it was one of the reasons GST being termed as 'Good and

Simple Tax' eliminating the complexity due to presence of multiple exemptions.

Current State of Affairs

Year 2020 unfolded unexpected adversity in the form of Covid-19 pandemic. Almost all the sectors in the economy are staring considerable decline in their turnovers in current fiscal because of the pandemic as both demand and supply factors are simultaneously interrupted.

The recession in the economy has left significant excess capacity and unsold stock to deteriorate in absence of regular demand levels. In this scenario, various sectors are seeking exemption from GST on their outward supplies expecting it would spur the demand.

The question is whether the benefits from such exemptions, if provided, would offset the shortcomings arising out of them. On one hand, exemption would remove levy of GST on outward supply, on the other hand, supplier would be denied input tax credit on inward supplies, resulting in increase in cost to the extent of GST on inward supplies. Thus, ultimate price to be borne by the customer may not be cheaper in all scenarios. Further, even if an exemption is given, the benefit reaching the customer cannot be determined. Going further, inclusion of further exemptions in GST Law may threaten domestic manufacturers and incentivise imports. Say, for example, basic custom duty on Personal protection Equipment (PPE) has been reduced to NIL upto September 30, 2020[2]. Therefore, import of PPE may get an advantage over domestic supplies. In case, if exemption on levy of GST on outward supply is provided on PPE, it would result into cascading effect of taxes by blocking of credit chain of GST. The same would lead to swollen manufacturing costs of domestic production and, thus, such domestic supplies would be costlier in comparison to imported supplies.

In a nutshell, exemptions sought for may not serve any good either in public interest or to manufacturers. All of us including

government have spent considerable time, efforts and cost for implementation of GST and move-over from erstwhile tax regime. If outcome is made same as in the previous tax regime, then the intended benefits of introduction of GST would not be relished.

Possible Resolutions

Waiver from GST may give temporary relief if it is properly channelized and implemented. Yet, for long-term and long-run impact on businesses, new innovative ideas in terms of dynamic product, distinguished advertisement, enhanced values to customer can only sustain. Indeed, seeking assistance is good till it has no future detrimental repercussions. Nonetheless, there can be other viable options to help industries in recovering from Covid-19 impact and boost the demand, such as:

- Reduction of prevailing GST rates on sectors impacted directly and ensuring that such reduction in GST rates does not entail inverted-duty structure with it;
- Liberating Time of Supply provisions for a specified period wherein GST be payable on receipt basis;
- Permitting tax adjustments for confirmed bad debts incurred;
- Allowing input tax credit in respect of expenses incurred for adopting social distancing measures;
- Accepting and acknowledging admissibility of accumulated ITC while contributing for CSR activities at least for the on-going phase; and
- Identification of specific supplies that are worthy of support by the government and provide direct subsidies.

Author's Statement

Exemptions under GST law were kept at minimum to maintain seamless flow of ITC in the supply chain. Inclusion of further exemptions would cause interruption leading to escalated costs. Nevertheless, requirement of assistance to needy industries cannot be ousted. Hopefully, government works out and tests the feasibility of other options to provide interim support to the industries. It is need of the hour to take a swift move of luring customers, re-claim lost demand and mitigate the potential shutdown risk. Any measure to be offered must be a cautious one rather than entertaining ill-informed requests of stakeholders of extending exemptions.

When we move out of thinking the ways to save part of our revenue from government's kitty only then we can channelize our energies to increase our revenue from customers' side. Ultimately, we would not only take our turnover to sky-highs but also aid the government in this tough time by paying our legitimate share of taxes.

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GST

IMPLICATIONS ON USE OF BRAND NAMES/LOGOS BY INDIAN SUBSIDIARIES/INDIAN ENTITIES

INTRODUCTION:

The introduction of GST in the Indian economy was received with mix responses and its impact on the Indian economy is still questioned till date. The coming of GST in India was based on a long desired goal of generating revenues from sources that were left outside the ambit of taxation but had the potential to generate great revenues for the government. Collection of revenues has been eased by the coming of GST but still there exists many untapped industries which could contribute to the generation of higher revenues. To achieve the taxation goal, the indirect tax department wants Indian conglomerates/ foreign banks to pay 18% GST on brand names and logos. The purpose is to generate maximum revenues out of the brand names/logos which are used by the subsidiaries for free and by charging a whopping 18% the government wants to add thousands of crores to its treasury. But the task of generating revenues is not an easy one, therefore in this article we discuss the structure and challenges that would arise in levying taxes on subsidiaries.

BRAND VALUATION AND THE DILEMMA OF CHOICE:

The taxing of the subsidiaries is not an easy task and must first pass the brand valuation test. Economists have come up with many tests which help calculate the brand value. It depends from case to case, country to country and company to company to select the best suited test which would be of profitable assistance to them. Generally, the choice of companies is determined by the tendency to evade tax circuits which raises questions of transparency and accountability on part of the companies which is often than not reflected in the calculation of their brand value. Therefore it is important to determine the brand value to decide whether or not a subsidiary is eligible to fall under the 18% tax slab. Enlisted below are some of the commonly used methods for estimating the brand value of companies:-

1. Assessing Attributes: Subjective attributes like customer satisfaction, loyalty, awareness and market share that are either tracked separately or weighted according to industry. These attributes are subjective in nature and hence are subjected to change. Different economists have come up with varying methods of calculating these abstract attributable values into simple measurable ones.

2. Brand Valuation: it's based on an objective analysis of the brand value which is done by using standard measuring tools. The calculation is done on the basis of most robust financial data available in order to achieve the most plausible valuation of a brand. The measuring mechanisms tend to differ from industry to industry but ensure objectivity at the least.

3. Algorithmic: there are many financial institutions and market agencies which work to determine the brand value based on a calculation employing various sets of tolls and blending them all. The lists such as "Top 100 Brands of the Year" are some of the examples.

4. Net Promoter Score: NPS is a metric developed by Fred Reichheld, Bain & Company, and Satmetrix. Its power is its simplicity. Customers are asked "How likely are you to recommend company/brand/product X to a friend/colleague/relative?" and score their response from 0 to 10. "Promoters" give a 9 or 10 score, "passives" a 7 or 8, and "detractors" a 0 to 6 score. The NPS score is the percentage of promoters less the percentage of detractors, and ranges from −100 to +100.

Of all the above methods used to estimate the value of a brand, companies and banks face the question of choice of selection and suitability. This poses a serious challenge in determining the real worth of a brand value and makes the taxation exercise more tedious. The tax department across the globe faces this challenge and so there exists unique and independent mechanisms to calculate brand value. The difficulty arises when the company is a multinational one and runs its operations in different jurisdictions.

TAXING SUBSIDIARIES: IS IT JUSTIFIED?

Subsidiaries of multinational companies do enjoy a great deal of autonomy in countries where they operate but it may not be so in the case of one-man parent company. Hence, ordinarily residence of both parent company and subsidiary company for tax purpose shall be taken to be place where they are incorporated or registered. Therefore it is the country or the jurisdiction in which the subsidiary resides, where it has to pay taxes. In determining the competency of subsidiaries in paying taxes it is crucial to understand that the subsidiaries are different and independent from the parent company which only provides it with brand name and logo. It is the subsidiary which takes decisions of importance to ensure the smooth functioning of the entity. Subsidiaries are often created for tax or regulatory reasons. They at times come into existence from mergers and acquisitions. It is a common practise in international law, which is the basis of international taxation, for foreign investors to invest in Indian companies through an interposed foreign holding or operating company, such practise has given rise to many corporate giants, multinational banks, and conglomerates. GST is spreading its arms and is attempting to target the brand value of these huge multinational companies. It can be construed from this step that subsidiaries would now have to pay tax under the 18% GST slab to the government to use the brand name/logo.

Tax avoidance is a problem faced by almost all countries following civil and common law systems and all share the common broad aim, which is to combat it. Many countries are taking various legislative measures to increase the scrutiny of transactions conducted by non-resident enterprises. The taxing of subsidiaries is one such initiative by the government to bring subsidiaries under the GST roof and make them accountable because the profits they earn due to their brand value are transferred directly to the parent company usually located outside the subsidiaries' country, thus exploiting the country where it is generating huge profits with the help of local assistance and resources. The argument that can best be construed from this discussion is that the government does not want the subsidies to let enjoy the brand name/logo free of cost

because it has incurred huge infrastructural costs in setting up safe havens for the multinational banks and conglomerates to settle in India. Taxing the subsidiaries for the use of brand name/logo is one way to pay for the costs incurred in bringing home foreign direct investment (FDI).

CONSEQUENCES:

The government has yet not crystallised this idea of taxing the subsidiaries for the use of brand name/logo and it would be too early to predict the repercussions but some consequences seem evident if subsidies are brought under the GST's 18% tax roof.

1. Poor brand value estimation: Due to the existence of a market full of choices to select from, to calculate the brand value, companies and banks would be willing to lowly estimate their brand value because it would help them in escaping tax liability and not fall fit to be taxed 18% for using brand name/logo. Poor brand value estimation would help companies only in the short run to escape tax liability but in the long run it would be detrimental to the overall health of the economy because it would bring bad repute to the company/bank and reduce their customer base.

2. GST Payable even when there is no consideration: The transaction between the parent and the subsidiary firm or an Indian firm with a parent company situated in an overseas nation is taxable even if there is no consideration. Although the recipient would be eligible for input tax credit, charging of GST could be an entirely revenue-neutral exercise. The scenario is all different for banks and other financial companies as GST has not yet allowed full input tax credit, a large part of GST would become pure cost as they would not be able to set it off against future tax liabilities.

3. Transactions Restructuring: Tax on logos and brands had not been an issue under the erstwhile tax regime but in GST nothing is entirely free of cost. Under the GST law, the "supply of brand" is deemed to have taken place from the parent company to the subsidiary that requires entities to revisit their agreements/licences to have a restructuring of their transactions.

CONCLUSION

An in-depth analysis of the tax rate and its impact on the survival of subsidiaries would revolve around the question that, how will the government ensure ease of doing business by adopting such (harsh) means? International banks would be dissuaded from opening more subsidiaries in India and would look for avenues to escape tax liability. Indian giants like the TATA's and Mahindra would be most affected because of their high brand value in the Indian market. Finally, it would be interesting to look for the credibility of the 18% tax rate under GST to charge companies and banks for their brand name and logo.

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ENHANCED DISCLOSURE REQUIREMENTS UNDER NEW GUIDANCE NOTES UNDER THE COMPETITION ACT

Last year, the CCI introduced a revised 'Form 1' for notification of any combination under the Competition Act and the CCI (Procedure in regard to the transactions of business relating to Combinations) Regulations ('Combination Regulations'). The description of the combinations is now much more detailed than before in Part V of the revised Form 1. The parties to the combination are now required to disclose the nature of rights acquired by them, which was earlier a part of the second stage inquiry by the CCI i.e. Form-2. One change that is likely to raise a few eyebrows is that parties have been asked to disclose the strategic rationale and justification behind the transaction.

Any group entity of the parties to the transaction having direct or indirect shareholding or control over another enterprise engaged in similar or identical goods (horizontal overlaps) has to be disclosed. Similar disclosures of any activity that is at a different level of the production chain to the activity of another party to the transaction (vertical overlaps) also have to be made. Apart from horizontal and vertical overlaps, complimentary activities of the parties to the transaction also have to be disclosed. Perhaps the most important change was the introduction of a 'Green Channel' for deemed approval by the CCI, on self declaration basis, for cases where there are no horizontal, vertical or complimentary overlaps.

However, there was some ambiguity about the nature of disclosures to be made, as there were no new Guidance Notes to go along with the revised Form 1. Though issued separately, Guidance Notes are a part of the Combination Regulations under Regulation 5(3A). Guidance Notes to the new Form I have been been recently issued on 28 March 2020, giving a truer picture of the disclosure requirements under the revised Form 1.

The first important clarification introduced by the new Guidance Notes is that where an acquisition is through a special purpose vehicle (SPV), the threshold limits under the Act will take into account the assets and turnover of the parent enterprise and not just the SPV. The Guidance Notes also make it clear that the reason and justification for interconnected transactions have to be disclosed. If an acquisition is made in tranches, details of other tranches have to be disclosed, in addition to the tranche for which approval is sought.

Instead of disclosure of structural and financial links between the parties mandated by the earlier form, the disclosures are now

broader, encompassing all agreements and documents relating to the transaction with relevant clauses. Through the Guidance Notes, the CCI has included observer rights as well as any commercial 'advantage' that the parties may gain, apart from veto rights, affirmative voting rights, and board appointment rights within the ambit of 'rights acquired' through the transaction.

The new Guidance Notes put a premium on obtaining sound legal advice while making declarations, and a D-I-Y approach is no longer possible for parties. One example is the need to cite all orders in similar cases, on a reasonable effort basis. This recurring theme is also found in the requirement to ensure all plausible alternate relevant markets are disclosed in Form – 1, which includes the reason for accepting or rejecting a particular market definition.

On the issue of valuation of a transaction, the Guidance Notes state that monetary benefits would include transfer of voting rights, securities, and tangible and intangible assets. An important addition made is that the valuation should include not merely the consideration paid by the acquirer, but also the consideration to be received through an open offer under the SEBI Takeover Code, if it is triggered by the deal.

In addition to the above, detailed guidance has been given regarding the groups to which the acquirer and the target belong. From the acquirer's perspective, the structure of the entire group, right up to the ultimate controlling entity and shareholders has to be shown. From the target's perspective, the group structure has to be disclosed with all affiliates 'downstream' of the target. The scope of 'complementary' services has been clarified as being products/services that enhance the value of the other product or service. The level of detail in Form-I has been increased, as the product/services overlaps and the relevant market analysis will have to be undertaken for each entity in which the acquirer entity, the target entity and their respective group entity(ies) hold even a single share!

Under Form 1, there is a requirement for furnishing market data for the last three years. This requirement has been waived in the Guidance Notes if the combined market share of the parties is less than 10%. However, apart from this instance, the disclosure requirements have become much more onerous and detailed. It remains to be seen whether the enhanced disclosure requirements will deter transactions or lead to stricter compliance.

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Tax Court Speaks!

An insight into the recent key judicial rulings

Income Tax Issue	Legal take away	Judicial Body
Treaty shopping not abusive - GAAR can't be applied to deny relief under DTAA	No abuse arises from choice of most beneficial treaty. Selection of a low tax jurisdiction may speak of an alleged avoidance transaction, but shopping or selection of a treaty to minimize tax on its own cannot be viewed as being abusive	Canadian Federal Court
Reassessment reinitiated as matter of 'abundant caution' based on audit objections quashed	Belief of income escapement based purely on audit objection "is nothing but a shame to believe in the garb of audit objection raised by the Revenue which cannot be the basis for reopening of the assessment in the absence of any changed circumstances on the part of the assessee…"	ITAT Mumbai
Applicability of Rule 7A to sale proceeds of rubber trees and timber	Rule 7A provides for computation of income derived from sale of centrifuged latex / cenex / latex based crepes etc. It does not provide for taxability of income from sale of old rubber trees	ITAT Cochin
Article 8 relief to airlines for income from 'pool participation'	Article 8(2) of India-France DTAA applies to income from rendering 'technical handling' services to other International Airlines Technical Pool. Hence not taxable in India under domestic tax laws	ITAT Delhi
Non filing of cross objections and raising of objections under ITAT Rules1	Allowed to raise 'additional' jurisdictional grounds on validity of proceedings u/s 153C by way of an oral application under Rule 27 of ITAT Rules, although it had not filed cross objections Assessee, as a Respondent before the ITAT was entitled to agitate the jurisdictional issue relating to the validity of the reassessment proceedings	Delhi HC
Depreciation on digital Content	Digital Content is not computer software to be eligible for 60% depreciation. Depreciation to be charged at 25%	ITAT Chennai
COVID times and the 90 days rule for pronouncement of orders by ITAT	The 90 days period as per Rule 34(5) of ITAT Rules to be computed by excluding at least the period during which the lockdown was in force	ITAT Mumbai

Income Tax Issue	Legal take away	Judicial Body
Lease rentals on Set-top boxes	Lease rental paid on set top boxes is not an eligible deduction u/s 37 but it is eligible for depreciation u/s 36 @ 60%	ITAT Chandigarh
Disallowance u/s 40(a)(ia)	Sec.40(a)(ia) are attracted only if expenses are claimed in the profit & loss account and not when the same are capitalized	ITAT Delhi
'Fee or charge' u/s 40(a)(iib)	Surcharge on sales tax and turnover tax is not a 'fee or charge' to fall within ambit of section 40(a)(iib) and hence, not liable to disallowance Levy of 'tax' is outside the ambit and scope of the said provision	HC Kerala
Principles of natural justice – Due time under law to respond to notice	Issue of show cause notice and passing of order against principles of natural justice to give due time under the law to the taxpayer to respond to the same	Madras HC
Characterization of renting / leasing of immovable property for charging GST	Basis the nature of agreement, the renting/leasing of 'cold storage' premises by one entity to another is for the purpose of renting / leasing of immovable property and does not fall within the ambit of storage services	Telangana AAR
Place supply for Ex-Factory interstate sales	As per section 10 of the IGST Act, place of supply for Ex-Factory interstate sales is location where movement ultimately terminates as mentioned on the GST invoice and not the factory gate. Thus, the same chargeable to IGST	Telangana AAR
Characterization of activity of selling ice cream at: 1. Ice cream parlor 2. At customers premises (party etc) 3. Wholesale sale	Sale of ice cream at ice cream parlor falls within the terms 'eating joint' and the supply of ice cream along with the service activities are 'Restaurant service' Activity of serving ice creams at customer's premises during party events characterized as 'outdoor catering service' Ice- cream supplied in bulk quantities to caterers not supply of service rather it is supply of goods	Telangana AAR

Income Tax Issue	Legal take away	Judicial Body
Anti-profiteering	Prescribed mechanism to pass benefit u/s 171 of the CGST Act to be followed - Reduction should reduce the final price payable by a consumer Conditions u/s 15(3) of CGST Act to be satisfied - Discount to be linked to the relevant invoice and subsequently, reversal of ITC to be done	NAA
Delivery vehicle reaching wrong destination and consequent GST liability	Only fact that the vehicle reached wrong destination carrying IGST paid goods not sufficient enough to levy CGST and SGST on the same. No penalty imposable	Telangana HC
Time-limit for availing transitional credit	Time limit prescribed under Rule 117 of CGST Rules for availing transitional credit is only directory and not mandatory Option to transition credit will be available for a period of 3 years as per the Limitation Act	Delhi HC
Rectification of GSTR3B in the month that an error happened (as opposed to the month in which error was discovered)	A taxpayer can rectify past GSTR 3B in the month that an error happened. The Government failed to implement the statutory mechanism for filing of GSTR1, 2 and 3 returns which were supposed to function as a self-policing mechanism where recipient & supplier of goods or services could verify, validate, modify and delete the information. Government, having failed to implement that, cannot be allowed to take benefit of its own wrong and deny rectification to assessees.	Delhi HC
Provisional attachment of Bank Accounts	Attachment of bank accounts can be made only by passing well-reasoned orders passed in accordance with law	P&H HC
Sealing of business premises	When goods lying at the business premises like godown are seized the godown itself cannot be sealed. Revenue cannot insist on proof of ownership in such cases	Gujarat HC

Income Tax Issue	Legal take away	Judicial Body
Mismatch in addresses in invoice and E-way bill	Difference in address shown in the invoice and the E-Way bill is only a clerical mistake and is not a serious mistake. Goods bound to be released on furnishing of bank guarantee	Kerala HC
Non-filing of GST TRAN-01 because of technical glitches	Demonstrating technical glitches on the common portal resulting in on filing of GST Tran – 1 a pre-requisite to avail relief – contrary view to Delhi High Court	Rajasthan HC
Composite supply Vs E Book	Supply of DVDs / CDs with the 'Law Weekly Desktop' software to search and read law journals to be read on computers does not fall under the category of 'E-book' but constitutes a composite supply Such DVD / CDs do not contain electronic versions of the journals but an executable software application	Tamil Nadu AAR
Anti-Profiteering – Methodology to compare price	Methodology of comparing average base price of the products pre & post rate-reduction period is correct reasonable, justifiable as per section 171 of the CGST Act, 2017	NAA
Anti-Profiteering – Reduction in price on account of CVD	Base price to be reduced to the extent of the CVD that is no longer to be paid as well as to the extent of the IGST whose credit was available in GST era	NAA
ITC on detachable parts in office fittings	Detachable parts in office fittings not immovable property, hence, ITC available	Karnataka AAAR
Joint development agreement – Composite Supply	Combination of two activities one of which is not a supply under GST cannot be said to be a composite supply Activity of development and sale of land carried on by the Appellant under the joint development agreement (JDA) is a supply of service	Karnataka AAAR

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WELLBEING IN A POST COVID WORLD

Introduction

Across the world today, humanity is facing an unseen enemy. An enemy that is potent enough to attack at any time, place and any one of us with immense impunity. And as on date, there is precious little we can do to prevent the attack. The best we can hope for is to mitigate the damage after we have been attacked and that is a battle we are fighting day in and day out in almost every country on Earth. We are essentially facing an unknown and potentially lethal disease. The figures and statistics we are being inundated with every hour actually give us only a small part of the overall picture...which is not only a pretty complex piece but also a constantly mutating environment by itself.

The Invisible Enemy

Let us just consider one perspective. All virus infections have 3 aspects - infectivity, pathogenicity & virulence. In plain English, this translates to how many people can one infected person spread the virus to, how much time does it take for those exposed to the virus to exhibit symptoms of infection and how many of those who are infected show severe symptoms which may lead to death. The first is measured by R0, the second in days and the third in percentage. In all previously known pathogenic viruses, there has always been one factor which is unfavourable to the virus, and favourable to humans. Covid-19 is the first known organism where all three factors are in favour of the virus. It has a R0 = 2.5, exposed folk can show no symptoms up to even 21 days and around 20% of those showing symptoms require hospitalisation of which 4 to 6 percent die. This essentially means that the number of carriers grows exponentially over a very short time. Consequently and very soon, the healthcare system of any country gets overwhelmed as there is an acute surge in demand compressed into a very short time frame. Compounding the situation is the reality that the healthcare labour pool becomes vulnerable to the disease at a much higher percentage due to the high viral load they are necessarily exposed to. It really does not matter if far more number of people die every day globally due to so many other causes. What matters is that on top of all the demands that such diseases and conditions impose on the healthcare infrastructure, Covid-19 adds an almost unbearable burden on available and limited resources.

Once you wrap your head around these basic facts, you can begin to comprehend part of the far reaching and potentially devastating consequences of this disease.

Fighting Back

However, we humans are a very resilient lot. While we are experiencing the most severe worldwide economic crisis in living memory, we are also trying to restart our engines of economic activity and growth so that we can take care of our people. This, everyone of sound mind will agree, is absolutely essential to prevent the scenario from degenerating into an apocalyptic collapse of modern civilisation. We must hunker down and wait

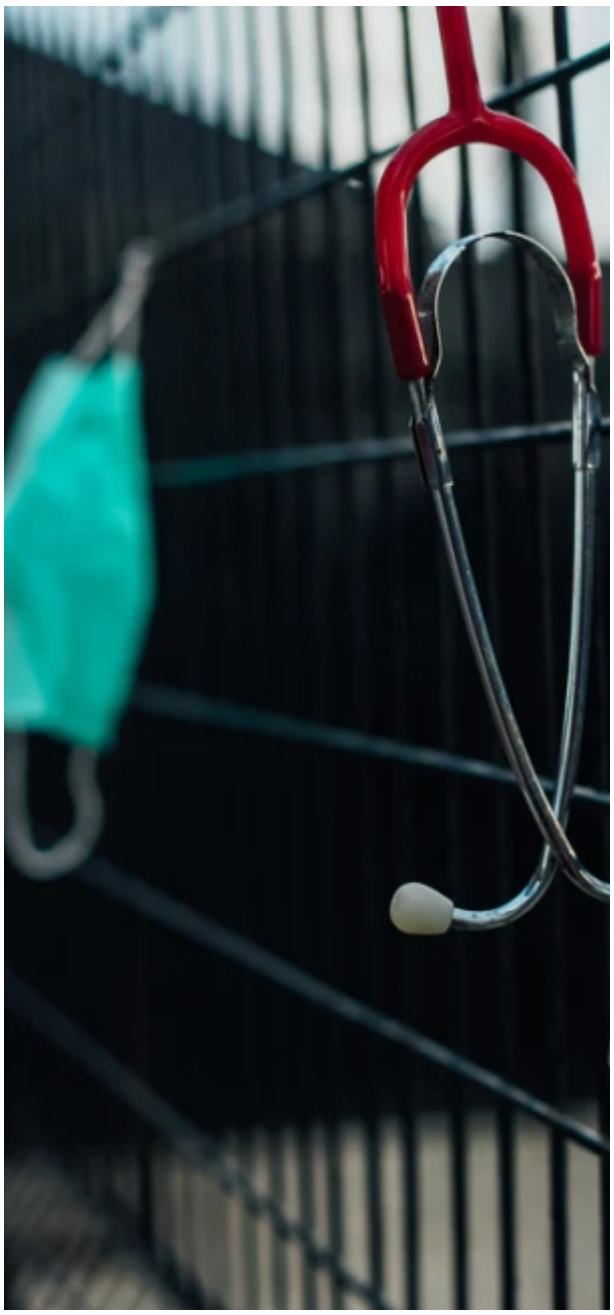
for the darkness to pass, but while we do so, we must also find every feasible way to grow our food, run our factories, service our societies and keep our utilities running. Yes, the forecasters and modellers are predicting a very bleak couple of years ahead. No one is blind to the challenges involved or naive about the uncertainty and volatility of the immediate future. But then we have to accept that we have no choice other than trying to live with and work around the situation while minimising the obvious risks involved in what we are trying to do.

At a fundamental level, there are two aspects to this approach to rebuilding our lives in a post Covid- 19 world. Both require us to drastically re-examine our ways of life and work and recast these in the light of the new situation. The first involves safeguarding ourselves by making the required changes in our home and work environments. These involve modifying our living and work spaces to enhance barriers of entry to the pathogen and creating capsules of safe spaces within and without our homes.

This will also call for designing and implementing new and comprehensive protocols of conduct, behaviour and interaction – between ourselves and also between us and our external environment. The terms we have become so familiar with – social distancing, sanitisation, mask protocol etc. and many more, all fall into the ambit of this first aspect. Relatively speaking, this is a simpler initiative and easier to design, implement and integrate into our lives.

Winning From Within

The second aspect is a bit more of a challenge. This calls for a deep and honest re-appraisal of our 21st century lifestyle and personal habits. The way we eat, drink, sleep, work, play and behave needs a hard and clinical look and significant recalibration. Also up on the table is a re-examination of how we treat ourselves – our minds, bodies and souls. As J Stanford once famously said, "Health is a state of body. Wellness is a state of being". It has been a long established fact that our bodies' immunity is significantly dependent on the condition of our physical, emotional and spiritual selves and for too long, we have grossly neglected to nurture the fundamentals of human existence. In our race for material prosperity and success, we have allowed ourselves to pay an increasingly higher price by way of a plethora of lifestyle diseases. Now, we are paying a premium on this price through compromised immunity against a new pathogen. This, by all means, must change. And this change cannot come by way of social or political fiat. To be sustainable and consistent and significantly



widespread, this change must be the outcome of an intrinsic determination to set right all that is undesirable and wrong in the overarching way of life that we had come to accept as the normal over the past few decades.

Conclusion

We at ZingUpLife have been trying to do our bit to build this new framework of human existence. Modelling our approach on an 8 dimensional model of human wellbeing, we base our initiatives in workplace wellness on two basic truths – "wellness is NOT the absence of illness" and "human wellbeing is NOT a uni-dimensional paradigm". We understand that human lives are not consumables for the engine of growth of societies but assets that must be nurtured to appreciate in value over time. In this current scenario, we have moved swiftly to create products and services that help organisations and their people to re-jig and re-cast both their external physical environments as well as their re-map their personal wellbeing priorities and practices.

I leave you to think over Greg Anderson's wise words, to light your path in these present days of dim darkness that seem to be enveloping us - "The concept of total wellness recognizes that our every thought, word, and behaviour affects our greater health and well-being. And we, in turn, are affected not only emotionally but also physically and spiritually."

Let us take care of our thoughts, words and behaviour and as we gradually fix these, a healthier and safer world will follow. Live well, be well and stay well.

Anirvanjyoti Chaudhuri
Co-founder and
Chief Strategy Officer
ZingUpLife

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Who are we?

Greentree is a well- established Global Human Resource Solution provider whereby it engages in a client-centric approach to lend world-class recruitment services. Our vast pool of knowledge based on comprehensive industry research and active camaraderie with business leaders makes us at Greentree, experts in searching the right human resource for your company.

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- 100+ Network of highly qualified recruiters.
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- Industry specific qualified recruitment teams with quality experience.

Get in Touch

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UPCOMING EVENTS 2020

S. No	Topic	Date
1.	Certificate Course on International Tax	12th June 13th June 19th June 20th June 26th June 27th June
2.	Certificate Course on GST	9th June 10th June 11th June
3.	Master class on Supply Chain Management and Mitigating the Impact of Fraud	18th June 19th June
4.	Cyber Legal Aspects Relating to Telemedicine in India	20th June
5.	Certificate Course on Practical Knowledge of Arbitration and Dispute Resolution	23rd June 24th June 25th June 27th June
6.	VAT Audit by Federal Tax Authority in UAE – Learning from experience	29th June
7.	Virtual Workshop on Mergers and Acquisitions	1st July 2nd July 3rd July
8.	Certificate course on Fraud detection & Prevention : Mitigating Corporate Fraud and Cyber Crime A way forward to effective Corporate governance	7th July 8th July 9th July 10th July
9.	Virtual Training on Contract Drafting & Negotiating - An Advanced Level Workshop	8th July 9th July 10th July
10.	2nd Annual Fraud, Risk and Compliance Summit	24th July
11.	Digital Course on Prevention of Oppression & Mismanagement : A way forward to effective Corporate governance	23rd July 27th July 29th July
12.	Certificate Course on Practical Knowledge of Arbitration for Corporates	4th August 5th August 6th August 7th August
13.	30 Under 45 (Fraud Risk Professional)	13th August
14.	Master the art of family business dynamics – Wills, Probate & Charters	18th August 19th August
15.	GST Summit and Awards	20th August
16.	Certificate Course on Detecting and Preventing Internal and External Fraud	24th August 25th August 26th August 27th August 28th August
17.	30 Under 45 (Indirect Taxation)	26th August

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